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**TITOLO TESI**

**The protection of environmentally displaced persons:  
Legal gaps in International and Regional Law**

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*Julio II: ¿Cuándo terminarás?*  
*Miguel Ángel: Cuando termine...*

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El inmortal Carlos Ruíz Zafón escribió en su libro, *El juego del ángel*, que un escritor "nunca olvida la primera vez que siente el dulce veneno de la vanidad en la sangre y cree que, si consigue que nadie descubra su falta de talento, el sueño de la literatura será capaz de [otorgarle] lo que más anhela: su nombre impreso en un miserable pedazo de papel que seguramente vivirá más que él". Tal vez sea esa misma vanidad la que me impulsa a escribir estas líneas, apenas unas horas antes del depósito de esta tesis doctoral, en la confianza de que en algún momento, luego de haber dejado esta existencia terrenal, alguien, tal vez un nuevo colegial del Colegio de España mientras curioseara por la Casa Cervantes, encontrará el trabajo de investigación con el que este doctorando se sometió al juicio de los sabios en busca de la eternidad de la Academia.

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## Abstract

The main objective of this thesis is to identify the gaps existing in International Law to protect environmentally displaced persons.

The object of study of the research is delimited by the concept of environmental disruption, defined as a drastic change of natural origin in an ecosystem or its utilities that makes it temporarily or permanently uninhabitable for humans. Disruptions of anthropogenic origin that might force people to move, such as implementing a development project or the effects of war on the environment, are therefore not considered. The very nature of environmental disruption presupposes that this movement is forced to ensure one's existence in dignified conditions, which excludes migration from the scope of the study as a predominantly voluntary movement. However, it is recognised that migration can be a sound coping strategy in contexts of environmental stress. Finally, contrary to the doctrinal tendency to consider only environmental displacement related to climate change, this thesis does not discriminate between natural causes, climatic or otherwise, that lead to disruption in the human environment.

The thesis is structured in three parts and eight chapters. Each part builds on an initial question or hypothesis: Does environmental displacement exist? Is there a gap in the international legal system regarding protecting environmentally displaced persons? Can international law prevent the causes of environmental displacement or, if not, how should it respond to protect those displaced?

The first part corresponds to Chapters I and II. It sets out how the relationship between the environmental factor and human mobility has been constructed and the numerical data on the extent of displacement due to natural disasters. These first two chapters, which use a social science methodology, act as a necessary precondition for the subsequent legal analysis, demonstrating the existence of the object of the study and justifying the relevance of the research.

The second part comprises Chapters III to VI. Each chapter deals with one of the legal protection regimes of international law, analysing the relevant instruments at both the universal and regional levels. Thus, Chapter III looks at refugee law, examining the 1951 Geneva Convention and the corresponding regional frameworks. Chapter IV focuses on analysing the hypothetical situation of statelessness in which the population of low-lying SIDS would be left due to rising sea levels associated with climate change. It also discusses the protection that UNHCR has been providing to environmentally displaced persons on the ground. Chapter V discusses the application of the principle of non-refoulement to environmentally displaced persons who are irregularly present on the territory of a third state. Finally, Chapter VI deals with internal displacement's universal and regional normative framework.

The *de lege data* examination of the second part will allow identifying the current weaknesses, shortcomings and limitations of the international legal system for



protecting environmentally displaced persons, including those related to climate change. The corroboration of this legal gap raises the question of how international law should respond to it, which is the subject of Part Three. Chapter VII explores the preventive response, analysing the international framework on climate change (UNFCCC) and disaster risk management (SFDRR) as immediate causes of displacement. In addition, attention is given to international progress on sustainable development (Agenda 2030) as an underlying cause of increased vulnerability to environmental disruption and subsequent displacement. Chapter VIII considers the reactive response, commenting on the University of Limoges' draft articles on the international status of environmentally displaced persons and comparing it with other normative proposals from the Academy for protecting the sub-category of climate displaced persons.

Finally, *quod erat demonstrandum* of the above analysis, the conclusions reached at the end of the doctoral research are set out.

## Resumen

La presente tesis tiene como objetivo principal identificar las lagunas que existen en el Derecho Internacional para proteger a las personas medioambientalmente desplazadas.

El objeto de estudio de la investigación viene delimitado por el concepto de disrupción medioambiental, definida como un cambio drástico de origen natural en un ecosistema o en sus utilidades que lo hace, temporal o permanentemente, inhabitable para el ser humano. No se consideran, por tanto, las disrupciones de origen antrópico que pudieran obligar a la población a desplazarse, como la ejecución de un proyecto de desarrollo o los efectos de la guerra en el medio ambiente. La propia naturaleza de la disrupción medioambiental presupone que este movimiento es forzoso, a fin de garantizar la propia existencia en condiciones dignas, lo que excluye la migración del ámbito de estudio en tanto que movimiento predominantemente voluntario. No obstante, se reconoce que la migración puede ser una estrategia de adaptación útil en contextos de estrés medioambiental. Finalmente, en contra de la tendencia doctrinal a considerar únicamente los desplazamientos medioambientales relacionados con el cambio climático, esta tesis no discrimina entre las causas naturales, climáticas o no, que provocan la disrupción en el medio humano.

La tesis se ha estructurado en tres partes y ocho capítulos. Cada una de las partes ha sido planteada en base a una pregunta o hipótesis de partida inicial, a saber: ¿Existen los desplazamientos medioambientales? ¿Existe una laguna en el ordenamiento jurídico internacional en cuanto a la protección de las personas desplazadas por motivos medioambientales? ¿Puede el Derecho Internacional evitar las causas del desplazamiento medioambiental o, en caso contrario, cómo debería responder para proteger a los desplazados?

La primera parte se corresponde con los Capítulos I y II. En ellos se expone cómo se ha construido la relación entre el factor ambiental y la movilidad humana, así como los datos numéricos sobre la magnitud de los desplazamientos debidos a los desastres naturales. Estos primeros capítulos, que responden a una metodología propia de las ciencias sociales, actúan como presupuesto necesario para el posterior análisis jurídico, demostrando la existencia del objeto del estudio y, por tanto, justificando la procedencia de la investigación.

La segunda parte comprende los Capítulos III a VI. Cada uno de ellos aborda uno de los regímenes jurídicos de protección del Derecho Internacional, analizándose los instrumentos relevantes tanto a nivel universal como regional. Así, el Capítulo III estudia el derecho de los refugiados, examinándose la Convención de Ginebra de 1951 y los marcos regionales correspondientes. El Capítulo IV se centra en analizar la situación hipotética de apátrida en la que quedaría la población de los PEID de escasa elevación como consecuencia de la subida del nivel del mar asociado al cambio climático. Además, se aborda la protección que sobre el terreno el ACNUR ha venido prestando a los desplazados medioambientales. El Capítulo V discute la aplicación del principio de

no devolución a las personas medioambientalmente desplazadas que se encuentren irregularmente en el territorio de un tercer Estado. Por último, el Capítulo VI se ocupa del marco normativo de ámbito universal y regional sobre desplazamiento interno.

El examen *de lege data* de la segunda parte permitirá señalar las debilidades, carencias y limitaciones actuales del ordenamiento jurídico internacional para la protección de las personas desplazadas por motivos ambientales, incluidos los relacionados con el cambio climático. La corroboración de la existencia de dicha laguna jurídica obliga a preguntarse acerca de la respuesta que debe dar el Derecho Internacional ante ella, lo que constituye el objeto de la tercera parte. El Capítulo VII explora la respuesta preventiva, analizándose el marco internacional sobre cambio climático (CMNUCC) y de gestión del riesgo de desastres (MSRRD), en tanto que causas inmediatas de los desplazamientos. Además, se presta atención a los progresos internacionales en materia de desarrollo sostenible (Agenda 2030), como causa subyacente de una mayor vulnerabilidad ante las interrupciones medioambientales y el subsiguiente desplazamiento. Por su parte, el Capítulo VIII considera la respuesta reactiva, comentando el proyecto de artículos de la Universidad de Limoges sobre el estatuto internacional de los desplazados ambientales y comparándolo con otras propuestas normativas de la Academia para la protección de la sub-categoría de los desplazados climáticos.

Por último, *quod erat demonstrandum* del análisis anterior, se exponen las conclusiones alcanzadas al final de la investigación doctoral.

## Abstract

L'obiettivo principale di questa tesi è quello di identificare le lacune che esistono nel diritto internazionale per proteggere gli sfollati ambientali.

L'oggetto di studio della ricerca è delimitato dal concetto di perturbazione ambientale, definito come un drastico cambiamento di origine naturale in un ecosistema o nelle sue utilità che lo rende temporaneamente o permanentemente inabitabile per l'uomo. Pertanto, le perturbazioni antropogeniche che possono costringere le persone a spostarsi, come la realizzazione di un progetto di sviluppo o gli effetti della guerra sull'ambiente, non sono prese in considerazione. La natura stessa delle perturbazioni ambientali presuppone che questo spostamento sia forzato, al fine di assicurare la propria esistenza in condizioni dignitose, il che esclude la migrazione dall'ambito dello studio come un movimento prevalentemente volontario. Tuttavia, si riconosce che la migrazione può essere un'utile strategia di coping in contesti di stress ambientale. Infine, contrariamente alla tendenza dottrinale di considerare solo lo spostamento ambientale legato al cambiamento climatico, questa tesi non discrimina tra le cause naturali, sia climatiche che di altro tipo, che causano disagi all'ambiente umano.

La tesi è strutturata in tre parti e otto capitoli. Ciascuna delle parti si basa su una domanda o ipotesi iniziale, vale a dire: esiste lo spostamento ambientale? Esiste una lacuna nel diritto internazionale per quanto riguarda la protezione degli sfollati ambientali? Il diritto internazionale può prevenire le cause dello spostamento ambientale o, in caso contrario, come dovrebbe rispondere per proteggere gli sfollati?

La prima parte corrisponde ai Capitoli I e II. Espone come è stata costruita la relazione tra il fattore ambientale e la mobilità umana, così come i dati numerici sulla dimensione degli spostamenti dovuti ai disastri naturali. Questo primo capitolo, che segue una metodologia di scienze sociali, funge da presupposto necessario per la successiva analisi giuridica, dimostrando l'esistenza dell'oggetto di studio e giustificando così la pertinenza della ricerca.

La seconda parte comprende i Capitoli da III a VI. Ogni capitolo si occupa di uno dei regimi di protezione giuridica del diritto internazionale, analizzando gli strumenti rilevanti sia a livello universale che regionale. Così, il Capitolo III si occupa del diritto dei rifugiati, esaminando la Convenzione di Ginevra del 1951 e i corrispondenti quadri regionali. Il Capitolo IV si concentra sull'analisi dell'ipotetica situazione di apolidia in cui si troverebbe la popolazione dei SIDS a bassa quota a causa dell'innalzamento del livello del mare associato al cambiamento climatico. Discute anche la protezione che l'UNHCR ha fornito agli sfollati ambientali sul terreno. Il Capitolo V discute l'applicazione del principio di non respingimento agli sfollati ambientali che sono irregolarmente presenti sul territorio di uno Stato terzo. Infine, il Capitolo VI si occupa del quadro normativo universale e regionale sullo spostamento interno.

L'esame *de lege data* della seconda parte ci permetterà di evidenziare le attuali debolezze, carenze e limiti del sistema giuridico internazionale per la protezione delle

persone sfollate per motivi ambientali, compresi quelli legati al cambiamento climatico. La conferma dell'esistenza di una tale lacuna giuridica solleva la questione di come il Diritto Internazionale dovrebbe rispondere ad essa, che è l'argomento della Parte III. Il Capitolo VII esplora la risposta preventiva, analizzando il quadro internazionale sul cambiamento climatico (UNFCCC) e la gestione del rischio di disastri (SFDRR) come cause immediate di spostamento. Si presta attenzione anche al progresso internazionale sullo sviluppo sostenibile (Agenda 2030) come causa di fondo di una maggiore vulnerabilità ai disastri ambientali e al conseguente spostamento. Il Capitolo VIII considera la risposta reattiva, commentando il progetto di articoli dell'Università di Limoges sullo status internazionale degli sfollati ambientali e confrontandolo con altre proposte normative dell'Accademia per la protezione della sottocategoria degli sfollati climatici.

Infine, *quod erat demonstrandum* dell'analisi di cui sopra, si espongono le conclusioni raggiunte alla fine della ricerca dottorale.

## TABLE OF CONTENTS

<b>TABLE OF FIGURES, MAPS AND TABLES.....</b>	<b>XXIV</b>
<b>LIST OF ABBREVIATIONS .....</b>	<b>XXVII</b>
<b>INTRODUCTION .....</b>	<b>1</b>
DELIMITATION OF THE SUBJECT OF STUDY .....	1
WORKING HYPOTHESIS AND STATE OF THE ART .....	4
STRUCTURE AND METHODOLOGY .....	6
Part One.....	6
Part Two .....	8
Structure.. .....	9
Methodology .....	9
Sources ... .....	10
Part Three .....	11
RESEARCH OBJECTIVES .....	12
<b>INTRODUCCIÓN .....</b>	<b>13</b>
DELIMITACIÓN DEL OBJETO DE ESTUDIO .....	13
HIPÓTESIS DE TRABAJO Y ESTADO DE LA CUESTIÓN .....	17
ESTRUCTURA Y METODOLOGÍA.....	18
Primera Parte .....	18
Segunda Parte .....	20
Estructura .....	21
Metodología .....	22
Fuentes.... .....	23
Tercera Parte.....	24
OBJETIVOS DE LA INVESTIGACIÓN .....	25
<b>INTRODUZIONE.....</b>	<b>26</b>
DELIMITAZIONE DELL'OGGETTO DI STUDIO .....	26
IPOTESI DI LAVORO E STATO DELL'ARTE .....	29
STRUTTURA E METODOLOGIA .....	31
Parte prima .....	31

Parte seconda .....	33
Struttura ..	34
Metodologia .....	34
Fonti .....	35
Parte terza.....	36
OBIETTIVI DELLA RICERCA.....	37

**PART ONE**  
**DEMONSTRATING THE EXISTENCE**  
**OF ENVIRONMENTAL DISPLACEMENT**

**CHAPTER I**  
**HUMAN MOBILITY AND THE ENVIRONMENT**

INTRODUCTION .....	39
1.THE RELATIONSHIP BETWEEN MIGRATION AND ENVIRONMENTAL CHANGE .....	39
1.1.Introduction.....	39
1.2.The environmental factor in classical migration models.....	42
1.3.The "maximalist" perspective on environmental migration .....	45
1.3.1.The role of human action behind environmental disruptions leading to migration. ....	48
A) Development projects .....	48
B) Pollution .....	49
C) Warfare .....	50
D) Natural Disasters .....	51
E) Sea-level rise .....	53
F) Land degradation .....	54
1.3.2.Associated factors to environmental vulnerability .....	57
A) Population growth and poverty .....	58
B) Ill-development.....	63
C) Lack of resources for adaptation .....	64
1.3.3.Assessment of the "maximalist" vision .....	66
1.4.Critique of the "maximalist" conception: the "minimalist" perspective on environmental migration .....	69
1.4.1.Human capacity to cope with environmental stress .....	70

A) Vulnerability and resilience to cope with environmental stress without migrating .....	71
B) Migration as a coping strategy to environmental stress .....	75
1.4.2. An “ahistorical and depoliticised” conception of the Third World which denies developing countries any possibility of adapting to environmental hazards	79
1.4.3. Multi-causality of the decision to migrate .....	82
1.5. Bridging the gap between the "maximalist" and the "minimalist" approach .....	88
1.5.1. The contextual model of Black et al. ....	89
1.5.2. The "effects framework" of Morrissey .....	92
<i>Excursus: testing Morrissey's model to explain flood-related displacement</i> ....	95

## CHAPTER II

### QUANTIFYING ENVIRONMENTALLY DISPLACED PERSONS

1. THE SCOPE OF ENVIRONMENTAL DISPLACEMENT: BETWEEN INDETERMINACY AND PRECISION .....	99
2. DEFINING AND CLASSIFYING ENVIRONMENTAL DISRUPTIONS .....	105
3. QUANTIFYING ENVIRONMENTAL DISPLACEMENT .....	111
3.1. Methodology .....	112
3.1.1. The International Disaster Database .....	112
3.1.2. The Disaster-related displacements dataset .....	115
3.2. How many people have been displaced by environmental disruptions in the world? ..	119
3.1.1. Hydrological disasters .....	120
A) Occurrence .....	120
B) Total material damages .....	122
C) Total people displaced .....	124
3.1.2. Sea-level rise and coastal risks .....	127
A) Global exposure .....	127
B) Assets exposed to extreme water levels .....	129
C) Population exposed to extreme water levels .....	132
D) The potential role of adaptation and mitigation .....	135
3.1.3. Meteorological disasters .....	139
A) Occurrence .....	139
B) Total material damages .....	141



C) Total people displaced .....	143
3.1.4.Climatological disasters .....	147
A) Occurrence .....	147
B) Total material damages .....	150
C) Total people displaced .....	152
3.1.5.Geophysical disasters.....	155
A) Occurrence .....	155
B) Total material damages .....	157
C) Total people displaced .....	159
4.EXTENT OF ENVIRONMENTAL DISPLACEMENT: WHAT DO WE REALLY KNOW? .....	164

## **PART TWO**

### **DE LEGE DATA ANALYSIS OF THE INTERNATIONAL PROTECTION OF ENVIRONMENTALLY DISPLACED PERSONS**

#### **CHAPTER III**

#### **ENVIRONMENTAL DISPLACEMENT IN REFUGEE LAW**

INTRODUCTION .....	175
1.THE 1951 GENEVA CONVENTION ON THE STATUS OF REFUGEES.....	176
1.1.Introduction.....	176
1.2.Conceptualising environmentally-displaced persons as "refugees": an analysis of Article 1(2) (A) of the 1951 Convention.....	178
1.2.1.A closed catalogue of causes for seeking refuge: a product of its time. Proposals for expansion to include environmental factors.....	179
1.2.2.The legal concept of "being persecuted" .....	184
A) The need for human agency .....	185
<i>Excursus: States as climate persecutors</i> .....	186
B) The need for persecution to be individual.....	190
1.2.3.A "well-founded fear" .....	192
1.2.4."(...) and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country" .....	195
1.2.5."(...) is outside the country of his nationality" or "being outside the country of his former habitual residence" .....	198
1.3.Do inhabitants of Kiribati or Tuvalu already qualify as refugees? Analysis of their status as a "particular social group" .....	199

1.3.1.Socio-economic class as a particular social group .....	200
1.3.2.Discriminatory measures as acts of persecution .....	204
1.3.3.The motivational element .....	207
2.REGIONAL INSTRUMENTS GOVERNING THE SPECIFIC ASPECTS OF REFUGEES IN AFRICA, LATIN AMERICA, THE MIDDLE EAST AND ASIA.....	209
2.1.The geopolitical context surrounding the development of regional instruments on refugee .....	210
2.1.1.Africa: the 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa.....	210
2.1.2.Latin America: the 1984 Cartagena Declaration on Refugees .....	212
2.1.3.The Middle East and Asia: the Bangkok Principles on the status and treatment of refugees and the Arab Convention on Regulating Status of Refugees in the Arab Countries .....	215
2.2.Fitting environmentally displaced persons in regional refugee instruments .....	217
<i>Excursus: the clause on "events seriously disturbing public order". Moving towards an environmental public order? .....</i>	<i>220</i>
2.3.The legal status of refugees under regional refugee instruments.....	227
2.3.1.The 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa .....	228
2.3.2.The 1984 Cartagena Declaration on Refugees.....	230
A) Refugee rights under the 1951 Convention.....	230
B) Refugee rights under the American Convention on Human Rights .....	232
C) Conclusion No. 22 of the UNHCR Executive Committee .....	232
D) Obligations of refugees .....	234
2.3.3.The Bangkok Principles on the status and treatment of refugees .....	234
2.3.4.The Arab Convention on Regulating Status of Refugees in the Arab Countries. ....	237
3.ENVIRONMENTALLY DISPLACED INDIVIDUALS IN EUROPEAN ASYLUM LAW.....	238
3.1.Introduction.....	238
3.2.The Qualification Directive 2011/95/EU (recast).....	241
3.2.1.Introduction.....	241
3.2.2.Definition of "refugee" .....	243
3.2.3.Definition of "person eligible for subsidiary protection" .....	246

3.2.4.Environmentally displaced individuals as beneficiaries of subsidiary protection: an analysis of Article 15 (b) QD (recast) .....	248
A) The Qualification Directive in context: negotiation process and objectives of subsidiary protection .....	249
B) The correlation between Article 15(b) QD (recast) and the principle of non-refoulement, as inferred by the ECtHR's case law from Article 3 ECHR.....	253
1.The case of <i>D. v. The United Kingdom</i> .....	253
a.The influence the ECtHR's judgment had on the drafting of Article 15 (b) QD .....	255
b.The correlation between Article 15 (b) QD and Article 3 ECHR according to the CJEU: the case of <i>M'Bodj v. État Belge</i> .....	256
2.The cases of <i>M.S.S. v. Greece and Belgium</i> and <i>Sufi and Elmi v. The United Kingdom</i> .....	257
C) Why, apart from Article 15 (b), persons forced to move for environmental causes would not generally be entitled to subsidiary protection: necessary elements for the activation of this complementary status.....	258
1.General risk situations prevailing in the country of origin are excluded ...	259
2.The requirement of an actor of persecution or serious harm (Article 6)....	260
3.Internal protection in the country of origin as a cause for excluding protection (Article 8) .....	261
D) The 2008 Cyclone Nargis in Myanmar: a case-study of subsidiary protection .....	263
3.3.The Temporary Protection Directive 2001/55/EC .....	267
3.3.1.Introduction .....	267
3.3.2.The legal concept of "mass influx" and "displaced persons" .....	268
A) Mass influx (Article 2 (d) TPD) .....	268
B) The definition of "displaced persons" (Article 2 (c) TPD) .....	270
3.3.3.Advantages of the TPD for the protection of environmentally displaced persons: the legal status of beneficiaries of temporary protection.....	271
A) Broad definitions resulting in flexibility in the application of the TPD ...	271
B) The legal status of environmentally displaced persons protected under the TPD .....	272
3.3.4.Temporal and political constraints on the use of the TPD in the context of environmental displacement .....	274

A) Limit on the duration of temporary protection.....	274
B) The high degree of political discretion ultimately hinders the practical viability of TPD in cases of "mass influx" caused by environmental factors...	275
3.3.5.The paradox of numbers: same situation, different level of protection .....	280
3.4.National responses: the clause of the more favourable standard (Article 3 Directive 2011/95/EU (recast) and Article 7 Directive 2001/55/EC).....	282
3.4.1.Finland .....	284
A) Humanitarian protection for environmental reasons .....	284
B) Temporary protection .....	286
3.4.2.Sweden.....	288
3.4.3.Italy .....	289
A) The residence permit for cases of calamity (art. 20 bis DL 286/1998) ....	290
1.The precedent of the previous residence permit for humanitarian reasons	290
2.The temporary residence permit for cases of calamity in the country of origin.....	293
B) Temporary protection for humanitarian reasons (art. 20 DL 286/1998) ..	296
1.Differences between temporary protection for humanitarian reasons and the temporary residence permit for cases of calamity.....	297
a.A different case of fact: natural disaster v. calamity .....	297
b.Determination of protection status on an individual or group basis: the need for a mass influx of displaced persons in the context of temporary protection for humanitarian reasons .....	300
2.Content of temporary protection for humanitarian reasons .....	301
3.4.4.Cyprus.....	302

## **CHAPTER IV**

### **ENVIRONMENTAL DISPLACEMENT AND STATELESSNESS**

#### **UNHCR'S ROLE IN THE PROTECTION**

#### **OF ENVIRONMENTALLY DISPLACED PERSONS**

INTRODUCTION .....	303
1.VANISHING SMALL ISLAND DEVELOPING STATES UNDER OCEAN WATERS: THE STATELESSNESS OF THEIR NATIONALS.....	303
1.1.Introduction.....	303
1.2.Statehood and low-lying island States .....	309

1.2.1.Low-lying island States and the criteria for statehood .....	309
A) The territory.....	311
B) The population.....	314
C) The public power .....	315
1.2.2.Low-lying island States and the presumption of statehood continuity.....	318
1.2.3.Low-lying island States as de-territorialised entities: the case of the Sovereign Military Order of Malta .....	319
1.3.Statelessness and low-lying island States.....	324
1.3.1.Low-lying island States and the 1954 Convention relating to the Status of Stateless Persons .....	324
1.3.2.Low-lying island States and the 1961 Convention on the Reduction of Statelessness.....	329
1.3.3.Regional initiatives to protect stateless persons and prevent statelessness .	331
A) Europe.....	331
B) Africa and Middle East .....	334
C) America.....	337
D) Asia.....	338
2.UNHCR'S ROLE IN PROTECTING ENVIRONMENTALLY DISPLACED PERSONS .....	339
2.1.Introduction.....	339
2.2.UNHCR's mandate.....	339
2.3.Environmental displacement situations already covered by UNHCR's mandate ...	343
2.4.Attempts to expand UNHCR's mandate to include environmentally displaced persons.....	345
2.4.1.The 2011 pilot proposal .....	347
2.4.2.The Nansen Conference.....	350
2.4.3.Why has UNHCR failed in its attempts to expand its mandate? An explanation from the general theory of international organisations .....	352
2.5.UNHCR's role on climate change and natural disasters-related displacement.....	355
2.5.1.UNHCR's field operations to assist internally displaced persons .....	358
2.5.2.UNHCR field operations to assist cross-border displaced persons .....	361

**CHAPTER V**  
**ENVIRONMENTAL DISPLACEMENT AND HUMAN RIGHTS:**  
**THE PRINCIPLE OF *NON-REFOULEMENT***

INTRODUCTION .....	363
1.UN'S HUMAN RIGHTS SYSTEM: THE <i>NON-REFOULEMENT</i> OF ENVIRONMENTALLY DISPLACED MIGRANTS UNDER THE ICCPR .....	371
1.1.Environmental disruptions as a source of potential damage to: .....	373
1.1.1.The right to life (Article 6 ICCPR).....	373
1.1.2.The right to be free from torture and other cruel, inhuman or degrading treatments (Article 7 ICCPR) .....	376
1.2.The applicability of the <i>real-risk test</i> in environmental disruptions: the notion of dignity .....	377
1.2.1.General living conditions as contrary to the right to live with dignity .....	379
1.2.2.General living conditions as contrary to the right to be free from inhuman or degrading treatment.....	383
1.2.3.The <i>real-risk test</i> : not an entirely objective test .....	387
1.3.Applying the <i>real-risk test</i> in the case of Mr Teitiota .....	388
1.4.Satisfying the <i>real-risk test</i> in sinking SIDS: a question of time?.....	390
1.5.Conclusion .....	393
2.REGIONAL HUMAN RIGHTS SYSTEMS: THE <i>NON-REFOULEMENT</i> OF ENVIRONMENTALLY DISPLACED MIGRANTS IN THE ECHR, THE INTER-AMERICAN HUMAN RIGHTS SYSTEM, AND THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS .....	395
2.1.European Convention on Human Rights (ECHR) .....	395
2.1.1.Non-man-made environmental harm as a threat to the right to life (Article 2(1) ECHR).....	395
A) The obligation of States to protect life in case of threats in the ECtHR's case-law .....	396
B) Application of the previous jurisprudential principles to the case of environmental displaced persons .....	399
2.1.2.Socio-economic living conditions degraded by environmental factors (Article 3 ECHR) . .....	401
2.1.3.Confronting Mr. Teitiota's case with the ECtHR's jurisprudence on Articles 2 and 3 ECHR: a different outcome than before the HRC? .....	404

2.2.The application of the principle of <i>non-refoulement</i> to environmentally displaced persons in the Inter-American human rights system .....	407
2.3.Environmental degradation, human rights and <i>non-refoulement</i> in the African Charter on Human and Peoples' Rights.....	416
3.STATES' AD HOC APPLICATION OF THE PRINCIPLE OF NON-REFOULEMENT .....	422

## CHAPTER VI

### ENVIRONMENTAL DISPLACEMENT UNDER INTERNATIONAL STANDARDS ON INTERNAL DISPLACEMENT

INTRODUCTION .....	424
1.GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT.....	425
1.1.Introduction.....	425
1.2.The concept of "internally displaced person" .....	429
1.2.1.Environmentally displaced persons as IDPs .....	431
<i>Excursus: the "reasonability test". A theoretical approach to distinguish voluntary movements from forced movements in the context of slow-onset environmental disturbances.</i> .....	433
1.3.Protection of IDPs in situations of environmental disruption: analysis of the content of the Guiding Principles in this particular context .....	436
1.3.1.Introduction.....	436
1.3.2.Section I (Guiding Principles 1 to 4): particular reference to the State's duty to protect the life and security of persons internally displaced by environmental disturbances and to the principle of non-discrimination .....	438
A) The States' duty to protect the life and security of IDPs in the context of environmental disruption: Guiding Principle No. 3 .....	439
B) The principle of non-discrimination: specific protection needs of particularly vulnerable groups .....	440
1.3.3.Section II (Guiding Principles 5 to 9): the States' duty to prevent displacement resulting from environmental disruptions, and special provisions in case of evacuation or forced relocation of affected communities.....	445
A) Preventing internal displacement from natural hazards: the importance of prevention and preparedness.....	446
B) Freedom of movement and forced evacuation or relocation of populations at risk: Guiding Principles No. 6 in conjunction with No. 14.....	449

1.3.4. Section III (Guiding Principles 10 to 23): a brief overview of IDPs' rights during internal displacement.....	452
A) Rights related to the personal integrity and security of IDPs.....	453
B) Family rights .....	455
C) Social and economic rights .....	455
D) Civil, political and other rights of a similar nature.....	458
1.3.5. Section IV (Guiding Principles 24 to 27): principles that shall guide the provision of humanitarian assistance. Particular reference to the "responsibility to protect" principle in the context of natural disasters .....	460
A) The Guiding Principle No. 25 and the coercive delivery of relief aid in the wake of a natural disaster: the case of Myanmar and the Cyclone Nargis .....	460
<i>Case study: the "responsibility to protect" in the case of Myanmar and Cyclone Nargis</i> .....	463
B) Principles that should guide the provision of humanitarian assistance ....	467
1.3.6. Section V (Guiding Principles 28 to 30): principles relating to return, resettlement and reintegration. Particular reference to participation rights of affected communities and housing and property rights.....	470
A) Participation of affected communities in the planning and management of their return or relocation: the case of the Carteret Islands (Papua New Guinea)....	
.....	472
<i>Case study: the Tulele Peisa project as an example of a bottom-up resettlement initiative</i> .....	476
B) Housing and property rights.....	482
<i>Excursus: the Pinheiro Principles</i> .....	484
2. REGIONAL FRAMEWORKS .....	486
2.1. Africa.....	486
2.1.1. The Great Lakes Protocol on Internal Displacement.....	488
A) Background .....	488
B) Content.....	489
1. The IDP concept and Development-Induced Displacement .....	490
2. Responsibility for protecting IDPs .....	491
3. Documentation and registration .....	492
4. Freedom of Movement.....	494
5. Protection for families of mixed ethnic identity.....	495



6. Protection and assistance to host communities .....	495
7. Participation of IDPs and civil society in the drafting of national legislation on internal displacement .....	496
8. Property rights of IDPs .....	497
9. Monitoring mechanism and implementation .....	500
2.1.2. The Kampala Convention .....	501
A) Background .....	501
B) Content .....	504
1. Definition .....	506
2. Protection from internal displacement .....	508
3. Protection during displacement: the responsibility to protect .....	510
<i>Excursus: The responsibility to protect in the Kampala Convention .....</i>	<i>514</i>
4. Protection relating to sustainable return, local integration or relocation ...	517
C) Implementation .....	520
2.2. The Americas .....	532
2.2.1. Peru .....	533
2.2.2. Mexico .....	535
2.3. Europe .....	536
2.3.1. The Council of Europe .....	537
2.3.2. The EU .....	541
2.4. Asia .....	549
2.5. The Middle East .....	555

### **PART THREE**

#### **PREVENTING ENVIRONMENTAL DISPLACEMENT**

##### ***DE LEGE FERENDA PROPOSALS TO PROTECT***

##### **ENVIRONMENTALLY DISPLACED PERSONS**

#### **CHAPTER VII**

##### **ENVIRONMENTAL DISPLACEMENT IN THE UN CLIMATE CHANGE**

##### **REGIME, THE FRAMEWORK FOR NATURAL DISASTER REDUCTION**

##### **AND THE SUSTAINABLE DEVELOPMENT AGENDA**

INTRODUCTION .....	560
1. ENVIRONMENTAL DISPLACEMENT IN THE UN CLIMATE CHANGE FRAMEWORK .....	562
1.1. Introduction .....	562

1.2.From Cancun to Paris: institutionalising the relationship between human mobility and climate change.....	563
1.2.1.COP16: The Cancun Agreements .....	563
1.2.2.COP 19: Establishing the Warsaw International Mechanism for Loss and Damage associated with climate change impacts .....	567
1.2.3.The Paris Agreement and the launching of the Task Force on Displacement ... ..	569
A) Human Mobility and adaptation in the Paris Agreement: the Nationally Determined Contributions (NDCs) .....	570
B) Setting up the working group on displacement .....	576
1.3.An overview of the Task Force on Displacement’s work .....	577
1.3.1.First phase: The initial two-year work plan (2017-2018).....	577
A) The COPs of Marrakech (2016) and Fiji (2017) .....	580
B) <i>Recommendations from the first phase-work of the TFD on integrated approaches to averting, minimising and addressing displacement related to the adverse impacts of climate change: the culmination of its two-year programme of work</i> .....	581
1.Improving methodologies for collecting and monitoring relevant data ....	583
2.Filling policy and regulatory gaps .....	584
3.Improving coordination within the UN system.....	587
1.3.2.Second phase: TFD's Plan of Action for 2019-2021 .....	589
A) Summary of the second Plan of Action and implementation progress.....	591
B) Outcomes from the second Plan of Action .....	594
1.3.3.The way ahead.....	597
2.DISASTERS-RELATED DISPLACEMENT: THE SENDAI FRAMEWORK .....	599
2.1.Introduction.....	599
2.2.Disasters-related displacement in the text of the Sendai Framewor .....	600
2.2.1.Human mobility.....	605
2.2.2.Displacement.....	608
A) Cross-border cooperation to reduce disaster and displacement-related risks . .....	610
B) Preparedness for effective response and protection of displaced persons	611
C) Rehabilitation of former settlements of people displaced by disasters.....	612
2.2.3.Evacuation.....	613

2.2.4.Relocation .....	615
2.3.Assessing the implementation of displacement-related provisions in the SFDRR: the 2019 and 2022 Global Platform for Disaster Risk Reduction .....	617
2.3.1.Resilience Dividend: Towards Sustainable and Inclusive Societies (2019 Global Platform) .....	618
2.3.2.From Risk to Resilience: Towards Sustainable Development for All in a COVID-19 Transformed World (2022 Global Platform).....	621
3.ENVIRONMENTALLY INDUCED HUMAN MOBILITY AND THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT .....	623
3.1.Introduction.....	623
3.2.Environmental factors, human mobility and the 2030 Agenda .....	625
3.2.1.Environmental migration as a strategy for development .....	626
3.2.2.Avoidance and minimisation of environmental displacement through sustainable development.....	628
A) Poverty and population growth .....	629
B) Land degradation .....	630
C) Conservation of marine ecosystems .....	632
D) Hunger.....	634
E) Drinking water.....	636
F) Human settlements resilience.....	637
G) Climate change .....	639
H) Pollution .....	641
3.3.Attainment of the Sustainable Development Goals: Towards the virtual eradication of environmental disturbances by 2030?.....	642
3.3.1.Review of the UN Secretary-General's 2021 report on the Sustainable Development Goals: a not-so-bright future in reducing environmental disruptions ..	
.....	644
A) Migration as a strategy for development .....	644
B) Poverty and population growth .....	645
C) Land degradation and conservation of marine ecosystems.....	646
D) Hunger and drinking water.....	647
E) Human settlement and disaster risk reduction.....	649
F) Climate change .....	650
G) Pollution .....	652

3.3.2.The UN High-level Political Forum on Sustainable Development (SDG Summit 2019).....	654
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## CAPÍTULO VIII

### **PROPUESTAS DE *LEGE FERENDA* PARA LA PROTECCIÓN DE LOS DESPLAZADOS AMBIENTALES:**

#### **COMENTARIO AL PROYECTO DE CONVENIO RELATIVO AL ESTATUTO INTERNACIONAL DE LOS DESPLAZADOS AMBIENTALES DE LA UNIVERSIDAD DE LIMOGES**

INTRODUCCIÓN.....	657
1.PRESENTACIÓN DE LAS DISTINTAS PROPUESTAS NORMATIVAS FORMULADAS.....	658
<i>Excursus: ¿Por qué la propuesta de Limoges? Un proyecto de convenio autónomo con vocación universal, de alcance general y de aplicación global.....</i>	661
2.COMENTARIO AL PROYECTO DE CONVENIO RELATIVO AL ESTATUTO INTERNACIONAL DE LOS DESPLAZADOS AMBIENTALES DE LA UNIVERSIDAD DE LIMOGES .....	666
2.1.Introducción .....	666
2.1.1.Génesis del proyecto.....	666
2.1.2.Estructura del proyecto de Convenio.....	667
2.1.3.Estructura de la exégesis.....	668
2.2.Preámbulo .....	669
2.2.1.Impacto de las disrupciones medioambientales en las comunidades humanas . .....	669
2.2.2.Relación de causalidad entre las disrupciones medioambientales y los desplazamientos de población .....	670
2.2.3.Razones fácticas y jurídicas que justifican la necesidad del Convenio relativo al Estatuto Internacional de los Desplazados Ambientales .....	671
A) Razones fácticas: la estabilidad de las sociedades humanas, la supervivencia de las culturas y para la paz mundial .....	671
B) Razones jurídicas: ausencia de un marco jurídico apropiado .....	674
2.2.4.Principios de Derecho Internacional que legitiman la obligación de la comunidad internacional de desarrollar un estatuto de protección internacional para los desplazados ambientales: principio de responsabilidades comunes pero diferenciadas y deber de solidaridad compartida y asistencia mutua en caso de siniestro ecológico.....	677

2.3. Capítulo primero: objeto, definiciones y ámbito de aplicación.....	678
2.3.1. Artículo 1 - Objeto.....	678
2.3.2. Artículo 2 - Definiciones y Artículo 3 - Ámbito de aplicación.....	679
A) Parte: las organizaciones internacionales regionales de integración económica .....	680
1. Ámbito regional.....	681
2. La integración económica como objetivo y la transferencia de competencias en materias reguladas por el convenio.....	682
3. Alcance de la participación de las organizaciones internacionales partes en el convenio .....	683
B) Concepto de "desplazado ambiental" .....	683
1. Elemento subjetivo .....	684
2. Elemento material.....	685
3. Elemento causal.....	688
4. Elemento temporal y espacial .....	690
2.4. Capítulo segundo: principios .....	691
2.4.1. Principios que presiden el cumplimiento de las obligaciones del convenio	691
A) Artículo 4 - Principio de solidaridad .....	691
B) Artículo 5 - Principio de responsabilidades comunes pero diferenciadas	693
1. El principio de responsabilidades comunes pero diferenciadas en el ámbito de la convención.....	694
2. El principio de responsabilidades comunes pero diferenciadas aplicado al Protocolo adicional a la convención sobre la responsabilidad de los actores públicos y privados.....	695
C) Artículo 6 - Principio de protección .....	697
2.4.2. Principios sobre el trato de los desplazados ambientales .....	697
A) Artículo 7 - Principio de no discriminación.....	697
B) Artículo 8 - Prohibición de la expulsión y devolución (non-refoulement)	699
2.5. Capítulo sexto: instituciones y órganos.....	703
2.5.1. Comparativa de la organización institucional prevista por los distintos proyectos normativos .....	703
2.5.2. Artículo 20 - Conferencia de las Partes (CP).....	706
2.5.3. Artículo 21 - Agencia Mundial para los Desplazados Ambientales (AMDA) ..	708

A) El Consejo Científico .....	708
1.Propuestas existentes .....	708
2.El Consejo Científico en el marco de Limoges .....	709
B) El Consejo de Administración.....	711
2.5.4.Artículo 22 - Alta Autoridad (AA) .....	713
A) Funciones .....	713
B) Composición.....	716
2.5.5.Artículo 23 - El Fondo Mundial para los Desplazados Ambientales (FMDA)..	
.....	716
A) Acciones financiadas .....	717
B) Beneficiarios de la financiación .....	718
C) Mecanismos de recaudación.....	720
1.Comparativa de los diferentes modelos de financiación .....	720
2.El impuesto a la degradación del medioambiente .....	722
D) Organización y funcionamiento del FMDA.....	724
2.5.6.Artículo 25-Funciones de la Organización Internacional para las Migraciones	
.....	725
2.6.Capítulos tercero y cuarto: derechos garantizados a las personas amenazadas por el	
desplazamiento o desplazadas .....	726
2.6.1.Protección y asistencia de los desplazados en los diferentes marcos	
normativos propuestos.....	726
2.6.2.Capítulo tercero: derechos garantizados a las personas amenazadas por el	
desplazamiento.....	730
A) Artículo 9 - Derechos de información y participación .....	731
1.Derecho de información (apartado 1) .....	731
2.Derecho de participación (apartado 2).....	732
3.Efectividad de los derechos de información y participación (apartado 3). 734	
a.Eficacia del derecho de información.....	735
b.Eficacia del derecho de participación .....	736
4.Deber de publicidad (apartado 4) .....	737
B) Artículo 10 - Derecho al desplazamiento.....	737
C) Artículo 11 - Derecho a oponerse al desplazamiento .....	740
2.6.3.Capítulo cuarto: derechos reconocidos a las personas desplazadas .....	742
A) Asistencia humanitaria (artículo 12, apartados 1 a 5).....	742

Contenido del derecho de asistencia.....	746
B) Derechos humanos protegidos.....	746
1.Libertad de circulación y de elección del domicilio (artículo 12, apartado 5).....	747
2.Derecho al reconocimiento de la personalidad jurídica (artículo 12, apartado 6).....	748
3.Derecho al respeto de la unidad familiar (artículo 12, apartado 7) .....	749
4.Derecho al respeto de los bienes y de los animales domésticos (artículo 12, apartado 8).....	750
5.Derecho a ganarse la vida mediante el trabajo (artículo 12, apartado 9)...	753
6.Derecho a la educación y a la formación (artículo 12, apartado 10) .....	754
7.Derecho al mantenimiento de la especificidad cultural (artículo 12, apartado 11).....	754
8.Derecho al retorno (artículo 12, apartado 12) .....	756
9.Derecho a la información y a la participación (artículo 12, apartado 14) .	757
a.Derecho a ser informado de la existencia y condiciones de reconocimiento del estatuto de desplazado ambiental, así como de las consecuencias del de dicho reconocimiento .....	757
b.Derecho a ser informado de los motivos y formas de su desplazamiento ... .....	759
c.Derecho a ser informado de los mecanismos de compensación establecidos por los daños materiales sufridos.....	759
d.Derecho a ser informado y a participar en la búsqueda de soluciones duraderas al desplazamiento.....	760
10.Derechos colectivos (artículo 12, apartado 15).....	761
11.Derechos específicos de los desplazados interestatales (artículo 13).....	763
a.Derecho a la nacionalidad (apartado 1).....	763
b.Derechos civiles y políticos (apartado 2).....	764
c.Prohibición de las expulsiones (apartado 3).....	764
2.7.Capítulo quinto: reconocimiento del estatuto de desplazado ambiental .....	767
2.7.1.Procedimiento de reconocimiento de la condición de desplazado ambiental.... .....	767
A) Artículo 14 - Reconocimiento del estatuto .....	767
B) Artículo 17 - Comisiones de desplazados ambientales.....	770

C) Artículo 16 - Procedimiento.....	771
D) Artículo 18 - Recurso ante la Alta Autoridad .....	772
2.7.2. Artículo 19 - Cesación del estatuto .....	773
2.8. Capítulo séptimo: mecanismos de aplicación.....	775
2.8.1. Artículo 27 - Cooperación .....	775
2.8.2. Artículo 28 - Acuerdos bilaterales y regionales .....	776
2.8.3. Artículo 29 - Informes de aplicación.....	776
2.9. Entrada en vigor del convenio relativo al estatuto internacional de los desplazados ambientales (artículo 42).....	777
SUMMARY OF THE UNIVERSITY OF LIMOGES' DRAFT INTERNATIONAL TREATY ON THE INTERNATIONAL STATUS OF ENVIRONMENTALLY DISPLACED PERSONS.....	779
SINTESI DEL PROGETTO DI TRATTATO INTERNAZIONALE DELL'UNIVERSITÀ DI LIMOGES SULLO STATUS INTERNAZIONALE DEGLI SFOLLATI AMBIENTALI .....	782
<b>QUOD ERAT DEMONSTRANDUM .....</b>	<b>785</b>
A. WHAT IS THE RELATIONSHIP BETWEEN ENVIRONMENTAL DISRUPTION AND HUMAN MOBILITY?.....	785
B. WHAT IS THE MAGNITUDE OF ENVIRONMENTAL DISPLACEMENT? .....	788
C. CAN ENVIRONMENTAL DISRUPTION AMOUNT TO PERSECUTION, TURNING THE DISPLACED PERSON INTO A REFUGEE?.....	790
D. CAN ENVIRONMENTAL DISRUPTION COMPROMISE THE SURVIVAL OF A STATE AND LEAVE ITS NATIONALS STATELESS?.....	798
E. CAN UNHCR INTERVENE IN THE PROTECTION OF ENVIRONMENTALLY DISPLACED PERSONS? .....	801
F. CAN ENVIRONMENTAL DEGRADATION OR THE RISK OF DISASTERS AFFECT THE RIGHT TO LIFE IN DIGNITY, SUCH THAT A STATE IS PROHIBITED FROM RETURNING DISPLACED PERSONS TO THEIR PLACE OF ORIGIN? .....	804
G. CAN ENVIRONMENTAL DISRUPTIONS THAT FORCE THEIR VICTIMS TO MOVE WITHIN THEIR STATES TURN THEM INTO IDPs? .....	810
H. CAN ENVIRONMENTAL DISPLACEMENT BE AVOIDED?.....	812
I. HOW COULD THE LEGAL GAPS IDENTIFIED IN THE INTERNATIONAL PROTECTION OF ENVIRONMENTALLY DISPLACED PERSONS BE FILLED?.....	818



**QUOD ERAT DEMONSTRANDUM ..... 826**

A. ¿CUÁL ES LA RELACIÓN ENTRE LAS DISRUPCIONES MEDIOAMBIENTALES Y LA MOVILIDAD HUMANA?..... 826

B. ¿CUÁL ES LA MAGNITUD DEL DESPLAZAMIENTO MEDIOAMBIENTAL? ..... 829

C. ¿PUEDEN LAS DISRUPCIONES MEDIOAMBIENTALES EQUIVALER A UNA PERSECUCIÓN QUE CONVIERTA AL DESPLAZADO EN UN REFUGIADO? ..... 831

D. ¿PUEDEN LAS DISRUPCIONES MEDIOAMBIENTALES COMPROMETER LA SUPERVIVENCIA DE UN ESTADO Y HACER A SUS NACIONALES APÁTRIDAS?..... 841

E. ¿PUEDE EL ACNUR INTERVENIR EN LA PROTECCIÓN DE LOS DESPLAZADOS MEDIOAMBIENTALES? ..... 843

F. ¿PUEDE LA DEGRADACIÓN AMBIENTAL O EL RIESGO DE DESASTRE AFECTAR AL DERECHO A LA VIDA EN CONDICIONES DIGNAS, DE MODO QUE SE PROHÍBA A UN ESTADO DEVOLVER A LOS DESPLAZADOS A SU LUGAR DE PROCEDENCIA?..... 847

G. ¿LA DISRUPCIÓN MEDIOAMBIENTAL QUE OBLIGA A SUS VÍCTIMAS A DESPLAZARSE DENTRO DE SUS ESTADOS HACE DE ELLOS DESPLAZADOS INTERNOS? ..... 853

H. ¿PUEDE EVITARSE EL DESPLAZAMIENTO MEDIOAMBIENTAL? ..... 856

I. ¿CÓMO SE PODRÍAN SUPLIR LAS LAGUNAS LEGALES IDENTIFICADAS EN LA PROTECCIÓN INTERNACIONAL DE LOS DESPLAZADOS MEDIOAMBIENTALES?..... 863

**QUOD ERAT DEMONSTRANDUM ..... 872**

A. QUAL È LA RELAZIONE TRA PERTURBAZIONE AMBIENTALE E MOBILITÀ UMANA? ..... 872

B. QUAL È LA DIMENSIONE DELLO SPOSTAMENTO AMBIENTALE? ..... 875

C. LE PERTURBAZIONI AMBIENTALI POSSONO EQUIVALERE A UNA PERSECUZIONE CHE RENDE LO SFOLLATO UN RIFUGIATO? ..... 877

D. PUÒ LO SCONVOLGIMENTO AMBIENTALE MINACCIARE LA SOPRAVVIVENZA DI UNO STATO E LASCIARE I SUOI CITTADINI APOLIDI? ..... 886

E. L'ACNUR PUÒ INTERVENIRE NELLA PROTEZIONE DEGLI SFOLLATI AMBIENTALI? .... 888

F. IL DEGRADO AMBIENTALE O IL RISCHIO DI DISASTRI POSSONO INCIDERE SUL DIRITTO A UNA VITA DIGNITOSA, AL PUNTO CHE A UNO STATO È PROIBITO FAR TORNARE GLI SFOLLATI NEL LORO LUOGO D'ORIGINE? ..... 892

G. LE PERTURBAZIONI AMBIENTALI CHE COSTRINGONO LE LORO VITTIME A SPOSTARSI ALL'INTERNO DEI LORO STATI LI RENDONO SFOLLATI INTERNI?..... 898

H. SI PUÒ EVITARE LO SPOSTAMENTO AMBIENTALE? .....	901
I. COME SI POSSONO COLMARE LE LACUNE GIURIDICHE INDIVIDUATE NELLA PROTEZIONE INTERNAZIONALE DEGLI SFOLLATI AMBIENTALI? .....	907

**BIBLIOGRAPHIC, DOCUMENTARY, JURISPRUDENTIAL AND  
LEGISLATIVE SOURCES AND ONLINE RESOURCES**

BIBLIOGRAPHIC SOURCES .....	921
1. BOOKS, BOOK CHAPTERS AND PHD THESIS .....	921
2. JOURNAL ARTICLES .....	927
3. RESEARCH WORKS PUBLISHED OR PRODUCED BY AN INSTITUTION OR AN INTERNATIONAL ORGANIZATION .....	935
4. NEWSPAPERS ARTICLES, BLOG ENTRIES AND PRESS RELEASES FROM INSTITUTIONS ..	942
5. WEBSITE ENTRIES .....	945
DOCUMENTARY SOURCES .....	949
1. DOCUMENTS FROM INTERNATIONAL BODIES .....	949
1.1. African Commission on Human and Peoples' Rights .....	949
1.2. African Union/Organisation of African Unity .....	950
1.3. Asian-African Legal Consultative Organization .....	951
1.4. Council of Europe .....	951
1.5. Economic Community of West African States .....	952
1.6. European Union .....	952
1.7. Inter-Agency Standing Committee .....	954
1.8. International Committee of the Red Cross .....	954
1.9. International Conference on Central American Refugees .....	955
1.10. International Conference on the Great Lakes Region .....	955
1.11. League of Arab States .....	955
1.12. Organization of American States .....	955
1.13. Platform on Disaster Displacement .....	957
1.14. United Nations .....	957
1.14.1. Commission on Human Rights/Human Rights Council .....	957
1.14.2. Committee on Economic, Social and Cultural Rights .....	958
1.14.3. Committee on the Rights of the Child .....	958
1.14.4. Economic and Social Council .....	958
1.14.5. Framework Convention on Climate Change .....	959

1.14.6.General Assembly.....	963
1.14.7.High Commissioner for Refugees .....	968
1.14.8.Human Rights Committee.....	970
1.14.9.International Organization for Migration.....	971
1.14.10.Office for Disaster Risk Reduction.....	971
1.14.11.Office of the High Commissioner for Human Rights.....	971
1.14.12.Secretary-General .....	971
1.14.13.Security Council .....	971
1.14.14.United Nations Development Programme .....	972
1.14.15.United Nations Educational, Scientific and Cultural Organization.....	973
1.14.16.World Health Organization .....	973
2.DOCUMENTS FROM NATIONAL BODIES .....	973
JURISPRUDENTIAL SOURCES .....	974
1.INTERNATIONAL BODIES .....	974
1.1.African Commission on Human and Peoples' Rights.....	974
1.2.Court of Justice of the European Union .....	974
1.3.European Court of Human Rights .....	975
1.4.Human Rights Committee .....	976
1.5.Inter-American Court of Human Rights .....	976
2.NATIONAL TRIBUNALS.....	978
2.1.Australia.....	978
2.1.1.High Court of Australia .....	978
2.1.2.Refugee Review Tribunal of Australia .....	978
2.2.Czech Republic .....	979
2.3.New Zealand .....	979
2.3.1.Immigration and Protection Tribunal .....	979
2.3.2.Refugee Status Appeals Authority .....	979
LEGISLATIVE SOURCES.....	980
1.INTERNATIONAL TREATIES .....	980
2.NATIONAL LEGISLATION AND POLICIES .....	985
3.SOVEREIGN MILITARY HOSPITALLER ORDER OF ST JOHN OF JERUSALEM OF RHODES AND OF MALTA.....	990
ONLINE RESOURCES AND WEBSITES .....	990

<b>ANNEX I TOTAL NUMBER OF NATURAL DISASTERS AND ASSOCIATED INTERNAL ENVIRONMENTAL DISPLACEMENT AND DAMAGE WORLDWIDE AND BY CONTINENT .....</b>	<b>993</b>
<b>ANNEX II NATURAL DISASTERS BY COUNTRY (INCLUDING SELF- GOVERNING OR SPECIAL STATUS TERRITORIES) .....</b>	<b>1001</b>
AFRICA.....	1001
AMERICAS .....	1013
ASIA.....	1024
EUROPE.....	1035
OCEANIA.....	1044
<b>ANNEX III ENVIRONMENTALLY DISPLACED PERSONS BY COUNTRY (INCLUDING SELF-GOVERNING OR SPECIAL STATUS TERRITORIES) .....</b>	<b>1048</b>
AFRICA.....	1048
AMERICAS .....	1061
ASIA.....	1073
EUROPE.....	1084
OCEANIA.....	1092
<b>ANNEX IV TOTAL DAMAGES ('000 US\$), ADJUSTED FOR INFLATION, BY COUNTRY (INCLUDING SELF-GOVERNING OR SPECIAL STATUS TERRITORIES) .....</b>	<b>1097</b>
AFRICA.....	1097
AMERICAS .....	1102
ASIA.....	1110
EUROPE.....	1118
OCEANIA.....	1122
<b>ANNEX V PROYECTO DE CONVENIO RELATIVO AL ESTATUTO INTERNACIONAL DE LOS DESPLAZADOS AMBIENTALES (CUARTA VERSIÓN-ABRIL 2018) .....</b>	<b>1125</b>

## TABLE OF FIGURES, MAPS AND TABLES

<b>Figure 1</b> -Relation between environmental changes and migration .....	40
<b>Figure 2</b> -The "maximalist" view of environment-related migration .....	69
<b>Figure 3</b> -The "minimalist" view of environment-related migration .....	88
<b>Figure 4</b> -Diagram of the "contextual migration model" proposed by Black et al. ....	89
<b>Figure 5</b> -Diagram of the "effects framework" proposed by Morrissey .....	93
<b>Figure 6</b> -Classification of environmental disruptions .....	108
<b>Figure 7</b> -Number of hydrological disasters by continental and year .....	120
<b>Figure 8</b> -Total material damages from hydrological disasters by continent and year ('000 US\$) .....	122
<b>Figure 9</b> -Number of environmentally displaced by hydrological disasters by continent and year .....	124
<b>Figure 10</b> -Assets exposed to sea-level rise, storm and subsidence by country (for the 2070s "FAC Scenario") .....	131
<b>Figure 11</b> -Population exposed to sea-level rise, storms and subsidence by country (for the 2070s "FAC Scenario") .....	133
<b>Figure 12</b> -Number of meteorological disasters by continent and year .....	139
<b>Figure 13</b> -Total material damages from meteorological disasters by continent and year ('000 US\$) .....	141
<b>Figure 14</b> -Number of environmentally displaced by meteorological disasters by continent and year .....	144
<b>Figure 15</b> -Number of climatological disasters by continent and year .....	148
<b>Figure 16</b> -Total material damages from climatological disasters by continent and year ('000 US\$) .....	150
<b>Figure 17</b> -Number of environmentally displaced by climatological disasters by continent and year .....	152
<b>Figure 18</b> -Number of geophysical disasters by continent and year .....	155
<b>Figure 19</b> -Total material damages from geophysical disasters by continent and year ('000 US\$) .....	157
<b>Figure 20</b> -Number of environmentally displaced by geophysical disasters by continent and year .....	160
<b>Figure 21</b> -Occurrence by disaster type (2016-2020) .....	164

<b>Figure 22</b> -Population displaced by disaster type (2016-2020).....	164
<b>Figure 23</b> -Material damages caused by disaster type ('000 US\$) (2016-2020) .....	165
<b>Figure 24</b> -Top ten countries per disaster-related displacement (2016-2020).....	166
<b>Figure 25</b> -Impact of natural disasters in Africa (2016-2020).....	170
<b>Figure 26</b> -Impact of natural disasters in the Americas (2016-2020) .....	170
<b>Figure 27</b> -Impact of natural disasters in Asia (2016-2020).....	171
<b>Figure 28</b> -Impact of natural disasters in Europe (2016-2020) .....	171
<b>Figure 29</b> -Impact of natural disasters in Oceania (2016-2020).....	172
<b>Figure 30</b> -UNHCR Disaster IDP Operations (1999-2016) .....	360
<b>Figure 31</b> -Progressive scale of environmental degradation and related human movement .....	435
<b>Figure 32</b> -Scope of the work of the TFD .....	580
<b>Figure 33</b> -Timeline of the first working phase of the TFD .....	582
<b>Figure 34</b> -Working Timeline of the TFD during its first and second phase .....	591
<b>Map 1</b> -Geographical distribution of countries more prone to natural disasters .....	167
<b>Map 2</b> -Geographical distribution of persons displaced as a result of natural disasters	167
<b>Map 3</b> -Geographical distribution of material losses caused by natural disasters .....	167
<b>Table 1</b> -Top 10 countries most affected by hydrological disasters .....	121
<b>Table 2</b> -Top 10 countries most economically damaged by hydrological disasters .....	123
<b>Table 3</b> -Top 10 countries with the most environmental displacement related to hydrological disasters.....	125
<b>Table 4</b> -Top 10 countries most affected by meteorological disasters.....	140
<b>Table 5</b> -Top 10 countries most economically damaged by meteorological disasters..	142
<b>Table 6</b> -Top 10 countries with the most environmental displacement related to meteorological disasters .....	145
<b>Table 7</b> -Top 10 countries most affected by climatological disasters.....	149
<b>Table 8</b> -Top 10 countries most economically damaged by climatological disasters...	151
<b>Table 9</b> -Top 10 countries with the most environmental displacement related to climatological disasters .....	153
<b>Table 10</b> -Top 10 countries most affected by geophysical disasters.....	156
<b>Table 11</b> -Top 10 countries most economically damaged by geophysical disasters .....	158

<b>Table 12-</b> Top 10 countries with the most environmental displacement related to geophysical disasters.....	161
<b>Table 13-</b> Top ten countries per disaster-related displacement (2016-2020) .....	166
<b>Table 14-</b> Elevation of Small Island States at risk of sea-flooding according to the IPCC .....	306
<b>Table 15-</b> "Selected human rights standards and guidelines relevant to effects of climate change" .....	364
<b>Table 16-</b> Development of legal or policy frameworks on internal displacement by the AU Member States.....	523
<b>Table 17-</b> Main humanitarian aid operations related to environmental disruptions financed by the EU during 2019 .....	547
<b>Table 18-</b> Policy frameworks on internal displacement in Asia countries .....	551
<b>Table 19-</b> Legal gaps in the protection of environmentally displaced persons in International and Regional Law.....	915
<b>Table 20-</b> Total natural disasters .....	993
<b>Table 21-</b> Total natural disasters per continent.....	993
<b>Table 22-</b> Total number of persons displaced by natural disasters .....	995
<b>Table 23-</b> Total number of persons displaced by natural disasters per continent .....	996
<b>Table 24-</b> Total damages caused by natural disasters ('000 US\$) .....	998
<b>Table 25-</b> Total damages caused by natural disasters per continent ('000 US\$) .....	998

## LIST OF ABBREVIATIONS<sup>1</sup>

<b>1951 Convention/la Convenzione del 1951/la Convención de 1951</b>	Convention Relating to the Status of Refugees (Geneva Convention)/ Convenzione sullo status dei rifugiati (Convenzione di Ginevra)/ Convención sobre el Estatuto de los Refugiados (Convención de Ginebra)
<b>AA</b>	Alta Autoridad (draft convention on the international status of environmentally displaced persons of the University of Limoges)
<b>AALCO</b>	Asian-African Legal Consultative Organization
<b>AchPR/CoADUP/CoADHP</b>	African Commission on Human and Peoples' Rights (African Commission)/ Commissione africana per i diritti umani e dei popoli (Commissione africana)/ Comisión Africana de Derechos Humanos y de los Pueblos (Comisión Africana)
<b>ACHR/CADU/CADH</b>	American Convention on Human Rights (Pact of San José)/ Convenzione americana dei diritti dell'uomo (Patto di San José)/ Convención Americana sobre Derechos Humanos (Pacto de San José)
<b>ADRDM</b>	American Declaration of the Rights and Duties of Man
<b>ACHPR/CADUP/CADHP</b>	African Charter on Human and Peoples' Rights (Banjul Charter)/ Carta africana dei diritti dell'uomo e dei popoli (Carta di Banjul)/ Carta Africana de Derechos Humanos y de los Pueblos (Carta de Banjul)
<b>AIDS</b>	Acquired Immunodeficiency Syndrome
<b>ALADI</b>	Asociación Latinoamericana de Integración
<b>AMDA</b>	Agencia Mundial para los Desplazados Ambientales (draft convention on the international status of environmentally displaced persons of the University of Limoges)
<b>AP</b>	Alianza del Pacífico

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<sup>1</sup> Three clarifications: i) Where the same name has several abbreviations in English, Italian and Spanish, the Italian and Spanish abbreviations have been included after the English abbreviation. ii) Where English acronyms have been retained in Spanish or Italian, the meaning of the acronym in Spanish or Italian appears in brackets after the English meaning. iii) Where another abbreviation has been used in the text in addition to the acronym, the abbreviation appears in parentheses next to the full name. For example, AchPR, whose full name is African Commission on Human and Peoples' Rights (African Commission).



<b>APRM</b>	African Peer Review Mechanism
<b>ArCHR</b>	Arab Charter on Human Rights
<b>Art(s)/Art(t).</b>	Article(s)/ Artículo(s)/ Articolo(i)
<b>ASEAN</b>	Association of Southeast Asian Nations (Associazione delle Nazioni del Sud-est asiatico; Asociación de Naciones de Asia Sudoriental)
<b>AU</b>	African Union
<b>BBC</b>	British Broadcasting Corporation
<b>BOE</b>	Boletín Oficial del Estado (Spain)
<b>CARICOM</b>	Comunidad del Caribe
<b>CAT</b>	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convención contra la Tortura y otros tratos o penas, crueles, inhumanos o degradantes)
<b>CBDR</b>	Common But Differentiated Responsibilities (Principle)
<b>CEAS</b>	Common European Asylum System
<b>CED</b>	International Convention for the Protection of All Persons from Enforced Disappearance (Convención Internacional para la protección de todas las personas contra las desapariciones forzadas)
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women (Convención sobre la eliminación de todas las formas de discriminación contra la mujer)
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>Cf.</b>	"compare"/ "confrontar"/ "confrontare"
<b>ChOAS</b>	Charter of the Organization of American States
<b>CIDCE</b>	Centre International de Droit Comparé de l'Environnement
<b>CIREFCA</b>	International Conference on Central American Refugees
<b>CJEU/CGUE/TJUE</b>	Court of Justice of the European Union/ Corte di giustizia dell'Unione europea/ Tribunal de Justicia de la Unión Europea

<b>CoE</b>	Council of Europe
<b>Coord(s).</b>	Coordinator(s)/coordinador(es)
<b>COP</b>	UNFCCC Conference of the Parties (Conferenza delle Parti dell'UNFCCC; Conferencia de las Partes de la CMNUCC)
<b>COVID-19</b>	SARS-CoV-2 Virus
<b>CP</b>	Conferencia de las Partes (draft convention on the international status of environmentally displaced persons of the University of Limoges)
<b>CRC</b>	Convention on the Rights of the Child (Convención sobre los Derechos del Niño)
<b>CRED</b>	Centre for Research on the Epidemiology of Disasters
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities (Convención sobre los derechos de las personas con discapacidad)
<b>CRS</b>	Convention on the Reduction of Statelessness
<b>CSSP</b>	Convention relating to the Status of Stateless Persons
<b>DG ECHO</b>	Directorate-General for European Civil Protection and Humanitarian Aid Operations
<b>Dir(s).</b>	Director(s)/director(es)
<b>DL/D-L</b>	Decreto Legislativo/ Decreto-Legge (Italy)
<b>DPR</b>	Decreto del Presidente della Repubblica (Italy)
<b>DRR</b>	Disaster Risk Reduction
<b>EASO</b>	European Asylum Support Office
<b>ECHR/CEDU/CEDH</b>	Convention for the Protection of Human Rights and Fundamental Freedoms/ Convenzione europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali/ Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades Fundamentales
<b>ECOSOC</b>	Economic and Social Council
<b>ECOWAS</b>	Economic Community of West African States
<b>ECTHR/CORTE</b>	European Court of Human Rights (the Strasbourg

<b>EDU/TEDH</b>	Court)/ Corte europea dei diritti dell'uomo (la Corte di Strasburgo)/ Tribunal Europeo de Derechos Humanos (el Tribunal de Estrasburgo)
<b>Ed(s).</b>	Editor(s)/editor(es) – Edition/edición
<b>E.g.</b>	"for example"/ "ad esempio"/ "por ejemplo"
<b>EM-DAT</b>	International Disaster Database (Emergency Events Database)
<b>ERC</b>	Emergency Relief Coordinator
<b>ERCC</b>	Emergency Response Coordination Centre
<b>ESC</b>	European Social Charter
<b>Et al.</b>	"and others"/ "ed altri"/ "y otros"
<b>EU/UE</b>	European Union/ Unione europea/ Unión Europea
<b>FAC Scenario</b>	Future City, All Changes Scenario (used in the OECD study on Port Cities with High Exposure and Vulnerability to Climate Extremes)
<b>FMDA</b>	Fondo Mundial para los Desplazados Ambientales (draft convention on the international status of environmentally displaced persons of the University of Limoges)
<b>GDP/PIB</b>	Gross Domestic Product/ Producto Interior Bruto
<b>Geneva Convention IV</b>	Geneva Convention Relative to the Protection of Civilian Persons in Time of War
<b>GIDD</b>	Global Internal Displacement Database
<b>GMSLR</b>	Global Mean Sea Level Rise
<b>GP</b>	Guiding Principle on Internal Displacement
<b>Great Lakes Protocol/ Protocollo dei Grandi Laghi/ Protocolo de los Grandes Lagos</b>	Protocol on the Protection and Assistance to Internally Displaced Persons in the Great Lakes Region/ Protocollo sulla protezione e l'assistenza agli sfollati interni nella regione dei Grandi Laghi/ Protocolo sobre la protección y asistencia a los desplazados internos en la región de los Grandes Lagos

<b>Guiding Principles/Principi Guida/Principios Rectores</b>	The UN Guiding Principles on Internal Displacement (Deng Principles)/ I Principi Guida delle Nazioni Unite sugli sfollati interni (Principi Deng)/ los Principios Rectores de los Desplazamientos Internos de las Naciones Unidas (Principios Deng)
<b>HRC</b>	Human Rights Committee (Comitato per i diritti umani delle Nazioni Unite; Comité de Derechos Humanos de las Naciones Unidas)
<b>IACHR</b>	Inter-American Commission on Human Rights
<b>IACtHR/Corte IDU/Corte IDH</b>	Inter-American Court of Human Rights/ Corte interamericana dei diritti umani/ Corte Interamericana de Derechos Humanos
<b>IASC</b>	Inter-Agency Standing Committee
<b>Ibid./Íbid.</b>	"in the same place"/ "nello stesso luogo"/ "en el mismo lugar" (the same source cited in the previous footnote, but different page or paragraph)
<b>ICCPR/PIDCP</b>	International Covenant on Civil and Political Rights/ Patto internazionale sui diritti civili e politici/ Pacto Internacional de Derechos Civiles y Políticos
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination (Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial)
<b>ICESCR/PIDESC</b>	International Covenant on Economic, Social and Cultural Rights/ Pacto Internacional de Derechos Económicos, Sociales y Culturales
<b>ICGLR</b>	International Conference on the Great Lakes Region
<b>ICRC</b>	International Committee of the Red Cross
<b>ICRMW</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Convención Internacional sobre la protección de los derechos de todo los trabajadores migratorios y de sus familiares)
<b>Id./Íd.</b>	"the same"/ "lo mismo"/ "lo stesso" (the same source and page or paragraph cited in the previous footnote)
<b>IDMC</b>	Internal Displacement Monitoring Centre

<b>IDPs/PDIs</b>	Internally Displaced Persons/ Personas Desplazadas Internamente
<b>I.e.</b>	"that is"/ "questo è"/ "esto es"
<b>IFRC</b>	International Federation of Red Cross and Red Crescent Societies
<b>IGOs</b>	Intergovernmental Organisations
<b>ILO/OIL/OIT</b>	International Labour Organization/ Organizzazione internazionale del lavoro/ Organización Internacional del Trabajo
<b>INDC</b>	Intended Nationally Determined Contributions
<b>IOM/OIM</b>	International Organization for Migration/ Organizzazione Internazionale per le Migrazioni/ Organización Internacional para las Migraciones
<b>IPCC</b>	Intergovernmental Panel on Climate Change (Gruppo intergovernativo sul cambiamento climatico; Grupo Intergubernamental de Expertos sobre el Cambio Climático)
<b>Kampala Convention/ Convenzione di Kampala/ Convención de Kampala</b>	African Union Convention for the protection and assistance of internally displaced persons in Africa/ Convenzione per la protezione e l'assistenza degli sfollati interni in Africa/ Convención de la Unión Africana para la Protección y la Asistencia de los Desplazados Internos en África
<b>LAS</b>	League of Arab States (The Arab League)
<b>Limoges Project/Progetto de Limoges/Proyecto de Limoges</b>	Draft convention on the international status of environmentally displaced persons of the University of Limoges/ Progetto di convenzione sullo status internazionale degli sfollati ambientali dell'Università di Limoges/ Proyecto de convenio relativo al estatuto internacional de los desplazados medioambientales de la Universidad de Limoges
<b>NAPAs</b>	National Adaptation Programmes of Action
<b>NDC/CDN</b>	Nationally Determined Contributions (Contributi determinati a livello nazionale)/ Contribuciones Determinadas a Nivel Nacional
<b>NGOs/ONGs</b>	Non-Governmental Organizations/ Organizzazioni Non Governative/ Organizaciones No Gubernamentales

<b>No.</b>	Number/ numero/ número
<b>NRC</b>	Norwegian Refugee Council
<b>NZIPT</b>	New Zealand Immigration and Protection Tribunal
<b>OAU</b>	Organisation of African Unity
<b>OAS/OSA/OEA</b>	Organization of American States/ Organizzazione degli Stati americani/ Organización de los Estados Americanos
<b>OCHA/OCAH</b>	United Nations Office for the Coordination of Humanitarian Affairs (Ufficio delle Nazioni Unite per gli affari umanitari)/ Oficina de Coordinación de Asuntos Humanitarios
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>OFDA</b>	Office of Foreign Disaster Assistance (part of the US Agency for International Development)
<b>OHCHR/ACNUDH</b>	Office of the United Nations High Commissioner for Human Rights (Ufficio dell'Alto Commissariato delle Nazioni Unite per i diritti umani)/ Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos
<b>OJEU</b>	Official Journal of the European Union
<b>Op. cit.</b>	"in the work cited"/ "en la obra citada"/ "nell'opera citata" (used to refer to an author's work that has already been cited)
<b>Op. cit. supra</b>	"in the work cited above"/ "en la obra citada arriba"/ "nell'opera sopra citata" (used to refer to an author's work cited in the preceding note when several authors appear in that note)
<b>Par(s)/Par(r)/Párr(s).</b>	Paragraph(s)/ paragrafo(i)/ párrafo(s)
<b>PDD</b>	Platform on Disaster Displacement
<b>PIF</b>	Pacific Islands Forum
<b>Peninsula Principles/ Principi di Penisola/ Principios de Península</b>	Peninsula Principles of Climate Displacement within States/ Principi di Penisola sullo spostamento climatico all'interno degli Stati/ Principios de Península sobre el desplazamiento climático dentro de los Estados

<b>Pinheiro Principles</b>	United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons
<b>P./pp.</b>	Page(s)/ pagina(e)/ página(s)
<b>Protocol I</b>	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts
<b>Protocol II</b>	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts
<b>QD(recast)/QD</b>	Qualification Directive (recast) (Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011)/ Qualification Directive (Council Directive 2004/83/EC of 29 April 2004)
<b>RAE</b>	Real Academia Española
<b>RRTA</b>	Refugee Review Tribunal of Australia
<b>RSAA</b>	New Zealand Refugee Status Appeals Authority
<b>SAARC/ASACR</b>	South Asian Association of Regional Cooperation/ Associazione sud-asiatica per la cooperazione regionale/ Asociación Sudasiática para la Cooperación Regional
<b>SDGs/OSS/ODSs</b>	Sustainable Development Goals/ Obiettivi di sviluppo sostenibile/ Objetivos de Desarrollo Sostenible
<b>SFDRR/MSRRD</b>	Sendai Framework for Disaster Risk Reduction (Sendai Framework) (Quadro di riferimento di Sendai per la riduzione del rischio di disastri (Quadro di Sendai))/ Marco de Sendai para la Reducción del Riesgo de Desastres (Marco de Sendai)
<b>SIDS/PEID</b>	Small Island Developing States (Piccoli stati insulari in via di sviluppo)/ Pequeños Estados Insulares en Desarrollo
<b>Supra</b>	"above"/ "sopra"/ "arriba"
<b>Tb.</b>	También
<b>TEU/TUE</b>	Treaty on European Union/ Tratado de la Unión Europea
<b>TFD</b>	Task Force on Displacement (Task Force sullo sfollamento; Grupo de Trabajo sobre Desplazamiento)

<b>TFEU/TFUE</b>	Treaty on the Functioning of the European Union/Tratado de Funcionamiento de la Unión Europea
<b>TPD</b>	Temporary Protection Directive (Council Directive 2001/55/EC of 20 July 2001)
<b>Trad(s).</b>	Traductor(es)
<b>UDHR/DUDH</b>	Universal Declaration of Human Rights/ Declaración Universal de los Derechos Humanos
<b>UK</b>	United Kingdom
<b>UNDP/PNUS/PNUD</b>	United Nations Development Programme/ Programma delle Nazioni Unite per lo sviluppo/ Programa de las Naciones Unidas para el Desarrollo
<b>UNDRR</b>	United Nations Office for Disaster Risk
<b>UNEP/PNUMA</b>	United Nations Environment Programme/Programa de las Naciones Unidas para el Medio Ambiente
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization (Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura)
<b>UNFCCC/CMNUCC</b>	United Nations Framework Convention on Climate Change (Convenzione quadro delle Nazioni Unite sui cambiamenti climatici)/ Convención Marco de las Naciones Unidas sobre el Cambio Climático
<b>UNGA</b>	United Nations General Assembly
<b>UNHCR/ACNUR</b>	United Nations High Commissioner for Refugees/ Alto Commissariato delle Nazioni Unite per i Rifugiati/ Alto Comisionado de las Naciones Unidas para los Refugiados
<b>UNHRC</b>	United Nations Commission on Human Rights
<b>UNICEF</b>	United Nations Children's Fund (Fondo delle Nazioni Unite per l'Infanzia; Fondo de las Naciones Unidas para la Infancia)
<b>UNISDR</b>	United Nations International Strategy for Disaster Reduction Secretariat (acronym changed to UNDRR)



<b>UNO (UN)/ONU (NU)</b>	United Nations Organization/ Organizzazione delle Nazioni Unite/ Organización de las Naciones Unidas
<b>UNTC</b>	United Nations Treaty Collection
<b>UNTS</b>	United Nations Treaty Series
<b>UPU</b>	Universal Postal Union
<b>USA (US)/EEUU</b>	United States of America/ Estados Unidos de América
<b>USSR</b>	Union of Soviet Socialist Republics
<b>VCLT/CVDT</b>	Vienna Convention on the Law of Treaties/Convención de Viena sobre Derecho de los Tratados
<b>Vid.</b>	See/ vedi/ véase
<b>Vol.</b>	Volume/ Volume/ Volumen
<b>WFP/PAM/PMA</b>	World Food Programme/ Programma Alimentare Mondiale/ Programa Mundial de Alimentos
<b>WHO</b>	World Health Organization
<b>WIM</b>	Warsaw international mechanism for loss and damage

## INTRODUCTION

*<sup>17</sup> The flood continued forty days on the earth. The waters increased and bore up the ark, and it rose high above the earth.*

*<sup>19</sup> And the waters prevailed so mightily on the earth that all the high mountains under the whole heaven were covered.*

*<sup>22</sup> Everything on the dry land in whose nostrils was the breath of life died.*

*<sup>23</sup> He blotted out every living thing that was on the face of the ground, man and animals and creeping things and birds of the heavens. They were blotted out from the earth. Only Noah was left, and those who were with him in the ark.*

*(...)*

*<sup>54</sup> and the seven years of famine began to come, as Joseph had said. There was famine in all lands, but in all the land of Egypt there was bread.*

*<sup>55</sup> When all the land of Egypt was famished, the people cried to Pharaoh for bread. Pharaoh said to all the Egyptians, "Go to Joseph. What he says to you, do."*

*<sup>57</sup> Moreover, all the earth came to Egypt to Joseph to buy grain, because the famine was severe over all the earth."<sup>1</sup>*

### DELIMITATION OF THE SUBJECT OF STUDY

The verses quoted above belong to Chapter 7 and Chapter 41 of Genesis. The first recounts a natural disaster recorded in the memory of virtually all ancient civilisations: the Great Flood. The second reflects a constant feature of ancient Egypt. Born and flourished on the banks of the Nile, the Egyptian empire's survival rested on the valley's fertility, which depended crucially on the silt from its seasonal floods<sup>2</sup>. Such a delicate balance condemned the Pharaohs' people to famine whenever the deified rulers failed to bring down the rains that caused the Nile to rise.

The history of the Israelite Patriarchs narrated in Genesis occurred between 1850 and 1700 B.C.<sup>3</sup> Its reproduction as the overture to this doctoral thesis intends to show

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<sup>1</sup> Gn. c.7, vv. 17, 19, 22 and 23; c. 41, vv. 54, 55 and 57.

<sup>2</sup> Vid. NAVARRO, J. (dir.), *Gran Enciclopedia Interactiva Oceano*, Vol. 4: Historia Universal, 1ªed., 12ª imp., España, Oceano Grupo Editorial, 2003, pp. 717-720.

<sup>3</sup> *Nueva Versión de La Biblia del P. Serafín de Ausejo, O.F.M. Cap.*, Barcelona, Ed. Herder S.A., 1975, p. 8.

that environmental disruptions have been and are a constant in human history, while movement remains the primary human coping strategy.

Initially, however, the research presented here had a different, though related, object of study to that of environmental displacement. It aimed to analyse the distinction between political refugees and economic migrants in International and European Law. The study's primary purpose was to highlight the lack of international protection faced by those forced to leave their countries of origin for reasons of necessity spuriously described as "economic". This lack of protection contrasts with the comprehensive system of guarantees and rights that has been built up in favour of politically motivated immigrants based on the 1951 Geneva Convention on the Status of Refugees since the end of World War II. The starting argument, anchored more in sentiment than in Law, was that there was not much difference between fleeing persecution by a government and fleeing persecution by hunger and poverty.

It soon came to attention that many of these ostensibly economic migration flows were closely related to environmental alterations that had severely affected the socio-economic conditions of life in the places of origin. It was indeed a surprise to find, in the course of reading the literature on the relationship between migration and the environment, an incipient doctrinal current in the ecological writings of the 1980s that, more rhetorically than legally, argued for the existence of so-called "environmental refugees".

It was from that serendipitous discovery that this thesis emerged. The issue of environmentally displaced persons and their protection represented a concretisation of the initial broad topic of study: an a priori category of economic migrants for whom a protection status was claimed to put them on a par with traditional political refugees. The foundation of this assimilation would lie in the forced component present in migration-related to drastic changes in the natural environment. Hence, it is more appropriate to refer to these movements as displacements rather than migrations to emphasise the absence of volition in the movement<sup>4</sup>. This statement does not ignore that

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<sup>4</sup> As pointed out by LÓPEZ RAMÓN, F., "Los Derechos de los emigrantes ecológicos", *Cuadernos Manuel Giménez Abad*, No. extra 6, 2017, p. 7, the naming of human movements associated with environmental factors has produced a prolific diversity of terms. Depending on the subjective element, the people affected have been described as "refugees", "displaced" or "migrants". Depending on the cause of displacement, they are referred to as "environmental", "ecological" or "climatic". As the author wittily points out, "by combining these two sets of three words each (always a noun with an adjective) we could

migration can also be an adaptive strategy in environmental stress situations. However, in these cases, the decision to move appears predominantly voluntary<sup>5</sup>.

The initial pursuit of this equation with political refugees to justify the claim of extending international protection to those "economic" migrants in a situation of significant vulnerability has conditioned the approach to the new object of study. Thus, within the broad spectrum of population movements related to environmental factors, this thesis focuses on displacement as a compelled response to an "environmental disruption" –i.e. a dramatic change in the ecosystem or its utilities that makes it temporarily or permanently uninhabitable for humans. Therefore, environmental migration is not a subject of study. However, some of the policy areas discussed, such as the frameworks for preventing displacement addressed in Chapter VII, are also of interest from an environmental migration perspective. In this case, the term 'human mobility' is used to cover both voluntary and forced movements.

A second precision regarding the delimitation of the research object has to do with the origin of this environmental alteration, the cause of which must be "natural". Disruptions of anthropogenic origin that could force the population to move, such as implementing a development project or the effects of war on the environment, are therefore not considered. Such a natural cause may be sudden, like the heavy rain that gave rise to the Great Flood, or slow in manifesting its effects, like the drought that ravaged Egypt for seven years in Pharaoh's dream. Particular attention has been paid to displacement related to sea-level rise in low-lying SIDS. The fate of these States could well be compared to the myth of Atlantis, with the thesis laying strong emphasis on the

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form the nine variants" or denominations used by the doctrine in its work [self-translated from the original in Spanish]. In our case, we have preferred to use the term "environmentally displaced" for the reasons given above, as well as because it is the most widely accepted term in the international political arena. In this regard, vid. THE NANSEN INITIATIVE, "Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change", Volume I, the Nansen Initiative, December 2015, par. 16, defining the term "disaster displacement" as referred to "situations where people *are forced or obliged* to leave their homes or places of habitual residence *as a result of a disaster or in order to avoid the impact* of an immediate and foreseeable natural hazard" [italics added]. It is worth noting that the Nansen Agenda received the support of 109 countries at the intergovernmental consultation held in Geneva, Switzerland, on 12-13 October 2015.

<sup>5</sup> The non-peaceful issue of control over the decision to migrate in the face of environmental change has been addressed, for example, by HUGO, G., "Environmental Concerns and International Migration", *The International Migration Review*, Vol. 30, No. 1, Special Issue: Ethics, Migration, and Global Stewardship, Spring 1996, pp. 106-113; and BATES, D.C., "Environmental Refugees? Classifying Human Migrations Caused by Environmental Change", *Population and Environment*, Vol. 23, No. 5, May 2002, pp. 467-469. Both authors propose to represent population mobility as a continuum from totally voluntary to totally forced mobility, reserving the term "environmental refugees" for those at the extreme of involuntary movement.

protection of their populations, which have become the paradigm of climate change-related displacement.

In this regard, it should be noted that specialised doctrine has tended to focus on environmental displacement in the context of climate change (the so-called "climate displaced"). In contrast to this approach, this thesis has preferred to maintain a position advocating for protecting the entire spectrum of environmental displacement due to natural causes, instead of limiting itself to a specific sub-category. This is because there seems to be no justification for discriminating between them. It is just as necessary to protect those fleeing rising sea levels caused by climate change as those displaced by a geophysical disruption such as a volcano or earthquake.

A final precision regarding the object of study concerns the geographical scope of the displacement considered. It includes both cross-border displacement –i.e. when displaced persons have crossed an internationally recognised border- and internal displacement –i.e. when they remain within the territory of the State of their habitual residence<sup>6</sup>. Finally, account was taken of the different forms that environmental displacement can assume, whether it is "spontaneous flight, an evacuation ordered or enforced by authorities or an involuntary planned relocation process"<sup>7</sup>.

## **WORKING HYPOTHESIS AND STATE OF THE ART**

As the title of the thesis itself indicates, the starting hypothesis has been the assumption that there is no normative instrument in the international legal order that allows for the adequate protection of environmentally displaced persons. This hypothesis builds on the results of previous doctoral research in this field. Specifically, this thesis takes as a reference the work of TORRES CAMPRUBÍ, A.<sup>8</sup>; GEMENNE, F.<sup>9</sup>; DOS

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<sup>6</sup> THE NANSEN INITIATIVE, "Agenda for the Protection...", *op. cit.*, par. 18.

<sup>7</sup> *Id.*

<sup>8</sup> TORRES CAMPRUBÍ, A., *Climate change and international security: revealing new challenges to the continuation of Pacific Islands' Statehood*, PhD Thesis, Madrid (Spain), Universidad Autónoma de Madrid, 2014, 481 pp.

<sup>9</sup> GEMENNE, F., *Environmental Changes and Migration Flows: Normative Frameworks and Policy Responses* (Vol. I), PhD Thesis, Institut d'Etudes Politiques de Paris; University of Liège, April 2009, 493 pp.

SANTOS, A.<sup>10</sup>; and FELIPE PÉREZ, B.I.<sup>11</sup> The research carried out is a continuation of the work begun by these authors.

On the one hand, it delves into the legal analysis of instruments commonly referred to when considering the protection of environmentally displaced persons, namely: at the universal level, the 1951 Geneva Convention relating to the Status of Refugees, the international legal regime on statelessness and the Guiding Principles on Internal Displacement. At the regional level, reference is often made to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the Cartagena Declaration on Refugees and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa. In addition, the catalogue of instruments analysed is expanded, particularly at the regional level, and attention is also paid to the degree to which the regions identified as hotspots of environmental displacement have adhered to the normative frameworks considered relevant to the protection and assistance of these displaced persons.

It also considers policy and institutional developments that have followed the research of the above-mentioned authors. Without claiming to be exhaustive, these include the adoption in March 2015 of the Sendai Framework for Disaster Risk Reduction, the adoption of the 2030 Agenda for Sustainable Development in September 2015, the establishment in late 2016 of the Working Group on Displacement under the UN climate change regime, and the landmark 2020 decision of the Human Rights Committee in the case of *Mr Teitiota v New Zealand* on the application of the principle of non-refoulement in cases of climate displacement. While these developments have not changed the landscape of international protection for those environmentally displaced, it is indicative of the international community's increased sensitivity to this issue that the relationship between human mobility and climate change has begun to be integrated into the political agenda.

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<sup>10</sup> DOS SANTOS, A., *Migraciones forzosas y las nuevas "categorías" de desplazados internos – desplazados medioambientales y del desarrollo: problemas y desafíos para el sistema internacional de protección*, PhD Thesis, Madrid (Spain), Instituto Universitario de Estudios sobre Migraciones (Universidad Pontificia Comillas), 2012, 549 pp.

<sup>11</sup> FELIPE PÉREZ, B.I., *Las migraciones climáticas: retos y propuestas desde el Derecho Internacional*, PhD Thesis, Tarragona (Spain), Universitat Rovira i Virgili, 2016, 413 pp.

## STRUCTURE AND METHODOLOGY

Phrased in the form of a question, the initial thesis of this research would be expressed as follows: Is there a gap in the international legal order regarding the protection of environmentally displaced persons? Answering this question requires, first of all, questioning the very existence of the object of study as a preliminary to theorising about possible international protection for environmentally displaced persons. As a final question, corroboration of the starting hypothesis requires considering possible ways to fill the legal gaps identified in preventing environmental disruption and protecting those displaced by it.

The structure of the thesis follows this mental framework. Thus, three parts can be distinguished, each of which answers one of the three questions posed.

### Part One

The first part corresponds to Chapters I and II, which address the existence of environmentally displaced persons, not as an abstract legal concept or category but as empirically verifiable reality. They are not, therefore, legal chapters. On the contrary, they are anchored in the social sciences, which responds to the conviction that Law is, and must always be, one step behind the social reality it seeks to regulate.

To question the existence of environmentally displaced people is to question the causal relationship between environmental changes in the human environment and the mobility of those who inhabit it. Bearing this in mind, Chapter I provides a historical literature review of the two doctrinal positions that have emerged on how to represent this relationship. The literature reviewed falls within ecological and environmental sciences, migration studies and security threat research. As a starting point for identifying relevant bibliographical references in the development of the discourse on environmental displacement, the bibliography of Saunders' work on the doctrinal construction of "environmental refugees"<sup>12</sup> was taken as a basis.

The consultation of the bibliographic materials necessary for this part of the thesis occurred during the visit to the London School of Economics Library, which was

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<sup>12</sup> SAUNDERS, P.L., "Environmental refugees: the origins of a construct", in: P.A. Stott; S. Sullivan (eds.), *Political Ecology: Science, Myth and Power*, New York (USA), Oxford University Press, 2000, pp. 218-246.

carried out to obtain the international mention for the PhD degree. This research stay was financed, in part, thanks to the grants for short research stays from the Vice-rectorate for Research of the University of Valencia, in the framework of the sub-programme of pre-doctoral grants "Atracció de Talent".

The literature review allowed us to go back to 1948, when the first reference to 'ecologically displaced persons' was found in Vogt, W., *Road to Survival*<sup>13</sup>. However, for the purposes of this introductory chapter, the time frame was limited to the mid-1980s onwards, which is when the most relevant studies advocating human displacement as a result of the environmental problems afflicting the world appeared. This doctrinal trend, linked to American conservationism and environmentalism, will feed the neo-Malthusian portrait of "environmental refugees", perceived as those who abandon a once fertile land that is now exhausted, sterile and polluted. These alarmist postulates will spur the emergence of the first detractors of such romantic visions of an idyllic nature disrupted by humans, in which migration would be a faithful reflection of a battered ecosystem that has been pushed to the limit of its carrying capacity.

This reconstruction of the thinking that gave birth to and condemned "environmental refugees" ultimately allows us to reach a meeting point between the two extremes. Unable to ignore the reality of current migratory movements and their close relationship with climatic and meteorological disturbances, new migration studies in the field seek to explain how environmental and non-environmental factors interact, shaping the decision to move.

Once it has been established that large-scale environmental changes influence human mobility, Chapter II focuses on quantifying the magnitude of the problem. In doing so, not only the relevance of doctoral research is legitimised, but also the intervention of Law itself. To this end, data from the International Disaster Database and the Global Internal Displacement Database are analysed. Therefore, the methodology used in Chapter II corresponds to that of the social sciences. Thus, after defining the time frame (2016-2020) and extracting the data from the databases mentioned above, the information is filtered and systematised by type of natural disruption and frequency, material losses and displaced population, and presented by continent and country (see Annexes I to IV).

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<sup>13</sup> VOGT, W., *Road to Survival*, New York (USA), William Sloane Associates, Inc., 1948, 335 pp.



Data analysis reveals a total of more than 115 million people displaced over a five-year period mainly due to rapid-onset environmental disruptions, i.e. natural disasters in the colloquial sense of the term, such as floods, storms or earthquakes. Remaining invisible are displacements related to slow-onset environmental disruptions such as sea-level rise or land degradation –with the exception of drought, for which data are still limited. This figure, the bulk of which concentrates in developing regions, confirms the existence of environmental displacement and the scale of the challenge of managing these flows of displaced persons.

## **Part Two**

Following the empirical foundation of the research, Chapters III to VI deal with the examination of the legal system under study. This second part constitutes the real core of the doctoral thesis. It is a *de lege data* analysis. The research consisted, first of all, in identifying the legal protection regimes offered by Public International Law, differentiating according to the geographical scope of displacement. Thus, the protection regime for refugees and stateless persons and the customary principle of non-refoulement, as a safeguard of the human right to life and freedom from torture or cruel, inhuman or degrading treatment and punishment, are the frameworks to be taken into account when displacement is cross-border or interstate. On the other hand, in cases where environmentally displaced persons remain within the borders of their country of nationality or habitual residence, the international framework for protection and assistance to IDPs would be the regime of reference.

In identifying the relevant normative instruments, both universal and regional instruments have been considered. Nor has a distinction been made between legally binding instruments (hard-law) and those that, despite having a normative character, lack binding force (soft-law). This inclusive approach is consistent with the particular idiosyncrasies of the international system and the community it serves, which, unlike the subjects of national law, is made up of equally sovereign subjects, not beholden to a higher power. In this sense, soft law instruments have been more permissive in including environmental displacement in their scope of application. However, greater adoption and application by States would be necessary for the protection they offer to be effective.

## Structure

For the convenience of exposition, the structure adopted in these four chapters distinguishes between universal and regional instruments. Firstly, the UN-sponsored framework for each protection regime is presented, followed by examining the instruments developed under the various regional initiatives and organisations. These instruments tend to adapt the universal framework to the specificities of each region. Hence, they tend to be more flexible, and it has often been easier to argue that environmental displacement fits within them.

An attempt has been made to ensure that as many regions as possible are represented in each of the chapters of this part. As a result, the thesis has unintentionally become a comparative law work to a certain extent. This is perhaps one of its most remarkable contributions to the current state of the science, as it provides an up-to-date overview of the normative developments in each region, as well as the degree of States' commitment to implementing them and adhering to universal frameworks.

With this distinction between universal and regional instruments in mind, each chapter discusses whether environmental displacement meets the legal requirements for displaced persons to be considered a refugee (Chapter III), a stateless person (Chapter IV), a person whose human rights require protection from forcible return to their place of origin (Chapter V) or an IDP (Chapter VI).

## Methodology

Methodologically, the chapters in this second part are, in essence, an analysis of concepts that follows the Aristotelian syllogism. Thus, the reasoning starts from two premises: a major one, represented by the legal definition of the protection regime under discussion, and a minor one, constituted by the factual circumstances that characterise environmental displacement. From both premises, a conclusion is drawn, either affirming or denying the attribution of the status in question to environmentally displaced persons. If the conclusion is affirmative, a final section is included examining the rights and obligations to which environmentally displaced persons would be entitled under such a legal regime. The reasoning, therefore, is typically deductive, starting from the general legal concepts and categories specific to each of the regimes analysed to test their applicability to the particular case of environmental displacement.

Following the Socratic maieutic method of advancing knowledge through questions, the different hypotheses discussed in Chapters III to VI could be phrased in the following way:

- Can environmental disruption amount to persecution, thus turning those displaced into refugees?
- Can environmental disruption compromise the survival of a State and leave its nationals stateless?
- Can environmental degradation or the risk of disasters affect the right to live in dignity, such that a State is prohibited from returning displaced persons to their place of origin?
- Can environmental disruptions that force their victims to move within their States turn them into IDPs?

The answers to each of these questions constitute the conclusions of the thesis.

### Sources

The bibliographical sources consulted for these chapters include both specialised works on the legal treatment of environmental and climate displacement and general references on the different legal regimes studied.

In terms of jurisprudential sources, the argumentation of the New Zealand and Australian courts has been a central reference when addressing the refugee status of environmentally displaced persons. These tribunals have had the opportunity to decide refugee claims brought by nationals of several SIDS on the basis of sea-level rise associated with climate change, hence their importance. On the other hand, the jurisprudence of the various international courts and quasi-judicial bodies on human rights has formed the basis for Chapter V. The selected decisions deal with the interpretation of the principle of *non-refoulement* in situations of environmental threat or harm to persons or where living conditions are contrary to dignity, which may be equivalent to situations in countries affected by an environmental disruption.

Likewise, during the research of these chapters, documentary sources have also received a great deal of attention, representing a large part of the materials consulted in the elaboration of this doctoral thesis. In doing so, the aim was to take the pulse of the

international community in the face of this complex challenge, trying to find out, through their documentary production, how international agencies and organisations are reacting to the phenomenon of environmental and climate displacement within their respective mandates. Special attention has been paid to the United Nations institutional family, thanks to access to its documentation through the United Nations Depository Library of the University of Valencia, where an internship was carried out during the first year of the PhD<sup>14</sup>.

### **Part Three**

The analysis of the various legal frameworks discussed in Part II reveals weaknesses, gaps and limitations in the current international legal framework for protecting environmentally displaced persons, including climate-related displacement. The next question is whether Law can avoid displacement causes, making it unnecessary to articulate a new protection regime for those displaced.

Chapter VII explores this possibility by analysing the international framework on climate change (UNFCCC) and natural disaster risk management (SFDRR) as immediate causes of displacement. In addition, attention is given to international progress on sustainable development (Agenda 2030 for Sustainable Development), recognising that its absence underlies the greater vulnerability of developing countries to environmental displacement. The methodology employed here has been to examine these frameworks and their degree of success in achieving their objectives, based on the relevant monitoring and implementation reports.

This seventh chapter shows that, without forgetting or underestimating the importance of prevention, reality imposes the need for reactive measures that protect those displaced and, above all, assist them in searching for durable solutions to displacement. For this reason, the last chapter of the thesis, Chapter VIII, is devoted to analysing the various *lege ferenda* proposals that the Academy has formulated to protect climatic and environmentally displaced persons, with particular attention to the proposal of the University of Limoges. In this case, the methodology of exegesis or critical commentary has been used in developing this chapter.

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<sup>14</sup> My sincere thanks to Ms Chelo Pons, Head of ONUBIB-UV, for her mentorship during the internship and for her great help in documenting this research.

## **RESEARCH OBJECTIVES**

Consistent with the structure set out above, the thesis has a threefold objective:

- a) To define the existence of environmental displacement and its scope for International Law intervention.
- b) To highlight the existing legal gaps in the international legal system, both universal and regional, for protecting these displaced persons.
- c) To examine the different proposals existing in the legal literature to fill this legal vacuum.

## INTRODUCCIÓN

*“<sup>17</sup>Cuarenta días duró el diluvio sobre la tierra. Subieron las aguas y elevaron el arca, que se alzó sobre la tierra.*

*<sup>19</sup>Fueron aumentando cada vez más las aguas sobre la tierra, y cubrieron los montes más altos que hay debajo de todos los cielos.*

*<sup>22</sup>Todo lo que tenía hálito de espíritu de vida en sus narices, de cuanto existía en la tierra firme, murió,*

*<sup>23</sup>Así fueron exterminados todos los seres existentes sobre la haz de la tierra, desde el hombre a la bestia, y los reptiles y las aves del cielo; todos fueron exterminados de la tierra, quedando sólo Noé y los que estaban con él en el arca.”*

(...)

*“<sup>54</sup>Comenzaron a venir los siete años del hambre, como José había predicho. Hubo hambre en todos los países; más en toda la tierra de Egipto había pan.*

*<sup>55</sup>Cuando el hambre se hizo sentir en todo el país de Egipto y el pueblo clamaba a Faraón pidiendo pan, decía el Faraón a todos los egipcios: Id a José, y haced lo que él os diga.*

*<sup>57</sup>De todos los países venían a Egipto para comprar trigo a José, pues el hambre se agravaba en toda la tierra”<sup>1</sup>.*

### DELIMITACIÓN DEL OBJETO DE ESTUDIO

Los versículos arriba citados pertenecen al Capítulo 7 y al Capítulo 41 del Libro del Génesis, respectivamente. El primero relata un desastre natural registrado en la memoria de prácticamente todas las civilizaciones de la antigüedad: el diluvio universal. El segundo refleja una constante del antiguo Egipto. Nacido y florecido a orillas del Nilo, la supervivencia del imperio se basaba en la fertilidad del valle, que dependía de manera crucial del limo procedente de sus inundaciones estacionales<sup>2</sup>. Un delicado equilibrio que condenaba al pueblo de los faraones a la hambruna cada vez que sus deificados soberanos no lograban hacer caer las lluvias necesarias para que el río creciera.

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<sup>1</sup> Nueva Versión de La Biblia del P. Serafín de Ausejo, O.F.M. Cap., Barcelona, Ed. Herder S.A., 1975, Gn. c.7, vv. 17, 19, 22 y 23; c. 41, vv. 54, 55 y 57.

<sup>2</sup> Vid. NAVARRO, J. (dir.), *Gran Enciclopedia Interactiva Oceano*, Vol. 4: Historia Universal, 1ªed., 12ª imp., España, Oceano Grupo Editorial, 2003, pp. 717-720.

La historia de los patriarcas de Israel que relata el Génesis tuvo lugar entre los años 1850 y 1700 a.C.<sup>3</sup> Su reproducción como obertura de esta tesis doctoral obedece a la finalidad de mostrar que las interrupciones medioambientales han sido y son una constante en la historia de la humanidad, en tanto que la movilidad sigue siendo la principal estrategia del ser humano para afrontarlas.

Sin embargo, en un principio, la investigación que aquí se presenta tenía un objeto de estudio diferente, pero relacionado con el desplazamiento medioambiental. Su objetivo era analizar la distinción entre el refugiado político y el inmigrante económico en el ordenamiento jurídico internacional y europeo. El propósito primordial que se perseguía con ella era evidenciar la ausencia de protección internacional que enfrentan aquellas personas compelidas a abandonar sus países de origen por razones de necesidad espuriamente calificadas de "económicas". Esta desprotección contrasta con el completo sistema de garantías y derechos que desde finales de la II Guerra Mundial se ha construido en favor de los inmigrantes por motivos políticos sobre la base de la Convención de Ginebra de 1951 sobre el Estatuto del Refugiado. El argumento de partida, más anclado en los sentimientos que en el Derecho, era que no había tanta diferencia entre huir de la persecución de un gobierno y huir de la persecución del hambre y la pobreza.

Pronto llamó la atención el hecho de que muchos de estos flujos migratorios aparentemente económicos guardaban una estrecha relación con alteraciones medioambientales que habían afectado severamente las condiciones socio-económicas de vida en los lugares de origen. Resultó ciertamente llamativo encontrar, en el curso de la lectura de la bibliografía sobre la relación entre migración y medio ambiente, una incipiente corriente doctrinal en los escritos ecologistas de los años 80 que, más retórica que jurídicamente, abogaba por la existencia de los llamados "refugiados medioambientales".

De ese hallazgo casual surge esta tesis. La cuestión de los desplazados medioambientales y su protección suponía una concreción del amplio tema de estudio inicial: una categoría de inmigrantes *a priori* económicos para los que se reclamaba un estatuto de protección que los equiparase a los tradicionales refugiados políticos. La base para esta asimilación vendría dada por el componente forzoso que está presente en

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<sup>3</sup> Nueva Versión de La Biblia del P. Serafín de Ausejo, O.F.M. Cap., *op. cit.*, p. 8.

las migraciones relacionadas con cambios drásticos en el entorno natural. De ahí que sea más apropiado calificar estos movimientos como desplazamientos que como migraciones, a fin de subrayar la ausencia de voluntad en el movimiento<sup>4</sup>. Esta afirmación no desconoce que la migración puede ser igualmente una estrategia de adaptación ante situaciones de estrés ambiental, si bien en estos casos la decisión de moverse aparece como predominantemente voluntaria<sup>5</sup>.

La búsqueda inicial de esta equiparación con los refugiados políticos, que justificara la pretensión de extender la protección internacional a aquellos inmigrantes "económicos" en situación de acusada vulnerabilidad, ha condicionado el planteamiento del nuevo objeto de estudio. Así, dentro del amplio espectro de movimientos poblacionales relacionados con factores ambientales, esta tesis se centra en el desplazamiento como respuesta a una "disrupción medioambiental" –i.e. a un cambio dramático en el ecosistema o en sus utilidades que lo hace temporal o permanentemente inhabitable para el ser humano. No son, por tanto, objeto de estudio las migraciones medioambientales. Con todo, algunos de los sectores normativos analizados, como los marcos para la prevención de los desplazamientos que se abordan en el Capítulo VII, también son de interés desde el punto de vista de la migración, empleándose en estos casos el término movilidad humana para englobar ambos fenómenos.

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<sup>4</sup> Como ha señalado LÓPEZ RAMÓN, F., "Los Derechos de los emigrantes ecológicos", *Cuadernos Manuel Giménez Abad*, No. extra 6, 2017, p. 7, la denominación de los movimientos humanos asociados a factores medioambientales ha sido objeto de una prolífica diversidad de términos. Atendiendo al elemento subjetivo, las personas afectadas han sido calificadas de "refugiados", "desplazados" o "inmigrantes". Por su parte, según la causa del movimiento, se les califica de "ambientales", "ecológicos" o "climáticos". Como ingeniosamente señala el citado autor, "combinando esos dos juegos de tres palabras cada uno (siempre un sustantivo con un adjetivo) podríamos formar las nueve variantes" o denominaciones empleadas por la doctrina en sus trabajos. En nuestro caso, se ha preferido utilizar la denominación "desplazado medioambiental" por las razones expuestas arriba, así como por ser el término más aceptado en el escenario político-internacional. A este respecto, vid. THE NANSEN INITIATIVE, "Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change", Volume I, the Nansen Initiative, December 2015, par. 16, definiendo el término "desplazamiento por desastres" como referido a "situaciones en las que las personas se *ven forzadas u obligadas a abandonar* sus hogares o lugares de residencia habitual *como consecuencia de un desastre o para evitar el impacto* de un peligro natural inmediato y previsible" [cursiva añadida y traducción del original en inglés]. Cabe destacar que la Agenda Nansen recibió el apoyo de 109 países en la consulta intergubernamental celebrada en Ginebra (Suiza) los días 12 y 13 de octubre de 2015.

<sup>5</sup> La nada pacífica cuestión del control sobre la decisión de emigrar ante los cambios medioambientales ha sido abordada, por ejemplo, por HUGO, G., "Environmental Concerns and International Migration", *The International Migration Review*, Vol. 30, No. 1, Special Issue: Ethics, Migration, and Global Stewardship, Spring 1996, pp. 106-113; y BATES, D.C., "Environmental Refugees? Classifying Human Migrations Caused by Environmental Change", *Population and Environment*, Vol. 23, No. 5, May 2002, pp. 467-469. Ambos autores proponen representar la movilidad de la población como un continuo que va del movimiento totalmente voluntario al totalmente forzado, reservando el término "refugiados ambientales" para los que se encuentran en el extremo del movimiento involuntario.



Una segunda precisión en cuanto a la delimitación del objeto de la investigación tiene que ver con el origen de esa alteración medioambiental, cuya causa ha de ser "natural". No se consideran, por tanto, las interrupciones de origen antrópico que pudieran obligar a la población a desplazarse, como la ejecución de un proyecto de desarrollo o los efectos de un accidente industrial o una guerra en el medio ambiente. Esta causa natural puede ser repentina, como la inundación que dio origen al diluvio universal; o lenta en la manifestación de sus efectos, como la sequía que en el sueño del faraón asolaba Egipto durante siete años. Particular atención se ha prestado a los desplazamientos relacionados con la subida del nivel del mar en los PEID de baja altitud. El destino de estos Estados bien podría compararse con el mito de la Atlántida, haciendo la tesis gran hincapié en la protección de sus poblaciones, que se han convertido en el paradigma de los desplazamientos relacionados con el cambio climático.

A este respecto, cabe señalar que la doctrina especializada ha tendido mayoritariamente a centrarse en los desplazamientos ambientales en el contexto del cambio climático (los llamados "desplazados climáticos"). Frente a este planteamiento, esta tesis ha preferido mantener una posición que aboga por la protección de todo el espectro de desplazados ambientales por causas naturales, en lugar de limitarse a una subcategoría específica. Ello porque no parece que esté justificada esta discriminación entre unos y otros. Tan necesario es proteger a quien huye de la subida del nivel del mar que está ocasionando el cambio climático, como al desplazado por una interrupción de origen geofísico, como un volcán o un terremoto.

Una última aclaración sobre el objeto de estudio se refiere al ámbito geográfico del desplazamiento considerado. Se incluye, así, tanto el desplazamiento transfronterizo, es decir, cuando las personas desplazadas han cruzado una frontera reconocida internacionalmente; como el desplazamiento interno, en el que permanecen en el territorio del Estado de su residencia habitual<sup>6</sup>. Por último, se han tenido en cuenta las diferentes formas que puede adoptar el desplazamiento medioambiental, ya se trate de "una huida espontánea, una evacuación ordenada o forzada por las autoridades o un proceso de reubicación involuntaria planificada"<sup>7</sup>.

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<sup>6</sup> THE NANSEN INITIATIVE, "Agenda for the Protection...", *op. cit.*, par. 18.

<sup>7</sup> Id. [traducido del original en inglés].

## HIPÓTESIS DE TRABAJO Y ESTADO DE LA CUESTIÓN

Como el propio título de la tesis indica, la hipótesis de partida ha sido la asunción de que no existe en el ordenamiento jurídico internacional un instrumento normativo que permita proteger adecuadamente a los desplazados medioambientales. Esta hipótesis se basa en los resultados de previas investigaciones doctorales en este ámbito. En concreto, esta tesis toma como referencia los trabajos de TORRES CAMPRUBÍ, A.<sup>8</sup>; GEMENNE, F.<sup>9</sup>; DOS SANTOS, A.<sup>10</sup>; y FELIPE PÉREZ, B.I.<sup>11</sup> La investigación realizada es, por tanto, continuadora de la labor iniciada por estos autores.

Por un lado, se profundiza en el análisis jurídico de los instrumentos a los que habitualmente se suele hacer referencia al considerar la protección de los desplazados ambientales, a saber: en el ámbito universal, la Convención de Ginebra de 1951 sobre el Estatuto de los Refugiados, el régimen jurídico internacional de la apatridia y los Principios Rectores de los Desplazamientos Internos. A nivel regional, suele citarse la Convención de la Organización de la Unión Africana por la que se regulan los Aspectos Específicos de los Problemas de los Refugiados en África, la Declaración de Cartagena sobre los refugiados y la Convención de la Unión Africana para la Protección y Asistencia de los Desplazados Internos en África. Por otro lado, se amplía el catálogo de instrumentos analizados, sobre todo a nivel regional, y se presta atención al grado de adhesión de las regiones identificadas como focos de desplazamiento ambiental a los marcos normativos considerados relevantes para la protección y asistencia de estos desplazados.

Asimismo, se tienen en cuenta los desarrollos normativos e institucionales que se han producido con posterioridad a las investigaciones de los autores citados. Sin pretender ser exhaustivos, entre ellos se encuentran la adopción en marzo de 2015 del Marco de Sendai para la Reducción del Riesgo de Desastres, la adopción de la Agenda

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<sup>8</sup> TORRES CAMPRUBÍ, A., *Climate change and international security: revealing new challenges to the continuation of Pacific Islands' Statehood*, PhD Thesis, Madrid (Spain), Universidad Autónoma de Madrid, 2014, 481 pp.

<sup>9</sup> GEMENNE, F., *Environmental Changes and Migration Flows: Normative Frameworks and Policy Responses* (Vol. I), PhD Thesis, Institut d'Etudes Politiques de Paris; University of Liège, April 2009, 493 pp.

<sup>10</sup> DOS SANTOS, A., *Migraciones forzosas y las nuevas "categorías" de desplazados internos – desplazados medioambientales y del desarrollo: problemas y desafíos para el sistema internacional de protección*, PhD Thesis, Madrid (Spain), Instituto Universitario de Estudios sobre Migraciones (Universidad Pontificia Comillas), 2012, 549 pp.

<sup>11</sup> FELIPE PÉREZ, B.I., *Las migraciones climáticas: retos y propuestas desde el Derecho Internacional*, PhD Thesis, Tarragona (Spain), Universitat Rovira i Virgili, 2016, 413 pp.

2030 para el Desarrollo Sostenible en septiembre de ese mismo año, la creación a finales de 2016 del Grupo de Trabajo sobre Desplazamiento en el marco del régimen de cambio climático de la ONU, y la decisión histórica de 2020 del Comité de Derechos Humanos en el caso del Sr. Teitiota contra Nueva Zelanda sobre la aplicación del principio de no devolución en casos de desplazamiento climático. Aunque estos avances no han cambiado el panorama de la protección internacional de los desplazados por motivos medioambientales, el que el vínculo entre movilidad humana y cambio climático haya empezado a integrarse en la agenda política revela una mayor sensibilidad de la comunidad internacional hacia esta problemática.

## **ESTRUCTURA Y METODOLOGÍA**

Enunciada en forma de pregunta, la tesis inicial de esta investigación quedaría expresada como sigue: ¿existe una laguna en el ordenamiento jurídico internacional en cuanto a la protección de las personas desplazadas por motivos medioambientales? Responder a esta cuestión requiere, en primer lugar, interrogarse sobre la existencia misma del objeto de estudio como paso previo a teorizar sobre la posible protección internacional de los desplazados ambientales. Como cuestión final, la corroboración de la hipótesis de partida obliga a considerar posibles fórmulas para cubrir las lagunas legales detectadas en la prevención de las interrupciones ambientales y la protección de los desplazados por las mismas.

La estructura de la tesis se ha planteado siguiendo este esquema mental. Así, se pueden distinguir tres partes, cada una de las cuales responde a uno de los tres interrogantes formulados.

### **Primera Parte**

La primera parte se corresponde con los Capítulos I y II, que abordan la existencia de los desplazados ambientales, no como un concepto o categoría jurídica abstracta, sino como una realidad empíricamente verificable. No se trata, por tanto, de capítulos jurídicos. Todo lo contrario, su anclaje en las ciencias sociales responde al convencimiento de que el Derecho va, y debe ir siempre, un paso por detrás de la realidad social que pretende regular.

Cuestionar la existencia de los desplazados ambientales es cuestionar la relación causal entre los cambios ambientales en el medio humano y la movilidad de quienes lo habitan. Teniendo esto presente, el Capítulo I lleva a cabo una revisión bibliográfica, en clave histórica, de los dos posicionamientos doctrinales que han surgido sobre la forma de representar esta relación. La literatura examinada se inscribe en el ámbito de las ciencias ecológicas y ambientales, los estudios migratorios y el campo de la investigación sobre las amenazas a la seguridad. Como punto de partida para identificar las referencias bibliográficas relevantes en el desarrollo del discurso sobre el desplazamiento ambiental, se tomó como base la bibliografía del trabajo de SAUNDERS sobre la construcción doctrinal del imaginario de los "refugiados ambientales"<sup>12</sup>.

La consulta de los materiales bibliográficos para esta parte de la tesis tuvo lugar durante la visita a la Biblioteca de la London School of Economics, que se realizó con el fin de obtener la mención internacional al título de doctor. Esta estancia de investigación fue financiada, en parte, gracias las subvencionadas para estancias cortas de investigación del Vicerrectorado de Investigación de la Universidad de Valencia, en el marco del subprograma de ayudas pre doctorales "Atracció de Talent".

La revisión bibliográfica permitió retroceder hasta 1948, cuando se encontró la primera referencia a los "desplazados ecológicos" en el libro de VOGT, W., *Road to Survival*<sup>13</sup>. No obstante, a efectos del este capítulo introductorio, el espacio temporal se acotó desde mediados de los años 80 en adelante, que es cuando aparecen los estudios más relevantes que propugna los desplazamientos humanos como resultado de los problemas ambientales que aquejan al mundo. Esta corriente doctrinal, vinculada con el conservacionismo y el ecologismo americano, alentará la imagen neo-maltusiana del "refugiado ambiental", percibido como aquél que abandona una tierra otrora fértil y ahora exhausta, estéril, y contaminada. Estos postulados alarmistas serán el acicate para la aparición de los primeros detractores de estas visiones románticas de una naturaleza idílica trastocada por el ser humano, en la que la migración aparece como un fiel reflejo de un ecosistema maltrecho que ha sido llevado al límite de su capacidad de carga.

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<sup>12</sup> SAUNDERS, P.L., "Environmental refugees: the origins of a construct", in: P.A. Stott; S. Sullivan (eds.), *Political Ecology: Science, Myth and Power*, New York (USA), Oxford University Press, 2000, pp. 218-246.

<sup>13</sup> VOGT, W., *Road to Survival*, New York (USA), William Sloane Associates, Inc., 1948, 335 pp.

Esta reconstrucción del pensamiento que alumbró y condenó a los "refugiados ambientales" permite, en última instancia, llegar a un punto de encuentro entre ambos extremos. Incapaces de ignorar la realidad de los movimientos migratorios actuales y su estrecha relación con las perturbaciones climáticas y meteorológicas, los nuevos estudios migratorios en la materia tratan de explicar cómo interactúan los factores ambientales y no ambientales al conformar la decisión de desplazarse.

Una vez establecido que los cambios ambientales de cierta envergadura influyen en la movilidad humana, el Capítulo II se centra en cuantificar la magnitud del problema. Con ello, no sólo se pretende legitimar la pertinencia de la investigación doctoral, sino también la propia intervención del Derecho. Para ello se analizan los datos de la International Disaster Database y de la Global Internal Displacement Database. La metodología empleada en este capítulo es, por tanto, la propia del ámbito de las ciencias sociales. Así, tras delimitar el marco temporal (2016-2020) y extraer los datos, la información se filtra y sistematiza por continentes y países, quedando organizada por tipo de perturbación natural y frecuencia, pérdidas materiales y población desplazada (véanse los anexos I a IV).

El análisis de los datos arroja un total de más de 115 millones de personas desplazadas en un periodo de cinco años debido principalmente a disrupciones ambientales de rápida aparición, es decir, a desastres naturales en el sentido coloquial del término, como inundaciones, tormentas o terremotos. Permanecen invisibles, por tanto, los desplazamientos relacionados con las perturbaciones medioambientales de aparición lenta, como la subida del nivel del mar o la degradación del suelo –a excepción de la sequía, para la que los datos disponibles son todavía limitados. Esta cifra, cuyo grueso se concentra en las regiones en desarrollo, confirma la existencia de los desplazamientos medioambientales y la magnitud del reto que supone la gestión de estos flujos de desplazados.

## **Segunda Parte**

Una vez fundamentada empíricamente la procedencia de la investigación, los Capítulos III a VI acometen la revisión del ordenamiento jurídico objeto de estudio. Esta segunda parte constituye el verdadero núcleo de la tesis doctoral. Se trata de un análisis *de lege data*, en el que la investigación ha consistido, en primer lugar, en

identificar los regímenes jurídicos de protección que ofrece el Derecho Internacional Público, diferenciando según el alcance geográfico del desplazamiento. Así, el régimen de protección de los refugiados y apátridas y el principio consuetudinario de no devolución, como salvaguarda del derecho humano a la vida y a no sufrir torturas o tratos y penas crueles, inhumanos o degradantes, son los marcos a tener en cuenta cuando el desplazamiento es transfronterizo o interestatal. En cambio, en aquellos casos en los que el desplazado medioambiental permanece dentro de las fronteras de su Estado de nacionalidad o residencia habitual, procede acudir al marco internacional sobre protección y asistencia de los desplazados internos.

A la hora de identificar los instrumentos normativos relevantes se ha tenido en cuenta tanto los de ámbito universal como los de alcance regional. Tampoco se ha discriminado entre instrumentos jurídicamente obligatorios (*hard law*) y aquellos otros que, a pesar de tener carácter normativo, carecen de fuerza vinculante (*soft law*). Este enfoque inclusivo es coherente con la propia y particular idiosincrasia del sistema internacional y de la comunidad a la que sirve que, a diferencia de los destinatarios de los ordenamientos internos, está conformada por sujetos igualmente soberanos, no sometidos a un poder superior. En este sentido, los instrumentos de derecho indicativo han resultado más permisivos a la hora de incluir el desplazamiento medioambiental en su ámbito de aplicación, si bien sería necesaria una mayor adopción y aplicación por parte de los Estados para que la protección que ofrecen fuera realmente efectiva.

### Estructura

A efectos expositivos, la estructura adoptada en estos cuatro capítulos sigue la distinción entre instrumentos de ámbito universal y regional. Así pues, en primer lugar se expone el marco auspiciado por las Naciones Unidas en cada régimen de protección para, a continuación, examinar los instrumentos desarrollados en el seno de las distintas iniciativas y organizaciones regionales. Estos instrumentos tienden a adaptar el marco universal a las especificidades de cada región y, por tanto, suelen ser más flexibles, lo que ha facilitado argumentar en favor de su aplicación a los desplazamientos medioambientales.

En la medida de lo posible, se ha tratado que el mayor número de regiones estuviera representado en cada uno de los capítulos de esta parte, por lo que en cierto

modo la tesis ha acabado convirtiéndose, sin pretenderlo, en un trabajo de derecho comparado. Ésta es quizá una de sus mayores contribuciones al estado actual de la ciencia, ya que proporciona una visión actualizada de los desarrollos normativos en cada región, así como del grado de compromiso de los Estados tanto en su aplicación como en su adhesión a los marcos universales.

Teniendo en cuenta esta distinción entre instrumentos universales y regionales, cada capítulo analiza si el desplazamiento medioambiental cumple los requisitos legales para que los desplazados sean considerados refugiados (Capítulo III), apátridas (Capítulo IV), personas cuyos derechos humanos exigen protección frente al retorno forzoso a su lugar de origen (Capítulo V) o desplazados internos (Capítulo VI).

### Metodología

Metodológicamente, los capítulos de esta segunda parte son, en esencia, un análisis de conceptos que sigue el esquema del silogismo aristotélico. Así, el razonamiento parte de dos premisas: una mayor, representada por la definición jurídica del régimen de protección que se estudia; y una menor, constituida por las circunstancias de hecho que caracterizan al desplazamiento ambiental. De ambas premisas se extrae una conclusión, que afirma o niega la atribución del estatuto en cuestión a los desplazados medioambientales. Si la conclusión es afirmativa, se incluye un apartado final en el que se analizan los derechos y obligaciones que corresponderían al desplazado medioambiental bajo dicho régimen jurídico. El razonamiento, por tanto, es típicamente deductivo, partiendo de los conceptos y categorías jurídicas generales propias de cada uno de los regímenes analizados para comprobar su aplicabilidad al caso particular del desplazamiento medioambiental.

Siguiendo con el método de la mayéutica socrática de avanzar en el conocimiento por medio de preguntas, las hipótesis discutidas en los capítulos III a VI podrían quedar planteadas a modo de interrogante de la siguiente manera:

- ¿Pueden las disrupciones medioambientales equivaler a una persecución, convirtiendo al desplazado en un refugiado?
- ¿Pueden las disrupciones medioambientales comprometer la supervivencia de un Estado dejando a sus nacionales apátridas?

- ¿Puede la degradación ambiental o el riesgo de desastre afectar al derecho a la vida en condiciones dignas, de modo que se prohíba a un Estado devolver a los desplazados a su lugar de procedencia?
- ¿La disrupción medioambiental que obliga a sus víctimas a desplazarse dentro de sus Estados hace de ellos desplazados internos?

Las respuestas a cada una de estas cuestiones constituyen las conclusiones finales de la tesis.

### Fuentes

Las fuentes bibliográficas consultadas para la elaboración de estos capítulos abarcan tanto trabajos especializados sobre el tratamiento jurídico de los desplazamientos ambientales y climáticos como obras generales sobre los diferentes regímenes jurídicos estudiados.

En cuanto a las fuentes jurisprudenciales, la argumentación de los tribunales neozelandeses y australianos ha resultado ser una referencia obligada a la hora de abordar la consideración de los desplazados ambientales como refugiados. Estos tribunales han tenido la oportunidad de decidir sobre las solicitudes de refugio presentadas por nacionales de varios PEID sobre la base de la subida del nivel del mar asociada al cambio climático, de ahí su importancia. Por su parte, la jurisprudencia de los diferentes tribunales y órganos cuasi jurisdiccionales internacionales de derechos humanos ha constituido la base para la elaboración del Capítulo V. Las decisiones escogidas versan sobre la interpretación del principio de no devolución en situaciones de amenaza o daño ambiental a las personas o donde las condiciones de vida son contrarias a la dignidad humana, que pueden ser equivalentes a las situaciones que se dan en un país afectado por una disrupción medioambiental.

Asimismo, durante la investigación de estos capítulos se ha tenido muy en cuenta las fuentes documentales, que representan gran parte de los materiales consultados en la elaboración de esta tesis doctoral. Con ello se ha pretendido tomar el pulso de la comunidad internacional ante este complejo reto, tratando de conocer, a través de su producción documental, cómo están reaccionando las agencias y organizaciones internacionales ante el fenómeno del desplazamiento ambiental y climático en el ámbito de sus respectivos mandatos. Se ha prestado especial atención a la familia institucional



de las Naciones Unidas, gracias al acceso que se ha tenido a su documentación a través de la Biblioteca Depositaria de las Naciones Unidas de la Universidad de Valencia, donde se realizaron unas prácticas durante el primer año del doctorado<sup>14</sup>.

### **Tercera Parte**

El análisis de los distintos marcos legales examinados en la segunda parte ha permitido detectar las debilidades, carencias y limitaciones que presenta actualmente el ordenamiento jurídico internacional para la protección de las personas desplazadas por motivos ambientales, incluidos los relacionados con el clima. La siguiente cuestión que cabe plantearse es si el Derecho puede evitar las causas del desplazamiento, haciendo innecesaria la articulación de un nuevo régimen de protección para estos desplazados.

El Capítulo VII explora esta posibilidad analizando el marco internacional sobre cambio climático (CMNUCC) y de gestión del riesgo de desastres (MSRRD), en tanto que causas inmediatas de los desplazamientos. Además, se presta atención a los progresos internacionales en materia de desarrollo sostenible (Agenda 2030 para el Desarrollo Sostenible), reconociendo que su ausencia es la causa subyacente de la mayor vulnerabilidad que presentan los países en desarrollo al desplazamiento ambiental. La metodología empleada aquí ha consistido en examinar estos marcos y su grado de éxito en la consecución de sus objetivos, basándose en los correspondientes informes de seguimiento e implementación.

Este séptimo capítulo muestra que, sin olvidar o subestimar la importancia de la prevención, la realidad impone la necesidad de medidas reactivas que protejan a los desplazados y, sobre todo, les asistan en la búsqueda de soluciones duraderas al desplazamiento. Por ello, el último capítulo de la tesis, el Capítulo VIII, se dedica a analizar las distintas propuestas *de lege ferenda* que se han formulado desde la Academia para la protección de los desplazados climáticos y ambientales, con especial atención a la propuesta de la Universidad de Limoges. En este caso, se ha empleado para su elaboración la metodología de la exégesis o comentario crítico.

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<sup>14</sup> Mi más sincero agradecimiento a Dña. Chelo Pons, responsable de ONUBIB-UV, por su mentoría durante las prácticas y por su gran ayuda en la documentación de esta investigación.

## **OBJETIVOS DE LA INVESTIGACIÓN**

De forma coherente con la estructura expuesta, la tesis ha sido planteada con un triple objetivo:

- a) Definir la existencia del desplazamiento medioambiental y su alcance en aras de una intervención del Derecho Internacional.
- b) Evidenciar las lagunas jurídicas existentes en el ordenamiento jurídico internacional, de ámbito universal y regional, para la protección de estos desplazados.
- c) Examinar las diferentes propuestas de la doctrina *iuspublicista* para colmar este vacío legal.

## INTRODUZIONE

*“<sup>17</sup>Il diluvio durò sulla terra quaranta giorni: le acque crebbero e sollevarono l'arca, che s'innalzò sulla terra.*

*<sup>19</sup>Le acque furono sempre più travolgenti sopra la terra e coprono tutti i monti più alti che sono sotto tutto il cielo.*

*<sup>22</sup>Ogni essere che ha un alito di vita nelle narici, cioè quanto era sulla terra asciutta, morì.*

*<sup>23</sup>Così fu cancellato ogni essere che era sulla terra: dagli uomini agli animali domestici, ai rettili e agli uccelli del cielo; essi furono cancellati dalla terra e rimase solo Noè e chi stava con lui nell'arca.*

(...)

*<sup>54</sup>E cominciarono i sette anni di carestia, come aveva detto Giuseppe. Ci fu carestia in ogni paese, ma in tutta la terra d'Egitto c'era il pane.*

*<sup>55</sup>Poi anche tutta la terra d'Egitto cominciò a sentire la fame e il popolo gridò al faraone per avere il pane. Il faraone disse a tutti gli Egiziani: «Andate da Giuseppe; fate quello che vi dirà».*

*<sup>57</sup>ma da ogni paese venivano in Egitto per acquistare grano da Giuseppe, perché la carestia infieriva su tutta la terra.”<sup>1</sup>*

### DELIMITAZIONE DELL'OGGETTO DI STUDIO

I versetti citati sopra appartengono al Capitolo 7 e al Capitolo 41 del Libro della Genesi, rispettivamente. Il primo riguarda un disastro naturale registrato nella memoria di quasi tutte le civiltà antiche: il diluvio universale. Il secondo mostra una caratteristica costante dell'antico Egitto. Nato e fiorito sulle rive del Nilo, la sopravvivenza dell'impero egiziano si basava sulla fertilità della valle, che dipendeva in modo cruciale dal limo delle sue inondazioni stagionali<sup>2</sup>. Questo delicato equilibrio condannava il popolo dei faraoni alla carestia ogni volta che i sovrani divini non riuscivano a far scendere le piogge che causavano le esondazioni del fiume.

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<sup>1</sup> Gn. c.7, vv. 17, 19, 22 e 23; c. 41, vv. 54, 55 e 57.

<sup>2</sup> Vid. NAVARRO, J. (dir.), *Gran Enciclopedia Interactiva Oceano*, Vol. 4: Historia Universal, 1ªed., 12ª imp., España, Oceano Grupo Editorial, 2003, pp. 717-720.

La storia dei patriarchi d'Israele raccontata nella Genesi si svolse tra il 1850 e il 1700 a.C.<sup>3</sup> La sua riproduzione come ouverture a questa tesi di dottorato intende mostrare che le perturbazioni ambientali sono state e sono una costante nella storia dell'uomo, mentre il movimento rimane la principale strategia umana per affrontarle.

Inizialmente, però, la ricerca qui presentata aveva un oggetto di studio diverso, anche se correlato, a quello dello spostamento ambientale. Il suo obiettivo era quello di analizzare la distinzione tra rifugiati politici e migranti economici nel Diritto Internazionale ed Europeo. Lo scopo principale dello studio era evidenziare la mancanza di protezione internazionale di coloro che sono costretti a lasciare i loro paesi d'origine per ragioni di necessità ingiustamente descritte come "economiche". Questa mancanza di protezione contrasta con l'ampio sistema di garanzie e diritti che dalla fine della seconda guerra mondiale è stato costruito a favore degli immigrati per motivi politici sulla base della Convenzione di Ginevra del 1951 sullo status dei rifugiati. L'argomento di partenza, ancorato più al sentimento che alla legge, era che non c'era molta differenza tra fuggire dalla persecuzione di un governo e fuggire dalla fame e dalla povertà.

Ben presto ci si accorse che molti di questi flussi migratori, apparentemente economici, erano strettamente legati ad alterazioni ambientali che avevano gravemente compromesso le condizioni socio-economiche di vita nei luoghi d'origine. È stato certamente suggestivo trovare, nel corso della lettura della bibliografia sul rapporto tra migrazione e ambiente, un'incipiente corrente dottrinale negli scritti ambientali degli anni '80 che, più retoricamente che giuridicamente, sosteneva l'esistenza dei cosiddetti "rifugiati ambientali".

È da questa scoperta casuale che è emersa questa tesi. La questione degli sfollati ambientali e della loro protezione rappresentava la concretizzazione dell'ampio tema dello studio iniziale: una categoria di migranti a priori economici per i quali si rivendicava uno status di protezione che li avrebbe messi alla pari dei tradizionali rifugiati politici. La base di questa assimilazione sarebbe data dal carattere forzato che è presente nelle migrazioni legate a cambiamenti drastici dell'ambiente naturale. Quindi, è più appropriato qualificare questi movimenti come spostamenti piuttosto che migrazioni

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<sup>3</sup> *Nueva Versión de La Biblia del P. Serafín de Ausejo, O.F.M. Cap., op. cit., p. 8.*

per sottolineare l'assenza di volontà nel movimento<sup>4</sup>. Questa affermazione non ignora il fatto che la migrazione può anche essere una strategia di adattamento in situazioni di stress ambientale, ma in questi casi la decisione di muoversi sembra essere prevalentemente volontaria<sup>5</sup>.

La volontà iniziale di cercare questa equiparazione con i rifugiati politici, che giustificherebbe la pretesa di estendere la protezione internazionale a quei migranti "economici" in una situazione di marcata vulnerabilità, ha condizionato l'approccio del nuovo oggetto di studio. Così, all'interno dell'ampio spettro di movimenti di popolazione legati a fattori ambientali, questa tesi si concentra sullo spostamento come risposta a una "perturbazione ambientale" –cioè un drammatico cambiamento nell'ecosistema o nelle sue utilità che lo rende temporaneamente o permanentemente inabitabile per gli umani. Pertanto, la migrazione ambientale non è un argomento di studio. Tuttavia, alcune delle aree politiche discusse, come le strategie per la prevenzione degli spostamenti discusse nel Capitolo VII, sono anche rilevanti dal punto di vista della migrazione, nel qual caso il termine mobilità umana viene utilizzato per coprire sia i movimenti volontari che quelli forzati.

Una seconda precisazione sulla delimitazione dell'oggetto della ricerca riguarda l'origine di questa alterazione ambientale, la cui causa deve essere "naturale". Le perturbazioni di origine antropica che potrebbero costringere la popolazione a spostarsi,

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<sup>4</sup> Come sottolineato da LÓPEZ RAMÓN, F., "Los Derechos de los emigrantes ecológicos", *Cuadernos Manuel Giménez Abad*, No. extra 6, 2017, p. 7, la denominazione dei movimenti umani associati a fattori ambientali ha prodotto una prolifica diversità di termini. A seconda dell'elemento soggettivo, le persone colpite sono state descritte come "rifugiati", "sfollati" o "migranti". A seconda della causa dello spostamento, si parla di "ambientale", "ecologico" o "climatico". Come osserva argutamente l'autore, "combinando queste due serie di tre parole ciascuna (sempre un sostantivo con un aggettivo) potremmo formare le nove varianti" o denominazioni utilizzate dalla dottrina [traduzione dall'originale in spagnolo]. Nel nostro caso, abbiamo preferito utilizzare il termine "sfollati ambientali" per le ragioni esposte sopra, oltre che perché è il termine più accettato nell'arena politica internazionale. A questo proposito, vid. THE NANSSEN INITIATIVE, "Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change", Volume I, the Nansen Initiative, December 2015, par. 16, definendo il termine "dislocamento per disastri" come riferito a "situazioni in cui le persone sono costrette o obbligate a lasciare le loro case o i loro luoghi di residenza abituale a causa di un disastro o per evitare l'impatto di un pericolo naturale immediato e prevedibile" [enfasi inserita e testo tradotto dall'originale in inglese]. In particolare, l'Agenda Nansen è stata approvata da 109 paesi alla consultazione intergovernativa tenutasi a Ginevra (Svizzera), dal 12 al 13 ottobre 2015.

<sup>5</sup> La non pacifica questione del controllo sulla decisione di migrare davanti a un cambiamento ambientale è stata affrontata, per esempio, da HUGO, G., "Environmental Concerns and International Migration", *The International Migration Review*, Vol. 30, No. 1, Special Issue: Ethics, Migration, and Global Stewardship, Spring 1996, pp. 106-113; and BATES, D.C., "Environmental Refugees? Classifying Human Migrations Caused by Environmental Change", *Population and Environment*, Vol. 23, No. 5, May 2002, pp. 467-469. Gli autori propongono di rappresentare la mobilità della popolazione come un continuum che va dalla mobilità totalmente volontaria a quella totalmente forzata, riservando il termine "rifugiati ambientali" a coloro che si trovano all'estremo del movimento involontario.

come la realizzazione di un progetto di sviluppo o gli effetti della guerra sull'ambiente, non sono quindi considerate. Questa causa naturale può essere improvvisa, come l'inondazione che ha dato origine al Grande Diluvio; o lenta nel manifestare i suoi effetti, come la siccità che devastò l'Egitto per sette anni nel sogno del Faraone. Un'attenzione particolare è stata data allo spostamento legato all'aumento del livello del mare nei SIDS a bassa quota, che potrebbero essere paragonati al mito di Atlantide. Il destino di questi Stati potrebbe essere paragonato al mito di Atlantide, e la tesi pone grande enfasi sulla protezione delle loro popolazioni, che sono diventate il paradigma dello spostamento legato al cambiamento climatico.

A questo proposito, vale la pena notare che la letteratura specializzata si è concentrata soprattutto sullo spostamento ambientale nel contesto del cambiamento climatico (il cosiddetto "spostamento climatico"). In contrasto con questo approccio, questa tesi ha preferito mantenere una posizione che sostiene la protezione dell'intero spettro degli sfollati per cause naturali, piuttosto che limitarla a una sottocategoria specifica. Questo perché non sembra esserci alcuna giustificazione per discriminare tra loro. La protezione di coloro che fuggono dall'innalzamento del livello del mare causato dal cambiamento climatico è altrettanto necessaria di quella degli sfollati a causa di una perturbazione geofisica come un vulcano o un terremoto.

Un'ultima precisazione sull'oggetto di studio riguarda l'ambito geografico dello spostamento in esame. Questo include sia lo spostamento transfrontaliero, cioè quando gli sfollati hanno attraversato un confine internazionalmente riconosciuto, sia lo spostamento interno, in cui rimangono nel territorio dello Stato di residenza abituale<sup>6</sup>. Infine, si è tenuto conto delle diverse forme che lo spostamento ambientale può assumere, sia che si tratti di "una fuga spontanea, un'evacuazione ordinata o forzata dalle autorità, o un processo di trasferimento involontario pianificato"<sup>7</sup>.

## **IPOTESI DI LAVORO E STATO DELL'ARTE**

Come indica il titolo stesso della tesi, l'ipotesi di partenza è stata l'assunzione che non esiste nell'ordine giuridico internazionale uno strumento normativo che permetta una protezione adeguata degli sfollati ambientali. Questa ipotesi si basa sui risultati di

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<sup>6</sup> THE NANSEN INITIATIVE, "Agenda for the Protection...", *op. cit.*, par. 18.

<sup>7</sup> Id. [tradotto dall'originale in inglese].

precedenti ricerche di dottorato in questo campo. In particolare, questa tesi prende come riferimento il lavoro di TORRES CAMPRUBÍ, A.<sup>8</sup>; GEMENNE, F.<sup>9</sup>; DOS SANTOS, A.<sup>10</sup>; e FELIPE PÉREZ, B.I.<sup>11</sup> La ricerca realizzata è, quindi, una continuazione del lavoro iniziato da questi autori.

Da un lato, approfondisce l'analisi giuridica degli strumenti a cui si fa comunemente riferimento quando si considera la protezione degli sfollati per motivi ambientali, vale a dire: a livello universale, la Convenzione di Ginevra del 1951 sullo status dei rifugiati, il regime giuridico internazionale sull'apolidia e i principi guida sullo sfollamento interno. A livello regionale, la Convenzione dell'Organizzazione dell'Unione Africana che regola gli aspetti specifici dei problemi dei rifugiati in Africa, la Dichiarazione di Cartagena sui rifugiati e la Convenzione dell'Unione Africana per la protezione e l'assistenza degli sfollati interni in Africa sono spesso citate. Inoltre, il catalogo degli strumenti analizzati viene ampliato, in particolare a livello regionale, e si presta attenzione al grado in cui le regioni identificate come hotspot di spostamento ambientale hanno aderito ai quadri normativi considerati rilevanti per la protezione e l'assistenza di questi sfollati.

Prende anche in considerazione gli sviluppi politici e istituzionali che hanno seguito le ricerche degli autori citati. Senza pretendere di essere esaustivi, questi includono l'adozione nel marzo 2015 del Sendai Framework for Disaster Risk Reduction, l'adozione dell'Agenda 2030 per lo sviluppo sostenibile nel settembre 2015, l'istituzione alla fine del 2016 del Working Group on Displacement nell'ambito del regime delle Nazioni Unite sui cambiamenti climatici, e la storica decisione del 2020 del Comitato per i diritti umani nel caso di Teitiota contro la Nuova Zelanda sull'applicazione del principio di non-refoulement nei casi di spostamento climatico. Mentre questi sviluppi non hanno cambiato il panorama della protezione internazionale

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<sup>8</sup> TORRES CAMPRUBÍ, A., *Climate change and international security: revealing new challenges to the continuation of Pacific Islands' Statehood*, PhD Thesis, Madrid (Spain), Universidad Autónoma de Madrid, 2014, 481 pp.

<sup>9</sup> GEMENNE, F., *Environmental Changes and Migration Flows: Normative Frameworks and Policy Responses* (Vol. I), PhD Thesis, Institut d'Etudes Politiques de Paris; University of Liège, April 2009, 493 pp.

<sup>10</sup> DOS SANTOS, A., *Migraciones forzadas y las nuevas "categorías" de desplazados internos – desplazados medioambientales y del desarrollo: problemas y desafíos para el sistema internacional de protección*, PhD Thesis, Madrid (Spain), Instituto Universitario de Estudios sobre Migraciones (Universidad Pontificia Comillas), 2012, 549 pp.

<sup>11</sup> FELIPE PÉREZ, B.I., *Las migraciones climáticas: retos y propuestas desde el Derecho Internacional*, PhD Thesis, Tarragona (Spain), Universitat Rovira i Virgili, 2016, 413 pp.

per gli sfollati ambientali, il fatto che il legame tra la mobilità umana e il cambiamento climatico abbia iniziato a essere integrato nell'agenda politica rivela una maggiore sensibilità della comunità internazionale verso questo tema.

## **STRUTTURA E METODOLOGIA**

Formulata sotto forma di domanda, la tesi iniziale di questa ricerca sarebbe espressa come segue: C'è una lacuna nell'ordine giuridico internazionale riguardo alla protezione degli sfollati ambientali? Rispondere a questa domanda richiede, prima di tutto, di mettere in discussione l'esistenza stessa dell'oggetto di studio come passo preliminare alla teorizzazione della possibile protezione internazionale degli sfollati ambientali. Come questione finale, la conferma dell'ipotesi di partenza richiede la considerazione di possibili modi per colmare le lacune giuridiche identificate nella prevenzione delle perturbazioni ambientali e nella protezione degli sfollati da queste.

La struttura della tesi segue questo schema mentale. Così, si possono distinguere tre parti, ognuna delle quali risponde a una delle tre domande proposte.

### **Parte prima**

La prima parte corrisponde ai Capitoli I e II, che affrontano l'esistenza degli sfollati ambientali, non come un concetto o una categoria giuridica astratta, ma come una realtà empiricamente verificabile. Non sono quindi capitoli giuridici. Al contrario, il loro ancoraggio nelle scienze sociali risponde alla convinzione che il diritto è, e deve essere sempre, un passo indietro rispetto alla realtà sociale che cerca di regolare.

Mettere in discussione l'esistenza degli sfollati ambientali è mettere in discussione la relazione causale tra i cambiamenti ambientali nell'ambiente umano e la mobilità di coloro che lo abitano. Con questo in mente, il Capitolo I fornisce una rassegna storica della letteratura sulle due posizioni dottrinali che sono emerse su come rappresentare questa relazione. La letteratura esaminata rientra nei campi delle scienze ecologiche e ambientali, degli studi sulle migrazioni e della ricerca sulle minacce alla sicurezza. Come punto di partenza per l'identificazione dei riferimenti bibliografici rilevanti nello sviluppo del discorso sullo spostamento ambientale, è stata presa come base la



bibliografia del lavoro di SAUNDERS sulla costruzione dottrinale dei "rifugiati ambientali"<sup>12</sup>.

La consultazione delle fonti bibliografiche per questa parte della tesi ha avuto luogo durante la visita alla Biblioteca della London School of Economics, effettuata per ottenere la menzione internazionale per il dottorato. Questo soggiorno di ricerca è stato finanziato, in parte, grazie alle borse di studio per brevi soggiorni di ricerca del Vice-Rettorato per la Ricerca dell'Università di Valencia, nel quadro del sottoprogramma di borse di studio pre-dottorato "Atracció de Talent".

La revisione della letteratura ci ha permesso di risalire al 1948, quando il primo riferimento agli 'sfollati ecologici' è stato trovato in VOGT, W., *Road to Survival*<sup>13</sup>. Tuttavia, per gli scopi di questo capitolo introduttivo, l'arco temporale è stato limitato alla metà degli anni '80 in poi, che è quando sono apparsi gli studi più rilevanti che sostengono lo spostamento umano come risultato dei problemi ambientali che affliggono il mondo. Questa corrente dottrinale, legata al conservazionismo e all'ambientalismo americano, alimenterà l'immagine neomalthusiana del "rifugiato ambientale", percepito come colui che abbandona una terra un tempo fertile e ormai esausta, sterile e inquinata. Questi postulati allarmistici spingeranno l'emergere di detrattori di queste visioni romantiche di una natura idilliaca sconvolta dall'uomo, in cui la migrazione sarebbe un fedele riflesso di un ecosistema maltrattato che è stato spinto al limite della sua capacità di carico.

Questa ricostruzione del pensiero che ha fatto nascere e condannare i "rifugiati ambientali" ci permette in definitiva di raggiungere un punto d'incontro tra i due estremi. Incapace di ignorare la realtà dei movimenti migratori contemporanei e la loro stretta relazione con gli shock climatici e meteorologici, i nuovi studi sulle migrazioni tentano di spiegare come i fattori ambientali e non ambientali interagiscono nel determinare la decisione di spostarsi.

Avendo stabilito che i cambiamenti ambientali di una certa scala influenzano la mobilità umana, il Capitolo II si concentra sulla quantificazione della dimensione del problema. In questo modo non solo si legittima la pertinenza della ricerca dottorale, ma

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<sup>12</sup> SAUNDERS, P.L., "Environmental refugees: the origins of a construct", in: P.A. Stott; S. Sullivan (eds.), *Political Ecology: Science, Myth and Power*, New York (USA), Oxford University Press, 2000, pp. 218-246.

<sup>13</sup> VOGT, W., *Road to Survival*, New York (USA), William Sloane Associates, Inc., 1948, 335 pp.

anche l'intervento del diritto stesso. A tal fine, vengono analizzati i dati dell'International Disaster Database e del Global Internal Displacement Database. La metodologia adottata in questo secondo capitolo è dunque quella delle scienze sociali. Così, dopo aver definito l'arco temporale (2016-2020) ed estratto i dati, le informazioni sono filtrate e sistematizzate per continente e paese, organizzate per tipo di disturbo naturale e frequenza, perdite materiali e popolazione sfollata (vedi Annessi I a IV).

L'analisi dei dati mostra un totale di oltre 115 milioni di persone sfollate in un periodo di cinque anni, principalmente a causa di disagi ambientali di rapida insorgenza, cioè disastri naturali nel senso colloquiale del termine, come inondazioni, tempeste o terremoti. Rimangono invisibili gli spostamenti legati a shock ambientali di lenta insorgenza, come l'innalzamento del livello del mare o il degrado del suolo, ad eccezione della siccità, per la quale i dati sono ancora limitati. Questa cifra, la maggior parte della quale è concentrata nelle regioni in via di sviluppo, conferma l'esistenza dello spostamento ambientale e la magnitudine della sfida di gestire questi flussi di spostati.

## **Parte seconda**

Una volta stabilita la base empirica della ricerca, i Capitoli da III a VI intraprendono la revisione del sistema giuridico oggetto di studio. Questa seconda parte costituisce il vero nucleo della tesi di dottorato. Si tratta di un'analisi *de lege data*, in cui la ricerca è consistita, in primo luogo, nell'identificare i regimi di protezione giuridica previsti dal Diritto Internazionale Pubblico, differenziandoli a seconda dell'ambito geografico dello spostamento. Così, il regime di protezione per i rifugiati e gli apolidi e il principio consuetudinario di non respingimento, come salvaguardia del diritto umano alla vita e alla libertà dalla tortura o da trattamenti e punizioni crudeli, inumani o degradanti, sono i regimi da prendere in considerazione quando lo spostamento è transfrontaliero o interstatale. D'altra parte, nei casi in cui lo sfollato ambientale rimane all'interno dei confini del suo Stato di nazionalità o di residenza abituale, è applicabile il regime internazionale sulla protezione e l'assistenza agli sfollati interni.

Nell'identificare gli strumenti normativi pertinenti, sono stati presi in considerazione sia strumenti universali che regionali. Inoltre, non è stata fatta una distinzione tra strumenti giuridicamente vincolanti (*hard law*) e quelli che, sebbene di

natura normativa, non hanno forza vincolante (*soft law*). Questo approccio inclusivo è coerente con le particolari idiosincrasie del sistema internazionale e della comunità che serve, che, a differenza dei destinatari delle leggi nazionali, è composta da soggetti ugualmente sovrani, non soggetti a un potere superiore. In questo senso, gli strumenti di *soft law* sono stati più permissivi nell'includere lo spostamento ambientale nel loro campo di applicazione, anche se sarebbe necessaria una maggiore adozione e applicazione da parte degli Stati perché la protezione che offrono sia efficace.

### Struttura

Ai fini dell'esposizione, la struttura adottata in questi quattro capitoli segue la distinzione tra strumenti universali e regionali. Così, prima viene presentato il regime di protezione promosso dalle Nazioni Unite, seguito da un esame degli strumenti sviluppati nelle varie iniziative e organizzazioni regionali. Questi strumenti tendono ad adattare il quadro universale alle specificità di ogni regione e sono quindi spesso più flessibili, essendosi dimostrati più facili da argomentare per l'applicazione allo spostamento ambientale.

Per quanto possibile, si è cercato di assicurare che il maggior numero possibile di regioni sia rappresentato in ciascuno dei capitoli di questa parte. Come risultato, in un certo senso la tesi è diventata inavvertitamente un lavoro di diritto comparato. Questo è forse uno dei suoi contributi più notevoli allo stato attuale della scienza, in quanto fornisce una panoramica aggiornata degli sviluppi normativi in ogni regione, così come il grado di impegno degli Stati sia nella loro implementazione che nella loro adesione ai quadri universali.

Tenendo presente questa distinzione tra strumenti universali e regionali, ogni capitolo considera se lo spostamento ambientale soddisfa i requisiti legali perché la persona sfollata sia considerata un rifugiato (Capitolo III), un apolide (Capitolo IV), una persona i cui diritti umani richiedono protezione dal ritorno forzato al suo luogo di origine (Capitolo V) o uno sfollato interno (Capitolo VI).

### Metodologia

Metodologicamente, i capitoli di questa seconda parte sono, in sostanza, un'analisi dei concetti che segue il sillogismo aristotelico. Così, il ragionamento parte da due

premesse: una maggiore, rappresentata dalla definizione giuridica del regime di protezione in studio, e una minore, costituita dalle circostanze di fatto che caratterizzano lo spostamento ambientale. Da entrambe le premesse si trae una conclusione, che afferma o nega l'attribuzione dello status in questione agli sfollati ambientali. Se la conclusione è affermativa, viene inclusa una sezione finale in cui vengono analizzati i diritti e gli obblighi che corrisponderebbero allo sfollato ambientale in tale regime giuridico. Il ragionamento, quindi, è tipicamente deduttivo, partendo dai concetti giuridici generali e dalle categorie specifiche di ciascuno dei regimi analizzati per verificare la loro applicabilità al caso particolare dello spostamento ambientale.

Seguendo il metodo della maieutica socratica di far progredire la conoscenza ponendo domande, le ipotesi discusse nei Capitoli da III a VI potrebbero essere formulate sotto forma di interrogazioni come segue:

- Le perturbazioni ambientali possono equivalere a una persecuzione che rende lo sfollato un rifugiato?
- Può lo sconvolgimento ambientale minacciare la sopravvivenza di uno Stato e lasciare i suoi cittadini apolidi?
- Il degrado ambientale o il rischio di disastri possono incidere sul diritto a una vita dignitosa, al punto che a uno Stato è proibito far tornare gli sfollati nel loro luogo d'origine?
- Le perturbazioni ambientali che costringono le loro vittime a spostarsi all'interno dei loro Stati li rendono sfollati interni?

Le risposte a ciascuna di queste domande costituiscono le conclusioni finali della tesi.

### Fonti

Le fonti bibliografiche consultate per l'elaborazione di questi capitoli coprono sia opere specializzate sul trattamento giuridico degli spostamenti ambientali e climatici sia opere generali sui diversi regimi giuridici studiati.

In termini di fonti giurisprudenziali, l'argomentazione delle corti neozelandesi e australiane si è dimostrata un riferimento obbligatorio quando si affronta la considerazione degli sfollati ambientali come rifugiati. Questi tribunali hanno avuto

l'opportunità di decidere le richieste di rifugio presentate da cittadini di diversi SIDS in base all'innalzamento del livello del mare associato al cambiamento climatico, da qui la loro importanza. Da parte sua, la giurisprudenza dei diversi tribunali e organi quasi-giurisdizionali internazionali per i diritti umani ha costituito la base del Capitolo V. Le decisioni scelte riguardano l'interpretazione del principio di non respingimento in situazioni di minaccia o danno ambientale alle persone o dove le condizioni di vita sono contrarie alla dignità umana, che possono essere equivalenti a quelle che si trovano in un paese colpito da una perturbazione ambientale.

Allo stesso modo, durante la ricerca di questi capitoli, sono state prese in considerazione le fonti documentarie, che rappresentano una gran parte dei materiali consultati nella elaborazione di questa tesi di dottorato. L'obiettivo è stato di prendere il polso della comunità internazionale di fronte a questa complessa sfida, cercando di scoprire, attraverso la sua produzione documentaria, come le agenzie e le organizzazioni internazionali stanno rispondendo al fenomeno dello spostamento ambientale e climatico nell'ambito dei loro rispettivi mandati. Un'attenzione speciale è stata data alla famiglia istituzionale delle Nazioni Unite, grazie all'accesso alla sua documentazione attraverso la Biblioteca Depositaria delle Nazioni Unite dell'Università di Valencia, dove è stato effettuato uno stage durante il primo anno del dottorato<sup>14</sup>.

### **Parte terza**

L'analisi dei vari quadri giuridici esaminati nella Parte II ha identificato le debolezze, le lacune e i limiti dell'attuale sistema giuridico internazionale per la protezione degli sfollati ambientali, compresi quelli sfollati per motivi legati al clima. La prossima domanda è se la legge può evitare le cause dello spostamento, rendendo così superflua la formulazione di un nuovo regime di protezione per gli sfollati.

Il Capitolo VII esplora questa possibilità analizzando il regime internazionale sul cambiamento climatico (UNFCCC) e la gestione del rischio di disastri (SFDRR) come cause immediate di spostamento. Inoltre, viene data attenzione ai progressi internazionali sullo sviluppo sostenibile (Agenda 2030 per lo sviluppo sostenibile), riconoscendo che la sua assenza è la causa di fondo della maggiore vulnerabilità dei

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<sup>14</sup> Ringrazio di cuore la signora Chelo Pons, direttrice dell'ONUBIB-UV, per la sua guida durante il tirocinio e per il suo grande aiuto nella documentazione di questa ricerca.

paesi in via di sviluppo allo spostamento ambientale. La metodologia impiegata qui è stata quella di esaminare questi regimi e il loro grado di successo nel raggiungimento dei loro obiettivi, sulla base dei relativi rapporti di monitoraggio e implementazione.

Questo settimo capitolo mostra che, senza dimenticare o sottovalutare l'importanza della prevenzione, la realtà impone la necessità di misure reattive che proteggano gli sfollati e, soprattutto, li assistano nella ricerca di soluzioni durevoli allo spostamento. Per questo motivo, l'ultimo capitolo della tesi, il Capitolo VIII, è dedicato all'analisi delle varie proposte *di lege ferenda* che sono state formulate dall'Accademia per la protezione degli sfollati climatici e ambientali, con particolare attenzione alla proposta dell'Università di Limoges. In questo caso, la metodologia dell'esegesi o del commento critico è stata utilizzata per la sua elaborazione.

## **OBIETTIVI DELLA RICERCA**

Coerentemente con la struttura di cui sopra, la tesi ha un triplice obiettivo:

- a) Definire l'esistenza dello spostamento ambientale e la sua portata per l'intervento del Diritto Internazionale.
- b) Evidenziare le lacune giuridiche esistenti nell'ordine giuridico internazionale, universale e regionale, per la protezione di questi sfollati.
- c) Esaminare le diverse proposte della letteratura giuridica per riempire questa lacuna normativa.

**PART ONE**  
**DEMONSTRATING THE EXISTENCE**  
**OF ENVIRONMENTAL DISPLACEMENT**

# **CHAPTER I**

## **HUMAN MOBILITY AND THE ENVIRONMENT**

### **INTRODUCTION**

This first chapter emerges from an essential premise: it is impossible to begin to theorise about creating an international regime to protect environmentally displaced persons without first understanding the relationship between human mobility and changes in the human environment where those displaced lived. Chapter I responds to this premise by examining the two schools of thought that have developed in the field of migration and environmental displacement. In this sense, the chapter is intended as a historicist review of the state of the art.

Although the first reference to "ecologically displaced persons" dates from 1948<sup>1</sup>, the studies that will shape both views of human mobility and the environment begin to emerge in the 1980s. First, it examines the known as the the "maximalist" approach, dominated by environmental science and security scholars who advocate a neo-Malthusian view of human displacement as a result of anthropogenic environmental problems. Secondly, it explores the known as the "minimalist" approach, which emerges as a reaction to such an alarmist view of environmental displacement, to which most migration scholars adhere. However, contrasting the two perspectives will show that they have more in common than they differ.

### **1. THE RELATIONSHIP BETWEEN MIGRATION AND ENVIRONMENTAL CHANGE**

#### **1.1. Introduction**

The main distinction between the two views mentioned above is their different representation of the relationship between environmental change and human migration. One conceives it as a linear and deterministic relationship between environmental change and subsequent migration, in which any significant alteration in the natural habitat where a human community lives will lead to population movements. The other

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<sup>1</sup> Vid. VOGT, W., *Road to Survival*, New York (USA), William Sloane Associates, Inc., 1948, 335 pp.



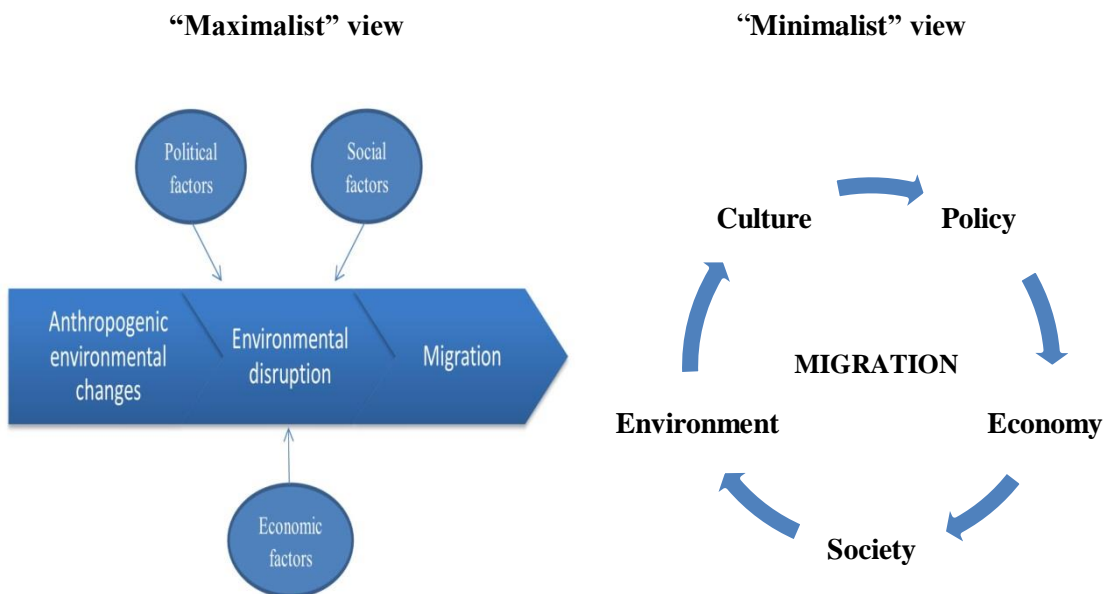
sees environmental changes as yet another contextual variable that can influence individuals in their choice to migrate, which is always a complex and multi-causal decision.

Suhrke was the one responsible for labelling each of these two ways of understanding the relationship between environmental change and human mobility as the "maximalist" and the "minimalist" approach<sup>2</sup>. In her own words:

"[T]he minimalists focus on the impact of a particular process such as land degradation, deforestation or changing climate on migration. But since migration, like social processes generally, is not a monocausal phenomenon, the minimalist premise skews the discussion towards a negative answer: environmental degradation by itself is not important as a cause of migration. (...) The maximalists, by contrast, tend to extract the environmental variable from a cluster of causes and proclaim the associated out-migration to be a direct result of environmental degradation"<sup>3</sup>.

Graphically, the "maximalist" and "minimalist" conception of the impact that environmental changes have on migration could be represented as follows:

**Figure 1-Relation between environmental changes and migration**



<sup>2</sup> SUHRKE, A., "Pressure Points: Environmental Degradation, Migration and Conflict", *Ocasional Paper Series of the Project on Environmental Change and Acute Conflict*, No. 3, American Academy of Arts and Science; University of Toronto (Peace and Conflict Studies Program), January 1993, 43 pp. SUHRKE, A., "Environmental Degradation and Population Flows", *Journal of International Affairs*, 47, n° 2, Winter 1994, pp. 473-496.

<sup>3</sup> SUHRKE, A., "Pressure Points: Environmental...", *op. cit. supra*, pp. 5 *in fine* and 6.

"Maximalists" are credited with having produced the first generation of literature on environmental migration<sup>4</sup>. Among the authors traditionally considered as such are writers like El-Hinnawi, Jacobson, Tuchman and Myers<sup>5</sup>. The "minimalist" view would have appeared later as a reaction against considering the existence of migratory flows driven mainly by the alterations of the natural environment<sup>6</sup>. Critical papers written on the topic by Kritz, Bilsborrow, McGregor, Lonergan or Black are usually cited as examples of the "minimalists" literature<sup>7</sup>.

As Morrison points out, what is most remarkable about Suhrke's work is that the division and characterisation she made in 1993 between the "maximalist" and the "minimalist" perspective has marked the subsequent evolution of the literature on environmental change and human migration<sup>8</sup>. The distinction became a veritable criterion for doctrinal classification among scholars depending on whether the author "maximises" or "minimises" the environmental factor's significance in the decision to migrate<sup>9</sup>.

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<sup>4</sup> SUHRKE, A., "Environmental Degradation and...", *op. cit.*, p. 477. "Maximalist" authors were also responsible for coining the term "environmental refugee" as someone fleeing environmental "persecution", in a clear analogy with political refuge. This term has been widely used in academic works favourable to these positions, especially those published up to the beginning of the 21st century, and continues to appear today, although now mainly limited to the media and NGOs.

<sup>5</sup> SUHRKE, A., "Pressure Points: Environmental...", *op. cit.*, p. 6. MORRISSEY, J., "Environmental change and forced migration: A state of the art review", *Background paper*, Refugee Studies Centre (University of Oxford), January 2009, pp. 3-4.

<sup>6</sup> MORRISSEY, J., *op. cit. supra*, p. 4 *in fine*. Besides criticising the "maximalist" relationship between environmental change and human mobility and their estimates of current or future population movements for environmental reasons, the "minimalists" also criticised the self-serving use of the term "environmental refugee", with which "maximalist" authors sought to draw political attention to environmental problems, despite the fact that its use, apart from having no legal basis, could have the negative effect of being used by governments to restrict asylum policies (vid, for example, the critique by KIBREAB, G., "Environmental Causes and Impact of Refugee Movements: A Critique of the Current Debate", *Disasters*, Vol. 21, Issue 1, 1997, p. 21).

<sup>7</sup> *Ibid.*, pp. 4 *in fine* and 9. SUHRKE, A., "Pressure Points: Environmental...", *op. cit.*, p. 4.

<sup>8</sup> MORRISSEY, J., "Rethinking the 'debate on environmental refugees': From 'maximalists and minimalists' to 'proponents and critics'", *Journal of Political Ecology*, Vol. 19, No 1, December 2012, p. 38.

<sup>9</sup> The distinction between "maximalists" and "minimalists" appears, *inter alia*, in: LONERGAN, S., "The Role of Environmental Degradation in Population Displacement", *Environmental Change and Security Project Report*, Issue 4, Spring 1998, pp. 7-9, who prefers to refer to them as "advocates" and "contrarians". RAMLOGAN, R., "Environmental refugees: a review", *Environmental Conservation*, Vol. 23, No. 1, March 1996, p. 86. MORRISSEY, J., "Rethinking the 'debate...', *op. cit.* DOS SANTOS SOARES, A., "Recientes debates sobre los nexos entre desplazamientos y degradación medioambiental", in: *Migraciones forzosas y las nuevas "categorías" de desplazados internos – desplazados medioambientales y del desarrollo: problemas y desafíos para el sistema internacional de protección*, PhD Thesis, Madrid (Spain), Instituto Universitario de Estudios sobre Migraciones (Universidad Pontificia Comillas), 2012, pp. 300-306. FELIPE PÉREZ, B.I., "Las cifras: entre maximalistas y minimalistas", in: *Las migraciones climáticas: retos y propuestas desde el Derecho Internacional*, PhD Thesis, Tarragona (Spain), Universitat Rovira i Virgili, 2016, pp. 150-159. SCIACCALUGA, G., "How Many "Climate Refugees"? Pros and Cons of Maximalism and Minimalism", in: *International Law and*

## 1.2. The environmental factor in classical migration models

Leaving aside studies on the large-scale human migrations associated with wide-scale climatic changes on Earth in prehistoric and ancient times<sup>10</sup>, classical, contemporary migration studies have not considered the environmental factor as a separate causal variable<sup>11</sup>. Migration theories can be grouped into five broad literature bodies: functionalist theories; historical-structural theories; the new economics of migration theory; network, institutional and migration systems theories, and the migration transition theories. Each of these theoretical models tries to explain the migration phenomenon by looking at one set of variables that operate at a specific level, be it micro/individual, meso/family and society, or macro/national and international<sup>12</sup>.

*Functionalist theories* conceive society as an organic system with an innate tendency to equilibrium, being migration decisions determined by push-pull factors

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*the Protection of "Climate Refugees"*, Cham (Switzerland), Palgrave Macmillan, 2020, pp. 39-56. KÄLIN, W.; SCHREPFER, N., "Protecting People Crossing Borders in the context of Climate Change: Normative Gaps and Possible Approaches" (PPLA/2012/01), *Legal and Protection Policy Research Series*, UNHCR, February 2012, pp. 11-13. LACZKO, F.; AGHAZARM, C., "Contextualizing the migration, environment and climate change debate", in: *Migration, Environment and Climate Change: Assessing the evidence*, Geneva (Switzerland), IOM, 2009, pp. 13-16 (in particular, p. 14). JÓNSSON, G., "The environmental factor in migration dynamics—a review of African case studies", *Working Papers*, Paper 21, International Migration Institute (University of Oxford), 2010, p. 7. MILAN, A; SAMI, A; AFIFI, T., "Environmentally Induced Migration and Sustainable Development", *Background Paper*, UNDESA/DSD; UNU-EHS, January 2011, p. 9

<sup>10</sup> The branch of palaeography which studies and reconstructs the climatic patterns of the Earth's ancient history is known as palaeoclimatology. For some palaeoclimatic studies on how large climatic variations influenced human mobility and demography, vid.: FANG, J.; LIU, G., "Relationship between climatic change and the nomadic southward migrations in eastern Asia during historical times", *Climatic Change*, No 22, 1992, pp. 151-168. VERSCHUREN, D.; LAIRD, K.R.; CUMMING, B.F., "Rainfall and drought in equatorial east Africa during the past 1,100 years", *Nature*, Vol. 403, 27 January 2000, pp. 410-414. YESNER, D.R., "Human dispersal into interior Alaska: antecedent conditions, mode of colonization, and adaptations", *Quaternary Science Reviews*, No 20, 2001, pp. 315-327. TYSON, P. D.; LEE-THORP, J.; HOLMGREN, K.; THACKERAY, J. F., "Changing gradients of climate change in southern Africa during the past millennium: implications for population movements", *Climatic Change*, No 52, 2002, pp. 129-135. HUANG, C.C. ET AL., "Climatic aridity and the relocations of the Zhou culture in the southern loess plateau of China", *Climatic Change*, No 61, 2003, pp. 361-378. MCLAUGHLIN, T.R., "Late Glacial and Early Holocene human demographic responses to climatic and environmental change in Atlantic Iberia", *Philosophical Transactions Royal Society B*, Vol. 376, Issue 1816, 18 January 2021, Article ID: 20190724, 8 pp.

<sup>11</sup> LONERGAN, S., "The Role of...", *op. cit.*, p. 7. SUHRKE, A., "Environmental Degradation and...", *op. cit.*, p. 475, noting, however, that "older theories did allow for natural disasters under the category of "physical" factors".

<sup>12</sup> For an in-depth review of the different migration theories that have been formulated since the end of the 19th century, vid.: MASSEY, D.S. ET AL., "Theories of International Migration: A Review and Appraisal", *Population and Development Review*, Vol. 19, No. 3, September 1993, pp. 431-466. STEPHEN CASTLES, S.; DE HAAS, H; MILLER, M.J., "Theories of Migration", in: *The Age of Migration*, 5<sup>th</sup> ed., Palgrave Macmillan, 2014, pp. 25-54. The brief summary of each of these theoretical frameworks provided in this section is based on these two publications. Vid. also on theories of environmental change and migration, GEMENNE, F., *Environmental Changes and Migration Flows: Normative Frameworks and Policy Responses* (Vol. I), Phd Thesis, Institut d'Etudes Politiques de Paris; University of Liège, April 2009, pp. 41-75.

between origin and destination areas to maximise income. Neoclassical functionalist models reduce these push and pull factors to differences in wages and employment opportunities. Migration causes labour supply to decrease and wages to increase in the area of origin, while labour supply increases and wages decrease in the area of destination, leading eventually to equilibrium and thus to the end of migration.

Building on the postulates of neo-Marxist political economy, *historical-structural theories* emphasise how migration is shaped by social, economic, cultural and political structures that override the individual's own freedom of choice. On the one hand, world-systems theory often sees immigration as a consequence of economic globalisation and the uneven penetration of capitalism in peripheral regions, which also results in the spread of certain cultural values and consumption patterns that developing societies want to emulate. On the other hand, in dual labour market theory, immigration results from the advanced industrial economies' chronic need for cheap foreign labour to fill unskilled jobs that nationals from developed country are unwilling to do. For historical-structural theories, migration does not lead to equilibrium but rather the opposite, as political and economic macro-forces and migration itself reinforce and perpetuate social and geographical inequalities.

The *new economics of migration* emerged as a critical response to neoclassical migration theory. Focusing on the analysis of migration flows from underdeveloped to developed countries, this theory argues that the decision to migrate lies not with isolated individuals but with the broader relational units they integrate, such as families or households. Consequently, individuals do not migrate to earn higher wages but to fill a number of gaps in underdeveloped markets and economies – e.g. labour, insurance or credit. In this way, remittances sent by migrants serve both to minimise the family's financial vulnerability and improve the household's financial opportunities.

*Network, institutional and migration systems theories* have in common that they focus on analysing the social, economic and cultural support structures that migration creates at the micro- and meso- levels between origin and destination, and how these structures reinforce the migration flow itself by helping to overcome structural constraints to mobility, such as government restrictions, poverty and social exclusion. The network theory focuses on interpersonal ties – e.g. kinship, friendship, common origin or culture - that connect migrants, former migrants, and non-migrants in origin

and destination areas. The institutional theory emphasises how migration creates a sector of activity favouring the emergence of for-profit and non-profit organisations – including the black migration market - dedicated to promoting migration. Lastly, the cumulative causality theory analyses how migration enhances socio-economic factors in places of origin, not only through the flow of money and goods but also through feedback in the form of information and ideas, facilitating subsequent movements.

Finally, *migration transition theories* link migration to the process of development and social and economic transformation of societies. These theories highlight how migration patterns change as the society of origin develops. In early transition societies, emigration increases due to population growth, declining rural employment and rapid economic and technological development. As industrialisation progresses, the rate of population growth slows and wages rise, so emigration decreases. At a certain point, society reaches a point of development where it moves from being a place of net emigration to one of net immigration.

As seen, none of the theoretical models developed by migration scholars have taken into account changes in the environment as a primary and separate driver of population movements. Studies on the link between environment and society have not been much more successful among demographic and economic disciplines either. For instance, the demographer Hugo analysed in 1981 the patterns of non-permanent circular migration in Indonesia, a country affected by severe and diverse environmental and climatic changes. However, he found no explanation for these complex migratory movements in the environment, but rather in economic and, to a lesser extent, socio-cultural determinants<sup>13</sup>.

Among economists, Sen's study of four cases of famine spread across Asia and Africa is worth mentioning<sup>14</sup>. These include the Great Bengal Famine of 1943, and several famines in Ethiopia, the West African Sahel and Bangladesh between 1973 and 1974. The work finds that famines were not so much the product of natural catastrophes such as floods or droughts that revealed imbalances between the rate of population

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<sup>13</sup> HUGO, G.J., "Circular Migration in Indonesia", *Population and Development Review*, Vol. 8, No. 1, March 1982, pp. 59-83.

<sup>14</sup> SEN, A., *Poverty and famines: an essay on entitlement and deprivation*, 1<sup>st</sup> ed., Oxford (United Kingdom), Oxford University Press, 1981, 257 pp. Vid. also, DRÈZE, J.; SEN, A., *Hunger and Public Action*, 1<sup>st</sup> ed., Oxford (United Kingdom), Clarendon Press Oxford, 1991, 392 pp., about the crucial role of public action to prevent and respond to hunger.

growth and food supply. Instead, the economist concludes that famine was triggered by people's inability to exchange their assets/"entitlements" for food. Examples of what is known as *the failure of exchange entitlements theory* would be a fall in the demand for labour, or a rise in food prices without an equal rise in wages, in both cases leaving workers unable to obtain sufficient supplies in exchange for their labour force. Another example would be nomadic herders during drought periods, as they find themselves in a disadvantageous position to exchange animals for grain.

Berry, another economist, suggested in a 1989 study that the agrarian crisis in Africa was less about climate variability and the adverse effects of drought than about the strategies farmers employed to access productive resources and their impact on agricultural yields<sup>15</sup>. In communities where the right to access natural resources is so closely linked to social belonging and identity, individuals tend to divert their surpluses into either opening or maintaining these social channels of access, rather than investing them in making the continued exploitation of agricultural assets sustainable. There comes a time when the productive capacity of natural resources diminishes, making the previous social investment unprofitable and thus generating a downturn.

In summary, this overview shows how the classical social science literature has tended unanimously to relate migration patterns in contemporary times to economic and social constraints, without considering environmental change as a driver of migration in itself.

### **1.3. The "maximalist" perspective on environmental migration**

The impact that environmental disturbances could have on society began to be studied by authors from ecology and security fields<sup>16</sup>. This first body of literature

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<sup>15</sup> BERRY, S., "Social Institutions and Access to Resources", *Africa: Journal of the International African Institute*, Vol. 59, No. 1: Access, Control and Use of Resources in African Agriculture, 1989, pp. 41-55.

<sup>16</sup> Vid., *inter alia*, EL-HINNAWI, E., *Environmental refugees*, Nairobi, United Nations Environment Programme (UNEP), 1985, 41 pp. JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, Worldwatch Institute, November 1988, 46 pp. TUCHMAN, J., "Redefining Security", *Foreign Affairs*, Vol. 68, No. 2, Spring 1989, pp. 162-177. WESTING, A., "The Environmental Component of Comprehensive Security", *Bulletin of Peace Proposals*, Vol. 20, No. 2, June 1989, pp. 129-134. MYERS, N., "The Environmental Dimension to Security Issues", *The Environmentalist*, Vol. 6, No. 4, 1986, pp. 251-257. MYERS, N., "Environment and Security", *Foreign Policy*, No. 74, Spring, 1989, pp. 23-41. HOMER-DIXON, T.F., "On the Threshold: Environmental Changes as Causes of Acute Conflict", *International Security*, Vol. 16, No. 2, Fall 1991, pp. 76-116. MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, Washington DC (USA), Climate Institute, June 1995, 214 pp., largely based on the findings published by Myers in previous articles. For a

understands environmentally induced migration as an emerging threat to both national and international security, being population movements the result of an acute disruption in the ecosystem in which a human community lives<sup>17</sup>. El-Hinnawi defines such "environmental disruptions" as "any physical, chemical and/or biological changes in the ecosystem (or the resource base) that render it, temporarily or permanently, unsuitable to support human life"<sup>18</sup>. Among the environmental stressors that can act as drivers of migration, the "maximalist" authors cite natural disasters, land degradation, rising sea levels associated with global warming, development projects, industrial accidents and toxic waste pollution, as well as the environmental implications of war<sup>19</sup>.

Although these early authors do not distinguish between the various environmental disruptions listed, they do behave differently, both in their temporal manifestation and in their spatial dimension<sup>20</sup>. On a temporal scale, environmental disruptions can be broadly divided into rapid and slow-onset environmental changes. For example, natural disasters, industrial accidents and development projects or war would be rapid-onset environmental disruptions, since they can quickly render an ecosystem unsuitable for human habitation. In contrast, the severe consequences that pollution, land degradation or the accumulation of green gases will have on human life may take decades to manifest themselves<sup>21</sup>. Similarly, in terms of their spatial scope, the

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comprehensive study on how the discourse on climate change and security has been shaped historically vid. TORRES CAMPRUBÍ, A., *Climate change and international security: revealing new challenges to the continuation of Pacific Islands' Statehood*, PhD Thesis, Madrid (Spain), Universidad Autónoma de Madrid, 2014, in particular Part I (pp. 38-201).

<sup>17</sup> Nevertheless, not all authors who have championed the securitisation of the environmental factor have accepted the existence of "environmental refugees". Vid. for example, Homer-Dixon, who led a research group at the University of Toronto on scarcity and conflict known as the 'Toronto Group'. In HOMER-DIXON, T.F., "On the Threshold...", *op. cit.*, p. 97, although the author accepts population movements as one of the four main effects of environmental degradation, he rejects the term environmental refugee for being "misleading", as "it implies that environmental disruption could be a clear, proximate cause of refugee flows".

<sup>18</sup> EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 4.

<sup>19</sup> Vid. for all, *ibid.*, pp. 6-40. JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, pp. 8-37. MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, pp. 24-25.

<sup>20</sup> One exception is Homer-Dixon, who does note the spatial and temporal differences existing among the seven major environmental problems he identifies as contributing to acute conflict, namely greenhouse warming, stratospheric ozone depletion, acid deposition, deforestation, agricultural land degradation, overuse and pollution of water supplies, and depletion of fish stocks (in: HOMER-DIXON, T.F., "On the Threshold...", *op. cit.*, pp. 88 *in fine* and 89).

<sup>21</sup> As Myers notes: "ecosystems [can] absorb stress over long periods without much outward sign of damage, but eventually are pushed to the limits of their resilience. They reach a disruption level at which the cumulative consequences of stress finally reveal themselves through systemic change of critical scale" [bracketed text added]. Myers refers to such a tipping point as a "jump effect" (in: MYERS, N., "Population/Environment Linkages: Discontinuities Ahead", *Ambio*, Vol. 21, No. 1: Population, Natural Resources and Development, February 1992, p. 116).

latter are global processes, while rapid-onset disturbances have a localised impact, although their effects may extend over several countries or even an entire region.

Finally, although addressed separately in their works, the "maximalist" authors do not assume that these environmental stressors act in isolation. On the contrary, they emphasise how they interact with each other, magnifying their effects, in what Myers calls "inter-sectoral synergies"<sup>22</sup>. One example would be interactions between global warming and environmental degradation impacting on food security<sup>23</sup>. Climate change will contribute to deforestation and crop loss insofar as plant species cannot adapt to new weather and climate patterns. In turn, the greenhouse effect will be reinforced by the loss of those natural carbon sinks, the additional deforestation resulting from having to clear new farmland, and the release of carbon dioxide from the organic remains of dead trees and plants. This environmental degradation will also accelerate the loss of biological biodiversity, needed both to create new crop species that are more resistant to high temperatures and drought and to prevent an increase in the incidence of agricultural pests, as their natural predators become extinct. What stands out, therefore, is that the combined impact of all environmental stressors on humanity will be far greater than the sum of their separate effects<sup>24</sup>.

The following sections set out the theory developed by the "maximalist" literature on how changes in ecosystems can become environmental disruptions capable of driving out populations. In this sense, the "maximalist" discourse has at its core the role of human activity in this regard, either by directly shaping the natural environment in which it unfolds, or indirectly through socio-economic processes that contribute to exacerbating environmental degradation and the vulnerability of human communities exposed to it, such as excessive population growth, poverty and unsustainable development.

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<sup>22</sup> Ibid., p. 118.

<sup>23</sup> Id. Also, DÖÖS, BO R., "Can large-scale environmental migrations be predicted?", *Global Environment Change*, Vol. 7, No. 1, 1997, p. 47.

<sup>24</sup> For more examples of "inter-sectoral synergies" between different environmental disruptions and their combined impact on the natural resource base for human survival, vid. HOMER-DIXON, T.F., "On the Threshold...", *op. cit.*, p. 90, who, besides referring to the feedback relationship between greenhouse warming, deforestation and damage to agricultural land, also points out how pollution and ozone depletion negatively affect fish stocks in the form of acid rain and increased incidence of ultraviolet radiation on phytoplankton, the basis of the ocean's food chain.



### **1.3.1. The role of human action behind environmental disruptions leading to migration**

In all the environmental disruptions referred to above, the anthropogenic factor appears in the "maximalist" literature as pre-eminently responsible for the environmental alteration that ultimately caused displacement. El-Hinnawi puts it this way: "people are both origin and victim of the actions that lead to environmental disruption and degradation"<sup>25</sup>. The "maximalist" construction of this relationship between human-induced changes in ecosystems and population movement is, however, fairly straightforward, being the product of two variables: first, the intensity of human activity in a particular ecosystem; and second, the resilience of that ecosystem to endure those human activities<sup>26</sup>. The stronger the human impact and the more vulnerable an ecosystem, the more likely it is to experience environmental disruption that renders it unsuitable for sustaining human life, leading its inhabitants to migrate.

The following sub-sections review how the "maximalist" authors have considered the role that human action plays in causing the six main environmental disruptions addressed in their research as responsible for population movements, namely: development projects; industrial accidents and toxic waste pollution; the environmental implications of war; natural disasters; sea-level rise associated with global warming; and land degradation.

#### **A) Development projects**

Development projects are referred to as one of the greatest transformations that humans can make to ecosystems. In this case, population displacement can be either a direct consequence of the project's implementation, which claims the land on which human communities live<sup>27</sup>; or the collateral result of the damage that these projects often inflict on the natural resources that form the basis of these communities' livelihoods<sup>28</sup>. The construction of large dams is often referred to as the most obvious

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<sup>25</sup> EL-HINNAWI, E., *Environmental refugees, op. cit.*, p. ii.

<sup>26</sup> Adapted from the Homer-Dixon model to measure the total effect of human activity on the environment in a particular ecological region (vid., HOMER-DIXON, T.F., "On the Threshold...", *op. cit.*, pp. 85-86).

<sup>27</sup> EL-HINNAWI, E., *Environmental refugees, op. cit.*, p. 33. MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 25, pointing out that large-scale projects have already forced the relocation of 20 million people in India and 30 million in China, and they uproot an average of more than 10 million people in the developing world every year.

<sup>28</sup> Richmond, A., *Global Apartheid: Refugees, Racism and the New World Order*, Toronto (Canada), Oxford University Press, 1994, as cited by O'LEAR, S., "Migration and the Environment: A Review of

example of this type of environmental disruption. On the one hand, because it forces the eviction of those human settlements that will subsequently be submerged under the dammed waters<sup>29</sup>. On the other hand, its construction can degrade surrounding farmland or render it useless, forcing dependent households to migrate<sup>30</sup>.

## **B) Pollution**

Nuclear accidents, such as those at the Three Mile Island (US), Chernobyl (Soviet Ukraine) or more recently Fukushima (Japan) nuclear power plants, as well as industrial accidents, such as those at Seveso (Italy), Bhopal (India) or San Juanico (Mexico), also forced the displacement of population living in the affected areas<sup>31</sup>. Although most of the people evacuated in these accidents were able to return to their homes once the disaster area was declared safe for human life again, in some cases the contamination resulting from radiation or chemicals released into the environment has rendered the affected ecosystems permanently uninhabitable<sup>32</sup>.

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Recent Literature”, *Social Science Quarterly*, Vol. 78, No. 2, June 1997, p. 614, mentioning as an example the river diversion project in James Bay (Quebec), which threatens the fishing-based livelihood of the aboriginal natives of this area.

<sup>29</sup> EL-HINNAWI, E., *Environmental refugees, op. cit.*, p. 33, Table 6, estimating that approximately 1,334,000 to 1,528,000 people would have to be resettled elsewhere as a result of twenty dam projects to be built between 1953 and 1974 in different parts of the world, most of them in developing countries. EL-Hinnawi's estimate is in line with the figure of 1.5 million people resettled worldwide due to the construction of large dams reported by MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 25 *in fine*.

<sup>30</sup> EL-HINNAWI, E., *Environmental refugees, op. cit.*, p. 30, who gives the example of the Aswan High Dam in Egypt. Its building had a negative impact on farmland fertility of in two ways. On the one hand, the construction of the dam increased salinisation and waterlogging in some areas, especially where drainage systems were inadequate. On the other hand, the annual load of silt and clay that arrived each year with the Nile floods was trapped behind the dam, depriving the farmland of the nutrients it provided.

<sup>31</sup> According to data reported in EL-HINNAWI, E., *Environmental refugees, op. cit.*, pp. 35-37; and JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, pp. 25-27, the explosion on 10 July 1976 at the Seveso chemical plant in northern Italy released a cloud of Dioxin that forced the evacuation of eight hundred people (EL-Hinnawi speaks instead of "thousands of people") who were unable to return to their homes for more than a year, although the safety of the area for people's health is still in question. The accident at the Three Mile Island nuclear plant in Pennsylvania (USA) on 28 March 1979 forced 10,000 people to leave their homes in the first 24 hours and 100,000 more to do so over the next day, without being allowed to return home until several days later, after the reactor had been brought under control. The accidental leak of methyl isocyanate that occurred between 2 and 3 December 1984 at the US company Union Carbide's pesticide factory in Bhopal, India, killed more than 2,500 people in the first week alone, and triggered a mass exodus in which at least 200,000 people fled the city. Finally, the 19-20 November 1984 explosions at a liquefied petroleum gas storage facility in the San Juanico neighbourhood of Mexico City killed 452 people, injured 4,248 others and left 31,000 displaced.

<sup>32</sup> For example, the Chernobyl accident irradiated an area of 200,000 square kilometres, caused the evacuation of 116,000 people within a radius of 30 kilometres and rendered 2,600 square kilometres uninhabitable (vid. JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, pp. 26 *in fine* and 27. MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 25). More recent to our time, although not cited in the "maximalist" literature because it post-dates these early studies, is the accident that occurred on 11 March 2011 at the Fukushima I nuclear power plant, as a result of the 14-metre-high tsunami that hit the station.

Ecosystem degradation due to human contamination can also occur progressively over time, through the continuous discharge of toxic waste into the atmosphere, onto land or into waterways, with the same result of triggering migration from the polluted environments<sup>33</sup>. Examples of displacement caused by industrial pollution cited in the "maximalist" literature include the evacuation of neighbourhoods built on the so-called Love Canal in Niagara Falls (USA), formerly used as a municipal chemical waste dump, and the town of Bogomice (Poland), also declared unfit for human life due to high concentrations of heavy metals in the air and soil from emissions from nearby copper smelting plants<sup>34</sup>.

### C) Warfare

Warfare also has direct and indirect implications for the habitability of ecosystems. Environmental destruction can be deliberately employed as a tactic of war to defeat the opponent. For instance, during the Second Indochina War (1961-1975), the United States massively bombed vast rural areas of South Vietnam and sprayed chemical herbicides on vast tracts of forest in what El-Hinnawi describes as a strategy designed to annihilate "both the natural and human ecology of the region"<sup>35</sup>. Collaterally, military activities also have a negative impact on the natural resource base

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Of the 160,000 people displaced, 36,000 have still not been able to return to their homes a decade later, while 2.4% of the area of Fukushima prefecture is still designated as a "difficult return zone" (in: GÓMEZ DÍAZ, L., "Fukushima, una década después: 36.000 desplazados y más de un millón de metros cúbicos de agua contaminada", *RTVE*, 11 March 2021).

<sup>33</sup> JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, pp. 20 *in fine* to 25. Also, WESTING, A., "The Environmental Component...", *op. cit.*, p. 132, referring to excessive air and water pollution as threats to environmental security. Richmond, A., *Global Apartheid: Refugees, Racism and the New World Order*, Toronto (Canada), Oxford University Press, 1994, as cited by O'LEAR, S., "Migration and the Environment...", *op. cit.*, p. 614, considering both sudden- and slow-contamination as examples of technological contributions to environmental problems that can lead to migration.

<sup>34</sup> Vid. JACOBSON, J.L., *op. cit. supra*, pp. 22 and 24 *in fine*. Jacobson further notes that the Love Canal case was not an isolated example in the United States, reporting that 1,390 families in forty-two communities across the country had to be evacuated and relocated because they lived near toxic waste dumps (*ibid.*, p. 23).

<sup>35</sup> EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 38. As a result, 1,500 square kilometres of mangroves were completely destroyed and approximately another 15,000 square kilometres were severely damaged. The impact of this environmental destruction on the population resulted in 17 million displaced people - most of them rural-to-urban migrants - many of whom were unable to return home after the war because their farmland had been irreparably damaged (*ibid.*, p. 39). Vid. also, WESTING, A., "The Environmental Component...", *op. cit.*, pp. 131-132, mentioning as cases of what he calls "environmental vandalism" the post-colonial armed conflicts that have taken place in the Horn of Africa, particularly in Ethiopia and Somalia.

on which communities depend, further pushing civilians to migrate to secure and environmentally-safe zones<sup>36</sup>.

Once the war is over, authors such as El-Hinnawi or Westing make the rehabilitation of former combat-zones, including the removal of mines, bombs and other unexploded ordnance, a priority so that those originally displaced by the war do not remain environmentally displaced in the post-war<sup>37</sup>. Finally, some "maximalist" authors have also described population displacements resulting from tensions and conflicts over control of scarce natural resources as environmental<sup>38</sup>.

#### D) Natural Disasters

Regarding natural disasters, it might seem that these disruptions are, to paraphrase the title of Wijkman and Timberlake's book, more acts of God than of humans. However, the "maximalist" literature emphasises the human role in transforming natural hazards into disasters that result in population displacement<sup>39</sup>. For example, excessive

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<sup>36</sup> Richmond, A., *Global Apartheid: Refugees, Racism and the New World Order*, Toronto (Canada), Oxford University Press, 1994, as cited by O'LEAR, S., "Migration and the Environment...", *op. cit.*, p. 614. MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 52, cite the cases of El Salvador, Somalia, Ethiopia, Sudan, Rwanda and the Philippines, where environmental upheavals caused by conflict –for example, in the form of famine– exacerbated the migration of civilians. OTUNNU, O., "Environmental refugees in Sub-Saharan Africa: causes and effects", *Refugee*, Vol. 12, No. 1, June 1992, p. 12, pointing to the close link between wars in Africa and environmental degradation, famine and economic crisis and the resulting migration. The author also notes how wars banish environmental care from the political chessboard, as a government that is fighting militarily for its survival does not make it a priority, for example, to undertake agricultural reforms that allow for sustainable land use (*id.*).

<sup>37</sup> WESTING, A., "Environmental Refugees: A Growing Category of Displaced Persons", *Environmental Conservation*, Vol. 19, No. 3, Autumn 1992, p. 206. EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 39-40, referring as an example to nomadic pastoralists who continue to avoid areas they had traditionally frequented before World War II because of the remnants of war that still remain scattered in the north-western Egyptian desert and the Libyan desert (*ibid.*, p. 40).

<sup>38</sup> Vid. for example, MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 52, considering that, of the around fifty armed conflicts that were ongoing in mid-1994, about twenty could be described as environmentally induced to some extent, half of them being associated with arid zones. OTUNNU, O., "Environmental refugees in...", *op. cit.*, p. 12, also shares this conclusion that environmental degradation can contribute to triggering conflict. NEWLAND, K., "Refugees: The rising flood", *World Watch*, 7, 1994, pp. 15-16, reports how population pressure and the impact of successive prolonged droughts increased competition for control of scarce natural resources in the Sahel and the Horn of Africa, leading to violent disputes between nomads and sedentary farmers. The author refers, for example, clashes over irrigated land in the Senegal River basin, displacing thousands of people who crossed the common border between Senegal and Mauritania both ways. EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 12, finds another example of environmentally-induced conflict in Ethiopia, where incursions by the Afar tribe into the Borkena Valley during the 1984 drought led to tensions and violence with the farmers already occupying the land, who considered the nomads as invaders. JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 13, refers to the growing competition and tension between the Hausa planters and the Fulani herders over scarce land in the state of Borno in Nigeria.

<sup>39</sup> The possibility that human intervention in some ecosystems might render them more prone to natural disasters or amplify their impact on the human communities that inhabit them was discussed by WIJMAN, A.; TIMBERLAKE, L., *Natural Disasters: Acts of God Or Acts of Man?*, London (UK),

removal of trees and vegetation through over-harvesting of timber or unsustainable agricultural and livestock practices increases the likelihood of heavy rainfall turning into flooding, as the soil loses its natural capacity to absorb and retain water<sup>40</sup>. Similarly, the destruction of topsoil renders the ground more prone to landslides and mudslides<sup>41</sup>, on the one hand, and droughts on the other, as the soil is unable to retain moisture<sup>42</sup>. Human alteration of runoff patterns can also make nearby settlements more vulnerable to flooding<sup>43</sup>. Likewise, the destruction of coral reefs, mangroves and other beachfront forests, as well as the levelling of beach dunes, make near-shore human communities more vulnerable to the effects of cyclones and tidal surges<sup>44</sup>.

These and other human interferences with the innate capacity of ecosystems "to roll with nature's punches" have led Jacobson to use the term "unnatural disasters" to refer to those ordinary, natural events whose effects are, however, exacerbated by human activities<sup>45</sup>. In this regard, the combined effect of warmer climates and altered hydrological cycles, resulting from the accumulation of greenhouse gases through the human use of fossil fuels and massive deforestation, is expected to make extreme

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Earthscan, 1984, 145 pp. This book is widely cited among "maximalist" authors dealing with the anthropogenic factor underlying many natural disasters. Vid. for example, EL-HINNAWI, E., *Environmental refugees*, *op. cit.*; JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*; RAMLOGAN, R., "Environmental refugees: a review", *op. cit.*; WESTING, A., "Environmental Refugees...", *op. cit.* Other authors such as Döös, although not citing the book by Wijkman and Timberlake, also accepts that "the long-term degradation of the environment can amplify or trigger natural disasters" (in: DÖÖS, BO R., "Can large-scale...", *op. cit.*, p. 45).

<sup>40</sup> The "maximalist" authors denounce a steady increase in the number of heavy floods occurring in the major river basins of many Third World countries as a consequence of severe deforestation and loss of vegetation cover. The countries most affected by these flash floods include Bangladesh, India and Nepal in the Himalayan basin; Ecuador, Bolivia and Peru in the Andean one; and Sudan in the Nile watershed. Vid. EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 10 and 13-16. JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, pp. 17-19. : HOMER-DIXON, T.F., "On the Threshold...", *op. cit.*, p. 97 *in fine*. DÖÖS, BO R., "Can large-scale...", *op. cit.*, p. 45, mentioning the link between deforestation and flooding as an example of how human-induced degradation can cause or magnify natural disasters.

<sup>41</sup> JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 19 *in fine* and 20, mentioning the cases of the city of Medellin (Colombia) and the slums of Rio de Janeiro (Brazil), hit by landslides in 1987 after heavy rains destabilised mountain slopes.

<sup>42</sup> EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 10. JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 19, observing that human degradation of the land throughout the Nile has disrupted the hydrological cycle, making the entire region drier. Myers and Kent have reported the same effect in countries such as Panama, Costa Rica, Côte d'Ivoire, Tanzania, India, the Philippines and Malaysia, where heavy deforestation has been associated with a decrease in rainfall that has negatively affected crop yields -e.g. rice paddies- and freshwater reserves (in: MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, pp. 37, 38 and 42).

<sup>43</sup> Jacobson cites the example of several villages built in places where flooding had not previously been a problem until logging and mining operations radically changed the natural course of the water (in: JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 19).

<sup>44</sup> EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 18.

<sup>45</sup> JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 17, adding that, as a result, "the rare has become commonplace, the extremes of weather that have been endured and survive through the millennia are increasingly turning into full-fledged catastrophes on a scale seldom before seen" (*ibid.*, p. 20).

weather and climate events, such as torrential rains, hurricanes, droughts, cold waves and typhoons, more frequent and intense<sup>46</sup>.

### E) Sea-level rise

For "maximalist" authors, the most worrying effect of human-induced climate change is the rise in sea level that will occur worldwide due to the melting of the poles and the thermal expansion of oceans and seas' waters<sup>47</sup>. After land degradation, these authors consider sea-level rise to be the environmental disruption with the second tremendous potential to cause large population movements<sup>48</sup>.

Usually taking the year 2050 or 2100 as a time reference, authors consider different thresholds of sea-level rise<sup>49</sup> to determine the inhabited coastal areas that, because of their low elevation and acute, gradual tectonic subsidence, are locally most exposed to such increases<sup>50</sup>. Once the threatened human settlements have been identified, the total number of people at risk of being displaced in the future is calculated by applying the expected population growth rate for these areas over the chosen time horizon. Studies on this subject were published by Myers<sup>51</sup> or Jacobson –

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<sup>46</sup> Ibid., p. 35. TUCHMAN, J., "Redefining Security", *op. cit.*, p. 170. HOMER-DIXON, T.F., "On the Threshold...", *op. cit.*, pp. 90, 94 and 97 *in fine*. MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 134, who refer, in particular, to a 40 to 50 % increase in the destructive capacity of typhoons, with winds of up to 350 km/h, as a result of increased intensity of atmospheric convection (*ibid.*, p. 136). They also mention several acute weather anomalies that occurred between 1993 and 1995 in the USA, Australia and India as examples of climate variability related to global warming (*ibid.*, pp. 47-48).

<sup>47</sup> JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 30.

<sup>48</sup> For example, *ibid.*, p. 29 *in fine*, estimates that just a one-metre rise in ocean levels worldwide may displace 50 million people in several countries.

<sup>49</sup> *Ibid.*, p. 30, reports that "a global temperature increase of 1.5 to 4.5 degrees Celsius can be expected as early as 2030 (...) [precipitating] a rise in sea level of 1.4 to 2.2 meters by the end of the next century" [verbal form changed]. Cf. TUCHMAN, J., "Redefining Security", *op. cit.*, p. 169 *in fine* and 170, who also assumes an "average global warming of 1.5-4.5°C (3-8°F) in the early 2030s" but reports a projected rise in sea-level of 0.30 to 1.21 meters by the year 2050.

<sup>50</sup> Despite being sea-level rise a global phenomenon, its actual impact on human communities will vary locally, due to differences between regions in terms of altitude above sea level or exposure to geological processes such as uplift or tectonic subsidence. In particular, coastal land subsidence will be of special relevance when estimating communities at risk since it can also be accelerated by human action –e.g. due to the withdrawal of groundwater and oil reserves or by the depletion of sediments reaching river estuaries as a result of channeling, diverting or damming rivers (vid. JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 31).

<sup>51</sup> MYERS, N., "Environmental Refugees in a Globally Warmed World", *BioScience*, Vol. 43, No. 11, December 1993, pp. 753-757, estimating the total number of people displaced by a sea-level rise equivalent to 30 cm in 2050 at 100 million. Countries and regions considered at risk include: China (30 million displaced), India (30 million), Bangladesh (15 million); Egypt (14 million); low-lying Island States (1 million); and other deltaic and coastal areas of the world counting for 10 million displaced people. These figures were reviewed in MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, pp. 135, 139-146, assuming a sea-level rise of 1 metre by 2100 in the countries and regions mentioned, due to the high rates of subsidence they presented. As a result, the total estimate of people displaced by sea level rise was updated to 123 million people, disaggregated into: Bangladesh, 13 million; Egypt, 16 million; China,

the latter reproducing the unpublished results of a research study by the Woods Hole Oceanographic Institution<sup>52</sup>.

### **F) Land degradation**

Increased climate variability due to global warming, coupled with saltwater intrusion from rising sea-levels, may cause what Myers and Kent call "agricultural dislocations", reducing global grain production and causing additional movements from famine-affected areas<sup>53</sup>. However, for the "maximalist" authors, what actually lies at the core of the problem of migration associated with future food shortages is human misuse of agricultural land. Jacobson, for example, warns that coming environmental migrations will herald hunger "in search of fertile soils"<sup>54</sup>.

Thus, the "maximalist" authors argue that the continuous overexploitation of soils, exacerbated by intensive and aggressive agricultural and livestock practices, leads to the long-term degradation of the land, which is unable to neutralise the adverse impacts of the overuse to which it is being subdued. Some of the most insidious forms of land

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73 million; India, 20 million; and low-lying Island States, 1 million. Other delta areas and coastal zones were not considered this time.

<sup>52</sup> John D. Milliman et al., *Environmental and Economic Impact of Rising Sea Level and Subsiding Deltas: The Nile and Bengal Examples*, unpublished paper, Woods Hole Oceanographic Institution, Woods Hole (Massachusetts), 1988, as reproduced by JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, pp. 32-36 (vid., in particular, p. 34, Table 2). Milliman et al. paper assumes two estimates of sea-level rise: a minimum of 13 centimeters by 2050 and 28 centimeters by 2100; and a maximum of 79 centimeters by 2050 and 217 centimeters by 2100. Sea-level rise projections are combined with different levels of land subsidence in Bangladesh and Egypt, leading to three possible scenarios: "best case", "worst case" and "really worst case". Taking only the "worst" and "really worst" case scenarios into account, the paper estimates that between 16% and 18% of the expected population of Bangladesh would be displaced by 2050 and between 26% and 34% by 2100. In Egypt, the percentage of displaced population ranges from 15% to 19% in 2050 and 21% to 26% in 2100.

<sup>53</sup> MYERS, N., "Environmental Refugees...", *op. cit.*, pp. 756-757. Also, MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, pp. 139, 146-148, concluding that "agricultural dislocations" could displace up to 50 million people. Areas at risk would include the entire Asia-Pacific region, in particular the Indian subcontinent, which is highly sensitive to monsoon-system shifts; regions prone to more persistent droughts, such as northern Mexico, northern Chile, northeastern Brazil, eastern Argentina, the Mediterranean basin, the Sahel, the southern quarter of Africa; sectors of the middle and tropical latitudes of Asia, as well as parts of the United States, southern Canada, southern Europe, and Australia. Vid. also, DÖÖS, BO R., "Environmental Degradation, Global Food Production, and Risk for Large-Scale Migrations", *Ambio*, Vol. 23, No. 2, March 1994, p. 125; and HOMER-DIXON, T.F., "On the Threshold...", *op. cit.*, p. 94, both concluding that the benefits that warming at higher latitudes and increased atmospheric carbon dioxide concentration may have on agricultural production and plant growth would not outweigh the reduction in potential in the major mid-latitude cereal-producing regions. Döös also refers to East Asian areas such as Bangladesh and Indonesia as particularly vulnerable to salt-water intrusions, as much of the fertile agricultural land is located in low-lying coastal areas (*ibid.*, p. 130). In the same vein, JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, pp. 34 *in fine* to 36, noting that sea-level rise will destroy the coastal mangrove forests on which 30 per cent of Bangladesh's population depends, and severely affect the Nile River and its Delta, where almost all of Egyptian arable land is located.

<sup>54</sup> JACOBSON, J.L., *op. cit. supra*, pp. 8-16.

degradation they refer to are: salination and waterlogging of soils resulting from poor irrigation practices; chemical degradation of fertile land because it does not have time to regenerate pastures and replenish nutrients absorbed by crops; the reduction of forest stands, unable to regenerate woodlands at the same rate as they are cleared; and rapid soil erosion, as extensive deforestation and overgrazing strip soils of vegetation cover, leaving them more exposed to wind and rain. All these phenomena are, however, related to human action<sup>55</sup>. Unsustainable practices result in a gradual decline in crop yields until the land is depleted and can no longer produce sufficient provisions for humans and their domestic animals<sup>56</sup>.

"Migration is the signal that land degradation has reached its sorry end", wrote Jacobson<sup>57</sup>. According to Myers and Kent, "[d]eforestation, in association with soil erosion, watershed degradation and environmental desiccation, has caused largescale

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<sup>55</sup> Human degradation of fertile land has been addressed by "maximalist" authors such as: JACOBSON, J.L., *op. cit. supra*. EL-HINNAWI, E., *Environmental refugees, op. cit.*, pp. 23-32. MYERS, N., "Population/Environment Linkages...", *op. cit.*, pp. 116-117. MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, pp. 39-42. Regarding Africa, on which there is consensus among "maximalists" that it will be the most affected continent, vid. WESTING, A., "Population, Desertification, and Migration", *Environmental Conservation*, Vol. 21, No. 2, Summer 1994, p. 111, Table III, reporting that, of the 494 million hectares of land significantly degraded by human action across Africa, overgrazing had caused 49% of the total degradation, followed by inappropriate agricultural practices (25%); deforestation and other vegetation removal (14%); and overharvesting of vegetation for fuel and other domestic uses (13%). By forms of degradation, water erosion was responsible for 46% of degraded land; wind erosion for 38%; nutrient loss for 9%; soil compaction for 4%; and salinisation for 3%.

<sup>56</sup> TUCHMAN, J., "Redefining Security", *op. cit.*, p. 165, states that soil degradation is causing agricultural productivity to decline by almost two billion hectares, 15% of the earth's land area. MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, pp. 43-46, also estimating that food production from rainfed cropland could decline by 19-29% between 1985 and 2010 in the absence of improved soil conservation practices (*ibid.*, p. 40). In terms of soil quality, MYERS, N., "Population/Environment Linkages...", *op. cit.*, p. 117, states that degradation "causes as much as 70 000 sq. kms. of farmlands to be abandoned each year, while another 200 000 sq. kms. lose virtually all their agricultural productivity". Similarly, HOMER-DIXON, T.F., "On the Threshold...", *op. cit.*, pp. 91-94, who, quoting the geographer Vaclav Smil, estimates that the planet will lose about 100 million hectares of arable land between 1985 and 2000 (*ibid.*, p. 94). Disaggregated data by form of soil degradation and subsequent loss of crop productivity can be found at DÖÖS, BO R., "Environmental Degradation...", *op. cit.*, pp. 125-126., reporting that soil erosion would be responsible for the annual loss of 5 million tons of grain; soil salinisation, aggravated by saltwater intrusion from sea level rise, would destroy 3 million tons of grain per year; and loss of fertility due to chemical and biotic soil stress would represent an annual loss of 4 million tons of grain.

At the same time as the yield capacity of arable land is declining, Döös or Homer-Dixon evidence that there is little scope for cultivating new land and, in any case, the most suitable cropland (about 500 million hectares) is already being exploited. Potential arable land reserves –some 1.7 billion hectares, located mainly in sub-Saharan Africa and South America- are only marginally suitable for cultivation because of various physical and chemical soil constraints, or because they are located in places where rainfall patterns are unstable (vid. DÖÖS, BO R., "Environmental Degradation...", *op. cit.*, pp. 126-127. HOMER-DIXON, T.F., "On the Threshold...", *op. cit.*, p. 93. Also, MYERS, N., "Population/Environment Linkages...", *op. cit.*, p. 117, noting that "the great bulk of the most fertile and accessible land has already been taken"). As a result, and taking into account the rate of world population growth, Homer-Dixon concludes that the world average of 0.28 hectares of cropland per capita will decline to 0.17 hectares by the year 2025 (in: HOMER-DIXON, T.F., *op. cit. supra*, p. 93.).

<sup>57</sup> JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 7 (the same idea is reiterated on pp. 9 and 16).



involuntary migrations in Philippines, Ethiopia, Madagascar, Peru and Haiti"<sup>58</sup>. For his part, El-Hinnawi points out that land degradation has been the main driver, throughout the Third World, behind the rural exodus that has pushed subsistence farmers into the slums and shantytowns of the big cities when there are no ever-more marginal lands to cultivate<sup>59</sup>.

Among the various forms of human-induced land degradation, desertification would constitute its most advanced stage<sup>60</sup> and one of the biggest drivers of migration in arid and semi-arid regions, as it makes soils extremely vulnerable to natural variability in rainfall patterns, "turning dry spells into droughts and periods of food shortage into famine"<sup>61</sup>. According to figures provided in the work of some "maximalist" authors, desertification threatens between 40 and 45 million square kilometres –or 35% of the earth's land surface- destroying 60,000 square kilometres of agricultural land each year and significantly reducing the productivity of additional 200,000 square kilometres of rangelands and irrigated and rain-fed cropland<sup>62</sup>. Myers and Kent identify desertification as the main form of land degradation in northeastern Brazil, northern/central Mexico, western India, Pakistan, North Africa and some regions of sub-Saharan Africa such as the Sahel, the Horn of Africa and the so-called "dry corridor" from Namibia, through Botswana and Zimbabwe, to southern Mozambique<sup>63</sup>.

The same authors point out that this destruction of agricultural land by desertification threatens the livelihoods of at least 900 million people in 100 countries<sup>64</sup>, 135 million of whom suffer the rigours of severe desertification<sup>65</sup>. Indeed, "maximalist" authors claim that the problem of desertification already acted as a trigger for some of

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<sup>58</sup> MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 37.

<sup>59</sup> EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 24. In the same vein, JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 10.

<sup>60</sup> EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 26.

<sup>61</sup> TUCHMAN, J., "Redefining Security", *op. cit.*, p. 167, mentioning the case of Ethiopia as an example of a recurring trend in other arid and semi-arid regions.

<sup>62</sup> Vid. JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 10 *in fine*. MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 39. Also, EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 28-29 and Table 4. Cf. HOMER-DIXON, T.F., "On the Threshold...", *op. cit.*, p. 94, reporting that about one-fifth of the world's cropland is suffering from some degree of desertification.

<sup>63</sup> MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, pp. 40-41

<sup>64</sup> *Ibid.*, p. 39.

<sup>65</sup> *Id.* The same figure is reported by JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 11. Cf. EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 28, who puts the figure of population affected by severe desertification at 280 million people in rural areas alone, rising to 470 million if urban population centres are included.

the largest migrations in the 1970s and 1980s, when millions of people living in arid and semi-arid lands were forced to leave their homes in search of food<sup>66</sup>.

### 1.3.2. Associated factors to environmental vulnerability

So far, this section has examined the various forms of directly human-induced environmental degradation that appear in the "maximalist" literature as the main drivers of environmental migration movements. However, these authors do not ignore the presence of other structural factors of a political, economic and demographic nature that underpin human societies and thus also shape, in a mediated way, the capacity of the ecosystems to cope with environmental stress. Otunnu summarises this idea noting that "there are no impenetrable walls between environmental, political and economic factors –they are, at one and the same time, causes and effects of environmental crisis"<sup>67</sup>.

Myers and Kent label these other underlying factors, which are not environmental in nature but which also contribute to environmental degradation, as "associated factors"<sup>68</sup>. Political factors would manifest themselves mainly in unsustainable development, induced in part by the international political-economic order. Economic factors would be related to poverty, which aggravates dependence on natural resources and thus their overexploitation. Finally, the demographic factor would refer to excessive population growth that imposes unsustainable long-term consumption patterns of natural resources. As in the case of environmental disturbances, for the "maximalist" authors, these non-environmental factors do not act in isolation either but interact with

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<sup>66</sup> For instance, MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 40, report that 10 million people had been displaced in semi-arid lands by 1987. Vid. also, EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 10-12, and JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, pp. 11-12 and Table 1, both referring to two prolonged periods of drought in the Sahel. The first lasted from 1968 to 1973, caused many villages to be abandoned while Sahelians move to the coastal countries of southern and west Africa, with the Ivory Coast becoming a major destination –the city had to accommodate 1.4 million people after the drought, being one in five of the country's inhabitants a foreigner. The drought also left 250,000 internally displaced people in Mauritania and one million in Burkina Faso, who migrated to the cities fleeing desert and famine. A second period of drought, between 1982 and 1984, displaced more than two million people in five Sahelian countries: Burkina Faso, Chad, Mali, Mauritania and Niger.

<sup>67</sup> OTUNNU, O., "Environmental refugees in...", *op. cit.* p. 13. In the same vein, MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 29, stating: "Nor do environmental factors generally operate in isolation from factors of economics, politics and the like"; DÖÖS, BO R., "Can large-scale...", *op. cit.*, p. 58, concluding "there are a large number of factors that can contribute to the risk of environmental migrations, including not only stresses on the environment, but also a variety of socio-economic/political factors"; and HOMER-DIXON, T.F., "On the Threshold...", *op. cit.*, p. 78, who neither ignores that "numerous intervening factors –physical, technological, economic, and social- often permit great resilience, variability, and adaptability in human-environmental systems".

<sup>68</sup> MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 26.

each other, adding further stress to the earth's environment and its ability to sustain human life<sup>69</sup>.

Ecosystems in the so-called Third World would be the most exposed to the play of these other "associated factors", as they have the lowest rates of development combined with the highest rates of population growth and poverty. This reality explains why, although environmental disruptions can occur anywhere in the world, "maximalist" studies tend instead to focus exclusively on countries traditionally considered as underdeveloped<sup>70</sup>: they are the most exposed to natural disasters<sup>71</sup> and the most dependent on their ecosystems' natural resources<sup>72</sup> while being the least well-equipped to deal with natural hazards and environmental changes<sup>73</sup>.

### **A) Population growth and poverty**

As will be seen below, the "maximalist" authors regarded population growth and poverty as two closely interrelated phenomena that feed on each other, leaving population more vulnerable to environmental change and thus to migration. Of the population growth that the "maximalist" authors expected to occur, a very high

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<sup>69</sup> Ibid., pp. 29-32, referring to these interactions as "inter-sectoral linkages". It should be noted that Myers had already used this expression to refer to the compounding dynamics between different environmental changes in his article: MYERS, N., "Population/Environment Linkages...", *op. cit.*, p. 118.

<sup>70</sup> *Inter alia*, MYERS, N., "Environment and Security", *op. cit.*, pp. 25-38, reviewing the environmental problems encountered by a sample of developing regions and countries in which the US has important interests and the political and security implications they could have for North America. MYERS, N., "Environmental Refugees...", *op. cit.*, pp. 752-761, focusing his entire analysis on sea-level rise in developing coastal countries. MYERS, N.; KENT, J., "Part III: Geographic Areas at Risk", in: *Environmental Exodus...*, *op. cit.*, pp. 68-117, conducting several extensive vulnerability analyses of different less developed countries or regions of the world, namely: sub-Saharan Africa and the Sahel; the Indian subcontinent; China; Central America; Eastern Europe; Mexico; the Wider Caribbean; Egypt and North Africa; the Horn of Africa and Kenya; and Bangladesh. For examples of mono-geographical studies on the issue, vid: ISLAM, M., "Natural calamities and environmental refugees in Bangladesh", *Refuge*, Vol. 12, No. 1, June 1992, pp. 5-10; and OTUNNU, O., "Environmental refugees in...", *op. cit.*, pp. 11-14.

<sup>71</sup> Vid. EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 6, Figure 1, showing that "the regions most prone to natural disasters are mostly located in developing countries".

<sup>72</sup> For example, JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 16, observes that "[a]griculture is the backbone of developing economies"; and MYERS, N., "Environment and Security", *op. cit.*, p. 24, points out that many developing countries "depend greatly their development prospects on the resource base-soil, water, and vegetation- that sustains much of their economic activity", giving as an example the Central America region, where a quarter of the gross domestic product is based on natural resources.

<sup>73</sup> In this regard, HOMER-DIXON, T.F., "On the Threshold...", *op. cit.*, p. 78, emphasises that "poor countries will in general be more vulnerable to environmental change than rich ones". Likewise, MYERS, N., "Environmental Refugees in a Globally Warmed World", *op. cit.*, p. 753, notes that, although developing countries account for the largest share of the population exposed to sea level rise, they have the least resources to cope with the problem.

percentage would take place in already impoverished regions<sup>74</sup>. Demographic growth in the poorer social strata will force more people to settle in more dangerous or unhealthy marginal locations, as housing in zones more protected from natural disasters or away from toxic waste dumps or industrial plants will be beyond their purchasing power<sup>75</sup>. Higher population density is compounded by the fact that poverty forces dwellers to endure an existence in these vulnerable areas in shacks or self-built shelters that are structurally unprepared to endure strong winds, rain or earthquakes<sup>76</sup>. As a result of the

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<sup>74</sup> Vid. MYERS, N., "Population/Environment Linkages...", *op. cit.*, p. 116, contrasting population growth of 1.8 per cent worldwide versus 2.1 per cent in developing countries. Among underdeveloped countries, "the poorest countries generally have population growth rates 50 percent higher than the average" (in: MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 54). Overall, TUCHMAN, J., "Redefining Security", *op. cit.*, p. 163, notes that of the additional one billion people who would be living on Earth by the end of the 1990s, 90% would be in developing countries. Vid. also, WESTING, A., "Environmental Refugees...", *op. cit.*, p. 204, Table IV, reporting population growth rates in the period 1985-1990 in the countries of origin of displaced persons, all of them developing countries. More specifically, population growth rates in North African countries for the period 1980-1991 are provided in WESTING, A., "Population, Desertification, and Migration", *op. cit.*, p. 112, Table IV. DÖÖS, BO R., "Can large-scale...", *op. cit.*, p. 43 and Figure 2 (in p. 44), observing that "the most dramatic increase of population is expected to occur in Africa and Asia", particularly in sub-Saharan Africa, where the population is expected to triple over the period 1990-2030, from 502 million to 1499 million people. In this regard, HOMER-DIXON, T.F., "On the Threshold...", *op. cit.*, p. 103, footnote 79, points out that the assumption made by demographers that developing countries would undergo a "demographic transition" similar to that of today's developed countries in the 19th and 20th centuries would be compromised by the inability of developing countries to maintain steady growth in social and economic prosperity".

At the household level, MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, pp. 49 *in fine* and 50, report that "[b]etween 15 and 30 percent of developing-world families have eight or more members, but among poor families the proportion rises to 55 to 80 percent". Mamdani, M., "Disaster Prevention: Defining the Problems", *Review of African Political Economy*, No. 33, August 1985, p. 95, explains this tendency arguing that "the peasant has as many children as possible to maximise the labour at his disposal. For a middle-class family, a child may be just a mouth to feed for 20 years, but for a peasant family after four years the child is also two hands to work!", concluding that "people are not poor because they have large families; really they have large families because they are poor" (as reproduced in: OTUNNU, O., "Environmental refugees in...", *op. cit.*, p. 13, who adds that "most literature on development in Africa suggests that high population growth is a result of inadequate education on the relevant issue" [in *ibid.*, pp. 12 *in fine* and 13]).

<sup>75</sup> Interestingly, EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 10, notes how disaster prevention measures adopted by States (such as dykes or terracing) tend to raise the value of the protected properties, making them financially inaccessible to low-income people. Similarly, JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 23, also observes how financial constraints compel people to remain in highly contaminated and toxic risk areas.

<sup>76</sup> EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 6 and 10. El-Hinnawi illustrates the argument of inadequate housing and infrastructures as contributing to the vulnerability of the poor to natural catastrophes by comparing material and human losses caused by earthquakes in rich and poor cities (*ibid.*, pp. 6-7). For instance, the 1976 Guatemala City earthquake and the 1971 earthquake that struck the city of San Fernando in California (USA) were of similar magnitude on the Richter scale: 6.6 and 7.5 respectively. However, the former killed 22,000 people, injured 75,000 and left nearly a million homeless. Most of those killed or injured lived in rural areas or slums, many of them in poor houses located in ravines or gorges highly vulnerable to landslides when earth movements happen. In contrast, the San Fernando earthquake killed only 65 people. Other large cities that El-Hinnawi reports to be prone to earthquakes and with a high concentration of impoverished people living in slums or shantytowns include Lima, Santiago, Quito, Caracas, Manila and Jakarta. All of these cities are located in the so-called "Ring of Fire", an area of high seismic activity around the Pacific coast (*ibid.*, pp. 19 *in fine* and 20). The same reasoning is made in MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 25, concluding that poverty "leaves people without the means to avoid or resist the disaster" judging by the large differences

combination of these factors, the poor become more vulnerable to displacement in the face of hazards.

To bolster this argument, "maximalist" authors such as El-Hinnawi or Westing cite a 1984 Swedish Red Cross report on natural disasters in the 1960s and 1970s. It shows that the population in low- and middle-income countries has been more affected by natural hazards than those in high-income countries, which is attributed to the growing concentration of impoverished people in areas more exposed to natural hazards<sup>77</sup>.

As examples of poor people who are constantly displaced by living in dangerous natural areas, El-Hinnawi and Jacobson refer to slum dwellers in Latin American cities such as Rio de Janeiro, who live in favelas on steep, deforested hillsides that are washed away by water and mud or threatened by landslides every time there are heavy rains. They also mention the millions of poor Nepalese and those in Guatemala City and its suburbs who have to flee their precarious dwellings with every earthquake; or the millions of poorer squatters living in cyclone- and flood-prone areas such as the dry lake bed of Texcoco (Mexico City), the "chars" of Bangladesh –i.e. the silt and sand bars of the Bengal delta- or in many other Asian floodplains such as the cities of Delhi, Bangkok, Calcutta, Dhaka or Manila<sup>78</sup>. Similarly, in the Bhopal and San Juanico industrial accidents, many of the victims were chemical plant workers who lived with their families in squatter settlements near the industrial plants because they could not afford transport<sup>79</sup>.

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between the death toll and economic damage caused by similar natural disasters in developed and underdeveloped countries.

<sup>77</sup> Vid. EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 6 and Figure 2, showing the graph a sharp increase in mortality as income decreases. Also, WESTING, A., "Environmental Refugees...", *op. cit.*, p. 206; and DÖÖS, BO R., "Can large-scale...", *op. cit.*, p. 45, mentioning a study that identifies an upward trend in the number of people affected by natural disasters correlated with population growth. Although Döös does not provide the study's reference, it is likely to be the same report cited by El-Hinnawi and Westing, as it covers people killed by natural disasters in the same period (1967-91).

Other "maximalist" authors who have pointed to the relationship between the increase in the number of poor people, their settlement patterns and the impact of natural disasters on them include: WESTING, A., "Environmental Refugees...", *op. cit.*, pp. 205 *in fine* and 206, stating that acute natural and anthropogenic disasters produce population displacements "that in large measure derive from inappropriate settlement patterns"; and MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 25, reporting that "one quarter of the developing world's population lives in areas at high risk of natural disasters", being "the ones who, by virtue of their impoverished plight, can do least to safeguard themselves".

<sup>78</sup> EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 10 and 15; and JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 17.

<sup>79</sup> EL-HINNAWI, E., *op. cit. supra*, p. 37.

At the same time, the combination of poverty and population growth exacerbates environmental degradation, as more people will have to try to survive in areas ecologically vulnerable<sup>80</sup>. In this sense, Myers and Kent point out that "environmental factors are often a function of economic factors insofar as environmental degradation engenders poverty, and at the same time it is the most impoverished who do the most environmental damage, however unintentionally"<sup>81</sup>, forming the two a "vicious circle"<sup>82</sup>. Thus, forced by family growth and economic hardship, rural communities have no choice but to overexploit existing natural resources, even at the cost of their future livelihoods, which in turn will further aggravate their poverty<sup>83</sup>.

This need-based depletion of natural stocks is also directly related to the imbalances in land tenure patterns that still prevail in the vast majority of developing countries. These agricultural models tend to concentrate the vast majority of fertile land suitable for cultivation and grazing in the hands of a small group of landowners, forcing the great bulk of small farmers and herders into fragile ecosystems, such as tropical forests, semi-arid areas or steep mountain slopes that are easily eroded, thus reinforcing and accelerating the degradation process of these marginal environments, which soon become unproductive<sup>84</sup>.

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<sup>80</sup> According to MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 2, in 1995 there were 359 million people subsisting in marginal environments.

<sup>81</sup> *Ibid.*, p. 26 *in fine*

<sup>82</sup> JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 9, who also notes that "land degradation is most often associated with poverty" and population growth took place "in areas already in advanced stages of environmental degradation" (*ibid.*, p. 8). TUCHMAN, J., "Redefining Security", *op. cit.*, p. 167, also refers to this "vicious cycle of human and resource impoverishment", where the Earth is unable to replenish what an ever-growing number of people are taking from it.

<sup>83</sup> *Vid.* MYERS, N., "Population/Environment Linkages...", *op. cit.*, p. 117. MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 49, citing the Philippines, Indonesia, India, Pakistan, Egypt or Kenya as examples of developing countries with large impoverish populations and high rates of land degradation. JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 9, who observes that "[t]hese cultivators are, in a sense, victims of circumstance", since driven by their presence needs "farmers make decisions to increase productivity that, in the long run, prove environmentally and economically disastrous" (*vid. also, ibid.*, p. 16). On his part, HOMER-DIXON, T.F., "On the Threshold...", *op. cit.*, notes that, since "agriculture is the source of much of the wealth generated in developing societies" (p. 95), "the most important potential social effect of environmental degradation is the further impoverishment it may produce in developing societies" (pp. 94 *in fine* and 95).

<sup>84</sup> *Vid.* JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 9, noting that the problem of inequitable land distribution is particularly acute in Latin America and the Caribbean (*ibid.*, p. 15). In this regard, TUCHMAN, J., "Redefining Security", *op. cit.*, p. 166, reports that 7% of Latin America's landowners owned 93% of all arable land in this vast region in 1975, squeezing the vast bulk of the rural population onto the most damage-prone land (also in MYERS, N., "Environment and Security", *op. cit.*, p. 37, regarding the particular case of Mexico). From the other perspective, MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 32, report that in Latin America 80% of the poorest people occupy marginal environments; in Asia, 60%; and in Africa, 51%. In absolute terms, the same authors state that between a quarter and half a billion impoverished people in developing countries are forced to cultivate hillsides

Although Myers and Kent report that arable land per capita is decreasing by an average of 1.9 per cent per year, mainly due to population growth, the same authors indicate that cropland will have to feed an additional 2.6 billion people by 2025 and 4.1 billion by 2050<sup>85</sup>. What is more, 95% of the annual population increase would be occurring in developing countries and more than half in the African and South Asian regions, which account for the vast majority of the so-called "bottom billion" –i.e. people with cash incomes of only \$1 a day and who are totally dependent on their environmental resource base for their livelihoods<sup>86</sup>.

Consequently, Myers and Kent foresee a bleak future for the poorest of the poor, as they will face even greater constraints in meeting their basic needs in their places of origin<sup>87</sup>, leaving them prone to migrate to places with brighter prospects. In this line, Döös expects the largest environmental migrations to come from those regions with the lowest per capita food availability – i.e. the world's poorest countries, where rapid population growth converges with the declining of national food production and insufficient purchasing power to make up the shortfall by importing supplies from other regions<sup>88</sup>.

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causing exceptional erosion (*ibid.*, p. 40). Regarding Asia, MYERS, N., "Population/Environment Linkages...", *op. cit.*, pp. 116-117, exposes the case of Philippines, where the scarcity of land in the lowlands caused increasing numbers of people to migrate to the steeply sloping highlands, where the country's main remaining forest reserves were located. The result was a marked increase in deforestation and a rapid expansion of soil erosion. EL-HINNAWI, E., *Environmental refugees, op. cit.*, p. 24, refers the same process in large mountain regions in India, where population growth and the lack of non-agricultural employment opportunities pushed poor peasants onto steeper slopes. For his part, OTUNNU, O., "Environmental refugees in...", *op. cit.*, pp. 13-14, points out that it was colonial land policy that led to the peripheralisation and marginalisation of peasants, and that these land tenure systems have been maintained in neo-colonial Africa, forcing peasants to keep working the depleted land over and over again.

<sup>85</sup> In MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, pp. 43 *in fine* and 46 *in fine*. In the same vein, DÖÖS, BO R., "Environmental Degradation...", *op. cit.*, pp. 128-130, concluding that the increase in global net food production will not be able to keep pace with the growth rate of the world's population, predisposing to large-scale migration of people escaping hunger. Also, DÖÖS, BO R., "Can large-scale...", *op. cit.*, p. 43, noting that "an increased density of the population in a certain region may lead to an increased environmental stress and a decline of the food production at the same time as the demand for food production is increasing".

<sup>86</sup> In MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, pp. 49 and 54 *in fine*.

<sup>87</sup> *Ibid.*, p. 49, citing the Philippines, Indonesia, India, Pakistan, Egypt and Kenya as examples of hotspots for future environmental migration, as they are developing countries with growing and increasingly impoverished populations and high rates of land degradation. Besides Asia and Africa, EL-HINNAWI, E., *Environmental refugees, op. cit.*, p. 22, also refers to Latin America as another ecological region at risk, as its natural resource base "for human existence is being damaged so badly that it can no longer support its growing populations".

<sup>88</sup> In DÖÖS, BO R., "Environmental Degradation...", *op. cit.*, p. 130. *Vid. also, ibid.*, Table VI and Figure 7 (p. 129), identifying, as did Myers and Kent, Africa and South and West Asia as the regions where the risk for large-scale migrations is particularly pronounced due to the rapid population growth and insufficient local food production.

## B) Ill-development

Misguided policies on natural resource management are also directly related to the increasing environmental degradation suffered by developing countries. For instance, Myers and Kent or Jacobson have pointed out several development-related economic failures that would have prevented small farmers from increasing crop productivity in a sustainable way, namely: the lack of public investment in the agricultural sector, especially in infrastructure and in preserving its environmental base; inadequate marketing, credit and extension services; or low price-setting and over-regulation by governments<sup>89</sup>.

At the macroeconomic level, the desire to quickly increase revenues, especially through exports, may likewise lead governments to engage in self-defeating environmental policies, such as granting loss-making logging concessions, investing in high-tech fishing equipment to increase catches by decimating stocks<sup>90</sup>, or incentivising the conversion of vulnerable lands to mechanised cash crops or modern livestock farms<sup>91</sup>. Some authors have pointed out that the international economic system itself may be indirectly coercing governments in developing countries to adopt such environmentally unsustainable practices<sup>92</sup>.

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<sup>89</sup> In JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 9. MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, pp. 38 and 43. MYERS, N., "Population/Environment Linkages...", *op. cit.*, p. 117, noting that "impoverished peasants cannot afford conservation measures to protect soil cover".

<sup>90</sup> Vid. TUCHMAN, J., "Redefining Security", *op. cit.*, p. 166, citing the case of the Philippines under the Marcos rule, when government usually granted logging concessions for periods of less than ten years. Since a second-growth forest takes 30-35 years to mature, loggers had no incentive to replant. As a result, of the Philippines' 17 million hectares of closed forest, only 1.2 million hectares survived at the time of Tuchman's paper (cf. HOMER-DIXON, T.F., "On the Threshold...", *op. cit.*, p. 91, who reports that the amount of remaining forest was between 6.8-7.6 million hectares). Tuchman also reports that the net result of the Philippine government's heavy investment in the fisheries sector was, however, a decline in per capita fish availability due to overfishing (vid. TUCHMAN, J., *op. cit. supra*, p. 167).

<sup>91</sup> Vid. WESTING, A., "Population, Desertification, and Migration", *op. cit.*, p. 111. Also JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 14, criticising the policies of Sahelian governments which, motivated by economic and political reasons, supported the creation of cash-crop plantations and sedentary agriculture on rangelands traditionally dedicated to seasonal grazing, ignoring that these arid lands were too fragile to bear sustained cultivation. Besides the ecological factor, these policies had profound sociological repercussions on the behaviour of large nomadic tribes, such as the Fulani or the Tuareg, who were compelled to change their ancestral way of life to a more sedentary lifestyle.

<sup>92</sup> Vid. for example, JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 13; and OTUNNU, O., "Environmental refugees in...", *op. cit.*, p. 12, both blaming the colonial past and the subsequent integration of the Sahel and sub-Saharan Africa into the international capitalist economy for unsustainable land-use changes that would be behind the fragility of African economic and agricultural systems. Otunnu also criticises structural adjustment policies in sub-Saharan Africa which, in his opinion, "have led only to more political, social, economic and environmental crises for the majority of the people" (*ibid.*, p. 14). Similarly, ISLAM, M., "Natural calamities and...", *op. cit.*, p. 9, points out that "[i]n a peripheral, neo-colonial state such as Bangladesh, the laws of motion of peripheral capitalist movement breed squatters



However, short-sighted development policies fail to consider, for example, that a fish shoal or a forest that is fished or logged beyond a critical point does not recover<sup>93</sup>, or that marginal land, while it may be suitable for traditional small-scale grazing or agriculture, is likely to be rapidly depleted under intensive large-scale exploitation<sup>94</sup>. The Philippines or Haiti are recurrently mentioned as illustrative examples of how the impact of natural resource depletion on national economies, combined with rapid population growth, leads to political instability, conflict and ultimately population movements<sup>95</sup>.

### C) Lack of resources for adaptation

The last factor associated with the more significant impact of environmental change on population movements in developing countries that the "maximalist" authors refer to is the impossibility of adapting to them. Thus, these authors argue that Third

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and slum dwellers", as they lead the government to prioritise other sectors, such as defence, over the implementation of natural disaster protection strategies such as cyclones or floods, which are what actually uproot people from the lower social strata into urban slum dwellers.

The influence of the international economic system on the ill-development of developing countries has recently been underlined by PENTINAT, S.B., "Análisis jurídico del principio de responsabilidades comunes, pero diferenciadas", *Seqüência: estudos jurídicos e políticos*, Vol. 25, N. 49, 2004, pp. 165-166. CERVER VALLTERRA, M., "Erradicar la pobreza global: un imperativo moral y un compromiso jurídico", *Revista Boliviana de Derecho*, No. 28, 2019, pp. 562-585. CAVANAGH, J.; GEORGE, S., "The first boomerang: The Environment", in: George, S., *The Debt Boomerang: How Third World Debt Harms Us All*, eBook Published, New York (USA), Routledge, 2009, 33 pp., arguing that the accumulation of debt in the Third World, and the structural adjustment policies imposed by the World Bank and the International Monetary Fund for its repayment, force developing countries into unsustainable economic development that wreaks havoc on the environment.

<sup>93</sup> This non-linear relationship between the exploitation of a natural resource and nature's ability to regenerate it results in what Myers calls "environmental discontinuity" –i.e. the complete depletion of the resource beyond any possibility of its natural restoration. Although any natural resource is susceptible to overexploitation, it is in the so-called renewable natural resources, such as fuel-wood and fish stocks, soil cover, water supplies and natural sinks for absorbing atmospheric pollution, that Myers identifies the greatest environmental discontinuities (vid. MYERS, N., "Population/Environment Linkages...", *op. cit.*, p. 117). In this regard, TUCHMAN, J., "Redefining Security", *op. cit.*, p. 164, notes the paradox implicit in the distinction between these natural resources and the so-called non-renewable resources, such as coal, oil and minerals. Thus, while the latter are in fact inexhaustible, renewable resources may indeed be finite. Tuchman illustrates this by pointing out that "we will never pump the last barrel of oil", because scarcity will make its extraction unprofitable. Conversely, "a species driven to extinction will not reappear, and eroded topsoil cannot be replaced (except over geological time)".

<sup>94</sup> Vid. WESTING, A., "Population, Desertification, and Migration", *op. cit.*, p. 111. In the same vein, JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 14.

<sup>95</sup> Regarding the Haitian case, vid. *inter alia*: JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, pp. 15 *in fine* and 16; TUCHMAN, J., "Redefining Security", *op. cit.*, p. 168; or MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, pp. 34-36. For the Philippines, vid., *inter alia*, MYERS, N., "Environment and Security", *op. cit.*, pp. 25-27; or TUCHMAN, J., "Redefining Security", *op. cit.*, p. 167, linking the fall of the Marcos regime to environmental decline. Apart from Haiti or the Philippines, MYERS, N., "The Environmental Dimension...", *op. cit.*, p. 252, mentions other countries where prolonged environmental degradation, aggravated by rapid population growth and flawed development policies, decimated the natural resource base that sustained agriculture, fuelling food riots –e.g., in Bangladesh, Egypt, Tunisia, Morocco, Morocco, Zambia, Colombia, Brazil, Bolivia, Haiti and the Dominican Republic.

World countries, unlike developed countries, lack the financial means, intellectual/human capital and institutional capacity to prevent natural hazards from turning into environmental disruptions that force their populations to migrate<sup>96</sup>. For this reason, Myers and Kent stress the need to distinguish between a country's susceptibility to natural hazards and its vulnerability – i.e. its capacity to adapt to them. They cite as an example the Netherlands and Egypt, which have similar susceptibility to sea-level rise<sup>97</sup>. El-Hinnawi does the same, comparing Japan and Nicaragua and their propensity to suffer heavy earthquakes<sup>98</sup>. However, despite their similar susceptibility, Egypt and Nicaragua are far more vulnerable to the effects of these natural disasters than their developed counterparts.

For the authors cited above, the reason for this greater vulnerability is not that Egypt will experience a higher relative sea-level rise than the Netherlands, as most of the latter's territory is actually below sea level. Nor is it because earthquakes are less intense or frequent in Japan than in Nicaragua, as both countries are located in geologically unstable areas with similar seismic activity. The explanation lies in the unequal level of development between the two countries, which allows, for example, the Netherlands to afford to build engineering mega-structures to protect against floods and sea-level rise that would be unfeasible for Egypt<sup>99</sup>; or Japan to implement strict building codes, zoning plans that exclude hazardous areas, earthquake drills and effective communication systems to warn the population<sup>100</sup> that Nicaragua, with a fragile government still mired in heavy social and political tensions, lacks<sup>101</sup>.

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<sup>96</sup> *Inter alia*, HOMER-DIXON, T.F., "On the Threshold...", *op. cit.*, p. 88. EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 22, noting that "[m]ost disaster problems in developing countries are unsolved development problems". TUCHMAN, J., "Redefining Security", *op. cit.*, p. 170, referring to adaptation to climate change. Differences in countries' adaptation possibilities to sea-level rise are highlighted in: JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 37; and MYERS, N., "Environmental Refugees...", *op. cit.*, p. 753.

<sup>97</sup> MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, pp. 134 *in fine* and 135.

<sup>98</sup> EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 6 *in fine* and 7.

<sup>99</sup> MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, pp. 134 *in fine* and 135. Referring also to the Netherlands, JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 37, reporting that this country "will have to expend at least \$5 billion by 2040 shoring up dikes and increasing drainage capacity to save their delta region". In general, Jacobson points out that "[p]rotecting shorelines and wetlands, not to mention the infrastructure and water supplies of coastal cities, will require billions of dollars, perhaps even more than many well-off nations will be able to pay" (*id.*).

<sup>100</sup> EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 6 *in fine* and 7.

<sup>101</sup> When El-Hinnawi published his book in 1985, Nicaragua was still in the midst of the second phase of the Sandinista Popular Revolution. Although the conflict formally ended in 1990, the shadow of a new civil war in Nicaragua still looms over the country (*vid.* EFE, "Alertan por una guerra civil en Nicaragua", *El País*, 14 January 2019 [last access: 14/01/2019]).

"Maximalist" authors note how this asymmetrical capacity to adapt to natural hazards will further aggravate the gap between the First and the Third World<sup>102</sup>, due to the greater material losses that natural disasters tend to cause in developing countries<sup>103</sup>. In turn, this greater environmental vulnerability of States results in the further impoverishment of their populations<sup>104</sup>. Again, the lowest social strata are the most affected since, given the precarious situation in which they find themselves, they struggle the most to replace the belongings that have been destroyed by the natural disaster<sup>105</sup>. Once they have lost everything, migration, mainly to the big cities, appears as the only alternative<sup>106</sup>.

### 1.3.3. Assessment of the "maximalist" vision

After reviewing the "maximalist" literature, the conclusion is that the explanation offered by these authors for how environmental changes cause migration flows is quite close to neoclassical migration models, based on push and pull factors in the place of origin and the place of destination. As Morrissey points out, the "maximalist" authors would have substituted wages for environmental vulnerability<sup>107</sup>. Thus, while in traditional neoclassical models it is low wages that act as a push factor to migrate to other places with better job opportunities<sup>108</sup>, in the "maximalist" literature is the greater

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<sup>102</sup> TUCHMAN, J., "Redefining Security", *op. cit.*, p. 170.

<sup>103</sup> For instance, MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 25, compare the losses caused by Hurricane Hugo in 1989, which amounted to less than half of one per cent of US GNP, with the 1982-83 losses caused by El Niño in Ecuador, Peru and Bolivia, which amounted to almost 10 per cent of those countries' GNP. Furthermore, they report that the losses caused by the September 1988 cyclone in the Bay of Bengal (Bangladesh) were equivalent to no less than six months of economic growth. Focusing on material damage caused by earthquakes in developed and developing countries, EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 20, notes that the 1972 earthquake in Managua, Nicaragua, caused US\$800 million in economic losses, compared to US\$535 million for the 1971 San Fernando earthquake in the United States, both earthquakes being of similar magnitude. Concerning floods, ISLAM, M., "Natural calamities and...", *op. cit.*, pp. 8-9, reports data on the huge material and human losses caused by the 1988 flood in Bangladesh, mainly among low-income families.

<sup>104</sup> In this regard, ISLAM, M., *op. cit. supra*, p. 5, identifies the repeated incidence of natural calamities striking a country, as in Bangladesh, as a crucial factor in the impoverishment of the population.

<sup>105</sup> *Ibid.*, p. 7, noting that "the loss incurred by the poorer families among the victims is proportionately greater compared to their capacity to sustain such losses". In the same vein, OTUNNU, O., "Environmental refugees in...", *op. cit.*, p. 11, concluding that "[e]nvironmental catastrophes have far more devastating impacts on (...) the most vulnerable groups in their societies" such as the poor.

<sup>106</sup> Vid. ISLAM, M., "Natural calamities and...", *op. cit.*, p. 7, exposing the plight of the thousands of displaced Bangladeshis who, beaten by repeated floods, ended up scattered across the many shanty towns and squatter settlements that surround the slums of Dhaka city.

<sup>107</sup> MORRISSEY, J., "Rethinking the 'debate...', *op. cit.*, p. 44.

<sup>108</sup> Vid. STEPHEN CASTLES, S.; DE HAAS, H; MILLER, M.J., "Theories of Migration", *op. cit.*, p. 29.

vulnerability of an ecosystem that pushes its inhabitants to move to other ecosystems that they perceive as more resilient and, therefore, with better habitability conditions<sup>109</sup>.

A second similarity has to do with conceiving migrants as rational actors. In the neoclassical economics theory, migration results from a cost-benefit calculation that leads individuals to expect a positive net return, usually monetary, from moving – i.e. an individual rationally decides to move to maximise its labour force<sup>110</sup>. Similarly, "maximalist" reasoning assumes that displacement will occur "as the rational end point of vulnerability"<sup>111</sup>. As long as the incentives to stay outweigh environmental vulnerability, people will stay. These incentives would include all kinds of ties to the site of origin, whether cultural, familial or material – e.g. ownership of real estate or even the prospect of acquiring more<sup>112</sup>. As Jacobson points out: "People are willing to tolerate a wide range of [environmental] threats to health and longevity"<sup>113</sup>. Migration would thus present itself as a last-resort response, once environmental vulnerability has turned into an environmental disruption that threatens the very survival.

Regarding the role of political, economic and social factors, in neoclassical theories they are considered as distortions of perfect markets affecting migration costs<sup>114</sup>. As seen above, for the "maximalist" authors, these non-environmental factors, mainly in the form of rapid population growth, poverty and misconceived development policies, would act similarly, distorting the balance of ecosystems by accelerating their degradation or preventing their restoration through adaptation. Therefore, political,

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<sup>109</sup> The "push and pull" terminology is indeed used by "maximalist" authors to express the relationship between environmental changes and migration. For example, Richmond, A., *Global Apartheid: Refugees, Racism and the New World Order*, Toronto (Canada), Oxford University Press, 1994, as cited by O'LEAR, S., "Migration and the Environment...", *op. cit.*, p. 614, argues that global warming, air and water pollution, and ozone depletion need to be recognized as legitimate "push" factors of forced migration. MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, pp. 26-27, when dealing with multicausality, highlight that "[t]he principal question here lies with the particular contributions of "environmental push" and "economic pull"", pointing out that, while neither need be the exclusive cause of migration, the environmental factor was always "a necessary cause" in the cases examined in the book. MYERS, N., "The Environmental Dimension...", *op. cit.*, p. 254; or DÖÖS, BO R., "Can large-scale...", *op. cit.*, p. 41, both also using push-pull models to explain environmental migration, reaching the same conclusion that, although the environmental factor is not the only trigger for migration, it always seems to assume a determining role.

<sup>110</sup> Vid. MASSEY, D.S. ET AL., "Theories of International Migration...", *op. cit.*, pp. 434-435.

<sup>111</sup> MORRISSEY, J., "Rethinking the 'debate...', *op. cit.*, p. 44.

<sup>112</sup> Vid. EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 16, noting that most people in the coastal lowlands of Bangladesh, despite being aware of flood hazards and opportunities elsewhere, do not migrate because the incentives to stay are still strong, including the prospect of acquiring more land in these disaster-prone areas, taking advantage of the fact that demand there will be low.

<sup>113</sup> JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, p. 6.

<sup>114</sup> Vid. STEPHEN CASTLES, S.; DE HAAS, H; MILLER, M.J., "Theories of Migration", *op. cit.*, p. 31.

economic and social factors would render ecosystems more vulnerable to environmental shocks that force their inhabitants to migrate.

However, in functionalist theories, migration is viewed as a positive "compensatory" mechanism, eventually leading to an equilibrium in employment and wages between the place of origin and destination, and thus to the end of the need to migrate<sup>115</sup>. In contrast, for "maximalist" authors, migration is a source of conflict, as it increases pressure on destination ecosystems, aggravating environmental degradation and generating competition between newcomers and local communities for the control of natural resources<sup>116</sup>. In this aspect, "maximalist" authors are closer to historical-structural theories. If these models postulate that migration leads to greater rather than less imbalance, as it widens the gap between rich and poor countries<sup>117</sup>, for the "maximalist" authors, migration spreads environmental degradation, thus perpetuating the need to move.

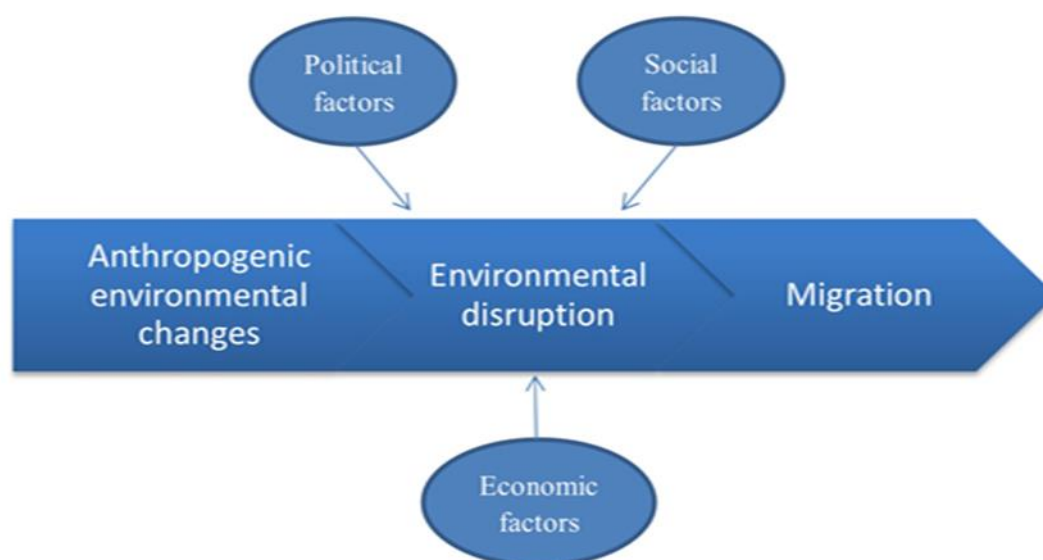
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<sup>115</sup> Vid. MASSEY, D.S. ET AL., "Theories of International Migration...", *op. cit.*, pp. 433, noting that, once equilibrium has been reached, the wage differential between the places of origin and destination only reflects the costs of travel, both financial and psychological.

<sup>116</sup> Vid., *inter alia*, EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 5 *in fine* and 12, noting that the influx of environmentally displaced persons creates a number of environmental, socio-economic and cultural problems for the inhabitants of the host areas which can lead to clashes between them and the newcomers. WESTING, A., "Population, Desertification, and Migration", *op. cit.*, p. 112, also exposing the social, economic and political consequences of environmental migration at sites of destination. TUCHMAN, J., "Redefining Security", *op. cit.*, p. 168, concluding that wherever they settle, "they flood the labor market, add to the local demand for food and put new burdens on the land, thus spreading the environmental stress that originally forced them from their homes". HOMER-DIXON, T.F., "On the Threshold...", *op. cit.*, p. 97, identifying population displacement as one of the four social impacts caused by environmental degradation that could substantially increase the likelihood of acute conflict in developing countries. In the same vein, DÖÖS, BO R., "Can large-scale...", *op. cit.*, p. 48, stating that "[c]learly, such migrations are likely to generate problems and disturbances ranging from political instability to civil wars and international conflicts". Myers even states that there would already have been conflicts induced by environmentally-driven migration (vid. MYERS, N., "Environment and Security", *op. cit.*, p. 34, citing the so-called Soccer War between El Salvador and Honduras as an example of tensions and conflicts arising from environmental migration; or MYERS, N., "The Environmental Dimension...", *op. cit.*, p. 251, describing how Ethiopia's sharp agricultural decline pushed multitudes of impoverished peasants into the country's lowlands, including the Ogaden area along the border with Somalia, a traditionally disputed area between the two countries, leading to an escalation of hostilities in 1977).

<sup>117</sup> Vid. STEPHEN CASTLES, S.; DE HAAS, H; MILLER, M.J., "Theories of Migration", *op. cit.*, p. 32.

**Figure 2-The "maximalist" view of environment-related migration**



#### **1.4. Critique of the "maximalist" conception: the "minimalist" perspective on environmental migration**

Criticisms of these early explanations developed by ecology and security scholars of how environmental change drives population movements began to come from experts in the field of migration and refugee studies<sup>118</sup>. These criticisms of "maximalist" reasoning largely resonate with the same criticisms that the migration literature in general has made of the neoclassical push-pull models on which the "maximalist" literature draws. Thus, just as in the past the theoretical models of migration that emerged after functionalist theories relativised the weight of wages and labour supply and demand in the decision to migrate in favour of other structural and limiting factors of migration, migration scholars "minimise" the primacy given to the environment in the "maximalist" literature.

The "minimalist" criticisms can be summarised as follows: a) "maximalist" authors fail to take into account human capacity to adapt to environmental stress and ignore migration as a form of adaptation to it; b) they accept an ahistorical and

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<sup>118</sup> Vid. *inter alia*, MCGREGOR, J., "Refugees and the Environment", in: Black, R.; Robinson, V. (eds.), *Geography and Refugees: Patterns and Processes of Change*, London and New York, Belhaven Press, 1993, pp. 157-170. MCGREGOR, J., "Climate change and involuntary migration: Implications for food security", *Food Policy*, Vol. 19, Issue 2, 1994, pp. 120-132. KIBREAB, G., "Environmental Causes and...", *op. cit.* BLACK, R., "Environmental refugees: myth or reality?", *New issues in refugee research*, Working paper No. 34, UNHCR, March 2001, 19 pp. CASTLES, S., "Environmental change and forced migration: making sense of the debate", *New issues in refugee research*, Working paper No. 70, UNHCR, October 2002, 14 pp. MORRISSEY, J., "Rethinking the 'debate...', *op. cit.*

depoliticised conception of the Third World that deprives it of any capacity to adapt to environmental challenges; c) and they assume an oversimplified conception of the decision to migrate that overlooks its multi-causal nature.

#### 1.4.1. Human capacity to cope with environmental stress

Neither push-pull models nor the "maximalist" reasoning inspired by them leave room for *human agency*, "which is the limited, but real capacity of human beings to make independent decisions and to change structural conditions"<sup>119</sup>. In functionalist theories, individuals are presented as socially isolated subjects within a system who react passively to certain external pressures in the same way: by migrating<sup>120</sup>. Similarly, as Morrissey points out, the "maximalist" explanation of so-called environmental migrations simply describes how certain changes in the environment or in its resource base will generate stress in households, assuming straightaway that migration will arise as the only possible response<sup>121</sup>. Consequently, "maximalist" authors seem to assume "a simple and direct cause-and-effect link" between environmental change and migration<sup>122</sup>, in what Castles calls a "common sense" assumption: "if water level rise, or forests disappear, it seems obvious [to the "maximalist" authors] that people will have to move", he adds<sup>123</sup>.

The "minimalist" literature criticises that these "common-sense models", like their neoclassical predecessors, overlook that human reaction to external stressors is rarely identical<sup>124</sup>, and thus ignore "the differential way in which people living in hazardous environments incorporate risk into their livelihoods and in so doing shape the contours of the risk itself"<sup>125</sup>. Therefore, human adaptation to environmental stress can manifest

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<sup>119</sup> STEPHEN CASTLES, S.; DE HAAS, H; MILLER, M.J., "Theories of Migration", *op. cit.*, p. 31.

<sup>120</sup> Id.

<sup>121</sup> MORRISSEY, J., "Rethinking the 'debate...', *op. cit.*, p. 43. In the same vein, MCGREGOR, J., "Climate change and involuntary migration...", *op. cit.*, p. 120 *in fine*.

<sup>122</sup> As noted by MCGREGOR, J., *op. cit. supra*, p. 121; LONERGAN, S., "The Role of...", *op. cit.*, p. 8; and in SUHRKE, A., "Pressure Points: Environmental...", *op. cit.*, p. 6; and SUHRKE, A., "Environmental Degradation and...", *op. cit.*, pp. 474 and 477, when she is describing the "maximalist" view.

<sup>123</sup> CASTLES, S., "Environmental change and...", *op. cit.*, p. 3 [bracketed text added]. In the same vein, PERCH-NIELSEN, S.L.; BÄTTIG, M.B.; IMBODEN, D., "Exploring the link between climate change and migration", *Climatic Change*, Vol. 91, Issue 3-4, December 2008, pp. 375 *in fine* and 376.

<sup>124</sup> KIBREAB, G., "Climate Change and Human Migration: a Tenuous Relationship Symposium", *Fordham Environmental Law Review*, Vol. 20, No. 2, 2017, Article 2, p. 380.

<sup>125</sup> MCGREGOR, J., "Climate change and involuntary migration...", *op. cit.*, p. 120 *in fine*. Also LONERGAN, S., "The Role of...", *op. cit.*, p. 8; and PERCH-NIELSEN, S.L.; BÄTTIG, M.B.; IMBODEN, D., "Exploring the link...", *op. cit.*, p. 376, both stressing that the maximalist reasoning fails to take into consideration the role of adaptation.

itself through multiple strategies, with migration being only one possible option<sup>126</sup>, and at all levels: state, community, family and individual.

For expository purposes, the term adaptation *stricto sensu* is reserved for those strategies to minimise environmental vulnerability which, due to their large scale, can only be implemented by public authorities (vid. next sub-section). In contrast, the different ways in which an individual or household can cope with environmental stress at the local level, discussed below, are referred to as coping strategies.

### **A) Vulnerability and resilience to cope with environmental stress without migrating**

Migration studies emphasise the role that economic, social, cultural or even demographic factors, such as age, gender or health condition, play in people's capacity and disposition to migrate<sup>127</sup>. The "minimalist" authors argue that these same factors determine whether individuals, as well as the households they belong to, are more or less willing and able to cope with environmental stress without resorting to migration<sup>128</sup>. Kibread refers to these different thresholds of tolerance to environmental change as "vulnerability"<sup>129</sup>, although the same idea is hinted at in the work of other "minimalist" authors. For instance, Perch-Nielsen et al. refer to a study by McLeman and Smit, analysing migration patterns in rural eastern Oklahoma during the droughts and floods of the 1930s, which found that the differences between migrants and non-migrants lay

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<sup>126</sup> KIBREAB, G., "Climate Change and Human Migration...", *op. cit.*, p. 380. Also, MCGREGOR, J., "Climate change and involuntary migration...", *op. cit.*, p. 122, pointing out that "[m]igration is usually only one of a variety of survival strategies pursued by families either simultaneously or consecutively with other strategies".

<sup>127</sup> Vid. STEPHEN CASTLES, S.; DE HAAS, H; MILLER, M.J., "Theories of Migration", *op. cit.*, p. 31, criticising neoclassical migration theory.

<sup>128</sup> In this regard, PERCH-NIELSEN, S.L.; BÄTTIG, M.B.; IMBODEN, D., "Exploring the link...", *op. cit.*, p. 380, review various case studies of sudden-onset natural hazards that would evidence the differential effects of these various factors on the decision to migrate. Vid. also, MORRISSEY, J., "Environmental change and...", *op. cit.*, p. 35, referring to his 2008 Master's thesis in Development Studies on environmental change and migration in Ethiopia, where he discusses the way in which land ownership, family size, age, ethnicity, gender, and access to capital and skills influenced the decision and possibility to migrate, as well as the choice of destination. Cf. with a "maximalist" author as OTUNNU, O., "Environmental refugees in...", *op. cit.* p. 11, noting that the impacts of environmental disasters differ by gender, age, class and region. Thus, he is indirectly assuming that the relationship between environmental stress and migration is not always so direct, but may depend on the resilience of those affected, which will be determined by all those factors.

<sup>129</sup> In KIBREAB, G., "Climate Change and Human Migration...", *op. cit.*, pp. 375-377. Kibread states that "responses to environmental processes and events are widely varied depending on their *vulnerability and resilience*" (*ibid.*, p. 375) [italics added]. However, vulnerability and resilience are two sides of the same coin –i.e. vulnerability would imply a lack of resilience capacity and vice versa.



in their different economic, social and cultural endowments<sup>130</sup>. McGregor, on his part, quotes a study by Shaw on floods and gender in Bangladesh where the author concludes:

"Floods not only have varying consequences for rich and poor, men and women, and rural and urban dwellers, *but their very nature as hazards is constituted by these and other forms of human social difference*"<sup>131</sup>.

Similarly, Black notes an interesting nuance to Findley's findings in her study of migration from rural Mali during the 1983-1985 drought, which would be consistent with the argument that demographic factors such as age and gender do indeed play a role in determining, for example, which household members migrate in the face of environmental stress. Thus, during the drought of the mid-1980s, hitherto predominantly male migration (defined as leaving for a period of six months or more) declined, while the circulation process (defined as leaving for less than six months, and involving many more women and children) did increase during the peak of the drought<sup>132</sup>. This finding would show how, during the drought, migration of family members considered more vulnerable took precedence, while men, generally more resilient, remained and coped with the adversities of the drought.

The idea underlying all the above examples is the same: vulnerability determines tolerance to environmental stress and, consequently, has a direct bearing on the decision to migrate. Vulnerability – or resilience from the flipside - would result from a combination of three variables: the capacity to resist or withstand the adverse effects of rapid- or slow-onset environmental disruption, the ability to recover from its consequences after its impact, and the subjective perception of the very danger posed by

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<sup>130</sup> PERCH-NIELSEN, S.L.; BÄTTIG, M.B.; IMBODEN, D., "Exploring the link..., *op. cit.*, p. 380. As the authors point out, the key question is which endowments have which effects. However, the literature review of empirical studies they do shows that the answer is far from peaceful. Thus, for example, most of the studies reviewed by the authors indicate that landowners and homeowners are less likely to migrate than renters, which would be in line with the findings of Morrissey's Master's thesis, which also finds that land ownership reduces the likelihood of migration (in MORRISSEY, J., "Environmental change and..., *op. cit.*, p. 35). However, Perch-Nielsen et al. also cite other studies showing the opposite effect. The studies reviewed by these authors on the role of wealth and income in the decision to migrate are even more contradictory in their results.

<sup>131</sup> Shaw, R., "Nature, culture and disasters; floods and gender in Bangladesh", p. 200, in: Croll, E.; Parkin, D., *Bush Base, Forest Farm. Culture, Environment and Development*, London (UK), Routledge, 1992, 276 pp., as reproduced by MCGREGOR, J., "Climate change and involuntary migration..., *op. cit.*, p. 121 [italics added].

<sup>132</sup> Vid. BLACK, R., "Environmental refugees: myth..., *op. cit.*, p. 7. A contemporary study on gender, poverty and migration related to climate change can be found in BORRÀS PENTINAT, S., "Climate migration, gender and poverty", in: Jaria i Manzano, J.; Borràs Pentinat, S. (eds.), *Research Handbook on global climate constitutionalism*, Edward Elgar Publishing, 2019, pp. 216-234.

the natural hazard<sup>133</sup>. Since the degree of vulnerability differs from one individual or household to another, the "minimalist" authors argue that the response to "commonly faced environmental risks" are not uniform, as the "maximalists" hold<sup>134</sup>. On the contrary, the "minimalist" literature presents several empirical studies that show how, confronted with the same situation of environmental stress, some people chose to migrate while others decided to stay and cope with it<sup>135</sup>.

Endowment differences are also hinted at in migration studies as an explanation for different household responses to the impact of environmental stressors on income or food supply, such as periods of drought affecting crops and livestock in arid and semi-arid regions like the Sahel<sup>136</sup>. Whilst some households may cope with income or food shortages by selling assets such as cattle or other valuables, wage labour, small trade, handicrafts, borrowing money or food, or even consuming wild animals or food obtained naturally from the environment, such as berries, fruits or seeds<sup>137</sup>, those without such resilience capacity may adapt through migration.

On the other hand, the reaction of the Bangladeshi population to the floods that devastated the country in 1988 is a clear example of how the perception of risk itself also modulates people's migratory response to the same environmental threat. Shaw

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<sup>133</sup> The first two components of vulnerability stem from KIBREAB, G., "Climate Change and Human Migration...", *op. cit.*, pp. 375. In particular, he observes that the "inability to reconstruct livelihoods after being struck by such a disaster (...) makes the group more vulnerable to the effects of future disasters (id.). Note the similarities of this assertion with those made by "maximalist" authors such as ISLAM, M., "Natural calamities and...", *op. cit.*, p. 5, identifying the repeated incidence of natural calamities as a crucial factor in the impoverishment of the population. The third component, referred to the subjective perception of natural hazards, is derived from MCGREGOR, J., "Climate change and involuntary migration...", *op. cit.*, p. 120 *in fine*, and his statement about how people shape the contours of risk. A similar conception of vulnerability seems to be assumed by PERCH-NIELSEN, S.L.; BÄTTIG, M.B.; IMBODEN, D., "Exploring the link...", *op. cit.*, p. 383, as they define it as a function of both exposure to natural hazards and sensitivity –sensitivity being defined as "the degree to which a system is affected by a given exposure".

<sup>134</sup> Vid. KIBREAB, G., "Climate Change and Human Migration...", *op. cit.*, pp. 375 *in fine* and 376, stressing once again that "[t]his is because, inter alia, people's resource endowments and consequently their adaptive capacities are varied" (*ibid.*, p.380).

<sup>135</sup> In this regard, MCGREGOR, J., "Climate change and involuntary migration...", *op. cit.*, p. 122, points out that "[s]tudies of migrants' actual decisions to flee show that they are commonly much more complex than a simple 'environmental' push as implied in studies of the effects of climate change".

<sup>136</sup> Vid., in general, *ibid.*, p. 122; or KIBREAB, G., "Climate Change and Human Migration...", *op. cit.*, pp. 381 *in fine* and 382. Focusing on drought-related famines in arid and semi-arid regions, vid. BLACK, R., "Environmental refugees: myth...", *op. cit.*, p. 6, who cites a paper from Peter Cutler on the behaviour of farmers in northern Ethiopia in anticipation of famine and a chapter written by Johann Pottier on migration as a hunger-coping strategy, with particular attention to gender and historical change.

<sup>137</sup> Vid. footnote *supra*. Cutler develops a typology of responses to famine consisting of five phases, the last and most severe being migration. Pottier criticises, however, these sequential typologies in which migration is assumed to be "an 'end result' that can be labelled simply as a 'problem'", when for him it is often part of the solution to famine for those affected (in: BLACK, R., *op. cit. supra*, p. 6).

describes how some families decided to stay on the roof of their homes while others moved to relief camps. The decision to move or stay was based on a weighing of risks. On the one hand, those who stayed did so because they perceived the danger of remaining in the flooded areas to be less than the risk of having their possessions stolen or their homes occupied while in the emergency camps, or the reduced privacy and *purdah* of the women there. For those who left, however, food insecurity, dirty water, the presence of pirates and the threat of snakebites that came with living on rooftops were more pressing. Shaw notes that it was often a serious illness or near-fatal accident to a child – such as a fall in floodwater – that reversed the order of priorities and precipitated families who had initially decided to stay to move to relief camps<sup>138</sup>.

Similarly, when it comes to communities living in ecosystems prone to natural stresses, their inhabitants tend to be more resilient, having incorporated environmental vulnerability as part of their way of life, which makes them less likely to resort to migration to cope with environmental stresses that are common for them<sup>139</sup>. For example, referring to the Horn of Africa, which is one of the arid and semi-arid regions most often mentioned in the "maximalist" literature as a hotspot for environmental migration flows, Kibreab points out instead how rural populations have developed strategies that allow them to maximise the use of a scarce resource such as water. Thus, pastoralists raise livestock species with different water needs, such as camels, cows, sheep and goats. During the dry season, species that need to be watered more frequently are favoured. For their part, smallholder farmers avoid or minimise the risk of water scarcity leading to crop failure or low yields by growing crop varieties that mature quickly and require little irrigation<sup>140</sup>.

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<sup>138</sup> As reported by MCGREGOR, J., "Climate change and involuntary migration...", *op. cit.*, p. 122. Cf. with KIBREAB, G., "Climate Change and Human Migration...", *op. cit.*, p. 381, assuming that the option of "stay put and face the consequences (...) can only happen when the environmental stressor in question is not related to sudden onset natural disaster, such as floods, forest fires, hurricanes, earthquakes, volcanic eruptions and tornadoes or sudden/man-made disasters, such as the Bhopal chemical spill, and the nuclear accident in Chernobyl". However, Shaw's study shows that even in the case of rapid-onset disasters there is still room for those affected to decide to "stay put and face the consequences". It will depend on how the severity of the danger is perceived by those exposed to it. Indeed, even in the case of the Chernobyl accident, there were people who decided to return home despite the fear that still persists today because of radioactive contamination (vid. BBC NEWS, "Chernobyl: cómo viven quienes volvieron a la zona del peor accidente nuclear de la historia", 6 January 2020 [last access: 06/01/2020]).

<sup>139</sup> In this vein, KIBREAB, G., "Climate Change and Human Migration...", *op. cit.*, p. 376, notes that "[s]uch coping strategies are built on the basis of the assumption that the future hazard is likely to be similar to the one that struck in the past".

<sup>140</sup> In KIBREAB, G., "Climate Change and Human Migration...", *op. cit.*, p. 377.

In short, Kolmannskog sums up this first critique of "maximalist" reasoning by observing that:

"Humans are not entities that can be understood easily within the natural science reductionist/isolationist cause and effect framework. *Migrants should no more than others be reduced to and seen as mere passive victims.* There is a myriad of factors in a person's life that may motivate him or her to act in one way or another and the degree of force will vary"<sup>141</sup>.

## **B) Migration as a coping strategy to environmental stress**

The very resort to migration, either simultaneously or consecutively with other non-migratory coping strategies, is perceived by migration experts as another sign of *human agency* rather than the consequence of an ecosystem increasingly hostile to human life, as the 'maximalists' do<sup>142</sup>. Herein lies one of the main differences in the way the environmental and migration literature addresses environmental change and population displacement. As Morrissey notes, "maximalist" authors seem to assume a sedentary conception of society, in which migration appears as an exceptional response to some environmental disruption of normal life<sup>143</sup>. By contrast, the "minimalist" authors explain migration by adopting the theoretical framework of the new economics of migration<sup>144</sup>. That is, migration understood as a regular component of the economic and social structure of rural regions of the Third World, traditionally exposed to

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<sup>141</sup> KOLMANNSKOG, V., "Future Floods of refugees: a comment on climate change, conflict and forced migration", NRC, 2008, p. 11.

<sup>142</sup> Vid., *inter alia*, KIBREAB, G., "Climate Change and Human Migration...", *op. cit.*, p. 376, noting that those who lack economic and social endowments may adapt to environmental stress "by resorting to seasonal or permanent migration". BLACK, R., "Environmental refugees: myth...", *op. cit.*, p. 6, who, when addressing migration resulting from drought and desertification, finds "movement of people [to be] a response to spatio-temporal variations in climatic and other conditions, rather than a new phenomenon resulting from a physical limit having been reached" [verb form changed]. MCGREGOR, J., "Climate change and involuntary migration...", *op. cit.*, p. 122, observing that "[m]igration is usually only one of a variety of survival strategies pursued by families either simultaneously or consecutively with other strategies" for dealing with environmental constraints. Of the same view, BILSBORROW, R.E., "Rural Poverty, Migration, and the Environment in Developing Countries: Three Case Studies", *Background paper for World Development Report 1992*, World Bank, November 1992, p. 3.

<sup>143</sup> MORRISSEY, J., "Rethinking the 'debate'...", *op. cit.*, p. 44.

<sup>144</sup> Cf. MCGREGOR, J., "Climate change and involuntary migration...", *op. cit.*, p. 122, who refers instead to social networks theory. However, without denying that the choice of migration destination may be largely determined by interpersonal ties between former and potential migrants or by the fact that, for historical reasons, different countries share the same culture, we believe that the "minimalist" understanding of migration as a strategy to cope with the adverse effects of environmental change is best explained through the theory of the new economics of migration.

climatic variations, and not as an abnormal response to a recent environmental deterioration derived from modern societies<sup>145</sup>.

Taking the example of the Sahel region for being one of the most recurrent in the "maximalist" literature, authors such as Black and Kibreab cite studies that would show how rainfall variability and cyclical droughts have been a characteristic feature of that region, forcing its inhabitants to develop migratory strategies that allow them both to diversify income opportunities and to optimise the use of natural resources during the dry season<sup>146</sup>. Black notes that these migratory responses, sometimes spanning decades and often centuries, range from nomadic pastoralism to long-distance trade and the permanent relocation of individuals and families<sup>147</sup>. In these cases, migration not only assumes an economic role, but eventually becomes a way of life, as in the case of nomadic pastoralists; or plays a cultural role, where the migration of young men is seen in society as a rite of passage to manhood<sup>148</sup>.

Additionally, Black cites a research study by David based on fieldwork in four regions of the Sahel: Diourbel (Senegal), Passoré (Burkina Faso), Bankass (Mali) and El Ain (Sudan), which aimed to clarify how and under what circumstances male out-migration impacts on natural resource management in resource-poor areas of the Sahel<sup>149</sup>. In it, David finds that migration in the Sahel

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<sup>145</sup> Vid., for example, BLACK, R., "Environmental refugees: myth..., *op. cit.*, pp. 4-7, who provocatively titles "A 'myth' extended: desertification-induced displacement?" his review of the empirical evidence that desertification and drought actually cause migration in a direct causal relationship as claimed by the "maximalists".

<sup>146</sup> BLACK, R., "Environmental refugees: myth..., *op. cit.*, pp. 5-6. KIBREAB, G., "Climate Change and Human Migration..., *op. cit.*, p. 363, noting that "[a]lthough it is imprudent to deny the link between drought and migration, the generalisation that people inhabiting drought-prone regions are most vulnerable to famine and to environmentally induced large-scale displacement because they lack the capacity to adapt to such environmental conditions is made with limited examination of the long-standing coping strategies developed over time through trial and error". He further adds that "seasonal migration has always been a vital survival mechanism and an integral part of production systems" (*ibid.*, p. 366).

<sup>147</sup> BLACK, R., *op. cit. supra*, p. 5.

<sup>148</sup> *Id.*

<sup>149</sup> Vid. DAVID, R., *Changing places? Women, resource management and migration in the Sahel: case studies from Senegal, Burkina Faso, Mali and Sudan*, London (UK), SOS Sahel, 1995, 169 pp. The study is very interesting because it analyses the results from a gender perspective, examining the effects of husbands' out-migration on their wives and their management of natural resources. The results showed that male out-migration did not generally result in women assuming the role of household head, as they tended to be left in charge of their husband's extended family, nor did it leave them in a more vulnerable situation, as due to the close relationships that exist in the study areas there was a great deal of inter-household support. In this sense, the effects of male migration were felt more by the community as a whole than by individual wives, as co-wives and sisters-in-law helped each other and neighbours and relatives supported women who were alone, thus women took on more responsibility for their immediate family and, in some cases, had to work even harder in the fields or in commercial activities. In this

"does not necessarily signify a rejection of a rural livelihood. Rather, it demonstrates that the survival strategies of rural Sahelians are not only rooted in their immediate vicinity, but are also linked into economies in other rural and urban locations. It is precisely this inter-linkage which supports rural communities and helps them to survive in such climatically unstable environments"<sup>150</sup>.

In this way, as Bilsborrow has pointed out, migration can also be seen as part of the household's survival strategy, which each year distributes the labour of different family members across space and time among various income-generating activities<sup>151</sup>. Thus, additionally to the cultivation of the family-land itself, there is the migration, either long-term or seasonal, part-time or full-time, of some of the household members to undertake agricultural and non-agricultural work in the surrounding area or elsewhere<sup>152</sup>.

Such diversification of income sources through migration reduces the environmental vulnerability of farm households<sup>153</sup>. As such, remittances from migrating family members make it possible to support the household in case the family's main

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respect, male emigration did leave women and children as the largest proportion of the stable working population. However, this did not generally translate into a greater role for women in active decision-making over agricultural and natural resources or changes in the normative gender division of labour. As the gender status quo did not change, male out-migration undermined the emergence of new rural initiatives that could help ensure long-term productivity, thus perpetuating, or even encouraging, the substitution of agricultural work by off-farm income-generating activities. At the same time, with the exception of Mali, remittances tended not to be invested in agriculture, as it was perceived as risky, but in the purchase of additional food, which the author interprets as a consequence of the incorporation of rural society into the cash economy, which also slows down the transformation of agricultural systems, as men, and increasingly women, think more about earning money to buy than about growing food. No evidence was found that male out-migration led women to seek off-farm income-generating activities that would increase pressure on renewable natural resources. Indeed, the study reveals that male out-migration did not alleviate population pressure on natural resources, as the land was usually occupied and worked by other members of the compound or village. Given the diversity of results, the study was inconclusive as to whether out-migration led women to be willing or able to participate in natural resource improvement activities, depending in each case on family structure, gender division of labour, land tenure rights, women's decision-making power and women's workload.

Note the similarity between some of the findings of David's field study and some of the arguments of "maximalist" authors, such as Ot OTUNNU, O., "Environmental refugees in...", *op. cit.* p. 13, regarding poorer families having more children as a means of increasing their labour force; or EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 30, regarding the burgeoning job opportunities in industrial centres attracting farmers to abandon their small plots in search of better and more profitable ways of making a living in the cities, which contributes to land degradation as much as overexploitation itself.

<sup>150</sup> DAVID, R., *Changing places? Women...*, *op. cit.*, p.18.

<sup>151</sup> BILSBORROW, R.E., "Rural Poverty, Migration...", *op. cit.*, p. 3 *in fine*.

<sup>152</sup> *Id.*

<sup>153</sup> *Ibid.*, p. 4. In the same vein, DAVID, R., *Changing places? Women...*, *op. cit.*, p.15, who also underlies that, although "[o]n average (...) remittances were found to be low (...), the sums sent home are vital to food security as they are a way to diversify risks and to provide support in times of harvest failure", concluding that "[o]verall, migration (...) has developed as a survival strategy to diversify risks and effectively maintains, rather than undermines or transforms, rural communities" (*ibid.*, p. 19).

crop fails due to environmental hazards such as drought, floods or storms, or a pest<sup>154</sup>. At the same time, the additional income protects the family from downward fluctuations in crop prices and even serves as an alternative source of capital to finance the purchase of livestock or improve the productivity of farmland<sup>155</sup>. As the new economics of migration theory underlines, migration thereby compensates for the lack of affordable public or private credit and insurance programmes in developing countries<sup>156</sup>.

In view of the above, to make plausible the "maximalist" explanation that migrations are the result of anthropogenic destruction of ecosystems and not the product of failures in the economic and market systems of developing countries, it would be necessary not only to show the existence of population movements that have always occurred in difficult ecosystems, which in Black's view is all that the "maximalist" literature reflects<sup>157</sup>. Instead, the "maximalist" authors would have to provide evidence that these population movements have increased in times or places of greater environmental degradation, something that, according to Black, the "maximalist" literature does not actually demonstrate<sup>158</sup>.

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<sup>154</sup> Vid. MASSEY, D.S. ET AL., "Theories of International Migration...", *op. cit.*, pp. 436 *in fine* and 437, noting: "If crop insurance is not available, families have an incentive to self-insure by sending one or more workers abroad to remit earnings home, thereby guaranteeing family income even if the harvest fails". Also, BILSBORROW, R.E., "Rural Poverty, Migration...", *op. cit.*, p. 4.

<sup>155</sup> Vid. MASSEY, D.S. ET AL., *op. cit. supra*, pp. 437-438, referring to migration as a palliative to poor farm households' lack of access to futures or capital markets.

<sup>156</sup> *Ibid.*, p. 436 *in fine*. Similarly, DAVID, R., *Changing places? Women...*, *op. cit.*, p.19, observing that "[a]s rainfall levels become even more unpredictable [in the Sahel], people seek new ways of ensuring adequate incomes to buy food in times of hunger and to finance changing needs (school fees, medicines, clothes, transport, etc.)" [bracketed text added].

<sup>157</sup> BLACK, R., "Environmental refugees: myth...", *op. cit.*, p. 6, noting, for instance, that "the evidence that is presented for migration as a result of drought and desertification is generally only the existence of migration from regions that are prone to such processes" (*ibid.*, p. 5).

<sup>158</sup> *Ibid.*, p. 5, criticising, for example, Jacobson because she simply "cites a number of Sahelian states in which rural-urban or north-south migration occurred during the drought period of the mid-1980s, or in which significant populations became dependent on food aid, and all of this is taken as *prime facie* evidence that these groups have been forced from desert margins because of declining rainfall". Black reports a study by Findley on emigration from the Senegal River Valley in Mali, which shows "that during the drought of the mid-1980s, migration actually *declined* rather than increased". However, DAVID, R., *Changing places? Women...*, *op. cit.*, p. 2, whose study is also cited by Black in support of his argument, does point out that:

*"Much of the recent population movement experience in the Sahel is a response to environmental stress [from] [c]hanging rainfall patterns and the long term trends to lower total rainfall (...). Statistics portray (...) [that] [i]f two thirty-periods, between 1931-1960 and 1961-1990 are compared, rainfall in the Sahelian region has declined by between 20 and 40 per cent (...). As dry season job opportunities (reliant on higher rainfall levels) die out, expectations change and harvest become even more unpredictable, many are seeking alternative ways of ensuring food security and meeting their cash needs"* [italics and bracketed text added].

#### **1.4.2. An “ahistorical and depoliticised” conception of the Third World which denies developing countries any possibility of adapting to environmental hazards**

The "minimalist" authors draw attention to the fact that, unlike rapid-onset disturbances, such as an industrial accident or a natural catastrophe, slow-onset disturbances would allow human communities to adapt to changes in their ecosystems without having to migrate, due to the progressive and gradual manifestation of their effects. Paradigmatic examples would be the case of soil degradation and, above all, flooding and sea-level rise associated with climate change<sup>159</sup>. However, the "minimalist" authors criticise that the "maximalist" literature does not discuss the role that public adaptation policies can play in protecting populations at risk<sup>160</sup>.

However, this criticism from certain "minimalist" authors is not entirely accurate. As seen in the review of the "maximalist" literature, these authors do consider the possibility of adaptation to environmental change as a strategy to reduce or avoid population movements. Nevertheless, they assume that such adaptation strategies will be unfeasible in developing countries due to the context of poverty and institutional instability in which they find themselves. Morrissey sharply criticises this aspect of the "maximalist" narrative for assuming an "ahistorical and de-politicized" context for the developing world that uses underdevelopment to reinforce the argument of environmental vulnerability as the main driver of migratory movements<sup>161</sup>.

As noted above, for the "maximalist" authors, poverty, along with population growth, plays a prominent role in shaping the vulnerability of societies to environmental

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About this contradiction, KIBREAB, G., "Climate Change and Human Migration...", *op. cit.*, p. 362, notes that "[s]cholarly opinions on the cause of the massive drought that afflicted the Sahel region in the 1970s and 1980s were deeply divided between those who attributed the problem to anthropogenic factors and those who argued that the drought was caused by natural phenomena reflected in natural climate cycle", such as "maximalists" like Myers. However, unlike Black, Kibread accepts that migration has been increased by the severity and intensity of drought in parts of sub-Saharan Africa, although he notes that the explanation cannot be sought solely in environmental or population changes, arguing that the problem of drought in this region has been exacerbated by war, conflict and lack of political stability (*ibid.*, p. 363) –we shall return to this issue of the multi-causality of migration that "minimalist" authors assume as opposed to the environmental mono-causality of "maximalists".

<sup>159</sup> In this regard, PERCH-NIELSEN, S.L.; BÄTTIG, M.B.; IMBODEN, D., "Exploring the link...", *op. cit.*, pp. 382-384, on flood adaptation options; and pp. 387-388 and 389, discussing cost-benefit options for adapting to sea-level rise. LONERGAN, S., "The Role of...", *op. cit.*, p. 11, regarding climate change-associated changes and land degradation. BLACK, R., "Environmental refugees: myth...", *op. cit.*, p. 8, referring to different adaptive responses to flooding and sea level rise.

<sup>160</sup> This criticism is made, for example, by PERCH-NIELSEN, S.L.; BÄTTIG, M.B.; IMBODEN, D., *op. cit. supra*, p. 376; or LONERGAN, S., *op. cit. supra*, pp. 8 and 11, the latter noting that "[n]one of the estimates of migration associated with global warming gives any consideration to adaptation mechanisms".

<sup>161</sup> MORRISSEY, J., "Rethinking the 'debate...', *op. cit.*, p. 44.



change. However, Morrissey points out that these authors often fail to account for the economic and political processes, both historical and contemporary, that produced Third World vulnerability and continue to perpetuate it today. Instead, they seem to assume poverty in them "as the natural and inevitable state of a pre-industrial society", thus denying developing countries any capacity to build societies resilient to environmental change<sup>162</sup>.

Morrissey further criticises the fact that this ahistorical and apolitical account of poverty also serves "maximalist" authors to homogenise the environmental vulnerability of large regions<sup>163</sup>. As McGregor notes, in "maximalist" analyses the relationship between environmental change and migration is often considered "at a very general level", tending to take as a frame of reference to be countries, sub-continent or even entire continents<sup>164</sup>. Against this tendency, Lonergan has written:

"It must be recognized that *the degradation of the environment is socially and spatially constructed*; only through a structural understanding of the environment in the broader political and cultural context of a region or country can one begin to understand the 'role' it plays as a factor in population movement"<sup>165</sup>.

Thus, by adopting macro-geographical frameworks as the spatial reference for their studies, "maximalist" authors ignore "internal differentiations in wealth and power within less industrialized societies (...) [or] technological innovation in local production systems"<sup>166</sup>, therefore overlooking the different adaptive capacities that each of them may have. Accepting that development is the determining factor in adaptation to environmental disruptions, the "maximalist" discourse assumes that all underdeveloped

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<sup>162</sup> Id. Morrissey's critique should be tempered by pointing out that, as the literature review has shown, some "maximalist" authors have indeed taken into account the colonial past or the influence of the international economic system on the detrimental policies that some developing countries have adopted in the management of their natural resources. Yet this nuance does not invalidate Morrissey's critique, as those "maximalist" authors who have considered these other, non-environmental variables have ultimately done so precisely to reinforce the deterministic relationship between poverty, environmental stress –manifested mainly in the degradation of fertile land- and, ultimately, migration as the tragic final outcome.

<sup>163</sup> Id.

<sup>164</sup> MCGREGOR, J., "Climate change and involuntary migration...", *op. cit.*, p. 121.

<sup>165</sup> LONERGAN, S., "The Role of...", *op. cit.*, p. 8 [italics added].

<sup>166</sup> In MORRISSEY, J., "Rethinking the 'debate'...", *op. cit.*, p. 44, when criticising the neo-Malthusian philosophy that underlies the "maximalist" conception of the relationship between man and the environment.

societies without distinction are equally vulnerable to them and, therefore, equally prone to generate environmental migrations to the same extent<sup>167</sup>.

However, against the "maximalist" assumption that future migration due to, for example, sea-level rise will be unavoidable in developing countries, as they will not be able to afford the costs of the defences needed to protect coastal populations, Perch-Nielsen et al. refer to several analyses by economists that suggest the opposite, i.e. that protection will be "an efficient option in many cases, including developing countries"<sup>168</sup>. Thus, regarding floods, the same authors mention different adaptation strategies, with different costs, that would reduce the risk of flood impacts leading to migration of affected populations<sup>169</sup>. Lonergan also finds that, although global warming will have "significant implications for some regions, these changes will occur slowly, and by all accounts, *most communities and regions will be able to adapt without substantial social or economic cost*"<sup>170</sup>.

Leaving aside their differences on the overall capacity of the Third World to adapt to major environmental changes on our planet, there is indeed some consensus among "maximalist" and "minimalist" authors that countries' different levels of development do shape their potential to adapt<sup>171</sup>. However, if it is ultimately the lack of development

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<sup>167</sup> Ibid., p. 44 *in fine*.

<sup>168</sup> PERCH-NIELSEN, S.L.; BÄTTIG, M.B.; IMBODEN, D., "Exploring the link...", *op. cit.*, p. 388. These economic analyses use cost-benefit models to determine the proportion of the coastline to be protected, which indirectly provides an indication of how many people might migrate from areas where the costs of protection against sea-level rise are greater than the material losses that would be avoided (vid. *ibid.*, p. 387). The assets at risk from sea-level rise and the costs of protection were estimated for the following developing countries: Argentina, Nigeria, Uruguay and Venezuela, assuming the most frequent "maximalist" scenario of 1 metre sea-level rise by 2100 (vid., *ibid.*, p. 387, Table 2).

<sup>169</sup> Ibid., p. 383. On the one hand, there are strategies that can reduce exposure to floods –e.g. by controlling heavy rainfall through better watershed management or engineering works. On the other hand, adaptation can reduce the sensitivity of the population to the negative effects of floods –e.g. the risk of crop failure can be minimised by diversifying crops and altering the timing of planting, while crop insurance schemes can also cushion the loss of income from crop failure. Finally, the likelihood of floods causing disease leading to death and displacement can be reduced by improving housing standards, hygienic conditions as well as the medical system. Vid. also, BLACK, R., "Environmental refugees: myth or reality?", *op. cit.*, p. 8, who also refers to many other possible adaptive responses to increasing flooding, including forecasting, the use of warning systems, flood insurance, and relief and rehabilitation efforts.

<sup>170</sup> LONERGAN, S., "The Role of...", *op. cit.*, p. 11 [italics added].

<sup>171</sup> Regarding the "maximalist" authors, we refer to authors like EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 6 *in fine* and 7; or MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, pp. 134 *in fine* and 135, both distinguishing between a country's susceptibility to natural hazards and its vulnerability, so that two countries may be similarly susceptible to the same natural hazard but different in terms of their vulnerability –i.e. in their capacity to adapt to it- because they have different degrees of development. For "minimalist" authors, vid., *inter alia*, LONERGAN, S., "The Role of...", *op. cit.*, pp. 10 *in fine* and 11, recognising that factors such as poverty and resource inequality, coupled with population growth, institutional constraints, and economic insufficiency do affect the ability of communities to adapt to a

that hinders adaptation to environmental change, then it is questionable whether migrations caused by environmental disruptions can actually be labelled "environmental", as the "maximalist" authors argue, since these movements would not be the result of increased environmental vulnerability, but rather the product of inequality between richer and poorer countries.

Loneragan puts it by pointing out that, "people became more vulnerable, not because of environmental degradation, per se, but because of a host of other social, economic and institutional factors"<sup>172</sup>. Therefore, for the "minimalist" authors, what really matters is that developing populations are becoming more vulnerable to environmental change not because they are experiencing greater degradation of their ecosystems than developed communities, but because of these other structural social, political and economic factors which are undermining both their capacity to cope with environmental stress at the micro level and their ability to implement adaptive strategies at the macro scale.

#### **1.4.3. Multi-causality of the decision to migrate**

As seen, there is unanimous criticism from the "minimalists" of the direct cause-and-effect relationship that the "maximalist" literature seems to accept between environmental change and migration. For the "minimalist" authors, this deterministic reasoning is based on the assumption, erroneous in their view, that migration is mono-causal and that the environmental factor can be isolated and decoupled from the rest of social, economic, political and institutional constructs in which it is embedded<sup>173</sup>.

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changing environment. PERCH-NIELSEN, S.L.; BÄTTIG, M.B.; IMBODEN, D., "Exploring the link.... *op. cit.*, p. 384, concluding that "the outcome of the flood does not only depend on the flood itself, but also on the way in which a society is structured, has knowledge and financial resources at its disposal and has prepared for such hazard events. It is the overall vulnerability of the society in question that strongly influences whether the depicted effects take place or not". KIBREAB, G., "Climate Change and Human Migration...., *op. cit.*, p. 373-374, noting that "[a]lthough all societies are essentially able to adapt to climate change and other similar risks, (...) A region's or a country's adaptive capacity is also influenced by, local and national governance, civil and political rights and literacy", as well as by poverty.

<sup>172</sup> LONERAGAN, S., "The Role of...., *op. cit.*, pp. 10 *in fine* and 11.

<sup>173</sup> Vid., *inter alia*, LONERAGAN, S., "The Role of...., *op. cit.*, pp. 6, 8, 11 and 12 –noting on this last page that such a separation is not only difficult but "a distortion of reality". MCGREGOR, J., "Climate change and involuntary migration...., *op. cit.*, p. 121. KIBREAB, G., "Environmental Causes and...., *op. cit.*, p. 21, arguing that "most of the available literature fails to emphasise the multi-causality of displacement". KIBREAB, G., "Climate Change and Human Migration...., *op. cit.*, p. 400, concluding that "[t]he claim that climate change causes population displacement is based on the wrong assumption that displacement is partly mono-causal and climate change can be isolated from other inextricably interwoven drivers of migration or displacement". Similarly, KOLMANSKOG, V., "Future Floods of refugees...., *op. cit.*, p. 13, criticising Myers' argument for being "largely deductive and reductionist /isolationist: country x has

Kibreab sums up this view by arguing that "climate changes, whether sudden or slow onset, do not occur in a socio-economic and institutional vacuum"<sup>174</sup>. In this vein, Black, for example, reviews the evidence provided by "maximalist" authors in support of population movements caused by drought and desertification, rising sea levels and environmental conflicts<sup>175</sup>. The author stresses that, in all of them, the evidence provided to sustain a direct mono-causal link between the environmental factor in question and population movements is circumstantial and extremely weak.

In the case of drought and desertification, Black argues that "maximalist" authors merely note the existence of migration in regions naturally exposed to these phenomena<sup>176</sup>. However, they fail to demonstrate that migration is not "an essential part of the economic and social structure of the region" but a response to ongoing environmental degradation<sup>177</sup>. Concerning sea-level rise, the author evidences that, while "maximalists" identify populations potentially at risk, they do not refer to "any specific populations that have been forced to *relocate* from floodprone areas in the recent past as a result of sea-level rises that have already occurred"<sup>178</sup>. Finally, regarding conflict, Black again points out that "the evidence for environmental pressure or degradation (or indeed population pressure itself) actually causing conflict and forced migration itself is limited"<sup>179</sup>, noting the presence of other political, economic, ethnic or rational factors instead<sup>180</sup>.

The mono-causal role of drought in triggering population movements in arid and semi-arid regions of Africa has also been reviewed by Kibreab and McGregor. The first author concludes that the massive population movements labelled "environmental" that occurred in the Sahel, the Horn of Africa or sub-Saharan Africa during the 1970s and 1980s were the result of the combined "effects of droughts on livelihoods (...) [with ] livelihoods threats, dislocations and displacements caused by the combined effects of

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environmental problems and also large numbers of migrants, so there must be a causal link". He adds that "[c]orrelation does not mean that there is necessarily a positive correlation, however, and even less that there is causality" (id.), and conclude that "[m]ost researchers today agree on the multi-causality of all migration, including forced migration" (ibid., p. 11).

<sup>174</sup> KIBREAB, G., "Climate Change and Human Migration...", *op. cit.*, p. 377.

<sup>175</sup> Vid. BLACK, R., "Environmental refugees: myth...", *op. cit.*, pp. 1-10.

<sup>176</sup> Ibid., p. 5.

<sup>177</sup> Ibid., p. 6.

<sup>178</sup> Ibid., p. 8.

<sup>179</sup> Ibid., p. 10.

<sup>180</sup> Ibid., p. 9, referring to the genocide in Rwanda.

conflict and war"<sup>181</sup>. In this regard, McGregor highlights how drought-related famines are more frequent in countries that, in addition to being affected by drought, are at war<sup>182</sup>.

Kibreab takes up and develops McGregor's idea by pointing out that war tends to create safe and unsafe zones that unbalance human relations with these fragile, arid and semi-arid environments. The reason is that conflict tends to concentrate all population pressure on the natural resources of the safe zones. As a result, traditional sustainable land-use practices that were once sustainable become useless, as the natural resources of insecure areas cannot be exploited. Once the natural resources in secure areas are depleted, the population has no choice but to migrate to other regions<sup>183</sup>. However, "[t]o see these movements as primarily because of environmental degradation, is to ignore the role of insecurity and conflict in its creation"<sup>184</sup>.

In this sense, it is interesting how the population movements that have taken place in these regions have been described by "maximalist" authors as environmental rather than political<sup>185</sup> –which may undermine the international protection possibilities of those displaced. McGregor refers to this dissociation by noting how a work published in 1991 referred to populations in Sudan, Ethiopia and Mozambique as displaced by civil war and internal conflict. However, these same countries were also cited in El-Hinnawi's booklet as examples where environmental disruptions triggered environmental migration flows<sup>186</sup>.

McGregor also refers to the case of Ethiopia and the drought that hit the country between 1987 and 1988, noting the presence of non-environmental factors other than conflict. Thus, drawing on a study by Clay et al., he points to the correlation between different government policies in specific country areas and the resulting famine prevalence in each zone. McGregor further refers to a paper by Pankhurst on livelihood changes during the drought. The research shows how survival strategies other than migration were undermined by political restrictions on travel, shrinking wage-labour

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<sup>181</sup> KIBREAB, G., "Climate Change and Human Migration..., *op. cit.*, p. 362 [bracketed text added]. Detailed explanations of each of these countries can be found on pp. 362-364 and 368.

<sup>182</sup> MCGREGOR, J., "Climate change and involuntary migration..., *op. cit.*, p. 121.

<sup>183</sup> In KIBREAB, G., "Environmental Causes and..., *op. cit.*, p. 22; and KIBREAB, G., "Climate Change and Human Migration..., *op. cit.*, pp. 363 *in fine* and 364.

<sup>184</sup> KIBREAB, G., "Environmental Causes and..., *op. cit.*, p. 22

<sup>185</sup> As noted by KIBREAB, G., "Climate Change and Human Migration..., *op. cit.*, pp. 368 *in fine* and 369.

<sup>186</sup> Vid. MCGREGOR, J., "Climate change and involuntary migration..., *op. cit.*, p. 121 *in fine*.

options in rural and urban areas, and worsening trade conditions as grain prices soared<sup>187</sup>.

Ultimately, what the "minimalist" authors are trying to show is that migration was not a deterministic, mono-causal reaction to environmental degradation in the various scenarios that the "maximalists" use to support their arguments. Instead, multi-causality was present in all of them. Referring to the Sahel, El Salvador, Haiti and Bangladesh as the most frequently cited cases in the "maximalist" literature, Lonergan argues:

"There is little doubt that each of these regions/countries has experienced significant environmental stress: droughts, deforestation, soil degradation, and flooding are the most notable. But it is also clear that there are a myriad of other social, economic and institutional processes which are present"<sup>188</sup>.

McGregor provides another example of multi-causality tangentially related to environmental change in the case of the Vietnamese displacement from the Yen Hung agricultural district. In this case, he accepts that soil salinisation may have influenced the decision to migrate as it caused low rice yields that affected incomes. However, McGregor also points to other factors such as the lack of local employment, fake news and rumours disseminated by tricksters and boat organisers, and a general climate of distrust in the future of the Vietnamese economy<sup>189</sup>. All these factors would have created a context where the Vietnamese population perceived that they had no choice but to emigrate.

What was the weight of environmental factors in each of the above examples of migration? As Lonergan responds regarding the impact of environmental degradation on population movements in El Salvador, "[i]t likely played a role, but it was certainly not a root cause"<sup>190</sup>. Thus, denying a mono-causal link does not mean that the "minimalist" authors reject environmental change as a possible trigger for migratory movements. Instead, they regard the environment as a contextual factor or proximate cause linked to other social, political and economic processes, which are the underlying causes that actually predispose people to emigrate<sup>191</sup>. In Castle's words, "emphasis on

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<sup>187</sup> Ibid., p. 122.

<sup>188</sup> LONERGAN, S., "The Role of...", *op. cit.*, p. 10.

<sup>189</sup> MCGREGOR, J., "Climate change and involuntary migration...", *op. cit.*, p. 122.

<sup>190</sup> LONERGAN, S., "The Role of...", *op. cit.*, p. 10.

<sup>191</sup> Vid. for example, the comments on the "maximalist" and "minimalist" approaches by LONERGAN, S., "The Role of...", *op. cit.*, p. 8; or by SUHRKE, A., "Environmental Degradation and...", *op. cit.*, criticising the lack of distinction in the "maximalist" work between underlying and proximate causes of

environmental factors is a distraction from central issues of development, inequality, and conflict resolution"<sup>192</sup>.

In this way, the "minimalist" authors reverse the "maximalist" reasoning. Poverty and uneven economic growth, along with demographic pressure, institutional constraints and political conflict, are no longer simply distortions of ecosystem balance, as conceived in the "maximalist" approach, but are seen as the proper drivers of migration in a context of environmental disruption. For example, Bilsborrow suggests three different ways in which the environmental context might impact on the non-environmental variables traditionally thought to be responsible for generating migration. According to this author, environmental changes could influence the decision to migrate through "income effects" resulting, for example, from a progressive drop in land fertility; "increased risks" due to an upsurge in the severity or frequency of droughts or floods; or "the environment becoming less pleasant or healthy" as a consequence, for instance, of worsening air pollution<sup>193</sup>.

Similar to Bilsborrow, Perch-Nielsen et al. compare the effects of floods, one of the leading environmental hazards acting as a "push factor" for migration according to the "maximalist" literature, with those push factors often cited in classical migration theories, finding a high degree of overlap between the two. For example, they found that several effects of floods described as drivers of migration, such as "loss of land" and "damage/loss of housing and infrastructure" or "reduced income" and "reduced job opportunities", corresponded respectively to traditional push factors such as land and housing or the labour market<sup>194</sup>.

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displacement (p. 478) and siding with the "minimalists" in this respect: "In a broader development perspective, environmental degradation appears as a proximate cause of migration, while the underlying factors are population pressures and the patterns of resource use". Similarly, SUHRKE, A., "Pressure Points: Environmental...", *op. cit.*, who, after reviewing several cases of "environmental migration" in the context of development processes and social conflicts, concludes: "In all the cases studied, environmental degradation appeared as a proximate cause of outmigration" (p. 32). KIBREAB, G., "Climate Change and Human Migration...", *op. cit.*, p. 367. BLACK, R., "Environmental refugees: myth...", *op. cit.*, p. 13, observing: "Although a distinction could be sustained at the level of proximate causes of flight, this is unhelpful from an academic point of view if it is accepted that the response to forced migration needs to be guided by underlying, rather than simply proximate causes". BILSBORROW, R.E., "Rural Poverty, Migration...", *op. cit.*, p. 3, arguing that "[t]he relevance of environmental factors in influencing out-migration decisions of rural populations can be readily seen as a contextual factor".

<sup>192</sup> CASTLES, S., "Environmental change and...", *op. cit.*, p. 2.

<sup>193</sup> BILSBORROW, R.E., "Rural Poverty, Migration...", *op. cit.*, p. 4.

<sup>194</sup> PERCH-NIELSEN, S.L.; BÄTTIG, M.B.; IMBODEN, D., "Exploring the link...", *op. cit.*, pp. 379 *in fine* and 380.

The review of case studies carried out by these authors is even more interesting as it was conducted relatively recently (2008), which allows us to compare their results with the arguments put forward by the "minimalist" authors in the 1990s. In this sense, the findings of Perch-Nielsen et al.<sup>195</sup> would support the "minimalist" critique against the mono-causal theory of environmental migration, its advocacy of the multiple variables that influence the personal decision to migrate and its view of environmental change as a contextual factor, operating in a similar way as described by Bilborrow in 1992 –i.e. that what determines the decision to migrate is not environmental changes *per se*, but the interaction of their effects on non-environmental factors. Thus, Perch-Nielsen et al. conclude that the adverse effects of floods and sea-level rise "on houses and utilities, loss of land, reduced work opportunities and reduced income can all contribute to migration. However, the review also shows that *the effects of floods are only a few of many factors* relevant for people's decision to migrate"<sup>196</sup>, which points to the multi-causal nature of migration.

More graphically, Wood has used the metaphor of an "environment and society umbrella" that we all carry with us to illustrate the multi-causality of the decision to migrate and the dynamics of the interactions between environmental and non-environmental factors. Thus, the umbrella's different spokes represent social, cultural, political, economic and ecological variables. When several ribs fail, the umbrella collapses, and its bearer must move in search of another umbrella under which to shelter<sup>197</sup>.

Approaches such as those of Bilborrow, Perch-Nielsen et al. or Wood allow environmental variables to be considered in the decision to migrate without falling into "maximalist" determinism. As Suhrke points out, these approaches represent

"a useful elaboration of the classic decision-making models of migration (...) [where] environmental degradation appears as a contextual variable that affects the economic, social and risk calculations of the migrant (...) on the level of the individual, the community or, conceivably, the entire nation"<sup>198</sup>.

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<sup>195</sup> Vid. *ibid.*, pp. 379-382 and pp. 386-389.

<sup>196</sup> *Ibid.*, p. 380 [italics added].

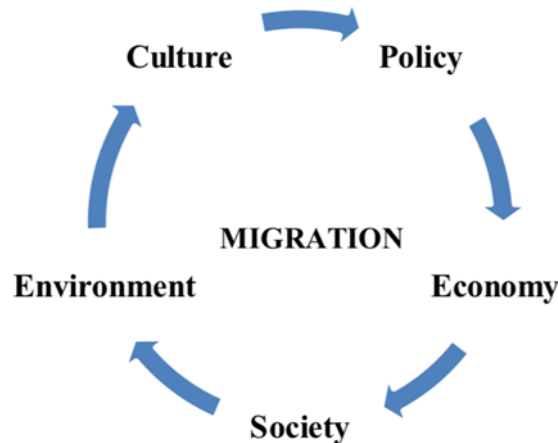
<sup>197</sup> In WOOD, W.B., "Ecomigration: linkages between environmental change and migration", in: A.R. Zolberg; P. Benda (ed.), *Global Migrants, Global Refugees: Problems and Solutions*, New York (USA), Berghahn Books, June 2001, pp. 42-61.

<sup>198</sup> SUHRKE, A., "Pressure Points: Environmental...", *op. cit.*, p. 5 [bracketed text added]. Also in SUHRKE, A., "Environmental Degradation and...", *op. cit.*, p. 476.



As will be seen in the next section, the development of alternative migration models that incorporate the environmental dimension has been the task undertaken by some "minimalist" authors in the wake of the debate with the "maximalists".

**Figure 3-The "minimalist" view of environment-related migration**



### **1.5. Bridging the gap between the "maximalist" and the "minimalist" approach**

The 21st century has witnessed reconciliation between the "maximalist" and "minimalist" positions<sup>199</sup>. Reality itself has shown that the influence of environmental factors on migration patterns cannot be ignored, nor can their expression be redirected entirely to the socio-economic variables of classic migration models. Thus, migration experts such as Black or Morrissey have left behind their "minimalist" scepticism towards the "maximalist" hypotheses of environmental science academics. Instead, they have recently begun to develop theoretical models of migration that incorporate the environmental variable<sup>200</sup>.

These papers build on existing migration theories but no longer deny substantive significance to the environmental factor as an additional variable involved in the decision to migrate. Instead, the models developed by Black and Morrissey seek to explain, from an integrative approach, how these environmental factors interact with

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<sup>199</sup> Vid. in this regard, GEMENNE, F., *Environmental Changes and Migration Flows...*, *op. cit.*, pp. 138-145.

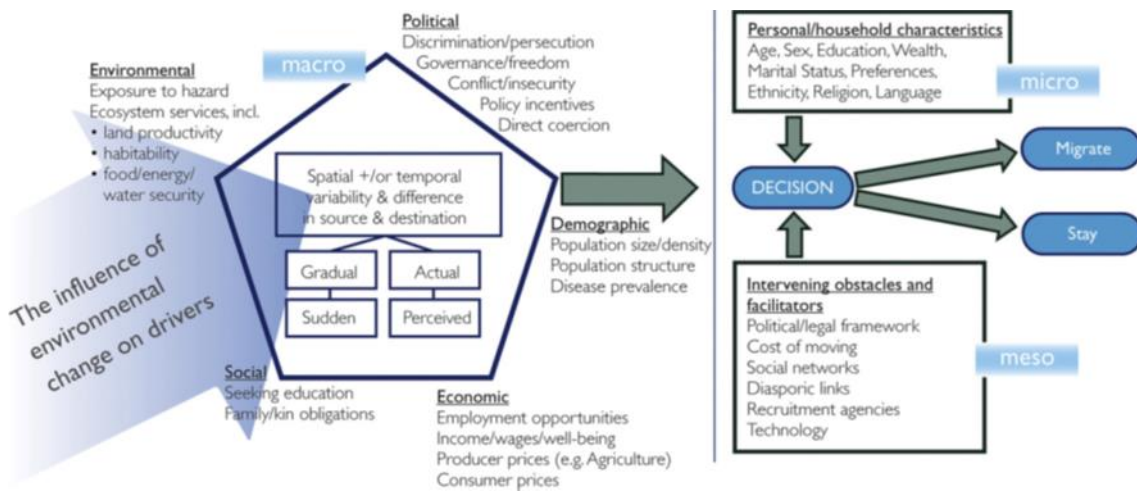
<sup>200</sup> Vid. BLACK, R. ET AL., "The effect of environmental change on human migration", *Global Environmental Change*, Vol. 21, Supplement 1, December 2011, pp. S3-S11. MORRISSEY, J., "Understanding the relationship between environmental change and migration: The development of an effects framework based on the case of northern Ethiopia", *Global Environmental Change*, Vol. 23, Issue 6, December 2013, pp. 1501-1510.

non-environmental factors in triggering migration. Both models are presented in the following sub-sections. The last sub-section tests Morrissey's model to explain migration movements associated with recurrent flooding in Bangladesh.

### 1.5.1. The contextual model of Black et al.

Black et al. introduce their theoretical framework of migration drivers in the following figure:

Figure 4-Diagram of the "contextual migration model" proposed by Black et al.<sup>201</sup>



Each of the pentagon vertices represents a "primary family" of macro-drivers of migration according to their nature. Alongside the four drivers of migration traditionally considered by classical migration theories –i.e. political, demographic, social and economic- Black et al. include environmental factors –in the form of exposure to natural hazards and availability of ecosystem services- as drivers of migration in their own right<sup>202</sup>. The lines linking together these five groups to form the pentagon reflect that these drivers rarely operate in isolation. The scheme within the pentagon explains how it is the actual or perceived different spatial and temporal interactions among these drivers which determine the volume, direction and frequency of migratory movements<sup>203</sup>.

In order to avoid falling into causal determinism between migration drivers and migration, Black et al. incorporate human capacity as the fundamental determinant for

<sup>201</sup> BLACK, R. ET AL., "The effect of environmental..., *op. cit.*, p. S5.

<sup>202</sup> *Ibid.*, pp. S6-S7.

<sup>203</sup> *Ibid.*, p. S6.

migration drivers to materialise in the decision to migrate. In the diagram, human capacity is represented by a green arrow linking the left side or macro level with the right side, representing the micro- and meso-level. At the micro-level, the capacity to migrate is conditioned by the personal characteristics and preferences of both individuals and the family unit where they integrate. At the meso-level are the different external factors that facilitate or hinder migration, such as migration legislation, social networks, or costs of migration<sup>204</sup>. Since this model presents the decision to migrate as a contextual decision made in the context shaped by the macro-, meso- and micro-levels, it has been suggested to label the migration model of Black et al. as the "contextual migration model".

Regarding environmental factors, which is what is novel in the Black et al. model, the authors consider the following to be "the most significant and extensive" environmental drivers of migration, namely: degradation of land and coastal and marine ecosystems, and global climate change and its associated adverse effects –i.e. sea-level rise, changes in tropical storm and cyclone frequency or intensity, changes in rainfall regimes, increases in temperature and changes in atmospheric chemistry affecting crop productivity<sup>205</sup>. Note that these environmental migration drivers coincide with the leading environmental changes that the "maximalist" authors blamed for forcing affected communities to leave their homes.

According to the theoretical model formulated by Black et al., the effects of environmental changes on mobility can manifest themselves in two ways: directly or indirectly. Direct effects refer either to an increased vulnerability of affected populations to natural hazards or reduced availability of or access to ecosystem services on which the human community living in them depends<sup>206</sup>. These "services" refer to what humans obtain from their natural environment in the form of provisioning –e.g. food and water-, regulating –e.g. protection against erosion- and cultural services –e.g. emotional or spiritual value<sup>207</sup>. Again, note the similarities with the "maximalist" narrative made more than two decades earlier<sup>208</sup>.

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<sup>204</sup> Ibid., p. S5.

<sup>205</sup> Ibid., pp. S7-S8.

<sup>206</sup> Ibid., p. S8.

<sup>207</sup> Ibid., p. S7.

<sup>208</sup> Vid for all how El-Hinnawi defines environmental disruptions likely to cause population displacement: "By "environmental disruption" (...) is meant any physical, chemical and/or biological changes in the

Indirectly, environmental factors affect migration by interacting with the other four macro-drivers –in origin and destination areas-, personal or household characteristics at the micro-level and intervening obstacles and facilitators at the meso-level<sup>209</sup>. The diagram illustrates this influence by the large blue arrow that overlaps with the pentagon figure of migration drivers. Very similar to the reasoning already made by Bilsborrow in 1992<sup>210</sup>, Black et al. argue that environmental changes can exacerbate the economic drivers of migration by negatively affecting livelihoods and income stability. However, these adverse effects may also interact at the meso-level, acting as a barrier to migration by reducing the household's ability to bear displacement costs<sup>211</sup>.

The same would be valid for the interaction between environmental and political factors. Thus, environmental changes in the form of scarcity may fuel potential conflict –although Black et al. are cautious about this assertion, arguing contradictory academic references on this point<sup>212</sup>. Similarly, environmental and disaster risk management policies modulate the ultimate decision to migrate by minimising or averting the adverse effects of environmental change on the population, thus eliminating or reducing the need to move or attracting people to more safe areas<sup>213</sup>.

In summary, the model proposed by Black et al. takes up much of what has been argued in the "maximalist" literature on the relationship between environmental changes and migration. The main difference remains the rejection of a causal link between environmental factors and the decision to migrate, as reflected in incorporating the meso- and micro-levels in the model. Moreover, in contrast to the "maximalist" view, the interaction between environmental variables and the other drivers of migration is not presented in a linear but a circular –or pentagonal- fashion. Thus, political, economic or demographic forces are not portrayed as factors associated with the environmental degradation that leads to displacement. Instead, they are regarded as independent determinants that interact in multiple ways with environmental drivers.

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ecosystem (or the resource base) that render it, temporarily or permanently, unsuitable to support human life" (in: EL-HINNAWI, E., *Environmental refugees, op. cit.*, p. 4).

<sup>209</sup> BLACK, R. ET AL., "The effect of environmental change on human migration", *Global Environmental Change, op. cit.*, p. S8.

<sup>210</sup> Cf. BILSBORROW, R.E., "Rural Poverty, Migration, and the Environment in Developing Countries: Three Case Studies", *op. cit.*, p. 3-6.

<sup>211</sup> BLACK, R. ET AL., "The effect of environmental change on human migration", *Global Environmental Change, op. cit.*, p. S8.

<sup>212</sup> *Ibid.*, pp. S8 *in fine* and S9

<sup>213</sup> *Ibid.*, p. S9.

### 1.5.2. The "effects framework" of Morrissey

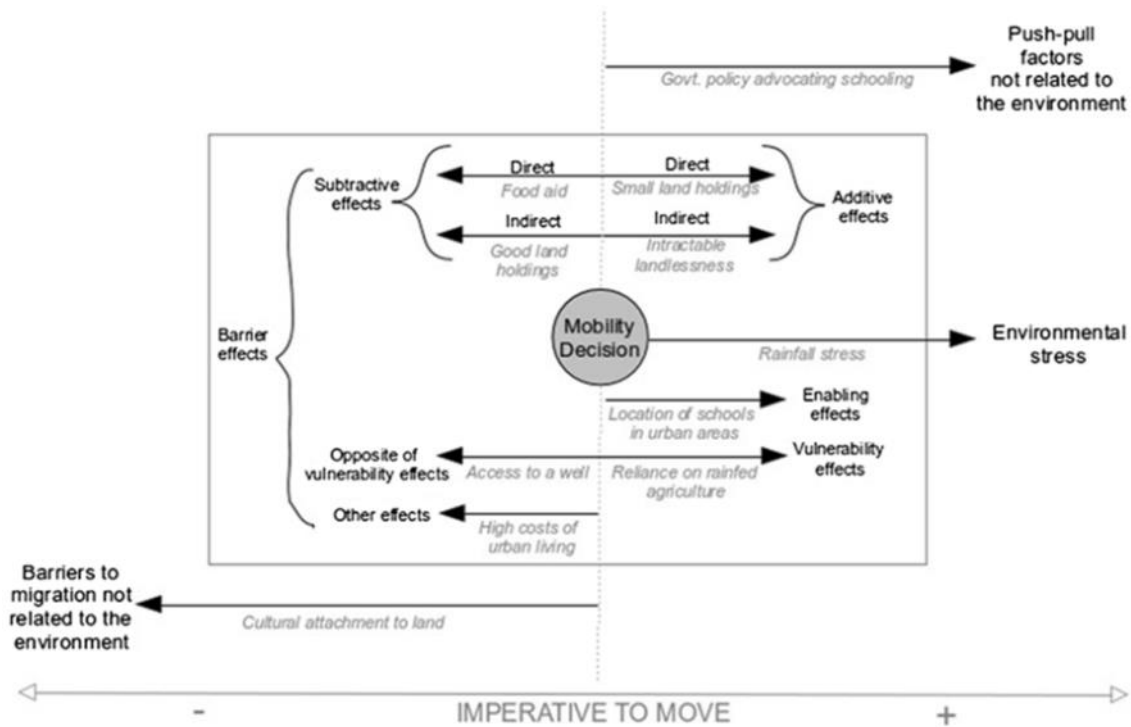
The model Morrissey proposes focuses on explaining the influence of environmental changes on the decision to migrate based exclusively on the interactions between environmental and non-environmental factors. As discussed above, the Black et al. model focuses on analysing how the environmental variable is embedded in and interacts with the context that modulates the decision to migrate at different operational levels. In Morrissey's model, the structure of levels –macro, meso and micro- dilutes to leave all the attention to the effects of these interactions. Thus, his model focuses not on types of migration drivers but rather on types of interactions between environmental and non-environmental factors and their effects. Hence, Morrissey calls his model an "effects framework".

As the author acknowledges, this option weighs down the model he proposes with some shortcomings<sup>214</sup>. First, it cannot account for the social, economic and political context that gives form to non-environmental factors. Second, the model explains the interactions between environmental and non-environmental factors. However, it leaves unresolved the question of how to relate these interactions to migration drivers that do not interact with environmental factors –e.g. cultural attachment to the land or government policies that do not address environmental or related issues. Finally, the typology of effects does not consider how migrants' perceptions interact with the different factors in deciding to migrate –a shortcoming that could be partially corrected by introducing a new effect discussed in the final part of this section.

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<sup>214</sup> Vid. MORRISSEY, J., "Understanding the relationship between environmental change and migration...", *op. cit.*, p. 1508.

Figure 5-Diagram of the "effects framework" proposed by Morrissey<sup>215</sup>



As the diagram shows, Morrissey's model is articulated around four categories of "effects", which are different manifestations of the interaction between environmental and non-environmental factors, namely: additive effects, facilitating effects, vulnerability effects and barrier effects. These effects create an "imperative to move" - equivalent to a migration driver in conventional terminology. Depending on the prevalence of one type of effect or another, the probability that such an imperative materialises in a decision to migrate will be higher or lower –this probability is represented in the diagram by the signs -/+ . Outside the box are other push-pull factors or barriers to emigration that are not impacted by the environmental variable.

Morrissey defines "additive effects" as non-environmental factors that produce a displacement need in addition to that arising from environmental factors. In turn, "additive effects" can be direct or indirect. They are direct when they produce stresses on livelihoods in a similar way to environmental shocks. Conversely, they are indirect when they reduce access to non-migratory alternative livelihoods in a non-environmentally related way .As an example of a "direct additive effect", Morrissey points to small landholdings, which trigger the need to migrate by reducing household output just as an environmental factor such as land degradation would. Conversely,

<sup>215</sup> Ibid., p. 1506.

landlessness indirectly generates a displacement imperative, which adds to the impoverishment caused by environmental stress<sup>216</sup>. Indirect additive effects would thus comprise the endowments referred to by the "minimalist" authors –i.e. what determines a household's ability, and hence vulnerability, to cope with environmental change without migrating.

For Morrissey, "enabling effects" refer to non-environmental factors that render mobility in the context of environmental stresses even a more attractive adaptation strategy to cope with livelihood insecurity. It could be argued that "enabling effects" do not increase the need to migrate, as "additive effects" do, but rather function as an incentive to migrate –e.g. the location of schools in urban areas<sup>217</sup>. "Vulnerability effects" also refer to non-environmental factors that do not in themselves trigger a displacement imperative. Instead, these effects aggravate the adverse impacts of environmental changes by leaving livelihoods more exposed –"vulnerable"- to them. To illustrate, Morrissey refers to a community whose livelihood depends primarily on rain-fed agriculture. Such dependence makes it particularly vulnerable to any variation in rainfall patterns and the consequent imperative to move<sup>218</sup>.

Finally, "barrier effects" refer to non-environmental factors that delay the urge to displace. Morrissey observes that these "barrier effects" can be "additive" or "vulnerability" effects working in the opposite direction –they are represented in the diagram as opposite arrows. Alongside these, Morrissey mentions "other barrier effects" that reduce the prospect of moving by limiting livelihood options in potential destinations –e.g. because of age, large numbers of dependants, the high cost of living in urban areas or congested urban labour markets<sup>219</sup>.

Regarding the "barrier effects" that counteract "additive effects", Morrissey calls them "subtractive effects", as they "subtract" the individual from having to migrate by reducing the livelihood insecurity engendered by environmental factors. Like "additive effects", these "subtractive effects" can secure livelihoods either directly –e.g. through food aid- or indirectly –e.g. through land reform that ensures sufficient land tenure to

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<sup>216</sup> Ibid., p. 1507.

<sup>217</sup> Id.

<sup>218</sup> Id.

<sup>219</sup> Id.

meet subsistence needs<sup>220</sup>. Barrier effects "opposite of vulnerability effects" would increase resistance to environmental stress, so I suggest renaming them "resilience effects". Morrissey gives the example of access to small water wells, which makes farmers less dependent on rainfall and therefore less vulnerable to rainfall variability<sup>221</sup>.

Morrissey builds his theoretical framework from his fieldwork in northern Ethiopia, considering the reduction or instability of livelihoods caused by the interaction of environmental and non-environmental factors as the imperative for the movement. However, in our view, the author succeeds in elaborating a generalisable migration model, which can be applied to any other migration driver arising in a context of environmental stress. In order to corroborate this assertion, we propose to test Morrissey's model in the case of flood-related displacement. This scenario is chosen because it is one of the most cited examples in the "maximalist" literature and most contested by the "minimalist" perspective. In this way, it is possible to verify whether Morrissey's model actually bridges the gap between the two approaches.

#### ***Excursus: testing Morrissey's model to explain flood-related displacement***

In our hypothetical case, the "displacement imperative" would be determined by how flood insecurity is shaped by the interaction of environmental and non-environmental factors, according to the typology of effects proposed by Morrissey. Floods and climate change impacts would be examples of environmental forces. Non-environmental factors would comprise, on the one hand, "maximalist" variables such as the anthropogenic factor underlying environmental disruptions as well as associated factors –i.e. overpopulation and poverty, poor development and lack of resources for adaptation. On the other hand, non-environmental factors would also include adaptation and multi-causality, alluded to by the "minimalist" authors. Therefore, Morrissey's typology of effects should allow us to integrate all these factors according to their effect on increasing or decreasing flood safety, thus minimising or exacerbating the displacement imperative.

Human degradation of ecosystems would be a "direct additive effect" since it exacerbates flood risk in the same way that climate change does. It is an additive effect because it adds to flood insecurity caused by climate change that forces people to

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<sup>220</sup> Id.

<sup>221</sup> Id.



migrate. It is also direct because it operates in the same way as climate change –i.e. by increasing the frequency and intensity of flooding. Examples of human degradation as a "direct additive effect" would be the destruction of vegetation cover or the diversion of rivers. Its counterpart –the direct subtractive effect- would be adaptation since it reduces insecurity and thus the need to move. Implementing flood containment measures, both artificial –dykes- and natural –increasing the capacity of watersheds to absorb rainwater through reforestation or restoration of vegetation cover- would be an example of a "direct subtractive effect".

However, partial adaptation would operate as a "facilitating effect". This would be the case if, for example, the government decides to implement flood protection measures in certain areas at the expense of others. This decision does not increase the risk of flooding in unprotected areas and thus the imperative to move, but makes migration to safer areas more likely. Lack of adaptation would also operate as an "indirect additive effect": it does not increase –or decrease- the risk of flooding but intensifies the need to leave in the absence of any option to stay.

Poverty can also be framed in different types of effects depending on its manifestation. For example, material losses caused by flooding in the lower strata of society would operate as an "indirect additive effect". It is additive because it creates an additional displacement imperative to that generated by the flood risk. However, it does so indirectly –i.e. it does not increase the risk of flooding but reduces the chances of protecting oneself and recovering from its effects. In this case, the "indirect subtractive effect" would consist of providing assistance to victims, facilitating access to private insurance systems or granting public aid to enable the population to recover from the damage suffered so that they do not have to emigrate.

Housing in inadequate dwellings or slums as a consequence of poverty would act as a "vulnerability effect", as it does not in itself create the need for displacement but leaves its inhabitants more exposed to the risk of flooding. The "opposite of vulnerability effects" –which we have renamed "resilience effects"- would result from implementing appropriate building codes to ensure that these dwellings are structurally resistant to heavy rains. Finally, poverty, meaning the absence of economic means, could also be a non-environmentally related barrier to migration.

Overpopulation would have a "vulnerability effect", as it does not affect flood risk but makes more people vulnerable to flooding. Ill-development would also exacerbate "vulnerability" when naturally flood-prone areas are urbanised or developed to accommodate infrastructure or industrial sites. In these cases, urban planning that excludes the use of these areas, especially for human settlements, and the planned relocation of exposed populations to safe areas would have a positive "resilience effect" against displacement. However, ill-development can also act as a "direct additive effect" when it involves practices or the implementation of projects that increase the risk of flooding in inhabited areas, thus generating a displacement imperative.

Finally, multi-causality would also admit multiple framings, such as additive, vulnerability and barrier effects. It could also be placed outside the effects framework with non-environmental push and pull factors -meso-level- and micro-level variables. At the micro-level, we believe that migrant perception, which Morrissey's typology of effects fails to capture, could fall under a new type of effect in the framework of interactions between environmental and non-environmental factors. It would be a new "barrier effect" counteracting the "facilitating effect", which we have called the "withholding effect".

Thus, fear of epidemics or being attacked by wild animals or raiders would have a "facilitating effect", as it increases the attractiveness of moving to temporary shelter sites after floods. Conversely, refusal to leave for fear of losing property through looting and pillaging or fear that female family members might suffer mistreatment in emergency shelter camps would be examples of the "withholding effect" we propose. Another example of a "withholding effect" would be the motivation to stay in flood-prone areas to take advantage of low demand and thus acquire land at lower prices in these locations.

Having tested Morrissey's proposed typology of effects in the field of flood-related displacement, its usefulness can be affirmed. The shortcomings pointed out by the author himself could be corrected, at least as far as the subjective perception of migrants is concerned, by the proposed "withholding effect". Even so, the effects framework allows for a clear and systematic explanation of the interactions between the different environmental and non-environmental factors that increase or decrease the imperative to move in the face of flood risk. The difficulties encountered in translating

the "maximalist" and "minimalist" approaches into this framework are not related to the typology of effects *per se*. Instead, they stem from the breadth of the categories with which the "maximalist" and "minimalist" authors work. Concepts such as poverty, multi-causality or adaptation encompass a myriad of manifestations, which means that they can generate several of the effects defined by Morrissey, as highlighted above.

In conclusion, once the scepticism of migration experts and the alarmism of environmental scholars have been overcome, it can be said that Morrissey's model, as well as that of Black et al., are good starting points on how to integrate the environmental factor into migration models.

## CHAPTER II

# QUANTIFYING ENVIRONMENTALLY DISPLACED PERSONS

### 1. THE SCOPE OF ENVIRONMENTAL DISPLACEMENT: BETWEEN INDETERMINACY AND PRECISION

As López Ramón notes, "the very extent of environmental migrations is a question which moves between a high degree of indetermination and surprising numerical accuracy"<sup>1</sup>. The IPCC Working Group II reports are probably one of the best documentary sources confirming such statement, at least as far as climate change and migration are concerned<sup>2</sup>. Thus, report after report shows a gradual shift in the working group's understanding of the relationship between climate change and human mobility and, consequently, in the estimates presented of the number of people potentially at risk of being displaced by the adverse effects of climate change. This inconsistency is ultimately due to the very scientific nature of the IPCC, whose mission is not to produce primary research but to evaluate the published literature on the subject of climate change. Hence, these variations reflect the successive emergence of the two schools of thought outlined in the previous chapter<sup>3</sup>.

Thus, in the 1990 and 1995 reports, Working Group II maintains the linear deterministic cause-effect nexus that is typical of the "maximalist" approach. In its 1990

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<sup>1</sup> LÓPEZ RAMÓN, F., "Los Derechos de los emigrantes ecológicos", *Cuadernos Manuel Giménez Abad*, No. extra 6, 2017, p. 7 [self-translation of the original in Spanish].

<sup>2</sup> According to the information that appears in IPCC, Working Group II [last access: 23/02/2019], the Working Group II "assesses the vulnerability of socio-economic and natural systems to climate change, negative and positive consequences of climate change and options for adapting to it".

<sup>3</sup> The question of the number of environmentally displaced persons was equally controversial between "maximalist" and "minimalist" authors. JACOBSON, J.L., *Worldwatch Paper 86...*, *op. cit.*, was one of the first authors to offer a global estimate of the number of 'environmental refugees' in the world, which she put at 10 million in 1988. WESTING, A., "Environmental Refugees...", *op. cit.*, also attempted to quantify the phenomenon of environmental displacement and its growing prospects if the world's environmental problems remained unresolved. Myers has been the most outspoken "maximalist" author in providing figures on the current and future numbers of environmentally displaced persons (which have been widely cited in works on environmental displacement, including legal ones). In MYERS, N., "Environmental Refugees...", *op. cit.*, the author estimated the number of this "unconventional category of refugees" at 25 million (p. 752), rising to 150 million by 2050 "in a greenhouse-affected world" (vid. Table 1, p. 757). In MYERS, N.; KENT, J., *Environmental Exodus...*, *op. cit.*, p. 1, it was estimated that the figure of 25 million "may well double by the year 2010 if not before", reaching 200 million people "at risk of displacement" if the effects of global warming were considered. These estimates were criticised by "minimalist" authors such as Black, citing the weakness of the methodology used to calculate them (vid. BLACK, R., "Environmental refugees: myth...", *op. cit.*, pp. 2-3).

report, the IPCC found that the poorest social classes and marginal settlements in developing countries were the most vulnerable to natural hazards, such as coastal or riverine floods, severe droughts, landslides, severe windstorms and tropical cyclones. The IPCC concluded that the adverse effects of these disasters, coupled with changes in precipitation and temperature as well as changes in water and food availability and increased health problems associated with all these phenomena, "could initiate *large migrations of people*, leading over a number of years to severe disruptions of settlement patterns and social instability in some areas"<sup>4</sup>. The report also warned that a sea-level rise of 1m by 2100 "would render some island countries uninhabitable [and] displace *tens of millions of people*"<sup>5</sup>.

Note the parallels between the IPCC's statements in its first report and the "maximalist" theses put forward, for example, by El-Hinnawi and Jacobson in their booklets, published respectively in 1985 and 1988. The IPCC's Second Assessment Report came out in 1996, following Myers and Kent's widely read book *Environmental Exodus: An Emergent Crisis in the Global Arena*. In the 1995 report, the IPCC even included a specific section on "Population Migration" which stated bluntly:

"If future climates resemble those projected by the general circulation models, wetter coasts, drier mid-continent areas, and sea-level rise *may cause the gravest effects of climate change through sudden human migration, as millions are displaced by shorelines erosions, river and coastal flooding, or severe drought*"<sup>6</sup>.

While still addressing the issue of environmental migration, the third report abandons any attempt to provide numerical estimates of its possible magnitude, however vague and imprecise as it had done in previous reports. Thus, the 2001 report merely notes that "human populations show significant tendencies to adapt to interannual variability of climate via migration, although migration may be the last of a complex set of coping strategies"<sup>7</sup>. The "minimalist" thesis has come to the fore, and the

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<sup>4</sup> TEGART, W.J.; SHELDON, G.W.; AND GRIFFITHS, D.C., *Climate Change: The IPCC Impacts Assessment*, Canberra (Australia), Australian Government Publishing Service, 1990, p. 3 [italics added].

<sup>5</sup> *Ibid.*, p. 4 [italics added].

<sup>6</sup> WATSON, R.T. ET AL. (eds.), *Climate Change 1995: Impacts, Adaptations and Mitigation of Climate Change: Scientific-Technical Analyses. Contribution of Working Group II to the Second Assessment Report of the Intergovernmental Panel on Climate Change*, New York (USA), Cambridge University Press, 1996, pp. 406 *in fine* and 407 [italics added].

<sup>7</sup> MCCARTHY, J.J. ET AL. (eds.), *Climate Change 2001: Impacts, Adaptations, and Vulnerability. Contribution of Working Group II to the Third Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge (UK), Cambridge University Press, 2001, p. 397.

IPCC is beginning to adopt the arguments put forward by authors such as McGregor, Kibreab or Black.

In the 2001 report, migration is no longer necessarily perceived as an extraordinary response to worsening climatic circumstances. Instead it is referred to as another manifestation of human agency to adapt, which may even be a typical response –“*a tendency*”- of populations living in regions subject to the rigours of climate variability<sup>8</sup>. Moreover, the IPCC accepts the presence of other factors that will determine whether individuals and households are more or less able to cope with environmental stresses without resorting to migration, which thus remains a strategy of last resort. As the “minimalists” anticipated, these other factors may be economic, social, cultural or even demographic.

The “minimalist” postulates are fully assumed in the 2007 and 2014 reports. Thus, the fourth report expressly rules out the feasibility of quantifying the phenomenon of climate change-related migration, considering that

“Estimates of the number of people who may become environmental migrants *are, at the best, guesswork* since (a) migrations in areas impacted by climate change are not one-way and permanent, but multi-directional and often temporary or episodic; (b) *the reasons for migration are often multiple and complex, and do not relate straightforwardly to climate variability and change (...)*”<sup>9</sup>.

Working Group II further argues in this regard, quoting Black, that “*disaggregating the causes of migration is highly problematic*, not least since individual migrants may have multiple motivations and be displaced by multiple factors”<sup>10</sup>. Note how the IPCC has taken on board the multi-causal nature of migration advocated by the “minimalist” authors. In the same vein as its predecessor, the 2014 fifth report also recognises that “environmental conditions and altered ecosystem services are few

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<sup>8</sup> The IPCC makes this point most forcefully in its 2007 report, where it states: “in many cases migration is a longstanding response to *seasonal* variability in environmental conditions, it also represents a strategy to *accumulate* wealth or to seek a route out of poverty, a strategy with benefits for both the receiving and original country or region” (in: MARTIN, P. ET AL. (eds.), *Climate Change 2007: Impacts, Adaptations, and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, Canada, Cambridge University Press, 2007, p. 365, Box 7.2. Environmental migration).

<sup>9</sup> Id. [italics added]. On the difficulties in estimating the number of environmental migrants or displaced persons, the IPCC adds that “(d) there are few reliable censuses or surveys in many key parts of the world on which to base such estimates (e.g. Africa); (e) and there is a lack of agreement on what an environmental migrant is anyway” (id.).

<sup>10</sup> Id. [italics added].

among the many reasons why people migrate"<sup>11</sup>. This report also contradicts the "maximalist" argument that the poorest in developing countries will be the ones to be displaced by the effects of environmental disruptions. In this regard, the IPCC points out that precisely because many vulnerable groups do not have the necessary resources, they will not be able to migrate from hazard-prone areas<sup>12</sup>.

In terms of quantifying climate change-related migration, the 2014 report not only states that "[t]here are no robust global estimates of future displacement". It goes a step further by arguing that "while climate change impacts will play a role in these decisions in the future, given the complex motivations for all migration decisions, *it is difficult to categorize any individual as a climate migrant*"<sup>13</sup>. This last statement by the IPCC brings us back to how much the environmental factor has to weigh to consider a displacement as environmental. However, narrowing the answer to those cases in which it is possible to establish a direct link between environmental disruption and human mobility is to fall into the same determinism of which the "maximalist" authors were accused.

The latest report produced by Working Group II, the sixth 2022 assessment report<sup>14</sup>, echoes the "considerable expansion in research on climate-migration linkages" that has taken place since the 2014 report<sup>15</sup>, also reflecting the current trend in the Academia to move beyond the polarised debate of previous decades. In this way, Working Group II would also have bridged the gap between the "maximalist" and "minimalist" postulates that dominated its previous reports. On the one hand, the Sixth Report accepts (with a high degree of confidence) that "[c]limatic conditions, events and variability are important drivers of migration and displacement"<sup>16</sup>. However, at the same

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<sup>11</sup> FIELD, C.B. ET AL (eds.), *Climate Change 2014: Impacts, Adaptations, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, USA, Cambridge University Press, 2014, p. 768, "FAQ 12.3 How many people could be displaced as a result of climate change?". Vid. also, Table 12-3, "Empirical evidence on observed or projected mobility outcomes (migration, immobility, or displacement) associated with weather-related extremes or impacts of longer-term climate change", pp. 769-770.

<sup>12</sup> Ibid., p. 768, "FAQ 12.3 How many people could be displaced as a result of climate change?". Vid. also, sub-section 1.2.4.2. "Migration as an Adaptation to Climate Change Impacts", pp. 770-771.

<sup>13</sup> Ibid., 768, "FAQ 12.3 How many people could be displaced as a result of climate change?" [italics added].

<sup>14</sup> PÖRTNER, H.O. ET AL (eds.), *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press, in press.

<sup>15</sup> Ibid., "Chapter 7: Health, wellbeing and the changing structure of communities", p. 48.

<sup>16</sup> Ibid., p. 49 [original text in italics].

time, it recognises that there is "high agreement" and "robust evidence" that "migration responses to specific climate hazards are strongly influenced by economic, social, political and demographic processes"<sup>17</sup>, which "may cause migration to increase, decrease, or flow in new directions (high confidence)"<sup>18</sup>.

This integrative view of both approaches on the relationship between environmental change and population movements is particularly evident in Chapter 7 of the report, which generally examines climate change-related population movements within the broad theme of *health, wellbeing and the changing structure of communities*. It does so from a four-fold perspective:

1) In the "minimalist" sense as a further adaptation strategy to climate change, "where migration is an outcome of individual or household choice"<sup>19</sup> which is, however, often made "when other forms of adaptation are insufficient"<sup>20</sup>.

2) In the "maximalist" sense as "involuntary displacement" that occurs "when adaptation alternatives are exhausted or not viable"<sup>21</sup>, leaving those affected with "few or no options except to move"<sup>22</sup>. However, the IPCC considers that displacement in this case "reflects non-climatic factors that constrain adaptive capacity and create high levels of exposure and vulnerability"<sup>23</sup>, as do the "minimalist" authors, who argue that different adaptive capacities do not derive from different environmental vulnerabilities, but from inequalities between richer and poorer countries.

3) The movement involving the "organized relocation of populations from sites highly exposed to climatic hazards"<sup>24</sup>.

4) Finally, Working Group II also considers the absence of movement, i.e. "immobility" reflecting the "inability or unwillingness to move from areas of high exposure for cultural, economic or social reasons"<sup>25</sup>.

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<sup>17</sup> Id. [original text in italics].

<sup>18</sup> Id. [original text in italics]. Vid. also, *ibid.*, p. 55 *in fine*, noting that multi-causality "influence exposure, vulnerability, adaptation options and the contexts in which migration decisions are made (high confidence)" [original text in italics].

<sup>19</sup> *Ibid.*, p. 48.

<sup>20</sup> *Ibid.*, p. 49.

<sup>21</sup> Id.

<sup>22</sup> *Ibid.*, p. 48.

<sup>23</sup> *Ibid.*, p. 49.

<sup>24</sup> *Ibid.*, p. 48.

<sup>25</sup> Id.



In addition to Chapter 7, the topic of climate migration cuts across the entire report. Chapters 5 to 15 address sectoral and geographical aspects of climate change-related movements, and Chapter 16 discusses involuntary immobility and displacement among the main risks identified across sectors and regions<sup>26</sup>. In this regard, a constant throughout the report is the importance that Working Group II places on human agency, as the "minimalist" authors highlight, noting the "high agreement" (albeit with "medium evidence") around the conclusion that the greater the "degree of voluntariness and freedom of movement" of climate migrants, "the greater the potential benefits for sending and receiving areas"<sup>27</sup>.

Although the IPCC can no longer be said to deny the existence of "climate migrants", as it did in its fifth report, Working Group II remains extremely cautious when it comes to quantifying present or future population movements related to climate change. Thus, the sixth report limits itself to highlighting the difficulties in providing reliable figures in this regard:

"Reliable global estimates of voluntary climate-related migration within and between countries are not available due to a general absence of concerted efforts to date to collect data of this specific nature, with existing national and global datasets often lacking information on migration causation or motivation. Better data are available for involuntary displacements within countries for reasons associated with weather-related hazards"<sup>28</sup>.

The "better data" referred to by Working Group II comes from the IDMC, which since 2008 has been collecting data on internal displacement associated with natural disasters, including climate-related phenomena. According to the latest report published by IDMC in 2021, as of 31 December 2020, natural disasters would have internally displaced at least 7 million people in 104 countries and territories<sup>29</sup>. However, this figure only shows a static picture of the number of environmentally displaced persons at a particular point in time. Consequently, it fails to capture the magnitude of the population movements that environmental disruptions are cumulatively causing around the world.

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<sup>26</sup> Ibid., p. 48 *in fine*. For references to climate-related mobility in the Sixth Assessment Report vid. Table "Cross-Chapter Box MIGRATE.1: Typology of climate-related migration and examples in sectoral and regional chapters of AR6", pp. 51-54.

<sup>27</sup> Ibid., p. 49 [original text in italics].

<sup>28</sup> Ibid., p. 57.

<sup>29</sup> IDMC; NRC, "Global Report on Internal displacement (2021): Internal displacement in a changing climate", IDMC, 2021, p. 15. In particular, vid. Part 2 of the report, which focuses entirely on internal displacement and climate change (pp. 75-118).

Bearing the above in mind, and in order to offer a more complete vision of the phenomenon to be legally regulated, this chapter undertakes, with the limitations that will be set out below, the difficult task of quantifying the environmental displacement that has occurred in the world in a reference period of five years (2016-2020). As a preliminary premise, the following section defines and delimits the environmental disturbances that for the purposes of this thesis have been taken into account as drivers of forced displacement.

## **2. DEFINING AND CLASSIFYING ENVIRONMENTAL DISRUPTIONS**

Before setting out the figures on environmental displacement, it is worth clarifying which environmental stressors will be considered causes of displacement eligible for international protection. This issue is directly related to the concept of *environmental disruption*, as only the movement that occurs as a result of environmental changes so defined would be considered displacement. To this end, it is proposed to adopt the definition provided by the "maximalist" El-Hinnawi, who defines "environmental disruptions" as

"any physical, chemical and/or biological changes in the ecosystem (or the resource base) that render it, temporarily or permanently, unsuitable to support human life"<sup>30</sup>.

This definition must, however, be narrowed down in view of the thesis' object. As the object of study focuses on displacement due to natural causes, it excludes from the research persons displaced by anthropogenic environmental disruptions, covered in the "maximalist" literature, namely: development projects, industrial accidents and toxic waste pollution, and the environmental implications of war. Likewise, the definition requires that environmental changes be sufficiently significant to render the place of residence uninhabitable, either temporarily or permanently, forcing displacement to

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<sup>30</sup> EL-HINNAWI, E., *Environmental refugees*, Nairobi, United Nations Environment Programme (UNEP), 1985, p. 4.

save one's own life<sup>31</sup>. Therefore, as El-Hinnawi points out, predominantly voluntary population movements –i.e. migrations- would also be excluded from consideration<sup>32</sup>.

As noted in the Nansen *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*,

"[s]uch displacement results from the fact that affected persons are (i) exposed to (ii) a natural hazard in a situation where (iii) they are too vulnerable and lack the resilience to withstand the impacts of that hazard. It is the *effects* of natural hazards, including the adverse impacts of climate change, that may overwhelm the resilience or adaptive capacity of an affected community or society, thus leading to a disaster that potentially results in displacement."<sup>33</sup>

The paragraph above embraces the "maximalist" thesis that forced displacement results from a country's susceptibility to natural hazards compounded by its vulnerability –i.e. the lack of capacity to adapt to them at the institutional and population level<sup>34</sup>.

The criteria of the CRED International Disaster Database have been used to define and classify the different environmental disruptions of natural origin that may force population movements. According to their source, CRED distinguishes five subgroups of environmental disruptions: hydrological, meteorological, climatological, geophysical

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<sup>31</sup> Vid. *Ibid.*, or BORRAS PENTINAT, S., "El estatuto jurídico de protección internacional de los refugiados ambientales", *Revista Interdisciplinar da Mobilidade Humana*, Vol. 19, No. 36, 2011, p. 17. Both authors argue that the "key element" in recognising a protection status for those environmentally displaced is precisely the forced nature of displacement, with environmental changes forcing them to leave their "traditional habitat" by threatening their very survival or seriously affecting their quality of life.

<sup>32</sup> EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 4. On migration as an adaptation strategy to climate change, vid. ARENAS HIDALGO, N.C., "El cambio climático y los desplazamientos de población. La migración como estrategia de adaptación", in: Giles Carnero, R., (coord.), *Cambio Climático, Energía y Derecho Internacional: Perspectivas de Futuro*, 1<sup>st</sup>ed., Pamplona (Spain), Aranzadi Thomson Reuters, 2012, pp. 221-235. Special mention should be made of islanders from SIDS threatened by sea-level rise, such as Kiribati or Tuvalu, who migrate to other continental States such as New Zealand or Australia under labour policies. SIDS and regional powers have jointly implemented these migration frameworks as adaptation strategies in the face of climate change and the scarcity of employment in SIDS. In these cases, islanders would be protected by the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*. For a commentary on some of these migration policies, vid. GRACIA PÉREZ, D., "La tragedia de los pequeños Estados insulares en desarrollo. Desplazamientos climáticos antes la subida del nivel del mar", *Anuario Hispano-Luso-Americano de derecho internacional*, No. 24, 2020, pp. 257-268.

<sup>33</sup> THE NANSEN INITIATIVE, "Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change", Volume I, the Nansen Initiative, December 2015, par. 16 [underlined added].

<sup>34</sup> Vid. for all, MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, Washington DC (USA), Climate Institute, June 1995, pp. 134 *in fine* and 135.

and biological, which in turn cover 15 types of catastrophes and more than 30 subtypes<sup>35</sup>.

Because climate change is not going to cause population movements by itself but through exacerbating meteorological, hydrological and climatologic events<sup>36</sup>, it has not been analysed as a separate phenomenon. Biological disruptions such as epidemics –i.e. hazards "caused by the exposure to living organisms and their toxic substances (e.g. venom, mold) or vector-borne diseases that they may carry"<sup>37</sup>- have not been considered either, as no impact on generating forced population movements has been identified in the reviewed literature for this kind of environmental disturbance<sup>38</sup>.

In turn, an additional sub-criterion has been introduced in the CRED classification by distinguishing between rapid- and slow-onset environmental disturbances depending on the speed at which their effects manifest themselves<sup>39</sup>. Accordingly, Figure 6 shows a proposed classification of environmental disruptions that cause population movements by subgroups according to their origin and the speed of their effects. Their consideration as drivers of displacement has been determined from IDMC-reported data<sup>40</sup> and the

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<sup>35</sup> Vid. EM-DAT, [Explanatory Notes](#) (last access: 22/04/2020), and EM-DAT, [Classification](#) (last access: 22/04/2020).

<sup>36</sup> In this regard, PÖRTNER, H.O. ET AL (eds.), "Chapter 7: Health, wellbeing and the changing structure of communities", in: *Climate Change 2022...*, *op. cit.*, p. 49, conclude: "In many regions, the frequency and/or severity of floods, extreme storms, and droughts is projected to increase in coming decades, especially under high-emissions scenarios, raising future risk of displacement in the most exposed areas (high confidence)" [original text in italics]. For changes in climate risks specific to each region vid. *ibid.*, pp. 77-79.

<sup>37</sup> EM-DAT, [Glossary: "Biological hazard"](#) (last access: 22/04/2020).

<sup>38</sup> The declaration by the WHO of COVID-19 as a pandemic on 11 March 2020 (previously declared a public health emergency of international concern on 30 January 2020) obliges, however, to reconsider this initial assumption for future research work. In particular, it would be interesting to analyse the exodus in developed countries from cities to rural areas, which are less exposed to infection; the impact of the pandemic on population movements in underdeveloped countries –perhaps heading to other areas of the country or neighbouring States with lower infection rates or better health care-, and population flows to places where the vaccination campaign against COVID-19 began earlier or where it was easier to access the vaccine. In the medium/long term, consideration should be given to the socio-economic effects of the pandemic, which could have the same effect on population movements as slow-onset environmental disruptions such as drought.

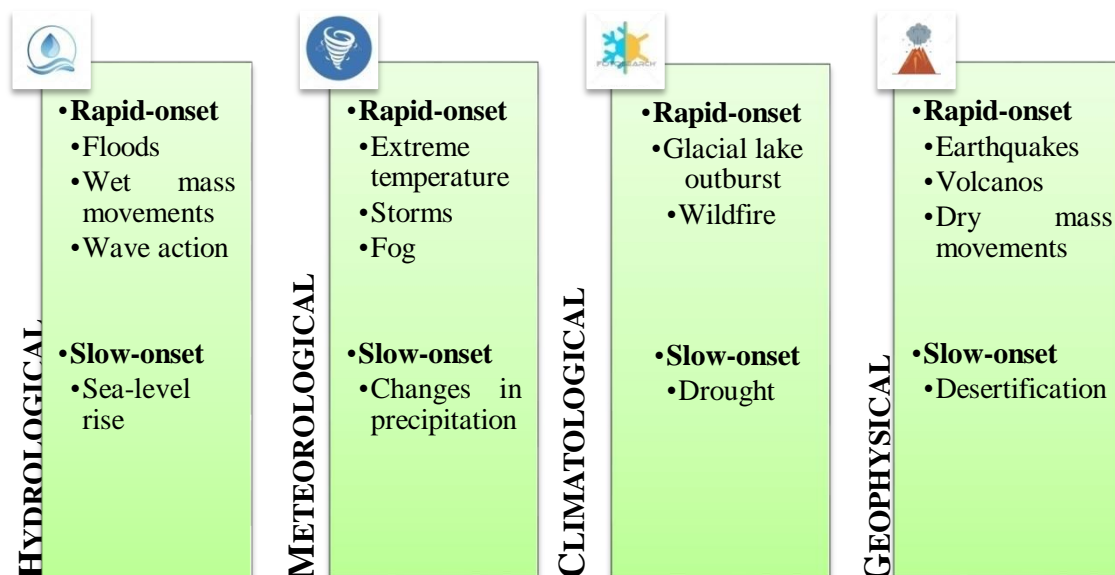
The two statements by the WHO Director-General on COVID-19 as an international emergency and pandemic referred to can be found at: WHO, ["WHO Director-General's opening remarks at the media briefing on COVID-19"](#), 11 March 2020 (last access: 25/11/2021). WHO, ["WHO Director-General's statement on IHR Emergency Committee on Novel Coronavirus \(2019-nCoV\)"](#), 30 January 2020 (last access: 25/11/2021).

<sup>39</sup> The distinction between sudden or progressive changes in the environment has been incorporated by the IOM in its definition of "environmental migrant" (vid. IOM, *Discussion Note: Migration and the Environment* (MC/INF/288), 1 November 2007, par. 6). It is also a classification criterion of standard reference among the specialised doctrine (vid. for all, IONESCO, D.; MOKHNACHEVA, D.; GEMENNE, F., *The Atlas of Environmental Migration*, 1<sup>a</sup> ed., New York (USA), Routledge, 2016, 172 pp.)

<sup>40</sup> IDMC, [GLOBAL INTERNAL DISPLACEMENT DATABASE](#) (last access 31/05/2019).

literature review on environmental displacement conducted in Chapter I. As a result, Figure 6 includes three phenomena –sea-level rise, changes in precipitation patterns and desertification- not foreseen in the CRED classification.

**Figure 6-Classification of environmental disruptions**



*Hydrological disasters* include "hazard(s) caused by the occurrence, movement, and distribution of surface and subsurface freshwater and saltwater"<sup>41</sup>. The most common rapid-onset hydrological disruptions that cause population displacement are floods in their many variants, such as riverine and coastal floods and flash floods<sup>42</sup>. However, the action of hydrological events can also cause downward movements of land material<sup>43</sup>, such as snow or debris avalanches, mudflows and rockfalls, forcing exposed populations to move. These phenomena are called wet mass movements. They are classified as hydrological rather than geological disturbances because the driving force is not geophysical but hydrological, which is why these movements are referred to as wet as opposed to dry.

Slow-onset hydrological disruptions that can cause forced population movements are related to sea-level rise. This phenomenon does not appear among the hydrological

<sup>41</sup> EM-DAT, Glossary: "Hydrological hazard" (last access: 22/04/2020).

<sup>42</sup> Cf. PÖRTNER, H.O. ET AL (eds.), "Chapter 7: Health, wellbeing and the changing structure of communities", in: *Climate Change 2022..., op. cit.*, p. 58: "Flood displacement can lead to increases or decreases in temporary or short-distance migration flows, depending on the local context (medium confidence)" [original text in italics].

<sup>43</sup> Vid. EM-DAT, Glossary: "Mass movement" (last access: 22/04/2020).

disaster sub-types considered by CRED. However, its inclusion in the proposed classification is mandatory because of its relevance to the object of study<sup>44</sup>.

*Meteorological phenomena* are usually "events caused by short-lived/small to mesoscale atmospheric processes (in the spectrum from minutes to days)"<sup>45</sup>. Storms are their primary manifestation as displacement drivers<sup>46</sup>, which can be tropical, extra-tropical or convective. Tropical storms occur in tropical or subtropical waters and are distinguished by "a warm-core, non-frontal synoptic-scale cyclone with a low pressure centre, spiral rain bands and strong winds"<sup>47</sup>. Depending on where they originate, tropical cyclones are called hurricanes (Atlantic, Northeast Pacific), typhoons (Northwest Pacific) or cyclones (South Pacific and the Indian Ocean)<sup>48</sup>. Instead, extra-tropical storms are also cyclonic systems but associated with low pressure in mid and high latitudes whose energy derives mainly from horizontal temperature contrasts (fronts) in the atmosphere. Their destructive potential can be particularly magnified if they are associated with cold fronts (e.g. European winter/storm Nor'easter)<sup>49</sup>. Finally, convective storms are generated "by the heating of air and the availability of moist and unstable air masses. Convective storms range from localised thunderstorms (with heavy rain and/or hail, lightning, high winds, tornadoes) to meso-scale, multi-day events"<sup>50</sup>.

Extreme temperatures in the form of cold and heat waves and severe winter conditions are the second type of sudden weather disruption the IDMC considers to be

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<sup>44</sup> Vid. PÖRTNER, H.O. ET AL (eds.), "Chapter 7: Health, wellbeing and the changing structure of communities", in: *Climate Change 2022..., op. cit.*, p. 78 *in fine*, reporting that "[s]ea level rise is not presently a significant driver of migration" and it "does not appear to currently be a primary motivation for international migration originating in small island states in the Indian and Pacific Oceans", which appears to be more related to economic considerations and family reunification (based on limited empirical evidence). However, the report concludes (with a high degree of confidence) that "[i]n low-lying coastal areas of most regions, future increases in mean sea levels will amplify the impacts of coastal hazards on settlements, including erosion, inland penetration of storm surges and groundwater contamination by salt water, and eventually lead to inundation of very low-lying coastal settlements" (id. [original text in italics and underlined added]), creating "a need for organized relocation of populations where protective infrastructure cannot be constructed" (ibid., p. 79).

<sup>45</sup> EM-DAT, Glossary: "Meteorological disasters" (last access: 22/04/2020).

<sup>46</sup> Confirmed by PÖRTNER, H.O. ET AL (eds.), "Chapter 7: Health, wellbeing and the changing structure of communities", in: *Climate Change 2022..., op. cit.*, pp. 57 *in fine* and 58: "Tropical cyclones and extreme storms are a particularly significant displacement risk in East and Southeast Asia, the Caribbean region, the Bay of Bengal region, and southeast Africa (IDMC 2020) (high confidence)" [original text in italics].

<sup>47</sup> EM-DAT, Glossary: "Tropical storm" (last access: 22/04/2020).

<sup>48</sup> Id.

<sup>49</sup> EM-DAT, Glossary: "Extra-tropical storm" (last access: 22/04/2020).

<sup>50</sup> EM-DAT, Glossary: "Convective storm" (last access: 22/04/2020).

responsible for displacement<sup>51</sup>. Changes in rainfall patterns and monsoon systems have been included as slow-acting weather disruptions, being cited in the "maximalist" literature as a cause of displacement because of their effects on agriculture.

In contrast to meteorological disruptions, *climatological phenomena* are "caused by long-lived, meso- to macro-scale atmospheric processes ranging from intra-seasonal to multi-decadal climate variability"<sup>52</sup>. The IDMC reports wildfires as the prominent rapid-onset climate disruption causing displacement<sup>53</sup>. Their origin can be natural – caused by lightning strikes- or human-induced<sup>54</sup>.

Drought appears in the IDMC database as the slow-onset climate disruption responsible for causing population displacement, although data recorded on its impact are still scarce<sup>55</sup>. CRED defines drought as "[a]n extended period of unusually low precipitation that produces a shortage of water for people, animals and plants"<sup>56</sup>. CRED notes that drought is not only a physical phenomenon, as human activities and water demand can worsen its effects. Therefore, it considers drought to be better defined conceptually and operationally, even though the operational criteria – i.e. the degree of precipitation reduction that is considered a drought- vary by locality, climate, and environmental sector<sup>57</sup>.

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<sup>51</sup> Cf. PÖRTNER, H.O. ET AL (eds.), "Chapter 7: Health, wellbeing and the changing structure of communities", in: *Climate Change 2022...*, *op. cit.*, pp. 79 *in fine* and 80, reporting "medium agreement, low evidence" on the conclusion that "[i]ncreased frequency of extreme heat events and long-term increases in average temperatures pose future risks to the habitability of settlements in tropical and sub-tropical regions, and may in the long term affect migration patterns in exposed areas, especially under high emissions scenarios" [original text in italics].

<sup>52</sup> EM-DAT, Glossary: "Climatological hazard" (last access: 22/04/2020).

<sup>53</sup> The IPCC's Sixth Assessment Report concludes that "[f]ew assessable studies were identified that examine links between wildfires and migration" and that therefore "[m]ore research (...) is needed". According to the report, displacement associated with wildfires takes the form of "urgent evacuations and temporary relocations, which place significant stress on receiving communities". However, "research in the US suggests fires have only a modest influence on future migration patterns in exposed areas" (in PÖRTNER, H.O. ET AL (eds.), "Chapter 7: Health, wellbeing and the changing structure of communities", in: *Climate Change 2022...*, *op. cit.*, p. 58).

<sup>54</sup> Vid. EM-DAT, Glossary: "Wildfire" (last access: 22/04/2020).

<sup>55</sup> According to PÖRTNER, H.O. ET AL (eds.), "Chapter 7: Health, wellbeing and the changing structure of communities", in: *Climate Change 2022...*, *op. cit.*, pp. 57 *in fine* and 58: "Drought-related population movements are most common in dryland rural areas of low-income countries, and occur after a threshold is crossed and in situ adaptation options are exhausted. (...) The most common response to drought is an increase in short-distance, rural-urban migration (*medium confidence*)" [original text in italics].

<sup>56</sup> EM-DAT, Glossary: "Drought" (last access: 22/04/2020).

<sup>57</sup> Id.

Finally, *geophysical disasters* are referred to "events originating from solid earth"<sup>58</sup>. All geophysical events in the CRED classification are sudden-onset events, such as earthquakes, volcanic activity or dry mass movements (e.g. rock falls or landslides). Associated with undersea earthquakes, volcanic eruptions and landslides are tsunamis, which are waves resulting from "a displacement of massive amounts of water" that move at very high speed through the ocean but slow down when they reach shallow water, making the wave more pronounced<sup>59</sup>.

Desertification has been included as a slow-onset geophysical disruption, as it is one of the main drivers of population displacement discussed in the environmental displacement literature. It is classified as a geophysical disruption because it is an extreme form of land degradation. However, its progression will be compounded by global warming and droughts associated with climate change<sup>60</sup>.

### 3. QUANTIFYING ENVIRONMENTAL DISPLACEMENT

The data provided in this section, which has been used to produce the graphs and tables below, has been obtained from two databases: the International Disaster Database and the Disaster-Related Displacement Dataset. An exception to this is the sub-heading on sea-level rise, where the data is drawn primarily from a research study published by the OECD identifying 136 port cities with high exposure and vulnerability to sea-level rise and extreme coastal flooding<sup>61</sup>. Overall, this assessment provides a reasonably comprehensive, if somewhat limited, empirical view of how environmental factors act as drivers of displacement. Data on sudden- and slow-onset events have been disaggregated in terms of frequency, monetary impact and displacement. The total figures for each of these fields are presented in tables in Annex I at the end of the thesis.

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<sup>58</sup> EM-DAT, Glossary: "Geophysical hazard" (last access: 22/04/2020).

<sup>59</sup> EM-DAT, Glossary: "Tsunami" (last access: 22/04/2020).

<sup>60</sup> Vid. PÖRTNER, H.O. ET AL (eds.), "Cross-Chapter Paper 3: Deserts, Semi-Arid Areas and Desertification", in: *Climate Change 2022..., op. cit.*, 53 pp., on the impacts and risks of climate change for arid and semi-arid areas, including desertification, and options for adaptation and climate-resilient development.

<sup>61</sup> NICHOLLS, R.J. et al., "Ranking Port Cities with High Exposure and Vulnerability to Climate Extremes: Exposure Estimates" (ENV/WKP(2007)1), *Environmental Working Paper*, No. 1, OECD, 19 November 2008, 62 pp. Mention should also be made of the Working Group II contribution to the IPCC Sixth Assessment Report, provisionally released in 2022. The report has included a cross-chapter assessing the impacts and risks that climate change (and associated sea level rise and other hydrological phenomena) pose to cities and coastal settlements. In this regard, the report not only points out the vulnerability of exposed human settlements, but also highlights opportunities for adaptation (vid. PÖRTNER, H.O. ET AL (eds.), "Cross-Chapter Paper 2: Cities and Settlements by the Sea", in: *Climate Change 2022..., op. cit.*, 42 pp).



Frequency identifies regions and countries that tend to be more exposed to natural disasters. The monetary impact, adjusted for inflation, is intended to test the "maximalist" thesis that developing countries are more susceptible to disaster impacts even when faced with disruptions similar to those experienced by developed countries, thus rendering their populations more impoverished, vulnerable and, consequently, more likely to resort to displacement. The relationship of exposure and vulnerability to the resulting increase in displacement will be assessed by checking that countries with the most extensive displacement rates are developing countries with a significant prevalence of disasters and associated loss and damage. Ultimately, the representation of these combined results on maps will visually show those countries that are potential hotspots of environmental displacement.

### 3.1. Methodology

#### 3.1.1. The International Disaster Database

The International Disaster Database (EM-DAT/Emergency Events Database)<sup>62</sup> was created by the Centre for Research on the Epidemiology of Disasters (CRED) in 1988, thanks to the initial support of the WHO and the Belgian Government<sup>63</sup>, and the sponsorship of the OFDA –which is part of the US Agency for International Development<sup>64</sup>. Records in the database date from 1900 to the present day<sup>65</sup>. According to the EM-DAT explanatory notes, for a disaster to be included in the database at least one of the following criteria must be met:

- "Ten (10) or more people killed
- One hundred (100) or more people affected
- Declaration of a state of emergency
- Request for international assistance"<sup>66</sup>.

Data are collected from several sources, including "UN, governmental and non-governmental agencies, insurance companies, research institutes and press agencies"<sup>67</sup>.

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<sup>62</sup> The database is available at CRED; UCLouvain, [EM-DAT/INTERNATIONAL DISASTER DATABASE](#), Brussels (Belgium) [last access 31/05/2019] [Registration is required and may be subject to payment depending on the user's profile].

<sup>63</sup> EM-DAT, [Welcome to the EM-DAT website](#) [last access: 22/04/2020].

<sup>64</sup> GUHA-SAPIR, D.; HOYOIS, PH.; WALLEMACQ, P.; BELOW, R., "Annual Disaster Statistical Review 2016. The numbers and trends", Brussels (Belgium), CRED, 2016, p. 13.

<sup>65</sup> Id.

<sup>66</sup> EM-DAT, [Explanatory notes](#), *op. cit.*

In order to avoid incompleteness, inconsistencies or even political bias, the CRED distinguishes between primary and secondary sources based on their ability to provide reliable and complete data<sup>68</sup>, giving priority "to data from UN agencies, governments, and the International Federation of Red Cross and Red Crescent Societies"<sup>69</sup>. As a general rule, a disaster is only included in the EM-DAT "if at least two sources report the disaster's occurrence in terms of deaths and/or affected persons"<sup>70</sup>.

However, this distinction between primary and secondary sources does not imply a mutually exclusive relationship. Although the final figures in EM-DAT usually come from the priority sources, the CRED guidelines clarify that "they can also be completed by a secondary source". It may also happen that a secondary source becomes primary when, for example, the final figures are available considerably after the disaster has struck. Finally, CRED reserves the use of some sources exclusively for specific disasters (e.g. the United States Geological Survey for earthquakes, WHO for epidemics)<sup>71</sup>.

Upon the outbreak of a catastrophe, disaster-related information is entered into the database at three different levels: a) the event/disaster level; b) the country (or countries) level; c) and the source level<sup>72</sup>. Level 1 includes information related to the disaster, such as its name and assigned identification number and its classification by group, subgroup, type, subtype and sometimes sub-subtype. Level 2 contains the geographical aspects of the disaster –such as continent, region, country and location- and its duration –e.g., start and end day and local time. Level 2 also records information on the origin of the disaster and its magnitude, associated disasters or whether the affected country requested or received international assistance or declared the state of emergency. Finally, level 3 provides details on the type and name of the information source, the human impact of the disaster –including the number of dead, lost, injured, affected or homeless- and its economic repercussions in terms of estimated total

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<sup>67</sup> EM-DAT, "Level 3-Source of information", [Guidelines](#) [last access: 22/04/2020].

<sup>68</sup> Vid. id. and EM-DAT, "7. How are the data compiled?", [Frequently asked questions](#) [last access: 22/04/2020].

<sup>69</sup> EM-DAT, "7. How are the data compiled?", *op. cit. supra*, also noting that "CRED consolidates and updates data on a daily basis. A further check is made at monthly intervals, and revisions are made at the end of each calendar year".

<sup>70</sup> EM-DAT, "Level 3-Source of information", [Guidelines](#), *op. cit.*

<sup>71</sup> Id. For a non-exhaustive classification of the main sources used in EM-DAT, vid. Table 2.

<sup>72</sup> EM-DAT, [Explanatory notes](#), *op. cit.*

damage, reconstruction costs and insured losses –in 000'US\$ in the value of the year of occurrence and adjusted for inflation<sup>73</sup>.

The data for the three levels mentioned above are displayed in an Excel spreadsheet that can be downloaded by the user, after registration in the database. Users can limit the search to the range of years they wish to examine<sup>74</sup>. "Empty fields in the EM-DAT database usually indicate missing values or no information. A "0" in EM-DAT does not represent a value, and may indicate that no information is available"<sup>75</sup>. The data provided in this chapter on the frequency of natural disasters and their economic impacts have been extracted from this database. For ease of reference, the data have been systematised by country and are presented in alphabetical order and grouped by continent in two annexes at the end of the thesis: Annex II "Natural disasters by country (including self-governing or special status territories)", and Annex IV "Total damages ('000 US\$), adjusted for inflation, by country (including self-governing or special status territories)"<sup>76</sup>.

The main limitation of the CRED database for this thesis research has been that there is no specific entry reflecting the number of people displaced by natural disasters. The entry "affected" includes "persons requiring immediate assistance during a period of emergency", which "may include displaced or evacuated persons". However, this entry is not reliable, as the modal *may* only indicates possibility. "Homeless" refers to "people whose house is destroyed or heavily damaged and therefore need shelter after an event", but this does not necessarily imply that they have been displaced. Finally, the "total affected" category is no more than the "sum of injured, homeless and affected", which does not add anything new to the information provided by each of the individual categories above<sup>77</sup>. An attempt has been made to fill this gap with data on disaster-related displacement from the Global Internal Displacement Database.

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<sup>73</sup> Vid. EM-DAT, Guidelines, *op. cit.*, for a detailed description of each of the three levels.

<sup>74</sup> More about the EM-DAT search engine in EM-DAT, "13. What is the search engine designed for?", Frequently asked questions [last access: 24/04/2020].

<sup>75</sup> EM-DAT, "6. What does it mean when there is no value in a given field? Is "0" a value?", Frequently asked questions [last access: 24/04/2020].

<sup>76</sup> The organisation of countries by continent follows that of the UN STATISTICS DIVISION, Geographic Regions [last access: 29/05/2019].

<sup>77</sup> The field definitions are taken from GUHA-SAPIR, D.; HOYOIS, PH.; WALLEMACQ, P.; BELOW, R., "Annual Disaster Statistical Review 2016...", *op. cit.*, p. 14-15.

### 3.1.2. The Disaster-related displacements dataset

This dataset is part of the Global Internal Displacement Database (GIDD)<sup>78</sup>. It was created by the International Displacement Monitoring Centre (IDMC), which keeps it up to date. Published data on disaster-related population movements cover displacement caused mainly by sudden-onset natural disruptions since 2008<sup>79</sup>. In general terms, the IDMC uses an event-based methodology to estimate the total number of people displaced by a single event, whether it is a natural disaster, a situation of violence or conflict, or a development project<sup>80</sup>. To this end, the IDMC does not set a minimum threshold in terms of number of people displaced or distance travelled to register a disaster-associated movement as displacement<sup>81</sup>.

The dataset, which is free to download in Excel format, is organised in eight columns. The first column shows the international code assigned to the country in question by the ISO 3166-1 alpha-3 standard, followed by its full name in the second column. The third, fourth and fifth columns indicate the year and starting date of the event, as well as its name –usually made up of the type of hazard and its geographical location, unless an internationally recognised name exists. The sixth and seventh columns refer to the category and type of hazard. The last entry, entitled "new displacement", gives an overall estimate of the number of people displaced by that event in that country<sup>82</sup>.

Regarding the category "new displacement", it should be clarified that it is not equivalent to first displacement. Therefore, the number of people *newly displaced* by a given event may include persons already displaced by a previous one (secondary or multiple displacements)<sup>83</sup>, which is not uncommon in the case of recurrent or overlapping natural hazards. In particular, the IDMC reports the greatest difficulty in tracking rainy season, hurricane or monsoon events that affect several countries in the same region at the same time, especially when sources make no reference to when, how

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<sup>78</sup> The dataset is available at IDMC, [GLOBAL INTERNAL DISPLACEMENT DATABASE](#) [last access 31/05/2019]. The database also provides information on situations of internal displacement associated with conflict and generalised violence.

<sup>79</sup> IDMC, [Geographical and temporal scope of the database](#) [last access: 31/05/2019].

<sup>80</sup> IDMC; NRC, "Global Report on Internal Displacement (2019). Methodological Annex", IDMC, May 2019, p. 5 [last access: 16/05/2020].

<sup>81</sup> *Ibid.*, p. 19.

<sup>82</sup> Vid. IDMC, "Global Report on Internal Displacement 2017 Disaster Dataset Codebook", IDMC, 2017, 5 pp.

<sup>83</sup> IDMC; NRC, "Global Report on Internal Displacement (2019)..., *op. cit.*, p. 5.

or which natural hazard caused the displacement<sup>84</sup>. In these cases, the overlap between different hazards makes it difficult to delineate when one event starts and ends and the next begins –e.g. in the case of successive storm systems- or to determine whether the displacement was caused by the main event –e.g. the storm- or by its secondary effects –the resulting floods or landslides<sup>85</sup>.

Focusing on the "new displacement" column, the main contribution of this work has been to systematise the available data so that it is possible to see, at a glance, the displacement generated by natural hazards in all continents and countries in the period 2016-2020<sup>86</sup>. To this end, an Excel table has been generated for each country<sup>87</sup>, showing the annual and total estimate of people displaced from 2016 to 2020 by each group of disruptions –i.e. hydrological, meteorological, climatological and geophysical. For ease of searching and consultation, the set of tables is attached as Annex III, grouped by continent and sorted alphabetically<sup>88</sup>.

The data on disaster-induced displacement used by IDMC to produce its estimates comes from government disaster management and disaster risk reduction agencies, the UN, IFRC, national Red Cross and Red Crescent societies, NGOs, and local and international media<sup>89</sup>. As can be seen, there is a certain correspondence between the sources of information considered by the IDMC and the CRED, which ensures a certain degree of consistency between the data provided by each of them. If different sources on the same disaster are available, the IDMC cross-checks the reported figures to validate data –called "triangulation"<sup>90</sup>. However, estimates are sometimes derived from a single report or are "the aggregation of several reports that together cover the wide geographical area affected by said disaster"<sup>91</sup>. Other times, estimates are extrapolations from "the number of severely damaged or destroyed homes or the number of families in

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<sup>84</sup> IDMC, "Monitoring challenges", [How we monitor?](#) [last access: 24/04/2020].

<sup>85</sup> IDMC; NRC, "Global Report on Internal Displacement (2019)..., *op. cit.*, p. 19.

<sup>86</sup> In this regard, "New displacements" also mean the total number of movements that have occurred over a period of time (e.g. between 1 January 2016 and 31 December 2020), as opposed to "Stock of displacements" which represents the total number of IDPs ("stock") existing in a given location at a specific point in time (e.g. at the end of a given year) (in IDMC, "IDMC Main Metrics and Indicators", [How we monitor?](#) [last access: 24/04/2020].

<sup>87</sup> Separate tables have been included for autonomous territories such as French Polynesia or Sint Maartel, and others with special status such as Palestine and Kosovo, following IDMC geographical considerations.

<sup>88</sup> The organisation of countries by continent follows that of the UN STATISTICS DIVISION, [Geographic Regions](#) [last access: 29/05/2019].

<sup>89</sup> IDMC; NRC, "Global Report on Internal Displacement (2019)..., *op. cit.*, p. 19.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* For an example of combining data sources through triangulation, *vid.* Box A2 (p. 11).

evacuation centres"<sup>92</sup>. In these cases, estimates are the result of multiplying the housing or family data by the country's average household size<sup>93</sup>.

As with any estimate, there is a margin of error accentuated in this case by two factors. On the one hand, there is the complexity of the relationship between environmental factors and human mobility, as highlighted by the "minimalists". On the other hand, the IDMC's own methodology, which relies highly on the data provided by its partners and the accuracy of the source in question. Firstly, the reporting terms used do not always coincide between sources<sup>94</sup>, and data is not equally available in all regions of the world, being more accessible in those countries "where international agencies, funding partners and media have a substantial presence"<sup>95</sup>, or where there are national agencies with sufficient willingness and capacity to collect and provide disaster-related information<sup>96</sup>. Similarly, large-scale events often overshadow small-scale events, which, despite being more common, tend to go unnoticed or unreported, particularly when they occur in isolated, insecure or marginalised areas<sup>97</sup>.

Secondly, figures based on data from official or collective shelter sites may lead to underestimates since "invisible" displaced –i.e. those sheltering with host families or other alternative places outside of the official structures- are not counted<sup>98</sup>. On the other hand, some sources may be interested in manipulating figures to draw international attention to the crisis, intensify foreign assistance, or minimise the scale of the disaster if the government is responsible for it or its mismanagement<sup>99</sup>.

In order to mitigate all these potential biases, besides triangulating data, the IDMC has established a scale of priority among the different data sources, giving preference to "those we have historically deemed to have been most objective"<sup>100</sup>. Data from government agencies, UN organisations (such as OCHA or UNHCR), IOM's

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<sup>92</sup> Ibid., p. 17

<sup>93</sup> Ibid., pp. 12 and 17. The homes taken into consideration are only those "that have been damaged to the extent they are no longer habitable", defining home as "any place where people have established a habitual residence", including shelters in refugee and IDP camps (p. 12). Regarding countries' average household size, the main limitation relates to the absence of a global dataset with up-to-date harmonised data on average household size for each country and territory monitored (p. 12).

<sup>94</sup> Ibid., p. 19.

<sup>95</sup> Ibid., p. 16.

<sup>96</sup> Id.

<sup>97</sup> Id.

<sup>98</sup> Ibid., p. 17

<sup>99</sup> IDMC; NRC, "Global Report on Internal Displacement (2018). Methodological Annex", IDMC, May 2018, p. 11.

<sup>100</sup> IDMC; NRC, "Global Report on Internal Displacement (2019)..., *op. cit.*, p. 9.

displacement tracking matrix, humanitarian groups, IFRC and local authorities have priority in the development of IDMC estimates. Secondary sources, for when data is not available from primary ones, include international and local NGOs, civil society and human rights organisations, and academia. Finally, tertiary sources are those considered the least reliable of all, such as international and local media, affected populations or non-state armed groups. IDMC uses them mainly to cross-check data from priority and secondary sources. Estimates based on tertiary sources are only used in specific cases - e.g. when no other figures are available-, provided that their accuracy can be assessed<sup>101</sup>. When the data that have been collected on displacement associated with a natural disaster are insufficient to generate a reliable estimate or could not be verified, IDMC does not publish any figures<sup>102</sup>, and the "new displacement" column associated with that event appears empty in the Excel spreadsheet.

However, the IDMC dataset has some shortcomings for our research purposes. The primary constraint is that it only offers estimations of internal displacement. There are no data on international border crossings caused by natural hazards. Therefore, the picture this section can provide, based on the available data, is biased because it is incomplete. In support of its usefulness, it should be noted that there is a strong consensus in the literature that displacement related to climate change and natural disasters is mostly intra-border<sup>103</sup>.

Secondly, the natural hazards considered as migration drivers are rapid-onset disruptions. Estimates of displacement associated with slow processes of environmental

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<sup>101</sup> Vid. id. and IDMC, "Data sources", How we monitor? [last access: 24/04/2020].

<sup>102</sup> IDMC, "IDMC Workflow", How we monitor?, [last access: 24/04/2020].

<sup>103</sup> Vid. the literature review in LACZKO, F.; AGHAZARM, C., *Migration, Environment and Climate Change: Assessing the Evidence*, *op. cit.*, 441 pp, noting that "[s]tatistics on internal displacement could be a useful indicator, given that most population movements following natural disasters are internal and not cross-border" (p. 263). However, the authors note that this "widely held belief" "is not always backed by empirical data but rather proven by the negative and the absence of evidence showing international migration post-disaster" (p. 273). Furthermore, the assessment states that "the only example of large-scale international migration due to natural disasters in recent years is Hurricane Mitch in Central America" (p. 274), and that most documented international migration movements from natural disasters have been intra-regional between neighbouring countries such as in the Sahel region, where borders are porous, and from Mexico to the US (p. 329). Vid. also, PÖRTNER, H.O. ET AL (eds.), "Chapter 7: Health, wellbeing and the changing structure of communities", in: *Climate Change 2022...*, *op. cit.*, p. 56, reporting similar findings. Thus, on the one hand, "[c]limate-related migration originates most often in rural areas in low- and middle-income countries, with migrant destinations usually being other rural areas or to urban centres within their home countries (i.e., internal migration) (medium confidence)" [original text in italics and underlined added]. On the other hand, "[m]ost documented examples of international climate-related migration are intra-regional movements of people between countries with shared borders (high agreement, medium evidence)" [original text in italics and underlined added].

degradation are not available. In 2017, the dataset included internal displacement caused by drought events for the first time, but limited to only four countries, subsequently expanding to nine countries in the 2018 report<sup>104</sup>. Additionally, in 2018, the IDMC included data regarding coastal erosion, mainly in Bangladesh<sup>105</sup>. However, the data available in the database on these environmental disruptions are still very limited in terms of the number of years and countries covered.

Finally, it should be noted that some contradictions have been detected between the number of natural disasters recorded by the CRED and the IDMC for the same year. As the IDMC uses a taxonomy of natural disasters based on the classification developed by CRED<sup>106</sup>, it is excluded that discrepancies are due to different classification criteria. To some extent, bearing in mind the aforementioned difficulties in data collection, the differences in the figures could be explained by the different purposes of the two databases. Thus, while the first database collects every natural disaster globally, the second is only interested in disasters that have caused displacement. Consequently, a disaster recorded in the EM-DAT may not appear in the IDMC database because there is no record of population displacement associated with it.

In order to avoid apparent contradictions between the two databases, figures presented below are disaggregated by natural disaster occurrence and associated displacement. Frequency is based solely on EM-DAT data, without considering whether or not displacement resulted from them. Instead, environmental displacement figures derive from IDMC estimates.

### **3.2. How many people have been displaced by environmental disruptions in the world?**

This sub-section, which is the core of Chapter II, presents data on the hydrological, meteorological, climatic and geophysical disturbances identified in the previous section as drivers of migration.

The structure followed in the analysis of the incidence of these natural disasters has always been the same: we begin by examining the frequency of each of these

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<sup>104</sup> IDMC; NRC, “Global Report on Internal Displacement (2019)...”, *op. cit.*, p. 21. IDMC, NRC, “Global Report on Internal Displacement (2018)...”, *op. cit.*, p. 1.

<sup>105</sup> IDMC; NRC, “Global Report on Internal Displacement (2019)...”, *op. cit.*, p. 21.

<sup>106</sup> IDMC, “Global Report on Internal Displacement 2017 Disaster Dataset Codebook”, *op. cit.*, p. 4.



environmental disruptions, and then analyse their economic impact and the associated population movements. A final sub-section concludes with the findings from the previous disaggregated analysis.

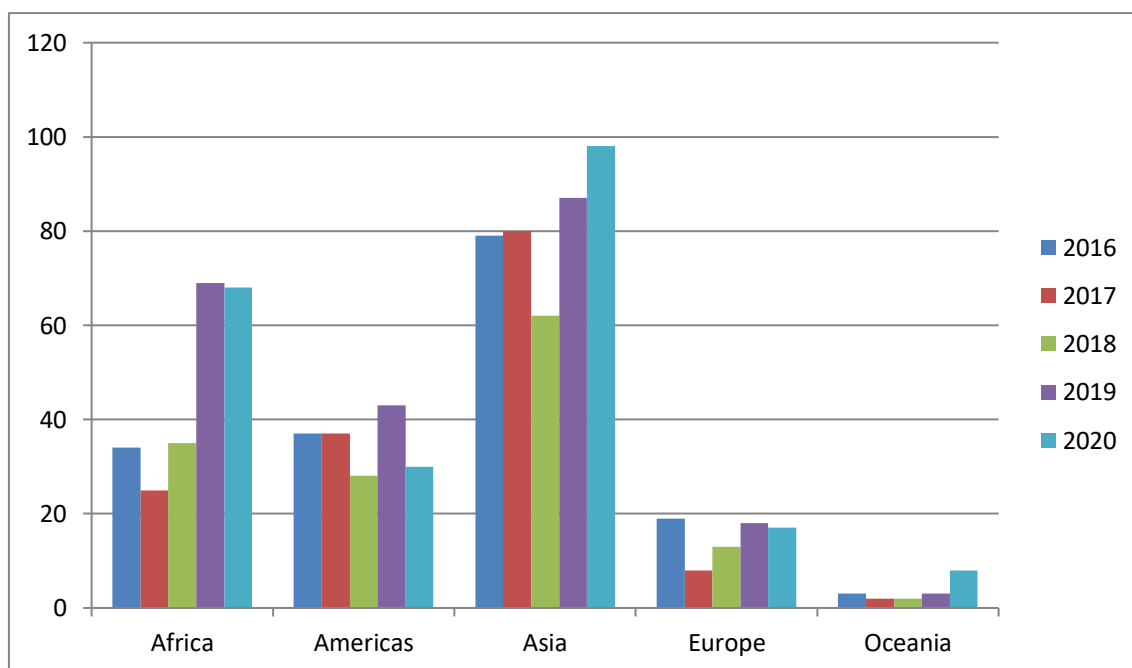
### 3.1.1. Hydrological disasters

Data available in this sub-section are referred to rapid-onset hydrological processes, mainly floods and landslides. A sub-section about sea-level rise and its impact on population movements has been included in a separate piece.

#### A) Occurrence

During the period 2016-2020, there were 905 hydrological disasters, which is more than half (50.95%) of the total number of natural disasters computed for the same period (1,776)<sup>107</sup>. This percentage is in line with the preponderance of hydrological disasters in the world annually, being the most frequent natural disaster<sup>108</sup>.

**Figure 7 - Number of hydrological disasters by continental and year<sup>109</sup>**



As shown in the graphic above, geographically, Asia was the most severely affected continent, with a total of 761 hydrological disasters, followed by the Americas (417) and Africa (313). Floods were the most prevalent hydrological disaster in the

<sup>107</sup> Vid. Table 20 – Total natural disasters, Annex I.

<sup>108</sup> Vid. id.

<sup>109</sup> Graph generated from data in Table 21 – Total natural disasters per continent, Annex I.

period 2016-2020, with 811 floods recorded globally, compared to 94 water-related mass movements<sup>110</sup>.

By sub-types, Asia was hit by 82 flash floods and 28 fluvial floods. Africa experienced 48 flash floods and 18 fluvial floods. The Americas were affected by 21 flash floods and 28 fluvial floods. Europe recorded 17 flash floods and 6 fluvial floods. Lastly, Oceania registered the lowest numbers of flash floods (3) and riverine floods (2)<sup>111</sup>. Regarding landslides, data broken down by subtype of disaster is only available for Africa, America and Asia. Thus, the African continent recorded 2 mudslides; the Americas, 6 mudslides; and Asia, 10 avalanches and 4 landslides. For Europe and Oceania, 3 landslides are generically reported for each of them<sup>112</sup>.

**Table 1 - Top 10 countries most affected by hydrological disasters<sup>113</sup>**

<b>Top 10 countries</b>	<b>Hydrological disasters</b>	<b>Flood</b>	<b>Landslide</b>
<b>Indonesia</b>	68	59	9
<b>China</b>	53	43	10
<b>India</b>	43	36	7
<b>Afghanistan</b>	24	19	5
<b>Pakistan</b>	24	22	2
<b>Colombia</b>	20	16	4
<b>USA</b>	19	18	1
<b>Brazil</b>	18	17	1
<b>Malaysia</b>	18	18	0
<b>Viet Nam</b>	18	18	0

At the country level, the table reflects the same trend showing Asian countries as the most prone to hydrological disasters in the period considered, accounting for eight of the ten most affected countries. Indonesia, China and India lead the ranking by far, holding the top three positions respectively.

<sup>110</sup> Disaggregated data by type of hydrological disasters obtained from the EM-DAT.

<sup>111</sup> Disaggregated data by flood sub-type obtained from the EM-DAT. Up to 558 floods between 2016 and 2020 are recorded in the EM-DAT without subtype classification (141 in Africa, 111 in the Americas, 247 in Asia, 49 in Europe and 10 in Oceania).

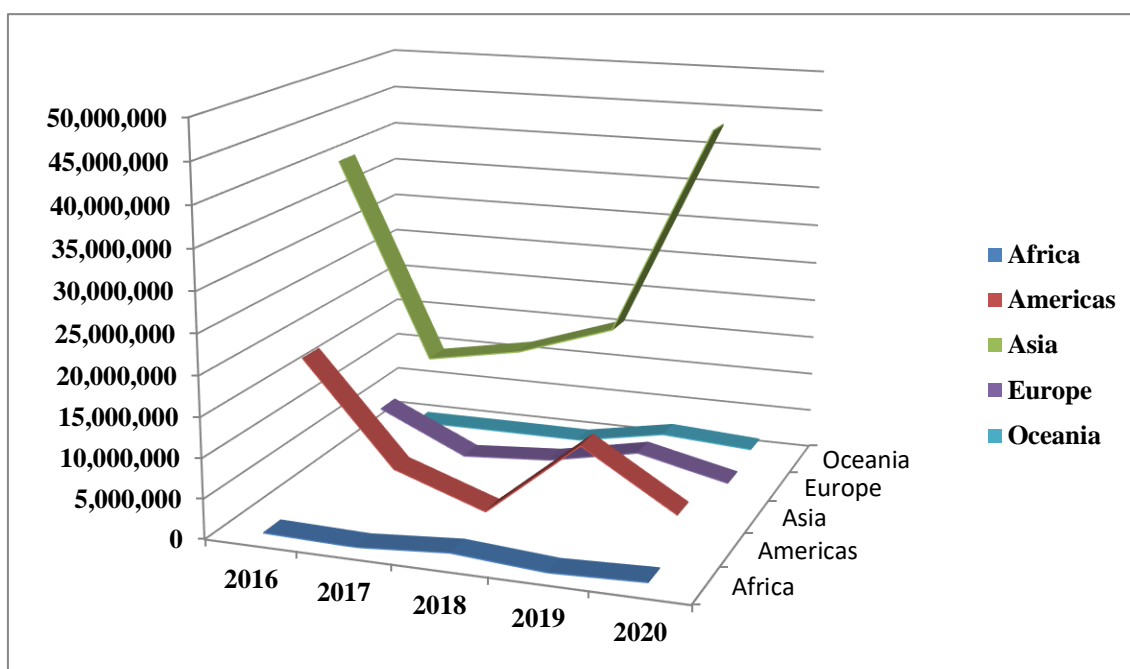
<sup>112</sup> Disaggregated data by wet mass movement sub-type obtained from the EM-DAT. A total of 71 landslides have been recorded in the database (22 in Africa, 9 in the Americas and 34 in Asia, plus the 3 in Europe and Oceania) without subtype classification or sub-categorised again as landslides.

<sup>113</sup> Table generated from data in Annex II: "Natural disasters by country (including self-governing or special status territories)" and from disaggregated data by type of hydrological disaster from the EM-DAT.

## B) Total material damages

A total of US\$ 203,213,029 in material damages from hydrological disasters<sup>114</sup> has been reported in 71 of the 136 countries that have experienced such calamities in the five-year period under review<sup>115</sup>. This total amount represents 21.16% of all damages reported between 2016 and 2020 (US\$ 959,936,545)<sup>116</sup>. Damage attributable to floods accounts for 98.85% (or US\$ 200,882,132) of the total damage caused by this category of disasters, compared to only 1.14% (or US\$ 2,330,897) for landslide damage<sup>117</sup>.

**Figure 8 - Total material damages from hydrological disasters by continent and year ('000 US\$)<sup>118</sup>**



Asia was the continent that quantified the highest material damages over the five-year period (US\$ 145,310,695), peaking in 2020 with US\$ 47,221,652<sup>119</sup>. In contrast, Africa was the least affected continent, with a total of US\$ 1,794,771 over the five years. The year with the most damage in Africa was 2018 (US\$ 882,852)<sup>120</sup>, despite the

<sup>114</sup> Vid. Table 24 – Total damages caused by natural disasters ('000 US\$), Annex I.

<sup>115</sup> Cf. the countries listed in Annex II: "Natural disasters by country (including self-governing or special status territories)" and those listed in Annex IV: "Total damages ('000 US\$), adjusted for inflation, by country (including self-governing or special status territories)".

<sup>116</sup> Vid. Table 24 – Total damages caused by natural disasters ('000 US\$), Annex I.

<sup>117</sup> Disaggregated data on material losses by type of hydrological disaster calculated from the EM-DAT.

<sup>118</sup> Graph generated from data in Table 25 – Total damages caused by natural disasters per continent ('000 US\$), Annex I.

<sup>119</sup> Vid. Table 25.

<sup>120</sup> Id.

number of hydrological disasters in that year (35) being lower than its annual average (46.2)<sup>121</sup>.

**Table 2 - Top 10 countries most economically damaged by hydrological disasters<sup>122</sup>**

<b>Top 10 countries</b>	<b>Hydrological disaster damage ('000 US\$)</b>
<b>China</b>	80,992,221
<b>USA</b>	33,772,036
<b>India</b>	29,773,899
<b>Japan</b>	17,203,750
<b>Iran</b>	5,811,348
<b>Peru</b>	3,550,196
<b>France</b>	3,533,426
<b>Australia</b>	3,416,688
<b>Spain</b>	2,929,523
<b>Canada</b>	2,430,079

There is a huge gap between the countries that occupy the top four positions in the top 10 ranking and all the others included. As an illustrative example of this, there is a difference of US\$ 11,392,402 between Japan, which ranks fourth, and Iran, which is fifth in the ranking, despite the fact that the former suffered almost half (7) of the hydrological disasters endured by Iran (13)<sup>123</sup>. Apart from China and the United States, where wet mass movements caused 1.24% and 2.87% of the total recorded hydrological damage respectively, in all other countries damage was caused exclusively by floods<sup>124</sup>.

With the exception of the United States, which ranks second with US\$ 33,772,036 in damages, the rest of the top positions are occupied by Asian countries, with China in the lead (US\$ 80,992,211). It is worth noting that China had been experiencing a significant decline in its total damages from 2016 (US\$ 36,684,806) to 2020, when it recorded a dramatic peak (US\$ 22,824,126)<sup>125</sup>, even though 2020 was the year with the lowest number of hydrological disasters (6), compared to sixteen events in 2016 (the

<sup>121</sup> Vid. Table 21 – Total natural disasters per continent, Annex I.

<sup>122</sup> Table generated from data in Annex IV: "Total damages ('000 US\$), adjusted for inflation, by country (including self-governing or special status territories)"

<sup>123</sup> Vid. Annex II: "Natural disasters by country (including self-governing or special status territories)".

<sup>124</sup> Disaggregated data on material losses by type of hydrological disaster obtained from the EM-DAT.

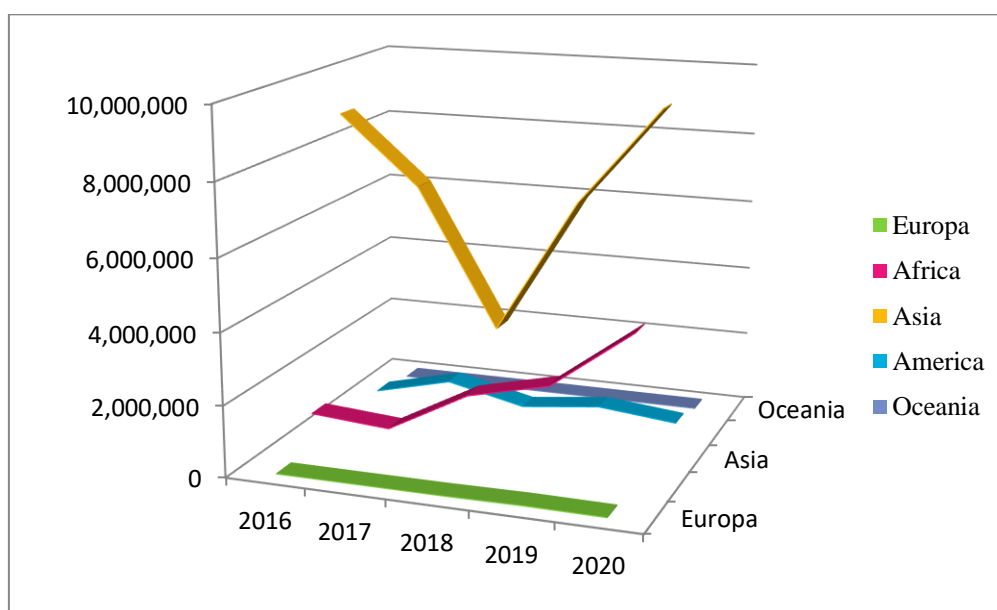
<sup>125</sup> Vid. China's table on material losses associated with natural disasters in Annex IV.

second most hydrologically active year after the seventeen disasters in 2017)<sup>126</sup>. It is also noteworthy that two developed European countries (France and Spain) have entered the ranking. Mention should also be made of Germany, which did not enter the ranking but recorded a similar amount of damage to Spain (US\$ 2.258.013<sup>127</sup>) caused solely by the floods resulting from the heavy rains that fell in 2016<sup>128</sup>.

### C) Total people displaced

Just over 48.5 million people were internally displaced between 2016 and 2020 as a result of hydrological disasters, accounting for 42.01% of the total number of persons displaced in the five-year period<sup>129</sup>. The year in which the most people were forced to leave, temporarily or permanently, their places of residence due to such disasters was 2020, with just over 14 million new displacements (or 29.11% of all displacements associated with hydrological events)<sup>130</sup>. Floods were the subtype of hydrological disaster responsible for the majority of associated population movements (99.26% of the total)<sup>131</sup>.

**Figure 9 - Number of environmentally displaced by hydrological disasters by continent and year<sup>132</sup>**



<sup>126</sup> Vid. China's table on the number of natural disasters recorded between 2016 and 2020 in Annex II.

<sup>127</sup> Vid. Germany's table on material losses associated with natural disasters in Annex IV.

<sup>128</sup> Data from the EM-DAT. Vid. also Germany's table on the number of hydrological disasters recorded between 2016 and 2020 in Annex II.

<sup>129</sup> Vid. Table 22 – Total number of persons displaced by natural disasters, Annex I.

<sup>130</sup> Id.

<sup>131</sup> Percentages calculated from the incidence of floods as recorded in IDMC, Disaster events 2008-2020 (new displacement) per hazard type, Excel spreadsheet [last access: 22/04/2022].

<sup>132</sup> Graph generated from data in Table 23 – Total number of persons displaced by natural disasters per continent, Annex I.

The significant number of displacement related to hydrological hazards is largely due to the influx of persons internally displaced by these disasters in Asia, accounting for 73.77% of hydrological displacement (or more than 35.8 million new movements between 2016 and 2020)<sup>133</sup>. China was the Asian country with the highest number of hydrological displacements on the continent in the period analysed (more than 13 million new displacements or 37.13% of total hydrological displacements in Asia)<sup>134</sup>. Floods accounted for 99.06% of hydrological displacement in China<sup>135</sup>. India recorded the second highest number of hydrological event-related displacements in Asia, with a total of just over 9.2 million<sup>136</sup>.

**Table 3 - Top 10 countries with the most environmental displacement related to hydrological disasters<sup>137</sup>**

<b>Top 10 countries</b>	<b>Displacement related to hydrological disasters</b>
<b>China</b>	13,320,955
<b>India</b>	9,252,876
<b>Philippines</b>	2,908,709
<b>Bangladesh</b>	2,885,064
<b>Indonesia</b>	2,192,262
<b>Somalia</b>	1,760,431
<b>Ethiopia</b>	1,589,456
<b>Myanmar</b>	1,388,721
<b>Nigeria</b>	1,229,456
<b>Sudan</b>	1,023,591

In Africa, internal displacement due to hydrological disasters far exceeded the number of forced displacements caused by the other sub-groups of natural disasters on the continent. Between 2016 and 2020, 10.5 million people were forcibly displaced by hydrological disasters (equivalent to 21.64% of all hydrological displacement globally

<sup>133</sup> Cf. data for Asia in Table 23 with global displacement figures in Table 22, both in Annex I.

<sup>134</sup> Cf. the figures on hydrological displacement in China in Annex III with the figures on hydrological displacement in Asia in Annex I, Table 23.

<sup>135</sup> Percentage calculated from the incidence of floods in China as recorded in IDMC, *Disaster events 2008-2020...*, *op. cit.*

<sup>136</sup> Vid. figures on hydrological displacement in India in Annex III.

<sup>137</sup> Table generated from data in Annex III: "Environmentally displaced persons by country (including self-governing or special status territories)".

or 74.91% of all internal displacement in Africa)<sup>138</sup>. The worst year was 2020, when just over 4 million people were internally displaced<sup>139</sup>. Just four African countries (Ethiopia, Nigeria, Somalia and Sudan) account for 41.55% of all internal displacement in Africa due to hydrological disasters<sup>140</sup>, each with displacement figures just over 1 million<sup>141</sup>.

The Americas was the third largest continent in terms of the number of persons displaced by hydrological events, registering just over 2 million displaced between 2016 and 2020 or 4.29% of all those displaced by hydrological events in the world<sup>142</sup> – a relatively small number compared to Asia or Africa<sup>143</sup>. Brazil, Peru and the United States account for 60.29% or more than 1.25 million of all those displaced by hydrological events on the continent<sup>144</sup>. The bulk of hydrological displacement in Brazil occurred in 2019 and 2020<sup>145</sup>. In particular, in 2020, a single flood was responsible for 96.92% of hydrological displacement that year<sup>146</sup>. Peru recorded its highest number of persons displaced by hydrological disruptions in 2017 (93.19% of the total number of persons displaced by hydrological disasters in the country in the five-year period)<sup>147</sup>, mainly as a result of the El Niño phenomenon<sup>148</sup>. The United States recorded the largest number of displacements due to hydrological disasters in 2016 and 2017 (equivalent to 88.35% of the displacements registered for this reason between 2016 and 2020 in the country)<sup>149</sup>.

Finally, Europe and Oceania accounted for 0.18% and 0.09%, respectively, of all the world's internal displacement due to hydrological disasters in the five-year period<sup>150</sup>. Russia, France and the United Kingdom were the countries with the highest numbers of

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<sup>138</sup> Cf. data for Africa in Table 23 with global figures in Table 22, both in Annex I.

<sup>139</sup> Vid. Table 23 – Total number of persons displaced by natural disasters per continent, Annex I.

<sup>140</sup> Percentage calculated from the total number of hydrological displacement in Africa, as reported in Annex I, Table 23.

<sup>141</sup> Vid. the tables on environmental displacement in each of these countries in Annex III.

<sup>142</sup> Cf. data on hydrological displacement for the Americas in Table 23 with global figures in Table 22, both in Annex I

<sup>143</sup> Cf. the total number of persons displaced by natural disasters in each continent as reported in Annex I, Table 23.

<sup>144</sup> Cf. figures on hydrological displacement in Brazil, Peru and the USA (Annex III) with data for the Americas in Table 23, Annex I.

<sup>145</sup> Vid. the table for Brazil in Annex III.

<sup>146</sup> Vid. IDMC, *Disaster events 2008-2020...*, *op. cit.*, cell 1060. Percentage calculated from the total number of hydrological displacement in Brazil in 2020, as reported in Annex III

<sup>147</sup> Vid. figures on hydrological displacement in Peru in Annex III.

<sup>148</sup> Vid. IDMC, *Disaster events 2008-2020...*, *op. cit.*, cell 7369.

<sup>149</sup> Vid. figures on hydrological displacement in the United States in Annex III.

<sup>150</sup> Cf. data on hydrological displacement for Europe and Oceania in Table 23 with global figures in Table 22, both in Annex I.

flood-related internal displacement on the European continent<sup>151</sup>. In France, displacement due to hydrological events was concentrated between 2018 and 2020, with no displacement recorded in previous years<sup>152</sup>. Russia and the United Kingdom reached their peak of hydrological displacement in 2019 (both with around 11,000 people)<sup>153</sup>. In the case of Russia, displacement was mainly the result of a flood in June 2019<sup>154</sup>.

In Oceania, Fiji, New Zealand and Papua New Guinea appear as the top three countries by number of hydrological dislocations<sup>155</sup>. In Fiji, flooding caused by Tropical Cyclone Keni in April 2018<sup>156</sup> was responsible for 96.95% of all hydrological displacements recorded in the country in the five-year period<sup>157</sup>. In New Zealand, 2017 and 2020 were the most prolific years<sup>158</sup>. The flooding of the Maitai River in February 2020<sup>159</sup> caused 91.46% of that year's movements and 38.34% of all movements associated with hydrological events<sup>160</sup>. Finally, in Papua New Guinea, a landslide in Wapenamanda and flooding in the Western Highlands in April 2019<sup>161</sup> caused 49.89% of all displacement associated with hydrological disasters in the country and 92.8% of such displacement in 2019<sup>162</sup>.

### 3.1.2. Sea-level rise and coastal risks

#### A) Global exposure

A research published by the OECD in 2008 detected that 136 port cities are exposed to suffer extreme sea levels and subsequent coastal-floods<sup>163</sup>. According to the IPCC'S fifth report, ocean thermal expansion and melting of glaciers will raise the global mean sea level (GMSLR), which is projected to be 0.28 to 0.98 m by 2100<sup>164</sup>. However, as already pointed out by the studies cited by the "maximalist" authors in this respect, regional variations and local factors such as subsidence could make relative

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<sup>151</sup> Vid. the tables on environmental displacement in each of these countries in Annex III.

<sup>152</sup> Vid. the table for France in Annex III.

<sup>153</sup> Vid. the tables for Russia and the UK in Annex III.

<sup>154</sup> Vid. IDMC, *Disaster events 2008-2020...*, *op. cit.*, cell 8071.

<sup>155</sup> Vid. the tables on environmental displacement in each of these countries in Annex III.

<sup>156</sup> Vid. IDMC, *Disaster events 2008-2020...*, *op. cit.*, cell 2938.

<sup>157</sup> Percentage calculated from the total number of hydrological displacement for Fiji as per Annex III.

<sup>158</sup> Vid. the table on hydrological displacement for New Zealand in Annex III.

<sup>159</sup> Vid. IDMC, *Disaster events 2008-2020...*, *op. cit.*, cell 7179.

<sup>160</sup> Percentage calculated from hydrological displacement figures for New Zealand as per Annex III.

<sup>161</sup> Vid. IDMC, *Disaster events 2008-2020...*, *op. cit.*, cells 7896 and 7904.

<sup>162</sup> Percentage calculated from hydrological displacement figures for Papua New Guinea as per Annex III.

<sup>163</sup> NICHOLLS, R.J. et al., "Ranking Port Cities..." (ENV/WKP(2007)1), *op. cit.*, p. 17.

<sup>164</sup> FIELD, C.B. ET AL (eds.), *Climate Change 2014...*, *op. cit.*, pp. 366 and 368.



sea-level rises higher than the projected GMSLR. In this respect, the IPCC accepts with *very high confidence* that relative sea-level rise can considerably surpass the GMSLR by an order of magnitude, amounting to more than 10 cm yr<sup>-1</sup><sup>165</sup>.

On the other hand, the OECD assumes a GMSLR of 0.5 m for the 2070s, but adds some variables depending on the region studied. Thus, for tropical storms, the OECD expects an additional 10% increase in extreme water level without expansion in the affected areas, while for extratropical storms a 10% increase is assumed only between 45° and 70° latitude<sup>166</sup>. Additionally, for anthropogenic subsidence, a potential 0.5 m drop in ground level from 2005 to the 2070s has been considered uniformly over the entire area of thirty-seven deltaic cities<sup>167</sup>. Taking all these local and regional factors into account, the OECD concludes that "the change in extreme water level is variable, ranging from about 0.5 m in cities only affected by global sea level rise, to up to 1.5 m for those cities affected by global sea level rise, storm surge and human-induced subsidence"<sup>168</sup>.

While these environmental changes –i.e. natural and human-induced subsidence, increased storms and, of course, sea level rise- will increase human and property exposure to coastal flooding, both the IPCC and the OECD agree that the main factors contributing to such increased exposure will be population growth, mainly due to migration to urban coastal areas, and the resulting rapid urbanisation to keep pace<sup>169</sup>. This finding again underlines the importance attributed by the "maximalist" authors to the population factor in exacerbating vulnerability to environmental disruption and causing displacement flows.

Geographically, the IPCC concludes that the most vulnerable areas will naturally be coastal and delta human settlements, as well as low-lying States, with most of the most vulnerable areas located in East, Southeast and South Asia a (*high confidence*)<sup>170</sup>.

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<sup>165</sup> Ibid., pp. 368-369.

<sup>166</sup> NICHOLLS, R.J. et al., "Ranking Port Cities..." (ENV/WKP(2007)1), *op. cit.*, p. 15.

<sup>167</sup> Vid. *ibid.*, Appendix 1, pp. 47-49.

<sup>168</sup> Ibid., p. 15.

<sup>169</sup> Ibid., p. 18; FIELD, C.B. ET AL (eds.), *Climate Change 2014...*, *op. cit.*, p. 382.

<sup>170</sup> FIELD, C.B. ET AL (eds.), *op. cit. supra*, pp. 364 and 366 *in fine*. The Sixth Assessment Report maintains this conclusion (high confidence), noting that while the risks faced by coastal cities and settlements are high globally, especially under the highest projections of sea-level rise, ocean-induced coastal risks to people, land and infrastructure in East and Southeast Asia are the highest compared to other regions, even for low projections of sea-level rise (in: PÖRTNER, H.O. ET AL (eds.), "Cross-Chapter Paper 2: Cities and Settlements by the Sea", in: *Climate Change 2022...*, *op. cit.*, p.10 and Figure CCP2.3).

This conclusion is empirically confirmed by the OECD research, which shows that most of the 136 largest port cities at risk to climate extremes are in Asia (52 ports or 38%)<sup>171</sup>, and that many of them (27%) are located in deltaic environments –again primarily in Asia<sup>172</sup>. However, in terms of number of ports per country, the hotspot of exposure and vulnerability shifts to the Americas, with the OECD report showing that the US has a higher number of ports at risk than China (17 ports or 13% versus 14 ports or 10%), closely followed by Brazil (10 ports or 7%)<sup>173</sup>.

Another interesting finding revealed by the OECD study is that a few cities contain most of the population and most of the risky assets. Thus, more than 50% of both are found in the top ten cities alone, a percentage that rises to more than 70% when considering the top twenty cities<sup>174</sup>. The twenty most exposed cities are located in both developed and developing countries. However, the distribution by population and assets shows that while the bulk of the exposed population is concentrated in developing countries, most of the assets are found in developed countries. This trend is maintained in the report's projections for 2070 in terms of population. In terms of assets, however, Asia will displace North America, reflecting the significant economic growth that the region is experiencing<sup>175</sup>.

## **B) Assets exposed to extreme water levels**

Considering the total assets estimated to be exposed to sea-level rise and extreme coastal flooding in 2005 (US\$ 3,000 billion<sup>176</sup>), North America is the subcontinent with the highest risk of material losses, with assets worth  $\geq$ US\$ 1,400,000 million within the extreme water-prone areas. Asia is second, with  $\leq$ US\$ 1,200,000 million at risk, and Europe is third, with assets worth  $\leq$ US\$ 400,000 million. On the other hand, Africa, Australasia and South America have significantly low asset exposure compared to the top three<sup>177</sup>. At the national level, the OECD report reveals that over 60% of vulnerable

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<sup>171</sup> NICHOLLS, R.J. et al., “Ranking Port Cities...” (ENV/WKP(2007)1), *op. cit.*, p. 17 and Figure 2. It should be noted that the OECD study includes both seaports and river ports located in coastal areas.

<sup>172</sup> *Ibid.*, p. 7.

<sup>173</sup> *Ibid.*, p. 17.

<sup>174</sup> *Ibid.*, p. 23.

<sup>175</sup> *Vid. ibid.*, pp. 17-18, and Tables 2, 3, 4 and 5 (pp. 29-31).

<sup>176</sup> *Ibid.*, p. 7 *in fine*. According to PÖRTNER, H.O. ET AL (eds.), “Cross-Chapter Paper 2: Cities and Settlements by the Sea”, in: *Climate Change 2022...*, *op. cit.*, p. 5, infrastructure and economic assets currently exposed in the 1-in-100-year floodplain for cities and settlements of all sizes are worth US\$6,500-US\$11,000 billion.

<sup>177</sup> *Vid. NICHOLLS, R.J. et al.*, “Ranking Port Cities...” (ENV/WKP(2007)1), *op. cit.*, Figure 4, p. 18.

assets in the top fifty cities are concentrated in just three rich countries: the United States, Japan and the Netherlands, where the 10 cities identified as most asset-exposed are also found<sup>178</sup>.

Within the top twenty cities by assets exposed in 2005, Miami (USA), New York-Newark (USA), New Orleans (USA), and Osaka-Kobe (Japan) head the ranking in descending order with threatened assets between US\$ 200 billion and >\$400 billion. They are followed by Tokyo (Japan), Amsterdam (Netherlands), Rotterdam (Netherlands), and Nagoya (Japan), with exposed assets between US\$ 100 billion and <\$200 billion. The remaining twelve cities have assets at risk with a monetary value of <US\$ 100 billion. In decreasing order, they are: Tampa-St Petersburg (USA), Virginia Beach (USA), Guangzhou Guangdong (China), Boston (USA), Shanghai (China), London (UK), Vancouver (Canada), Fukuoka-Kitakyushu (Japan), Mumbai (India), Hamburg (Germany), Bangkok (Thailand), and Hong Kong (China)<sup>179</sup>.

The picture is quite similar in the 2070 scenario, despite the proportional increase in exposed assets that developing countries in Asia and Africa will experience<sup>180</sup>. Thus, while total asset exposure could increase substantially to \$US 35,000 billion in total in the 2070s<sup>181</sup>, 90% of the estimated total assets exposed in the world's major port cities in the 2070s will continue to be located in the US, Japan and the Netherlands, along with five Asian countries: China, India, Thailand, Vietnam and Bangladesh<sup>182</sup>.

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<sup>178</sup> Ibid., p. 26. Vid. also Figure 9 on p. 22, showing the ten top countries by assets exposed in 2005 and in the 2070s "FAC Scenario".

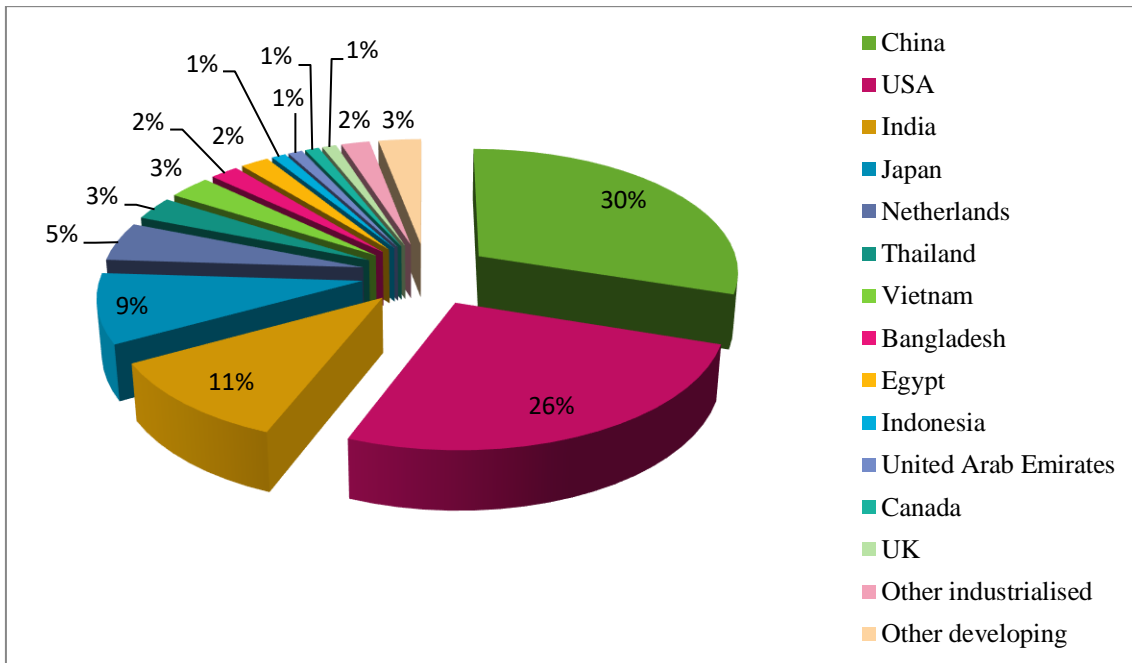
<sup>179</sup> Vid. Table 4, p. 30, and the map of Figure 13.a., p. 25, which shows the twenty most asset-exposed cities in the 2005 scenario.

<sup>180</sup> Ibid., pp. 26 *in fine* and 27, Vid. also Figure 15 on p. 27, showing the twenty cities with the largest proportional increase in exposed assets in the 2070s under the "FAC Scenario". All but one (Miami) are Asian port cities. As for African port cities, although several of them will see high proportional increases in exposed assets, their absolute value of exposed assets will remain relatively low.

<sup>181</sup> Ibid., p. 8. For the 2100 time horizon, IPCC Working Group II reports that exposed coastal infrastructure assets will be worth between US\$7-14 trillion, contingent on warming levels and socio-economic development pathways (medium confidence) (in: PÖRTNER, H.O. ET AL (eds.), "Cross-Chapter Paper 2: Cities and Settlements by the Sea", in: *Climate Change 2022..., op. cit.*, p. 2).

<sup>182</sup> NICHOLLS, R.J. et al., "Ranking Port Cities..." (ENV/WKP(2007)1), *op. cit.*, p. 20.

**Figure 10 - Assets exposed to sea-level rise, storm and subsidence by country (for th 2070s "FAC Scenario")<sup>183</sup>**



At the city level, Miami, New York-Newark, New Orleans and Virginia Beach are the most exposed cities in North America (USA), with exposed assets ranging from US\$ 580 billion (Virginia Beach) to >\$3,500 billion (Miami). In Europe, the two most exposed cities are in the Netherlands, Amsterdam and Rotterdam, with a respective potential loss of over US\$ 843 billion and \$825 billion. Asia gains prominence under the "FAC Scenario", with thirteen of the twenty most exposed cities in the world: Guangzhou Guangdong (China), Kolkata (India), Shanghai (China), Mumbai (India), Tianjin (China), Tokyo (Japan), Hong Kong (China), Bangkok (Thailand), Ningbo (China), Osaka-Kobe (Japan), Ho Chi Minh City (Vietnam), Nagoya (Japan) and Qingdao (China). The asset value of cities at risk in Asia ranges from over US\$ 600 billion (Qingdao) to US\$ 3,357 billion (Guangzhou Guangdong). Finally, Africa enters the ranking with Alexandria (Egypt), which has a potential material loss of over US\$ 563 billion<sup>184</sup>.

<sup>183</sup> Ibid., Figure 7, p. 21.

<sup>184</sup> Vid. *ibid.*, Table 5, p. 31. Also, the map in Figure 13.b., p. 25.

### C) Population exposed to extreme water levels

The OECD study estimates that the total population exposed in 2005 to sea-level rise and coastal flooding in the 136 port cities considered was approximately 38.5 million<sup>185</sup>. Asia accounts for 65% of the total population at risk. At the opposite extreme, South America and Australia have a relatively low rate of population at risk, representing respectively 3% and <1% of the global total<sup>186</sup>. The latest IPCC Working Group II assessment has updated these figures, reporting that by 2020 almost 11% of the world's population, or 896 million people, will reside in coastal areas below 10 metres above sea level<sup>187</sup>. The situation is exacerbated on small islands:

"Approximately 22 million in the Caribbean live below 6 metres elevation (Cashman and Nagdee, 2017) and an estimated 90% of Pacific Islanders live within 5 km of the coast, if Papua New Guinea is excluded (Andrew et al., 2019). In the Solomon Islands and Vanuatu, over 60% of the population lives within 1 km of the coast (Andrew et al., 2019)"<sup>188</sup>.

When the OECD combines water-level rise scenarios for 2070 with population growth projections ("FAC Scenario"<sup>189</sup>), the resulting number of people at risk rises from a moderate 38.5 million to a staggering 147 million –an increase of nearly 150%<sup>190</sup>. More striking are the projections of people at risk globally by the IPCC Working Group II, which concludes, with a high degree of confidence, that "[b]y 2050, more than a billion people located in low-lying [cities and settlement] areas will be at risk from coast specific climate hazards, influenced by coastal geomorphology, geographical location and adaptation action"<sup>191</sup>. In particular, the IPCC Working Group II finds that "[w]ithout adaptation, the population at-risk to a 100-year coastal flood

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<sup>185</sup> Ibid., p. 17 *in fine*.

<sup>186</sup> Id. Vid. also Figure 3, p. 18, presenting a graphic on the distribution of population exposed in 2005 to extreme water levels.

<sup>187</sup> PÖRTNER, H.O. ET AL (eds.), "Cross-Chapter Paper 2: Cities and Settlements by the Sea", in: *Climate Change 2022...*, *op. cit.*, p. 5.

<sup>188</sup> PÖRTNER, H.O. ET AL (eds.), "Chapter 15: Small Islands", in: *Climate Change 2022...*, *op. cit.*, pp. 23 *in fine* and 24. Regarding migration and displacement in small islands related to climate change and sea level rise, Working Group II concludes (medium evidence, high agreement): "Despite difficulties with attribution, the literature establishes that climate variability and extreme events and broad environmental pressures have contributed to some degree to human mobility on small islands over time".

<sup>189</sup> The Future City, All Changes Scenario ("FAC Scenario") takes into account the future socio-economic situation of the exposed port cities together with all 2070 water level factors combined (i.e. climate change plus natural subsidence/elevation plus human-induced subsidence) (vid. NICHOLLS, R.J. et al., "Ranking Port Cities..." (ENV/WKP(2007)1), *op. cit.*, p. 13).

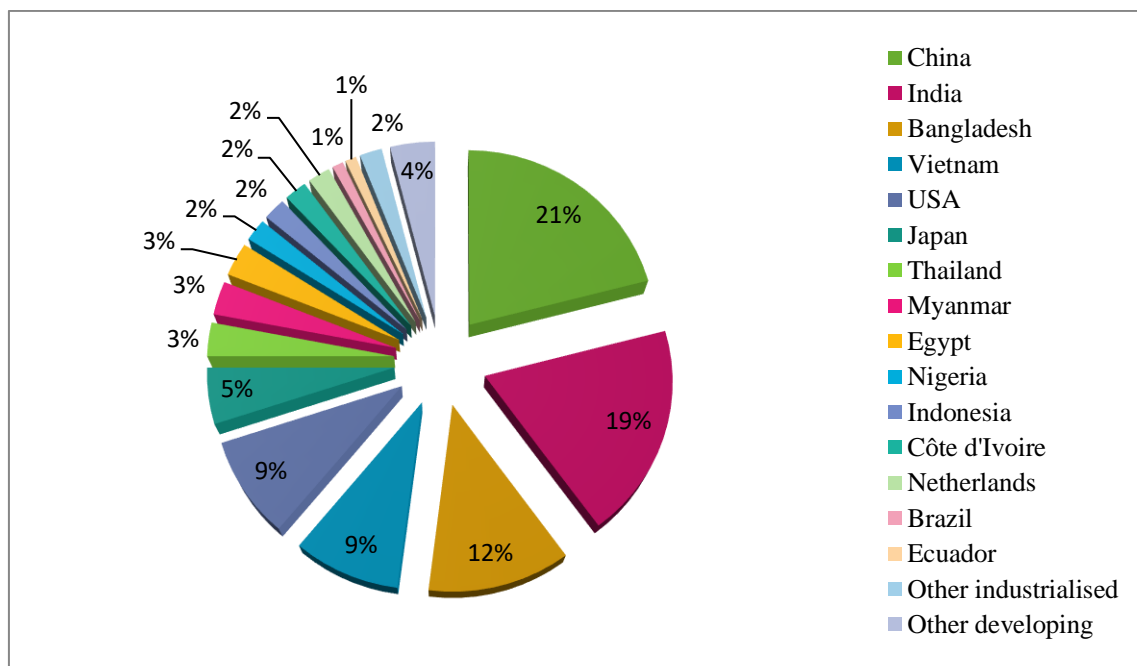
<sup>190</sup> Ibid., p. 19. Vid. also Figure 5 on p. 19, comparing the impacts of individual and combined water level factors on global population exposure, based on current and future population scenarios.

<sup>191</sup> PÖRTNER, H.O. ET AL (eds.), "Cross-Chapter Paper 2: Cities and Settlements by the Sea", in: *Climate Change 2022...*, *op. cit.*, p. 2.

increases by ~20% if current global mean sea level rises by 0.15m relative to current levels; this at-risk population doubles at 0.75m rise in mean sea level, and triples at 1.4m"<sup>192</sup>.

Equally shocking is the fact that only eleven countries account for 90% of the total estimated population at risk by 2070, again with a strong presence of Asian countries, namely China, USA, India, Japan, Thailand, Vietnam, Bangladesh, Myanmar, Egypt, Nigeria and Indonesia<sup>193</sup>. All of the twenty cities with the largest increases in exposed population according to OECD projections will locate in developing regions. Specifically, seventeen of them are in Asia (four of which are capital cities) and three in Africa (two being capitals). The population increase in these twenty cities is expected to be equivalent to an increase in exposure of more than 200%<sup>194</sup>.

**Figure 11 - Population exposed to sea-level rise, storms and subsidence by country (for the 2070s "FAC Scenario")<sup>195</sup>**



<sup>192</sup> Ibid., p. 10. Vid. also p. 9: "Without adaptation, risks to land and people in coastal C&S from pluvial- and coastal-flooding will *very likely* increase substantially by 2100 and *likely* beyond as a result of SLR, with significant impacts even under RCP2.6 (...). Across these studies, by 2100, 158-510 million people and US\$7,919-US\$12,739 billion assets under RCP4.5, and 176-880 million people and US\$8,813-US\$14,178 billion assets under RCP8.5, will be within the 1-in-100-year floodplain (*very high confidence*)".

<sup>193</sup> NICHOLLS, R.J. et al., "Ranking Port Cities..." (ENV/WKP(2007)1), *op. cit.*, p. 20. Vid. also Figure 10 on p. 22, which shows a graph of the fifteen top countries by population exposed today and in the 2070s.

<sup>194</sup> Ibid., p. 26. Vid. also Figure 14 on the same page, displaying the top twenty cities with the largest proportional increase in exposed population in the 2070s under the "FAC Scenario".

<sup>195</sup> Ibid., Figure 8, p. 21.

By city, the OECD produced two maps showing the twenty most vulnerable cities by exposed population in both the 2005 scenario and the projected 2070s scenario<sup>196</sup>. 65% of the top twenty cities exposed in 2005 are located in Asian countries, rising to 75% by 2070<sup>197</sup>. In the 2005 scenario, Mumbai (India), Guangzhou Guangdong (China), Shanghai (China) and Miami (USA) rank top, from highest to lowest, as the cities with an exposed population of 2 to 3 million in the event of coastal flooding. The cities of Ho Chi Minh (Vietnam), Calcutta (India), New York (USA), Osaka-Kobe (Japan), Alexandria (Egypt), New Orleans (USA) and Tokyo (Japan) rank decreasingly as cities with a population at risk of 1 to 2 million inhabitants. Finally, with an exposed population of less than one million inhabitants, there are, in descending order, the cities of Tianjin (China), Bangkok (Thailand), Dhaka (Bangladesh), Amsterdam (Netherlands), Hai Phòn (Vietnam), Rotterdam (Netherlands), Shenzhen (China), Nagoya (Japan) and Abidjan (Côte d'Ivoire)<sup>198</sup>. It is worth noting that fifteen of these top twenty cities are located in deltas<sup>199</sup>.

Of these twenty cities, fourteen appear again as highly vulnerable in the 2070 scenario ("FAC Scenario"), increasing the proportion of delta cities from fifteen to sixteen<sup>200</sup>. Thus, in decreasing order, Calcutta (India), Mumbai (India), Dhaka (Bangladesh), Guangzhou (China), Ho Chi Minh City (Vietnam), Shanghai (China), Bangkok (Thailand), Miami (USA), Hai Phòn (Vietnam), Alexandria (Egypt), Tianjin (China), Abidjan (Côte d'Ivoire), New York (USA), and Tokyo (Japan) remain in the top twenty cities, being joined by the cities of Rangoon (Myanmar), Khulna (Bangladesh), Ningbo (China), Lagos (Nigeria), Chittagong (Bangladesh), and Jakarta (Indonesia)<sup>201</sup>. Due to population growth projections, the population at risk in the 2070 scenario is larger than in the 2005 scenario. Thus, the population at risk in each of the 20 major cities in the 2070 scenario ranges from more than 2 million to more than 14 million<sup>202</sup>.

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<sup>196</sup> Vid. *ibid.*, Figure 12., p. 24.

<sup>197</sup> Percentages calculated on the proportion of Asian countries listed in *ibid.*, tables 2 and 3, pp. 28-29.

<sup>198</sup> Vid. *ibid.* Table 2, p. 28.

<sup>199</sup> Id. The deltaic city condition is marked with a "[D]" in the table.

<sup>200</sup> Vid. *ibid.* Table 3, p. 29.

<sup>201</sup> Vid. *id.*

<sup>202</sup> Id. Vid. also Figure 14 on p. 26, which shows a graph of the twenty cities with the largest proportional increase in exposed population in the 2070s under the "FAC Scenario" relative to the 2005 scenario.

## D) The potential role of adaptation and mitigation

The figures on population and assets exposed to coastal flooding presented in the OECD paper underline the pressing need to integrate adaptation and capacity building considerations for resilience to the adverse effects of climate change into risk management and urban development strategies, as the OECD has pointed out<sup>203</sup>. The paper emphasises that special attention should be given to developing countries in Asia, Africa and, to a lesser extent, Latin America, given the rapid growth they will experience until the 2070s<sup>204</sup>.

Equally essential as adaptation is mitigation, as it counteracts the environmental changes responsible for rising sea levels and extreme coastal flooding. On this point, the IPCC's fifth report cites three different studies showing that reducing or stabilising CO<sub>2</sub> emissions at a given concentration could reduce the risk of coastal flooding compared to an unmitigated scenario<sup>205</sup>. The OECD report also echoes the positive impact that policies aimed at minimising human-induced subsidence –e.g., by reducing groundwater abstraction- could have in reducing the risk of sea-level rise and exposure to coastal flooding<sup>206</sup>. The report draws attention to the crucial role that their implementation can play in deltaic cities, which are more prone to subsidence, having already been applied in the Netherlands, Shanghai (China) and large cities in Japan, and

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<sup>203</sup> Ibid., p. 39. Vid. also PÖRTNER, H.O. ET AL (eds.), “Cross-Chapter Paper 2: Cities and Settlements by the Sea”, in: *Climate Change 2022...*, *op. cit.*, pp. 11-16, on adaptation strategies in coastal cities and settlements threatened by sea-level rise and hydrological extreme events. These strategies are categorised into protective measures (man-made or natural), adaptation of the built environment, advance measures through the creation of new land by building seawards, and retreat measures through the relocation of people, assets and activities away from coastal hazard areas.

<sup>204</sup> NICHOLLS, R.J. et al., “Ranking Port Cities...” (ENV/WKP(2007)1), *op. cit.*, p. 39.

<sup>205</sup> FIELD, C.B. ET AL (eds.), *Climate Change 2014...*, *op. cit.*, p. 382:

“Tol (2007) finds that stabilizing CO<sub>2</sub> concentration at 550 ppm reduces global impacts on wetlands and dry lands by about 10% in 2100 compared to a scenario of unmitigated emissions. Hinkel et al. report that stabilizing emissions at 450 ppm CO<sub>2</sub> –eq reduces the average number of people flooded in 2100 by about 30% compared to a baseline where emissions increase to about 25 Gt C-eq in 2100. Arnell et al find that an emissions pathway peaking in 2016 and declining at 5% per year thereafter reduces flood risk by 58 to 66% compared to an unmitigated A1B scenario. All three studies only consider the effects of mitigation during the 21<sup>st</sup> century and assume low or no contribution of ice sheets to GMSLR”.

In the same vein, see the IPCC's Sixth Assessment Report, which notes that limiting post-industrial global temperature increase to 1.5-2°C would significantly reduce future risks related to sea level rise. Specifically, under this scenario, the population at risk of being permanently submerged would increase by 26% by 2100, compared to 53% under a business-as-usual emissions scenario (in: PÖRTNER, H.O. ET AL (eds.), “Cross-Chapter Paper 2: Cities and Settlements by the Sea”, in: *Climate Change 2022...*, *op. cit.*, p. 9).

<sup>206</sup> NICHOLLS, R.J. et al., “Ranking Port Cities...” (ENV/WKP(2007)1), *op. cit.*, p. 37.



becoming essential to extend them to the entire Asian continent because of the high proportion of such cities<sup>207</sup>.

At the same time, both the fifth IPCC report and the OECD study present some conclusions that support some of the theses assumed by the "maximalists" on sea-level rise. Firstly, adaptive capacity will be significantly shaped by socio-economic development. Thus, the OECD study reports that only the US and the Netherlands would be able to provide a high level of protection against extreme flooding. In contrast, India, Vietnam and Bangladesh – countries which, as seen above, also feature a high proportion of the population at risk - would only be able to offer limited protection against such events, likely requiring donor support to recover from the catastrophe<sup>208</sup>. In particular, the paper records that twenty-six cities with a total exposed population of 11.4 million people in 2005 are located in countries considered "low-income" –fourteen cities in Asia, eleven in Africa and one in the Caribbean<sup>209</sup>.

Such a "coastal adaptation funding gap" has also been highlighted in the IPCC's Sixth Assessment Report, which stresses the financial challenges faced by the Global South, as public budgets allocated to coastal adaptation are limited<sup>210</sup>. As for the role of international donors, on whose support the implementation of such adaptation measures in developing countries often depends, the IPCC underlines that "[s]uch aid is often inconsistent and short term, which limits long-term maintenance of knowledge, equipment and infrastructure needed to sustain adaptation measures beyond initial funding periods"<sup>211</sup>.

In addition to noting difficulties for developing countries in mobilising the resources needed to protect low-lying coastal areas from extreme flooding, the IPCC report also points to the role that what the "maximalists" call "associated factors", such as poverty, population growth and ill-development, will play in hindering adaptation<sup>212</sup>.

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<sup>207</sup> Id.

<sup>208</sup> Ibid., p. 35. Vid. also Table 9, on the same page, showing the top ten countries by population exposed in 2005 to a 1:100 extreme event compared to potential to protect.

<sup>209</sup> Id. Vid. also Table 10, p. 36, listing a number of exposed cities that are located in countries classified as having a limited capacity for protection according to their GDP level.

<sup>210</sup> PÖRTNER, H.O. ET AL (eds.), "Cross-Chapter Paper 2: Cities and Settlements by the Sea", in: *Climate Change 2022...*, *op. cit.*, p. 17.

<sup>211</sup> Id.

<sup>212</sup> FIELD, C.B. ET AL (eds.), *Climate Change 2014...*, *op. cit.*, p. 373. Vid. also PÖRTNER, H.O. ET AL (eds.), "Cross-Chapter Paper 2: Cities and Settlements by the Sea", in: *Climate Change 2022...*, *op. cit.*, pp. 18-23.

Thus, it is reported that intense migration flows to coastal cities will lead to an expansion of informal urban settlements in marginal areas, increasing the proportion of people vulnerable to this kind of environmental disruption<sup>213</sup>. In addition, the poverty of their dwellers and their heavy dependence on natural resources will intensify pressure on coastal ecosystems, compounding wetland loss. In terms of exposure, this form of environmental degradation leaves these human settlements even more vulnerable to flooding, given their role as natural barriers to the impact of waves and storms on the coastline<sup>214</sup>, as seen in the discussion of "maximalist" thinking.

Against denying developing countries the capacity to adapt to environmental changes due to a lack of financial and institutional means, the "minimalists" would argue the depoliticised and ahistorical conception that this reasoning seems to assume<sup>215</sup>. In line with this critique, the OECD foresees an economic growth scenario that "will allow a general improvement in protection levels and a corresponding decrease in flooding risks in coastal cities around the globe"<sup>216</sup>. This economic prospect would leave some room for developing countries to adapt through protective measures. In contrast to this brighter economic picture for the developing world, the IPCC reports that, on a benefit-cost basis, protection options would be feasible for 3% of the world's coastline<sup>217</sup>.

While that percentage may seem small, it would be equivalent to protecting 78% of the world's coastal population and 92% of the world's coastal floodplain assets<sup>218</sup>. For the remaining exposed coastline that could not access protection measures, such as small coastal settlements, less densely populated poorer coasts or isolated communities, "coastal migration was estimated to be optimal in terms of economic costs"<sup>219</sup>. However, migration as an adaptation strategy –i.e., in a "minimalist" sense - does not consider "place attachment, community relationships, livelihoods and the spiritual and

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<sup>213</sup> FIELD, C.B. ET AL (eds.), *op. cit. supra*, p. 373.

<sup>214</sup> Id.

<sup>215</sup> Vid. for all MORRISSEY, J., "Rethinking the 'debate on environmental refugees': From 'maximalists and minimalists' to 'proponents and critics'", *Journal of Political Ecology*, Vol. 19, No 1, December 2012, p. 44.

<sup>216</sup> NICHOLLS, R.J. et al., "Ranking Port Cities..." (ENV/WKP(2007)1), *op. cit.*, p. 35.

<sup>217</sup> PÖRTNER, H.O. ET AL (eds.), "Cross-Chapter Paper 2: Cities and Settlements by the Sea", in: *Climate Change 2022...*, *op. cit.*, p. 18.

<sup>218</sup> Id.

<sup>219</sup> Id. However, Working Group II shows only medium confidence that adaptation investments in these areas would not be financially viable. On the other hand, migration as an adaptive response to sea-level rise "would result in large land losses and high levels of migration for South and South-east Asia in particular and, in relative terms, small island nations would suffer most" (vid. id.).

cultural significance of settlements"<sup>220</sup>. Moreover, even when the benefit-cost ratio is high, financing may be unaffordable, as it is difficult "to convert the long-term benefits of adaptation into the revenue streams that may be needed to initially finance adaptation investments" –as was the case in Ho Chi Minh City, in Vietnam<sup>221</sup>.

Notwithstanding the above, the OECD concludes that "even if all cities are well protected against extreme events, large-scale city flooding may remain a frequent event at the global scale because so many cities are threatened both in terms of population and assets and because *protection is not fail-safe*"<sup>222</sup>. Therefore, it is not only adaptation and mitigation measures that need to be considered, but also "what happens when adaptation and especially defences fail"<sup>223</sup>.

Precisely because of this ineliminable "residual risk", the OECD advocates risk management strategies to complement the above<sup>224</sup>. Among these, the report mentions, on the one hand, disaster prevention and preparedness measures, such as flood early warning systems, the development of evacuation plans and urban planning to avoid flood-prone areas and thus reduce or eliminate vulnerability. On the other hand, disaster response strategies include the recovery and reconstruction of affected areas, with sufficient international support when the country's capacities are not enough<sup>225</sup>, as well as the selective relocation of at-risk population settlements<sup>226</sup>. However, the OECD does not consider the possibility that disaster management and response strategies may fail like adaptation and defence approaches, raising the question of how to protect people displaced because extreme water events have flooded their homes.

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<sup>220</sup> *Id.*, pointing to the narrow view of cost-benefit ratios as the reason for their limited application in the context of coastal adaptation decisions.

<sup>221</sup> *Id.*

<sup>222</sup> NICHOLLS, R.J. et al., "Ranking Port Cities..." (ENV/WKP(2007)1), *op. cit.*, p. 9 [italics added]. Thus, the OECD concludes that:

"There is a 74% chance of having one or more of the 136 cities affected by a 100-year event every year, and a 99.9% chance of having at least one city being affected by such an event over a 5-year period. Even considering 1000-year events, the probability of having one of the 136 cities affected is as large as 12% over one year and 49% over 5-year periods" (p. 40).

<sup>223</sup> *Ibid.*, p. 40

<sup>224</sup> *Vid. ibid.* pp. 36 *in fine*, 37 and 40.

<sup>225</sup> The disaster risk reduction and disaster response strategies referred to by the OECD are addressed in Chapter VII when discussing the SFDRR.

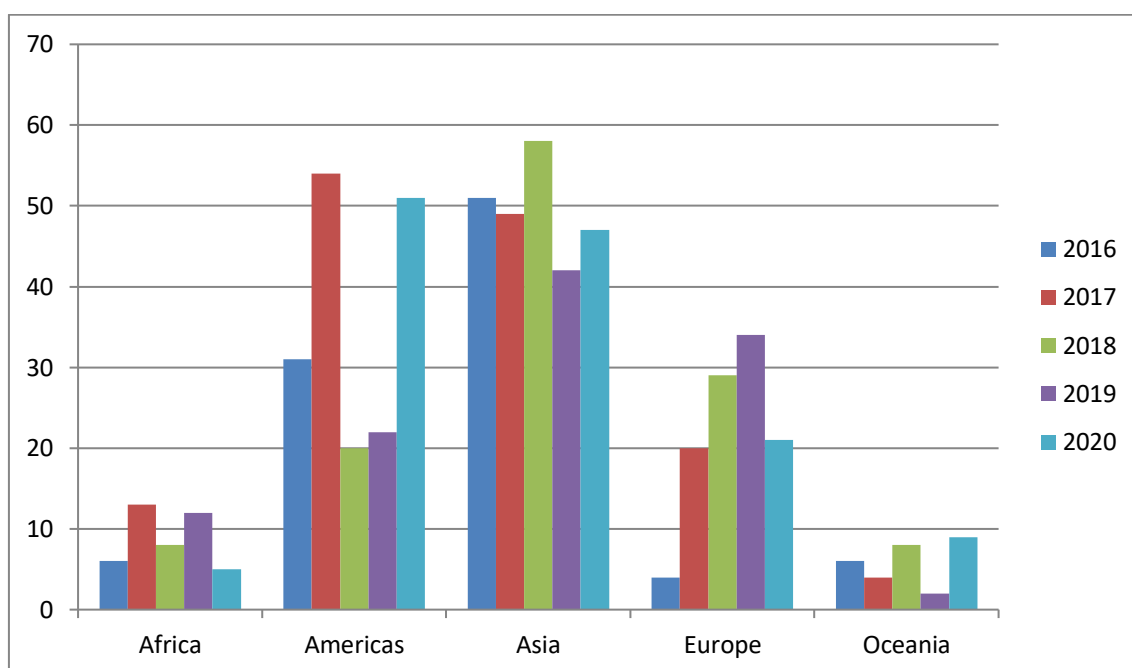
<sup>226</sup> The human rights implications of relocation or prohibition of return to the disaster site for those displaced by sea-level rise are addressed in Chapter VI by examining international standards on the protection of IDPs, with a particular focus on the case of low-lying SIDS.

### 3.1.3. Meteorological disasters

#### A) Occurrence

During 2016 and 2020, there were as many as 606 weather-related disasters, with an average of 121.2 meteorological events per year. They represent 34.12% of the overall number of disasters occurring in the five-year period, being the second most recurrent natural catastrophe<sup>227</sup>.

Figure 12 - Number of meteorological disasters by continent and year<sup>228</sup>



Asia continues to lead the ranking, suffering an average of 49.4 meteorological disasters each year. Americas is in second place with an annual rate of 35.6 events, and Europe is in the third position having a yearly average of 21.6 disasters of this type. Lastly, Oceania presents an annual average of 5.8 meteorological disasters<sup>229</sup>.

Among the top ten countries, the majority of those affected remain Asian (6 out of 10). However, the United States tops the ranking of countries with the most storms, with a total of 77 storms during the five-year period. It is followed by China (43) and the Philippines (36). As for extreme temperature events, India, Japan and France tie with 5 events each.

<sup>227</sup> Vid. Table 20 – Total natural disasters, Annex I.

<sup>228</sup> Graph generated from data in Table 21 – Total natural disasters per continent, Annex I.

<sup>229</sup> Vid. Table 21 – Total natural disasters per continent, Annex I.

**Table 4 - Top 10 countries most affected by meteorological disasters<sup>230</sup>**

<b>Top 10 countries</b>	<b>Meteorological disasters</b>	<b>Storm</b>	<b>Extreme temperature</b>
<b>USA</b>	77	77	0
<b>China</b>	43	42	1
<b>Philippines</b>	36	0	0
<b>India</b>	33	28	5
<b>Viet Nam</b>	24	24	0
<b>Japan</b>	22	17	5
<b>France</b>	17	12	5
<b>Mexico</b>	16	16	0
<b>Italy</b>	12	9	3
<b>Bangladesh</b>	11	9	2

Differentiating by disaster type, storms account for 87.62% (531) and extreme temperature events for 12.37% (75) of the total meteorological phenomena recorded between 2016 and 2020 (606). By disaster subtype and continent, Africa faced 6 cold waves and 1 heat wave, and Asia experienced 11 heat waves, 10 cold waves and 3 severe winter conditions. Europe suffered the highest rate of heat waves (25), as well as 10 cold waves and 7 severe winter conditions. The Americas and Oceania reported only 1 heat wave each<sup>231</sup>.

Finally, regarding storms, Africa encountered 17 convective storms and 20 tropical cyclones. Europe recorded 38 convective storms, 26 extratropical storms and 1 tropical cyclone, and Oceania 5 convective storms and 23 tropical cyclones. The Americas saw the highest number of convective storms (67) and 106 tropical cyclones, while Asia had the second highest number of convective storms (64) and the largest number of tropical cyclones between 2016 and 2020 (152)<sup>232</sup>.

<sup>230</sup> Table generated from data in Annex II "Natural disasters by country (including self-governing or special status territories)" and from disaggregated data by type of meteorological disaster from the EM-DAT.

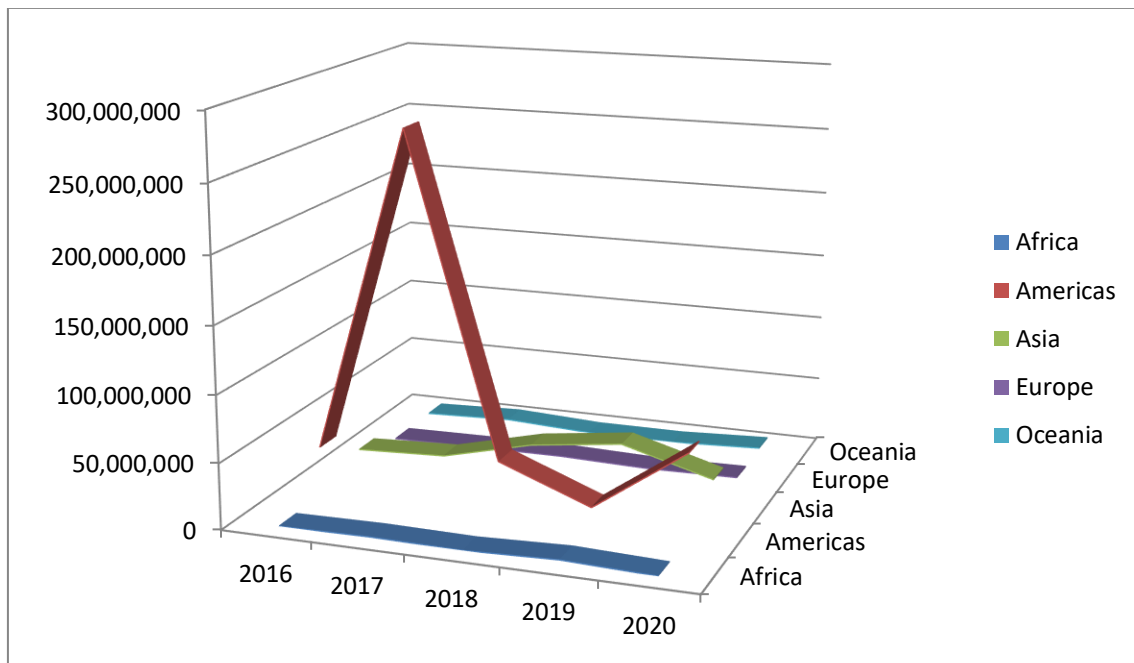
<sup>231</sup> Disaggregated data by type and subtype of meteorological disaster obtained from the EM-DAT.

<sup>232</sup> Disaggregated data from the EM-DAT. Additionally, the EM-Dat database shows 6 storms in Asia, 4 in the Americas and 1 in Europe with no subtype classification.

## B) Total material damages

Material damages from meteorological disasters between 2016 and 2020 were concentrated in 65 countries out of 128 that recorded weather-related catastrophes<sup>233</sup>, with damages amounting to US\$ 587,385,940<sup>234</sup>. This means that 63 countries recorded meteorological events but have not reported economic damages from them. Material losses attributable to meteorological disasters account for 61.19% of the total damage caused by natural disasters<sup>235</sup>. By type, storms caused the vast majority of weather-related damages (US\$ 585,436,146 or 99.66% of all damages), while extreme temperature waves account for only 0.33% (US\$ 1,949,794)<sup>236</sup>.

**Figure 13 - Total material damages from meteorological disasters by continent and year ('000 US\$)**<sup>237</sup>



The Americas had by far the highest volume of damage (US\$ 440,739,884) and Africa the lowest (US\$ 3,336,405). Note, however, the tremendous difference between the Americas and Asia, even though the latter ranks second for weather-related damage

<sup>233</sup> Cf. the countries listed in Annex II: "Natural disasters by country (including self-governing or special status territories)" and those listed in Annex IV: "Total damages ('000 US\$), adjusted for inflation, by country (including self-governing or special status territories)".

<sup>234</sup> Vid. Table 24 – Total damages caused by natural disasters ('000 US\$), Annex I.

<sup>235</sup> Vid. id.

<sup>236</sup> Disaggregated data on material losses by type of meteorological disaster calculated from the EM-DAT.

<sup>237</sup> Graph generated from data in Table 25 – Total damages caused by natural disasters per continent ('000 US\$), Annex I.

(US\$ 128,573,853)<sup>238</sup>. A particularly prolific year for storms in the Americas was 2017, which saw 54 storms –an increase of 52.54% over its annual average (35.4)<sup>239</sup>. This year accounts for 63.22% (US\$ 278,677,318) of the total weather damage in the Americas<sup>240</sup>. The Americas will not experience similar storm activity again until 2020 (51)<sup>241</sup>. On the other hand, Europe and Oceania together account for only 2.5% of total global meteorological losses<sup>242</sup>.

**Table 5 - Top 10 countries most economically damaged by meteorological disasters<sup>243</sup>**

<b>Top 10 countries</b>	<b>Meteorological disaster damage ('000 US\$)</b>
<b>USA</b>	336,365,559
<b>Puerto Rico</b>	75,233,806
<b>Japan</b>	48,001,247
<b>China</b>	42,598,932
<b>India</b>	20,981,922
<b>Australia</b>	6,917,758
<b>Viet Nam</b>	5,832,872
<b>St. Martin</b>	4,532,381
<b>Bahamas</b>	4,283,253
<b>Cuba</b>	3,532,365

Half of the countries included in the top 10 are American, with the United States and Puerto Rico leading the ranking. Damage in the United States alone accounts for 57.26% of total meteorological damage and 76.31% of the continent<sup>244</sup>. These percentages rise to 72.17% and 96.18%, respectively, when Puerto Rico, St. Martin, Bahamas and Cuba are considered<sup>245</sup>. Following the prominence of the Americas, 2017 was the year in which the economic cost caused in the United States by weather-related

<sup>238</sup> Vid. Table 25 – Total damages caused by natural disasters per continent ('000 US\$), Annex I.

<sup>239</sup> Vid. Table 21 – Total natural disasters per continent, Annex I.

<sup>240</sup> Vid. Table 25 – Total damages caused by natural disasters per continent ('000 US\$), Annex I.

<sup>241</sup> Vid. Table 21 – Total natural disasters per continent, Annex I.

<sup>242</sup> Vid. Table 25 – Total damages caused by natural disasters per continent ('000 US\$), Annex I.

<sup>243</sup> Table generated from data in Annex IV: "Total damages ('000 US\$), adjusted for inflation, by country (including self-governing or special status territories)".

<sup>244</sup> Cf. the table with weather-related material damage suffered by the USA, included in Annex IV, with Table 24 – Total damage caused by natural catastrophes ('000 US\$) and Table 25 – Total damage caused by natural catastrophes by continent ('000 US\$), both in Annex I.

<sup>245</sup> Vid. Annex IV for tables showing the economic losses incurred by each of these countries.

disasters peaked, reaching US\$ 189,155,055 (equivalent to 56.23% of the total damage associated with weather events in the country or 67.87% of the continent's weather damage for 2017)<sup>246</sup>. China, along with Japan and India, are the three Asian countries that recorded the highest damage in the five-year period<sup>247</sup>.

### C) Total people displaced

Weather-related disasters caused more than 57.5 million new displacements between 2016 and 2020, being the subgroup of natural disasters that caused the most dislocations in the five-year period (49.72% of all displacements)<sup>248</sup>. Storms, in their different forms, account for 99.6% of weather-induced displacement<sup>249</sup>. The years 2016, 2019 and 2020 show displacement figures above the annual average of 11.5 million new displacements due to such disasters<sup>250</sup>. In all three years, internal displacement in Asia accounted for at least 81.72% of all displacement<sup>251</sup>. Following this trend, Asia was the continent where, in absolute terms, meteorological disasters caused the greatest number of population displacements associated with natural disasters (accounting for 39.52% of all displacement caused by natural disasters in the five-year period)<sup>252</sup>.

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<sup>246</sup> Vid. the table of damages for the USA in Annex IV and compare it with the table of total damages by continent (Table 25, Annex I).

<sup>247</sup> Vid. Annex IV for a year-by-year breakdown of the damage caused in each of these countries by weather-related disasters between 2016 and 2020.

<sup>248</sup> Vid. Table 22 – Total number of persons displaced by natural disasters, Annex I.

<sup>249</sup> Percentages calculated from the incidence of storms as recorded in IDMC, Disaster events 2008-2020..., *op. cit.*

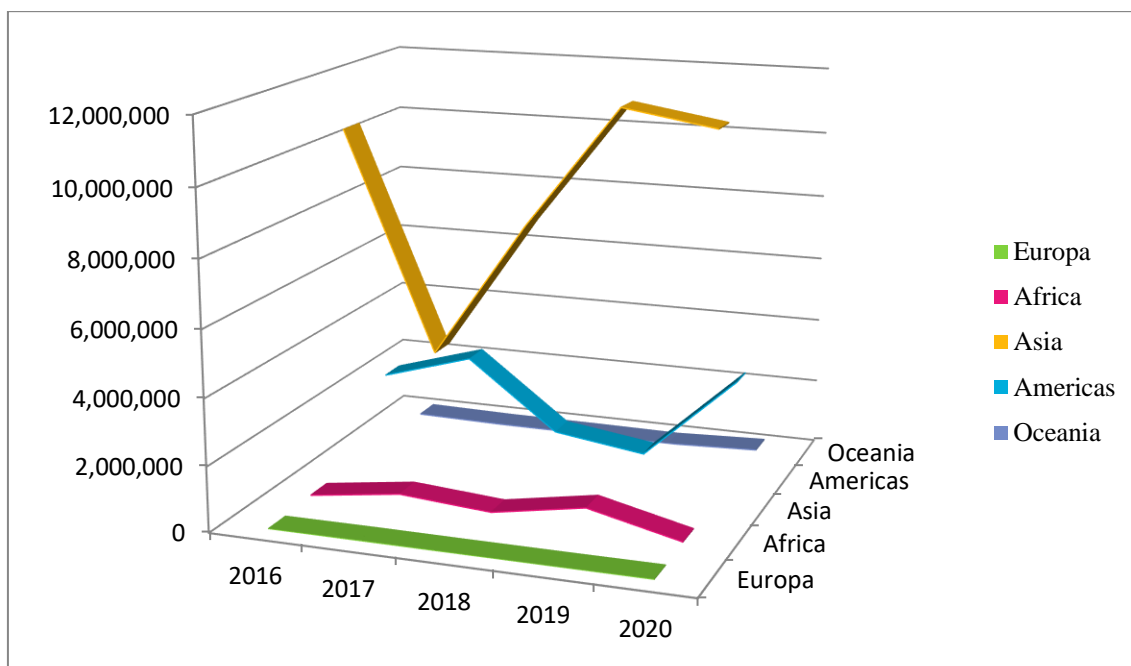
<sup>250</sup> Vid. Table 22 – Total number of persons displaced by natural disasters, Annex I.

<sup>251</sup> Vid. Table 23 – Total number of persons displaced by natural disasters per continent, Annex I.

<sup>252</sup> Cf. data for Asia in Table 23 with Table 22.



**Figure 14 - Number of environmentally displaced by meteorological disasters by continent and year<sup>253</sup>**



The total number of internal displacement in Asia exceeded 45.7 million, accounting for 79.49% of all weather-related displacement recorded between 2016 and 2020<sup>254</sup>. The Philippines, with over 16.7 million, and China, with just over 11 million, were the two countries with the highest rates of displacement due to meteorological calamities, accounting for 60.96% of all persons displaced by these phenomena within Asia between 2016 and 2020<sup>255</sup>. Typhoon Mangkhut in September 2018 caused more than 1.5 million new displacements in both China and the Philippines<sup>256</sup>. Also notable are Typhoon Lekima, which displaced nearly 2.1 million persons in 2019 in China<sup>257</sup>, and Typhoons Kammuri, Goni and Vamco, which forced the displacement of more than 4.2 million persons between 2019 and 2020 in the Philippines<sup>258</sup>.

<sup>253</sup> Graph generated from data in Table 23 – Total number of persons displaced by natural disasters per continent, Annex I.

<sup>254</sup> Cf. data for Asia in Table 23 with Table 22.

<sup>255</sup> Vid. the tables on environmental displacement in the Philippines and China in Annex III.

<sup>256</sup> Vid. IDMC, *Disaster events 2008-2020...*, *op. cit.*, cells 1724 and 7735.

<sup>257</sup> *Ibid.*, cell 1787.

<sup>258</sup> *Ibid.*, cells, 7761, 7846 and 7850.

**Table 6 - Top 10 countries with the most environmental displacement related to meteorological disasters<sup>259</sup>**

<b>Top 10 countries</b>	<b>Displacement related to meteorological disasters</b>
<b>Philippines</b>	16,765,079
<b>China</b>	11,119,740
<b>Bangladesh</b>	7,275,845
<b>India</b>	5,969,281
<b>USA</b>	3,877,255
<b>Cuba</b>	3,518,323
<b>Viet Nam</b>	2,111,965
<b>Japan</b>	1,166,083
<b>Honduras</b>	936,071
<b>Mozambique</b>	677,525

In contrast, Europe was the continent with the lowest rate of weather-related displacement, accounting for only 0.038% of the total figure for 2016-2020<sup>260</sup>. Within Europe, the United Kingdom was the country with the highest rate of displacement (accounting for 46.84% of those displaced on the continent due to meteorological phenomena)<sup>261</sup>. Just three storms, one in 2017 and two in 2020<sup>262</sup>, accounted for 97.79% of all weather-related displacement reported in that country<sup>263</sup>.

Africa recorded more than 1.5 million internal displacements over the five-year period, accounting for 2.75% of all weather-induced displacement worldwide<sup>264</sup>. Looking at the mosaic of countries that make up Africa, the sum of those displaced in Madagascar and Mozambique alone accounts for 66.84% of all weather-induced displacement on the continent<sup>265</sup>. In both cases, the explanation for these relatively high numbers of environmental displacement is the fact that they are regions prone to

<sup>259</sup> Table generated from data in Annex III: "Environmentally displaced persons by country (including self-governing or special status territories)".

<sup>260</sup> Cf. data for Europe in Table 23 with Table 22 – Total number of persons displaced by natural disasters, both in Annex I.

<sup>261</sup> Vid. the table on environmental displacement in the United Kingdom in Annex III.

<sup>262</sup> Vid. IDMC, *Disaster events 2008-2020...*, *op. cit.*, cells 3079, 3109 and 3110.

<sup>263</sup> Percentage calculated from the total number of weather-related displacement in the UK, as reported in Annex III.

<sup>264</sup> Cf. data for Africa in Table 23 with Table 22 – Total number of persons displaced by natural disasters, both in Annex I.

<sup>265</sup> Vid. the tables on environmental displacement in Madagascar and Mozambique Annex III.

cyclical tropical cyclones as a result of their position in relation to the Indian Ocean. Thus, all the natural disasters that caused the highest numbers of persons affected and displaced in these countries belong to this sub-type of weather phenomenon. Cyclone Enawo alone caused all weather-related displacement in Madagascar in 2017, which was the country's peak year with almost 250,000 new displacements (or 64.84% of all weather-related displacements in the country)<sup>266</sup>. In Mozambique, Cyclone Idai left almost 500,000 people displaced in 2019<sup>267</sup> (accounting for 94.02% of weather-related displacement that year or 70.57% of such displacement in the country over the five-year period<sup>268</sup>).

The Americas, with almost 10 million displacements (representing 17.23%), ranks second in terms of the number of internal displacements caused by weather-related disasters<sup>269</sup>. In three different years, 2016, 2017 and 2020, the figure exceeded two million displaced persons, peaking in 2020 at just over three million<sup>270</sup>. Cuba and the United States respectively accounted for 35.48% and 39.10% of all weather-related displacement in the Americas<sup>271</sup>. Hurricane Matthew in 2016 and Hurricane Irma in 2017 were responsible for 80% of all weather displacement in Cuba in the five-year period<sup>272</sup>. In the United States, these hurricanes caused 27.76% of weather displacement in the country<sup>273</sup>.

In Oceania, despite its position between the Indian and Pacific Oceans and a climate strongly influenced by ocean currents, the proportion of persons displaced by weather-related disasters is relatively low, accounting for only 0.47% of all weather-related displacement worldwide<sup>274</sup>. However, at the continental level, these disasters

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<sup>266</sup> Vid. IDMC, *Disaster events 2008-2020...*, *op. cit.*, cell 5952, and the table for Madagascar in Annex III.

<sup>267</sup> Vid. *ibid.*, cell 6366.

<sup>268</sup> Percentage calculated from weather-related displacement figures in Mozambique, as reported in Annex III.

<sup>269</sup> Cf. data for the Americas in Table 23 with Table 22 – Total number of persons displaced by natural disasters, both in Annex I.

<sup>270</sup> Vid. data for the Americas in Table 23 – Total number of persons displaced by natural disasters per continent, Annex I.

<sup>271</sup> Cf. figures on environmental displacement in Cuba and the USA (Annex III) with data for the Americas in Table 23, Annex I.

<sup>272</sup> Vid. IDMC, *Disaster events 2008-2020...*, *op. cit.*, cells 2597 and 2598, and the table for Cuba, Annex III.

<sup>273</sup> Vid. IDMC, *op. cit. supra*, cells 9056 and 9092, and the table for the USA in Annex III.

<sup>274</sup> Cf. data for Oceania in Table 23 with Table 22 – Total number of persons displaced by natural disasters, both in Annex I.

caused 53.49% of all displacement<sup>275</sup>. Most environmental displacement is located in the archipelagos of Melanesia, Micronesia and Polynesia, as a result of the intense cyclonic activity affecting their coral and volcanic islands. Fiji was the island nation with the most intense displacement flows in Oceania (accounting for 43.55% of all weather-related population movements), with 2016 and 2020 being the most intense years<sup>276</sup>. Tropical Cyclones Zena and Winston in February and April 2016 and Cyclone Yasa in December 2020 were responsible for the vast majority of displacement in the country<sup>277</sup>. In addition to the island territories, the rest of the weather-induced displacement in Oceania occurred mainly in Australia (12.27%)<sup>278</sup>, also due to the impact of several cyclones, such as Cyclone Debbie in March 2017<sup>279</sup>, responsible for 88.74% of all weather-induced displacement in the country<sup>280</sup>; or Cyclones Veronica and Trevor in March 2019, which caused all displacement that year<sup>281</sup>.

### 3.1.4. Climatological disasters

#### A) Occurrence

Climate-related disasters represent 7.03% (equivalent to 125 events) of the total number of disasters recorded between 2016 and 2020 (1,776), with 25 events being the average number of climatological calamities occurring per year globally<sup>282</sup>. Making a distinction between droughts and wildfires, as these are the two main types that make up the general category of climatic disasters, there have been 68 droughts (representing 54.4%) and 57 wildfires (equivalent to 45.6%) in the period considered<sup>283</sup>.

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<sup>275</sup> Vid. Table 23 – Total number of persons displaced by natural disasters per continent, Annex I.

<sup>276</sup> Vid. the table on environmental displacement in Fiji in Annex III.

<sup>277</sup> Vid. IDMC, *Disaster events 2008-2020...*, *op. cit.*, cells 2931, 2932 and 2949.

<sup>278</sup> Vid. the table on environmental displacement in Australia in Annex III.

<sup>279</sup> Vid. IDMC, *Disaster events 2008-2020...*, *op. cit.*, cell 496.

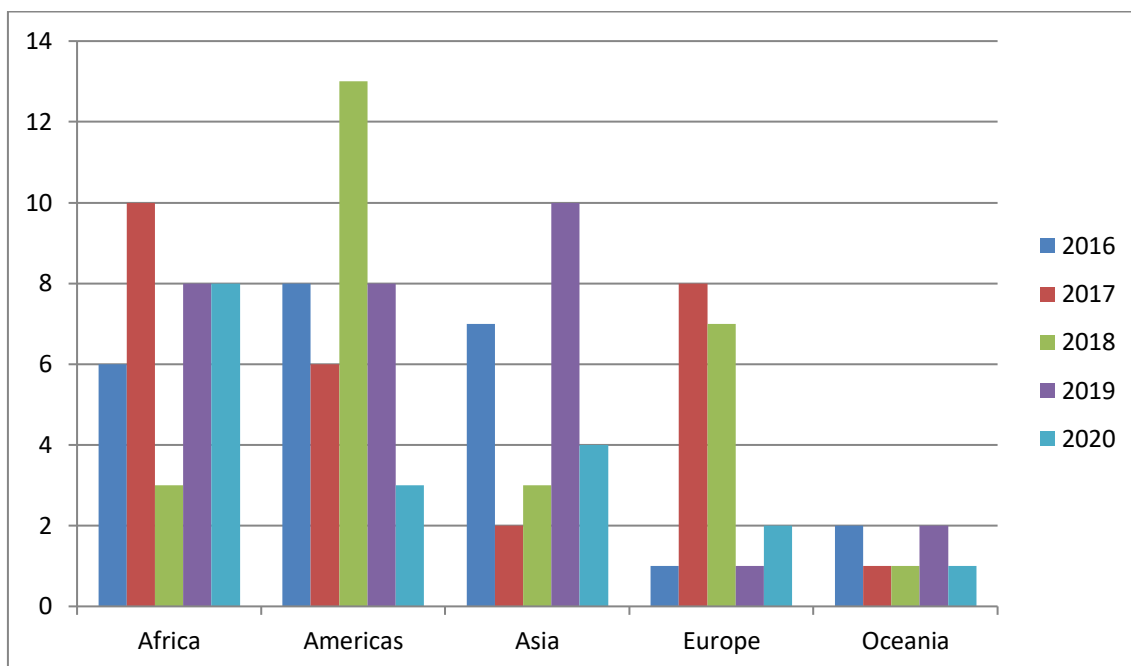
<sup>280</sup> Percentage calculated from the total number of weather-related displacement in Australia, as reported in Annex III.

<sup>281</sup> Vid. IDMC, *Disaster events 2008-2020...*, *op. cit.*, cells 524 and 525.

<sup>282</sup> Vid. Table 20 – Total natural disasters, Annex I.

<sup>283</sup> Disaggregated data by type of climatological disaster obtained from the EM-DAT.

**Figure 15 - Number of climatological disasters by continent and year<sup>284</sup>**



By continent, the Americas suffered the most climate-related disasters (38), followed closely by Africa (35) and Asia (26). Europe reported 19 climatic phenomena in the five-year period and Oceania 7 events<sup>285</sup>. Differentiating between droughts and wildfires, Africa was the continent most affected by drought with 69 events. The Americas and Asia recorded 16 and 15 droughts respectively. Europe and Oceania were the continents with the lowest number of droughts, with 3 and 2 respectively. The scenario changes when it comes to wildfires, with the Americas topping the ranking with 17 forest fires and 2 land fires across the continent. In second place, European forests were ravaged by fire on 15 occasions. Asia recorded 6 forest fires and 1 land fire. In contrast, Africa, together with Oceania, had the lowest rate of forest fires, with only one each. In contrast, Oceania had the highest number of land fires (3)<sup>286</sup>.

<sup>284</sup> Graph generated from data in Table 21 – Total natural disasters per continent, Annex I.

<sup>285</sup> Vid. Table 21 – Total natural disasters per continent, Annex I.

<sup>286</sup> Disaggregated data by continent and type and subtype of climatological disaster obtained from the EM-DAT. There remain 11 wildfires (2 in Africa, 3 in the Americas, 4 in Asia, 1 in Europe and 1 in Oceania) without subtype classification.

**Table 7 - Top 10 countries most affected by climatological disasters<sup>287</sup>**

<b>Top 10 countries</b>	<b>Climatological disasters</b>	<b>Drought</b>	<b>Wildfire</b>
<b>USA</b>	16	3	13
<b>Australia</b>	5	1	4
<b>China</b>	4	2	2
<b>Portugal</b>	4	0	4
<b>Lesotho</b>	3	3	0
<b>Madagascar</b>	3	3	0
<b>Mauritania</b>	3	3	0
<b>South Africa</b>	3	2	1
<b>India</b>	3	1	2
<b>Canada</b>	3	0	3

By country and type, African countries (Lesotho, Madagascar, Mauritania and South Africa) top the ranking for droughts. This trend is reversed when considering wildfires, as none, except South Africa (1), recorded this climatic disaster in the period studied. As can be seen in the table above, the bulk of wildfires are located in North America (United States and Canada). In global figures, the United States ranks first because of the number of wildfires it experienced during the five-year period (13), having recorded the same number of droughts as African countries. Australia ranks second globally, again because of the number of wildfires the country experienced during the five-year period (4). It is also worth noting that two European countries experienced high rates of wildfires between 2016 and 2020: Portugal (4) and Spain, which does not appear in the table but recorded 3 wildfires<sup>288</sup>.

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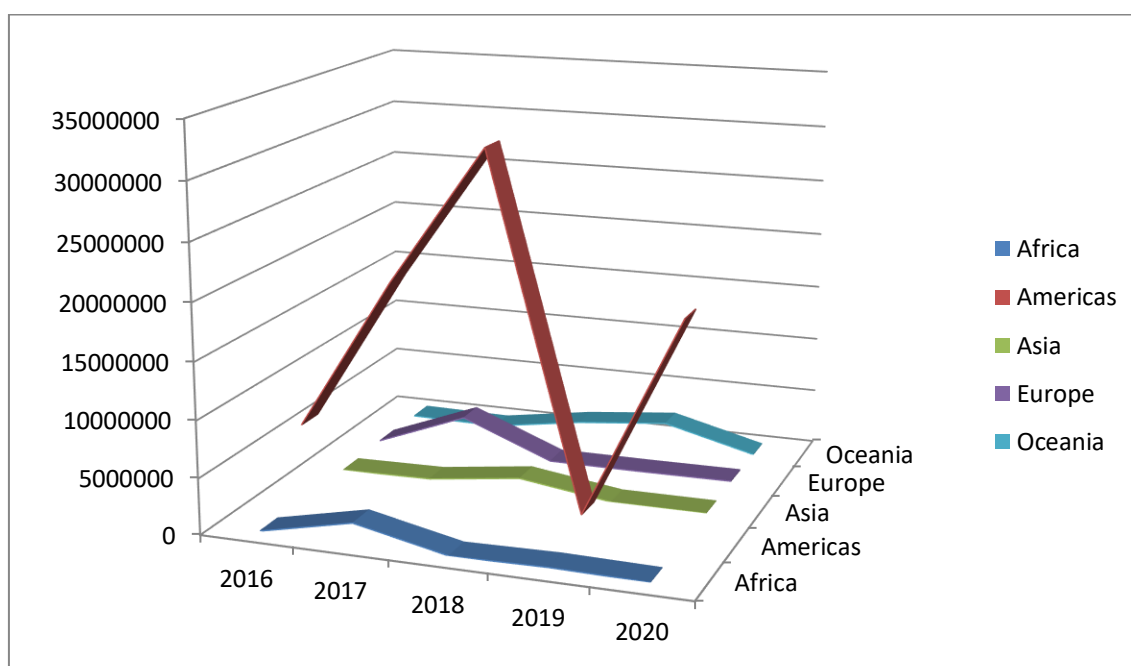
<sup>287</sup> Table generated from data in Annex II "Natural disasters by country (including self-governing or special status territories)", and from disaggregated data by type of climatological disaster from the EM-DAT.

<sup>288</sup> Vid. Spain's table on the occurrence of climate-related disasters in Annex II.

## B) Total material damages

At US\$ 94,930,708, climate-related disasters account for 9.88% of all damages recorded between 2016 and 2020<sup>289</sup>. However, it should be noted that only 23 countries out of 71 that have experienced climate shocks have reported associated economic damages<sup>290</sup>. The percentage of climate damages attributable to droughts over the 5-year period is 30.41% (or US\$ 28,869,091), while wildfires account for 69.58% (US\$ 66,061,617)<sup>291</sup>.

**Figure 16 - Total material damages from climatological disasters by continent and year ('000 US\$)**<sup>292</sup>



Following the trend in weather-related disaster damage, the Americas are also the continent with the highest proportion of climate-related damage. In five years, it has accumulated US\$ 80,185,708 in damages, representing 84.46% of total climate-related damage worldwide<sup>293</sup>. Likewise, Africa is the continent with the least damage from this

<sup>289</sup> Vid. Table 24 – Total damages caused by natural disasters ('000 US\$), Annex I.

<sup>290</sup> Cf. the countries listed in Annex II: "Natural disasters by country (including self-governing or special status territories)" and those listed in Annex IV: "Total damages ('000 US\$), adjusted for inflation, by country (including self-governing or special status territories)".

<sup>291</sup> Disaggregated data on material losses by type of climatological disaster calculated from the EM-DAT.

<sup>292</sup> Graph generated from data in Table 25 – Total damages caused by natural disasters per continent ('000 US\$), Annex I.

<sup>293</sup> Cf. data on economic losses for the Americas in Table 25 with Table 24 – Total damages caused by natural disasters ('000 US\$), both in Annex I.

type of disaster (US\$ 1,933,930)<sup>294</sup>, despite being the continent with the second largest incidence of climate catastrophes (35 disasters)<sup>295</sup>.

In the Americas and Oceania, wildfires were responsible for most of the damage associated with climatic events (US\$ 61,355,208 or 76.51% of the total in the Americas; and US\$ 2,276,557 or 63.74% of the total in Oceania). In the other three continents, drought was the most damaging climatic calamity. Interestingly, Europe recorded the third highest amount of drought-related damage (US\$ 2,542,555), despite being the continent with the second fewest incidences (only 3 droughts in the five-year period), only ahead of Oceania (2)<sup>296</sup>.

**Table 8 - Top 10 countries most economically damaged by climatological disasters<sup>297</sup>**

<b>Top 10 countries</b>	<b>Climatological disaster damage ('000 US\$)</b>
<b>USA</b>	66,943,534
<b>Canada</b>	4,516,026
<b>Argentina</b>	3,668,946
<b>Australia</b>	3,561,009
<b>China</b>	3,521,885
<b>Brazil</b>	3,140,935
<b>Italy</b>	2,542,555
<b>South Africa</b>	1,933,930
<b>India</b>	1,187,012
<b>Portugal</b>	986,449

There is a majority of American countries in the top 10 (4), with three of them topping the ranking (United States, Canada and Argentina). The amount of damage caused by climatological disasters in the United States amounts to US\$ 66,943,534, which represents 94.93% of all climate-related damage recorded in the world and 83.48% in the Americas in the period 2016-2020<sup>298</sup>. Wildfires were responsible in the

<sup>294</sup> Vid. Table 25 – Total damages caused by natural disasters per continent ('000 US\$), Annex I.

<sup>295</sup> Vid. Table 21 – Total natural disasters per continent, Annex I.

<sup>296</sup> Disaggregated data on material losses by type of climatological disaster calculated from the EM-DAT.

<sup>297</sup> Table generated from data in Annex IV: "Total damages ('000 US\$), adjusted for inflation, by country (including self-governing or special status territories)".

<sup>298</sup> Vid. the table of damages for the USA in Annex IV and compare it with the table of total damages worldwide and by continent (Table 24 and Table 25, Annex I).

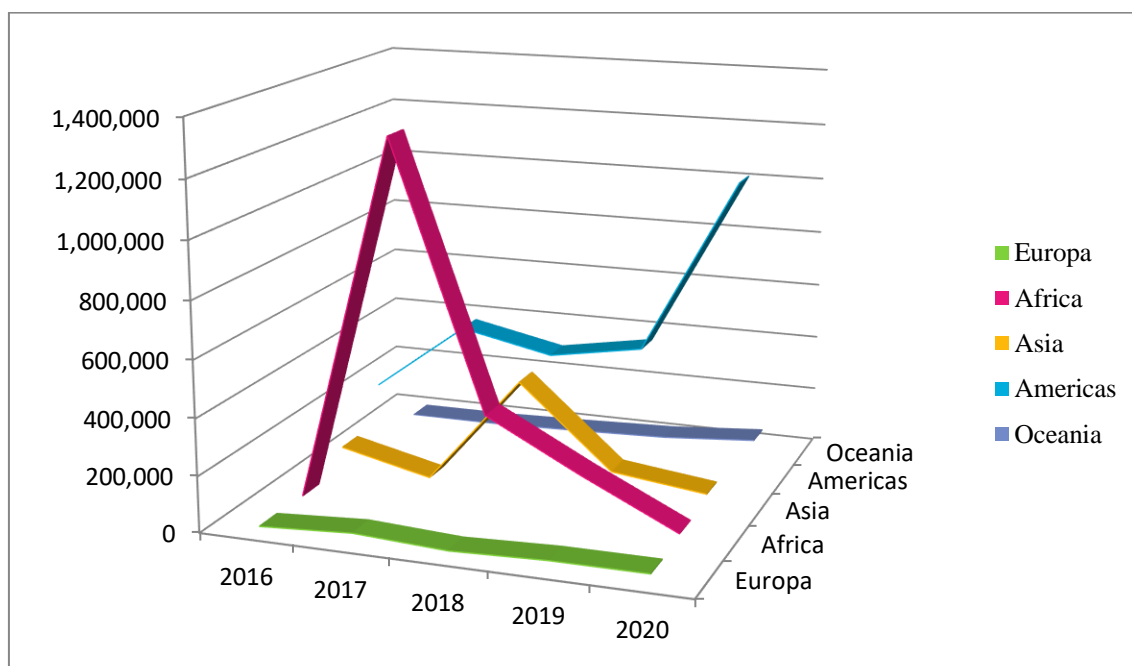


United States for 83.99% of climatological damages (i.e. US\$ 56,231,180). This trend is repeated in all other developed countries included in the ranking, except in Italy, where climate-related damage was due exclusively to drought and not to wildfires. In contrast, drought was the main cause of climate damage in developing countries<sup>299</sup>.

### C) Total people displaced

Climate displacement accounts for 4.62% of all persons displaced by natural disasters<sup>300</sup>. Droughts and wildfires are the main climate-related disasters causing forced displacement, accounting for 43.98% and 56.01% of such displacements respectively between 2016 and 2020<sup>301</sup>. Displacement due to drought peaked in 2017, when 54.35% of displacement due to this environmental disruption was recorded<sup>302</sup>. For wildfires, the worst year was 2020, when 40.65% of those affected were forced to leave their homes<sup>303</sup>.

**Figure 17 - Number of environmentally displaced by climatological disasters by continent and year<sup>304</sup>**



<sup>299</sup> Disaggregated data on material losses by type of climatological disaster obtained from the EM-DAT.

<sup>300</sup> Vid. Table 22 – Total number of persons displaced by natural disasters, Annex I.

<sup>301</sup> Percentages calculated from the incidence of droughts and wildfires as recorded in IDMC, *Disaster events 2008-2020...*, *op. cit.*

<sup>302</sup> Id.

<sup>303</sup> Id.

<sup>304</sup> Graph generated from data in Table 23 – Total number of persons displaced by natural disasters per continent, Annex I.

The Americas and Africa were the continents recording the high figures of displacement associated to climatic phenomena. Together, both continents account for 84.72% of such movements<sup>305</sup>. The Americas recorded its worst year in 2020, when 41.20% of total climate displacement happened in the continent<sup>306</sup>. Such high incidence was due to the recurrent wildfires that chronically assolates the United States and which were particularly virulent during the 2020 summer<sup>307</sup>. In particular, total climate displacements in the United States accounts for 91.26% of all climate displacement in the Americas<sup>308</sup>.

**Table 9 - Top 10 countries with the most environmental displacement related to climatological disasters<sup>309</sup>**

<b>Top 10 countries</b>	<b>Displacement related to climatological disasters</b>
<b>USA</b>	2,393,440
<b>Somalia</b>	1,216,495
<b>Ethiopia</b>	651,941
<b>Afghanistan</b>	375,472
<b>Canada</b>	198,479
<b>Israel</b>	86,742
<b>Australia</b>	79,232
<b>India</b>	63,493
<b>Burundi</b>	52,008
<b>China</b>	50,157

Wildfires were also responsible for climate displacement in Europe (accounting for 1.74% of such displacement worldwide<sup>310</sup>). In ascending order, Greece, France and especially Spain have the largest number of displacements due to wildfires (almost

<sup>305</sup> Cf. data for the Americas and Africa in Table 23 with global figures in Table 22, both in Annex I.

<sup>306</sup> Vid. Table 23 – Total number of persons displaced by natural disasters per continent, Annex I.

<sup>307</sup> Vid. IDMC, *Disaster events 2008-2020...*, *op. cit.*, cells 9048 to 9820.

<sup>308</sup> Cf. the table for United State in Annex III: "Environmentally displaced persons by country (including self-governing or special status territories)" with Table 23 – Total number of persons displaced by natural disasters per continent, in Annex I.

<sup>309</sup> Table generated from data in Annex III "Environmentally displaced persons by country (including self-governing or special status territories)".

<sup>310</sup> Cf. data for Europe in Table 23 with global figures in Table 22, both in Annex I. The high incidence of wildfires in environmental displacement in Europe has been determined from IDMC, *Disaster events 2008-2020...*, *op. cit.*

74,000 displacements or 79.03% of climate displacements in Europe)<sup>311</sup>. Focusing on Spain, 2019 saw the highest number of people evacuated<sup>312</sup> due to a wildfire in January, displacing more than 17,500 people<sup>313</sup> (equivalent to 54.43% of climate displacements in Spain and 18.87% of such displacements in Europe<sup>314</sup>). This pattern is even more pronounced in Oceania, as the total number of climate displacements reported on the continent (more than 82,500 or 1.54% of the global total<sup>315</sup>) corresponds to wildfires in Australia and New Zealand<sup>316</sup>.

If wildfires are responsible for displacement in the Americas, Europe and Oceania, in Africa it is drought. In Somalia, the 2017 drought caused 68.86% (or more than 890,000 displacements<sup>317</sup>) of that year's climate displacements in Africa and 46.71% of total climate displacement on the continent over the five-year period<sup>318</sup>. New drought episodes will recurrently affect Somalia in the coming years, albeit with less impact on population movements, adding up to almost 320,000 new displacements or the equivalent of 35.87% of the displacements caused by the 2017 drought<sup>319</sup>. Also in the Horn of Africa, Ethiopia has the second highest number of drought-associated displacements on the continent, although well below those recorded in Somalia<sup>320</sup>. Four periods of drought in consecutive years (2017-2020) caused more than 650,000 displacements in Ethiopia<sup>321</sup> –or 34.15% of all climate displacement in Africa over the five-year period<sup>322</sup>.

In Afghanistan, the Asian country with the highest rate of climate displacement on the continent (58.57%)<sup>323</sup>, two droughts in 2018 and 2019 were responsible for all of

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<sup>311</sup> Cf. the tables on environmental displacement for Greece, France and Spain in Annex III with Table 23 – Total number of persons displaced by natural disasters per continent, in Annex I.

<sup>312</sup> Vid. the table on environmental displacement in Spain in Annex III.

<sup>313</sup> IDMC, *Disaster events 2008-2020...*, *op. cit.*, cell 2832.

<sup>314</sup> Percentages calculated from environmental displacement figures recorded in Spain (vid. Annex III) and in Europe (vid. Table 23 – Total number of persons displaced by natural disasters per continent, in Annex I).

<sup>315</sup> Vid. data for Oceania in Table 23 and global figures in Table 22, both in Annex I.

<sup>316</sup> Vid. IDMC, *Disaster events 2008-2020...*, *op. cit.*, cells 449 to 563 for Australia, and cells 7149 to 7193 for New Zealand.

<sup>317</sup> *Ibid.*, cell 8236.

<sup>318</sup> Percentage calculated from the total number of climate displacement in Africa, as reported in Annex I, Table 23.

<sup>319</sup> Vid. IDMC, *Disaster events 2008-2020...*, *op. cit.*, cells 8242, 8246 and 8252.

<sup>320</sup> Cf. climate displacement figures for Somalia and for Ethiopia recorded in Annex III.

<sup>321</sup> IDMC, *Disaster events 2008-2020...*, *op. cit.*, cells 2895, 2897, 2901 and 2906.

<sup>322</sup> Percentage calculated from the total number of climate displacement in Africa, as reported in Annex I, Table 23.

<sup>323</sup> Cf. the table on climate displacement in Afghanistan in Annex III with the total number of climate displaced in Asia in Annex I, Table 23.

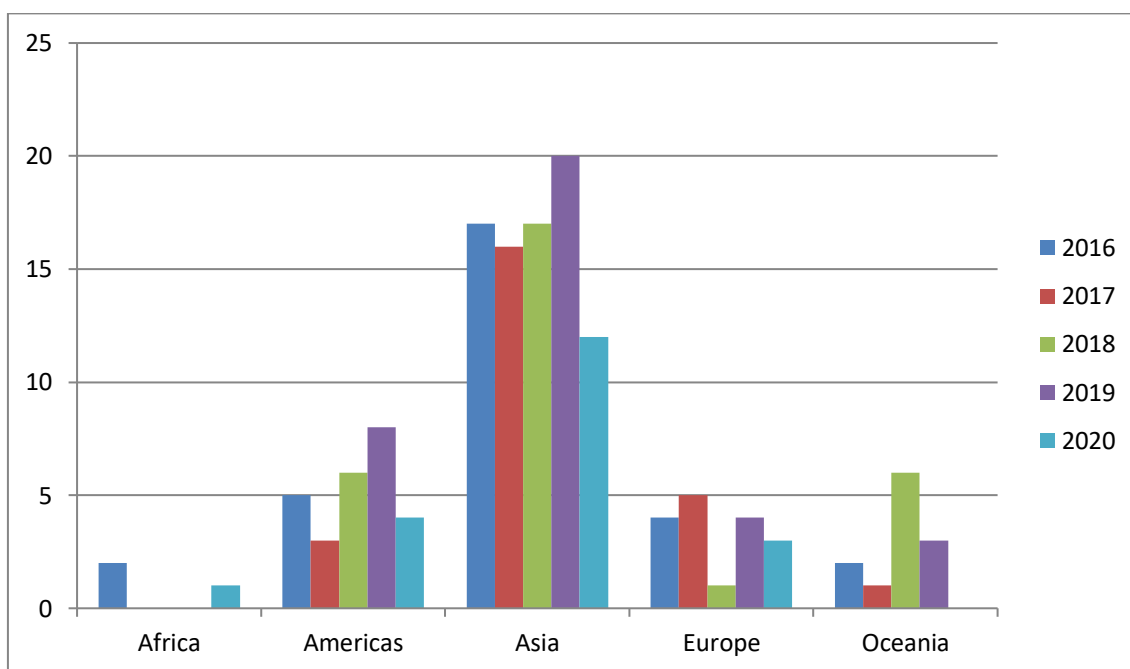
them (more than 375,000)<sup>324</sup>. In contrast, in Israel, wildfires were responsible for nearly 87,000 displacements<sup>325</sup>, ranking the country second in Asia with a rate of 13.53%<sup>326</sup>.

### 3.1.5. Geophysical disasters

#### A) Occurrence

Between 2016 and 2020, a total of 140 geophysical disasters were recorded, representing 7.88 % of the 1,776 total disasters computed<sup>327</sup>. On an annual average, 28 geophysical disasters occurred each year worldwide in that period<sup>328</sup>. By type, a distinction can be made between earthquakes (119 recorded events), dry mass movements (2) and volcanic activity (19)<sup>329</sup>.

**Figure 18 - Number of geophysical disasters by continent and year<sup>330</sup>**



Asia is by far the continent that has endured the most geophysical catastrophes (82), with 74 earthquakes, 7 volcanic events and 1 dry mass movement. Far behind are the Americas, with 21 earthquakes and 5 volcanic events. So is Oceania, with 6

<sup>324</sup> Vid. IDMC, *Disaster events 2008-2020...*, *op. cit.*, cells 147 and 194.

<sup>325</sup> *Ibid.*, cells 5147 to 5157.

<sup>326</sup> Cf. the table on climate displacement in Israel in Annex III with the total number of climate displaced in Asia in Annex I, Table 23.

<sup>327</sup> Vid. Table 20 – Total natural disasters, Annex I.

<sup>328</sup> *Id.*

<sup>329</sup> Disaggregated data by type of geophysical disaster obtained from the EM-DAT.

<sup>330</sup> Graph generated from the data in Table 21 – Total natural disasters per continent, Annex I.

earthquakes and 6 volcanic events; and Europe, with 15 earthquakes, 1 volcanic event and one more dry mass movement. Finally, Africa is the continent with the least geophysical activity with only 3 earthquakes recorded in the five-year period<sup>331</sup>.

Disaggregating the data by disaster sub-types, the number of ground movements in Asia (73) is again much larger than the figures recorded in the Americas (21), Europe (15), Oceania (5) and Africa (3). In addition, tsunamis occurred once in Asia in 2018 and once in Oceania in 2016. As for dry mass movements, one rockfall was reported in Europe in 2017 and one landslide in Asia in 2018. Regarding volcanic activity, Asia and the Americas registered 3 ash falls each, and Oceania 5. The Americas suffered 1 pyroclastic flow and 1 lava flow, and Asia 2 lava flows<sup>332</sup>.

**Table 10 - Top 10 countries most affected by geophysical disasters<sup>333</sup>**

<b>Top 10 countries</b>	<b>Geophysical disasters</b>	<b>Earthquake</b>	<b>Mass Movement (dry)</b>	<b>Volcanic activity</b>
<b>Indonesia</b>	20	15	0	5
<b>Philippines</b>	14	12	0	2
<b>China</b>	13	13	0	0
<b>Iran</b>	9	9	0	0
<b>Turkey</b>	7	7	0	0
<b>Japan</b>	6	6	0	0
<b>Italy</b>	6	5	0	1
<b>Papua New Guinea</b>	6	4	0	2
<b>Ecuador</b>	5	4	0	1
<b>Peru</b>	5	4	0	1

By country, the first six places in the top 10 ranking are occupied by Asian countries. Indonesia was the country with the most volcanic activity, with 2 ashfalls recorded in the five-year period, 1 lava flow and 2 unclassified volcanic events. Interestingly, none of the countries in the table registered any dry mass movement

<sup>331</sup> Disaggregated data by continent and type of geophysical catastrophe obtained from EM-DAT.

<sup>332</sup> Disaggregated data by continent and subtype of geophysical catastrophe obtained from EM-DAT. Additionally, a total of 4 volcanic events (1 in Europe, 2 in Asia and 1 in Oceania) are entered in the database without subtype classification.

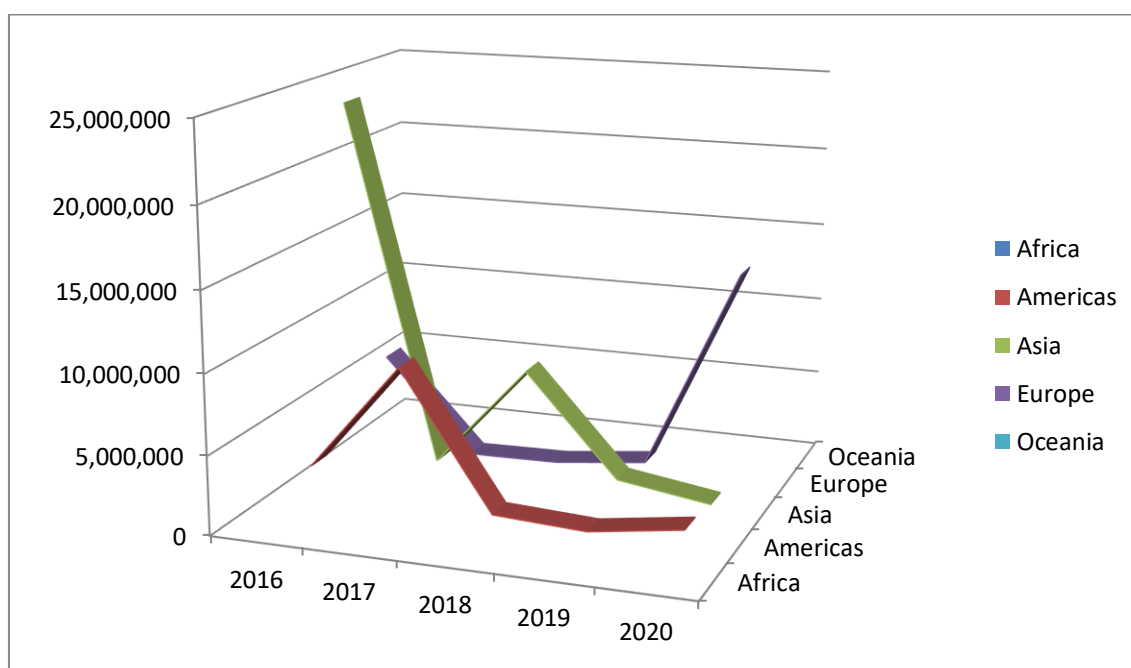
<sup>333</sup> Table generated from data in Annex II "Natural disasters by country (including self-governing or special status territories)", and from disaggregated data by type of geophysical disaster from the EM-DAT.

between 2016 and 2020. Finally, Indonesia, the Philippines and China are the most seismically active countries. All earthquakes in these countries were ground movements, except for the tsunami that affected Indonesia in 2018<sup>334</sup>.

### B) Total material damages

Damage caused by geophysical disasters amounts to US\$ 74,406,868 and accounts for 7.75% of all natural disaster-related damage recorded between 2016 and 2020<sup>335</sup>. A total of 22 countries out of the 39 that experienced geophysical disasters in that period have reported damage<sup>336</sup>. In turn, 98.64% of all material losses were due to earthquakes (US\$ 73,400,498), compared to a meagre 1.35% due to volcanic activity (US\$ 1,006,370). No damage related to dry mass movements has been reported<sup>337</sup>.

**Figure 19 - Total material damages from geophysical disasters by continent and year ('000 US\$)**<sup>338</sup>



Asia was the continent with the highest number of geophysical damages (US\$ 35,463,493), followed by Europe (US\$ 20,676,756)<sup>339</sup>. These two continents account for 75.45% of total geophysical damage, in contrast to Africa and Oceania, which

<sup>334</sup> Disaggregated data by country and subtype of geophysical catastrophe obtained from EM-DAT.

<sup>335</sup> Vid. Table 24 – Total damages caused by natural disasters ('000 US\$), Annex I.

<sup>336</sup> Cf. the countries listed in Annex II: "Natural disasters by country (including self-governing or special status territories)" and those listed in Annex IV: "Total damages ('000 US\$), adjusted for inflation, by country (including self-governing or special status territories)".

<sup>337</sup> Disaggregated data on material losses by type of geophysical disaster calculated from the EM-DAT.

<sup>338</sup> Graph generated from data in Table 25 – Total damages caused by natural disasters per continent ('000 US\$), Annex I.

<sup>339</sup> Vid. Table 25 – Total damages caused by natural disasters per continent ('000 US\$), Annex I.

together account for only 6.70%<sup>340</sup>. Earthquakes were the most damaging catastrophe on all five continents<sup>341</sup>. For Asia, 2016 was the most dismal year, accounting for 67.51% of the continent's recorded geophysical losses for the entire 2016-2020 period<sup>342</sup>, even though that year was not particularly different in terms of the annual average number of geophysical disasters (17 earthquakes recorded in 2017), and neither was it the most prolific year –which was 2019 with 20 geophysical disasters<sup>343</sup>. In Europe, three earthquakes in 2020 (a figure that matches the average annual number of geophysical catastrophes recorded between 2016 and 2020<sup>344</sup>) were responsible for the highest number of geophysical material losses recorded on the continent in the five-year period (US\$ 13,635,216 or 65.94% of the total)<sup>345</sup>.

**Table 11 - Top 10 countries most economically damaged by geophysical disasters<sup>346</sup>**

<b>Top 10 countries</b>	<b>Geophysical disaster damage ('000 US\$)</b>
<b>Japan</b>	27,548,988
<b>Croatia</b>	13,635,216
<b>Mexico</b>	9,253,831
<b>Italy</b>	6,240,629
<b>New Zealand</b>	4,403,125
<b>Indonesia</b>	2,922,881
<b>China</b>	2,298,605
<b>Ecuador</b>	2,258,013
<b>Puerto Rico</b>	994,630
<b>Iran</b>	937,223

At the country level, Japan was the most affected with US\$ 27,548,988 in losses, accounting for 77.68% of the total geophysical damage recorded on the continent in

<sup>340</sup> Cf. data on economic losses for these continents in Table 25 with Table 24 – Total damages caused by natural disasters ('000 US\$), both in Annex I.

<sup>341</sup> According to data recorded in the EM-DAT.

<sup>342</sup> Vid. Table 25 – Total damages caused by natural disasters per continent ('000 US\$), Annex I.

<sup>343</sup> Vid. Table 21 – Total natural disasters per continent, Annex I.

<sup>344</sup> Vid. id.

<sup>345</sup> Vid. Table 25 – Total damages caused by natural disasters per continent ('000 US\$), Annex I.

<sup>346</sup> Table generated from data in Annex IV: "Total damages ('000 US\$), adjusted for inflation, by country (including self-governing or special status territories)".

2016-2020<sup>347</sup>. The bulk of Japan's damage is concentrated in 2016 (US\$ 22,693,030), and was caused by just three earthquakes<sup>348</sup>. China, which usually appears at the top of the top 10 country rankings, is seventh for geophysical damage and only accounts for 6.48% of the total geophysical damage recorded on the Asian continent in 2016-2020<sup>349</sup>. It is also worth noting that a European country, Croatia, appears for the first time in the top three, reporting geophysical losses of US\$ 13,635,216. All geophysical damage in Croatia was the result of two earthquakes in 2020<sup>350</sup>.

### C) Total people displaced

Geophysical displacement represents 3.64% of environmental displacements (over 4.2 million)<sup>351</sup>. By subtype, earthquakes caused 76.92% of displacements; volcanic eruptions, 21.66%; and dry mass movements, 1.41%<sup>352</sup>. Because of their geological location alongside the long chain of volcanoes and other tectonic structures surrounding the Pacific Ocean, known as the Pacific Ring of Fire<sup>353</sup>, Asia and the Americas are the two continents with the highest seismic and volcanic activity<sup>354</sup>. Asia accounts for 80.37% of all geophysical dislocations recorded in the world between 2016 and 2020, a figure that rises to 94% if geophysical movements in the Americas are added<sup>355</sup>.

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<sup>347</sup> Vid. the table of damages for Japan in Annex IV and compare it with the table of total damages by continent (Table 25, Annex I).

<sup>348</sup> Vid. the table of damages for Japan in Annex IV and the table of geophysical disasters in Japan in Annex II.

<sup>349</sup> Vid. the table of damages for China in Annex IV and compare it with the table of total damages by continent (Table 25, Annex I).

<sup>350</sup> For data on the incidence of natural disasters and economic losses in Croatia, vid. the tables for this country in Annex II and Annex IV.

<sup>351</sup> Vid. Table 22 – Total number of persons displaced by natural disasters, Annex I.

<sup>352</sup> Percentages calculated from the incidence of each sub-type of geophysical event as recorded in IDMC, *Disaster events 2008-2020...*, *op. cit.*

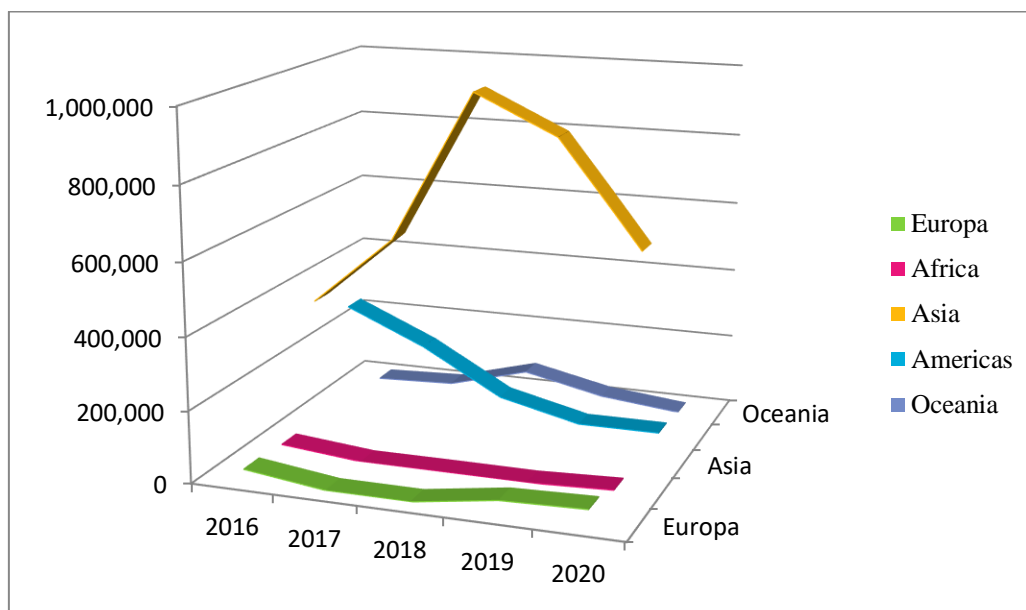
<sup>353</sup> US GEOLOGICAL SURVEY, *Photo Glossary of Earthquakes* ([archive.org](https://www.archive.org)) (last access 28/05/2019).

<sup>354</sup> Vid. Table 21 – Total natural disasters per continent, Annex I.

<sup>355</sup> Cf. data for Asia and the Americas in Table 23 with global figures in Table 22, both in Annex I.



**Figure 20 - Number of environmentally displaced by geophysical disasters by continent and year<sup>356</sup>**



Indonesia is responsible for 32.87% of all geophysical displacements in Asia, ranking first with more than 1.3 million displacements in the period analysed<sup>357</sup>. Earthquakes alone were responsible for 81.51% of displacement in Indonesia, with the Lombok earthquakes in July 2018 and the earthquakes and subsequent tsunami in Central Sulawesi in September 2018 causing the highest number of displacements in the country (over 690,000 displacements) in the period analysed<sup>358</sup>. Volcanic activity was responsible for 18.06% of geophysical displacements in Indonesia, with the Mount Agung Eruption triggering more than 150,000 displacements in 2017<sup>359</sup> (equivalent to 90.17% of geophysical movements that year in the country or 11.05% in the five-year period in Indonesia). Finally, dry mass movements represent only 0.42% of the total geophysical displacements in Indonesia<sup>360</sup>.

On the other hand, the Philippines recorded the second highest number of displacements related to geophysical events in Asia<sup>361</sup>. Notable were the Surigao City earthquake, which dislocated more than 54,700 people in 2017; the Mayon volcano

<sup>356</sup> Graph generated from data in Table 23 – Total number of persons displaced by natural disasters per continent, Annex I.

<sup>357</sup> Cf. the figures on environmental displacement in Indonesia in Annex III with the figures on environmental displacement in Asia in Annex I, Table 23.

<sup>358</sup> IDMC, *Disaster events 2008-2020...*, *op. cit.*, cells 4135 and 4136.

<sup>359</sup> *Ibid.*, cell 4001.

<sup>360</sup> Percentages calculated from the incidence of each sub-type of geophysical event in Indonesia as reported in IDMC, *Disaster events 2008-2020...*, *op. cit.*

<sup>361</sup> Cf. the figures on environmental displacement in the Philippines in Annex III with the figures on environmental displacement in Asia in Annex I, Table 23.

eruption in 2018, which expelled 91,000 people from their homes; the earthquakes in Davao del Sur (Matanao) and North Cotabato (Tulunan), which put more than 390,000 people on the move in 2019; and the volcanic eruption of Mount Taal in 2020, which displaced more than half a million persons<sup>362</sup> (equivalent to 45.39% of geophysical displacements in the Philippines and 14.92% in Asia<sup>363</sup>).

**Table 12 - Top 10 countries with the most environmental displacement related to geophysical disasters<sup>364</sup>**

<b>Top 10 countries</b>	<b>Displacement related to geophysical disasters</b>
<b>Indonesia</b>	1,357,588
<b>Philippines</b>	1,114,433
<b>China</b>	286,734
<b>Iran</b>	280,753
<b>Japan</b>	214,918
<b>Ecuador</b>	275,444
<b>Mexico</b>	197,661
<b>Papua New Guinea</b>	85,187
<b>Pakistan</b>	57,948
<b>Croatia</b>	41,630

In the Americas, Central and South America comprise all population displacement associated with geophysical events<sup>365</sup>, with Ecuador and Mexico at the top of the ranking<sup>366</sup>. Together, they account for more than 473,000 displacements, which represent 82.23% of all displacements in the Americas<sup>367</sup>. In Ecuador, an earthquake in the northwest displaced more than 250,000 people in April 2016<sup>368</sup> (or 94.03% of all

<sup>362</sup> IDMC, *Disaster events 2008-2020...*, *op. cit.*, cells 7713, 7746, 7780 and 7782.

<sup>363</sup> Percentage calculated from the total number of geophysical displacement in the Philippines, as reported in Annex III, and in Asia, as reported in Annex I, Table 23.

<sup>364</sup> Table generated from data in Annex III: "Environmentally displaced persons by country (including self-governing or special status territories)".

<sup>365</sup> Vid. Annex III for countries in the Americas that have recorded displacement related to geophysical events.

<sup>366</sup> Vid. the tables on environmental displacement in Ecuador and Mexico in Annex III for displacement figures due to geophysical events broken down by year.

<sup>367</sup> Cf. the figures on environmental displacement in Ecuador and Mexico in Annex III with the figures on environmental displacement in the Americas in Annex I, Table 23.

<sup>368</sup> IDMC, *Disaster events 2008-2020...*, *op. cit.*, cell 2735.

geophysical displacement recorded in Ecuador between 2016 and 2020<sup>369</sup>). Ecuador will not experience displacement associated with geophysical disasters again until 2018<sup>370</sup>, when an earthquake in Chimborazo displaced over 2,800 persons<sup>371</sup>. In Mexico, two earthquakes in September 2017<sup>372</sup> caused 97.29% of all geophysical displacement in the country<sup>373</sup> (totalling more than 190,000 displacements). A new earthquake in November 2019 was again responsible for the more than 3,500 geophysical dislocations recorded that year<sup>374</sup>.

Oceania ranks third in number of displacements related to geophysical disasters<sup>375</sup>. These displacements, numbering just over 111,000 (or 2.63% of the world's total geophysical displacements)<sup>376</sup>, are concentrated in only five countries, which are, in order of importance, Fiji, Solomon Islands, New Zealand, Papua New Guinea and Vanuatu<sup>377</sup>. Displacements related to volcanic activity in the area include the eruptions of Mount Ulawun in June 2019, which forced the evacuation of 18,500 people in Papua New Guinea<sup>378</sup>; and episodes of volcanic activity on Ambae Island (Vanuatu) in 2017 and 2018, which displaced more than 22,000 people between them<sup>379</sup> (or 95.99% of all geophysical displacements in Vanuatu<sup>380</sup>). Also notable in Papua New Guinea was the Southern Highlands earthquake, which displaced more than 58,000 people in February 2018<sup>381</sup>.

In Europe, the epicentre is in Croatia, followed by Albania and Italy<sup>382</sup>. Geophysical displacements on the continent account for 2.60% of all recorded displacements worldwide due to this type of natural catastrophe<sup>383</sup>. All geophysical displacement in Croatia was the result of two earthquakes in 2020, with the Sisak Moslavina (Petrinja) earthquake accounting for 96.08% of geophysical displacement in

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<sup>369</sup> Percentage calculated from the total number of geophysical displacement in Ecuador, as reported in Annex III.

<sup>370</sup> Vid. the table on environmental displacement in Ecuador in Annex III.

<sup>371</sup> IDMC, *Disaster events 2008-2020...*, *op. cit.*, cell 2756.

<sup>372</sup> *Ibid.*, cells 6023 and 6025.

<sup>373</sup> Percentage calculated from the total number of geophysical displacement in Mexico as reported in Annex III.

<sup>374</sup> IDMC, *Disaster events 2008-2020...*, *op. cit.*, cell 6043.

<sup>375</sup> Vid. Table 23 – Total number of persons displaced by natural disasters per continent, Annex I.

<sup>376</sup> Cf. data for Oceania in Table 23 with global figures in Table 22, both in Annex I.

<sup>377</sup> Vid. countries in Oceania that have recorded displacement related to geophysical events in Annex III.

<sup>378</sup> IDMC, *Disaster events 2008-2020...*, *op. cit.*, cells 7897 and 7909.

<sup>379</sup> *Ibid.*, cells 10042, 10045 and 10051.

<sup>380</sup> Percentage calculated on the figures for geophysical displacement in Vanuatu as reported in Annex III.

<sup>381</sup> IDMC, *Disaster events 2008-2020...*, *op. cit.*, cell 7894.

<sup>382</sup> Vid. countries in Europe that have recorded displacement related to geophysical events in Annex III.

<sup>383</sup> Cf. data for Europe in Table 23 with global figures in Table 22, both in Annex I.

the country (40,000 people displaced)<sup>384</sup>. The same pattern is repeated in Albania, where three earthquakes in 2019 caused all geophysical displacement in the country, with the one in Central Albania being particularly disruptive, displacing 32,000 people<sup>385</sup>. In Italy, the bulk of geophysical displacements are concentrated in 2016 (accounting for 95.77% of such displacements in the country in the five-year period)<sup>386</sup>. They were a consequence of the earthquakes that occurred in central Italy in August of that year<sup>387</sup>.

Finally, as far as Africa is concerned, geophysical displacement on the continent accounts for only 0.75% of all displacement due to geophysical disasters in the world<sup>388</sup>. Four African countries alone account for 96.45% of all geophysical displacement on the continent<sup>389</sup>. In order of importance they are: Uganda (1,147), Algeria (9,548), Rwanda (9,731) and Tanzania (10,172)<sup>390</sup>. With the exception of Algeria, the vast majority of these movements occurred in 2016. Earthquakes in Tanzania's Kagera region and Uganda's Rakai district caused 99.8% and 100% of all geophysical displacements in those countries, respectively<sup>391</sup>. In Rwanda, a series of landslides in the north, west and south triggered the population movements recorded in the country<sup>392</sup> –the only time in the five-year period analysed that a dry mass movement is notable as a driver of population displacement. Lastly, the geophysical displacements in Algeria in 2020 were a consequence of the earthquake that affected the province of Mila in August<sup>393</sup>.

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<sup>384</sup> IDMC, *Disaster events 2008-2020...*, *op. cit.*, cells 3387 and 3388. Percentage calculated on the figures for geophysical displacement in Croatia as reported in Annex III.

<sup>385</sup> IDMC, *op. cit. supra*, cells 336 to 338.

<sup>386</sup> Vid. the table on environmental displacement in Italy in Annex III.

<sup>387</sup> IDMC, *Disaster events 2008-2020...*, *op. cit.*, cells 5178 and 5179.

<sup>388</sup> Cf. data for Africa in Table 23 with global figures in Table 22, both in Annex I.

<sup>389</sup> Percentage calculated from the total number of geophysical displacement in Africa, as reported in Annex I, Table 23.

<sup>390</sup> Vid. Annex III for those countries in Africa that have recorded displacement related to geophysical events.

<sup>391</sup> IDMC, *Disaster events 2008-2020...*, *op. cit.*, cells 8734 and 8773.

<sup>392</sup> *Ibid.*, cell 8087.

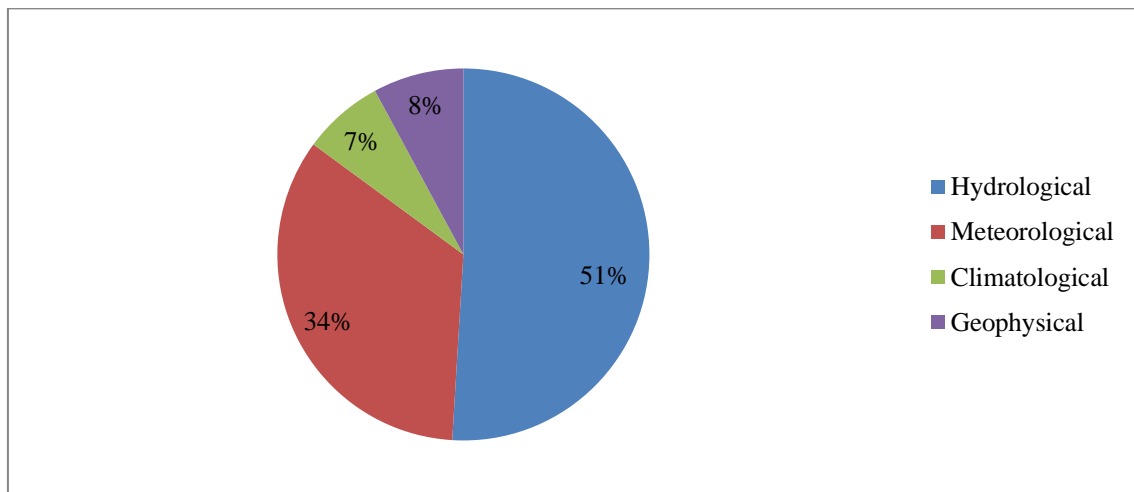
<sup>393</sup> *Ibid.*, cell 2718.

#### 4. EXTENT OF ENVIRONMENTAL DISPLACEMENT: WHAT DO WE REALLY KNOW?

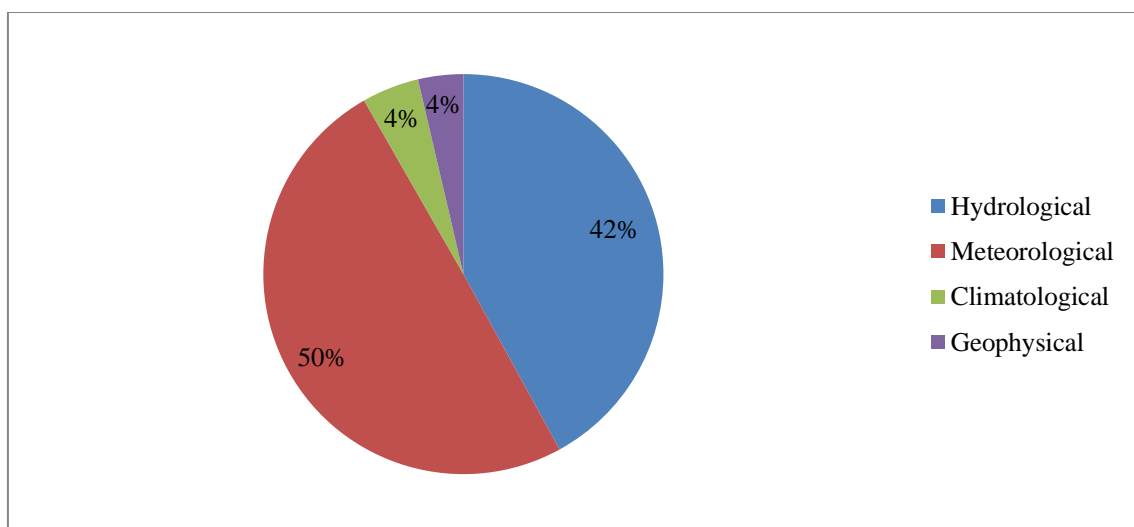
From the analysis in the preceding sections, it is possible to draw some conclusions about what the five-year period 2016-2020 has brought in terms of population movements associated with natural disasters.

As figures below show, hydrological disasters were the most common natural disaster and were responsible for almost half of the environmental displacement recorded. However, it was meteorological events that caused the greatest population movements and material losses, despite having a lower occurrence rate than water-related disasters.

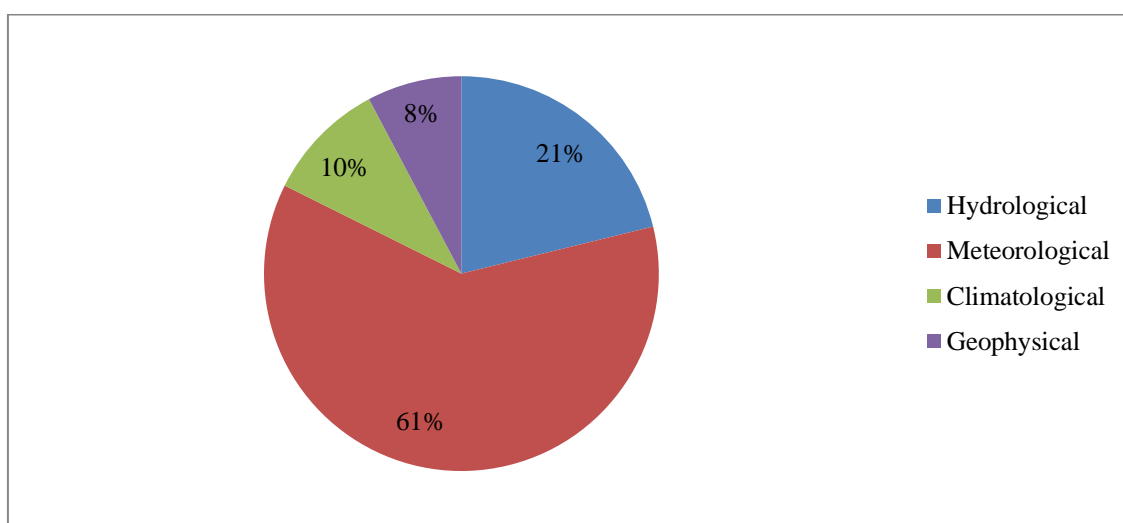
**Figure 21 - Occurrence by disaster type (2016-2020)**



**Figure 22 - Population displaced by disaster type (2016-2020)**



**Figure 23 – Material damages caused by disaster type ('000 US\$) (2016-2020)**



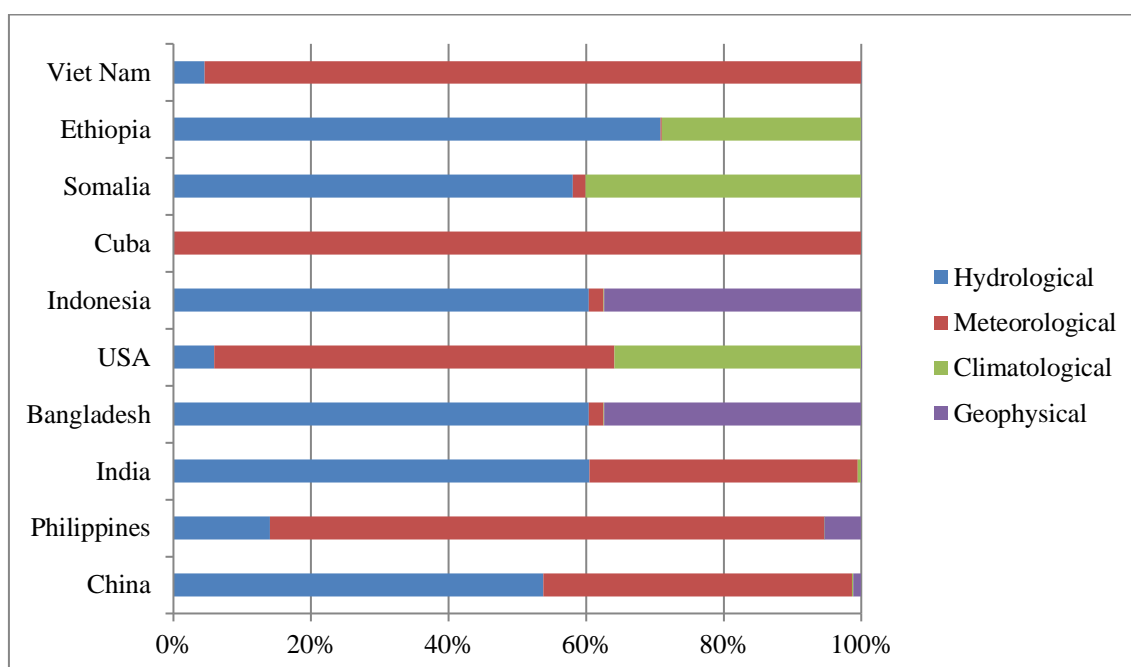
The representation in the three graphs of climate disruptions in terms of frequency, displaced population and monetary losses is residual. However, it should be noted that the climate events considered as drivers of displacement refer to wildfire and drought and not to climate change. Therefore, the importance of this global phenomenon and its impact on environmental displacement should not be overlooked, as it will exacerbate the intensity and frequency of extreme weather and hydrological events<sup>394</sup>, which as seen above are responsible for 92% of the total population displacement recorded in these five years.

The figure below shows graphically the number of environmentally induced displacements recorded in the ranking table of the top ten countries. In all of them, forced displacement occurred primarily as a result of hydrological or meteorological hazards.

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<sup>394</sup> Vid. PÖRTNER, H.O. ET AL (eds.), “Chapter 7: Health, wellbeing and the changing structure of communities”, in: *Climate Change 2022..., op. cit.*, p. 49, showing a high degree of confidence in this conclusion.

**Figure 24 - Top ten countries per disaster-related displacement (2016-2020)**

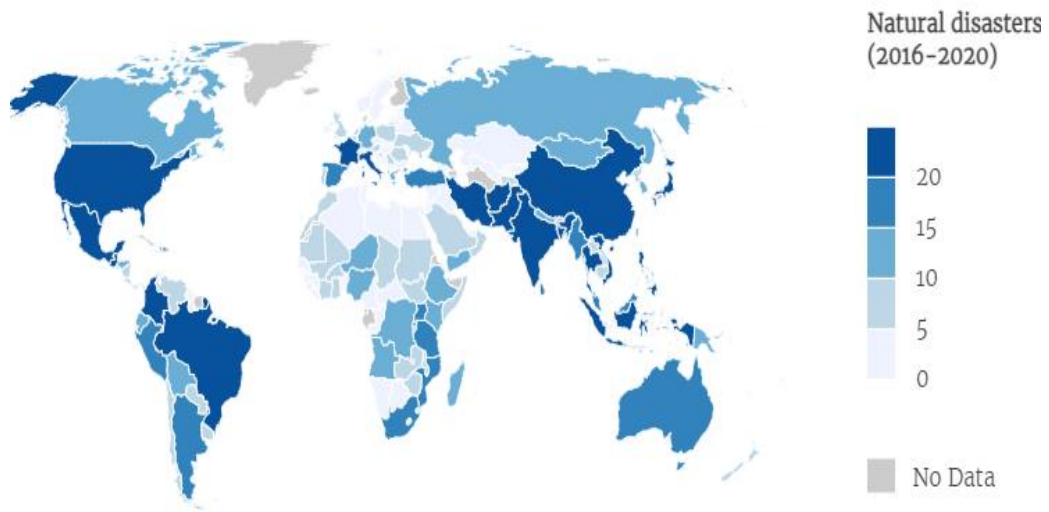


**Table 13 - Top ten countries per disaster-related displacement (2016-2020)**

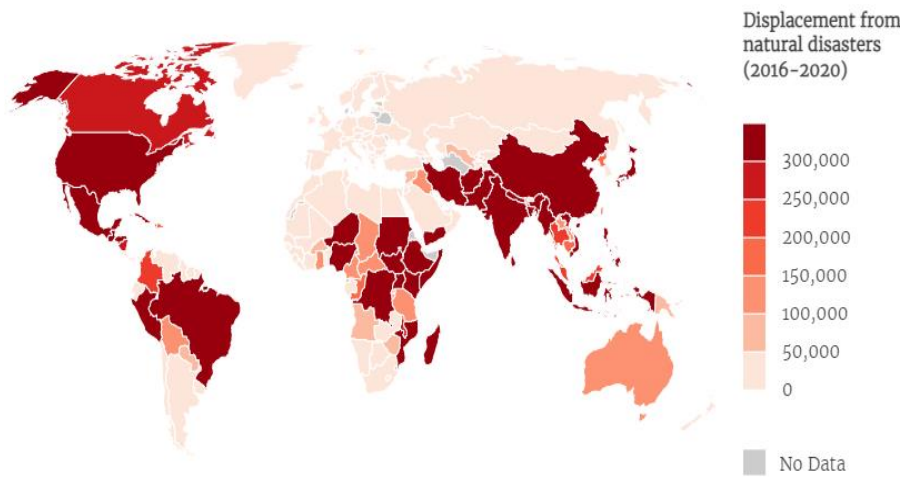
	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
<b>China</b>	13,320,955	11,119,740	50,157	286,734	<b>24,777,586</b>
<b>Philippines</b>	2,908,709	16,765,079	5,499	1,114,433	<b>20,793,720</b>
<b>India</b>	9,252,876	5,969,281	63,493	10,000	<b>15,295,650</b>
<b>Bangladesh</b>	2,192,262	79,754	2,305	1,357,588	<b>3,631,909</b>
<b>USA</b>	396,442	3,877,255	2,393,440	3,610	<b>6,670,747</b>
<b>Indonesia</b>	2,192,262	79,754	2,305	1,357,588	<b>3,631,909</b>
<b>Cuba</b>	638	3,518,323			<b>3,518,961</b>
<b>Somalia</b>	1,760,431	55,391	1,216,495		<b>3,032,317</b>
<b>Ethiopia</b>	1,589,456	4,050	651,941		<b>2,245,447</b>
<b>Viet Nam</b>	100,516	2,111,965	720	72	<b>2,213,273</b>

As can be seen in the table, with the exception of four States, the rest are all Asian countries. This is significant as it reflects the current and future dominance of this continent as a hotspot for environmental displacement. That conclusion is strongly supported by the maps below, which show the distribution of natural disasters and related damage and displaced persons around the world. Consequently, it is vital to redouble efforts to effectively manage natural disaster risks in Asia through mechanisms to prevent and minimise their impacts on the population and assets, as well as strategies to build adaptive and resilience capacity in the Asian countries most prone to natural disasters. These strategies are discussed in detail in Chapter VII.

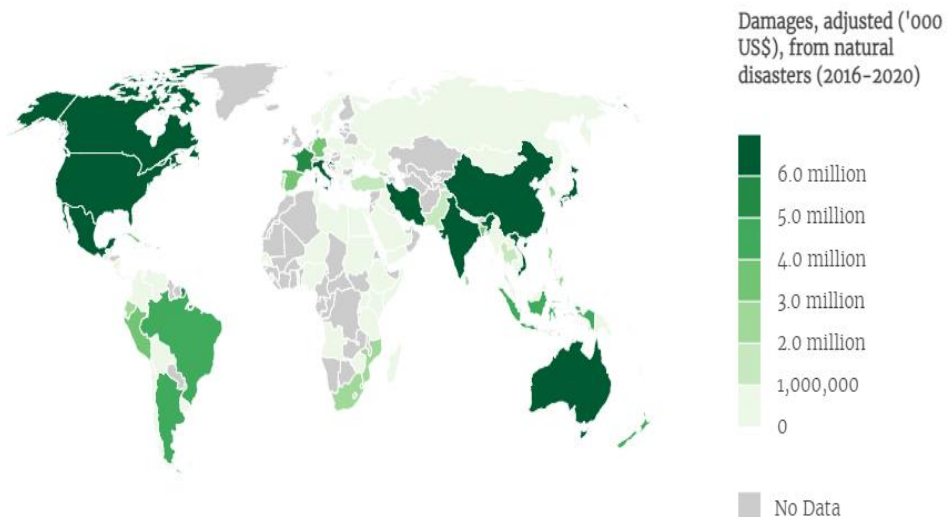
**Map 1 - Geographical distribution of countries more prone to natural disasters**



**Map 2 - Geographical distribution of persons displaced as a result of natural disasters**



**Map 3 - Geographical distribution of material losses caused by natural disasters**





Asia is the only continent where the "maximalist" assumption is verified –i.e., where there is a correspondence between high exposure to natural hazards, high vulnerability to economic damage and a high volume of associated displacement-, showing an overlap between the three maps. However, the maps reveal that this relationship does not automatically occur in the other continents.

Thus, judging from the maps, a first conclusion that can be drawn is that a higher rate of natural disasters does not translate into a higher rate of environmental displacement and vice versa –i.e., exposure does not equal displacement. A clear example of this is Africa, which has high numbers of environmental displacement, with these flows tending to be concentrated in Central Africa and neighbouring countries to the West and North, as well as East Africa. However, these parts of the continent have generally recorded a medium/low cumulative incidence of natural disasters between 2016 and 2020. The opposite is true in Europe, where despite countries with a high number of natural disasters –such as France or Italy- the rate of related population movements is at the lowest levels; or in South America –with the exception of Brazil.

The lack of correlation between a country's exposure to natural disasters and the internal displacement flows it experiences would point to the vulnerability of developing countries as a determining factor in explaining this divergence<sup>395</sup>. An exception to this assertion would be North American countries, particularly the United States, which has experienced one of the highest volumes of population displacement due to natural disasters during the period under study, despite being a country with one of the highest development indices. This finding shows that forced population displacement due to natural disasters occurs in both developing and developed countries. However, this assertion needs to be nuanced because of the very methodology employed by the IDMC, which does not discriminate between sudden evacuations or flight in an emergency situation and displacement of a migratory nature.

Therefore, it is likely that the movements of people in the United States recorded by IDMC correspond to the former typology of displacement, in response to the very high number of rapid-onset environmental shocks –primarily storms and wildfires- that the country experienced between 2016 and 2020. In this sense, displacement in contexts

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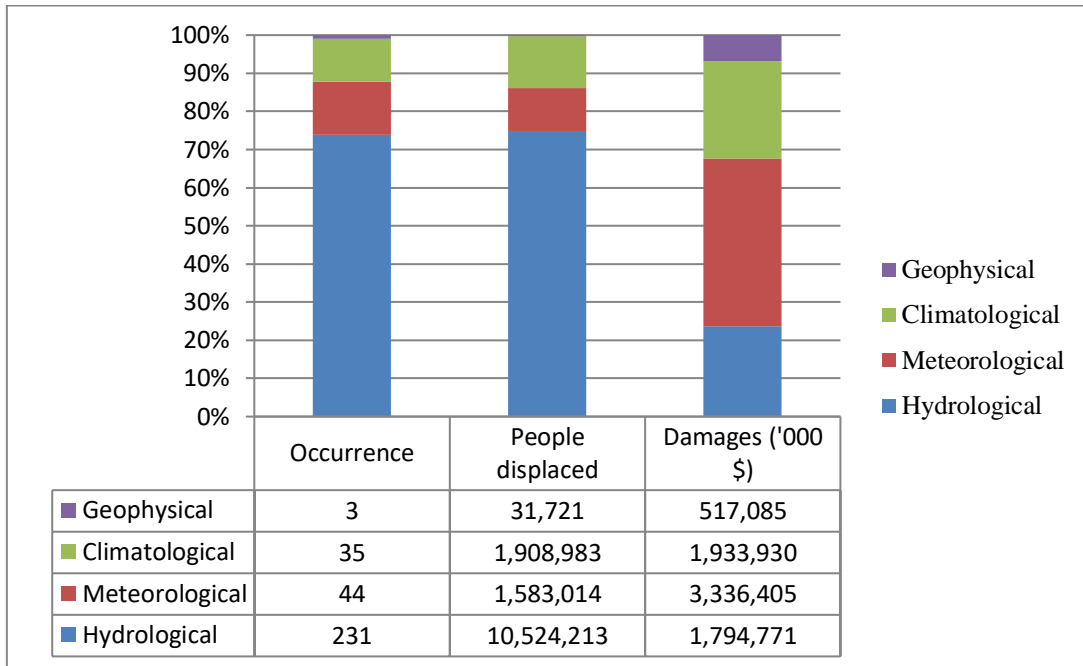
<sup>395</sup> A vulnerability that has been politically and economically constructed, as noted in the “maximalist” literature.

of rapid-onset natural disasters need not necessarily be of short duration. Ultimately, it will be the capacity of the affected country to recover from the catastrophe and thus allow for the safe return of the displaced population that will determine the duration and character of the displacement. In other words, whether an *a priori* temporary displacement becomes more or less permanent will depend on socio-economic rather than strictly environmental factors. It is at this point that it is necessary and interesting to consider the material impact of natural disasters, as it can fuel poverty in developing countries and thus perpetuate –or force new displacement- as a coping strategy.

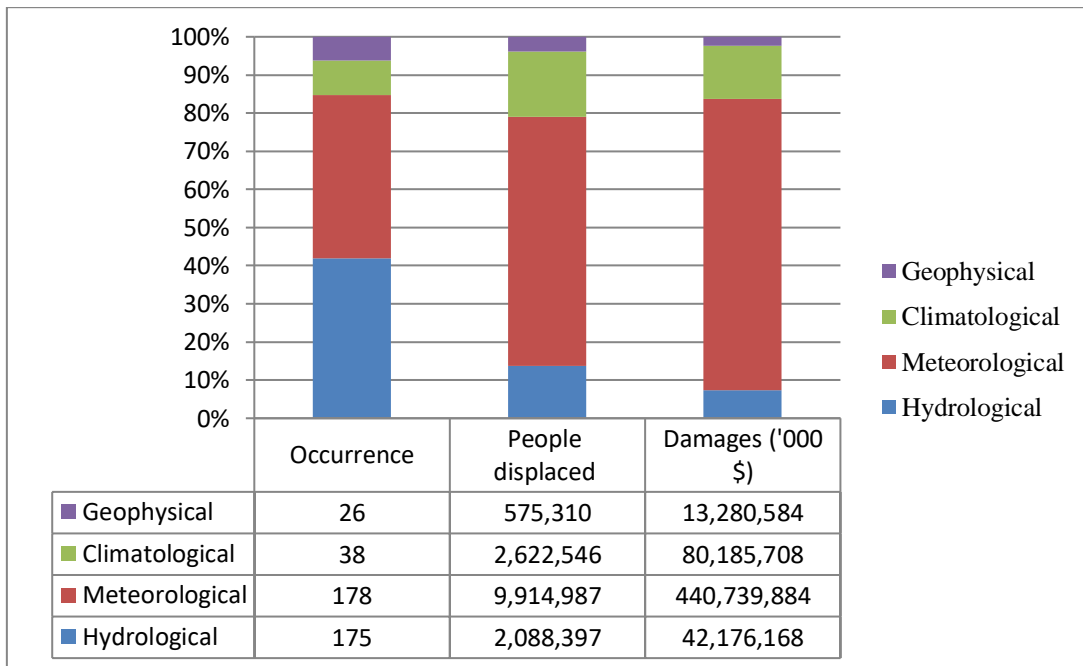
Map 3 shows that the greatest volume of material losses tends to be concentrated in developed countries, which is logical given the greater value and concentration of assets exposed to damage in the event of a disaster in these countries. However, alongside these States, developing countries with emerging economies and large land areas, such as India, China and Brazil, also stand out on the map. It is in these countries where it would be most interesting to investigate how damage associated with natural disasters can slow down the great potential of their economic growth, as well as the repercussions of such economic slowdown on development indices, on their populations' standard of living and on migratory flows.

The next set of figures disaggregates the information displayed in the maps, showing in a synthetic but more detailed way the proportion that each of the subgroups of natural disasters has represented in each continent within the three different variables analysed (occurrence or frequency, persons displaced, and damages caused in US\$).

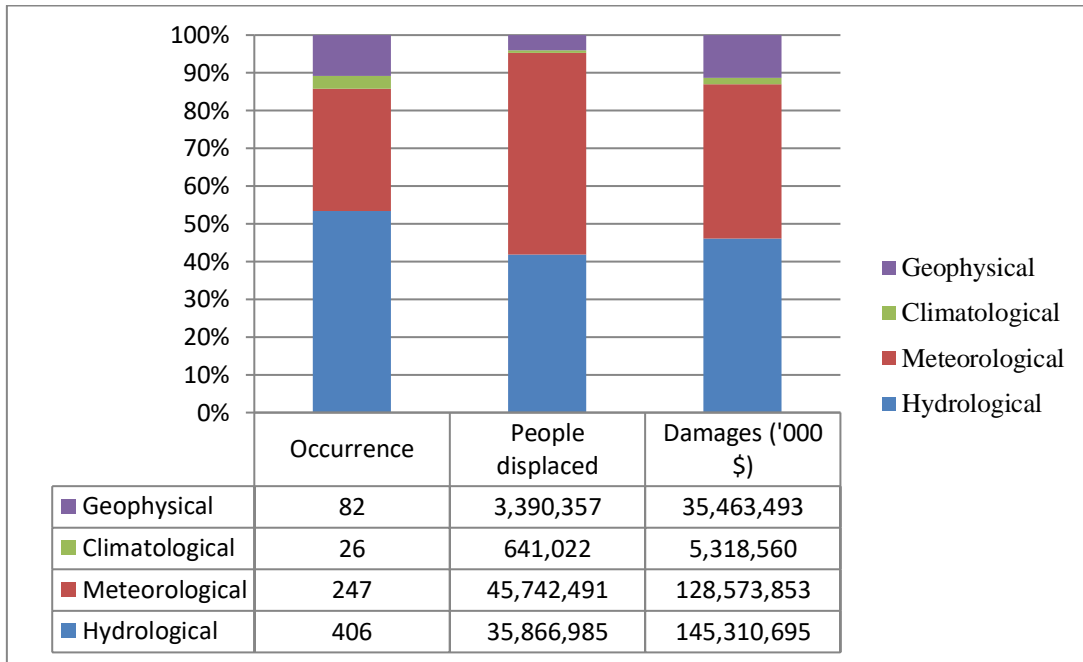
**Figure 25 - Impact of natural disasters in Africa (2016-2020)**



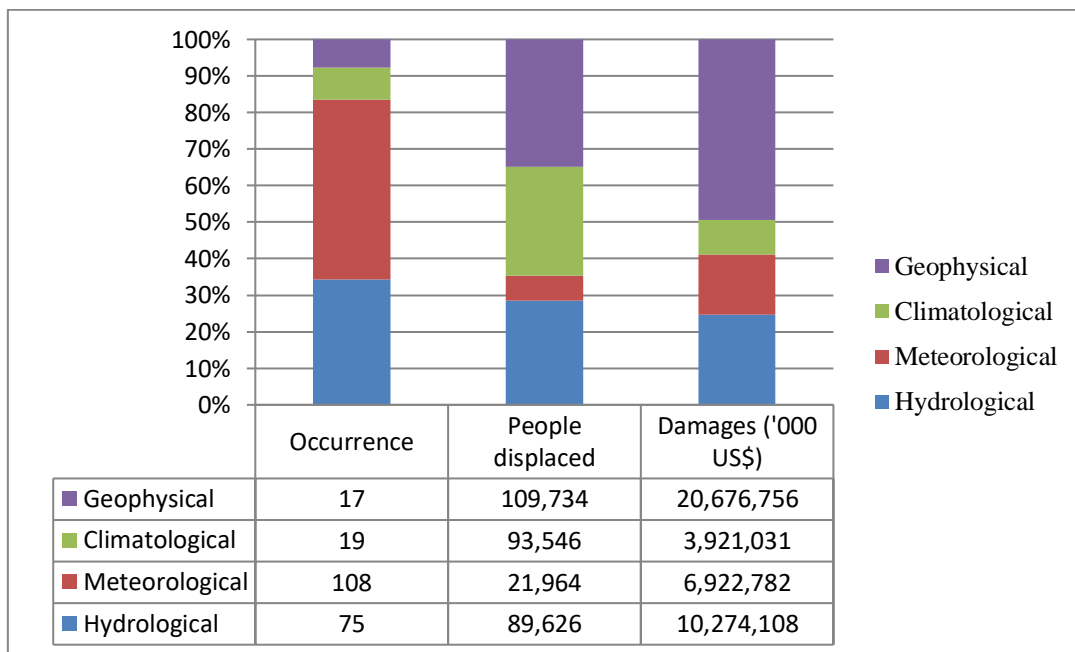
**Figure 26 - Impact of natural disasters in the Americas (2016-2020)**



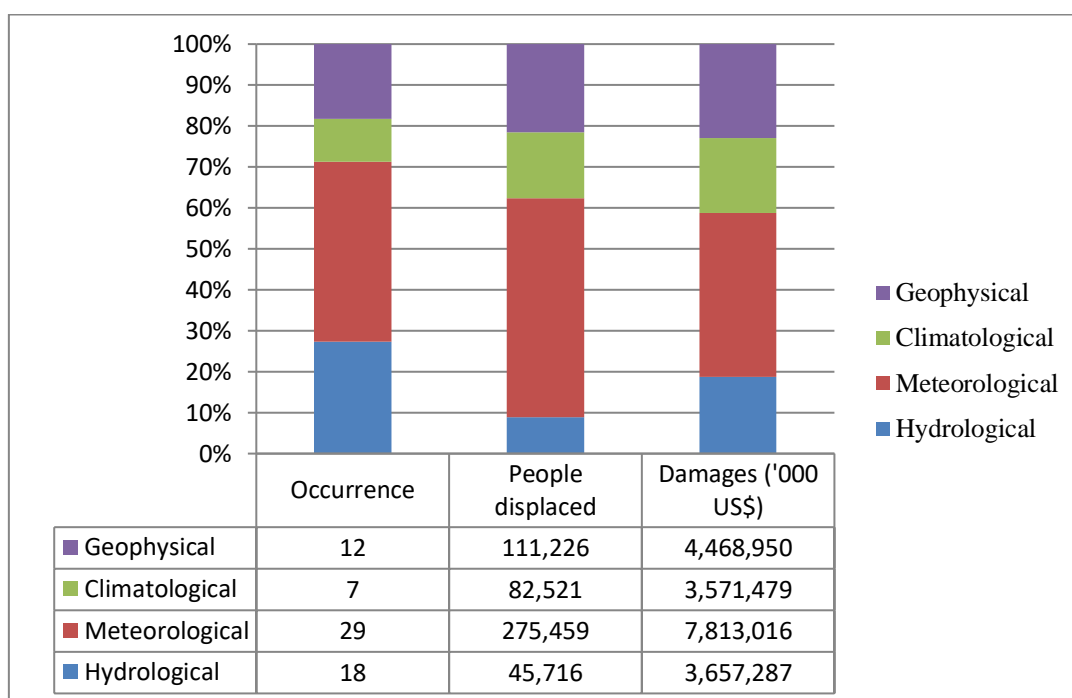
**Figure 27 - Impact of natural disasters in Asia (2016-2020)**



**Figure 28 - Impact of natural disasters in Europe (2016-2020)**



**Figure 29 - Impact of natural disasters in Oceania (2016-2020)**



All three variables –occurrence, displaced persons and damage- should be considered when addressing environmental displacement. Specifically, within the political and socio-economic realities of each region and country, the frequency of natural disasters and the associated economic losses allow the displacement figures provided in this chapter to be individualised under the broad category of environmentally displaced persons. Therefore, the phenomenon of environmental displacement, which, according to data collected up to 2020, is quantified in 1,776 natural disasters, almost 960 billion in material losses and more than 115 million new displacements recorded since 2016, requires a legal-political response that cannot be uniform and undifferentiated. On the contrary, it must be multiple and adapted to each type of environmental disruption and associated displacement typology.

Are we dealing with cyclical or recurrent natural disasters that periodically force people to move for short periods of time to seek safety? Does displacement take the form of seasonal or stable migration to cope with the socio-economic impact of natural disruptions? Or is it permanent displacement due to the impossibility of returning to the

affected area in safety and dignity because of exposure to natural disaster risks or because of the material damage suffered? Depending on the answer given, we will move into one international protection regime or another, and we will find different legal loopholes to which different solutions will have to be found<sup>396</sup>.

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<sup>396</sup> In this sense, BORRÀS PENTINAT, S., “Refugiados ambientales: El nuevo desafío del Derecho Internacional del Medio Ambiente”, *Revista de Derecho*, Vol. 19, No. 2, Diciembre 2006, p. 88, poses the dilemma of whether the recognition and legal protection of environmentally displaced persons is a problem of international protection of people or the environment. The answer, however, would be both: environmental protection prevents displacement and, *a sensu contrario*, the lack of environmental protection as a fundamental human right could be used to argue for the international community's obligation to protect environmentally displaced persons.

**PART TWO**  
*DE LEGE DATA ANALYSIS*  
**OF THE INTERNATIONAL PROTECTION**  
**OF ENVIRONMENTALLY DISPLACED PERSONS**

## **CHAPTER III**

# **ENVIRONMENTAL DISPLACEMENT IN REFUGEE LAW**

### **INTRODUCTION**

This first Chapter of Part Two examines the protection of environmentally displaced persons from the perspective of International Refugee Law. In terms of protection, this branch of Public International Law, together with that dealing with situations of statelessness, would offer those displaced for environmental reasons the highest levels of protection within the borders of a State different from the one of their nationality. The chapter is essentially an analysis of concepts. Each section presents an exegesis of the definition of the term "refugee" contained in the international text under study, testing the hypothesis of whether it is possible to include environmental displacement.

The structure of the Chapter consists of three major sections. The first one analyses the definition of refugee, which supports the legal regime of universal scope developed by the UN based on the *1951 Geneva Convention relating to the Status of Refugees* and its *1967 Protocol*. The other two sections examine the definitions of refugees contained in other international instruments of regional scope. Thus, the second section covers Africa, Latin America, the Middle East and Asia. For its part, the third and last one is devoted exclusively to the EU, whose particular pre-eminence as a regional integration organisation on the European continent calls for differentiated and separate treatment.

The international texts analysed in the second and third sections take the most varied forms: from genuine international treaties such as *the 1969 OAU Refugee Convention governing the specific aspects of refugee problems in Africa*, or the *1994 Arab League Convention on Regulating Status of Refugees in the Arab Countries*, to soft-law instruments such as the *1984 Cartagena Declaration on Refugees* in Latin America, or the *1966 Bangkok Principles on status and treatment of Refugees* in Asia; as well as legal standards which have been drawn up within an International Organization and are binding on its Member States, such as the EU and its *Directives 2001/55/EC on Temporary Protection in the event of a mass influx of displaced persons*



and 2011/95/EU on the recognition of International Protection for third-country nationals or stateless persons (recast).

## 1. THE 1951 GENEVA CONVENTION ON THE STATUS OF REFUGEES

### 1.1. Introduction

Very few cases of environmental displacement would fall within the material scope of the Geneva Convention on Refugees<sup>1</sup>. They would consist of taking advantage of or intentionally causing an environmental disruption to persecute a sector of the population for any of the causes typified in Article 1(A) (2) of the 1951 Convention<sup>2</sup>.

An example would be the case of a State which, following an environmental disaster, neglects its responsibility to intervene in the affected area because the affected population has a particular nationality, race, religion or political tendencies or constitutes a differentiated social group<sup>3</sup>. Also when, for instance, the national authorities deny access to humanitarian assistance to the victims of a natural event<sup>4</sup> – or

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<sup>1</sup> UN, *Convention Relating to the Status of Refugees*, 28 July 1951, UNTS, Vol. 189, No. 2545, pp. 137-220.

<sup>2</sup> Supporting this statement, *vid.*, *inter alia*, ACKETOFT, T., “Environmentally induced migration and displacement: a 21st century challenge” (Doc. 11785), COE Parliamentary Assembly (Committee on Migration, Refugees and Population), 23 December 2008, par. 82 (last access: 13/01/2020). UNHCR (in cooperation with the NRC, the Representative of the Secretary General on the Human Rights of Internally Displaced Persons and the United Nations University), “Forced Displacement in the Context of Climate Change: Challenges for States under International Law”, 6th session of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention from 1 until 12 June in Bonn, UNHCR, 20 May 2009, pp. 9 *in fine* and 10 (last access: 13/02/2020). ZETTER, R. ET AL., “Protecting environmentally displaced people. Developing the capacity of legal and normative frameworks”, *Research report*, Oxford (UK), Refugee Studies Centre (University of Oxford), 2011, p. 19, (last access: 13/02/2020). KÄLIN, W.; SCHEREPFER, N., “Protecting People Crossing Borders In The Context Of Climate Change: Normative Gaps and Possible Approaches” (PPLA/2012/01), *Legal and Protection Policy Research Series*, UNHCR (Division of International Protection), February 2012, pp. 32-33. MCADAM, J., “Climate Change Displacement and International Law: Complementary Protection Standards” (PPLA/2011/03), *Legal and Protection Policy Research Series*, UNHCR, May 2011, p. 14 (last access: 02/03/2020). MCADAM, J., “Review Essay: From Economic Refugees to Climate Refugees?”, *Melbourne Journal of International Law*, 10, 2009, p. 593. BORRÀS PENTINAT, S., “La migración ambiental: entre el abandono, el refugio y la protección internacional”, *Papeles de relaciones ecosociales y cambio global*, No. 132, 2015-2016, p. 37.

<sup>3</sup> UNHCR, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, 01 October 2020, UNHCR, par. 10. *Vid.* in this regard NEW ZEALAND IMMIGRATION AND PROTECTION TRIBUNAL, No. 800413, 25 June 2013, par. 58, stating: “Studies conducted in the aftermath of famine and other natural disasters provide evidence of a political weighting of state response in which the recovery needs of marginalised groups are sometimes not met”.

<sup>4</sup> *Vid.* EAT; JHU CPHHR, *After the Storm: Voices from the Delta. A Report by EAT and JHU CPHHR on human rights violations in the wake of Cyclone Nargis*, 2nd ed., EAT; JHU CPHHR, May 2009, p. 9, which reports cases of discrimination in the provision of relief by the Myanmar authorities to the victims of Cyclone Nargis, particularly in the Irrawaddy Delta area, on ethnic and religious grounds (i.e. non-Burmese and non-Buddhist population). *Vid.* also, SELTH, A., “Even Paranoids Have Enemies: Cyclone

persecutes those who provide it<sup>5</sup> - for one of the above reasons. Another example would be when a State either prevents a particular sector of its population from having access to natural resources<sup>6</sup> or destroys them – e.g. burning of forests or poisoning of drinking water sources - to decimate them<sup>7</sup>. Similarly, people displaced by environmental disruptions may, over time, become involved in conflicts with the host community or dominant group over control of available resources, or suffer discrimination in access to them, which may also give rise to protection needs<sup>8</sup>.

It should be made clear, however, that in all the cases mentioned refugee status would be granted based on one of the grounds set out in the Refugee Convention – namely, nationality, race, religion, political opinion or membership to a particular social group. Not because of the environmental disruption *per se*. As Kolmannskog states, "[t]he environmental factor comes in not as a ground, but as a form of persecution"<sup>9</sup>.

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Nargis and Myanmar's Fears of Invasion”, *Contemporary Southeast Asia*, vol. 30, n° 3, 2008, p. 388, who also reports the comments made by some observers, claiming that "the regime deliberately withheld details of the storm to weaken the opposition movement's support in the Ayeyarwady delta, or to punish the large ethnic Kayin community in the region". Nevertheless, the author is rather sceptical about the veracity of this accusations.

<sup>5</sup> NEW ZEALAND REFUGEE STATUS APPEALS AUTHORITY, *Refugee Appeal No 76374*, 28 October 2009, granting refugee status to a Burmese activist who had a well-founded fear of being arrested and convicted for distributing humanitarian aid in Myanmar (one of the countries affected by Cyclone Nargis in May 2008), as the aid had been purchased with money provided by foreign supporters of an opposition party, which could be perceived by the Myanmar government as expressing a political opinion contrary to the regime. In this regard, UNGA, *Protection of persons in the event of disasters. Memorandum by the Secretariat (A/CN.4/590)*, 11 December 2007, par. 22, footnote 75, has reported widespread State concern that international relief assistance in the aftermath of natural disasters could be used to interfere in the domestic affairs or to destabilize the situation in another country. In the same vein, NEW ZEALAND IMMIGRATION AND PROTECTION TRIBUNAL, *No. 800413, op. cit.*, par. 58 *in fine*, pointing out: "(...) the provision of post-disaster humanitarian relief may become politicized".

UNHCR, *Legal considerations...*, *op. cit.*, par. 10, has also referred to "environmental defenders, activists or journalists, who are targeted for defending, conserving and reporting on ecosystems and resources".

<sup>6</sup> NEW ZEALAND IMMIGRATION AND PROTECTION TRIBUNAL, *No. 800413, op. cit.*, par. 68, considering that "the discriminatory denial of food in the wake of a drought (...) could support a finding of being persecuted". In the same vein, UNHCR, *Legal considerations...*, *op. cit.*, pars. 10-11, the latter referring to the interaction of the adverse effects of climate change or disasters with conflict and violence, particularly in situations of food insecurity, which may give rise to a well-founded fear of persecution under the 1951 Convention when, for example, the State is unwilling to ensure non-discriminatory access to affordable food or natural resource-dependent livelihoods.

<sup>7</sup> UNHCR, *Legal considerations...*, *op. cit.*, par. 10. Vid. for example, HUMAN RIGHTS WATCH, "The Iraqi Government Assault on the Marsh Arabs", *Human Rights Watch Briefing Paper*, January 2003, 15 pp. (last access: 25/01/2020). Marsh Arabs have suffered persecution since 1991, when they rose up against the Iraqi Government. Since then, governmental authorities have been trying to decimate Marsh populations through building dams, dikes, and canals aimed at preventing the waters of the Tigris and the Euphrates from flowing into the marshlands (p. 4). Numbering about 250,000 people in 1991, the Marsh Arabs were believed to number fewer than 40,000 in 2003 (p. 1).

<sup>8</sup> NEW ZEALAND IMMIGRATION AND PROTECTION TRIBUNAL, *No. 800413, op. cit.*, par. 70.

<sup>9</sup> KOLMANNSKOG, V.O., *Future Floods of refugees: a comment on climate change, conflict and forced migration*, Norwegian Refugee Council, 2008, p. 27.

## 1.2. Conceptualising environmentally-displaced persons as "refugees": an analysis of Article 1(2) (A) of the 1951 Convention

Apart from the specific scenarios mentioned above, the Geneva Convention does not include environmental disruptions among the reasons for which a person may seek sanctuary in the territory of third countries<sup>10</sup>. Specifically, paragraph 2 of Article 1(A) establishes that a refugee is one who

"As a result of events occurring before 1 January 1951 and *owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion*<sup>11</sup>, 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"<sup>12</sup>.

Refugee-concept is, therefore, a legal one, being governed by the refugee-definition contained in Article 1 (A) (2) of the Geneva Convention. In other words, an individual can only gain refugee status when meeting all the requirements set out in the conventional refugee-definition<sup>13</sup>.

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<sup>10</sup> The refugee concept contained in the 1951 Convention is defining by three types of clauses, which have been called respectively "inclusion", "cessation" and "exclusion" clauses. The inclusion clauses [Art. 1 (A) and (B)] positively define who is a refugee. In other words, the various elements that must be present for a person to be declared as a refugee. In contrast, the so-called cessation and exclusion clauses operate in a negative sense. Thus, the former lists a whole series of cases in which a refugee "ceases" to have such a status [Art. 1 (C)]; while the latter refers to a series of circumstances in which the refugee applicant is "excluded" from the scope of protection of the 1951 Convention [Art. 1 (D), (E) and (F)], despite fulfilling the elements of the refugee definition under the inclusion clauses. Vid. UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (HCR/1P/4/ENG/REV.4), Reissued, Geneva (Switzerland), UNHCR, February 2019, pars. 30-31.

<sup>11</sup> "In order to be considered a refugee, a person must show well-founded fear of persecution for one of the reasons stated above. It is immaterial whether the persecution arises from any single one of these reasons or from a combination of two or more of them". Vid. *ibid.*, par. 66.

<sup>12</sup> UN, *Convention Relating to the Status of Refugees*, *op. cit.*, [italics added], adding: "Events occurring before 1 January 1951" as referred to in section A of Article 1 may be understood as referring to events occurring before that date "in Europe" or "in Europe or elsewhere". Each Contracting State was required to formulate at the time of its consent the spatial extent it wished to give to that expression [art. 1 (B)]. Both temporal and geographical limitations on the definition of refugee were removed by Paragraphs 2 and 3 of Article 1 of the Protocol relating to the Status of Refugees, signed in New York on 31 January 1967, in force since 4 October 1967. Consequently, the States that accede to the Protocol are now obliged to apply the substantive provisions of the Refugee Convention but without the 1 January 1951 deadline (paragraph 2), and irrespective of where the events giving rise to the refugee occurred (paragraph 3). States which, while being parties to the 1951 Convention, have declared their willingness to restrict the scope of the Convention to events occurring in Europe, may accede to the 1967 Protocol while maintaining the spatial restrictions if they so wish (paragraph 3 *in fine*). Vid. UN, *Protocol Relating to the Status of Refugees*, 31 January 1967, UNTS, Vol. 606, No. 8791 pp. 267-276.

<sup>13</sup> NEW ZEALAND IMMIGRATION AND PROTECTION TRIBUNAL, *No. 800413*, *op. cit.*, par. 51.

In contrast to the legal refugee-concept is the notion of *environmental refugee*, which builds on a sociological construct of the refugee-notion<sup>14</sup>. The problem between the sociological concept of refugee and the legal one is that the former is much broader than the latter<sup>15</sup>. In the social scientific literature, "a *refugee* is understood as someone who is forced to flee involuntarily"<sup>16</sup>; reserving the term *migrant* for those who move of their own free-will, "although in response to disagreeable conditions ("push" factors) as well as anticipation of a better life ("pull" factors)"<sup>17</sup>. If this reasoning applies in the context of environmental displacements, a distinction could be drawn between those who would be in refugee-like situations – *environmental refugees* - and those who would not – *environmental migrants*<sup>18</sup>.

The point is that, from the perspective of the States Parties to the Geneva Convention, it is the legal concept that applies, not the sociological one. This legal conception requires the applicant to prove there is a "well-founded" fear of "being persecuted", and that such persecution links to one of the five grounds of the Convention<sup>19</sup> – namely, race, religion, nationality, membership of a particular social group or political opinions.

### **1.2.1.A closed catalogue of causes for seeking refuge: a product of its time. Proposals for expansion to include environmental factors**

The fact that the above enumeration of causes for seeking refuge is a *numerus clausus*, i.e. that the well-founded fear of being persecuted must necessarily be due to one of the reasons described in the definition of refugee, "makes all other reasons for escape [legally] irrelevant"<sup>20</sup>. Thus, UNHCR itself has pointed out that persons who are victims of climate change or natural disasters are generally excluded from the refugee

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<sup>14</sup> SUHRKE, A., "Environmental Degradation and Population Flows", *op. cit.*, p. 482.

<sup>15</sup> NEW ZEALAND IMMIGRATION AND PROTECTION TRIBUNAL, *No. 800413*, *op. cit.*, par. 51.

<sup>16</sup> SUHRKE, A., "Environmental Degradation and Population Flows", *op. cit.*, p. 482.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> NEW ZEALAND IMMIGRATION AND PROTECTION TRIBUNAL, *No. 800413*, *op. cit.*, par. 51.

<sup>20</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status...*, *op. cit.*, par. 39 [bracketed text added]. However, these other reasons for escape, while not in themselves sufficient to justify the granting of refugee status, may not be entirely irrelevant to the refugee status determination process, as all circumstances must be taken into account to properly understand the applicant's case (*Id.*)

definition<sup>21</sup>, unless, as noted above, such environmental disruptions are caused or used as forms of persecution for one of the five reasons listed<sup>22</sup>.

The lack of reference to environmental grounds in the legal definition of a refugee has brought several voices in favour of broadening the material scope of the Convention<sup>23</sup>. A possibility that could be implemented in two different ways: either by renegotiating the text of the Geneva Convention itself; or by adding a new Additional Protocol that would widen the scope of the definition contained in Article 1(2)(A), as was done in 1967.

The first proposal to extend the legal concept of refugee that we are aware of took place in 2006. The proposal was launched during an international meeting of representatives of States, human rights and environmental protection organisations and various UN agencies, which was hosted by the Government of the Maldives, one of the island States most affected by sea-level rise<sup>24</sup>.

In the media, *The Guardian* echoed the statements made by the Finance Minister of Bangladesh – another state which suffers from severe flooding every year due to its geographical position in the Ganges Delta. The Minister took the opportunity of the Climate Change Conference to be held next week in Copenhagen (2009) to make a double call. On the one hand, he called for the EU and the US to take responsibility for the millions of people who will be displaced by climate change. On the other hand, he urged the United Nations "to redefine international law to give climate refugees the same protection as people fleeing political repression"<sup>25</sup>.

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<sup>21</sup> UNHCR (in cooperation with the NRC, the Representative of the Secretary General on the Human Rights of Internally Displaced Persons and the United Nations University), "Forced Displacement in the Context of Climate Change: Challenges for States under International Law", *op. cit.*, p. 10.

<sup>22</sup> *Id.* Vid. sub-section 1.1 of this Chapter for examples in this regard.

<sup>23</sup> ACKETOFT, T., "Environmentally induced migration and displacement: a 21st century challenge" (Doc. 11785), *op. cit.*, par. 43. UNHCR (in cooperation with the NRC, the Representative of the Secretary General on the Human Rights of Internally Displaced Persons and the United Nations University), *op. cit. supra*, p. 10 *in fine*. BORRÀS PENTINAT, S., "El estatuto jurídico de protección internacional de los refugiados ambientales", *Revista Interdisciplinar da Mobilidade Humana*, Vol. 19, No. 36, 2011, pp. 28-30; and BORRÀS PENTINAT, S., "Refugiados ambientales: El nuevo desafío del Derecho Internacional del Medio Ambiente", *Revista de Derecho*, Vol. 19, No. 2, Diciembre 2006, p. 88 *in fine* to p. 94, suggesting in both papers rethinking the current politically based concept of "refugees" through the Geneva Convention's link to human rights protection, including the human right to a healthy environment.

<sup>24</sup> BIERMANN, F.; BOAS, I., "Protecting Climate Refugees: The Case for a Global Protocol", *Environment Magazine*, vol. 50, n° 6, 2008, pp. 10-11.

<sup>25</sup> GRANT, H.; RANDERSON, J.; VIDAL, J., "UK should open borders to climate refugees, says Bangladeshi minister", *The Guardian*, 30 November 2009 (last access: 03/12/2018).

In the field of academia, J. Cooper, an American lawyer, can be cited as one of the first authors who proposed, as early as 1998, to expand the Geneva definition. She suggested adding a new clause in Article 1(2)(A) that would include those fleeing from "degraded environmental conditions threatening his life, health, means of subsistence, or use of natural resources (...)"<sup>26</sup>. Cooper justified her proposal by arguing that the Refugee Convention is deeply rooted in the Universal Declaration of Human Rights<sup>27</sup>, which "(...) set the political stage for the Refugee Convention"<sup>28</sup>. In her opinion,

"[t]he comprehensive language of these provisions [arts. 22<sup>29</sup> and 25<sup>30</sup> UDHR] can be interpreted as setting broad environmental standards and creating an implicit human right to freedom from life-threatening and otherwise intolerable environmental conditions"<sup>31</sup>.

One reason in favour of the 1951 Convention as the most appropriate instrument to protect environmentally displaced persons is its universal status<sup>32</sup>. Almost all States within the international community has ratified the Convention, which means that virtually all States have more or less functional asylum systems operating based on the Geneva Convention. Thus, the protection of persons displaced by environmental factors

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<sup>26</sup> COOPER, J.B., "Environmental Refugees: Meeting the Requirements of the Refugee Definition", *New York University Environmental Law Journal*, vol. 6, no. 2, 1998, p. 494.

<sup>27</sup> UNGA, *Resolution 217 (III) [A] Universal Declaration of Human Rights adopted by the General Assembly at its Third session (A/RES/217(III)[A])*, 1948, pp. 71-79.

<sup>28</sup> COOPER, J.B., "Environmental Refugees: Meeting the Requirements of the Refugee Definition", *op. cit.*, p. 490. Indeed, she pointed out that:

"...the Refugee Convention incorporated human rights ideas from the Universal Declaration into its very definition of "refugee". The language of the refugee definition gives attention to five freedoms: freedom from persecution for reasons of (1) race, (2) religion, (3) nationality, (4) membership of a particular social group, and (5) political opinion. Not surprisingly, these five freedoms are conceptually contained within Articles 2, 18, 20, and 19 of the Universal Declaration, which set forth the rights to freedom from discrimination, freedom of religion, freedom of association, and freedom of expression, respectively" (pp. 490 *in fine* and 491).

<sup>29</sup> UNGA, *Resolution 217 (III) [A] Universal Declaration of Human Rights...*, *op. cit.*, whose Article 22 lays down: "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality".

<sup>30</sup> *Ibid.*, Article 25.1: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".

<sup>31</sup> COOPER, J.B., "Environmental Refugees: Meeting the Requirements of the Refugee Definition", *op. cit.*, p. 492 [bracketed text added].

<sup>32</sup> According to UNTC, [Status of the Convention relating to the Status of Refugees](#) (last access: 08/05/2022) and [Status of the Protocol relating to the Status of Refugees](#) (last access: 08/05/2022), 146 States were parties to the 1951 Convention and 147 to the 1967 Protocol. Such a figure represents 75.38% of the international community (percentage calculated on a total of 195 independent States, according to data published on USA, "Independent States in the World (Fact sheet)", *Bureau of Intelligence and Research (Department of State)*, 16 July 2020).

could be implemented in a short time, without any adjustments other than the additional training on the new cause of refuge that the authorities and officials responsible for examining refugee claims would have to receive.

However, UNHCR has repeatedly expressed its doubts about the opening of any process to renegotiate the Geneva Convention, which could end up with precisely the opposite result of that intended. That is, leading to lower protection standards for refugees than those provided for under the current definition<sup>33</sup>. Such mistrust of the international community cannot but be shared, given the current political mood, which is more inclined to restrict the international protection regime for refugees than to expand it<sup>34</sup>.

Furthermore, the practice of States to deny asylum on the grounds of economic migration could be exacerbated by opening the door of the 1951 Convention to environmentally displaced persons<sup>35</sup>. Often their decision to migrate is perceived as economically motivated, even if the environmental factor is ultimately the actual underlying responsible cause<sup>36</sup>.

From a legal perspective, the inclusion of environmentally displaced persons within the scope of the 1951 Convention is not as simple as extending the catalogue of refugee causes to include environmental disruptions<sup>37</sup>. Difficulties to amend the Geneva

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<sup>33</sup> ACKETOFT, T., “Environmentally induced migration and displacement: a 21st century challenge” (Doc. 11785), *op. cit.*, par. 55. UNHCR (in cooperation with the NRC, the Representative of the Secretary General on the Human Rights of Internally Displaced Persons and the United Nations University), “Forced Displacement in the Context of Climate Change: Challenges for States under International Law”, *op. cit.*, p. 10 *in fine*. BORRÀS PENTINAT, S., “El estatuto jurídico de protección...”, *op. cit.*, p. 29 *in fine*; and BORRÀS PENTINAT, S., “Refugiados ambientales...”, *op. cit.*, p. 92, who, while proposing an extension of the refugee concept to include environmentally displaced persons, recognises that such legal recognition may lead to a devaluation of existing refugee protection.

<sup>34</sup> Vid footnote *supra*.

<sup>35</sup> Vid. ACKETOFT, T., *op. cit. supra*, par. 43. Also, BORRÀS PENTINAT, S., “El estatuto jurídico de protección...”, *op. cit.*, p. 42 *in fine*; and BORRÀS PENTINAT, S., “Refugiados ambientales...”, *op. cit.*, p. 92.

<sup>36</sup> Vid. *ibid.*, par. 44, observing that the current debate largely recalls

“(...) the fierce arguments twenty years ago over the existence, definition and need for protection of internally displaced persons. Similarly in today’s context, there were those at the time who vehemently opposed the “creation” of this category of people because they considered that it would provide an excuse for governments to contain these persons in their own country. Yet the subsequent success and adoption of the UN Guiding Principles on Internal Displacement shows that bringing issues to the surface and giving them a name may serve a good purpose”.

<sup>37</sup> In this regard, BORRÀS PENTINAT, S., “El estatuto jurídico de protección...”, *op. cit.*, p. 43, has argued that it may be more important for the refugee definition to be determined not by the causes but, *inter alia*, by the gravity of the situation that has led to displacement or the inability of the State of origin to provide sufficient assistance to its population. She further adds that these factors determine an objective reality that is not subject to the establishment of subjective causes that may result in a discriminatory situation of

Convention stem from the fact that its legal definition of refugee shows a very well-defined structure that reflects the historical context in which the 1951 Convention was negotiated<sup>38</sup>. As Cooper has pointed out,

"(...) the refugee definition is a product of its time. (...) Not surprisingly, the definition that issued forth from that era reflected Western notions of rights and needs extolled after the persecution of the Second World War"<sup>39</sup>.

It was developed to protect victims fleeing from the Nazi or Fascist regimes<sup>40</sup>. Not only was this reflected in the fact that the Convention "was geographically limited to Europe and temporally limited to events surrounding the Second World War"<sup>41</sup>. It was also translated into the other elements that make up the legal definition of a refugee: a) starting from the particular persecution-reasons that negotiating States took into account when they discussed the text of the 1951 Convention<sup>42</sup>; b) the very meaning of the concept of persecution; c) the fact of not being able to benefit from the protection of the country of origin as a result of it; or d) the necessity of having fled outside the borders of the country to escape the persecution<sup>43</sup>.

The following analysis of the remaining components of the definition will show how difficult it is to fit transboundary environmental movements within the refugee-

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legal unprotection for those who have fled for reasons other than political ones (vid. BORRÀS PENTINAT, S., "Refugiados ambientales...", *op. cit.*, p. 93).

<sup>38</sup> GOODWIN-GILL, G.S., "Convención sobre el Estatuto de los Refugiados. Protocolo sobre el Estatuto de los Refugiados", United Nations, 2008, pp. 1-3 (last access: 12/01/2020).

<sup>39</sup> COOPER, J.B., "Environmental Refugees: Meeting the Requirements of the Refugee Definition", *op. cit.*, p. 482. Also KOLMANSKOG, V.O., *Future Floods of refugees: a comment on climate change, conflict and forced migration*, *op. cit.*, p. 25.

<sup>40</sup> GOODWIN-GILL, G.S., "Convención sobre el Estatuto de los Refugiados. Protocolo sobre el Estatuto de los Refugiados", *op. cit.*, p. 2 *in fine*.

<sup>41</sup> EDWARDS, A., "Refugee Status Determination in Africa", *African Journal of International & Comparative Law*, vol. 14, 2006, p. 208. Also BORRÀS PENTINAT, S., *Flujos migratorios y refugiados climáticos (European Climate Law Papers 5/2021)*, UNED, 2021, p. 11, footnote 20, arguing that further evidence that the 1951 Convention was drafted specifically with the European context in mind is provided by the fact that in Europe there has been no need to develop the right to seek asylum in subsequent regional conventions, in contrast to what has happened in other continents. In this sense, the author points out how neither the European Convention on Human Rights nor the Charter of Fundamental Rights of the European Union include particular provisions on the right to seek asylum.

<sup>42</sup> ECOSOC, *Ad Hoc Committee on Statelessness and Related Problems: Provisional Draft of Parts of the Definition Article of the Preliminary Draft Convention Relating to the Status of Refugees, Prepared by the Working Group on This Article (E/AC.32/L.6)*, 23 January 1950, discussing the categories of persons to whom the term "refugee" should apply.

<sup>43</sup> In this sense, Borràs Pentinat has criticised the anachronism of legal concepts such as refugee, displaced person, asylum seeker or stateless person, as they legally endorse the discrimination faced by people in need of protection on other, non-political grounds, stressing the urgent need to revise them to adapt their application to the new social realities of the 21st century, such as those derived from the deterioration of the environment (in: BORRÀS PENTINAT, S., "El estatuto jurídico de protección...", *op. cit.*, p. 45; BORRÀS PENTINAT, S., "Refugiados ambientales...", *op. cit.*, p. 92 *in fine* and 93).



concept. Beyond extending the catalogue of causes contained in Article 1 (A) (2), any proposal to include environmental disruption in it would also force a twisted reinterpretation of the other elements of the definition, changing the whole structure of the legal definition of a refugee. All these drawbacks would have led to a growing consensus among international actors that the refugee-notion contained in the 1951 Convention should not be touched to include environmentally displaced persons<sup>44</sup>.

### 1.2.2. The legal concept of "being persecuted"

Although the concept of persecution has a vital role in the Geneva definition of a refugee, "persecution" itself is not defined in the 1951 Convention. The drafters of the Convention rightly preferred to leave it as a legally undefined concept, in anticipation of the many and varied forms that the act of persecution may take<sup>45</sup>. It can be inferred from both Articles 31 and 33 of the Convention, which refer to refugees whose lives or freedoms are or would be threatened upon their return or expulsion<sup>46</sup>, that persecution includes threats to life or torture, or cruel, inhuman or degrading treatment or punishment<sup>47</sup>. Beyond that, the question of whether other harmful acts or threats would amount to persecution will depend on the circumstances of each case<sup>48</sup>.

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<sup>44</sup> ACKETOFT, T., "Environmentally induced migration and displacement: a 21st century challenge" (Doc. 11785), *op. cit.*, par. 57, noting that during the International Conference on Environment, Forced Migration and Social Vulnerability, held in Bonn (Germany), from 9 to 11 October 2008, no one proposed any longer to extend the current definition of refugee.

<sup>45</sup> As noted in sub-section 1.1 of this Chapter, environmental disruption can be provoked or exploited as a form of persecution on the grounds of race, religion, nationality, political opinion or membership of a particular social group. In this case, displaced persons do have refugee status, provided they are outside to the country of origin.

<sup>46</sup> Article 31 addresses refugees who have entered or are unlawfully in the country of refuge; while Article 33 refers to the prohibition of non-refoulement.

<sup>47</sup> This interpretation is reinforced by developments in the field of human rights and their necessary transposition into the asylum and refugee regime. Vid. UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status...*, *op. cit.*, par. 51. GOODWIN-GILL, G.S., "Convención sobre el Estatuto de los Refugiados. Protocolo sobre el Estatuto de los Refugiados", *op. cit.*, p. 4.

<sup>48</sup> UNHCR, *op. cit. supra*, par. 52. In the context of climate change and disasters, vid. UNHCR, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, 01 October 2020, par. 7, noting that their adverse effects can impact on the "capacity, ability and willingness" of States to provide protection, thereby exposing vulnerable populations, both in the short- and long-term, to a risk of human rights violations that, in certain circumstances, could amount to persecution within the meaning of the 1951 Convention. In this regard, UNHCR has observed that in assessing the risk of being persecuted in the context of climate change or disasters, the characteristics of the impacts, i.e. whether they manifest themselves suddenly or gradually, overlap in space and time or vary in intensity, magnitude, frequency and duration, must be considered. In parallel, these factors must be weighed against the positive impacts of national and international efforts to reduce disaster risk and mitigate the adverse effects of climate change and disasters, operational responses in the country of origin, or developments in the adaptive capacity of the country and its communities. "Taken together, *all these circumstances will determine how the enjoyment of human rights are affected*

The conventional refugee-concept also keeps silence on the eventual source of persecution, focusing instead on defining which victims of persecution are entitled to refugee status. However, this does not imply that any agent could qualify as *an agent of persecution* in the sense of the 1951 Convention. By including the term persecution, the representatives of the negotiating States were thinking of totalitarian governments that inflicted unfair or cruel treatment on their citizens because of their inherent characteristics. It follows that the act of persecution must be imputable to a human agent. Or what is the same, the active subject of the persecution must necessarily involve a human component. At the same time, the victims of the persecutory conduct cannot be an indiscriminate mass of subjects. There must be a differentiating element that individualises and distinguishes them from the rest of the population. In this sense, persecution must be individual.

#### **A) The need for human agency**

As stated above, persecution must be imputable to a State, either as a material perpetrator or as an indirect one. In the latter, persecution is committed by particular sections of the population – non-State actors - but with the deliberate tolerance of the country's authorities, or when such authorities refuse or are unable to provide adequate protection against it<sup>49</sup>.

Therefore, it does not seem that natural disruptions such as drought, an earthquake or a flood, to cite a few examples, could be characterised as agents of persecution within the meaning of the 1951 Convention. They have more to do with randomness or force majeure than with the deliberate or intentional action of a State<sup>50</sup>. Nevertheless, it has been argued that the Latin etymology of the word *persecute* has a passive voice and an active one. While the latter involves the presence of an actor who follows someone, the passive voice simply means running away from something, thus not requiring the presence of human agency as in the active sense<sup>51</sup>. Consequently, the "act of fleeing

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*and whether a reasonable possibility of being persecuted in the country of origin exists"* (par. 9 [italics added]).

<sup>49</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status...*, *op. cit.*, par. 65.

<sup>50</sup> BOND RANKIN, M., "Extending the limits or narrowing the scope? Deconstructing the OAU refugee definition thirty years on", *New issues in refugee research*, Working Paper No. 113, UNHCR, April 2005, p. 20 (last access: 13/02/2020).

<sup>51</sup> IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No 800413*, 25 June 2013, par. 51.

from climate change" could indeed amount to persecution, even if no one is identified as responsible for it<sup>52</sup>.

However, this argument must fail for the same reasons pointed out when noting the differences between the legal concept of refugee and its sociological construction<sup>53</sup>. Thus, even if the etymological analysis of the word persecution were correct, the plenipotentiaries who intervened during the negotiation of the Geneva Convention would have decided, for the purposes of the Convention, to limit the meaning of the term persecution only to its active etymological voice<sup>54</sup>. Therefore, to be considered a refugee, one must not run away from something, but from someone, and do so for one of the five Convention grounds<sup>55</sup>. Any other conduct that did not meet such a definition of persecution would be legally irrelevant. Even if, sociologically or even semantically, such conduct could be qualified as persecution.

### ***Excursus: States as climate persecutors***

This legal need for a human agent has led authors like Cooper to argue that States themselves, or even the international community as a whole, are responsible for environmental displacement when they fail to stop or prevent the environmental disturbances that cause it<sup>56</sup>.

"Disasters require decisions, and failure to decide or negligent decision-making on the part of a particular set of authorities is common in the face of environmental disaster. Because authoritative decisions on the part of the government so often underlie environmental disasters, the refugees created by such disaster suffer a form of governmental persecution"<sup>57</sup>.

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<sup>52</sup> Id.

<sup>53</sup> Id. Also, SUHRKE, A., "Environmental Degradation and Population Flows", *op. cit.*, p. 482.

<sup>54</sup> Vid. UN AD HOC COMMITTEE ON REFUGEES AND STATELESS PERSONS, *Ad Hoc Committee on Statelessness and Related Problems: Provisional Draft of Parts of the Definition Article of the Preliminary Draft Convention Relating to the Status of Refugees, Prepared by the Working Group on This Article (E/AC.32/L.6)*, 23 January 1950, on the particular reasons for persecution that the negotiating States considered when discussing the text of the 1951.

<sup>55</sup> IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No 800413*, 25 June 2013, par. 51.

<sup>56</sup> COOPER, J.B., "Environmental Refugees: Meeting the Requirements of the Refugee Definition", *op. cit.*, pp. 502-526.

<sup>57</sup> *Ibid.*, p. 502. Similarly, human activity has been linked to the outcome of certain natural disasters that apparently do not have an anthropogenic origin. For example, in the case of earthquakes, which could be related to certain human risk activities, tolerated or permitted by the States, capable of stimulating seismic activity. Vid. FOULGUER, G.R., WILSON, M.P., GLUYAS, J.G., JULIAN, B.R., DAVIES, R.J., "Global review of human-induced earthquakes", *Earth-Science Reviews*, vol. 178, March 2018, pp. 438-514. Activities that have been proposed to induce earthquakes include: the impoundment of water reservoirs; erecting tall buildings; coastal engineering; quarrying; extraction of groundwater, coal, minerals, gas, oil and

She then presents three examples of environmental crises: the desertification of the African Sahel, global warming and rising sea levels, and the Chernobyl nuclear accident, which would have been the result of government action or inaction. The role played by the States in the occurrence of such environmental disruptions would turn them into *agents of persecution* and the subsequent waves of displaced persons into *environmental refugees*<sup>58</sup>.

According to Cooper, global warming will generate more *environmental refugees* in the future than any other environmental crisis, given the profound effects it has on ecosystems. These include the melting of glaciers, ice caps and ice sheets; thermal expansion of ocean waters and sea-level rise; and the increased frequency and virulence of extreme weather or climate events. States are aware that global warming is mainly caused by their high rates of greenhouse gas emissions into the atmosphere. Nevertheless, despite the severe and real threat that global warming poses to the existence of millions of people in their original habitats, States decide to continue polluting. For Cooper, this disregard for their populations makes them *climate persecutors*<sup>59</sup>.

The same argument was made by a Kiribati national in his appeal to the Refugee Review Tribunal of Australia, claiming to be a *climate refugee*. He argued that that the high-ongoing carbon emissions from Australia would be sufficient to meet the conventional requirement of persecution since there is evidence that "many of the pacific islands have submerged deeper under water"<sup>60</sup> as a result of climate change and sea-level rise. According to him, Australia's current policy would clearly indicate that the government knows this reality and yet accepts the effect that its greenhouse gas emissions have on the region<sup>61</sup>.

It can hardly be denied neither the reality of global warming, nor the magnitude of the impact it is having and will have on living conditions on Earth, nor even Cooper's

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geothermal fluids; excavation of tunnels, and adding material to the subsurface by allowing abandoned mines to flood and injecting fluid for waste disposal; enhanced oil recovery; hydrofracturing; gas storage and carbon sequestration.

<sup>58</sup> COOPER, J.B., "Environmental Refugees: Meeting the Requirements of the Refugee Definition", *op. cit.*, pp. 504-519.

<sup>59</sup> *Ibid.*, pp. 507-514. A similar reasoning is made in BORRÀS PENTINAT, S., *Flujos migratorios y refugiados...*, *op. cit.*, pp. 13-14; BORRÀS PENTINAT, S., "La migración ambiental...", *op. cit.*, p. 36.

<sup>60</sup> REFUGEE REVIEW TRIBUNAL OF AUSTRALIA, 0907346 (2009) RRTA 1168 (10 December 2009) (Kiribati), par. 22.

<sup>61</sup> *Id.*

criticism that governments are not doing enough to reduce their emissions. However, we cannot share her conclusion that these arguments make States *persecutors* in the sense of the Geneva Convention. Neither did the Tribunal, which rejected it as unfounded<sup>62</sup>.

In the first place, it is undeniable that there is a correlation between the behaviour of States and the aggravation of climate change. However, it is not possible to establish direct causality between, on the one hand, the particular contribution of a State to climate change and, on the other hand, the production of a particular climate-related event that triggers a movement of population<sup>63</sup>. Not at least is it possible to establish it in a way comparable to the causal link that must exist between the act of persecution from which one flees and the request for refuge. Not only because the State of science does not allow it, but also because there is no cause-effect relationship whereby environmental disruptions necessarily cause persons to displace<sup>64</sup>.

As noted when addressing the minimalist view of environmental displacement<sup>65</sup>, the potential for an environmental disruption to trigger population movements cannot be established straight away, as it is the result of multiple factors. The intensity, scope and frequency of the natural event itself will be one of them; but also, and even more importantly, will be the response capacity of the State and the vulnerability of the affected population<sup>66</sup>.

Secondly, the positive obligation of States to take measures to protect the lives of those within their jurisdiction is not absolute, but "would depend on the origin of the threat and the extent to which (...) [the] risk is susceptible to mitigation"<sup>67</sup>. In the context of known natural hazards, such an obligation certainly includes the duty to adopt both *ex-ante* disaster risk reduction measures and *ex-post* operational responses<sup>68</sup>.

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<sup>62</sup> Id.

<sup>63</sup> KÄLIN, W.; SCHEREPFER, N., "Protecting People Crossing Borders In The Context Of Climate Change...", *op. cit.*, p. 31.

<sup>64</sup> Ibid., pp. 5 *in fine* and 7.

<sup>65</sup> Vid. sub-section 1.4 of Chapter I.

<sup>66</sup> KÄLIN, W.; SCHEREPFER, N., "Protecting People Crossing Borders In The Context Of Climate Change...", *op. cit.*, p. 6.

<sup>67</sup> ECtHR, *Budayeva and Others v Russia* (Applications Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02), 29 September 2008, pars. 135-137 [bracketed text added].

<sup>68</sup> IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No. 800517-520*, 4 June 2014, par. 75. Vid. also, ECtHR, *Budayeva and Others v Russia*, *op. cit.*, pars. 147-159, where the Strasbourg Court found Russia had violated Article 2 ECHR because it had failed to maintain defence and warning infrastructure in an area identified as being prone to mudslides.

However, it cannot, of course, include an obligation to eliminate or mitigate the underlying environmental drivers of those hazards, since precisely the fact that they have natural origin implies they are beyond human control<sup>69</sup>. Even less so in the case of climate change where action by a single State is not enough, as Cooper herself acknowledges<sup>70</sup>. To equate this incapacity with a failure of state protection or even to describe it as persecution is going too far, as it means imposing an impossible burden on States<sup>71</sup>.

Thirdly, such reasoning ignores the necessary element of motivation that must exist between the persecution and the persecuted<sup>72</sup>. In other words, there is no basis for concluding that countries that have historically emitted large amounts of greenhouse gases, such as Australia, have done so to persecute the citizens of Kiribati or other SIDS because of their race, religion, nationality, membership of a particular social group or political opinion<sup>73</sup>. As the Australian Court noted, at most

"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"<sup>74</sup>.

Finally, the argument of considering as an agent of persecution either a State different from the one from whose territory the flight took place, or the international community as a whole, is "a complete reversal of the traditional refugee paradigm"<sup>75</sup>.

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<sup>69</sup> IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No. 800517-520*, *op. cit.*, par. 75.

<sup>70</sup> COOPER, J.B., "Environmental Refugees: Meeting the Requirements of the Refugee Definition", *op. cit.*, p. 513.

<sup>71</sup> IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No. 800091*, 20 January 2012, par. 111, concluding that "(...) there exists no failure of state protection provided the state is doing what it reasonably can to prevent the future risk of harm".

In this regard, *vid. also* MCADAM, J., "Review Essay: From Economic Refugees to Climate Refugees?", *op. cit.*, p. 592, saying that: "(...) the governments of both Kiribati and Tuvalu are not responsible for climate change, nor are they developing policies that increases its negative impacts on particular sectors of the population".

<sup>72</sup> MCADAM, J., *op. cit. supra*, p. 590. In her opinion, the problem with environmental disruptions and the Refugee Convention "(...) is not an insufficient severity of harm, especially where the knock-on effects of climate change jeopardise rights relating to health, employment, housing and so on (...); but rather, demonstrating that the violation has the necessary discrimination content to amount to *persecution*. This is closely linked to the absence of a 'persecutor'" (pp. 590 *in fine* and 591).

<sup>73</sup> REFUGEE REVIEW TRIBUNAL OF AUSTRALIA, 0907346 (2009) RRTA 1168 (10 December 2009) (Kiribati), par. 51.

<sup>74</sup> *Id.*

<sup>75</sup> MCADAM, J., "Climate Change Displacement and International Law...", *op. cit.*, p. 12. *Vid. also* MCADAM, J., "Review Essay: From Economic Refugees to Climate Refugees?", *op. cit.*, p. 592, saying

Conventional refugees escape from the persecution of their very own governments. In contrast, environmentally displaced persons not only do not flee from their States, which are generally still willing to protect their citizens from environmental hazards<sup>76</sup>. They also seek refuge in the States that have contributed most to climate change, i.e., developed States<sup>77</sup>.

For example, assuming that Australia is persecuting the citizens of Kiribati by aggravating climate change with its greenhouse gas emissions, then they should not apply for refuge in the very country that is, in theory, persecuting them. On the contrary, they should run away from it. The very logic of the 1951 Convention does not allow bringing together the condition of persecutor and protector in the same subject.

### **B) The need for persecution to be individual**

As noted, there is an inextricable link between persecution and the five grounds of the Convention. This link is called the motivational element, and it answers the question of why does a State persecute its nationals?<sup>78</sup> In this respect, the concept of persecution within the meaning of the Convention implies a discriminatory element. Victims of persecution are persons selected by reference to their race, religion, nationality, membership of a particular social group or political opinion<sup>79</sup>. It is irrelevant whether the discriminatory element is real or not. It is enough that the persecutor perceives it in the victim<sup>80</sup>, even if it is mistaken.

Therefore, persecution must be individual<sup>81</sup>. Individualisation does not mean that the act of persecution must be aimed exclusively at one subject. Indeed, the persecution

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that: "This de-linking of the actor of persecution from the territory from which flight occurs is unknown to refugee law". KÄLIN, W.; SCHEREPFER, N., "Protecting People Crossing Borders In The Context Of Climate Change...", *op. cit.*, p. 31 *in fine*.

<sup>76</sup> Vid. sub-section 1.2.4 of this Chapter, commenting the requirement that refugee-seekers must be unable or unwilling to avail themselves of the protection of their country of nationality or former habitual residence.

<sup>77</sup> MCADAM, J., "Climate Change Displacement and International Law...", *op. cit.*, p. 13. MCADAM, J., "Review Essay: From Economic Refugees to Climate Refugees?", *op. cit.*, p. 592.

<sup>78</sup> REFUGEE REVIEW TRIBUNAL OF AUSTRALIA: 1004726 (2010) RRTA 845 (30 September 2010) (Tonga), pars. 14-15; 0907346 (2009) RRTA 1168 (10 December 2009) (Kiribati), pars. 13-14. N00/34089 (2000) RRTA 1052 (17 November 2000) (Tuvalu). N99/30231 (2000) RRTA 17 (10 January 2000) (Tuvalu); V94/02840 (1995) RRTA 2383 (23 October 1995) (Tuvalu).

<sup>79</sup> REFUGEE REVIEW TRIBUNAL OF AUSTRALIA: 0907346 (2009) RRTA 1168, *op. cit.*, par. 48; V94/02840 (1995) RRTA 2383, *op. cit.*

<sup>80</sup> REFUGEE REVIEW TRIBUNAL OF AUSTRALIA: 1004726 (2010) RRTA 845, *op. cit.*, pars. 14-15; 0907346 (2009) RRTA 1168, *op. cit.*, par. 50.

<sup>81</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status...*, *op. cit.*, par. 45: "an applicant for refugee status must normally show good reason why he individually fears persecution".

will typically target a collective<sup>82</sup>. What is essential is that all individuals who are identified by the persecutor as members of that collective share the same discriminatory characteristic. In this way, the victims can be indeterminate but not indiscriminate.

That is the reason why adverse circumstances that indiscriminately affect the entire population of a country, such as widespread poverty, lack of health services, shortage of food or drinking water, or environmental disruptions cannot generally be considered as forms of persecution<sup>83</sup>. For example, in 2000, several nationals of the SIDS, mainly from Kiribati and Tuvalu, submitted asylum claims before Australian and New Zealand Tribunals based on the environmental and economic difficulties they faced in their respective countries of origin. All of them were, however, dismissed. The courts argued precisely the indiscriminate nature of climate change, natural events or economic hardship, without it being possible to establish any motivational link with any one of the five grounds set out in the 1951 Convention<sup>84</sup>.

"This is not a case where the appellants could be said to be differentially at risk of harm amounting to persecution due to any one of the five Convention grounds. The inadequacies of infrastructure and social services in Tuvalu apply to all Tuvaluan citizens. All Tuvaluans face the problem of the erosion

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<sup>82</sup> Regarding those cases where the adverse effects of climate change or disasters are used to persecute part of the population, UNHCR, *Legal considerations...*, *op. cit.*, par. 8, has clarified that "[t]he fact that many or all members of a community are impacted does not undermine the validity of any individual member's claim. (...) In some cases, the adverse effects of climate change and disasters on an entire community may strengthen rather than weaken the evidence that justifies the fear of an individual being persecuted".

In situations where entire groups of persons have been displaced in circumstances suggesting that members of that group could be regarded as refugees on an individual basis, so-called "group determination" of refugee status is often used for practical reasons. In such cases, in order to assist displaced persons as speedily as possible, each member of the group is recognized, in the absence of evidence to the contrary, as a *prima facie* refugee, rather than proceeding to determine the refugee status of each member of the group individually. *Vid.* UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status...*, *op. cit.*, par. 44.

<sup>83</sup> Regarding climate change victims, BORRÁS PENTINAT, S., "La migración ambiental...", *op. cit.*, p. 37, concludes that "while climate change affects some countries more negatively by virtue of their geography and resources, it does not do so on the basis of a particular personal characteristic, such as the nationality or race of its people". Similarly, MCADAM, J., "Review Essay: From Economic Refugees to Climate Refugees?"..., *op. cit.*, p. 591, emphasizing that

"[g]eneral poverty is not sufficient for claiming refugee status. Rather, there must be a differential impact as against the rest of society (in other words, because the group is marginalized). For example, one must be able to demonstrate that one is poor because government policy, inaction or discrimination treats one group in society differently from others".

*Vid.* also, MCADAM, J., "Climate Change Displacement and International Law...", *op. cit.*, p. 13. FOSTER, M., *International Refugee Law and Socio-Economic Rights: Refugee from Deprivation*, Cambridge University Press, 2007, p. 310.

<sup>84</sup> In the same vein, MCADAM, J., "Review Essay: From Economic Refugees to Climate Refugees?"..., *op. cit.*, p. 592: "The impacts of climate change on the livelihoods of the people of Kiribati and Tuvalu are largely indiscriminate, rather than tied to particular characteristics".



of the Tuvaluan coastland and rising tidal levels. The poor economic conditions prevailing in Tuvalu apply across the board to all Tuvaluan citizens. Therefore the harm feared and difficulties complained of by the appellants cannot be said to be forms of harm directed at the appellants for reason of their civil or political status"<sup>85</sup>.

### 1.2.3. A "well-founded fear"

If the discriminatory component of persecution is the motivational element of the persecutor, the fear of being persecuted is the motivation of the victim. Unless one "seeks adventure or just wishes to see the world, a person would not normally abandon his home and country without some compelling reason"<sup>86</sup>. The fear of being persecuted is thus the underlying and explaining motive for the displacement. However, the victim's internal State of fear must base on an objective situation that supports it. The fear must therefore be "well-founded"<sup>87</sup>; or what is the same, fear cannot exist only in the mind of the victim<sup>88</sup>.

A well-founded fear is one in which there is a real chance that the fear will eventually materialise into harm to the life or freedom of the person claiming it, as

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<sup>85</sup> NEW ZEALAND REFUGEE STATUS APPEALS AUTHORITY, *Refugee Appeal No 72185*, 10 August 2000, par. 16. And the same was affirmed regarding Kiribati by the IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No 800413*, 25 June 2013, par. 75:

"The sad reality is that the environmental degradation caused by both slow and sudden onset natural disasters is one which is faced by the Kiribati population generally. (...) the underlying environmental events and processes favour no civil or political status. Nor has it been suggested that the Government of Kiribati has in some way failed to take adequate steps to protect him from such harm as it is able to for any applicable Convention ground".

Vid. also, NEW ZEALAND REFUGEE STATUS APPEALS AUTHORITY: *Refugee Appeal No 72186*, 10 August 2000, par. 16; *Refugee Appeal Nos 72189–72195*, 17 August 2000, par. 13; *Refugee Appeal Nos 72179–72181*, 31 August 2000, par. 14; *Refugee Appeal No 72313*, 19 October 2000, par. 13; *Refugee Appeal No 72314*, 19 October 2000, par. 13; *Refugee Appeal No 72315*, 19 October 2000, par. 13; *Refugee Appeal No 72316*, 19 October 2000, par. 13. IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal Nos 801093-094*, 23 February 2017, par. 46: "(...) generalised consequences of climate change, without anything more, cannot give rise to recognition of refugee status due to the lack of a nexus to a Convention ground"; *Refugee Appeal Nos 801120-123*, 20 March 2017, par. 34; *Refugee Appeal Nos. 800517-520*, 4 June 2014, par. 45.

And the REFUGEE REVIEW TRIBUNAL OF AUSTRALIA: 1004726 (2010) RRTA 845 (30 September 2010) (Tonga), par. 46; 0907346 (2009) RRTA 1168 (10 December 2009) (Kiribati), pars. 51-52; N00/34089 (2000) RRTA 1052 (17 November 2000) (Tuvalu); N95/09386 (1996) RRTA 3191 (7 November 1996) (Tuvalu); N96/10806 (1996) RRTA 3195 (7 November 1996) (Tuvalu); N99/30231 (2000) RRTA 17 (10 January 2000) (Tuvalu).

<sup>86</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status...*, *op. cit.*, par. 39.

<sup>87</sup> *Ibid.*, par. 38, noting that the term "well-founded fear" therefore contains a subjective element (the victim's mental state) and an objective element (the factual situation in the country of origin), and both elements must be taken into account in determining whether a well-founded fear exists.

<sup>88</sup> REFUGEE REVIEW TRIBUNAL OF AUSTRALIA, V94/02840 (1995) RRTA 2383, *op. cit.*

opposed to a remote or insubstantial or a far-fetched possibility<sup>89</sup>. To consider the fear to be well-founded does not require, however, that there is at least a 50% probability that it will take place<sup>90</sup>. It is sufficient to establish that there is a substantial factual basis for the applicant to harbour such fear, and not that it is merely an assumption or speculation<sup>91</sup>.

Of course, neither is it necessary for the applicant to have personally suffered persecution<sup>92</sup>. The fact that friends, relatives or other members of the same race or social group have already suffered persecution for the same motive is in itself a clear indicator that the applicant's fear of being a victim of the same persecution is well-founded<sup>93</sup>. Likewise, public statements made by government authorities or the laws of the country may indicate the imminence of the persecution<sup>94</sup>. In all these cases, the fact that persecution has not targeted the applicant's person yet does not mean that it has not begun. What the requirement of "well-founded fear" excludes is any subjective fear of harm that anticipates a real chance of being persecuted.

Therefore, to repute a fear "well-founded", it must base on a situation of danger that from an objective perspective already exists<sup>95</sup>. This conclusion would exclude preventive displacement that takes place either before the natural disaster occurs or, when it is a process of slow environmental degradation, before the natural environment has become uninhabitable. Consequently, the problem of including environmental

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<sup>89</sup> Vid. HIGH COURT OF AUSTRALIA, *Chan Yee Kin v. Minister for Immigration and Ethnic Affairs; Soo Cheng Lee v. Minister for Immigration and Ethnic Affairs; Kelly Kar Chun Chan v. Minister for Immigration and Ethnic Affairs*, 12 September 1989, 39 pp. In particular, the reasoning made in this regard by Dawson, J., p. 11, par. 19; Toohey, J., p. 18, par. 26; or McHugh, J., p. 35, par.35.

The "real chance" test, as interpreted in *Chan v. MIEA*, was applied in the following case law concerning the refugee status of citizens of low-lying SIDS: NEW ZEALAND IMMIGRATION AND PROTECTION TRIBUNAL: *Refugee Appeal No. 800413*, *op. cit.*, par. 53; *Refugee Appeal 801093-094*, *op. cit.*, par. 43; *Refugee Appeal Nos 801120-123*, *op. cit.*, par. 31. REFUGEE REVIEW TRIBUNAL OF AUSTRALIA: 0907346 (2009) RRTA 1168, *op. cit.*, par. 15; N00/34089 (2000) RRTA 1052, *op. cit.*; N99/30231 (2000) RRTA 17, *op. cit.*; N96/10806 (1996) RRTA 3195, *op. cit.*

<sup>90</sup> Vid. footnote *supra*.

<sup>91</sup> Vid. footnote *supra*. Vid. also UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status...*, *op. cit.*, par. 42: "In general, the applicant's fear should be considered well-founded if he can establish, *to a reasonable degree*, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there" [italics added].

<sup>92</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status...*, *op. cit.*, par. 43, stressing that assessment of the applicant's credibility does not need to be necessarily based "on the applicant's own personal experience".

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> NEW ZEALAND REFUGEE STATUS APPEALS AUTHORITY: *Refugee Appeal No 76044*, 11 September 2008, par. 57, considering that the well-founded requirement sets a standard that is totally objective.

disruptions among the causes of refuge would also be a problem of predictability. That is to say, how imminent should the risk of environmental disruption be so that it can be claimed that a person who flees the country in advance for fear of it does so because of a well-founded fear.

For example, during the interviews that New Zealand and Australian judges conducted with asylum seekers from SIDS, almost all of them expressed their unwillingness to return home for fear that the islands where they lived would sink under the waters of the Pacific Ocean<sup>96</sup>. However, several of them also declared that such a scenario, if it were to occur, would not happen "in 3 to 5 years", "within 10 years", or "in the next 90 years"<sup>97</sup>. Others reported news from television, the media or relatives about how climate change and rising sea levels were worsening living conditions on the islands<sup>98</sup>.

While not denying that such information may generate some concern or *fear* in applicants about the future of low elevation SIDS, there does not appear to be a *well-founded fear*. In any case, the risk of sinking is not expected to materialise for several decades. Even if a certain degree of compulsion or fear is accepted in the applicant's decision to migrate, such a decision is more likely to qualify as a "voluntary adaptive migration"<sup>99</sup> – that is, adapting to changes in the environment of low-lying islands by migrating elsewhere to avoid the worst effects that those environmental changes will have in the near future; rather than as a decision to avoid an actual risk to life or integrity.

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<sup>96</sup> NEW ZEALAND REFUGEE STATUS APPEALS AUTHORITY: *Refugee Appeal No 72185*, *op. cit.*, par. 9; *Refugee Appeal No 72186*, *op. cit.*, par. 9; *Refugee Appeal Nos 72189–72195*, *op. cit.*, pars. 8-9(b); *Refugee Appeal Nos 72179–72181*, *op. cit.*, par. 9; *Refugee Appeal No 72313*, *op. cit.*, par. 9; *Refugee Appeal No 72314*, *op. cit.*, par. 9; *Refugee Appeal No 72315*, *op. cit.*, par. 9; *Refugee Appeal No 72316*, *op. cit.*, par. 9. IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND: *Refugee Appeal No 800413*, *op. cit.*, pars. 26-31; *Refugee Appeal Nos 801120-123*, *op. cit.*, par. 23.

REFUGEE REVIEW TRIBUNAL OF AUSTRALIA: 1004726 (2010) RRTA 845, *op. cit.*, pars. 29 and 37; 0907346 (2009) RRTA 1168, *op. cit.*, pars. 19(17), 20 and 21; N00/34089 (2000) RRTA 1052, *op. cit.*; N99/30231 (2000) RRTA 17, *op. cit.*

<sup>97</sup> REFUGEE REVIEW TRIBUNAL OF AUSTRALIA: 0907346 (2009) RRTA 1168, *op. cit.*, pars. 20 and 34; N99/30231 (2000) RRTA 17, *op. cit.*

<sup>98</sup> IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No 800413*, *op. cit.*, pars. 29 and 31. REFUGEE REVIEW TRIBUNAL OF AUSTRALIA, N00/34089 (2000) RRTA 1052, *op. cit.*, where the appellant reported that he had known that there had been talks between the Prime Minister of Tuvalu and the Governments of Fiji and New Zealand about the sinking of Tuvalu.

<sup>99</sup> IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No 800413*, *op. cit.*, par. 49.

Therefore, displacement would only occur as a result of a well-founded fear when the environmental disruption represents a real threat to the life or integrity of those fleeing it, and not when it is a slight risk. In the case of natural disaster, its onset should be close enough to call for the evacuation of the population. If the displacement is the result of a slow-onset environmental disruption, the degradation of the ecosystem would have to reach a sufficiently advanced stage to be considered a threat to the life or integrity of those living in it.

In both cases, it would still be possible for the country's authorities to intervene, preventing the danger that both types of disruption represent for the safety of its citizens from materialising. Particularly in cases such as the sea-level rise and low-lying SIDS, where there is still considerable time to manoeuvre. Such intervention can take many forms: evacuating or relocating citizens to safe areas in the event of natural disasters; taking measures to slow or reverse environmental degradation or minimise its effects on the population; or by ultimately resettling affected communities in other areas within the country whose environmental conditions make them habitable. Alternatively, displaced persons often have the possibility of moving to a part of the country not affected by the environmental disturbance, than to migrate to other States.

Both possibilities, the intervention of the country's authorities to protect its citizens and the emigration or relocation of the latter to other parts of the country, lead us to examine the last two elements of the refugee definition.

#### **1.2.4. "(...) and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country"**

The main difference between traditional refugees and environmentally displaced persons is that the latter, in principle, still enjoy the assistance of their national governments, which remains able and willing to protect them<sup>100</sup>. In contrast, not only are refugees unable to avail themselves of the protection of their States. It is precisely the persecution they suffer at the hands of their governments or non-state actors from

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<sup>100</sup> BIERMANN, F.; BOAS, I., "Protecting Climate Refugees: The Case for a Global Protocol", *op. cit.*, p. 11. KÁLIN, W.; SCHEREPFER, N., "Protecting People Crossing Borders In The Context Of Climate Change...", *op. cit.*, p. 32. MCADAM, J., "Climate Change Displacement and International Law...", *op. cit.*, p. 12. MCADAM, J., "Review Essay: From Economic Refugees to Climate Refugees?", *op. cit.*, p. 592, observing that "in the case of Tuvalu and Kiribati the government remains able and willing to protect its citizens.

whom the State is unable or unwilling to protect them which forces refugees to seek shelter within the borders of another country<sup>101</sup>.

This difference raises another problem as to the legal definition of persons displaced by the environment as refugees. In this regard, it is essential to keep in mind that the Geneva Convention serves as a supplementary protection mechanism<sup>102</sup>. It acts as a substitute for the State that is unable or unwilling to protect its nationals, or stateless persons habitually resident on its territory<sup>103</sup>, from the fears which the 1951 Convention itself set out. National protection, whenever possible, takes precedence over international protection<sup>104</sup>. This alone is a clear obstacle to protecting those displaced for environmental reasons under the Geneva Convention, even if environmental disruptions were included as one of the causes for obtaining refuge.

Thus, under normal circumstances, a State that detects an imminent risk of natural disasters, such as an earthquake, a flood or a hurricane, will act by evacuating residents from danger zones and moving them to a safe place until they can return to their homes. In the case of slow-onset environmental disruptions, due to its particular characteristics such as their gradual progression or the fact that they do not pose an immediate threat to the lives of its citizens, State intervention may be delayed or not occur at all. Particularly, if national authorities are not even aware that such a process is taking place. Nevertheless, such inaction, as long as it did not act as a form of persecution on one of the conventional grounds, would neither justify displaced persons seeking protection from other states rather than from the own authorities.

Indeed, the lack of fear of persecution by the authorities of one's own country explains precisely why displacement as a result of environmental disruptions often occurs, at first and whenever possible, within the same country. For instance, by moving

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<sup>101</sup> Vid. footnote *supra*.

<sup>102</sup> KÄLIN, W.; SCHEREPFER, N., "Protecting People Crossing Borders In The Context Of Climate Change...", *op. cit.*, p. 32, noting "the surrogate nature of international protection".

<sup>103</sup> In the case of stateless persons, it is the country of their habitual residence regarding which the fear of persecution must be assessed. Vid. ECOSOC, *Report of the Ad hoc Committee on Statelessness and related problems* [E/1618 (E/AC.32/5)], 17 February 1950, p. 39. Also, UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status...*, *op. cit.*, par. 103.

However, it should be made clear that not all stateless persons are refugees. The other elements of the definition, especially the presence of one of the grounds for persecution described in the Convention, will also have to be met. Otherwise, the stateless person will not have refugee status (UNHCR, *op. cit. supra*, par. 102).

<sup>104</sup> UNHCR, *op. cit. supra*, pars. 90 and 106.

to the wetter regions, in the case of drought, or to the interior of the country in the event of coastal flooding.

In the case of SIDS, the Australian and New Zealand Courts themselves noted the efforts being made by countries such as Kiribati and Tuvalu to adapt to environmental challenges. Furthermore, SIDS are very much involved at the political stage to the fight climate change and its effects, as rising sea levels will eventually threaten their survival as States<sup>105</sup>.

At the most, there would be those cases where the State's authorities are overwhelmed by the magnitude of a particular environmental disruption and, even if it wants to, cannot assist its population. However, even in such cases, it makes more sense to strengthen the regime of international intervention and humanitarian relief to assist

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<sup>105</sup> MCADAM, J., "Climate Change Displacement and International Law...", *op. cit.*, p. 13, adding that: "(...) in the case of Tuvalu and Kiribati, the government remains *willing* to protect its citizens, although the extent of its ability to do so over time is unclear".

Regarding *Tuvalu*, *vid.* UNGA, *Report of the Working Group on the Universal Periodic Review – Tuvalu* (A/HRC/39/8), 10 July 2018, 19 pp. Initiatives undertaken by the government of Tuvalu include: the establishment of which is known as the Climate Change and Natural Disaster Survival Fund, as well as a coastal adaptation project, funded by the Green Climate Fund, which included the construction of protective dykes for all its islands (par. 18). In the international political arena, Tuvalu had also proposed two climate change-related initiatives, in particular with regard to the establishment of the Pacific Islands Climate Insurance Facility, and the adoption within the UN General Assembly of a resolution to provide protection to persons displaced as a result of climate change (par. 17). *Vid.* also UNGA, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – Tuvalu* (A/HRC/WG.6/30/TUV/1), 28 March 2018, pars. 81-83. According to this document, Tuvalu has implemented so far two National Adaptation Programmes of Action (NAPAs). Both projects, NAPAs 1 and 2, has been founded by the Global Environmental Fund with the UNDP as the Implementing Agency. The expected date for completing the implementation of the NAPA 2 project was the end of 2018. This project was focused on three key themes, namely: (i) strengthening Community Based Conservation Programmes on highly vulnerable near-shore fisheries; (ii) strengthening Community Disaster Preparedness and Response Potential and (iii) enhanced capacity of communities to access internal/external financing for community-based climate change adaptation through existing participatory planning processes. The only NAPA project that has been submitted to the UNFCCC Secretariat by Tuvalu dates back to 2007: UNDP, *Tuvalu's National Adaptation Programme of Action*, submitted by the Ministry of Natural Resources, Environment, Agriculture and Lands of Tuvalu, May 2007, 55 pp.

Regarding Kiribati, its 2007 NAPA also shows that the Kiribati Government is acutely aware of the problems posed by climate change and sea-level rise and is taking many steps at the regulatory and programme level in relation to these risks. Specifically through, (i) the Water Resource Adaptation Project which aims to developing new water supply systems to guarantee the supply of drinking water, particularly at South Tarawa –one of the most affected areas-, as well as to maintaining the existing ones; (ii) enhancing coastal protection systems, both naturally –planting mangroves or restoring coral reefs- and artificially –building and restoring sea-walls-; (iii) improving food security, since the health of coral reefs is associated with fish abundance, and also by the Agricultural Food Crops Development Plan, which aims to diversifying agricultural systems, setting up and maintaining gene banks and planting materials Promoting/processing agricultural products, and introducing new cash crops. At the legislative level, the Kiribati's Parliament passed in 2019 the Disaster Risk Management and Climate Change Act. *Vid.* UNDP, *Republic of Kiribati National Adaptation Program of Action (NAPA)*, submitted by the Environment and Conservation Division, Land and Agricultural Development, January 2007, 63 pp. (particularly, Chapter 6, pp. 36-53).

States in cases of environmental disruption, than to alter the whole legal scheme of the refugee definition<sup>106</sup>.

In short, when it is possible to invoke the protection of the country of nationality or habitual residence without having a well-founded fear to refuse it, it must be concluded that the person concerned does not require international protection. Whereas a priori this seems to be the case for persons displaced by environmental factors, they could not be considered refugees within the meaning of the Geneva Convention<sup>107</sup>, even if environmental disruptions were to be included among the grounds for refuge.

#### **1.2.5. "(...) is outside the country of his nationality" or "being outside the country of his former habitual residence"**

Finally, one might wonder whether it is worth undertaking an amendment of the Geneva Convention to include persons displaced by environmental disruptions. Especially when it is very likely that, as noted in Chapter II, a high percentage of them will not cross an international border, choosing instead to relocate themselves in another part of the country that is not affected.

In this respect, it should not overlook that it is a general requirement for obtaining refugee status that the applicant is outside the country of their nationality or the country in which they had their habitual residence, in the case of stateless persons. As the UNHCR itself has pointed out, "[t]here are no exceptions to this rule. International protection cannot come into play as long as a person is within the territorial jurisdiction of his home country"<sup>108</sup>.

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<sup>106</sup> KÄLIN, W.; SCHEREPFER, N., "Protecting People Crossing Borders In The Context Of Climate Change...", *op. cit.*, p. 32, highlighting that "(...) even where authorities are unable to do this [referring to assisting their population in the event of environmental disturbance] for lack of resources and capacity, they will usually try to get support from the international community" [bracketed text added].

<sup>107</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status...*, *op. cit.*, par. 90. Vid. also, Robinson, N., *Convention Relating to the Status of Refugees: Its History, Contents and Interpretation. A commentary*, New York, Institute of Jewish Affairs, 1953, p. 46, stressing that someone is not a refugee in the case of "events which are being combated by the authorities, because in such cases there would be no reason for a person possessing nationality to be unwilling to avail himself of the protection of his country (...)" ; quoted by KÄLIN, W.; SCHEREPFER, N., "Protecting People Crossing Borders In The Context Of Climate Change...", *op. cit.*, p. 32, footnote 133.

<sup>108</sup> *Ibid.*, par. 88.

### 1.3. Do inhabitants of Kiribati or Tuvalu already qualify as refugees? Analysis of their status as a "particular social group"

Several citizens from Kiribati and Tuvalu appealed before the RSAA in New Zealand or the RRTA in Australia, claiming to be entitled to refugee status because they had a well-founded fear of being persecuted by their countries of origin for belonging to a particular social group<sup>109</sup>. Members of this social group would share the following features: having lost the ability to generate sufficient resources for their livelihoods as a result of climate change; living in low-income areas close to the coast and affected by sea-level rise; and being ignored by their Governments, which would not be taking the necessary measures to protect them from the harmful effects of both climate change and the rise in sea-level<sup>110</sup>.

In the view of the appellants, their governments systematically discriminated against them by not investing public money in the development of public services in the areas where they resided; as well as infrastructures to protect their homes from flooding and coastal erosion caused by the rise of the sea-level. On the contrary, those who were close to or in some way related to the country's government would enjoy better living standards, and the areas in which they resided would also be better equipped with measures to contain seawater intrusion<sup>111</sup>. In particular, one of them claimed that the government had extracted sand from impoverished areas of the island to build sea walls in well-off residential areas, leaving them even more vulnerable to high tides and flooding<sup>112</sup>.

The crux of the matter, therefore, lies in determining, firstly, whether belonging to one socio-economic stratum or another is equivalent to belonging to a particular social group within the meaning of the Geneva Convention. If the answer is yes, it would be necessary to determine, secondly, whether differences in treatment between social classes can be considered as acts of persecution. If so, it remains to be seen whether

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<sup>109</sup> NEW ZEALAND REFUGEE STATUS APPEALS AUTHORITY: *Refugee Appeal No 72185, op. cit.*, par. 12; *Refugee Appeal No 72186, op. cit.*, par. 12; *Refugee Appeal Nos 72189–72195, op. cit.*, par. 9(c); *Refugee Appeal Nos 72179–72181, op. cit.*, par. 10(c). REFUGEE REVIEW TRIBUNAL OF AUSTRALIA: 0907346 (2009) RRTA 1168, *op. cit.*, par. 22; N95/09386 (1996) RRTA 3191, *op. cit.*

<sup>110</sup> Vid. footnote *supra*. Vid. also, IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No 801093-094, op. cit.*, par. 22, accusing the government of maintaining an "incompetent and relaxed" attitude.

<sup>111</sup> NEW ZEALAND REFUGEE STATUS APPEALS AUTHORITY: *Refugee Appeal Nos. 72179–72181, op. cit.*, par. 10(c); *Refugee Appeal Nos 72189–72195, op. cit.*, par. 9(c).

<sup>112</sup> NEW ZEALAND REFUGEE STATUS APPEALS AUTHORITY, *Refugee Appeal Nos. 72179–72181, op. cit.*, par. 10(c)



there is a causal link between the alleged discriminatory measures taken by the Kiribati and Tuvalu Governments and the fact that the appellants belong to the lower classes of society, far from the orbit of power.

### 1.3.1. Socio-economic class as a particular social group

Authors such as Cooper or Borràs Pentinat have already theorised about the hypothesis of considering environmental displaced persons as a particular social group, arguing that in reality there was no need to expand the Geneva Convention as they would already fall within its scope<sup>113</sup>. According to them, those persons eco-socially vulnerable and with too little political power to prevent the degradation of their environment are members of the same social group. It would be because of this membership that they are subject to environmental degradation that their governments or developed countries actively cause or contribute to it by absence or negligence in decision-making<sup>114</sup>.

However, such an approach seems to overlook the fact that the existence of a particular social group must be determined regardless of the persecution it suffers. In other words, the distinctive element that identifies all individuals who possess it as members of a particular social group cannot be the persecution itself<sup>115</sup>. There must be one attribute or characteristic intrinsic to all of them, which would continue to exist even if there were no persecution. The High Court of Australia clearly illustrated this point by the example of left-handed persons:

"Left-handed men are not a particular social group. But, if they were persecuted because they were left-handed, they would no doubt quickly become recognisable in their society as a particular social group. Their persecution for being left-handed would create a public perception that they were a particular social group. *But it would be the attribute of being left-*

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<sup>113</sup> COOPER, J.B., "Environmental Refugees: Meeting the Requirements of the Refugee Definition", *op. cit.*, pp. 521-526. BORRÀS PENTINAT, S., *Flujos migratorios y refugiados...*, *op. cit.*, p. 15.

<sup>114</sup> COOPER, J.B., *op. cit. supra*, p. 522. BORRÀS PENTINAT, S., *op. cit. supra*, p. 15.

<sup>115</sup> MCADAM, J., "Review Essay: From Economic Refugees to Climate Refugees?", *op. cit.*, p. 592. MCADAM, J., "Climate Change Displacement and International Law...", *op. cit.*, p. 13. KOLMANNSSKOG, V.O., *Future Floods of refugees: a comment on climate change, conflict and forced migration*, *op. cit.*, p. 27.

*handed and not the persecutory acts that would identify them as a particular social group*"<sup>116</sup>.

Both Cooper and Borràs Pentinat are aware that "(...) a 'social group' needs to be able to exist independently of the persecution at issue"<sup>117</sup>. However, Cooper tries to reinforce her position by claiming that the lack of political power would be the common note to all persons suffering from environmental persecution<sup>118</sup>. On her part, Borràs Pentinat argues that the belonging of those environmentally displaced to the same social group would be identified and characterised by their greater geographical exposure and eco-social vulnerability to environmental damage<sup>119</sup>.

However, Cooper's reasoning misses that the lack of political power to protect their rights is the common denominator of all persons who suffer persecution, whether for belonging to a particular social group or for any of the other Convention's grounds. Otherwise, if they held power, they would not be persecuted. Consequently, the lack of political power would not be the individualising attribute which defines a particular social group, but an inherent element in any persecution.

Neither did the RSAA share the argument that poverty could serve as an attribute to define the existence of a particular social group. In the Authority's view, "[w]hile this [those not having sufficient means to sustain themselves] may be a statistical group, it is not (...) a *social group* in respect of which its members can be said to be persecuted"<sup>120</sup>. The Court argued that poor people

"(...) is simply not a group capable of definition in this manner because poverty is a relative concept. To a wealthy person, a labourer may well be considered poor, but the same labourer would seem wealthy to a beggar. The 'poverty line' in New Zealand, for example, would far exceed the income level of the middle classes in many third world countries"<sup>121</sup>.

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<sup>116</sup> HIGH COURT OF AUSTRALIA, *A v Minister for Immigration and Ethnic Affairs*, *op. cit.*, p. 28 [italics added].

<sup>117</sup> COOPER, J.B., "Environmental Refugees: Meeting the Requirements of the Refugee Definition", *op. cit.*, p. 522. BORRÀS PENTINAT, S., *Flujos migratorios y refugiados...*, *op. cit.*, p. 15.

<sup>118</sup> COOPER, J.B., *op. cit. supra*, p. 522.

<sup>119</sup> BORRÀS PENTINAT, S., *op. cit. supra*, p. 15, with the term eco-social emphasising the dependence of their precarious economy on ecosystem services.

<sup>120</sup> NEW ZEALAND REFUGEE STATUS APPEALS AUTHORITY: *Refugee Appeal No 72185*, *op. cit.*, par. 17; *Refugee Appeal No 72186*, *op. cit.*, par. 17; *Refugee Appeal Nos. 72189–72195*, *op. cit.*, par. 14; *Refugee Appeal Nos. 72179–72181*, *op. cit.*, par. 15.

<sup>121</sup> NEW ZEALAND REFUGEE STATUS APPEALS AUTHORITY, *Refugee Appeal No 71553/99*, 28 January 2000, p. 7.

Against the Court's argument on economic relativity, Foster points out that it "ignores contemporary understandings of 'poverty' as going beyond 'insufficient income to buy a minimum basket of goods and services' to more broadly refer to 'the lack of basic capabilities to live in dignity'"<sup>122</sup>. She goes on adding that the relativity argument also ignores that "whether or not the applicant is 'being persecuted' for reasons of his or her MPSG [membership of a particular social group] will always need to be determined in light of the particular factual circumstances of each individual case"<sup>123</sup>. Although Foster's point about the current understanding of poverty is entirely right, her reasoning leaves unanswered the underlying question. That is, could it be claimed that all individual in a country or in the world who are eco-social vulnerable – i.e. who "lack the basic capabilities to live in dignity"- belong to the same social group *within the meaning of the 1951 Convention*?

There are two main approaches regarding what constitutes a social group within the meaning of the 1951 Convention. One known as the *protected characteristics approach* and the other referred to as the *sociological approach*<sup>124</sup>. The first argues that members of the group must be bound by an immutable characteristic or by a characteristic that is so fundamental to human dignity that they should not be required to change it. This approach has gained acceptance in the UK, USA, Canada, and New Zealand<sup>125</sup>. The *sociological approach* has been developed mainly in Australia. It stresses that the agents of persecution must also perceive such a common characteristic as the element that sets those who share it apart from the rest of society<sup>126</sup>. The UNHCR seems to have reconciled both approaches, as it considers that

"A particular social group is a group of persons who share a common characteristic other than the risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate,

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<sup>122</sup> FOSTER, M., *International Refugees Law and Socio-Economic Rights: Refugee from Deprivation*, *op. cit.*, p. 131.

<sup>123</sup> *Id.* [bracketed text added].

<sup>124</sup> KOLMANNSSKOG, V.O., *Future Floods of refugees: a comment on climate change, conflict and forced migration*, *op. cit.*, p. 27. MARCS, C., "Spoiling Movi's River: Towards Recognition of Persecutory Environmental harm...", *op. cit.*, pp. 61-65.

For an in-depth study, *vid.* ALEINIKOFF, A, "Protected characteristics and social perceptions: an analysis of the meaning of 'membership of a particular social group'", in: E. Feller; V. Türk; F. Nicholson (eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, Cambridge (UK); New York (USA); Genève, Cambridge University Press; UNHCR, 2003, pp. 263-311.

<sup>125</sup> MARCS, C., "Spoiling Movi's River: Towards Recognition of Persecutory Environmental harm...", *op. cit.*, pp. 61-63.

<sup>126</sup> *Ibid.*, pp. 63-65.

unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights"<sup>127</sup>.

From the perspective of the *protected characteristics approach*, none of the criteria seems to be met by "the poor". As the RSAA observes:

"Poverty per se is not immutable, nor is it so fundamental to the identity of the members that they ought not to be required to change it. Indeed, it is surely a characteristic which the impecunious would be happy to change"<sup>128</sup>.

The same reasoning could be made about considering greater geographic exposure to environmental degradation as the individualising feature of the social group of environmentally displaced people. After all, this is precisely the circumstance that those affected seek to change through displacement.

However, from the *sociological approach*, it could still be argued that the perception of belonging to one or another social class –and thus being perceived as more or less eco-socially vulnerable- is a sociological construct, which has effects beyond the purely statistical ones referred to by the RSSA. It also has the potential to bring together and unite in a single social group all those members of society who have similar purchasing power, cultural level or even natural resource dependence. In this light, it may be admitted that social classes could be considered, at least a priori, as particular social groups within the meaning of the 1951 Convention<sup>129</sup>.

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<sup>127</sup> UNHCR, *Guidelines on international protection: gender-related persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (HCR/GIP/02/01), 7 May 2002, par. 29.

Vid. also ALEINIKOFF, A, "Protected characteristics and social perceptions: an analysis of the meaning of 'membership of a particular social group'", *op. cit.*, p. 300, who holds that both approaches are interlinked, since the protected characteristic approach would be "the core of the social perception analysis". Hence, "groups that qualify under the protected characteristics approach are virtually assured recognition under the social perception test as well".

<sup>128</sup> NEW ZEALAND REFUGEE STATUS APPEALS AUTHORITY, *Refugee Appeal No 71553/99*, *op. cit.*, p. 9.

Cf. FOSTER, M., *International Refugees Law and Socio-Economic Rights: Refugee from Deprivation*, *op. cit.*, p. 309, noting that "the notion that the poor can simply change their status is unrealistic. On the contrary, (...) poverty is a structural problem, especially in developing countries, the alleviation of which requires national action and international action and cooperation".

<sup>129</sup> There is nothing in the term "membership of a particular social group" or anything in the travaux préparatoires of the Geneva Convention to suggest that that expression was intended to be limited only to those groups that shared an innate or fundamental attribute that, *ejusdem generis*, is similar to the other differentiating elements specifically listed by the Convention as grounds for refuge. As MARCS, C., "Spoiling Movi's River: Towards Recognition of Persecutory Environmental harm...", *op. cit.*, p. 60, points out: "Very little explanatory material concerning the fifth *Convention* ground exists in the drafting history, in the UNHCR guidelines, in the *travaux préparatoires*, or in the remarks of Mr. Petren of Sweden, who proffered the last minute amendment to the *Convention* definition". Vid. also, HIGH COURT OF AUSTRALIA, *A v Minister for Immigration and Ethnic Affairs*, *op. cit.*, pp. 5-7.

### 1.3.2. Discriminatory measures as acts of persecution

It should be noted at the outset that the existence in a society of different social classes with different vulnerability to environmental degradation and the existence of differences in treatment between them does not necessarily mean that those who are treated less favourably and are more vulnerable are persecuted.<sup>130</sup> However, several discriminatory measures which individually would not be particularly severe, taken together and in conjunction with other adverse factors "may nevertheless give rise to a reasonable fear of persecution if they produce, in the mind of the person concerned, a feeling of apprehension and insecurity as regards his future existence"<sup>131</sup>. In particular, if such discriminatory measures "lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practise his religion, or his access to normally available educational facilities" or, in the present case, to live with dignity in healthy and safe environmental conditions<sup>132</sup>.

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It is clear that if the drafters of the 1951 Geneva Convention introduced a specific reference to membership of a particular social group, it had to be precisely to protect those people who were persecuted for sharing a common characteristic other than their race, religion, nationality or political opinions. Vid. FOSTER, M., "The 'Ground with the Least Clarity': A Comparative Study of Jurisprudential Developments relating to 'Membership of a Particular Social Group'" (PPLA/2012/02), *Legal and Protection Policy Research Series*, UNHCR, August 2012, p. 2, footnote 3 (last access: 02/03/2020), who reproduces the explanation of Mr. Pétren, the representative of Sweden, at the behest of whom the category of "membership of a particular social group" was included in Article 1 (A) (2):

"(...) 'experience has shown that certain refugees had been persecuted because they belonged to particular social groups. The draft Convention made no provision for such cases, and one designed to cover them should accordingly be included'".

In this regard, the refugee-ground "membership of a particular social group" has been described by COOPER, J.B., "Environmental Refugees: Meeting the Requirements of the Refugee Definition", *op. cit.*, p. 521, as a "(...) 'catch-all' for individuals not falling into the remaining categories".

As the HIGH COURT OF AUSTRALIA, *A v Minister for Immigration and Ethnic Affairs*, *op. cit.*, pp. 5-6, has observed:

"By the ordinary meaning of the words used, a "particular group" is a group identifiable by any characteristic common to the members of the group and a "social group" is a group the members of which possess some characteristic which distinguishes them from society at large".

This could be, for example, the sharing of a common language or a series of ethnic customs or traditions, but also the fact of having the same social status, as long as it allows those who share it to be distinguished from the rest of society.

<sup>130</sup> Vid. on discriminatory measures as an act of persecution, UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status...*, *op. cit.*, par. 54.

<sup>131</sup> *Ibid.*, par. 55.

<sup>132</sup> *Ibid.*, par. 54. In the context of the adverse effects of climate change and disasters, UNHCR, *Legal considerations...*, *op. cit.*, par. 10, has noted that a well-founded fear of persecution under the 1951 Convention can also arise when a government neglects certain populations when taking prevention or risk reduction measures during the preparedness phase, causing discriminated populations to be disproportionately affected.

Thus, decisions denounced by islanders seeking refuge, such as the national authorities removing sand from some areas to transport it to others or building dykes in some places and not in others, do not seem significant at first glance. However, this perception changes when one considers the climate of insecurity in which the majority of the population of Tuvalu and Kiribati lives. Given that the rise in sea-level is already perceptible on the islands and the proximity of the applicants' homes to the coast, such discriminatory measures may therefore amount to persecution, as they are of sufficient entity to create in the minds of discriminated citizens a real fear for their survival.

The appeals were, however, dismissed as the reality of Kiribati or Tuvalu did not prove to be consistent with the alleged discrimination. Regarding the lack of socio-economic opportunities claimed by the appellants, the Economic and Social Committee has noted: "[a] distinction should be drawn between the inability and the unwillingness of States parties to comply with their obligations under article 6 ICESCR"<sup>133</sup>. Thus, there would only be non-compliance when the State fails to use the maximum of its available resources for the realisation of the right to work, and not when the State fails to fully guarantee this right because of the resource constraints it faces<sup>134</sup>.

Nevertheless, none of the appellants claimed to have encountered any restrictions or obstacles in accessing the labour market other than the difficulties faced in general by other citizens when trying to find a job on the islands<sup>135</sup>, given their small size and the scarcity of job offers<sup>136</sup>. Indeed, some of the appellants had a previous employment history, having worked in various occupations before emigrating from the islands<sup>137</sup>.

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<sup>133</sup> CESCR, *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)* (E/C.12/GC/18), 6 February 2006, par. 32. Vid. UN, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, UNTS, Vol. 993, No. 14531, pp. 3-106, whose Article 6 guarantees the right to work.

<sup>134</sup> Vid. CESCR, *op. cit. supra*.

<sup>135</sup> IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND: *Refugee Appeal No 801093-094*, *op. cit.*, par. 55, observing: "The appellants claim that they will not be able to access employment on return to Tuvalu, due to the general lack of employment opportunities. It is not, however, claimed that either of the appellants would be unable to access employment for discriminatory reasons". *Refugee Appeal No 801120-123*, *op. cit.*, par. 50.

Regarding the indiscriminate nature of the lack of employment in Kiribati or Tuvalu, vid. NEW ZEALAND REFUGEE STATUS APPEALS AUTHORITY: *Refugee Appeal No 72185*, *op. cit.*, par. 16; *Refugee Appeal No 72186*, *op. cit.*, par. 16; *Refugee Appeal Nos 72189–72195*, *op. cit.*, par. 13; *Refugee Appeal Nos 72179–72181*, *op. cit.*, par. 14; *Refugee Appeal No 72313*, *op. cit.*, par. 13; *Refugee Appeal No 72314*, *op. cit.*, par. 13; . REFUGEE REVIEW TRIBUNAL OF AUSTRALIA: 0907346 (2009) RRTA 1168, *op. cit.*, par. 22.

<sup>136</sup> Vid. IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No 800859*, *op. cit.*, par. 55:

"all employment is in short supply in Tuvalu, with 40 per cent of adult males unemployed and skilled people and university graduates unable to find work. The

Regarding the lack of public services, the complaints mainly concerned about the unavailability of drinking water. The Immigration and Protection Tribunal of New Zealand clarified "what is at the core of the right to safe drinking water":

"This does not require that safe drinking water comes necessarily from the tap. What is required is that the person is able to access, after whatever process is necessary, water that they are able to drink"<sup>138</sup>.

Based on the information available to the Tribunals, it was noted that, despite shortcomings, that was possible in both Tuvalu<sup>139</sup> and Kiribati<sup>140</sup>. Furthermore, it was

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country has an insignificant manufacturing base, exports almost nothing and relies heavily on overseas aid, remittances from overseas and an increasing pool of migrant workers. Dependence on subsistence farming remains a reality for a significant part of the population" [italics added].

Vid. also, IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No 801120-123*, *op. cit.*, par. 37, which, based on the 2014 Tuvalu Economic and Development Handbook (Volume 1) and a 1994 Household Income and Expenditure Economic Survey, affirms that "a significant proportion of the population live in poverty, with some sectors of society more affected than others, including those without access to a regular source of income, without access to land and those with large families".

And REFUGEE REVIEW TRIBUNAL OF AUSTRALIA: N95/09386 (1996) RRTA 3191, *op. cit.*; N96/10806 (1996) RRTA 3195, *op. cit.*, which took into consideration the U.S. Department of State, *Country Reports on Human Rights Practices for 1995*, 'Tuvalu', published February 1996, which states:

"The primarily subsistence economy relies mainly on coconuts, taro, and fishing. Tuvalu depends heavily on foreign aid, mainly from Australia, New Zealand, Japan, and Taiwan. Remittances from Tuvaluans working abroad as well as the sale of commemorative and thematic postage stamps and of fishing licenses to foreign vessels provide additional sources of foreign exchange. Tuvalu's isolation and meager natural resources severely limit prospects for economic self-sufficiency".

<sup>137</sup> IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No 801093-094*, *op. cit.*, par. 57; *Refugee Appeal No 800517-520*, *op. cit.*, par. 100.

<sup>138</sup> IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No 800859*, *op. cit.*, par. 74. Later confirmed in: *Refugee Appeal No 801120-123*, *op. cit.*, par. 48; *Refugee Appeal No 801093-094*, *op. cit.*, par. 57.

<sup>139</sup> NEW ZEALAND IMMIGRATION AND PROTECTION TRIBUNAL: *Refugee Appeal No 801120-123*, *op. cit.*, pars. 46-49; *Refugee Appeal No 801093-094*, *op. cit.*, pars. 23 and 54, which states that "[d]uring the dry season, the wife would pay the government to deliver safe drinking water"; *Refugee Appeal No 800859*, *op. cit.*, pars. 72-77.

Vid. also UNGA, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Addendum: Mission to Tuvalu (17-19 July 2012)* (A/HRC/24/44/Add.2), 1 July 2013, par. 12, noting: "As of 2011, 98 per cent of the population of Tuvalu had access to an improved source of water and 83 per cent had access to improved sanitation facilities", although there are still challenges in the country that need to be addressed to fully guarantee the enjoyment of the fundamental rights to water and sanitation.

<sup>140</sup> NEW ZEALAND IMMIGRATION AND PROTECTION TRIBUNAL: *Refugee Appeal No. 800413*, *op. cit.*, par. 73.

Vid. also UNGA, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Addendum: Mission to Kiribati (23-26 July 2012)* (A/HRC/24/44/Add.1), 28 June 2013, par. 15:

"In 2011, 66 per cent of the population of Kiribati had access to an improved water source. 8 Only South Tarawa and Christmas Island have public water supply infrastructures and are partially connected to a water network. This supply is usually provided only every other day for two hours per day. The rest of the population in South Tarawa and Christmas Island relies on rainwater supplies and well water. Another type of source is fresh groundwater lenses (see para. 17 below), which are

shown that Governments would have been assisting populations without any distinction in the event of extreme water shortages<sup>141</sup>, as well as enhancing longer-term solutions with the assistance of the international community, including the EU<sup>142</sup>, New Zealand or Australia<sup>143</sup>.

Nor did the reports indicate that SIDS such as Tuvalu or Kiribati were not taking steps to protect their respective populations from climate change, the rise in sea-level or other known environmental disasters. On the contrary, they show they were doing whatever was in their power to protect the lives of their citizens, even though much more remains to be done<sup>144</sup>.

### 1.3.3. The motivational element

The conclusion that the alleged discriminatory acts had no factual basis should be sufficient to abandon the reasoning as to whether the inhabitants of the low-lying

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the main sources of potable water for people on the outer islands, although the primary source of water supply varies between and within islands. People on outer islands also rely on open wells and unprotected rain catchment systems”.

<sup>141</sup> IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No. 800517-520, op. cit.*, par. 110:

“A recent example occurred in 2011, when Tuvalu experienced an extreme shortage of water forcing the government to declare a state of emergency. In conjunction with international partners such as Australia and New Zealand and the International Federation of the Red Cross and Red Crescent (“IFRC”), Tuvalu acted quickly. Red Cross volunteers delivered tarpaulin packs, water containers and 10,000 litres of water to the communal water tank on Nukulaelae Island during 35 its first assessment trip. The New Zealand Red Cross assisted with two emergency desalination units which were operating with full capacity within three hours of arrival and were producing 4,000 litres of clean water per day”.

<sup>142</sup> For example, the European Commission provided rainwater tanks to individual households under its European Development Fund projects, so that every household on Funafuti (Tuvalu's main and most populated atoll) had at least one 10,000-litre capacity rainwater tank. Vid. UNGA, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation... Mission to Tuvalu, op. cit.*, par. 16.

<sup>143</sup> IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No. 800517-520, op. cit.*, par. 111:

“(…) the Australian Government provided AUSS\$1.4 million to support Tuvalu’s long-term water security. Working with New Zealand, the Australian Government delivered one million litres of clean drinking water. The Australian Agency for International Development (“AusAID”) also funded 607 water tanks for residents on Funafuti with a further 150 water tanks for schools on outer islands. AusAID also financed three further solar powered desalination units which were hoped to ‘significantly improve supply of fresh water across the country and lessen the risk of another disaster’ ”.

<sup>144</sup> IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No 800517-520, op. cit.*, pars. 102-108; *Refugee Appeal No 801120-123, op. cit.*, pars. 46-52; *Refugee Appeal No 801093-094, op. cit.*, 49-54; *Refugee Appeal No. 800413, op. cit.*, par. 88; *Refugee Appeal No 800859, op. cit.*, pars. 68-71. Regarding the different measures taken by Kiribati or Tuvalu to protect their respective populations from climate change and sea-level rise, vid. footnote 105.



islands are a particular social group suffering persecution from their governments. However, for the sake of completeness, it is worth analysing the last element; namely the motivational one.

It is assuming that the gravity of the harm caused by the decisions of the governments of Kiribati or Tuvalu would result in a violation of internationally recognised human rights such as the right to work<sup>145</sup>, the right to drinking water<sup>146</sup> or the right to life<sup>147</sup>. This assumption would not be sufficient, however, to conclude that citizens belonging to the lowest social classes suffered persecution.

As stated by the New Zealand Immigration and Protection Tribunal: "Not every breach of a refugee claimant's human rights constitutes being persecuted"<sup>148</sup>. Therefore, evidence of discrimination in the enjoyment of human rights is not, in itself, sufficient<sup>149</sup>. As in any other case, the applicant would have to show not only that a violation of their human rights has occurred, but also that the violation links sufficiently to a conventional ground. That is, in the present case, that the discriminatory conduct is *motivated* by their membership to the lowest social class. Nevertheless,

"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 (...), the absence of the element of motivation means that persecution cannot be said to be occurring for reasons of membership of any such group"<sup>150</sup>.

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<sup>145</sup> The right to work is recognized in: GENERAL ASSEMBLY, *International Covenant on Economic, Social and Cultural Rights*, *op. cit.*, Article 6; UNGA, *Resolution 217 (III) [A] Universal Declaration of Human Rights...*, *op. cit.*, Article 23.

<sup>146</sup> The fundamental right nature of the right to water would be inferred from the right to an adequate standard of living and the right to the highest attainable standard of health (Articles 11 and 12 ICESCR). Vid. UNGA, *Resolution 64/292 The human right to water and sanitation, adopted by the General Assembly at its Sixty-fourth session (A/RES/64/292)*, 3 August 2010, 3pp. CESCR, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)* (E/C.12/2002/11), 20 January 2003.

<sup>147</sup> The right to life is enshrined in: UNGA, *Resolution 217 (III) [A] Universal Declaration of Human Rights...*, *op. cit.*, Article 3; UN, *International Covenant on Civil and Political Rights*, 16 December 1966, UNTS, Vol. 999, No. 14668, pp. 171-186 (English version), Article 6; UN, *Convention on the Rights of the Child*, 20 November 1989, UNTS, Vol. 1577, No.27531, pp. 44-61 (English version), Article 6; UN, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, UNTS, Vol. 2515, No. 44910, pp. 69-95 (English version), Article 10.

<sup>148</sup> IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No. 800091*, *op. cit.*, par. 99. Later confirmed in: *Refugee Appeal No 800859*, *op. cit.*, par. 51; *Refugee Appeal No 801093-094*, *op. cit.*, par. 52.

<sup>149</sup> Vid. footnote *supra*.

<sup>150</sup> REFUGEE REVIEW TRIBUNAL OF AUSTRALIA: 0907346 (2009) RRTA 1168, *op. cit.*, par. 52.

Vid also, NEW ZEALAND REFUGEE STATUS APPEALS AUTHORITY: *Refugee Appeal No 72185*, *op. cit.*, par. 17; *Refugee Appeal No 72186*, *op. cit.*, par. 17; *Refugee Appeal Nos 72189–72195*, *op. cit.*, par. 14;

Consequently, those situations in which it is not possible to identify any nexus between the discriminatory act and one of the Convention grounds cannot be qualified as persecution, and therefore victims will not be refugees. Of course, such a statement does not preclude the State author from eventually incurring in international responsibility for violation of fundamental international human rights law<sup>151</sup>. However, as the New Zealand Immigration and Protection Tribunal noted, while international refugee law exists "in close relationship with international human rights law, is not coextensive with it"<sup>152</sup>.

## 2. REGIONAL INSTRUMENTS GOVERNING THE SPECIFIC ASPECTS OF REFUGEES IN AFRICA, LATIN AMERICA, THE MIDDLE EAST AND ASIA

As has been noted, the Geneva refugee-concept is somewhat limited in its scope and rigid in its interpretation. Indeed, the 1967 Protocol sought to make it a truly international definition with a universal vocation. However, despite removing the temporal and geographical limitations relating to European refugees-flows that the 1951 Convention originally intended to respond, the catalogue of grounds for seeking refuge remained unchanged.

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*Refugee Appeal Nos 72179–72181, op. cit.*, par. 15. In all of them, the Tribunal argued that “[t]here must be a nexus between the membership of a particular social group in question and the persecution feared”.

<sup>151</sup> The possibility for individuals to file complaints against their States for violations of fundamental international human rights law is subject to the fulfillment of two conditions: (a) the State must be party to the treaty which embodies the fundamental right in question; (b) the State party must have recognized the competence of the Treaty Committee to receive and consider individual complaints. Vid. OHCHR, *Procedimientos para presentar denuncias individuales en virtud de tratados de derechos humanos de las Naciones Unidas*, Folleto informativo No. 7/Rev.2, Nueva York/Ginebra, 2013, 48 pp.

Currently, the UN human rights treaties that provide for the individual complaint mechanism are: UN, *Optional Protocol to the International Covenant on Civil and Political Rights*, 16 December 1966, UNTS, Vol. 999, No. 14668, pp. 302-305; UN, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, UNTS, Vol. 1465, No. 24841, pp. 112-209 (Article 22); UN, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, UNTS, Vol. 660, No. 9464, pp. 211-318, (Article 14); UN, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, 6 October 1999, UNTS, Vol. 2131, No. 20378, pp. 83-129; UN, *Optional Protocol to the Convention on the Rights of Persons with Disabilities*, 13 December 2006, UNTS, Vol. 2518, No. 44910, pp. 296-300 (English version); UN, *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 December 2006, UNTS, Vol. 2716, No. 48088, p. 70 (Article 31); UN, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990 UNTS, Vol. 2220, No. 39481, p. 122 (Article 77); UNGA, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, 10 December 2008, UNTS, Vol. 2922, No. 14531, pp. 29-102; UN, *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, 19 December 2011, UNTS, Vol. 2983, No. 27531, pp. 1-76.

Neither Tuvalu nor Kiribati, however, meets the two above-mentioned requirements for their nationals to file individual complaints for violations of their human rights. Regarding the status of ratification by Kiribati and Tuvalu of the UN human rights treaties listed above, vid. OHCHR, [Status of ratification of International Human Rights Treaties \(Interactive Dashboard\)](#) (last access: 16/02/2020).

<sup>152</sup> IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND, *Refugee Appeal No. 800091, op. cit.*, par. 99.

It soon became evident the difficulty to subsume in the Convention grounds the political and migratory scenarios of other regions of the world. As a result, these ended up developing their very own refugee instruments, which broaden the traditional refugee-definition by introducing new reasons for seeking and obtaining refuge, depending on the particularities of their respective regional contexts.

## **2.1. The geopolitical context surrounding the development of regional instruments on refuge**

### **2.1.1. Africa: the 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa**

The first and most important extension of the refugee definition took place in Africa before even two decades had passed since the 1951 Convention was approved. In the 1960s, the collapse of the colonial system, followed by the struggle for national independence initiated by the former colonies, convulsed the African continent.

"(...) Liberation movements sprang up in many countries across the continent, and as their activities were viewed as subversive by the erstwhile administrative powers, they invariably had to conduct their operations from outside their national boundaries. Independent African governments regarded the struggle of the liberation movement as legitimate, and readily offered asylum to their members"<sup>153</sup>.

By 1965 there were some 850,000 refugees in Africa and, by the end of the decade, the number had risen to around one million fleeing from racism, colonialism and apartheid<sup>154</sup>. The need for a convention to regulate the specific aspects of the refugee crisis in Africa focused mainly on the position to be taken on who should be considered a "refugee" in territories still under colonial rule or the domination of white minority regimes, particularly in the southern African region<sup>155</sup>.

The most controversial question was whether, besides those fleeing from the apartheid and racial persecution in general, there should also be considered as

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<sup>153</sup> UNHCR, *Persons covered by the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and by the Cartagena Declaration on Refugees (Submitted by the African Group and the Latin American Group)* (EC/1992/SCP/CRP.6), UNHCR, 6 April 1992, par. 4.

<sup>154</sup> UNHCR, "Chapter 2: Decolonisation in Africa", in: *The State of The World's Refugees 2000: Fifty Years of Humanitarian Action*, Oxford University Press, 01 January 2000, p. 52.

<sup>155</sup> OKOTH-OBBO, G., "Thirty years on: a legal review of the 1969 OAU Refugee Convention governing the specific aspects of refugee problems in Africa", *Refugee Survey Quarterly*, Vol. 20, No. 1, January 2001, par. 70.

"refugees" the so-called *Freedom fighters*; i.e. those who fought with arms for the liberation of the African continent from colonial rule<sup>156</sup>. Initially, several countries, especially those forming the so-called Front Line States, argued that States should not be legally obliged to grant refugee status to these freedom fighters, proposing that it be left to the discretion of each State<sup>157</sup>. Nevertheless, "the shared experience of struggling for liberation made African solidarity a moral imperative"<sup>158</sup> among the African States.

Therefore, the Convention Governing the Specific Aspects of Refugee Problems in Africa<sup>159</sup>, adopted by the Organization of African Unity<sup>160</sup> (OAU), was "a direct response to sentiments that the 1951 Convention definition neither reflected the African experience, nor adequately encompassed the range of refugees to whom African Governments wished to extend protection"<sup>161</sup>. Consequently, the new African refugee-definition was drafted in line with those sentiments. Hence, although it bases on the Genève Refugee Convention<sup>162</sup>, it enlarges the latter by incorporating a second paragraph which states:

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<sup>156</sup> Id.

<sup>157</sup> Id. Front Line States was a coalition of African countries, which included Angola, Botswana, Mozambique, Tanzania, Zambia and Zimbabwe, which from the 1960s to the early 1990s committed to ending apartheid and white minority rule in South Africa and Rhodesia.

<sup>158</sup> COOPER, J.B., "Environmental Refugees: Meeting the Requirements of the Refugee Definition", *op. cit.*, p. 496. She refers to Suhrke, A., "Global Refugee Movements and Strategies of Response", in: Kritz, M.M. (ed.), *U.S. Immigration Policy Global and Domestic Issues*, Lexington Books, 1983, p. 160, who explains the unique political background of the OAU Convention as justification for the lack of similar subsequent changes in the refugee definitions of other countries (footnote 79).

<sup>159</sup> OAU, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September, 1969, UNTS, Vol. 1001, No. 14691, pp. 45-52. The OAU Convention entered into force on 20 June 1974 and has been ratified by forty-six African States to date. The list of countries which have signed, ratified or acceded to the Convention can be consulted at AU, [OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.pdf](#) (last access: 08/05/2022).

<sup>160</sup> The OAU was established on 25 May, 1963, in Addis Ababa, on signature of the OAU Charter by representatives of 32 governments. It was disbanded on 9 July 2002 by its last chairperson, South African President Thabo Mbeki, and replaced by the African Union consisting of 55 member States. Information extracted from AU, [About the African Union](#) (last access 14/03/2020).

<sup>161</sup> EDWARDS, A., "Refugee Status Determination in Africa", *op. cit.*, p. 209. Vid. also the report addressed to the Council of Ministers by the Administrative Secretary-General of the OAU, par. 8, asserting the necessity of founding a new definition for the term "refugee" which takes into account the specific aspects of the refugee situation in Africa, as it is transcribed in: JACKSON, I.C., *The Refugee Concept in Group Situations*, Refugees and Human Rights Series, vol. 3, Brill, 1999, p. 189.

Cf. OKOTH-OBBO, G., "Thirty years on: a legal review of the 1969 OAU Refugee Convention governing the specific aspects of refugee problems in Africa", *op. cit.*, par. 70, who argues that there is no historical record to support such statements that the OAU Convention was a product of dissatisfaction with the 1951 Convention. In particular, he denies that the drafters of the OAU Convention sought to overcome with it the personalized and individualized nature of the 1951 definition or its alleged inability to accommodate the massive influx of refugees or persons fleeing for reasons such as general violence, war and conflict.

<sup>162</sup> The Genève definition of refugee was incorporated in Article I (1) of the OAU Convention. As recognized in the Preamble of the latter, "the United Convention of 28 July 1951, as modified by the

"2. 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"<sup>163</sup>.

Like the 1951 Convention in its time, the African refugee-definition fully mirrors the political context in which the OAU Convention was negotiated. In that way, the new set of refugee grounds added by the OAU Convention reveals, on the one hand, the African countries' latent fear of suffering a new colonial invasion, which could jeopardise the recently achieved independence. On the other hand, their shared solidarity in protecting those who were fighting or would fight in the future against any possible external interference<sup>164</sup>.

### **2.1.2. Latin America: the 1984 Cartagena Declaration on Refugees**

Nearly a decade of civil wars in the Central American region during the 1970s resulted in more than 2 million people displaced by conflict and violence. Of these, only 150,000 were recognised and protected as refugees<sup>165</sup>. In addition to this massive displacement of people in need of international protection, most Latin American countries had not yet ratified the 1951 Convention or its 1967 Protocol. Besides, they also lacked domestic legislation governing both the substantive aspects of refugee

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Protocol of 31 January 1967, constitutes the *basic and universal instrument relating to the status of refugees (...)* [italics added], being the OAU Convention its "(...) effective regional complement in Africa (...)" [art. VIII (2)].

Vid. also UNHCR, "Chapter 2: Decolonisation in Africa", *op. cit.*, p. 56, highlighting the importance of the influence exerted by UNHCR during the negotiation of the OAU Convention in order to keep the supremacy of the 1951 Convention, as it feared that "the emergence of a regional instrument that in any sense competed with the 1951 Convention would impair the universal character of the UN Convention".

<sup>163</sup> OAU, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, *op. cit.*, Article I (2).

<sup>164</sup> Vid. OKOTH-OBBO, G., "Thirty years on: a legal review of the 1969 OAU Refugee Convention governing the specific aspects of refugee problems in Africa", *op. cit.*, par. 70, who states that the willingness to protect "freedom fighters" is what produced the African expanded definition.

<sup>165</sup> ORTIZ MIRANDA, C., "Toward a Broader Definition of Refugee: 20th Century Development Trends", *California Western International Law Journal*, vol. 20, n° 2, 2015, p. 324, footnote 51, quoting a Report on the International Conference on Central American Refugees (Guatemala City May 29-31, 1989), prepared by Rev. Msgr. DiMarzio, Executive Director, Migration and Refugee Services, United States Catholic Conference.

Vid. also, MONDELLI, J.I., *La fuerza vinculante de la definición regional de la Declaración de Cartagena sobre Refugiados (1984)*, San José (Costa Rica), unedited version, provisional publication, Diciembre 2018, p. 4, who points out that most of these people were sheltered in Costa Rica (41,000), Honduras (37,000) and Mexico (43,000), with smaller but significant numbers in Belize, El Salvador, Guatemala and Nicaragua.

status, such as the requirements for access to protection or the legal status of protected persons, as well as the procedural aspects of determining such status<sup>166</sup>.

The exodus of thousands of people fleeing from the violence and armed conflicts that ravaged the region revealed the inability of the Latin American asylum system – both diplomatic and territorial - to respond effectively to situations of massive influxes of people in need of protection<sup>167</sup>. At the same time, it showed the legal limitations of the 1951 Convention in extending its scope to other vulnerable groups that did not fit the definition of a refugee<sup>168</sup>.

To address the legal challenges and humanitarian needs posed by that massive displacement of persons in Central America, the Government of Colombia sponsored a *Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*<sup>169</sup>. The international meeting was arranged in cooperation with the University of Cartagena de Indias, the Regional Center for Third World Studies and the UNHCR<sup>170</sup>.

The meeting took place in the city of Cartagena de Indias (Colombia), between 19 and 22 November 1984. It was attended by government representatives from ten countries in the region (Belize, Colombia, Costa Rica, El Salvador, Guatemala,

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<sup>166</sup> MONDELLI, J.I., *op. cit. supra*, p. 5. ARBOLEDA, E., “The Cartagena Declaration of 1984 and its similarities to the 1969 OAU Convention – A comparative perspective”, *International Journal of Refugee Law*, vol. 7, Special Issue, 1995, pp. 89 and 91, observing that the regional asylum system, composed of the Treaty of Montevideo of 1889 and a series of subsequent regional conventions dealing specifically with asylum and asylees, was conceived to protect victims of political persecution, mostly high-profile or well-known persons from social or political elites such as politicians, labour leaders and intellectuals who had fled repressive regimes. Not to respond to the massive waves of ethnically mixed people from rural areas, who were fleeing from indiscriminate violence and who mostly concentrated in the remote areas bordering their country of origin.

<sup>167</sup> Vid. footnote *supra*.

<sup>168</sup> ARBOLEDA, E., *op. cit. supra*, p. 90 *in fine*. Vid. also MONDELLI, J.I., *op. cit. supra*, p. 4. According to the author, of the nearly 2 million displaced persons in the region, the following groups of people were left outside Geneva's protection system: (1) a first group of people who, although qualified as refugees, never sought recognition and assistance as such; (2) a second group of people who had voluntarily decided to return to their countries of origin (repatriates), but who needed assistance. Based on the figures provided by the respective governments, there were 13,500 Guatemalans, 35,000 Nicaraguans and 13,000 Salvadorans in the region; (3) lastly, a third group of internally displaced persons who, although subject to the jurisdiction of their respective countries, also needed assistance.

<sup>169</sup> ARBOLEDA, E., *op. cit. supra*, pp. 92 *in fine* and 93. Previously, in 1981, a Colloquium on the Central American crisis had been held in Mexico. It was organized by the Mexican Ministry of Foreign Affairs, in cooperation with the Institute of Legal Research of the National University of Mexico, under the auspices of UNHCR (*ibid.* pp. 91 *in fine* and 92).

<sup>170</sup> MONDELLI, J.I., *La fuerza vinculante de la definición regional de la Declaración de Cartagena...*, *op. cit.*, p. 4. ORTIZ MIRANDA, C., “Toward a Broader Definition of Refugee: 20th Century Development Trends”, *op. cit.*, p. 323.

Honduras, Mexico, Nicaragua, Panama and Venezuela<sup>171</sup>), together with a large group of legal experts from twelve Latin American countries and a high-level UNHCR delegation<sup>172</sup>. The Colloquium concluded with the adoption of a declaration of principles known as the *Cartagena Declaration on Refugees*<sup>173</sup>.

The Cartagena Declaration reaffirms the nuclear nature of both the Refugee Convention and its 1967 Protocol on refugees' protection. In this regard, it encourages the Latin-American States to ratify or adhere to both international instruments, if they are not yet States Parties. At the same time, it urged them "[t]o promote within the countries of the region the adoption of national laws and regulations facilitating the application of the Convention and the Protocol (...)"<sup>174</sup>. However, the Cartagena Declaration also recognises that

"(...) in view of the experience gained from the massive flows of refugees in the Central American area, *it is necessary to consider enlarging the concept of a 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 the elements of the 1951 Convention and the 1967 Protocol, *includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order*"<sup>175</sup>.

Although the Cartagena Declaration does not have the nature of an international treaty and is therefore not binding, its influence as a regional protection instrument has

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<sup>171</sup> MONDELLI, J.I., *op. cit. supra*, p. 4.

<sup>172</sup> Id. Vid. also footnotes 5 and 6, which list the names and countries of origin of the experts, as well as the names and positions of the members who made up the UNHCR delegation.

<sup>173</sup> UNHCR, *Cartagena Declaration on Refugees*, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena de Indias (Colombia), 22 November 1984.

The regional background to the Cartagena Declaration includes the conclusions and recommendations of the *Coloquio sobre el Asilo y la Protección Internacional de Refugiados en América Latina* (Tlatelolco, Mexico City, 11 May 1981), as well as the conclusions and recommendations of the *Seminario sobre Asilo Político y Situación del Refugiado* (La Paz, Bolivia, 19 April 1983). In both, the interest of Latin American countries in extending the scope of the traditional definition of refugee to other situations of mass influx of displaced persons is already evident. Vid. MONDELLI, J.I., *La fuerza vinculante de la definición regional de la Declaración de Cartagena...*, *op. cit.*, p. 5.

<sup>174</sup> Conclusions III (1) and (2) of the Cartagena Declaration.

<sup>175</sup> *Ibid.*, III (3) [italics added].

not been negligible<sup>176</sup>. According to UNHCR, sixteen Central and Latin American States have incorporated the expanded definition of refugee into their domestic legislation<sup>177</sup>. Further, international actors such as the Organization of American States, the UN General Assembly or the UNHCR's Executive Committee have expressly endorsed the Cartagena Declaration<sup>178</sup>.

Likewise, since the adoption of the Cartagena Declaration in 1984, States in Central and Latin America have been adopting new Declarations on the occasion of significant anniversaries of the Cartagena Declaration<sup>179</sup>. The latest, the Brazilian Declaration and Plan of Action<sup>180</sup>, was adopted on 3 December 2014. It expressly refers to the importance of climate change and natural disasters as a driver of cross-border displacement, as well as to the challenge this poses for the region, recognising "the need to conduct studies and to give more attention to this matter, including by UNHCR"<sup>181</sup>.

### **2.1.3. The Middle East and Asia: the Bangkok Principles on the status and treatment of refugees and the Arab Convention on Regulating Status of Refugees in the Arab Countries**

The flight of hundreds of Arab-Palestinians, seeking refuge from the Israeli army under the shelter of the borders of neighbouring Arab States, led to several international meetings between governmental representatives of the so-called Arab world, which concluded with the adoption of several regional refugee-agreements.

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<sup>176</sup> Vid., MONDELLI, J.I., *La fuerza vinculante de la definición regional de la Declaración de Cartagena...*, *op. cit.*, Resumen Ejecutivo, p. 1, who concludes that "(...) the regional definition is currently binding on Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela, because it has acquired the status of a particular rule of customary international law" [self-translation of the original in Spanish]. Vid. also ARBOLEDA, E., "The Cartagena Declaration of 1984 and its similarities to the 1969 OAU Convention – A comparative perspective", *op. cit.*, pointing out that the Cartagena Declaration confirms customary legal rules (p. 94) and has even led to the amendment of immigration laws in several Latin American countries (p. 98).

<sup>177</sup> Vid. UNHCR, *Definición regional de refugiado (Cartagena): Países de América Latina que la han incorporado a su legislación nacional*. According to it, the Latin American States that have transposed the Cartagena definition into their respective legal systems are: Bolivia, Ecuador, México, Belice, Brasil, Guatemala, Paraguay, El Salvador, Peru, Honduras, Argentina, Uruguay, Nicaragua, Colombia, Chile y Costa Rica.

<sup>178</sup> NICHOLSON, F.; KUMIN, J, "[A guide to international refugee protection and building state asylum systems](#)", *Handbook for Parliamentaries*, No. 27, UNHCR; Inter-Parliamentary Union, 2017, p. 21 (last access: 07/01/2020).

<sup>179</sup> Id.

<sup>180</sup> UNHCR, *A framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean (Brazil Declaration and Plan of Action)*, Brasilia, 3 December 2014, 19 pp.

<sup>181</sup> Ibid., p 3 *in fine*.



The immediate objective of these meetings was to address the need to protect Arabs fleeing from Palestine. However, this initial concern was soon overtaken by the broader issue of the treatment that intraregional refugees should receive<sup>182</sup> at a time when the Arab States were still reluctant to ratify the 1951 Convention<sup>183</sup>, which was perceived as an instrument designed by and for the West.

The first of those regional meetings took place in March 1964, at the behest of the Government of the Arab Republic of Egypt. It requested the Asian-African Legal Consultative Committee<sup>184</sup> to pronounce itself on the status and treatment of the Arabs coming from Palestine, whom Egypt had sheltered after the outbreak of the Arab-Israeli war in 1948<sup>185</sup>. The Committee, on the initiative of UNHCR, took the opportunity to address the issue of refugees in Asia and Africa<sup>186</sup>, adopting in August 1966 a set of non-binding legal recommendations known as the *Bangkok Principles*, which were reviewed in 1970, 1987<sup>187</sup> and, more recently, in 2001<sup>188</sup>.

The same thing happened in the 1990s when the "First Intifada" (1987-1994), also known as the Stones' Uprising, confronted the Arab population, mostly young people, living in the Gaza Strip and the West Bank with the Israeli militia. The confrontation led to new flows of Arab refugees to neighbouring countries<sup>189</sup>. In response to the new situation, two additional texts on refugee issues were adopted at the regional level: *the 1992 Cairo Declaration on the Protection of Refugees and Displaced Persons in the*

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<sup>182</sup> SEN, B., "Protection of refugees: Bangkok Principles and after", *Journal of the Indian Law Institute*, vol. 34, n° 2, (April-June 1992), p. 187.

<sup>183</sup> EL CHEMALI, L., "The Arab Refugee Paradox: An overview of refugee legislation in the Arab Middle East", *Völkerrechtsblog: International Law & International Legal Thought*, 14 November 2016.

Vid. also UNTC, [Status of the Convention relating to the Status of Refugees](#) (last access: 08/05/2022). According to it, only eight of the twenty-two States that make up the Arab League are parties to the 1951 Convention: Algeria, Djibouti, Egypt, Mauritania, Morocco, Somalia, Sudan, Tunisia and Yemen. In addition, there are other Middle East non-Arab Muslim countries as States Parties, such as Iran or Turkey.

<sup>184</sup> The Asian-African Legal Consultative Organization (AALCO), originally known as the Asian-African Legal Consultative Committee, is an inter-governmental organization which had emerged as an outcome of the historic Bandung Conference, held in Indonesia, in April 1955. Established in November 1956, its purpose is to serve as an advisory body to its member States in the field of international law and as a forum for Asian-African co-operation in legal matters of common concern. AALCO presently have forty-seven countries as its members. Information extracted from AALCO, [About AALCO](#) (last access: 09/05/2022).

<sup>185</sup> SEN, B., "Protection of refugees: Bangkok Principles and after", *op. cit.*, p. 187.

<sup>186</sup> *Id.*

<sup>187</sup> *Ibid.*, p. 188.

<sup>188</sup> AALCO, *Final text of the AALCO's 1966 Bangkok Principles on status and treatment of Refugees*, adopted by the Committee at its Fortieth session, 24 June 2001.

<sup>189</sup> EL CHEMALI, L., "The Arab Refugee Paradox: An overview of refugee legislation in the Arab Middle East", *op. cit.*

*Arab World*<sup>190</sup>, and the 1994 Arab Convention on Regulating the Status of Refugees in the Arab Countries, which never entered into force<sup>191</sup>.

Both the Arab Refugee Convention and the Bangkok Principles, as amended in its 2001 version, adopt the broader definition contained in the 1969 OAU Refugee Convention. However, the Arab Refugee Convention has the particularity of extending it even further by expressly including individuals fleeing natural disasters<sup>192</sup>.

## 2.2. Fitting environmentally displaced persons in regional refugee instruments

Regional definitions of the refugee notion pose fewer interpretative difficulties than the traditional Geneva concept in terms of including environmentally displaced persons in its scope.

Firstly, the double objective/subjective element contained in the formula "owing to a well-founded fear of being persecuted", used by the 1951 Convention, is completely objectified in the regional definitions of a refugee. The latter refers to the objective fact of having been "compelled to leave his place of habitual residence"<sup>193</sup>. The change in

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<sup>190</sup> UNHCR, *Declaration on the Protection of Refugees and Displaced Persons in Arab World*, adopted by the Group of Arab Experts at the Fourth Arab Seminar on "Asylum and Refugee Law in the Arab World", Cairo (Arab Republic of Egypt), from 16 to 19 November 1992. This Declaration encourages Arab States to ratify the 1951 Convention and its 1967 Protocol (art. 4), while recommending that

"(...) pending the elaboration of an Arab Convention relating to refugees, Arab States adopt a broad concept of "refugee" and "displaced person" as well as a minimum standard for their treatment, guided by the provisions of the United Nations instruments relating to human rights and refugees as well as relevant regional instruments" (art. 6).

<sup>191</sup> LAS, *Arab Convention on Regulating Status of Refugees in the Arab Countries*, 1994. According to Article 17, "The Convention shall go into effect thirty days from depositing with the General Secretariat of the League of Arab States ratification or accession instruments by one third of the member-states of the League of Arab States" [italics added]. However, according to information provided in REFworld, [Arab Convention on Regulating Status of Refugees in the Arab Countries](#) (last access: 09/05/2022), the Convention has not been ratified by any Member State so far.

<sup>192</sup> Vid. Article 1 from the Arab Refugee Convention, and Article I (2) from the Bangkok Principles.

<sup>193</sup> MOSES OKELLO, J.O., "La Convención de la OUA de 1969 y el desafío permanente de la Unión Africana", *Revista Migraciones Forzadas*, n° 48, December 2014, p. 73, noting that the OAU Convention's definition of refugee focuses "on the objective circumstances compelling flight and does not link flight to each asylum seeker's subjective interpretation of the danger arising from events surrounding their person" [self-translation of the original in Spanish]. Vid. also, RWELAMIRA, M.R., "Two Decades of the 1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa", *International Journal of Refugee Law*, vol. 1, Issue 4, 1989, p. 559. OKOTH-OBBO, G., "Thirty years on: a legal review of the 1969 OAU Refugee Convention governing the specific aspects of refugee problems in Africa", *op. cit.*, par. 71, noting the expanded definitions "focuses on the *objective circumstances* which have compelled flight" [italics added].

Cf. BOND RANKIN, M., "Extending the limits or narrowing the scope? Deconstructing the OAU refugee definition thirty years on", *op. cit.*, pp.21-23. EDWARDS, A., "Refugee Status Determination in Africa",

wording is not minor either, since the disappearance of the notion of persecution from the regional texts removes the main obstacle presented by the Geneva Convention. In other words, there is no longer any need to resort to forced interpretations to qualify environmental disruptions as acts of persecution.

Consequently, the requirement to identify an "agent of persecution" is also eliminated. This, in turn, removes the need to establish a causal link between the actions of a State, or even the international community as a whole, and the environmental disruption leading to displacement. A link that, as shown, is not easy to prove in the context of natural disasters or global phenomena such as climate change, where the potential source of harm is not the deliberate actions of States<sup>194</sup>.

The reason why it is no longer necessary to identify a persecuting agent is that in the expanded definitions of refugee the risk from which individuals are seeking protection arises from external situations; in contrast to the Geneva definition, where the risk comes from a third subject. More graphically, based on the regional texts, refugee status is granted for the objective fact of being "in the wrong place at the wrong time"<sup>195</sup> and not for fear of being persecuted by anyone<sup>196</sup>.

Therefore, there is also no need to carry out an individual risk assessment, as defined in the 1951 Convention<sup>197</sup>, to prove that the fear suffered by those seeking

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*op. cit.*, pp. 228-230. They both wonder if the adjective "compelled" could leave room for a subjective component in the OUA refugee definition.

<sup>194</sup> Vid. OKOTH-OBBO, G., "Thirty years on: a legal review of the 1969 OAU Refugee Convention governing the specific aspects of refugee problems in Africa", *op. cit.*, par. 71, highlighting that one of the advantages of the broadened definition is it "includes within its scope even accidental situations not necessarily based on deliberate State actions; and because the source of danger need not be the actions of a State or its agents (...)".

<sup>195</sup> UNHCR, "Interpretación de la definición ampliada de refugiado contenida en la Declaración de Cartagena sobre Refugiados de 1984", *Resumen de las conclusiones de la reunión de expertos sobre la interpretación de la definición ampliada de refugiado de la Declaración de Cartagena de 1984, celebrada en Montevideo, Uruguay, los días 15 y 16 de octubre de 2013*, 7 Julio 2014, par. 9 (last access: 23/01/2020), observing that the determination of refugee status in the Cartagena Declaration requires an examination of both the situation in the country of origin, which must correspond to one of the five situations contained in the definition of refugee; and the particular exposure of the person or group of persons seeking protection to the risks inherent in that situation. The risks taken into consideration also include indirect effects, such as poverty, economic decline, inflation, violence, disease, food insecurity and malnutrition, and displacement.

<sup>196</sup> ARBOLEDA, E., "The Cartagena Declaration of 1984 and its similarities to the 1969 OAU Convention – A comparative perspective", *op. cit.*, p. 94: "An individual does not have to demonstrate the link between his or her personal status and the possibility of persecution or serious harm to him or her".

<sup>197</sup> UNHCR, *Reunión de expertos. Interpretación de la definición ampliada de refugiado contenida en la Declaración de Cartagena...*, *op. cit.*, par. 28. UNHCR, *Legal considerations...*, *op. cit.*, footnote 57, noting that the regional refugee definitions "[do] not require a personalized or discriminatory threat or risk of harm" [verb form changed].

refuge is well-founded<sup>198</sup>. As commented, in the regional definitions, the risks from which applicants receive protection arise from situations that are indiscriminate and collective nature. In other words, they represent in themselves a threat to anyone exposed to them<sup>199</sup>. Therefore, "the proximity – temporal and/or spatial/geographical - or the imminence of the threat would be sufficient to justify the need for international protection"<sup>200</sup>.

For the same reason, as the new "motives" introduced as causes of refuge no longer refer to inherent or personal characteristics of applicants but to objective situations prevailing in the country of origin which are unrelated to them, the need to verify the motivational element behind the persecution also disappears<sup>201</sup>.

In conclusion, the regional refugee-instruments make it easier to obtain refugee status on environmental grounds and in many more cases than the Geneva Convention. Under the latter, the only way to obtain shelter in cases of environmental displacement was to prove that a State or non-state actor had caused or used the environmental

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<sup>198</sup> ARBOLEDA, E., "The Cartagena Declaration of 1984 and its similarities to the 1969 OAU Convention – A comparative perspective", *op. cit.*, p. 94, stating that refugee applicants does not have to justify their fear of persecution on the basis of broader regional definitions. OKOTH-OBBO, G., "Thirty years on: a legal review of the 1969 OAU Refugee Convention governing the specific aspects of refugee problems in Africa", *op. cit.*, par. 71, noting that "the fear of danger is not linked to the individual's personal subjective reaction to the adversity he perceives".

<sup>199</sup> UNHCR, *Reunión de expertos. Interpretación de la definición ampliada de refugiado contenida en la Declaración de Cartagena...*, *op. cit.*, par. 8. BOND RANKIN, M., "Extending the limits or narrowing the scope? Deconstructing the OAU refugee definition thirty years on", *op. cit.*, pp. 6-7. Talking about the paradigm shift that the OAU Convention represents in relation to the Geneva Convention, he highlights that the individual and their freedoms, which are at the core of the entire protection regime of the 1951 Convention, including the refugee-definition, are replaced in the OAU Convention by a community approach, focusing on collective security and the macro-political phenomena in Africa.

<sup>200</sup> UNHCR, *Reunión de expertos. Interpretación de la definición ampliada de refugiado contenida en la Declaración de Cartagena...*, *op. cit.*, par. 28 [self-translation of the original in Spanish], adding that, in most cases, situational events will be such that they will automatically establish the link between them and the risk they pose to people. In this regard, the UNHCR has noted:

"Whether the effects of climate change or disasters are severe enough to compel a person to leave and seek protection in another country - namely, whether a risk of serious harm is established - depends on how the disaster unfolds and develops; the geographical proximity of the disaster to the person's place of habitual residence; how it affects their life, physical integrity, liberty and enjoyment of other human rights; and how the State responds" (vid. UNHCR, *Legal considerations...*, *op. cit.*, par. 17).

<sup>201</sup> UNHCR, *Reunión de expertos...*, *op. cit. supra*, par. 29, noting that the Cartagena refugee definition does not require a discriminatory, intentional or individualized aspect of the feared harm. Therefore, its focus is not on the personal circumstances of the individual fleeing, but on the objective circumstances in the country of origin. Vid. also, BOND RANKIN, M., "Extending the limits or narrowing the scope? Deconstructing the OAU refugee definition thirty years on", *op. cit.*, p. 7, who argues that the OAU Convention definition of a refugee, "rather than focusing on the 'persecuted individual', it looks to a series of events which disrupt society as a whole and which present a generalized threat to an indefinite class of people".

disturbance as a form of persecution because of race, religion, nationality, political opinion or membership of a particular social group. In contrast, under the regional refugee-instruments, it would be sufficient for the applicant to be objectively exposed to the indiscriminate risk created by the environmental disruption, and for the latter to have reached a degree of compulsion sufficient to "compel" those concerned to leave their place of residence.

***Excursus: the clause on "events seriously disturbing public order". Moving towards an environmental public order?***

Notwithstanding the above, except for the Arab Convention, which does expressly mention natural disasters as a cause of refuge, neither the OAU Convention nor the Cartagena Declaration or the Bangkok Principles includes environmental disruptions in their extended catalogues of grounds for requesting refugee status.

Nevertheless, the OAU Convention and, by extension, the other international instruments that have drawn on it, do include a reference to other "events seriously disturbing public order". The legally indeterminate content of this expression has led to some debate as to whether this closing clause would allow for the inclusion of environmental disruptions within the category of "events" capable of seriously disturbing public order.

At first glance, it seems that an isolated interpretation of the public order clause provides an affirmative answer to the question. After all, public order understood as *social peace or public tranquillity*<sup>202</sup> can be as disturbed by external aggression, internal

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<sup>202</sup> UNHCR, *Reunión de expertos. Interpretación de la definición ampliada de refugiado contenida en la Declaración de Cartagena...*, *op. cit.*, par. 24, observing: "While the notion of 'public order' does not have a universally accepted definition, it can be interpreted in the context of the Cartagena refugee definition as a reference to peace and security/stability of society and the normal functioning of State institutions" [self-translation of the original in Spanish and italics added].

Vid. also ATIENZA, M., "Un supuesto enigma jurídico: el orden público", *Blog Atienza*, rewriting of the paper presented by the author at the *III Colloquium between Civilists and Philosophers of Law*, held in Santiago de Compostela, 27 and 28 November 2018, pp. 5-6. According to him, the expression "public order" is used in legal contexts with two different meanings: either with the meaning it has in ordinary language (public order as social peace, as public tranquillity), which would be the meaning with which it is used in the regional expanded definition of refugee; or with an exclusively technical-legal meaning, so that the expression "public order" fulfils the function of marking a limit or establishing an exception (for example, "the rule of foreign law shall apply unless it is contrary to public order").

For a study of "public order" as a boundary in international law, vid. JIMÉNEZ SOLARES, E., "El orden público internacional (OPI). Fuente de las normas del Derecho Internacional de los Derechos Humanos", in: Becerra Ramírez, M. (coord.), *Fuentes del derecho internacional desde una visión latinoamericana*, Instituto de Investigaciones jurídicas UNAM, 2018, pp. 15-37.

conflict or a situation of generalised violence or foreign domination, as by an environmental disruption – at least in the case of natural disasters such as an earthquake or a flood<sup>203</sup>.

However, an *ejusdem generis* or joint interpretation of the expanded refugee-definition as a whole leads to a very different conclusion. *Ejusdem generis* is the Latin form for "of the same kind" <sup>204</sup>. In the context of interpreting norms, this aphorism means that general words, which follow specific words in a legal enumeration, should be interpreted as including only objects of a similar nature to those listed by the preceding specific words<sup>205</sup>. Thus, the sentence "events seriously disturbing public order" should be interpreted as covering only situations which, *ejusdem generis*, are of the same or similar nature to those specific situations expressly mentioned in both the OAU Convention and the Cartagena Declaration as reasons for refuge<sup>206</sup>.

The OAU Convention refers to external aggression, occupation and foreign domination [art. I (2)]; while the Cartagena Declaration mentions generalised violence, foreign aggression, internal conflicts, and massive violation of human rights [Conclusion III (3)]. Comparing the different situations listed, they all have in common that, in addition to seriously disturbing public order<sup>207</sup>, they are intentionally human-

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<sup>203</sup> EDWARDS, A., "Refugee Status Determination in Africa", *op. cit.*, p. 226, who comes to a similar conclusion but on the premise that it is not the disturbance on the environment per se, but "(...) looting and general crimes [that] often follow such events, including in some cases the complete collapse of the sistema of law and order", what seriously disturbs public order. BOND RANKIN, M., "Extending the limits or narrowing the scope? Deconstructing the OAU refugee definition thirty years on", *op. cit.*, pp. 8 and 20, arguing that: "a plain reading [of the OAU Convention's refugee definition] does not immediately suggest the exclusion of natural disasters why an earthquake or flood does not seriously disturb public order" [bracketed text added].

<sup>204</sup> WEX LEGAL DICATIONARY, Ejusdem Generis (last access: 21/03/2020).

<sup>205</sup> Id., giving the following example: "if a law refers to automobiles, trucks, tractors, motorcycles, and other motor-powered vehicles, a court might use *ejusdem generis* to hold that such vehicles would not include airplanes, because the list included only land-based transportation".

<sup>206</sup> Cf. BOND RANKIN, M., "Extending the limits or narrowing the scope? Deconstructing the OAU refugee definition thirty years on", *op. cit.*, p. 20, who arrives to the same conclusion using also that interpretation maxim. Similarly, EDWARDS, A., "Refugee Status Determination in Africa", *op. cit.*, p. 217, but applying the interpretative rule, *noscitur a sociis* ("it is known by its associates"), in which the meaning of the words of a law are to be interpreted in the context of the words surrounding it.

<sup>207</sup> Indeed, a participant in the Colloquium at which the Cartagena Declaration was adopted postulated that, since the other four situational events always presuppose or imply a disturbance of public order, it would be sufficient to reach that threshold of "serious disturbance" for the Cartagena refugee definition to be activated. This approach, while correct, was rejected because of the risk that the other four situations in the definition would become immaterial, as well as the fact that the "public order" ground is the one least applied by State practice and therefore seems to have the least consensus as to its interpretation. Vid. UNHCR, *Reunión de expertos. Interpretación de la definición ampliada de refugiado contenida en la Declaración de Cartagena...*, *op. cit.*, par. 27.

made situations involving acts of violence. As has already been said, these characteristics are not typical of environmental disruptions<sup>208</sup>. As Bond Rankin rightly highlights,

"If a natural disaster can be put into legal terms, it is probably best described as force majeure or 'an event or effect that can be neither anticipated nor controlled'. Unless otherwise stated, a force majeure usually considered to be outside of the responsibility of a state and do not therefore give rise to a duty to grant asylum".<sup>209</sup>

The exception, as already noted in the discussion of the 1951 Geneva Convention, is where environmental disruptions are caused or exploited by a State or non-state actor as an instrument to seriously undermine public order. In such cases, environmental disruptions are merely an instrument in the service of a political purpose<sup>210</sup>.

The drafting process of the OAU Convention and the Cartagena Declaration also seems to support a restrictive interpretation of the public order clause, which would only include human-made events that threaten the security or stability of society<sup>211</sup>.

In the case of the OAU Convention, the historical account given by the OAU Administrative General Secretariat in its 1968 report shows the various drafts of the African refugee definition before the final version<sup>212</sup>. The new draft prepared by the General Secretariat, after the Council of Ministers had rejected the previous one at its

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Regarding the OAU Convention, vid. EDWARDS, A., "Refugee Status Determination in Africa", *op. cit.*, p. 218, who agrees that the effect of interpreting the final ground under the OAU Convention as a catch-all category would be to render the other three grounds superfluous.

<sup>208</sup> In the same vein, vid. BOND RANKIN, M., "Extending the limits or narrowing the scope? Deconstructing the OAU refugee definition thirty years on", *op. cit.*, p. 20, who argue that "the technical meaning of 'public order' suggests a reference to social and political unrest caused by human activities and not by nature". RWELAMIRA, M.R., "Two Decades of the 1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa", *op. cit.*, pp. 557-558, who states: "The phrase events seriously disturbing public order is designed to cover a variety of man-made conditions which do not allow people to reside safely in their countries of origin" [italics added].

<sup>209</sup> BOND RANKIN, M. *op. cit. supra*, p. 20.

<sup>210</sup> *Ibid.*, p. 21, to whom, for example, "[t]he definition would seem to capture the effects of a famine caused by state action since this is merely using nature as a tool to a political end". He cites as an example the famine that took place in Ethiopia in the 1980s. According to him, while the media attributed the lack of food to the drought, the truth is that the famine was being used by the government to force a process of collectivization of the land, which was masked behind the backdrop of the drought (vid. footnote 142).

<sup>211</sup> Vid. UN, *Vienna Convention on the Law of Treaties*, 23 May 1969, UNTS, Vol. 1155, No. 18232, pp. 331-513. According to Article 32, which deals with supplementary means of interpretation of treaties, when the ordinary interpretative criteria (set out in Art. 31) leave the meaning of the term interpreted ambiguous or obscure, its meaning should be determined in the light of the preparatory work of the treaty and the circumstances of its conclusion.

<sup>212</sup> OAU, *Report of the Administrative Secretary-General for the Meeting of the OAU Commission on Refugees held in Addis Ababa from 17th to 23rd June 1968* (Doc. CM/228), September 1968, 29 pp. [Includes Annex I-III (Pg. 5-23), Add. 1 (Pg. 24-29)],

September 1967 meeting as too "long and complex"<sup>213</sup>, included "a completely new paragraph 2 (...) suggested by a Member State" to Article I on the refugee definition<sup>214</sup>. Among the grounds for claiming refugee status, this version listed that of fleeing from "internal subversion"<sup>215</sup>. However, "[t]he word 'subversion' was considered ambiguous and replaced by 'disorder'" during the debate in the Ad hoc Commission on Refugees<sup>216</sup>, both being the antecedents of the public order clause contained in the final text of the Convention.

Both syntagmas, "internal subversion" and "internal disorder", suggest that the expression "events seriously disturbing public order" would have been included to deal, primarily, with threats of human origin capable of breaking the social peace of the community<sup>217</sup>. However, contrary to what happens in cases of external aggression, occupation or foreign domination, in cases of internal subversion or internal disorder the threat would not come from an external agent, but from within the community itself<sup>218</sup>.

As regards the Cartagena Declaration, the clause "other circumstances which have seriously disturbed public order" has also been interpreted as referring to human acts

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<sup>213</sup> Ibid., Annex I, par. 6, p. 2.

<sup>214</sup> Id.

<sup>215</sup> The reference to "internal subversión" was related to the approval of the OAS, "Resolution 27 (II) Declaration on the problem of subversion" [AHG/Res. 27 (II)], in: *Resolutions adopted by the Second Ordinary Session of the Assembly of Heads of State and Government held in Accra, Ghana, from 21 to 26 October 1965* [AHG/Res. 25 (II)-AHG/Res. 45 (II)], Secretariat, pp. 6-7. This resolution strongly condemns "any subversion originating in our countries against another Member State of the Organization of African Unity" (par. 1), so the aim was also to protect those fleeing such situations as refugees.

<sup>216</sup> OAU, *Report of the Administrative Secretary-General...* (Doc. CM/228), *op. cit.*, Annex I, par. 9, p. 3.

<sup>217</sup> BOND RANKIN, M., "Extending the limits or narrowing the scope? Deconstructing the OAU refugee definition thirty years on", *op. cit.*, footnote 138.

<sup>218</sup> Ibid., p. 21, who points out: "Disruptions to public order are about breakdowns in human relationships and antagonisms *within* the community" [italics added]. Interestingly, he excludes natural disaster from the category of events seriously disturbing public order, inter alia, because "(a) natural disaster represents a threat to the community, but rather than coming from *within*, a natural disaster is an event which sees the community confront collective adversity from the *outside*" [p. 21, italics added].

Vid. also, EDWARDS, A., "Refugee Status Determination in Africa", *op. cit.*, p. 217. She wonders whether a *noscitur a sociis* interpretation of the fourth ground of the OAU Convention would imply that events seriously disturbing public order must also have an international character or an international connection, since all three of the preceding grounds also share the characteristic of being international in nature. Thus, to support the argument that the term "public order" is most often applied in the domestic context, she argues that "even though the principal intention of the drafters was to protect persons against colonial excesses, a correlative (and perhaps inseparable) objective was to protect persons fleeing incursions on their freedoms, threats to their lives, as well as general instability", regardless of whether they had an international or domestic origin. Furthermore, regarding the international component of the definition grounds and the colonial powers, she offers at least an original interpretation by observing that, since "colonial governments had the effect of removing the sovereignty of the pre-colonial State (...), the conflict that led to the end of that regime could only be described as "internal" in character *de jure*, rather than international".



and not to natural disasters<sup>219</sup>. During the *International Conference on Central American Refugees (CIREFCA)*, it was pointed out that the different situations referred to in the Cartagena's definition "must be understood in the light of international humanitarian law relating to armed conflict, which classifies various types of situations involving different levels of violence"<sup>220</sup>. In particular, it has been identified that these "other circumstances which have seriously disturbed public order" relate to internal disturbances and tensions<sup>221</sup>. For definitions of these two concepts, the CIREFCA refers to the ICRC Commentary of 1987 on Protocol II to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of Non-International Armed Conflicts. In it, the ICRC defines the term *internal disturbances* as involving

"(...) situations in which there is no non-international armed conflict as such, but there exists a confrontation within the country, which is characterized by a certain seriousness or duration and which involves acts of violence"<sup>222</sup>.

Such could be the case of riots, isolated and sporadic acts of violence and other acts of a similar nature, provided that they seriously disturb public order but do not reach such a level of severity as to qualify as armed conflict<sup>223</sup>. As for *internal tensions*, it would be the least severe stage in the scale of violence. In particular, it would include situations where there is a state of opposition or hostility between human groups (e.g. for political, religious, racial, social or economic reasons), but which do not necessarily degenerate into open acts of violence<sup>224</sup>. According to the ICRC, in the event of internal

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<sup>219</sup> CIREFCA, *Principios y criterios para la protección y asistencia a los refugiados, repatriados y desplazados en América Latina* (Doc. CIREFCA 89/9), Abril 1989, par. 33. Cf. FELIPE PÉREZ, B., "Las migraciones inducidas por el cambio climático en América Latina y el Caribe", in: Oliveira do Prado, R.C.; Pigrau i Solé, A. (coords.), *Derecho internacional y comparado del medio ambiente*, España, Huygens, 2014, p. 348, who reports that the majority of the doctrine is of the opinion that it is not entirely appropriate to consider environmental degradation as equivalent to "circumstances which have seriously disturbed public order". Vid. also the recent paper by CORTI VARELA, J., "La protección regional de los migrantes climáticos en América Latina", *Revista Española de Derecho Internacional*, Vol. 73, No. 2, 2021, pp. 399-407.

<sup>220</sup> CIREFCA, *op. cit. supra*, par. 28 [self - translated from the original Spanish].

<sup>221</sup> *Ibid.*, par. 33.

<sup>222</sup> ICRC, *Commentary of 1987 on Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, adopted on 8 June 1977, par. 4475.

<sup>223</sup> CIREFCA, *Principios y criterios para la protección y asistencia a los refugiados, repatriados y desplazados en América Latina*, *op. cit.*, par. 33. Cf. ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, UNTS, Vol. 1125, No. 17513, pp. 609-699, whose Article 1(2) excludes from its material field of application "(...) situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts".

<sup>224</sup> Vid. RAE, [tensión | Definición | Diccionario de la lengua española](#) (last access: 20/08/2020).

disturbances, the State uses armed force to restore order; whereas, in the case of internal tensions, the resource to force is a preventive measure to maintain respect for law and order<sup>225</sup>.

In summary, the inclusion of the public order clause in both the OAU Convention and the Cartagena Declaration ultimately aimed to protect populations in the face of a panoply of human-made situations of internal origin. Such situations could adopt the most varied forms, ranging from spontaneous acts of revolt to a confrontation between more or less organised groups, and which would be characterised by testing, to a greater or lesser extent, the ability of national authorities to protect those under their jurisdiction.

Nevertheless, even if the public order clause was not intended initially to accommodate environmental displacements, its wording is sufficiently vague to grant refugee status on account of environmental disruptions in the country of origin<sup>226</sup>. It

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Also ICRC, *Commentary of 1987 on Protocol Additional to the Geneva Conventions of 12 August 1949...*, *op. cit.*, par. 4476, pointing out the characteristics that are usually involved in such situations, like: i) large scale arrests; ii) a large number of "political" prisoners; iii) the probable existence of ill-treatment or inhumane conditions of detention; iv) the suspension of fundamental judicial guarantees, either as part of the promulgation of a state of emergency or simply as a matter of fact; v) allegations of disappearances.

<sup>225</sup> ICRC, *op. cit. supra*, par. 4477.

<sup>226</sup> UNHCR, *Persons covered by the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and by the Cartagena Declaration on Refugees...*, *op. cit.*, par. 7: "This cause or category of people [meaning victims of environmental disruptions] is not explicit in the OAU Convention, but reference in the Convention to "events seriously disturbing public order in either part or the whole of his country of origin or nationality", can be construed to cover this category" [bracketed text added].

In the same vein, RWELAMIRA, M.R., "Two Decades of the 1969 OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa", *op. cit.*, p. 558, who considers that even if the expression "events seriously disturbing public order" was designed to cover human-made conditions, the expanded definition provides "the necessary flexibility to include even victims of ecological changes such as famine and drought". MOSES OKELLO, J.O., "La Convención de la OUA de 1969 y el desafío permanente de la Unión Africana", *op. cit.*, pp. 72 *in fine* and 73, who points out: "the OAU Convention has surreptitiously covered even those fleeing environmental disasters such as drought and famine (...), although the Convention is silent on whether victims of natural disasters can legitimately be considered as refugees" [self-translation of the original in Spanish].

Concerning the Cartagena Declaration, *vid.* UNHCR, *Reunión de expertos. Interpretación de la definición ampliada de refugiado contenida en la Declaración de Cartagena...*, *op. cit.*, pars. 10-26, where it is noted that, while persons found to leave because of natural or ecological disasters are not, strictly speaking, protected under the Cartagena refugee definition, it is left to the discretion of States to interpret broadly the ground of "other circumstances which have seriously disturbed public order" in order to provide protection to such persons.

would suffice for its impact on society to be sufficiently severe to reach the threshold of serious disturbance of public order<sup>227</sup>.

Indeed, at least as far as the Cartagena Declaration is concerned, there seems to be a consensus that "the humanitarian and protective orientation of the instrument requires an inclusive, evolutionary and flexible interpretation"<sup>228</sup>. Therefore, in those cases where the literal meaning of the terms of the Declaration is not apparent, as could be the case for including with environmental events in the concept of "public order", a finalist or teleological interpretation of the text should prevail<sup>229</sup>. Such an interpretation should focus more on covering "new developments in State practice" rather than on a "strictly legalistic" view of the Declaration<sup>230</sup>.

However, at present, there does not seem to be a practice among either African or Latin American States to consider environmental disturbances as events that alter public order in the sense of the OAU Convention or the Cartagena Declaration. For example, in the Draft Refugee White Paper presented to the Minister of Home Affairs of South Africa, the government express its disagreement "to consider as refugees, persons fleeing their countries of origin solely for reasons of poverty or other social, economic or *environmental hardships*"<sup>231</sup>. Furthermore, the White Paper 's task team adds that the South Africa's refugee policy should not be "cast so widely as to include victims of poverty and other social or economic hardships, *environmental disasters*, or other factors not directly or secondarily recognised in refugee obligations"<sup>232</sup>.

Although that Refugee White Paper dates back to 1998, there does not appear to have been any significant change of attitude among States, at least on the African continent. Thus, as recently as 2002, on the occasion of the eruption of the Nyiragongo

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<sup>227</sup> BOND RANKIN, M., "Extending the limits or narrowing the scope? Deconstructing the OAU refugee definition thirty years on", *op. cit.*, p. 16, estimates that "the test should be an objective assessment which considers the gravity of the harm in relation to what can normally be expected of public order". In the same vein, UNHCR, *Legal considerations...*, *op. cit.*, par. 16 *in fine*, concluding that "[w]hether a disturbance to public order stems from human or other causes is not determinative for concluding a serious disturbance of public order; the central concern is the *effect* of a given situation. Accordingly, the principal inquiry at the time of assessing a claim for refugee status is whether a serious disturbance to public order *exists as a matter of fact*, based on an assessment of available evidence".

<sup>228</sup> UNHCR, *Reunión de expertos. Interpretación de la definición ampliada de refugiado contenida en la Declaración de Cartagena...*, *op. cit.*, par. 3.

<sup>229</sup> *Id.*

<sup>230</sup> *Ibid.*, footnote 5.

<sup>231</sup> REPUBLIC OF SOUTH AFRICA, "Draft Refugee White Paper presented to the Minister of Home Affairs, the Honorable M.G. Buthelezi", *Government Gazette*, Vol. 396, No. 18988, 19 June 1998, p. 7 [italics added] (last access 25/03/2020).

<sup>232</sup> *Ibid.*, p. 9, par. 2.6 [italics added].

volcano, Rwanda, which is a State party to the OAU Convention, temporarily sheltered hundreds of thousands of Congolese fleeing the disaster. Nevertheless, Rwanda did not declare that it was acting in compliance with its obligations under any refugee treaty, but rather in response to the demands of solidarity and neighbourliness among African nations<sup>233</sup>. Therefore, even if a practice of granting shelter to those displaced by environmental factors could be identified among the African States, this practice would nevertheless lack the necessary *opinio iuris*. That is to say, the conviction of African States to be complying with a legal obligation imposed on them by the OAU Convention<sup>234</sup>.

Still, it cannot be entirely ruled out that such a practice, now based on a moral obligation of brotherhood, may in time evolve into a genuine legally binding customary law<sup>235</sup>. Indeed, most States recognize the advantage of maintaining a broader refugee concept. It would allow them to adapt their laws and processes quickly and effectively in the event of an exodus of asylum-seekers, such as those that led to the adoption of the Cartagena Declaration or the OAU Convention<sup>236</sup>, as might be one due to environmental reasons.

### **2.3. The legal status of refugees under regional refugee instruments**

It has been concluded that environmentally displaced persons could eventually achieve refugee status under regional frameworks. Either because the expanded definition of refugee expressly provides for natural disasters as a cause of refuge, as is the case with the Arab Convention on Refugees. Alternatively, because the undefined legal concept of "events seriously disturbing public order" is interpreted broadly to include environmental disruptions that have reached a certain level of gravity. It now remains to analyse the legal status from which environmental displaced persons would benefit under each of those frameworks.

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<sup>233</sup> EDWARDS, A., "Refugee Status Determination in Africa", *op. cit.*, p. 227.

<sup>234</sup> *Id.*

<sup>235</sup> In the same vein, *id.*

<sup>236</sup> ARBOLEDA, E., "The Cartagena Declaration of 1984 and its similarities to the 1969 OAU Convention – A comparative perspective", *op. cit.*, p. 100.

### **2.3.1. The 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa**

The OAU Convention<sup>237</sup> does not develop in-depth the catalogue of rights and obligations that make up the personal status of refugees in the African States. Perhaps the explanation is that the OAU Convention itself was conceived as a complement to the 1951 Geneva Convention, and not as a substitute for it in Africa. Therefore, it did not intend to replace the UN Convention on Refugees; but simply to adapt it to the humanitarian protection needs demanded by the context of decolonisation on the African continent<sup>238</sup>.

It could then be understood that once a person has been recognised as a refugee according to the regional definition, the OAU Convention implicitly sends to the Geneva Convention for the rights and obligations concerning refugees. In any event, this possibility, in respect of which the African Convention is silent, would require the State concerned to be a party to both international conventions. Since express consent is an essential element for a treaty to bind a State, accession to the OAU Convention cannot be understood to imply ratification of the 1951 Convention.

From a substantive point of view, it is undeniable that the drafters of the African Convention took the Geneva Convention as a reference. For example, they also included a non-discrimination clause, although formulated in broader terms than in the 1951 Convention. In addition to prohibiting States Parties from treating refugees on their territory differently because race, religion or country of origin, the OAU Convention also proscribes discrimination based on membership of a particular social group or political opinions<sup>239</sup>. Similarly, the African Convention refers to the Geneva Convention about the travel documents that States Parties shall issue to refugees, unless there are compelling reasons of national security or public order, to enable them to move outside their territory<sup>240</sup>.

In contrast, the African Convention enlarges the general obligation imposed by Article 2 of the Geneva Convention on all refugees to respect the laws and regulations of the host country, as well as the measures taken by the host country to maintain public

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<sup>237</sup> OAU, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, *op. cit.*

<sup>238</sup> Vid. sub-section 2.1.1, as well as the Preamble of the OAU Convention and Article VIII (2).

<sup>239</sup> Cf. Article 3 of the 1951 Convention with Article IV of the OAU Convention.

<sup>240</sup> Cf. Article 28 (1) of the 1951 Convention with Article VI (1) of the OAU Convention.

order. Not only does Article III of the OAU Convention reproduce the Geneva precept, but it extends it by additionally prohibiting refugees from engaging in "any subversive activities against any Member State of the OAU". Likewise, refugees residing in the territory of one of the States Parties must also refrain "from attacking any State Member of the OAU, by any activity likely to cause tension between the Member States, and in particular by the use of arms, through the press, or by radio" [art. III (2)]<sup>241</sup>.

Another particularity of the African Convention relates to the repatriation of refugees. As stated in Article 1 (C) (4) of the Geneva Convention, Article I (4) (e) of the OAU Convention provides that refugee status ends when the circumstances which prompted its recognition have ceased to exist. However, the African Convention specifies that repatriation must always be voluntary, so that "no refugee shall be repatriated against his will" [art. V (1)]<sup>242</sup>.

It has already been noted how long it can take to restore the situation in the country of origin after an environmental disruption, if at all. It is therefore plausible that, when the time comes to return, refugees will have developed more significant ties with the country that hosted them than those who remain with the country from which they came. The OAU Convention makes, however, no provision for the naturalization of refugees<sup>243</sup>. At most, refugees can choose to remain in the host country, since, as stated, no repatriation can be forced. Nevertheless, as long as their refugee-status has ceased, they risk being trapped into a kind of legal limbo, or even becoming an irregular immigrant under the aliens' law of the country concerned.

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<sup>241</sup> This commitment by the States Signatories to the African Convention to prevent refugees residing on their respective territories from engaging in activities that could be considered subversive or likely to create tensions between African States, is but a reflection of the geopolitical context in which the OAU Convention was being negotiated. Thus, in the midst of the decolonization process, it was vitally important to preserve the unity and ties of friendship among the various African nations, in order to ensure the success of the decolonization process and the independence of the newly constituted States from foreign powers. Vid. UNHCR, "Chapter 2: Decolonisation in Africa", *op. cit.*, p. 54, pointing out that African governments feared about the security problems that refuge could create, as refugees from other independent African States might use countries of asylum as bases from which to seek the overthrow of the regimes from which they had fled.

<sup>242</sup> In fact, the voluntary nature of the return is such, that the most the host State can do is to "encourage" the refugees to return to their countries of origin by making regular appeals in the national media in which it has to practically convince them that "the new circumstances prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without fear of being disturbed or punished" [Art. V (4)]. Aside from this, the countries of asylum and origin are expected to cooperate with each other, as well as with voluntary institutions and international and intergovernmental organizations, including UNHCR [Art. VIII (2)], in order to facilitate the safe return of refugees to their countries of origin and their resettlement there [Art. V (2), (3) and (5)].

<sup>243</sup> Cf. with Article 34 of the 1951 Convention.

Otherwise, nothing else provides for the OAU Convention regarding other civil and social rights to which refugees on the African continent may be entitled. For example, regarding work and residence permits or access to social services such as health or education, which are indeed covered by the Geneva Convention<sup>244</sup>.

### **2.3.2. The 1984 Cartagena Declaration on Refugees**

As has been said, the Cartagena Declaration on Refugees<sup>245</sup> is not a binding normative instrument, but rather a set of guidelines intended to lead the Latin American States in addressing the issue of refugees in the region. Conclusion No. 8 of the Cartagena Declaration encourages countries to

"(...) establish a minimum standard of treatment for refugees, on the basis of the provisions of the 1951 Convention and 1967 Protocol and of the American Convention on Human Rights, taking into consideration the conclusions of the UNHCR Executive Committee, particularly No. 22 on the Protection of Asylum Seekers in Situations of Large-Scale Influx"<sup>246</sup>.

Consequently, the Cartagena Declaration does not establish a standard legal status for those who have been recognized as refugees in the Latin American continent. Instead, true to its nature as a guiding instrument, it allows each State Party the freedom to define in its domestic legislation the catalogue of rights and obligations that refugees shall have in its territory. Homogeneity between the different national legislations would come from that minimum level of treatment which, in any case, should be guaranteed to all refugees regardless of the Latin American country in which they seek refuge. As Conclusion No. 8 indicates, its content must necessarily be based both on the 1951 Convention and its 1967 Protocol and on the ACHR.

#### **A) Refugee rights under the 1951 Convention**

Focusing on the Refugee Convention<sup>247</sup>, which currently provides the most comprehensive personal status for refugees, it distinguishes three categories or groups of rights: (a) those enjoyed under the same conditions as nationals of the host State; (b) those recognised as any other foreigner; and (c) those rights to which refugees are entitled in their own right.

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<sup>244</sup> Vid. Chapters II, III and IV of the 1951 Convention.

<sup>245</sup> UNHCR, *Cartagena Declaration on Refugees*, *op. cit.*

<sup>246</sup> *Ibid.*, Conclusion III (8).

<sup>247</sup> UN, *Convention Relating to the Status of Refugees*, *cit*

Regarding the first group, refugees in the territory of a State Party are equal to its nationals in the enjoyment of the following rights and freedoms: (a) freedom of religion (art. 4); (b) the right to intellectual and industrial property (art. 14); (c) access to Courts (art. 16); (d) access to elementary education (art. 22.1); (e) public assistance (art. 23); and (f) labour legislation and social security (art. 24).

As regards the second category or group of rights, refugees shall receive treatment at least as favourable as that afforded generally to aliens legally in the territory for (a) freedom of movement and choice of place of residence (art. 26); (b) acquisition of movable and immovable property and other rights in rem (art. 13); (c) self-employment (art. 18); (d) exercise of liberal professions (art. 19); (e) housing policies (art. 21); and (f) access to levels of education other than the elementary, including the award of scholarships (art. 22.2).

A different standard applies to freedom of association (art. 15) and the right to gainful employment (art. 17), which refugees shall enjoy under the most favourable treatment accorded to nationals of a foreign country (known as the *most-favoured-nation standard of treatment*).

Finally, the Geneva Convention recognises a range of rights and guarantees that are specific to refugees, in the sense that they derive from the very situation of persecution suffered by refugees in their home States. The first and most important is the prohibition on host States not to expel or return refugees to territories where their life or freedom is in danger – i.e. the *non-refoulement prohibition* [art. 33 (1)].

Otherwise, it includes a series of administrative procedures in which the authorities of the host State replace the State of origin. Article 25 provides that the State which has granted refugee status shall assist refugees in the exercise of those rights, including the issue of documents or certificates, which would have required the intervention of the authorities of the country of origin. It must also issue them with the relevant identity or travel documents for travel outside its territory (arts. 27 and 28). Ultimately, especially when the refugee situation is long-term, the host State is urged to facilitate as far as possible their naturalization (art. 34).



## **B) Refugee rights under the American Convention on Human Rights**

As for the American Convention on Human Rights, better known as the Pact of San José, it provides the basis for the inter-American system for the promotion and protection of human rights<sup>248</sup>. Chapter II (arts. 3-25) lists the civil and political rights that all persons are entitled to and which, following Conclusion No. 8 of the Cartagena Declaration, should equally be granted to refugees, even if they do not come from an American State.

The following rights are recognized as human rights by the Pact of San José: a) the right to juridical personality (art. 3); b) the right to life (art. 4); c) the right to human treatment (art. 5); d) the freedom from slavery (art. 6); e) the right to personal liberty (art. 7); f) the right to a fair trial (art. 8); g) the freedom from ex post facto laws (art. 9); h) the right to compensation in case of a miscarriage of justice (art. 10); i) the right to privacy (art. 11); j) the freedom of conscience and religion (art. 12); k) the freedom of thought and expression (art. 13); l) the right to honour and reputation (included the right to reply) [art. 14]; m) the right of assembly (art. 15); n) the freedom of association (art. 16); the rights of the family (art. 17); o) the right to a name (art. 18); p) the rights of the child (art. 19); q) the right to a nationality (art. 20); r) the right to property (art. 21); s) the freedom of movement and residence (art. 22); t) the right to participate in government (art. 23)<sup>249</sup>; u) the right to equality before the law (art. 24), and v) the right to judicial protection (art. 25).

## **C) Conclusion No. 22 of the UNHCR Executive Committee**

Finally, the UNHCR Executive Committee's Conclusion No. 22<sup>250</sup>, referred to in the Cartagena Declaration, sets out several provisions on the protection measures that States should take in the event of a mass influx of persons seeking refuge. These are of particular interest in the context of environmental disruptions, as they may lead to a large-scale arrival of displaced persons.

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<sup>248</sup> OAS, *American Convention on Human Rights (Pact of San José)*, 22 November 1969, UNTS, Vol. 1144, No. 17955, pp. 143-212. It is also known as “Pact of San José”, because it was adopted in that city. In addition to recognizing a wide set of rights and freedoms the Convention establishes two mechanisms (the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights), responsible for ensuring their protection and for compliance with the Pact of San José as a whole.

<sup>249</sup> The right to participate in the political life is linked to nationality. Thereof, it can be restricted or denied in the case of alien persons, who are residing in a State which is not their country of nationality.

<sup>250</sup> EXECUTIVE COMMITTEE OF THE UNHCR, *Conclusion on Protection of Asylum-Seekers in Situations of Large-Scale Influx No. 22 (XXXII) - 1981*, 21 October 1981, No. 22 (XXXII).

Firstly, it provides that in situations of large-scale influxes, persons seeking asylum must gain admittance into the State in which they first sought refuge. If that State cannot admit them for a prolonged period, it must at least temporarily admit them while a durable solution to their situation is finding (par. II.A.1). This solution may consist in their voluntary repatriation, local settlement or resettlement in a third country (par. I.2). In all cases, the fundamental principle of *non-refoulement* must be scrupulously observed, including non-rejection at the State's borders (par. II.A.2). Likewise, States should not penalize them or expose them to any unfavourable treatment simply because their presence in the country is considered illegal [par. II.B.2(a)]<sup>251</sup>.

Similarly, asylum-seekers temporarily admitted into the territory of a State should receive the necessary assistance to meet their vital needs, including the provision of food, shelter and basic hygiene and health products [par. II.B.2(c)]. Other minimum basic human standards that must be respected include not being subject to cruel, inhuman or degrading treatment [par. II.B.2(d)]; and not being discriminated against because of race, religion, political opinion, nationality, country of origin or physical disability [par. II.B.2(e)].

They shall also enjoy the fundamental civil rights internationally recognized, in particular those mentioned in the Universal Declaration of Human Rights [par. II.B.2(b)], such as the right to life or honour, or the inviolability of the person, privacy, family, home and correspondence. They must also be recognized as legal persons and be allowed access to the courts and other administrative authorities competent to defend their rights and legitimate interests [par. II.B.2(f)]. Nor should restrictions be placed on their movements beyond those necessary in the interests of public health and public order [par. II.B.2(a)]. The family unit to which the applicant belongs must also be respected, with all possible assistance in locating family members [par. II.B.2(h)-(i)]. Necessary measures must also be taken to protect minors and unaccompanied children [par. II.B.2(j)].

Ultimately, a person seeking protection and temporarily admitted to the territory of a country should also be assisted by that country in finding a durable and satisfactory

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<sup>251</sup> Cf. Article 31 of the 1951 Convention, which prohibits Contracting States from imposing criminal penalties on applicants for refugee status who have entered or are illegally present on their territory.

solution to their situation, including taking all possible measures to facilitate voluntary repatriation [par. II.B.2(n)-(p)]. Once a durable solution becomes available, the temporary host country must allow refugees to travel to the State where they have been admitted, and to take with them any assets they have brought [par. II.B.2(o)]<sup>252</sup>.

#### **D) Obligations of refugees**

Finally, it is necessary to refer to the obligations of refugees. The Geneva Convention mentions, on the one hand, the due respect that refugees must show for the laws and regulations of the host State; and, on the other hand, compliance with any measures taken by the authorities of that State for the maintenance of public order (art. 2). Conclusion No. 22 extends these obligations by prohibiting refugees from engaging in any subversive activities against their country of origin or any other State [par. II.B.2(g)]<sup>253</sup>.

Lastly, the 1951 Convention refers to the obligation of refugees to pay the corresponding taxes established by the host State, which shall not differ from or exceed those required of its nationals under similar conditions (Article 29).

#### **2.3.3. The Bangkok Principles on the status and treatment of refugees**

Article IV of the Bangkok Principles<sup>254</sup> addresses, in a general way, the status and treatment of refugees in Asian and Middle East countries.

Regarding the treatment, article IV lays down three general prohibitions which should be respected in all cases, regardless of the final content that each State gives to refugee status. Namely, a) the prohibition on denying refugees the enjoyment of any rights to which they may be entitled because "he does not fulfill the requirements that by its nature a refugee is unable to fulfill" (art. IV.3). b) The exemption from reciprocity; i.e., the granting of rights to refugees does not depend on correspondence "in regard to the grant of such rights between the receiving State and the State or Country of nationality of the refugee or, if he is stateless, the State or Country of his former habitual residence" (art. IV.4). c) And the prohibition of discrimination

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<sup>252</sup> Cf. with Article 30 of the 1951 Convention.

<sup>253</sup> This provision is motivated by the need to avoid tensions between the host State and other States which could jeopardise the humanitarian, peaceful and friendly nature of the institution of refuge.

<sup>254</sup> AALCO, *Final text of the AALCO's 1966 Bangkok Principles on status and treatment of Refugees*, op. cit.

regarding "race, religion, nationality, ethnic origin, gender, membership of a particular social group or political opinion" (art. IV.5).

Dealing with the minimum content of the refugee status, Article IV.1 of the Bangkok Principles claims that:

"A State shall accord to refugees treatment no less favourable than that generally accorded to aliens in similar circumstances, with due regard to basic human rights as recognised in generally accepted international instruments".

Adding paragraph 2:

"The standard of treatment referred to in paragraph 1 shall include the rights relating to aliens contained in the Final Report of the Committee on the Status of Aliens, to the extent they are applicable to refugees".

The first paragraph sets out what is known as *the international minimum standards of aliens' treatment*. Academic literature has broadly debated on the specific content of this international minimum standard<sup>255</sup>. At present, there seems to be a consensus that it would include the fundamental civil rights, but not the political, economic, social and cultural ones, contained in the International Covenant on Civil and Political Rights<sup>256</sup>. Such rights are (i) the right to life (art. 6); (ii) the prohibition of torture and other cruel, inhuman or degrading treatment and punishment, including the prohibition that no one may be subject to medical or scientific experiments without his consent (art. 7); (iii) the prohibition of slavery (art. 8); (iv) the prohibition of imprisonment for breach of a contractual obligation (art. 11); (v) the principle of legality (art. 15); (vi) the right to recognition of legal personality (art. 16); and (vii) the freedom of thought, conscience and religion (art. 18).

The second paragraph of Article IV.1 of the Bangkok Principles, for its part, refers to the *Principles Concerning Admission and Treatment of Aliens*<sup>257</sup>. These are a set of non-binding guidelines adopted by the AALCO which aims to standardise the minimum treatment that foreigners should receive throughout the Afro-Asian region, regardless of the State in which they live.

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<sup>255</sup> PASTOR RIDRUEJO, J.A., *Curso de Derecho Internacional Público y Organizaciones Internacionales*, 23<sup>a</sup> ed., Madrid (Spain), Tecnos, 2019, pp. 248-249.

<sup>256</sup> UNGA, *International Covenant on Civil and Political Rights*, *op. cit.*

<sup>257</sup> AALCO, *Principles Concerning Admission and Treatment of Aliens*, adopted by the Committee at its Fourth session, 25 February 1961.

The *catalogue of rights* includes: (i) the freedoms of movement throughout the territory of the State and to reside in any part of it (art. 7); (ii) the right to freedom from arbitrary arrest, to profess and practise its religion, to have the protection of the executive and police authorities of the State, to have access to the courts of law, and to have legal assistance (art. 8); (iii) the right to acquire, hold and dispose of property (art. 11), without being private of it except in case of acquisition, expropriation or nationalization by the host State, who shall pay the corresponding compensation (art. 12); (iv) and the guarantee of not-recruitment by force into the State's army (art. 14).

As to *aliens' obligations*, Article 13 refers to the payment of taxes and duties under the laws and regulations of the host State, without being subjected to forced loans which are unjust or discriminatory.

Regarding *employment, self-employed or the exercise of liberal professions*, Article 9 entitles States to "prohibit or regulate professional or business activities or any other employment of aliens within its territory". Finally, Article 10 excludes aliens from participating in the political life of the country, as it sets that: "An alien shall not be entitled to any political rights, including the right of suffrage, nor shall he be entitled to engage himself in Political activities, except as otherwise provided by local laws, regulations and orders".

In any case, it is worth finishing remembering that, on the one hand, all the rights listed before are the minimum level of treatment that every refugee should receive following the Bangkok Principles. Consequently, nothing prevents the States from deciding to extend it as much as they wish. On the other hand, and as a consequence of the above, it will be necessary to examine the internal legislation of each State to determine the specific status that refugees shall enjoy in its territory.

#### 2.3.4. The Arab Convention on Regulating Status of Refugees in the Arab Countries

The Arab Convention<sup>258</sup> is undoubtedly the most sparing of the four regional instruments as regards the treatment and status of refugees. Article 5 merely provides: "The Contracting States (...) shall undertake to exert every possible effort, to ensure that refugees are accorded *a level of treatment no less than that accorded to foreign residents on their territories*" [italics added].

Unlike to what happens in the other regional texts, the Arab Convention does not refer to other international instruments to determine by reference the minimum level of treatment to provide to foreigners and, by extensión, to refugees legally residing in the territory of the Contracting States. However, this does not mean that States have absolute discretion to determine it, as their respective aliens' law must respect in any case the *international minimum standards of aliens' treatment*. They must therefore grant foreigners the fundamental human and civil rights recognized in generally accepted international instruments<sup>259</sup>. Likewise, Article 7 of the Arab Convention prohibits the Contracting States from discriminating refugees "as to race, religion, gender and country of origin, political or social affiliation".

In compliance with the United Nations 1951 Convention and its Protocol, Article 10 expressly guarantees the right of refugees to be issued with identification cards and travel documents by the Contracting State in whose territory they legally reside, "in order to enable them to travel from and return to such territories, except in cases where this is barred for reasons related to national security or public order".

As regards the stay of refugees in the territory of the Contracting States, Article 8 sets out that a "refugee lawfully residing (...) shall not be expelled save on grounds of national security or public order". In such case, "the Contracting State shall allow such refugee a reasonable period within which to seek legal admission into another country". Equally, a refugee "shall not be involuntarily repatriated to his country of origin" (art. 9.1). Conversely, "the country of asylum, in cooperation with the country of origin, shall make appropriate arrangements for the safe return of refugees willing to return home" (art. 9.2).

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<sup>258</sup> LAS, *Arab Convention on Regulating Status of Refugees in the Arab Countries*, *op. cit.*

<sup>259</sup> Vid. sub-section 2.3.3 of this Chapter regarding the rights that are covered by the *international minimum standards of aliens' treatment*.

Finally, the Arab Convention does deal in more detail with the obligations incumbent on refugees while residing in the territory of the Contracting States. Thus, refugees shall respect at all times "the provisions of laws and regulations of his host country" (art. 11), and "refrain from performing any terrorist or subversive activity levelled against any country including his country of origin" (art. 12). In particular, in the exercise of their freedom of opinion and expression, refugees shall refrain from attacking any country, including their country of origin. Nor shall they transmit, by any means, opinions or news which may create tension between the host country and other countries (art. 13).

### **3. ENVIRONMENTALLY DISPLACED INDIVIDUALS IN EUROPEAN ASYLUM LAW**

#### **3.1. Introduction**

There remains to address one last regional framework in the field of asylum and refuge: the one developed in Europe. The presence in the old continent of a new legal-political organisation, the EU, has had an undeniable impact on how the universal legal framework of the United Nations on refuge has adapted and expanded within the European legal framework. In its role as an international integration organisation<sup>260</sup>, the most advanced example to date of an international organisation of this kind<sup>261</sup>, the EU has exerted a decisive influence on the development of common refugee rules at European level.

The geopolitical situation in Europe, and consequently the results achieved within the EU, has, however, differed substantially from the regional context experienced in Africa, Latin America or the Middle East and Asia<sup>262</sup>. The OAU and its African Convention of 1969<sup>263</sup> inaugurated a process of regional adaptation of Geneva's definition of a refugee to the post-colonial reality of Africa. Its expanded definition

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<sup>260</sup> As regards the classification of International Organisations, vid. PASTOR RIDRUEJO, J.A., *Curso de Derecho Internacional Público y Organizaciones Internacionales*, *op. cit.*, pp. 714-717, who, in terms of methods of cooperation, distinguishes four types of International Organisation: coordination, control, operational and integration.

<sup>261</sup> *Ibid.*, p. 717.

<sup>262</sup> Vid. sub-section 2.1 of this Chapter, addressing the geopolitical context in which regional instruments on refuge were developed in Africa, Latin America, and the Middle East and Asia.

<sup>263</sup> OAU, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, *op. cit.*

would later serve as a precedent and inspiration for the 1984 Cartagena Declaration<sup>264</sup> on Latin America, the 1994 Arab Convention on Refugees<sup>265</sup> or the 2001 Bangkok Principles<sup>266</sup>. Each of these international instruments sought, with greater or lesser success, to adopt a standard definition of refugee that responded to the geopolitical and migratory needs of their respective territorial spheres of influence.

For its part, the EU began its very own process of drawing up a joint action on refugees in 1993. That year, the Member States agreed to coordinate their action on asylum within the framework of the procedures laid down by the Maastricht Treaty for intergovernmental cooperation in the fields of justice and home affairs<sup>267</sup>. However, this process intended to achieve a significantly different objective. As noted, the refugee-definition in the 1951 Geneva Convention initially aimed to give shelter to the flow of displaced persons left behind in Europe by the Second World War and totalitarian regimes. However, the path set in motion by the 1993 Maastricht Treaty did not intend to emulate the revisionist debate that had taken place fifteen years earlier within the OAU, and later in Latin America, on the definition of a refugee.

Its purpose was not, therefore, to update the 1951 refugee concept to the European migratory reality of almost half a century later; but to undertake a far-reaching harmonisation of the procedural and substantive rules on asylum and refugee matters in force in all EU Member States<sup>268</sup>. This enormous task, still unfinished, led to the creation of the Common European Asylum System (CEAS)<sup>269</sup>. At its core remains the

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<sup>264</sup> UNHCR, *Cartagena Declaration on Refugees*, *op. cit.*

<sup>265</sup> LAS, *Arab Convention on Regulating Status of Refugees in the Arab Countries*, *op. cit.*

<sup>266</sup> AALCO, *Final text of the AALCO's 1966 Bangkok Principles on status and treatment of Refugees*, *op. cit.*

<sup>267</sup> Vid. "Declaration on Asylum" in: EU, *Treaty on European Union*, signed in Maastricht, 7 February 1992, OJEU (C 191), 29 July 1992, p. 108.

According to the aforementioned Declaration, asylum issues were included in what was commonly known as the *second pillar*. In the areas covered by the second pillar (Art. K.1 of the Maastricht Treaty), Member States agreed to inform and consult each other within the Council with a view to coordinating their action (Art. K.3 of the same legal text).

<sup>268</sup> Vid. "Declaration on Asylum" in: EU, *Treaty on European Union*, signed in Maastricht, *op. cit.*, p. 108.

<sup>269</sup> In accordance with the conclusions of the 1999 Tampere programme, the construction of the CEAS was to be undertaken in two phases: in the first phase (1999-2004), common minimum standards were to be adopted in the short term; in the longer term, these should lead to the establishment of a common procedure and a uniform status for aliens granted asylum throughout the territory of the EU (the current second phase). Vid. EUROPEAN COUNCIL, *Tampere European Council. Presidency Conclusions*, 15-16 October 1999, Conclusions 13-15.

The migration crisis of recent years has shown, however, that the CEAS construction is still unfinished. The fact that several of the rules that make up the legal structure of the CEAS are still Directives on minimum standards has the direct consequence that asylum applications are not treated in the same way



Geneva system, as refugee status continues to be recognised based on the 1951 definition as amended by the 1967 Protocol. However, the procedure for recognising refugee-status is common to all Member States, no matter the country where the application is submitted; and the minimum legal status of its beneficiaries is uniform throughout the EU<sup>270</sup>.

Thus, this last section explores the extent to which environmental movements could accommodate within the current EU asylum and refugee instruments<sup>271</sup>. For this purpose, the reference framework will be the one established by the Qualification Directive 2011/95/EU (recast)<sup>272</sup> and the Temporary Protection Directive 2001/55/EC, which are discussed in sub-sections 3.2 and 3.3, respectively. Moreover, since the Directives establish common minimum standards for all Member States, they leave open the possibility for them to introduce or maintain more favourable standards in their respective domestic legal systems. The scope of this possibility under each Directive, as well as the use some States have made of it in the field of environmental migration, is addressed in the last sub-section (3.4).

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as intended throughout the EU. The proportion of favourable decisions granting asylum and the facilities offered by national social welfare systems vary considerably from one Member State to another. As a result, secondary movements within the EU continue to take place, so that future asylum seekers seek to arrive to those Member States where they consider that they will have a better chance of receiving protection and under more favourable welfare conditions. The Council is currently examining seven proposals submitted by the European Commission, most of which concern the need to replace the Directives with Regulations that will achieve genuine harmonisation of both the procedure for granting refuge and its legal status. Vid. COUNCIL OF THE EUROPEAN UNION, Reform of the EU asylum rules (update to 16 June 2020) (last access: 30/07/2020).

<sup>270</sup> Vid. footnote *supra*.

<sup>271</sup> The protection of environmental and climate displaced persons at EU level has recently been addressed in: FERNÁNDEZ ARRIBAS, G., “La necesidad de una acción normativa por parte de la Unión Europea en materia de protección de desplazados medioambientales transfronterizos”, *Revista española de derecho internacional*, Vol. 74, No. 1, 2022, pp. 185-192. FELIPE PÉREZ, B., “El visado climático europeo como instrumento de protección jurídica para las personas migrantes climáticas”, *Revista española de derecho internacional*, Vol. 74, No. 1, 2022, pp. 193-200.

<sup>272</sup> EU, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, OJEU (L 337), 20 December 2011, pp. 9-26. EU, *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof*, OJEU (L 212), 07 August 2001, pp. 12-23.

## 3.2. The Qualification Directive 2011/95/EU (recast)

### 3.2.1. Introduction

The 1999 Tampere Council, in its conclusion No 14, provided for the harmonisation of minimum standards among the Member States on, inter alia, the recognition and content of international protection<sup>273</sup>. Accordingly, the Commission proposed, in the second half of 2001, a Council Directive aimed at establishing the minimum requirements that non-EU citizens would have to meet to "qualify" as beneficiaries of protection within the EU, as well as the content of such protection<sup>274</sup>.

The Directive – known as the "Qualification Directive" - was finally adopted by the Council in 2004<sup>275</sup>. Along with refugee status, the Directive introduced a regime of *subsidiary protection* to cover specific cases where, despite the non-applicability of the 1951 Refugees Convention, protection continues to be needed. Instead of extending the Geneva definition to include new categories of "refugees", as was the case with the OAU Convention or the Cartagena Declaration, the EU preferred to maintain the 1951 concept in its integrity. It opted to create a supranational status of complementary protection<sup>276</sup>, the first of its kind, based entirely on the codification of general human rights obligations, particularly the principle of *non-refoulement*<sup>277</sup>.

The vagueness and ambiguity of some provisions of the Directive, however, jeopardize the uniformity it intended to achieve. The national authorities of the different Member States interpreted the same concepts in different ways, which prevented a

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<sup>273</sup> EUROPEAN COUNCIL, *Tampere European Council. Presidency Conclusions*, *op. cit.*

<sup>274</sup> EUROPEAN COMMISSION, *Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection* (COM(2001) 510 final), 12 September 2001, Explanatory Memorandum (pp. 2-9).

<sup>275</sup> EU, *Council Directive 2004/83/EC of 29 April 2004 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*, OJEU (L 304), 30 September 2004, pp. 12-23.

<sup>276</sup> The complementary nature of subsidiary protection with respect to the refugee regime was already established at the Tampere Council, whose Conclusion No 14 "provide[s] that rules regarding refugee status should be complemented by measures on subsidiary forms of protection" (Recital 6 QD recast). Vid. Also Recital 33 QD (recast), which expressly points out that "[s]ubsidiary protection should be complementary and additional to the refugee protection enshrined in the Geneva Convention".

<sup>277</sup> MAYRHOFER, M.; AMMER, M., "People Moving in the Context of Environmental Change: The Cautious Approach of the European Union", *European Journal of Migration and Law*, n° 16, 2014, p. 407.

sufficient level of harmonisation among them<sup>278</sup>. At the same time, it had a negative impact on the quality and efficiency of decision-making, as a high percentage of decisions refusing refuge were appealed against and won. In turn, appellations resulted in both administrative costs for States and a detriment to applicants genuinely in need of protection, who had to wait for prolonged litigation before being able to access the rights granted by the Directive<sup>279</sup>. As a response, a process of revision of the Qualification Directive begun in 2009. The aim was to overcome these weaknesses by clarifying problematic legal concepts while simplifying and maintaining unity in its application<sup>280</sup>. The process concluded in 2011 with the adoption of a new Directive (the "Qualification Directive (recast)")<sup>281</sup>.

However, the reform did not affect the hard-core of the directive, namely the definitions of refugee [Art. 2 (d) QD (recast)] and beneficiary of subsidiary protection [Art. 2 (f) QD (recast)]. The next sub-section addresses briefly some clarifications that the QD has introduced regarding the recognition of refugee status, to the extent that they confirm the exclusion of environmentally displaced persons from its scope of application. The following sub-sections focus instead on the new subsidiary protection status introduced by the QD. They analyse whether and to what extent it could provide a sufficient basis to support an international legal obligation of both Member States and the EU itself to receive and provide protection to displaced persons in the context of environmental disturbances.

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<sup>278</sup> EUROPEAN COMMISSION, *Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted* (SEC(2009) 1373) (SEC(2009) 1374), 21 October 2009, Explanatory Memorandum (pp. 2-4).

<sup>279</sup> Id.

<sup>280</sup> Id.

<sup>281</sup> EU, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification...*, *op. cit.*

### 3.2.2. Definition of "refugee"

The definition of "refugee" content in Article 2 (d) QD (recast) reproduces in essence Article 1 (A) (2) of the 1951 Refugee Convention:

"'refugee' means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply"<sup>282</sup>.

Therefore, everything said in the first section of this Chapter about how environmentally displaced persons might fit into the definition of refugees in the Geneva Convention is reproduced here<sup>283</sup>.

The first difference between Article 2 (d) QD (recast) and Article 1 (A) (2) of the 1951 Convention, as amended by the 1967 Protocol, is its different territorial scope. The reference to "a third-country national" implies that nationals of EU Member States are excluded from the refugee status provided for in the QD (recast)<sup>284</sup>. However, from the perspective of environmental migration, this exclusion is not so relevant since, according to the data presented in Chapter II, movements related to environmental

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<sup>282</sup> Id.

<sup>283</sup> The relevance of the Refugee Convention for the interpretation of the QD (recast) is clearly inferred from Recital 4 QD (recast), which refers to the 1951 Convention and its 1967 Protocol as "the cornerstone of the international legal regime for the protection of refugees", and Recitals 23 and 24 QD (recast), which provide that the Directive introduces common standards and criteria to guide Member States' national authorities in the application of the Geneva Convention. It has also been confirmed by the CJEU in: *Joined Cases C-199/12 to C-201/12 X, Y and Z v. Minister voor Immigratie en Asiel* (ECLI:EU:C:2013:720), 7 November 2013, par. 45, which states that the Directive must be interpreted in a manner consistent with the Geneva Convention; and *Joined Cases C-443/14 and C-444/14 Ibrahim Alo and Amira Osso v. Region Hannover* (ECLI:EU:C:2016:127), 1 March 2016, par. 29.

<sup>284</sup> EU, *Protocol (No 24) on asylum for nationals of Member States of the European Union*, OJEU (115), 09 May 2008, pp. 305-306, whose Sole Article provides: "Given the level of protection of fundamental rights and freedoms by the Member States of the European Union, Member States shall be regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters. Accordingly, any application for asylum made by a national of a Member State may be taken into consideration or declared admissible for processing by another Member State only in (...) four cases. All of them are related to cases where the EU institutions have determined a clear risk of a serious breach, or the existence of such a breach, by the Member State from which the asylum seeker comes, of the values on which the EU is founded: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Vid. EU, *Consolidated version of the Treaty on European Union*, OJEU (C 326), 26 October 2012, Articles 2 and 7.

changes are expected to occur mainly in Latin America, Africa and Asia. Cross-border movements will therefore come from outside the EU's borders.

Secondly, Article 6 of the 2004 QD, which have been left unaltered by the QD (recast), settles the question of whether acts of persecution requires human agency. As have been noted, the fact that the Geneva Refugee Convention does not define the source of persecution has led to argue that environmental disturbances may themselves be considered agents of persecution<sup>285</sup>.

The list of actors of persecution or serious harm in Article 6 QD (recast) makes it clear, however, that the act of persecution must assume the form of conduct attributable to a State, a non-State actor or to "parties or organisations controlling the State [*de facto* State actors] or a substantial part of the territory of the State"<sup>286</sup>. Therefore, acts of persecution cannot derive from inanimate agents. The list of acts of persecution in Article 9 (2) QD (recast) further strengthens this need for human action. Although it is a non-exhaustive enumeration – given the use of the words "inter alia" - all the examples mentioned in it derive from an abuse of power by a subject<sup>287</sup>.

In third place, unlike the 1951 Convention, Article 10 of the former 2004 QD – which the QD (recast) has slightly amended regarding gender-related aspects - defines each of the grounds for refuge. Focusing on membership of a particular social group, discussed in sub-section 1.3 in the context of the appeals lodged by citizens of Kiribati and Tuvalu, the existence of such a group is defined in Article 10 (d) QD (recast) by the presence of two elements:

"- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is

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<sup>285</sup> Vid. sub-section 1.2.2 (A) of this Chapter.

<sup>286</sup> EU, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification...*, *op. cit.*, Article 6 QD (recast) [Bracketed text added]. Vid. also the comments made thereon by INTERNATIONAL ASSOCIATION OF REFUGEE LAW JUDGES (EUROPEAN CHAPTER), "Qualification for International Protection (Directive 2011/95/EU) A Judicial Analysis", EASO, December 2016, pp. 55-60 (last access: 01/08/2020).

<sup>287</sup> Article 9 (2) QD (recast) lays down that "[a]cts of persecution as qualified in paragraph 1 can, inter alia, take the form of: (a) acts of physical or mental violence, including acts of sexual violence; (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner; (c) prosecution or punishment which is disproportionate or discriminatory; (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment; (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in Article 12(2); (f) acts of a gender-specific or child-specific nature".

so fundamental to identity or conscience that a person should not be forced to renounce it, and

- that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society"<sup>288</sup>.

It seems that the Directive not only has merged the two approaches developed by common law countries – i.e. the *protected characteristics* and the *social perception approach*. The use of the conjunction "and" also suggests that both requirements must be met within the EU legal order<sup>289</sup>.

The sharing of a "common background that cannot be changed" could provide sufficient room to encompass persons who share the experience of having faced the same environmental disruption and its harmful consequences. For example, in a decision by the Czech *Nejvyšší správní soud* (Supreme Administrative Court) concerning the granting of refuge to former members of the Iraqi regime, the existence of a particular social group was determined based on their previous association with the government. Thus, all applicants shared the background of having participated in the Iraqi army and other armed forces or the exercise of power before the collapse of Saddam Hussein's regime<sup>290</sup>. Nothing in the wording of Article 10 (c) QD (recast) suggests that such "background" must have its origin in a political/human situation.

The requirement of a "distinct identity" is, however, non-existent in the context of environmental disruptions. In the above example, the applicants' previous relationship with the regime of Saddam was the reason that "they [were] perceived by the rest of the population to be supporters or representatives of the former regime, especially when they also follow the Sunni religion"<sup>291</sup>. Equally, the existence of laws targeting a population group within a country also supports the finding that the surrounding society perceives that group as different<sup>292</sup>. In contrast, the indiscriminate nature of

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<sup>288</sup> EU, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification...*, *op. cit.*

<sup>289</sup> Cf. INTERNATIONAL ASSOCIATION OF REFUGEE LAW JUDGES (EUROPEAN CHAPTER), "Qualification for International Protection (Directive 2011/95/EU) A Judicial Analysis", *op. cit.*, p. 49.

The need to meet both conditions has been confirmed by the CJEU, *Joined Cases C-199/12 to C-201/12 X, Y and Z v. Minister voor Immigratie en Asiel*, *op. cit.*, par. 45.

<sup>290</sup> SUPREME ADMINISTRATIVE COURT, *HR v. Ministry of the Interior* (5 Azs 2/2012-49), 2 August 2012, summary published on European Database of Asylum Law, p. 2.

<sup>291</sup> *Id.* [bracketed text added].

<sup>292</sup> CJEU, *Joined Cases C-199/12 to C-201/12 X, Y and Z v. Minister voor Immigratie en Asiel*, *op. cit.*, par. 48, referring to the existence in the country of origin of criminal laws specifically targeting homosexuals.

environmental disturbances means that no group differs from the rest of the society affected by such an event. In particular, when the natural phenomenon affects entire regions or involved several countries.

It could be argued, nevertheless, that its effects are perceived more by low-income individuals than by those from wealthy social strata. However, in this case, the distinctive element would no longer be the sharing of an environmental background, but the fact of belonging to a specific socio-economic class within society<sup>293</sup>. In sum, it seems that Article 10 (d) QD (recast), and especially the request for a "distinct identity", would prevent environmentally displaced persons from being considered as a particular social group.

Finally, it has been said that the Geneva Convention operates as a supplementary protection mechanism, acting as a substitute for States which are unable or unwilling to protect their nationals, or stateless persons habitually resident on their territory. Article 8 QD (recast) has captured this subsidiary nature of the international protection regime in what is known as the *internal protection exception*. This exception, common to both statuses – refugee and beneficiary of subsidiary protection-, would also exclude the vast majority of cases of environmental displacement from the scope of both the refugee scheme and the complementary protection mechanism. Its operability is analysed in detail when addressing subsidiary protection.

### **3.2.3. Definition of "person eligible for subsidiary protection"**

Article 2 (f) QD (recast) defines the term *person eligible for subsidiary protection* as follows:

"[A] third-country national or a stateless person who does not qualify as a refugee but in respect of whom *substantial grounds have been shown for believing* that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, *would face a real risk of suffering serious harm as defined in Article 15*, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail him or herself of the protection of that country"<sup>294</sup>.

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<sup>293</sup> Vid. sub-section 1.3.1 of this Chapter, regarding socio-economic classes as a "particular social group".

<sup>294</sup> EU, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification...*, *op. cit.*, [Italics added].

Although the definition of who is entitled to subsidiary protection is broader than the definition of a refugee, it still has a rigid legal structure which, to some extent, continues to reflect the refugee Geneva definition. In this vein, the concept of *serious harm* is to subsidiary protection as nuclear as the notion of *persecution* is to the institution of refuge. To define *serious harm*, Article 2 (f) refers to Article 15 QD (recast), which sets out:

"Serious harm consists of:

(a) the death penalty or execution; or

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or

(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict"<sup>295</sup>.

Unlike persecution, subsidiary protection does not require the risk of serious harm derives from reasons of race, religion, nationality, political opinion or membership of a particular social group<sup>296</sup>. As Article 2 (f) QD (recast) indicates, it is sufficient to show "substantial grounds" for believing that the applicant would face a real risk of suffering such harm if returned to the country of origin. Nevertheless, despite this difference, the definition of serious harm is, as the catalogue of grounds for persecution, a *numerus clausus*. Consequently, it does not admit of an extensive interpretation to include any situation other than the three cases typified by Article 15 QD (recast)<sup>297</sup>.

Thus, human rights violations in the country of origin may engage the international responsibility of the country concerned under human rights law, and even trigger the prohibition of *refoulement* if they are severe enough. However, this will not be sufficient to establish the existence of serious harm to obtain subsidiary protection, unless the violation alleged can subsume under one of the letters of Article 15 QD

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<sup>295</sup> Id.

<sup>296</sup> INTERNATIONAL ASSOCIATION OF REFUGEE LAW JUDGES (EUROPEAN CHAPTER), "Qualification for International Protection (Directive 2011/95/EU) A Judicial Analysis", *op. cit.*, p. 103.

<sup>297</sup> Id., noting that "it follows from the clear wording [of Article 15] that the definition is exhaustive" [bracketed text added].



(recast)<sup>298</sup>. As will be seen, this virtually excludes environmental displaced persons as eligible for subsidiary protection<sup>299</sup>.

### **3.2.4. Environmentally displaced individuals as beneficiaries of subsidiary protection: an analysis of Article 15 (b) QD (recast)**

Article 15 QD (recast) does not expressly include environmental disruptions among the potential sources of serious harm. Despite it, some authors have argued that it would still be possible to grant subsidiary protection to persons who are victims of natural disasters, or who are fleeing from processes of environmental degradation<sup>300</sup>. They base their reasoning on the term "inhuman or degrading treatment" used in letter b, which reflects Article 3 ECHR<sup>301</sup>. The certainly progressive way in which the ECtHR has interpreted this provision would, according to them, provide a sufficient basis for including cases of deterioration of socio-economic conditions in the applicant's country of origin related to environmental problems<sup>302</sup>.

Indeed, Article 3 ECHR is part of the general principles of EU law in its own right, as Article 19 (2) of the EU Charter of Fundamental Rights has enshrined the prohibition of torture or inhuman or degrading treatment<sup>303</sup>. Furthermore, Article 53 (3)

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<sup>298</sup> Id. Vid. Also, CJEU, *C-465/07 Elgafaji v. Staatssecretaris van Justitie* (ECLI:EU:C:2009:94), 17 February 2009, par. 31, observing that "the three types of 'serious harm' defined in Article 15 of Directive 2004/83 (...) constitute the qualification for subsidiary protection". Later confirmed in CJEU : *C-285/12 Aboubacar Diakité v. Commissaire général aux réfugiés et aux apatrides* (ECLI:EU:C:2014:39), 30 January 2014, par. 18; and *Case C-542/13 Mohamed M'Bodj v. État Belge* (ECLI:EU:C:2014:2452), 18 December 2014, par. 30.

<sup>299</sup> KRALER, A. ET AL., "Climate Refugees': legal and policy responses to environmentally induced migration" (PE 462.422), Brussels (Belgium), European Parliament's Committee on Civil Liberties, Justice and Home Affairs, December 2011, p. 52 (last access: 08/08/2020), who categorically conclude: "None of the grounds [of Article 15 QD] are applicable to environmentally displaced individuals" [bracketed text added].

<sup>300</sup> MAYRHOFFER, M.; AMMER, M., "People Moving in the Context of Environmental Change: The Cautious Approach of the European Union", *op. cit.*, pp. 410-418. KOLMANNSSKOG, V.; MYRSTAD, F., "Environmental Displacement in European Asylum Law", *European Journal of Migration and Law*, vol 11, issue 4, 2009, pp. 321-322.

<sup>301</sup> CoE, *European Convention for the Protection of Human Rights and Fundamental Freedoms made in Rome, 4 November 1950, as amended by Protocols Nos. 11, 14 and 15, and supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16*, Strasbourg (France), European Court of Human Rights; Council of Europe, 62 pp. Article 3 ECHR states: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

<sup>302</sup> MAYRHOFFER, M.; AMMER, M., "People Moving in the Context of Environmental Change: The Cautious Approach of the European Union", *op. cit.*, pp. 413-418. KOLMANNSSKOG, V.; MYRSTAD, F., "Environmental Displacement in European Asylum Law", *op. cit.*, pp. 321-322.

<sup>303</sup> EU, *Charter of Fundamental Rights of the European Union*, OJEU (C 326), 26 October 2012, pp. 391-407. It should be recalled that since the entry into force of the Treaty of Lisbon, the EU Charter of Fundamental Rights is legally binding and has the same value as the EU Treaties.

of the EU Charter states that the meaning and scope of the rights guaranteed by the Charter "shall be the same as those laid down" by the ECHR<sup>304</sup>. Likewise, the CJEU has also declared that "the case-law of the ECtHR on the interpretation of article 3 ECHR has to be "taken into consideration in interpreting the scope of that right in the Community legal order"<sup>305</sup>. Having said this, the CJEU has, however, declined to interpret Article 15 (b) QD (recast) in the same way that the ECtHR has interpreted Article 3 ECHR. The European Court has adduced in this regard the different objectives pursued by the Qualification Directive, as well as the slightly different wording and the context in which Article 15 (b) applies<sup>306</sup>.

#### **A) The Qualification Directive in context: negotiation process and objectives of subsidiary protection**

As the very European Commission has declared, subsidiary protection status did not intend to create "new *ratione personae* protection obligations"<sup>307</sup>. Instead, it aimed to clarify and harmonize the divergent complementary protection schemes that most Member States had developed, drawing from the ECtHR's case law and general principles of international humanitarian law<sup>308</sup>.

In the context of the preparatory works on subsidiary protection status, Member States were invited to provide updated information on existing national protection instruments used in cases where the applicant does not qualify for refugee status under the Geneva Convention. A summary of the responses received was published in the

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Vid. EU, *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007*, OJEU (C 306), 17 December 2007, pp. 1-271, Article 1 (8) amending the wording of Article 6 TEU. For the consolidated version of the TEU, vid. EU, *Consolidated version of the Treaty on European Union, op. cit.*

<sup>304</sup> EU, *Charter of Fundamental Rights of the European Union, op. cit.*

<sup>305</sup> CJEU, *C-465/07 Elgafaji v. Staatssecretaris van Justitie, op. cit.*, par. 28.

<sup>306</sup> CJEU, *Case C-542/13 Mohamed M'Bodj v. État Belge, op. cit.*, par. 34. Vid. also, inter alia, CJEU: *C-116/10 État du Grand-Duché de Luxembourg, Administration de l'enregistrement et des domaines v. Pierre Feltgen and Bacino Charter Company SA* (ECLI:EU:C:2010:824), 22 December 2010, par. 12; *C-150/10 Bureau d'intervention et de restitution belge v. Beneo-Orafti SA* (ECLI:EU:C:2011:507), 21 July 2011, par. 41; *Case C-11/12 Maatschap L.A. en D.A.B. Langestraat en P. Langestraat-Troost v. Staatssecretaris van Economische Zaken, Landbouw en Innovatie* (ECLI:EU:C:2012:808), 13 December 2012, par. 27. They all highlight that provisions of EU law must be interpreted taking into account not only their wording, but also the context in which they occur and the objectives pursued by the rules of which they form part.

<sup>307</sup> COUNCIL OF THE EUROPEAN UNION, *Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection* (Doc. 13620/01 ASILE 52), Brussels, 7 November 2001, p. 6.

<sup>308</sup> *Ibid.*, pp. 5 *in fine* and 6.

document ASIM 267 (13667/97)<sup>309</sup>. It showed that, under the most varied terms – "temporary residence", "exceptional leave to remain", "tolerated stay", "de facto refugee status"... -, Member States usually provided complementary protection in three broad situations: a) "refugee convention-like grounds"; b) "other substantial/humanitarian reasons"; c) and "other practical reasons", which refers to situations in which there are administrative obstacles, not imputable to the alien, to deport them into the country of origin<sup>310</sup>.

The humanitarian reasons most frequently mentioned by the Member States were those relating to grave health conditions, the existence of a state of war in the applicant's country of origin and the risk of facing inhuman treatment or punishment upon return to the country of origin<sup>311</sup>. Only Finland declared to grant residence permits on humanitarian grounds related to environmental disasters<sup>312</sup>. Besides, Denmark stated to have done so, but only on an exceptional basis in cases of drought and food insecurity in the State of origin, given the exceptional vulnerability of the applicants – e.g. in the case of families with young children from certain areas in Afghanistan<sup>313</sup>.

To open the debate on the content of subsidiary protection, Member States were asked, on a preliminary basis, "what aspects [they] would like the joint strategy on subsidiary protection to cover"<sup>314</sup>. In particular, they were asked whether the new legal instrument should cover other situations in addition to those already encompassed by international obligations binding on the Member States. Among those situations, not legally covered, were environmental disasters<sup>315</sup>. It remains unknown how the Member States responded to the Commission's discussion note. However, the fact is that environmental factors were never included in any of the proposals on the definition of serious harm or of a person eligible for subsidiary protection.

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<sup>309</sup> COUNCIL OF THE EUROPEAN UNION, *Summary of replies concerning the national instruments of protection falling outside the scope of the Geneva Convention - Subsidiary protection* (Doc. 13667/97 LIMITE ASIM 26), Brussels, 6 January 1998, 11 pp.

<sup>310</sup> *Ibid.*

<sup>311</sup> COUNCIL OF THE EUROPEAN UNION, *Study on the international instruments relevant to subsidiary protection* (Doc. 10175/98 LIMITE ASIM 178; ASILE 6; MIGR 6), Brussels, 13 July 1998, par. 4.3.

<sup>312</sup> COUNCIL OF THE EUROPEAN UNION, *Summary of replies concerning the national instruments...* (Doc. 13667/97 LIMITE ASIM 26), *op. cit.*, p. 5 *in fine*.

<sup>313</sup> *Ibid.*, p. 4. EUROPEAN COMMISSION, *Commission Staff Working Document: Climate change, environmental degradation, and migration. Accompanying the Communication 'An EU Strategy on Adaptation to climate change'* (SWD(2013) 138 final), Brussels, 16 April 2003, p. 19 and footnotes 52 and 53.

<sup>314</sup> COUNCIL OF THE EUROPEAN UNION, *Discussion paper on subsidiary protection* (Doc. 13167/99 LIMITE ASILE 41), Brussels, 19 November 1999, p. 2.

<sup>315</sup> *Ibid.*, p. 3.

Moreover, judging from the way the negotiations unfolded, not only were most Member States not interested in extending their international obligations to new categories of protected persons. Neither did they want subsidiary protection to extend to any human rights violations that the applicant might suffer in the country of origin. For example, Article 15 (b) QD initially defined "serious harm" in a general way, as a "violation of a human right, sufficiently severe to engage the Member State's international obligations"<sup>316</sup>. This subsection concerned a well-founded fear of a violation of human rights arising from acts other than torture or other inhuman or degrading treatment or punishment, which were already covered by letter (a) of draft Article 15<sup>317</sup>. Nevertheless, the delegations from Spain, France, the Netherlands and Finland called for specifying the particular human rights violations that would give rise to subsidiary protection<sup>318</sup>, which ultimately led to the withdrawal of draft letter (b).

Subsequently, the Danish Presidency presented another proposal on the definition of serious harm, adding a letter (d) to Article 15, which reads as follow:

"acts or treatments outside the scope of sub-paragraphs (a) to (c) in an applicants country of origin, or in the case of a stateless person, his or her country of former habitual residence, when such acts or treatment are sufficiently severe to entitle the applicant to protection against refoulement in accordance with the international obligations of Member States"<sup>319</sup>.

The logic was the same as that underlying the discarded Article 15 (b). Namely, to allow the examination of other human rights violations than those resulting from a breach of Article 3 ECHR or Article 1 of the 6th Protocol to the ECHR – the latter concerning the abolition of the death penalty<sup>320</sup>. Nevertheless, instead of a generic reference to human rights violations sufficiently grave to compromise Member States' international obligations, the new proposal limited such violations only to those that

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<sup>316</sup> COUNCIL OF THE EUROPEAN UNION, *Proposal for a Council Directive on minimum standards...* (Doc. 13620/01 ASILE 52), *op. cit.*, p. 48.

<sup>317</sup> *Ibid.*, p. 26.

<sup>318</sup> COUNCIL OF THE EUROPEAN UNION, *Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection* (Doc. 10596/02 LIMITE ASILE 36), Brussels, 9 July 2002, p. 24, footnote 4.

<sup>319</sup> COUNCIL OF THE EUROPEAN UNION, *Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection* (Doc. 12148/02 LIMITE ASILE 43), Brussels, 20 September 2002, p. 4.

<sup>320</sup> *Ibid.*, p. 7. The Danish proposal had listed violations of Article 3 of the ECHR or Article 1 of the 6th Protocol to the ECHR as subparagraphs (a) and (b) of Article 15 QD.

could trigger the prohibition of *refoulement*, and thus the Member States' extraterritorial obligation to protect.

The Danish Presidency justified the inclusion of subsection (d) on the need to give legal effect to the ECtHR's case law<sup>321</sup>. On several occasions, The Court of Strasbourg had stressed that other articles of ECHR than Article 3 – e.g., Article 6 regarding the right to a fair trial –, could also entail the principle of *non-refoulement*<sup>322</sup>.

Indeed, the formulation of the proposed letter (d) seemed wide enough to have cover persons arriving at European borders from countries whose environmental situation would pose a menace to life or personal integrity if they were to return there. However, it seems that national delegations were also aware of the broad scope that the wording of letter (d) left for such interpretations<sup>323</sup>. The Danish Presidency, to overcome Member States' concerns, clarified in its explanatory note that: "[b]y using the wording "acts or treatment" it is ensured that only man-made situations, *and not for instance situations arising natural disasters or situations of famine*, will lead to the granting of subsidiary protection"<sup>324</sup>. The clarification should not have convinced the other Member State delegations, as the subsection (d) was deleted in the final version of Article 15 of the 2004 QD.

In summary, the negotiation process of the Qualification Directive points to two realities. On the one hand, the purpose of the Directive from the outset was simply to codify existing and widespread practices among the Member States on complementary forms of protection. As pointed out in the document ASIM 267, protection in situations of environmental disturbance was not among them<sup>325</sup>. On the other hand, and even more importantly, it also shows that the Member States rejected outright any wording of

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<sup>321</sup> Vid. for example, ECtHR, *Soering v. The United Kingdom* (Application no. 14038/88), 07 July 1989, par. 113, noting: "The Court does not exclude that an issue might exceptionally be raised under Article 6 (art. 6) by an extradition decision in circumstances where the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the requesting country. However, the facts of the present case do not disclose such a risk".

<sup>322</sup> COUNCIL OF THE EUROPEAN UNION, *Proposal for a Council Directive on minimum standards...* (Doc. 12148/02 LIMITE ASILE 43), *op. cit.*, p. 7.

<sup>323</sup> The delegations of Germany, Spain, France and Belgium expressed reservations on subparagraph (d), considering that the wording was "too vague and could allow a wide margin of interpretation". Austria, Greece, Finland, Luxembourg, the Netherlands and Sweden also made scrutiny reservations on the same grounds. Vid. COUNCIL OF THE EUROPEAN UNION, *Proposal for a Council Directive on minimum standards...* (Doc. 12148/02 LIMITE ASILE 43), *op. cit.*, p. 11, footnote 1.

<sup>324</sup> *Ibid.*, p. 7 [Italics added].

<sup>325</sup> As noted above, of all Member States only Finland granted residence permits on humanitarian grounds related to environmental disasters. Vid. COUNCIL OF THE EUROPEAN UNION, *Summary of replies concerning the national instruments...* (Doc. 13667/97 LIMITE ASIM 26), *op. cit.*, p. 5 *in fine*.

Article 15 that would allow victims of environmental disturbances to be entitled to subsidiary protection.

**B) The correlation between Article 15(b) QD (recast) and the principle of non-refoulement, as inferred by the ECtHR's case law from Article 3 ECHR**

1. The case of *D. v. The United Kingdom*

For those authors who have claimed that environmentally-degraded conditions in the alien's country of origin could, under certain circumstances, amount to ill-treatment within the meaning of Article 15 (b) QD (recast), the case of *D v. The United Kingdom*<sup>326</sup> decided by the ECtHR is nuclear in their reasoning<sup>327</sup>.

The case concerned a terminal AIDS patient in the last stage of the disease whom the UK wanted to deport to the Caribbean island of St Christopher<sup>328</sup>. Although the ECtHR did not consider that the general living conditions on the Island or the shortcomings in the medical care system amounted *per se* to torture or inhuman or degrading treatment<sup>329</sup>, the exceptional circumstances of the case as a whole made, nevertheless, the deportation inhumane in the eyes of Article 3 ECHR<sup>330</sup>.

The Court paid particular attention to his "already limited life expectancy", which the "conditions of adversity" on the Island would have further reduced<sup>331</sup>; the absence of the medical treatment D was receiving in the United Kingdom on which he was utterly dependent<sup>332</sup>; as well as the lack of relatives or friends in St Christopher who could support him morally in the final stages of his life<sup>333</sup>. In the Court's view, all these factors taken together would have "subject[ed] him to [such] acute mental and physical suffering"<sup>334</sup> that would have qualified as proscribed ill-treatment.

The case is indeed relevant from the perspective of environmental displacement. For the first time, the Strasbourg Court recognised the operability of the principle of

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<sup>326</sup> ECtHR, *D. v. The United Kingdom* (Application No. 30240/96), 02 May 1997, 21 pp.

<sup>327</sup> KOLMANNSSKOG, V.; MYRSTAD, F., "Environmental Displacement in European Asylum Law", *op. cit.*, pp. 321-322.

<sup>328</sup> *Vid.*, ECtHR, *D. v. The United Kingdom*, *op. cit.*, "I. PARTICULAR CIRCUMSTANCES OF THE CASE" (pars. 6-21).

<sup>329</sup> *Ibid.*, par. 53.

<sup>330</sup> *Ibid.*, par. 54 *in fine*.

<sup>331</sup> *Ibid.*, par. 52.

<sup>332</sup> *Ibid.*, pars. 51 and 53.

<sup>333</sup> *Ibid.*, par. 52.

<sup>334</sup> *Id.* [bracketed text added].

*non-refoulement* in cases where the inhuman or degrading situation was not created or tolerated, directly or indirectly, by the authorities of the State of return. In other words, situations where the intentionality element was missing:

"the Court must reserve to itself sufficient flexibility to address the application of that Article (art. 3) in other contexts which might arise. It is not therefore prevented from scrutinising an applicant's claim under Article 3 (art. 3) where *the source of the risk of proscribed treatment in the receiving country stems from factors which cannot engage either directly or indirectly the responsibility of the public authorities of that country* (...). To limit the application of Article 3 (art. 3) in this manner would be to undermine the absolute character of its protection"<sup>335</sup>.

Thus, some scholars have compared the exceptional situation of D to severe cases of environmental disruption,

"where people would be sent back to a life threatening situation (e.g. because the disaster has not ended yet or due to secondary hazards) or to a situation where they would not get any humanitarian assistance or where such assistance would be clearly insufficient and inadequate"<sup>336</sup>.

Interpreting Article 15 (b) QD (recast) in the same way as the ECtHR applied Article 3 ECHR in *D v. the UK*, "subsidiary protection should be granted in certain cases of extreme natural disaster or degradation on the basis of the ban of torture, inhuman or degrading treatment or the right to life"<sup>337</sup>. Ultimately, this conclusion stems from the correlation assumed by its proponents between Article 3 ECHR and Article 15 (b) QD (recast).

The question of whether subsidiary protection should include cases such as that of *D v. the UK* already arose during the negotiation of the original 2004 QD. At the same time, in the case of *M'Bodj v. État Belge*, the CJEU had the opportunity to determine to what extent the ECtHR's case-law should condition the interpretation of Article 15 (b) QD (recast)<sup>338</sup>. As set out below, neither the Member States' declarations nor the CJEU's statements appear to support the conclusion that the effects of environmental disruptions can be regarded as inhuman or degrading acts for Article 15 (b) QD (recast).

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<sup>335</sup> *Ibid.*, par. 49.

<sup>336</sup> KÄLIN, W.; SCHEREPFER, N., "Protecting People Crossing Borders in the context of Climate Change: Normative Gaps and Possible Approaches" (PPLA/2012/01), *Legal and Protection Policy Research Series*, UNHCR (Division of International Protection), February 2012, p. 36.

<sup>337</sup> KOLMANNSSKOG, V.; MYRSTAD, F., "Environmental Displacement in European Asylum Law", *op. cit.*, p. 322.

<sup>338</sup> CJEU, *Case C-542/13 Mohamed M'Bodj v. État Belge*, *op. cit.*

a. *The influence the ECtHR's judgment had on the drafting of Article 15 (b) QD*

During the debate on the definition of serious harm, the Danish Presidency expressed its concern that "if sub-paragraph (b) was to fully include the jurisprudence of ECtHR relating to Article 3 of ECHR, cases based purely on compassionate grounds as was the case in *D versus UK* (...) would have to be included"<sup>339</sup>. As has been noted, in this case, the extradition of the applicant was found contrary to Article 3 ECHR, even though the situation in St. Kitts was not in itself considered equivalent to torture or inhuman or degrading treatment. To avoid the inclusion of such situations, the Danish Presidency suggested "limit[ing] the scope of sub-paragraph (b) by stating that the real risk of torture or inhuman or degrading treatment or punishment *must prevail in his or her country of origin*"<sup>340</sup>.

In this regard, some scholars have reduced the importance of case *D v. the UK* from the viewpoint of environmentally-related cross-border displacements<sup>341</sup>. They rightly point out that, in that case, the risk of ill-treatment did not emanate from the conditions in the country of origin itself, *but "from the withdrawal of support/treatment provided to a person in a bad state of health by the sending state (...)"*<sup>342</sup>. By contrast, in the context of environmental displacement, the situation of inhuman or degrading treatment stems from environmental factors *prevailing in the very country of origin*.

Despite the geographical limitation introduced by the Danish Presidency, it could still be argued whether other cases based on compassionate grounds, where the risk of ill-treatment actually exists in the country of origin, would therefore fall within the scope of Article 15 (b). The Belgian delegation also raised this issue, questioning "whether [all] compassionate ground cases would fall outside the scope of this sub-paragraph"<sup>343</sup>. To dispel any doubt about the non-inclusion of such cases under the subsidiary

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<sup>339</sup> COUNCIL OF THE EUROPEAN UNION, *Proposal for a Council Directive on minimum standards...* (Doc. 12148/02 LIMITE ASILE 43), *op. cit.*, p. 6.

<sup>340</sup> *Id.* [bracketed text added]. The Danish suggestion was accepted by the rest of the Member States' delegations, and was also maintained during the recast of the Qualification Directive in 2011.

<sup>341</sup> MAYRHOFER, M.; AMMER, M., "People Moving in the Context of Environmental Change: The Cautious Approach of the European Union", *op. cit.*, pp. 414 *in fine* and 415.

<sup>342</sup> *Ibid.*, p. 415

<sup>343</sup> COUNCIL OF THE EUROPEAN UNION, *Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection* (Doc. 12534/02 LIMITE ASILE 49), Brussels, 07 October 2002, p. 3, footnote 2.



protection regime, "which was never the intention of this Directive"<sup>344</sup>, the Danish Chair suggested inserting a recital in the preamble to the Directive with wording similar to that in the explanatory memorandum to the Commission's proposal (point 2, paragraph 2):

"Whereas those third country nationals or stateless persons, who are allowed to remain in the territories of the Member States for reasons not due to a need for international protection but on compassionate or humanitarian grounds, fall outside the scope of this Directive"<sup>345</sup>.

With a slightly amended wording, the Danish Presidency's proposal was finally adopted as recital 9 of the 2004 QD – now recital 15 QD (recast). Consequently, protection that a Member State would decide to provide for humanitarian reasons, based on the environmental conditions prevailing in the country of return, would not be covered by the European subsidiary protection regime.

*b. The correlation between Article 15 (b) QD and Article 3 ECHR according to the CJEU: the case of M'Bodj v. État Belge*

Furthermore, the CJEU has had occasion to rule on the inclusion of cases such as that of *D. v. the UK* in the scope of Article 15 (b) QD. In *M'Bodj v. État Belge*, the Belgian Constitutional Court asked the European Court for a preliminary ruling. The national court asked whether a third-country national, who had been granted a residence permit in the territory of a Member State under national legislation on medical grounds, would be entitled to the social assistance and health care which the QD provides to beneficiaries of subsidiary protection<sup>346</sup>.

Although not referring expressly to the case of *D. v. the UK*, the CJEU noted that Article 3 ECHR had been interpreted by the ECtHR as precluding, in highly exceptional cases, the removal of foreign-nationals suffering from a severe physical or mental illness to a country where appropriate treatment was not available<sup>347</sup>. However, the European Court considered that the precedent set by its counterpart in Strasbourg did not imply that persons who may not be expelled under Article 3 ECHR "should be

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<sup>344</sup> COUNCIL OF THE EUROPEAN UNION, *Proposal for a Council Directive on minimum standards...* (Doc. 12148/02 LIMITE ASILE 43), *op. cit.*, p. 6.

<sup>345</sup> COUNCIL OF THE EUROPEAN UNION, *Proposal for a Council Directive on minimum standards...* (Doc. 12534/02 LIMITE ASILE 49), *op. cit.*, p. 3, footnote 2.

<sup>346</sup> CJEU, *Case C-542/13 Mohamed M'Bodj v. État Belge*, *op. cit.*, par. 24 (1).

<sup>347</sup> *Ibid.*, par. 39.

granted leave to reside in a Member State by way of subsidiary protection under Directive 2004/83"<sup>348</sup>.

After analysing the subsidiary protection regime, the CJEU found that situations such as the case of *D. v. the UK*, although they may prevent a non-EU national from being removed from the territory of a Member State based on Article 3 ECHR and the prohibition on *refoulement*, are excluded from the scope of the QD<sup>349</sup>. Consequently, the discretionary granting by a Member State of national protection on grounds other than the need for international protection – i.e. on compassionate or humanitarian grounds -, does not entitle beneficiaries to the rights set out in the Directive. Nor does it make them eligible for subsidiary protection, as indicated in Recital 15 QD (recast) – previously Recital 9 - included on a proposal by the Danish Presidency<sup>350</sup>.

## 2. The cases of *M.S.S. v. Greece and Belgium* and *Sufi and Elmi v. The United Kingdom*

Apart from *D. v. the UK*, some authors have invoked other cases from the ECHR's case-law to argue in favour of considering situations of environmental distress as inhuman or degrading treatment within the scope of Article 15 (b) QD (recast)<sup>351</sup>. In this regard, reference has been made to the cases of *M.S.S. v. Greece and Belgium*<sup>352</sup>, and *Sufi and Elmi v. The United Kingdom*<sup>353</sup>.

In the first case, the prohibition of not returning the applicant, an Afghan man seeking asylum, to Greece from Belgium stemmed from the most extreme poverty in which he had found himself in Greece during several months, which the ECtHR judged as incompatible with Article 3 ECHR<sup>354</sup>. However, this case would be irrelevant from the perspective of the QD (recast), as relevant facts took place in another EU-Member State and not in Afghanistan. As highlighted above, the scope of Article 15 (b) was intentionally limited to those situations where a real risk of suffering torture or inhuman or degraded treatment or punishment exists in the applicant's country of origin.

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<sup>348</sup> Ibid., par. 40.

<sup>349</sup> Ibid., pars. 35-37. Each of the reasons that led the CJEU to that conclusion in *M' Bodj v. État Belge* is discussed separately in sub-section 3.2.4. (C) of this Chapter.

<sup>350</sup> Ibid., par. 46-47.

<sup>351</sup> MAYRHOFER, M.; AMMER, M., "People Moving in the Context of Environmental Change: The Cautious Approach of the European Union", *op. cit.*, pp. 415-416.

<sup>352</sup> ECtHR, *M.S.S. v. Belgium and Greece* (Application No. 30696/09), 21 January 2011, 117 pp.

<sup>353</sup> ECtHR, *Sufi and Elmi v. The United Kingdom* (Applications Nos. 8319/07 and 11449/07), 28 November 2011, 77 pp.

<sup>354</sup> ECtHR, *M.S.S. v. Belgium and Greece* (Application No. 30696/09), 21 January 2011, pars. 249-264.

The second refers to two Somali nationals who were to be deported from the UK to Somalia. In this case, various NGOs' Reports that the Court took into consideration indeed mentioned long-term droughts and poor harvests in the country<sup>355</sup>. Nevertheless, the breach of Article 3 ECHR was not based on the climate situation in Somalia, but on its condition as a failed State and the situation of grave internal conflict that existed throughout the country<sup>356</sup>. Furthermore, regarding the relationship between Article 3 ECHR and Article 15 QD (recast), the very Strasbourg Court declared: "The jurisdiction of this Court is limited to the interpretation of the Convention and it would not, therefore, be appropriate for it to express any views on the ambit or scope of article 15(c) of the Qualification Directive"<sup>357</sup>, confirming the complementarity but separated relation among the two *corpora* of protection.

In conclusion, it is possible that based on the ECtHR's case-law, further discussed in Chapter V, it could be argued that Article 3 ECHR and the principle of *non-refoulement* would prevent a person from being returned to a country where the environmental conditions are very extreme. However, this does not imply a correlative right to stay in the territory of an EU-Member State under subsidiary protection. Therefore, the residence permit to which displaced persons for environmental reasons would be entitled in such exceptional situations, which will generally be one for humanitarian reasons, and the rights attached to it, remain at present dependent on the national legislation of each Member State.

**C) Why, apart from Article 15 (b), persons forced to move for environmental causes would not generally be entitled to subsidiary protection: necessary elements for the activation of this complementary status**

The ruling of the CJEU in the case of *M'Bodj v. Belgian State* focuses on the applicability of subsidiary protection to cases of foreign nationals who are allowed to stay on the territory of EU-Member States for medical reasons<sup>358</sup>. However, it is possible to draw from it certain general principles which also prevent subsidiary protection from applying to serious risks arising from general unintentional situations in the country of origin, as could be the case with environmental disruptions.

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<sup>355</sup> Ibid., pars. 170, 188, 189, 194 and 195.

<sup>356</sup> Ibid., par. 282.

<sup>357</sup> Ibid., par. 226.

<sup>358</sup> CJEU, *Case C-542/13 Mohamed M'Bodj v. État Belge*, *op. cit.*

1. General risk situations prevailing in the country of origin are excluded

Recital 35 in the preamble to QD (recast) – previously recital 34 in the 2004 QD – states:

"Risks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm"<sup>359</sup>.

On this basis, the CJEU concluded in *M'Bodj v. Belgian State* that the failure of a country's health system to provide a seriously-ill national with treatment available in other countries cannot be regarded as inhuman or degrading treatment within the meaning of Article 15 (b)<sup>360</sup>. Thus, although the motivational element inherent in the term "persecution" has been removed from subsidiary protection status<sup>361</sup>, a certain degree of intentionality is still required<sup>362</sup> to distinguish the victim from the others. That is to say, even if the reasons for the real risk of serious harm may not be specific to an individual, applicants must still show substantial grounds for that risk in their particular case.

In this way, in *M'Bodj v. Belgian State*, the CJEU makes a separate reference to cases where there is a real risk that a third-country national would be *intentionally deprived* of health care in that country, considering that in such cases the need for subsidiary protection may arise<sup>363</sup>.

Once again, the requirement that the victim must be to some extent individuated from the rest of society makes it challenging to qualify climate change, natural events or economic difficulties as potential sources of serious harm for the QD (recast), due to their indiscriminate nature. Exceptions would be made for those cases already mentioned, where an environmental disturbance is used or caused to harm a person or a group of persons but for reasons unconnected with or adjacent to refuge grounds. In the

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<sup>359</sup> EU, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification...*, *op. cit.*

<sup>360</sup> CJEU, *Case C-542/13 Mohamed M'Bodj v. État Belge*, *op. cit.*, par. 41.

<sup>361</sup> INTERNATIONAL ASSOCIATION OF REFUGEE LAW JUDGES (EUROPEAN CHAPTER), "Qualification for International Protection (Directive 2011/95/EU) A Judicial Analysis", *op. cit.*, p. 103.

<sup>362</sup> *Ibid.*, p. 109.

<sup>363</sup> CJEU, *Case C-542/13 Mohamed M'Bodj v. État Belge*, *op. cit.*, par. 41.

light of the last nuance introduced by the CJEU, it seems that these cases could be eligible for subsidiary protection if all other elements are met<sup>364</sup>.

## 2. The requirement of an actor of persecution or serious harm (Article 6)

Article 6 QD (recast) lays down the following list of those identified as responsible for inflicting persecution or serious harm:

"Actors of persecution or serious harm include:

(a) the State;

(b) parties or organisations controlling the State or a substantial part of the territory of the State;

(c) non-State actors, if it can be demonstrated that the actors mentioned in points (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7"<sup>365</sup>.

As it was explained when addressing the refugee definition under the QD (recast), the above provision would support not only the affirmation that Article 15 (b) requires an element of intentional ill-treatment to be applied, but also the need for human agency<sup>366</sup>. The CJEU has also confirmed this necessity in its *M'Bodj* judgment, where the Court has stated that serious harm "*must take the form of conduct on the part of a third party and that it cannot therefore simply be the result of general shortcomings in the (...) country of origin*"<sup>367</sup>. Although the CJEU was referring to constraints on the health system, its reasoning is equally valid in the case of "dire socio-economic [or environmental conditions] in the country of origin without any identifiable actor of persecution or serious harm"<sup>368</sup>.

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<sup>364</sup> This could have been the case for the victims of Cyclone Nargis that hit Burma in early May 2008. Vid. sub-section 3.2.4. (D) of this Chapter.

<sup>365</sup> EU, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification...*, *op. cit.*

<sup>366</sup> Vid. Sub-section 3.2.2.

<sup>367</sup> CJEU, *Case C-542/13 Mohamed M'Bodj v. État Belge*, *op. cit.*, par. 35 [italics added]. As underlined by the CJEU in its *M'Bodj* judgment, persecution or serious harm 305, that is, a human agency. It thus excludes persecution or serious harm arising from dire socio-economic or health conditions in the country of origin without any identifiable actor of persecution or serious harm<sup>306</sup>. On this basis, the Belgian Conseil du Contentieux des Etrangers (Council for Alien Law Litigation) has for instance refused applications for international protection based on the outbreak of the Ebola virus in Guinea and Liberia<sup>307</sup>.

<sup>368</sup> INTERNATIONAL ASSOCIATION OF REFUGEE LAW JUDGES (EUROPEAN CHAPTER), "Qualification for International Protection (Directive 2011/95/EU) A Judicial Analysis", *op. cit.*, p. 55 [bracketed text added]. It notes that "[o]n this basis, the Belgian Conseil du Contentieux des Etrangers (Council for Alien

There exists, of course, the argument that "natural disasters are not just natural"<sup>369</sup>, being "also a human factor involved (...), as the degree of disaster depends on vulnerability and the acts or lack of action from governments and others before, during and after a natural hazard"<sup>370</sup>. Objections to this reasoning have already been made in the *excursus* for considering States, or the international community as a whole, as climate/environmental persecutors<sup>371</sup>. Suffice it to note the difficulty of holding the international responsibility of States when their environmental vulnerability derives from a lack of resources. Either when the inadequate response of governments to environmental disruptions does not qualify as gross negligence or willful omission, but as a case of force majeure operating as an exclusion of liability.

3. Internal protection in the country of origin as a cause for excluding protection (Article 8)

There is still one last element to be analysed of the context in which the QD (recast) operates, and which would also hamper its application to cases of transboundary displacement related to the environment. It is the *internal protection exception*, contained in Article 8 QD (recast), whose paragraph (1) allows the Member States to

"(...) determine that an applicant is not in need of international protection if *in a part of the country of origin*, he or she:

(a) has no well-founded fear of being persecuted or *is not at real risk of suffering serious harm*; or

(b) *has access to protection* against persecution or serious harm as defined in Article 7;

and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there"<sup>372</sup>.

The CJEU does not expressly assess this exception in the case of *M'Bodj*, since it assumes that appropriate treatment would not be available in any of the country's

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Law Litigation) has for instance refused applications for international protection based on the outbreak of the Ebola virus in Guinea and Liberia" (id.).

<sup>369</sup> KOLMANNSSKOG, V.; MYRSTAD, F., "Environmental Displacement in European Asylum Law", *op. cit.*, p. 320 *in fine*.

<sup>370</sup> Ibid., p. 321.

<sup>371</sup> Vid., "Excursus: States as climate persecutors", in sub-section 1.2.2 (A) of this Chapter.

<sup>372</sup> EU, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification..., *op. cit.* [italics added]. A general commentary on Article 8 QD (recast) can be found in: INTERNATIONAL ASSOCIATION OF REFUGEE LAW JUDGES (EUROPEAN CHAPTER), "Qualification for International Protection (Directive 2011/95/EU) A Judicial Analysis", *op. cit.*, pp. 72-80.

hospitals. On the contrary, the *internal protection exception* could play a significant role in cross-border environmental movements. Thus, even accepting the exposure to a severe environmental risk as inhuman or degrading treatment within the meaning of Article 15(b) QD (recast), Article 8 thereof would in itself discard a good number of applications for subsidiary protection that might arise from that cause.

Indeed, it is difficult to imagine any scenario other than an apocalyptic one in which a natural disaster could lead an entire country to absolute and complete collapse. Natural phenomena such as earthquakes, typhoons, tornadoes, volcanic eruptions or major floods have their impact on a particular geographical area. Except in rare circumstances – one might think of small-size States located at the epicentre of a disaster -, extreme natural events do not usually render the whole territory of a country unsuitable for life. Therefore, as long as there remain safe areas within the national territory where populations directly affected by a natural hazard could be evacuated, subsidiary protection by the EU Member States would not apply<sup>373</sup>.

Cautions could be made regarding slow-onset environmental disruptions, like drought or sea-level rise, which may affect entire countries. Such would be the case of the African States, which are prone to suffer long-term droughts; or the low-lying SIDS that are at risk of disappearing under the ocean waters<sup>374</sup>. Nevertheless, to the extent that protection could be provided under the terms of Article 7 QD (recast) – i.e. in an effective and durable manner - against the harmful effects that such processes have on socio-economic living conditions, the risk of serious harm would be prevented or minimised, so that subsidiary protection would not arise either.

In this regard, it is worthy to note that Article 7 QD (recast) includes international organisations among protection actors<sup>375</sup>. Thus, once again, the vital role played by international assistance in the context of environmental disturbances should be

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<sup>373</sup> KRALER, A. ET AL., “*Climate Refugees*”: *legal and policy responses to environmentally induced migration (study)*, *op. cit.*, p. 52.

<sup>374</sup> In this regard, UNHCR has called for caution in assessing the internal flight exception in the context of the adverse effects of climate change and disasters, noting that slow-evolving processes such as “ environmental degradation, desertification or sea level rise, initially affecting only parts of a country, may progressively affect other parts, making relocation neither relevant nor reasonable” (in: UNHCR, *Legal considerations...*, *op. cit.*, par. 12.

<sup>375</sup> According to Article 7 QD (recast), “[p]rotection can be provided by: (a) the State; or (b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State”. A general commentary on Article 7 QD (recast) can be found in: INTERNATIONAL ASSOCIATION OF REFUGEE LAW JUDGES (EUROPEAN CHAPTER), “Qualification for International Protection (Directive 2011/95/EU) A Judicial Analysis”, *op. cit.*, pp. 60-71.

highlighted. Not only by delivering humanitarian relief to meet the basic needs of victims – such as shelter, food, clean water or medicines - and participating in the subsequent recovering phase, but also and primarily by helping to strengthen the resilience and adaptive capacity of those countries most prone to suffering environmental disruptions.

#### **D) The 2008 Cyclone Nargis in Myanmar: a case-study of subsidiary protection**

One reservation has been made to the conclusion that persons displaced for environmental reasons would not generally be entitled to subsidiary protection. It concerns cases where a disturbance in the environment has been used or caused to harm a person or a group of persons but for reasons different from those which give rise to the right of refuge<sup>376</sup>. Such could have been the case for the victims of Cyclone Nargis that hit Burma in early May 2008. A study published in 2009 jointly by local volunteers from the Emergency Assistance Team (EAT-Burma) and researchers from Johns Hopkins University, reported repeated government interference in local and international attempts to provide relief to the affected communities<sup>377</sup>.

The response to Cyclone Nargis by Burma's junta, the State Peace and Development Council, was deeply influenced by the proximity of the date of the referendum on the new constitution drafted by the military junta, which was due to take place on the 10th of the same month when the cyclone hit the coast of Myanmar<sup>378</sup>. It seems that the government feared that foreign powers – mainly the USA - could take advantage of that context of natural disaster, using the delivery of international humanitarian aid as a vehicle for invading or destabilising the country<sup>379</sup>.

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<sup>376</sup> Vid. sub-section 3.2.4 (C) of this Chapter.

<sup>377</sup> EAT; JHU CPHHR, *After the Storm: Voices from the Delta. A Report by EAT and JHU CPHHR on human rights violations in the wake of Cyclone Nargis*, *op. cit.*

<sup>378</sup> *Ibid.*, p. 16. Thus, despite the national emergency, preparations for the holding of the referendum continued throughout the country, except in the areas most affected by the cyclone, where voting was delayed by two weeks. In SELTH, A., “Even Paranoids Have Enemies: Cyclone Nargis and Myanmar's Fears of Invasion”, *op. cit.*, p. 387.

<sup>379</sup> SELTH, A., “Even Paranoids Have Enemies: Cyclone Nargis and Myanmar's Fears of Invasion”, *op. cit.*, pp. 391-394. According to Josef Silverstein, a retired Rutgers University professor, the entry of foreign soldiers into Myanmar would have been, in the eyes of the Burmese Junta, “the spearhead to overthrow the government”. From the Junta's perspective: “Aid workers could be carrying weapons to give to the people, they could give them ideas of how to overthrow the government”. In THE ASSOCIATED PRESS, “Why Is Burma Junta Afraid of Letting Foreign Aid Workers?”, *The Irrawaddy*, 09 May 2008 (last access: 10/08/2020). Vid. also footnote 5 of this Chapter, commenting on the general concern of



Immediately after the disaster, the Burmese Junta blocked the entry into Myanmar of the rapid disaster assessment teams offered by the UN and the US<sup>380</sup>, and refused any aid from Western countries<sup>381</sup> or to allow relief workers to enter the country<sup>382</sup>. Only 'friendly' countries such as China, India and Thailand were allowed to transport relief supplies donated by the international community to Rangoon, the largest city in Myanmar and one of the worst affected, within the first week of the disaster<sup>383</sup>.

Later, and after significant international pressure, the government agreed to accept foreign assistance, but on the basis that it could control aid distribution and under many restrictions<sup>384</sup>. For instance, visas for international aid workers were granted in small numbers and with considerable delays<sup>385</sup>, and they did not involve access to the most severely affected areas, as additional permits were required to enter the Irrawaddy Delta<sup>386</sup>. Besides, numerous checkpoints were established along routes to the Delta, including the payment of so-called "fees" to access the Delta<sup>387</sup>. All these measures intended to be a real deterrent to international relief efforts<sup>388</sup>.

Also, there were reports of relief workers, including private volunteers, intimidated or detained by military authorities<sup>389</sup>, who were also accused of theft and confiscation of relief supplies<sup>390</sup>. Moreover, cyclone survivors, mainly men, but also women and children, were forced to provide free labour in military-led reconstruction

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States that international relief assistance following natural disasters may be used to interfere in internal affairs.

<sup>380</sup> EAT; JHU CPHHR, *After the Storm: Voices from the Delta. A Report by EAT and JHU CPHHR on human rights violations in the wake of Cyclone Nargis*, *op. cit.*, p. 52.

<sup>381</sup> *Ibid.*, p. 53. SELTH, A., "Even Paranoids Have Enemies: Cyclone Nargis and Myanmar's Fears of Invasion", *op. cit.*, p. 388, who refers: "The United States, Britain and France sent naval vessels loaded with aid supplies, but they were denied permission to land in Myanmar, or to deliver any supplies by helicopter".

<sup>382</sup> EAT; JHU CPHHR, *op. cit. supra*, p. 52.

<sup>383</sup> *Id.*

<sup>384</sup> *Ibid.* pp. 52-53. SELTH, A., "Even Paranoids Have Enemies: Cyclone Nargis and Myanmar's Fears of Invasion", *op. cit.*, p. 387 *in fine* and 388.

<sup>385</sup> EAT; JHU CPHHR, *op. cit. supra*, p. 52 *in fine*. SELTH, A., *op. cit. supra*, p. 388, reporting that, once inside the country, "the movement of foreign aid workers was restricted and relief distribution was tightly controlled by the authorities".

<sup>386</sup> EAT; JHU CPHHR, *op. cit. supra*, p. 52 *in fine* and 53, reporting that foreign organisations had to wait up to four days before they were allowed to travel to the delta. In addition, they were required to give two days' notice before travelling there and access was only allowed for 24-hour periods.

<sup>387</sup> *Ibid.*, p. 29.

<sup>388</sup> *Id.*, noting that relief "groups were forced to find alternate routes and methods (often clandestinely) to deliver aid to survivors".

<sup>389</sup> *Ibid.*, pp. 32 *in fine* and 33.

<sup>390</sup> *Ibid.*, pp. 33 *in fine* and 34. *Vid.* footnote 5 of this Chapter, on the granting of refugee status in New Zealand to a Burmese activist who had a well-founded fear of being arrested and convicted for distributing humanitarian aid in Myanmar in the context of Cyclone Nargis.

projects, including the repairing of military bases, as well as schools, roads and other infrastructures<sup>391</sup>.

In the light of the grave and repeated situation of inhuman and degrading treatment that the military government was subjecting Burma people in the aftermath of the disaster, it is inevitable to raise the question of whether the victims of Cyclone Nargis would fall under subsidiary protection. There is no doubt that the government's actions significantly aggravated the consequences of the disaster for the general population.

It does not appear that the Burmese government blocked the entry of international humanitarian aid into the country to punish the population<sup>392</sup>, but rather that it was motivated by a paranoid fear of any possible intervention by foreign powers in Myanmar's internal affairs. Nevertheless, it is no less accurate to affirm that this blockade had the direct consequence of preventing the many populations affected by Cyclone Nargis from receiving immediately primary care in the form of food, drinking water, shelter and healthcare. In words of the former UK Prime Minister Gordon Brown: "A natural disaster is being made into a 'man-made catastrophe' by the neglect and the inhuman treatment of the Burmese people by a regime that is failing to act"<sup>393</sup>.

Although the government was aware of the dire consequences that its decision to prevent or hinder international aid had on the victims of the natural disaster, it accepted them as minor collateral damage, violating the obligation of every State to protect its population<sup>394</sup>. As has been noted, the Burmese Junta appears to have managed the natural disaster "more as a national security issue than a humanitarian operation"<sup>395</sup>.

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<sup>391</sup> EAT; JHU CPHHR, *After the Storm: Voices from the Delta. A Report by EAT and JHU CPHHR on human rights violations in the wake of Cyclone Nargis*, *op. cit.*, pp. 45-48. Families who could not provide a worker were forced to pay a fine, or to contribute in other ways to the government's reconstruction efforts - for example, by making forced donations.

<sup>392</sup> Some commentators have argued that the government may have hidden information about the scale and impact of the cyclone in order to weaken the opposition to the regime, which would seem to enjoy wide support in the Ayeyarwady Delta; or to punish the large Kayin ethnic community in the region. In addition, cases of discrimination in the distribution of aid on ethnic and religious grounds have also been reported (vid. footnote 4 of this Chapter).

<sup>393</sup> BBC NEWS, "[Burma 'guilty of inhuman action'](#)", 17 May 2008 (last access: 10/08/2020).

<sup>394</sup> Indeed, some voices in the political arena called for the application of the *principle of the responsibility to protect*. Vid. SELTH, A., "Even Paranoids Have Enemies: Cyclone Nargis and Myanmar's Fears of Invasion", *op. cit.*, pp. 389-391. Vid. also EAT; JHU CPHHR, *After the Storm: Voices from the Delta. A Report by EAT and JHU CPHHR on human rights violations in the wake of Cyclone Nargis*, *op. cit.*, pp. 20-23, which conclude that "systematic abuses" incurred by the Government of Myanmar against its population due to the mismanagement of the crisis caused by Cyclone Nargis "amount to crimes

It can, therefore, be concluded that the necessary preconditions for subsidiary protection were fulfilled, namely: i) the existence of intentional conduct attributable to a human agent [art. 6 QD (recast)]; ii) which expose the population to a real risk of serious harm within the catalogue of Article 15 QD (recast). Although the cyclone did not strike the whole country or all regions equally<sup>396</sup>, it does not seem that the internal protection exception could be invoked [art. 8 QD (recast)]. The government's actions make it unreasonable to expect that displaced persons could return to the country and be resettled in other less affected areas in safe and durable conditions and without fear of government reprisals for having fled.

It should be clarified, however, that it was the actions of the Myanmar government itself that ultimately led to the situation of inhuman or degrading treatment that would give rise to the right to subsidiary protection, and not the impact of Cyclone Nargis as such. The environmental factor would only have acted as a concomitant or catalytic factor. Furthermore, this theoretical possibility of having gained subsidiary protection within the EU frontiers is more illusory than real. Thus, potential Burmese applicants would first have to have managed to escape the military regime's iron grip and, once across the border, travel the 6,180 km which separate them from Cyprus, the nearest EU country, where to apply for subsidiary protection.

That frightening reality of Cyclone Nargis highlights two crucial points. Firstly, the importance of focusing efforts on assisting the victims of natural disasters on the ground, without waiting for displacement to occur. Secondly, and even more importantly, the need to continue to reinforce the structural principles of International Law regarding Friendly Relations and Co-operation among States<sup>397</sup>, so that a government's misgivings about the international community do not prevent international assistance as happened in Burma.

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against humanity, as defined by article 7(1)(k) of the Rome Statute of the International Criminal Court, through the creation of conditions whereby basic survival needs of civilians cannot be adequately met and thus “intentionally causing great suffering, or serious injury to body or to mental or physical health”.

<sup>395</sup> MCCARTAN, B., “Relief as war in Myanmar”, *Asia Times Online*, 20 May 2008 (last access: 10/08/2020).

<sup>396</sup> The Government of Myanmar declared an emergency across five of the fourteen administrative divisions: Yangon, Ayeyarwady and Bago Regions, and Kayin and Mon States. In SELTH, A., “Even Paranoics Have Enemies: Cyclone Nargis and Myanmar's Fears of Invasion”, *op. cit.*, p. 386.

<sup>397</sup> UNGA, *Resolution 2625 (XXV) Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly at its Twenty-fifth session [A/RES/2625 (XXV)]*, 1971, pp. 121-124.

### 3.3. The Temporary Protection Directive 2001/55/EC

#### 3.3.1. Introduction

The experiences of the former Yugoslav republics and Kosovo<sup>398</sup> led the European Council to urge, at its special meeting in Tampere on 15 and 16 October 1999, the creation of a framework for temporary protection in the event of a mass influx of displaced persons at the EU's borders<sup>399</sup>.

The humanitarian crisis caused by the internal conflict in Yugoslavia, which led to the most massive flow of refugees in Europe since the Second World War<sup>400</sup>, evidenced the many disparities between the various temporary protection regimes of EU-Member States. For example, in terms of access to protection, the maximum duration thereof, easier or lesser access to asylum procedures and the rights and benefits granted<sup>401</sup>. The lack of a coordinated response at the European level soon revealed some undesirable effects. These included an unequal distribution of migratory pressure, with large discrepancies between the number of persons seeking protection in the different Member States<sup>402</sup>; as well as secondary movements, that oriented the flows of displaced persons towards the more "generous" Member States<sup>403</sup>.

Thus, the need for in-depth harmonisation between the various national temporary protection schemes became clear. The result was Directive 2001/55/EC – known as the Temporary Protection Directive (TPD)<sup>404</sup>. To some extent, the Directive turned into positive law the framework that the European Communities had to create *ad-hoc*<sup>405</sup> to

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<sup>398</sup> Vid. BEIRENS, H. ET AL., *Study on the Temporary Protection Directive*, Luxembourg, Publications Office of the European Union, 2016, pp. 4 *in fine* and 5 (last access: 08/08/2020). KOLMANNSSKOG, V.; MYRSTAD, F., "Environmental Displacement in European Asylum Law", *op. cit.*, p. 316. KRALER, A. ET AL., "*Climate Refugees*": *legal and policy responses to environmentally induced migration (study)*, *op. cit.*, p. 54.

<sup>399</sup> EUROPEAN COUNCIL, *Tampere European Council. Presidency Conclusions*, *op. cit.*, par. 16.

<sup>400</sup> BEIRENS, H. ET AL., *Study on the Temporary Protection Directive*, *op. cit.*, p. 5.

<sup>401</sup> *Id.*

<sup>402</sup> *Id.*

<sup>403</sup> *Id.*

<sup>404</sup> EU, *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection...*, *op. cit.*

<sup>405</sup> EU, *Council Resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis*, OJEU (C 262), 7 October 1995, pp. 1-3. EU, *Council Decision of 4 March 1996 on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis*, OJEU, (L 063), 13 Mars 1996, pp. 10-11.

respond to the influx of displaced persons that the ethnic-religious conflict in the former Yugoslavia had left behind, with almost 4,000,000 million displaced persons<sup>406</sup>.

The new common temporary protection mechanism was primarily designed to be based on solidarity between all Member States<sup>407</sup>, given the more significant migratory pressure on the States whose external boundaries constitute the European frontier. To this end, the TPD lays down common minimum standards for giving temporary protection in the event of a mass influx of displaced persons<sup>408</sup>. Besides, it establishes a series of incentive measures aimed at ensuring that the effort, both in receiving displaced persons and in bearing the financial burden of hosting them, is equitable between all Member States<sup>409</sup>.

### 3.3.2. The legal concept of "mass influx" and "displaced persons"

#### A) Mass influx (Article 2 (d) TPD)

The TPD was not conceived then as an ordinary instrument of the European migration policy, but as an exceptional mechanism to deal with equally exceptional migration situations<sup>410</sup>. In this sense, the term "mass influx of displaced persons" stands as the central notion behind the activation of the temporary protection mechanism. Article 2 (d) of the TPD defines a mass influx as an

"arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area (...)"<sup>411</sup>.

Therefore, the concept of "mass influx" combines a quantitative criterion – the arrival of a significant number of people<sup>412</sup> -; with a spatial one – all coming from the

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<sup>406</sup> INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, "Transitional Justice in the Former Yugoslavia", 1 January 2009, 3 pp. (last access: 04/08/2020), p. 2.

<sup>407</sup> Id.

<sup>408</sup> EU, *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection...*, *op. cit.*, Recitals 8 and 20.

<sup>409</sup> Id.

<sup>410</sup> "The TPD is built on the principle that temporary protection does not constitute a "third status" " with respect to refuge or subsidiary protection. Vid. BEIRENS, H. ET AL., *Study on the Temporary Protection Directive*, *op. cit.*, p. 35.

<sup>411</sup> EU, *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection...*, *op. cit.*, Article 2 (d).

<sup>412</sup> According to the EXECUTIVE COMMITTEE OF THE UNHCR, *Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations No. 100 (LV) – 2004*, 8 October 2004:

"mass influx situations may, inter alia, have some or all of the following characteristics: (i) considerable numbers of people arriving over an international border; (ii) a rapid rate of arrival; (iii) inadequate absorption or response capacity in

same country or geographical area<sup>413</sup>. Both parameters remain legally indeterminate; hence their determination will take place on a case-by-case basis. According to Article 5 TPD, the existence of a mass influx of displaced persons must be "established by a Council decision adopted by a qualified majority on a proposal from the Commission"<sup>414</sup>.

On a theoretical level, it has been raised the question of whether the arrival should not be geographically limited to one Member State, but be understood as affecting the EU as a whole<sup>415</sup>. The main reason for rejecting such an argument derives from Article 2 (a) TPD itself, which refers to mass influxes posing a risk to the efficient functioning of the European asylum system.

Although that system bases on the homogenisation of minimum substantive and procedural standards among all Member States, from a practical or functional perspective, each State remains responsible for the management of the asylum system on its territory<sup>416</sup>. A mass influx of displaced persons beyond the capacity of one Member State's asylum system would therefore be sufficient to jeopardise the whole<sup>417</sup>. Similarly, the fact that some Member States are directly affected by the mass influx and others are not will often be the result of coincidence or chance. For example, because of their proximity to the country or region where the situation giving rise to the displacement has its epicentre<sup>418</sup>.

Given that the mechanism has been designed precisely to help those Member States which, at any given time, are faced with more significant migratory pressure, it

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host States, particularly during the emergency; (iv) individual asylum procedures, where they exist, which are unable to deal with the assessment of such large numbers".

<sup>413</sup> As highlighted by BEIRENS, H. ET AL., *Study on the Temporary Protection Directive*, *op. cit.*, p. 18: "Cases of 'cumulative influx' from different geographical regions should not fall under the TPD".

<sup>414</sup> EU, *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection...*, *op. cit.*, Article 5 (1). According to EU, *Consolidated version of the Treaty on European Union*, *op. cit.*, Article 16 (4), the Council has reached a qualified majority if two conditions are met: (a) 55% of the Member States vote in favour, which in practice means 15 of the 27 Member States; (b) the Member States in favour represent at least 65% of the total population of the EU.

<sup>415</sup> BEIRENS, H. ET AL., *Study on the Temporary Protection Directive*, *op. cit.*, p. 17.

<sup>416</sup> *Id.*, noting that "there is presently not one 'EU asylum system', but 28 different national systems" [the reference to the number of EU-Member States was made by the author prior to the *Brexit*].

<sup>417</sup> *Ibid.*, p. 32, where is noted: "As asylum systems are interdependent, the entire CEAS can be exposed to pressure as an overburdened system of one Member State can have spill-over effects to other Member States, including via secondary movements".

<sup>418</sup> *Ibid.*, p. 17.

would be contrary to the principle of solidarity that inspires the TPD to require the whole EU be directly affected by the mass influx<sup>419</sup>.

### **B) The definition of "displaced persons" (Article 2 (c) TPD)**

Compared to the QD (recast), the TPD mechanism has the advantage of not defining the persons who may receive protection temporarily. Either because of their inherent circumstances – refugee status –, or because of the real risk of being exposed to serious harm in the country of origin – beneficiary of subsidiary protection<sup>420</sup>. Therefore, the displaced-person definition in Article 2 (c) TPD does not discriminate among the reasons why people have been displaced in large numbers<sup>421</sup>. On the contrary, it merely points out that their return to their country of origin cannot take place "in safe and durable conditions because of the situation prevailing in that country"<sup>422</sup>.

Without being an exhaustive list, but only an illustrative one, Article 2 (c) TPD mentions, "in particular", cases of (i) persons fleeing "areas of armed conflict or endemic violence"; as well as (ii) those "at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights"<sup>423</sup>. To the latter situation, some authors have argued that "'generalised violations' of human rights often occur in, during or after a natural disaster, and in such cases the displaced are within a recognised category"<sup>424</sup> of temporary protection.

Indeed, the Finnish delegation actively promoted the inclusion of an explicit reference to "persons who have had to flee as a result of natural disasters"<sup>425</sup> along with the other two categories of displaced persons mentioned in Article 2(c) of the TPD.

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<sup>419</sup> This interpretation has also been confirmed by Commission officials who stated: "The language in the Directive is not crystal clear and there is a margin of manoeuvre to argue that the activation of the TPD would be justified if only one Member State is affected". Vid. *ibid.*, footnote 48.

<sup>420</sup> MAYRHOFER, M.; AMMER, M., "People Moving in the Context of Environmental Change: The Cautious Approach of the European Union", *op. cit.*, p.406, observing that the definition of displaced person under the TPD "is broader than the one with regard to subsidiary protection".

<sup>421</sup> KOLMANNKOG, V.; MYRSTAD, F., "Environmental Displacement in European Asylum Law", *op. cit.*, p. 317.

<sup>422</sup> EU, *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection...*, *op. cit.*, Article 2 (c).

<sup>423</sup> *Id.*

<sup>424</sup> KOLMANNKOG, V.; MYRSTAD, F., "Environmental Displacement in European Asylum Law", *op. cit.*, p. 317. Vid. also MAYRHOFER, M.; AMMER, M., "People Moving in the Context of Environmental Change: The Cautious Approach of the European Union", *op. cit.*, p.406.

<sup>425</sup> COUNCIL OF THE EUROPEAN UNION, *Proposal for a Council Directive 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*, (Doc. 6128/01 LIMITE ASILE 15), Brussels, 16 February 2001, p. 4, footnote 2.

However, the proposal was finally rejected given the opposition of the Spanish and Belgian delegations, who argued that "such situations were not mentioned in any international instrument on refugees"<sup>426</sup>.

In any case, the lack of express mention of environmental disruption does not in any way exclude environmental displacements from the scope of the TPD. As long as the Council agrees by a qualification majority that the displacement caused by an environmental disruption is sufficiently large to establish the existence of a mass influx, the mechanism of temporary protection will be activated<sup>427</sup>.

### **3.3.3. Advantages of the TPD for the protection of environmentally displaced persons: the legal status of beneficiaries of temporary protection**

#### **A) Broad definitions resulting in flexibility in the application of the TPD**

The broadness of key concepts such as "mass influx" or "displaced persons" makes the temporary protection mechanism flexible enough to accommodate within its scope all types of situations, both of human and natural origin, which give rise to large and unforeseeable migratory movements<sup>428</sup>.

For instance, countries such as the United Kingdom recognized the usefulness of the new instrument, ensuring "that each European Member State plays its part in providing humanitarian assistance to people forced from their homes by war and *natural disasters* (...)"<sup>429</sup>. The European Commission, on its part, referred to temporary protection as an appropriate instrument for some situations of environmental displacement. For example, "*after severe rapid-onset disasters (such as floods)*, when

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<sup>426</sup> Id.

<sup>427</sup> Similarly, KOLMANNSSKOG, V.; MYRSTAD, F., "Environmental Displacement in European Asylum Law", *op. cit.*, p. 317, noting that "if a majority [of the Council] decides that a natural disaster calls for invoking the Temporary Protection Directive mechanisms, it is free to do so" [bracketed text added].

<sup>428</sup> MAYRHOFER, M.; AMMER, M., "People Moving in the Context of Environmental Change: The Cautious Approach of the European Union", *op. cit.*, p.407, observing: "the definition in the Temporary Protection Directive looks sufficiently broad to cover certain persons moving in the context of environmental change (...)". BEIRENS, H. ET AL., *Study on the Temporary Protection Directive*, *op. cit.*, p. 15, note that "the legislator purposely opted for a broad definition of mass influx which would allow to cover different types of inflows and types of pressure, not confined to numerical thresholds or linked to specific indicators". EUROPEAN COMMISSION, *Commission Staff Working Document: Climate change, environmental degradation, and migration...*, *op. cit.*, p. 19, which finds that "the Directive leaves wide room for manoeuvre, in the form of open definitions of key words, such as 'mass influx'". KRALER, A. ET AL., "*Climate Refugees*": *legal and policy responses to environmentally induced migration (study)*, *op. cit.*, p. 54, in the same vein as the previous ones.

<sup>429</sup> UK HOME OFFICE, "UK Plans in Place to Protect Victims of Humanitarian Disasters", *Press Release*, 20 December 2004 (last access: 3 January 2011) [italics added].



masses flee from the area affected but when the possibility of them returning in the short or medium term remains open"<sup>430</sup>. Indeed, a very positive element of the TPD is that such a massive influx of people into the EU could have occurred spontaneously or "aided, for example through an evacuation programme" [Art. 2(d) TPD]<sup>431</sup>.

The latter provision may be most appropriate in the context of fast-acting environmental disruptions when the magnitude of the natural disaster exceeds the response capacity of the affected State, which seeks the assistance of the international community. In such cases, the EU, "in response to an appeal by international organisations"<sup>432</sup>, may participate in a joint rescue and evacuation operation, agreeing to transfer all or part of the population at risk to the territory of the Member States. In this sense, the activation of the temporary protection mechanism does not require that the massive influx of displaced persons has already taken place. On the contrary, Article 2 (a) TPD allows it to be activated *a priori*, i.e. when such a mass influx has not occurred yet but is imminent.

## **B) The legal status of environmentally displaced persons protected under the TPD**

Environmental displaced persons, who are beneficiaries of temporary protection in the EU, shall enjoy the rights recognised by the TPD in its Chapter III. As will be seen, the catalogue of rights is sufficiently extensive and complete to comply with Recital 15 of the Directive's Preamble. It states that: "Member States' obligations as to the conditions of reception and residence of persons enjoying temporary protection in the event of a mass influx of displaced persons *should be (...) fair and offer an adequate level of protection to those concerned*"<sup>433</sup>.

In this sense, the lack of access of environmental displaced persons to subsidiary protection status could be partly made up for by the possibility of receiving protection

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<sup>430</sup> EUROPEAN COMMISSION, *Commission Staff Working Document: Climate change, environmental degradation, and migration...*, *op. cit.*, p. 19 [italics added].

<sup>431</sup> The inclusion of the reference to "evacuation programmes" has its precedent in the evacuation programme that was launched during the Kosovo crisis. It has been considered one of the strengths of the Directive, insofar as it could facilitate the legal and safe arrival of displaced persons. Vid. BEIRENS, H. ET AL., *Study on the Temporary Protection Directive*, *op. cit.*, p. 17.

<sup>432</sup> EU, *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection...*, *op. cit.*, Article 2 (c).

<sup>433</sup> *Ibid.*, Recital 15 [italics added]. Indeed, BEIRENS, H. ET AL., *Study on the Temporary Protection Directive*, *op. cit.*, p. 25, points out that the high level of rights enjoyed by beneficiaries of temporary protection under the Directive may ultimately "constitute an argument for Member States not to support the activation of the TPD".

under the TPD, since the rights provided for in the latter "largely mirror those stipulated in the QD"<sup>434</sup>. Albeit with the significant limitation that it is still a temporary protection status. The following is a summary of the rights granted to the beneficiaries of temporary protection under Chapter III of the TPD:

(a) To gain a residence permit for the entire period of temporary protection, under the terms of Article 8;

(b) To develop labour-activities as an employed or self-employed person, subject to rules applicable to the profession [Art. 12]. The labour law of each State shall also regulate matters relating to remuneration, access to social security systems and other conditions of employment [Art. 12];

(c) To access to adequate accommodation or, where appropriate, to the means of obtaining such housing [Art. 13 (1)];

(d) To receive the necessary assistance in respect of social welfare and means of subsistence, where they do not have sufficient resources [Art. 13 (2)]; (e) medical care, including at least emergency care and essential treatment of illness [Art. 13 (2)];

(f) To receive the necessary medical or other assistance in the case of persons with special needs such as unaccompanied minors or persons who have been subjected to torture, rape or other serious forms of moral, physical or sexual violence [Art. 13 (4)];

(g) In the case of persons less than 18 years of age, access to the education system under the same conditions as the nationals of the host Member State [Art. 14 (1)]. In the case of adults, the Directive guarantees only access to educational opportunities for adults, vocational training and practical workplace experience [Art. 12], while the Member States have the discretion to authorise access to the general education system [Art. 14 (2)];

(h) And the right to family reunification under the terms of Article 15.

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<sup>434</sup> BEIRENS, H. ET AL., *op. cit. supra*, p. 25.

### 3.3.4. Temporal and political constraints on the use of the TPD in the context of environmental displacement

#### A) Limit on the duration of temporary protection

Because of its nature as an exceptional mechanism, the TPD presents some limitations when the situation that caused the displacement, or the effects thereof, is prolonged in time. Following Article 4 (1) TPD, the duration of protection is one year; it may be extended automatically by six-month periods for a further year. Supposing the situation which led to the granting of protection persists in the country of origin, the Council may decide, exceptionally and by a qualified majority, extending it for a maximum of a third-year [Art. 4 (2) TPD].

However, this time frame may prove insufficient when it comes to rebuilding and making large areas that have been affected by a natural disaster fit for human life again, especially if the disaster took place in an underdeveloped country. In other cases, mainly where environmental degradation is slow, the reversing-process will likely take more than three years to complete – e.g. cases of desertification, pollution of aquifers, or loss of soil fertility. Either it will be entirely impossible, as in the example of land-loss as a result of rising sea levels<sup>435</sup>.

For these situations where protection needs extend beyond the maximum period of three years, Article 22 (2) TPD merely states: "In cases of enforced return, Member States shall consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases"<sup>436</sup>. It does not, however, clarify what kind of status should be granted to those who, once the temporary protection has ended, cannot return to their country of origin. Of course, being a beneficiary of temporary protection does not preclude the application of "of the Geneva Convention or other

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<sup>435</sup> EUROPEAN COMMISSION, *Commission Staff Working Document: Climate change, environmental degradation, and migration...*, *op. cit.*, p. 19, observing: "Temporary protection status might be appropriate after severe rapid-onset disasters (such as floods), when masses flee from the area affected *but when the possibility of then returning in the short or medium term remains open*" [italics added]. In the same vein, KOLMANSKOG, V.; MYRSTAD, F., "Environmental Displacement in European Asylum Law", *op. cit.*, p. 318, who stress that the TPD "does not cater for people who may need to stay longer or permanently".

<sup>436</sup> EU, *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection...*, *op. cit.*, Article 22 (2).

international or national instruments giving international protection"<sup>437</sup>, as Article 2 (c) TPD makes clear.

However, as already noted, a person displaced for environmental reasons does not usually fall within the definition of a refugee or a beneficiary of subsidiary protection. Therefore, the question of residence in the territory of Member States after the end of temporary protection will have to be determined by the international principle of *non-refoulement*<sup>438</sup> and, where appropriate, the issuance of a residence permit for humanitarian reasons under the national law on foreigners<sup>439</sup>.

### **B) The high degree of political discretion ultimately hinders the practical viability of TPD in cases of "mass influx" caused by environmental factors**

Until the outbreak of the Russo-Ukrainian war, the EU Council had never activated the temporary protection mechanism<sup>440</sup>. Previously, there had been two attempts to do so by the foreign ministers of Malta and Italy<sup>441</sup>. Both requests were motivated by the humanitarian emergency that the two countries faced in 2011. In that year, countless boats carrying hundreds of migrants arrived on Italian and Maltese coasts, fleeing the political instability that had broken out in North African countries following the *Arab Spring*, as well as the war in Libya<sup>442</sup>.

Because of the very logic of the TPD, which theoretically bases on solidarity between all Member States, it seems that the Council's decision should be motivated above all by a functional criterion. In other words, the existence of a "mass influx" should be regarded as proven when the individual capacities of one or more bordering

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<sup>437</sup> Ibid., Article 2 (c).

<sup>438</sup> Vid. in this regard Chapter V of this thesis.

<sup>439</sup> Examples among EU Member States of the issuance of a residence permit on humanitarian grounds due to environmental reasons are outlined in sub-section 3.4 of this Chapter.

<sup>440</sup> Vid. EU, *Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection*, OJEU (L 71/1), 4 March 2022.

<sup>441</sup> BEIRENS, H. ET AL., *Study on the Temporary Protection Directive*, *op. cit.*, pp. 13, 27-36 and Annex 2 for an analysis of twelve case studies in which several EU-Member States may have experienced situations of massive pressure/flow between 2001 and 2014, the reasons why the temporary protection mechanism was not activated, and the recourse to alternative measures by the EU and the Member States to deal with such situations of migratory pressure.

<sup>442</sup> Ibid., pp. 125 and 131. According to the figures in the mentioned document, in 2011 the number of asylum seekers in Italy increased from 800 in January to a peak of 7,000 in May (p. 124). In terms of reception capacity, the almost 10,000 places (9,495) available in the Italian reception centres for refugees and asylum seekers contrasted with an almost fourfold increase in arrivals (62,692) (p. 126). In Malta, the number of applications for protection rose from 30 in March 2011 to 1,125 (mostly Eritreans and Somalis) in April 2011, which represents an increase of 3,650 per cent (ibid., p. 128). The number of applicants fell to 355 in May 2011 and remained below 100 per month for the rest of the year (p. 128).

Member States to respond to the irregular arrival of aliens at the EU's external borders are overwhelmed. For example, because displaced persons arrive in considerable numbers or at a rate that exceeds the State's absorption capacity<sup>443</sup>. Article 2 (a) TPD refers in particular to situations where such an influx would also jeopardise the proper functioning of the European asylum system, as the State concerned would be equally unable to deal efficiently with such a vast number of requests for protection.

Precisely for these reasons, Article 5 (1) TPD provides that the Commission "shall also examine any request by a Member State" to submit to the Council a proposal to determine the existence of a mass influx<sup>444</sup>. However, despite the high number of displaced persons arriving irregularly on the Italian and Maltese coasts, the former EU Commissioner for Home Affairs declared: "It is still premature to activate the temporary protection directive and there are other ways to help Malta and Italy"<sup>445</sup>. Indeed, the refusal of the European institutions led Italy to decree the state of humanitarian emergency at the national level, as will be examined in the next sub-section on this Chapter<sup>446</sup>.

The main problem and explanation for not having implemented the TPD so far is the vagueness of the concept of mass influx. In its favour, it provides the necessary flexibility to include the most varied displacement triggers, such as environmental disruptions. However, the absence of any legal criteria for determining what "large numbers" should be reached for considering such an arrival as a case of "mass influx"

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<sup>443</sup> Vid. EXECUTIVE COMMITTEE OF THE UNHCR, *Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations No. 100 (LV) – 2004*, *op. cit.*

<sup>444</sup> It should be clarified that, according to Article 5 (1), the Member State's request only has to be examined; it does not oblige the Commission to present a proposal to the Council to activate the temporary protection mechanism. Consequently, the Commission "has the monopoly to propose the activation of the mechanism". It is doubtful whether the Commission is obliged to respond officially to this request. Experts seem to agree that it does; however, in practice this does not seem to have been the case for the requests made by Malta and Italy in 2011. Vid. BEIRENS, H. ET AL., *Study on the Temporary Protection Directive*, *op. cit.*, pp. 20 and 22.

<sup>445</sup> CAMILLERI, I., "[Malmstrom again rejects call for activation of migration mechanism](#)", *Times Malta*, 11 April 2011 (last access: 10/08/2020). A few days earlier, Malmström had written the following entry on her institutional blog MALMSTRÖM, C., "[Debate on migratory flows](#)", *Cecilia Malmström Blog (European Commission)*, 6 April 2011 (last access: 10/08/2020):

"At this point we cannot see a mass influx of migrants to Europe even though some of our member states are under severe pressure. The temporary mechanism is one tool that could be used in the future, if necessary, but we have not yet reached that situation".

<sup>446</sup> Vid. sub-section 3.4.3 (B) of this Chapter.

is, at the same time, the main obstacle to the Directive's operability<sup>447</sup>, as the procedure for its activation becomes highly politicised:

"At each step of the procedure, the decision to request (the Member State), to propose (the Commission) and to establish (the Council) a case of mass influx warranting the activating of the TPD becomes a political exercise – a debate of subjective interpretations – rather than a mere technical analysis of whether the conditions have been fulfilled (i.e. a “tick box”-exercise)<sup>448</sup>.

As a result, the process for activating the temporary protection mechanism becomes lengthy and cumbersome<sup>449</sup>, which is in clear contrast to the purpose of the Directive itself. That is to say, to serve as a rapid response instrument to relieve the pressure on national asylum systems affected by an unexpected mass influx of displaced persons, and to allow immediate access of these displaced persons to international protection<sup>450</sup>.

The question of "numbers" was raised again in 2014, in the context of the migratory crisis that the war in Siria caused in the Mediterranean. The European Parliament Member Ms Gardini presented a written question, asking the Commission whether "the sheer numbers of displaced persons fleeing the war in Syria who are seeking to reach or have reached the EU constitutes a mass influx as defined in Article 2(d) of the directive"<sup>451</sup>; and whether "a proposal under Article 5 should therefore be submitted to the Council"<sup>452</sup>. In the answer given by Mr Avramopoulos, on behalf of the Commission, he argued:

"In view of the scale of the influx [almost 100 000 Syrians had applied for asylum in the EU between January and October 2014] and the manner in which these persons' asylum applications have been handled, the Commission considers that a proposal to trigger the EU-wide temporary

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<sup>447</sup> BEIRENS, H. ET AL., *Study on the Temporary Protection Directive*, *op. cit.*, pp. 16-17.

<sup>448</sup> *Ibid.*, p. 22. Vid. also, KRALER, A. ET AL., "*Climate Refugees*": *legal and policy responses to environmentally induced migration (study)*, *op. cit.*, p. 54, observing that the fact that "the existence of a mass influx of displaced individuals is decided by the Council on a proposal from the Commission, [has been] the major political obstacles to activate the temporary protection mechanism" [bracketed text added]. MAYRHOFER, M.; AMMER, M., "People Moving in the Context of Environmental Change: The Cautious Approach of the European Union", *op. cit.*, p.407, also making the same observation.

<sup>449</sup> BEIRENS, H. ET AL., *op. cit. supra*, p. 19.

<sup>450</sup> *Id.*

<sup>451</sup> EUROPEAN PARLIAMENT, *Question for written answer E-008507-14 to the Commission. Rule 130. Elisabetta Gardini (PPE). Subject: Application of Directive 2001/55/EC*, 29 October 2014.

<sup>452</sup> EUROPEAN PARLIAMENT, *Answer given by Mr Avramopoulos on behalf of the Commission (Question reference: E-008507/2014)*, 28 January 2015.

protection regime provided by the TPD would not be justified in the present circumstances"<sup>453</sup>.

In the debate that took place in the Committee on Civil Liberties, Justice and Home Affairs on 26 February 2015, Ms Gardini complained to the Commission that "a response that "the numbers have not been reached" calls, in the absence of a clear definition, indicator and method for calculating the indicator value, for the question: "What numbers would have to be reached?"<sup>454</sup>. Judging by the precedents of 2011 and 2014, it seems the answer to such a question would have been a number too high.

From the Commission's perspective, the debate on the activation of the TPD seems to be more focused on the grade of affectation suffered by the CEAS, since the Commission replied: "'the asylum systems (e.g. Italy) are still working', the 'numbers arriving are still manageable', that 'Syrians have 98% positive decision rate' and 'are treated properly', and other EU support measures had been triggered (e.g. EASO), with the result that the CEAS 'is coping'"<sup>455</sup>. However, the question would then be: "What adverse effects would have to be reached?" for activating the temporary protection mechanism<sup>456</sup>. The answer would be, once again, a very high threshold.

Up to now, both the Commission and the Member States themselves have preferred to deal with situations of migratory pressure by resorting to alternative measures<sup>457</sup>. For instance, the Commission considered that the TPD was not the

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<sup>453</sup> Id.

<sup>454</sup> BEIRENS, H. ET AL., *Study on the Temporary Protection Directive*, *op. cit.*, p. 19.

<sup>455</sup> Id.

<sup>456</sup> Id.

<sup>457</sup> Among them, it can be mentioned: i) Emergency funding for sudden mass influxes under established funding schemes such as the European Refugee Fund (2008-2013) or the Asylum, Migration and Integration Fund (AMIF), which replaced the previous one. The latter is established for seven-year periods and is currently in its second period (2021-2027), with a total of 9.9 billion. ii) Article 33 Dublin Regulation, which provide for a mechanism for early warning, preparedness, and management of asylum crisis. iii) Emergency support for Member States under particular migratory pressures through the European Asylum Support Office. iv) Finally, the recourse to bilateral arrangements or *ad hoc* multilateral-mechanisms for the relocation of persons in need of protection. An example of the latter would be the EUREMA pilot project, which sought to relocate within the EU the relatively large number of recognised beneficiaries of international protection hosted by Malta. The project was implemented in two phases: from 2010 to 2011 and from 2012 to 2013; and involved a total of twelve States between the two phases (Bulgaria, France, Germany, Hungary, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia and the UK).

Vid. BEIRENS, H. ET AL., *Study on the Temporary Protection Directive*, *op. cit.*, pp. 30-31 and related footnotes. EUROPEAN COMMISSION, *Asylum, migration and integration funds* (last access: 08/08/2021). EUROPEAN ASYLUM SUPPORT OFFICE, "*EASO fact finding report on intra EU-relocation activities from Malta*", EASO, July 2012, 17 pp. (last access: 08/08/2020). EU, *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection*

appropriate instrument to address the 2011 migration crisis, as it explained: "At the time of the Arab Spring in 2011, it was our feeling that the TPD would not have really helped the situation; applicants were treated fairly well, and were given a protection status, usually relatively quickly"<sup>458</sup>.

Likewise, some Member States, including Malta, commented that: "had the TPD been activated, it would probably not have added any value as the activation process would have taken too long"<sup>459</sup>. These statements from Malta make one wonder whether its request responded more to a form of political pressure at European level for the implementation of additional measures – mainly in the form of financial assistance – than to a real need for equitable reception of asylum seekers by all Member States<sup>460</sup>.

In any case, the case-by-case recourse to different alternative measures, uncoordinated with each other, ends up frustrating in practice the objective of the TPD; namely the achievement of a truly coherent, comprehensive and coordinated EU-wide strategy in the event of a mass influx of displaced persons, as well as a real fair distribution of efforts among the Member States<sup>461</sup>.

In summary, while, in theory, it would be possible to include persons who have been displaced in large numbers for environmental reasons in the scope of TPD, the precedent of the 2011 and 2014 migratory crises shows that, in practice, there is little chance that the temporary protection mechanism will ever be activated in such cases. The Commission's general reluctance to initiate the procedure for its activation would be compounded by the difficulty of reaching the reinforced majority required by Article 5

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*lodged in one of the Member States by a third-country national or a stateless person*, OJEU (L 180), 29 June 2013, pp. 31-59, Article 33.

<sup>458</sup> BEIRENS, H. ET AL., *op. cit. supra*, pp. 32 *in fine* and 33.

<sup>459</sup> *Ibid.*, pp. 33 and 131 [the latter referring to bilateral conversations between Malta and other Member States], as well as footnote 74.

<sup>460</sup> *Ibid.*, pp. 33. In response to the increased migration pressure faced by Malta in 2011, the 2011 allocation from the European Refugee Fund (EUR 1,417,719) was supplemented by an additional EUR 1,201,000 in emergency funds; in addition to befitting from the EASO pilot-project (*ibid.*, p. 132). Italy, on its part, also received financial emergency assistance under the European Refugee Fund and national funding allocated total of EUR 860 million. Moreover, between August and November 2011, additional resources were approved for the activation of emergency measures in Italy, amounting to EUR 14.52 million (*ibid.*, p. 127).

<sup>461</sup> *Ibid.*, pp. 33.



TPD within the Council, on an issue that remains as controversial as environmental migration<sup>462</sup>.

### 3.3.5. The paradox of numbers: same situation, different level of protection

Nor should this study on the application of TPD in cases of environmental displacement be concluded without highlighting an indeed paradoxical fact, namely that the same situation of human rights violation may give a right to temporary protection, and not to subsidiary protection, simply because of a question of numbers.

Thus, if persons displaced for environmental reasons arrives in the EU individually or in small groups, they will not be entitled to subsidiary protection, as the risk of suffering environmental damage does not fit into the definition of serious harm in Article 15 QD (recast)<sup>463</sup>. However, if the same individual fleeing the same environmental disruption comes to the EU in the context of a mass influx of displaced persons, they may instead obtain temporary protection<sup>464</sup>. In the opposite sense, persons moving from an environmental disturbance individually or in small groups would not be covered by the TPD either, as they cannot be qualified as "a mass influx". As noted:

"Linking temporary protection to 'mass influx' can, however, also be a weakness if the goal is protection for displaced individuals. An individual may be in need of protection even though he or she does not arrive in a 'mass influx' situation"<sup>465</sup>.

Precisely to avoid this kind of discriminatory dichotomy, the Commission proposed during the negotiations of the 2004 QD to include in the definition of serious harm in Article 15 a letter c) with the following content:

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<sup>462</sup> KRALER, A. ET AL., "*Climate Refugees*": *legal and policy responses to environmentally induced migration (study)*, *op. cit.*, p. 55, highlighting that the exceptional nature of the temporary protection mechanism, the strong political implications behind its activation and the fact the it has never been used, "renders the Directive less effective in dealing with migrants displaced by environmental disasters". MAYRHOFER, M.; AMMER, M., "People Moving in the Context of Environmental Change: The Cautious Approach of the European Union", *op. cit.*, p.407, considering "unlikely that the Council will determine the existence of a 'mass influx' in the context of environmental change or disasters".

<sup>463</sup> Vid. sub-section 3.2.4 of this Chapter, regarding environmentally displaced individuals as beneficiaries of subsidiary protection under Article 15 (b) QD (recast).

<sup>464</sup> MAYRHOFER, M.; AMMER, M., "People Moving in the Context of Environmental Change: The Cautious Approach of the European Union", *op. cit.*, p.407.

<sup>465</sup> KOLMANNSSKOG, V.; MYRSTAD, F., "Environmental Displacement in European Asylum Law", *op. cit.*, p. 317.

"a threat to his or her life, safety or freedom as a result of indiscriminate violence arising in situations of armed conflict, or as a result of systematic or generalised violations of their human rights"<sup>466</sup>.

As can be noted, its wording was virtually identical to the last sentence of Article 2 (c) (ii) TPD, which refers to "persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights"<sup>467</sup>. The Commission considered that if such persons referred to in Article 2(c) (ii) TPD are protected when they arrive in a "mass influx" agreed by the Council, they should also be protected by the Member States when they arrive individually and do not qualify as refugees<sup>468</sup>. Ultimately, the situation from which they were fleeing was the same, so for the sake of the integrity of the CEAS, it seemed appropriate that both European instruments should cover the same case<sup>469</sup>.

Finally, Article 15 (c) of the 2004 QD kept the reference to situations of indiscriminate violence in the framework of armed conflict, but not to systematic human rights violations, which was eliminated<sup>470</sup>. The possibility of recovering this last clause was also not reopened during the recasting of the QD in 2009<sup>471</sup>.

Even if the reference to systematic human rights violations had been retained in the wording of Article 15 QD, it would still be difficult to argue for the inclusion of environmental disruptions in the scope of subsidiary protection. Since it would remain necessary to impute the harmful conduct to a third party [Art. 6 QD (recast)] and the internal protection exception would continue to operate [Art. 8 QD (recast)]<sup>472</sup>.

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<sup>466</sup> EUROPEAN COMMISSION, *Proposal for a Council Directive on minimum standards for the qualification...*, *op. cit.*, p. 48.

<sup>467</sup> EU, *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection...*, *op. cit.*

<sup>468</sup> EUROPEAN COMMISSION, *Proposal for a Council Directive on minimum standards for the qualification...*, *op. cit.*, p. 27.

<sup>469</sup> *Id.*

<sup>470</sup> EU, *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification...*, *op. cit.*, Article 15 (c).

<sup>471</sup> EUROPEAN COMMISSION, *Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification...* (SEC(2009) 1373) (SEC(2009) 1374), *op. cit.*

<sup>472</sup> *Vid.* sub-section 3.2.4 (D) of this Chapter for a hypothetical example of subsidiary protection in the context of Cyclone Nargis that hit Myanmar in 2008.

### 3.4. National responses: the clause of the more favourable standard (Article 3 Directive 2011/95/EU (recast) and Article 7 Directive 2001/55/EC)

One of the main objectives pursued by both the QD and the TPD was to harmonise the large number of protection statuses that had emerged unevenly in the different EU Member States<sup>473</sup>. However, it is the very nature of minimum standards that both Directives have, which allows the Member States to introduce or maintain more favourable rules for determining who qualifies for the subsidiary or temporary protection<sup>474</sup>.

Article 3 QD (recast) lays down:

"Member States *may introduce or retain more favourable standards* for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, *in so far as those standards are compatible with this Directive*"<sup>475</sup>.

While Article 7 (1) TPD provides:

"Member States *may extend temporary protection* as provided for in this Directive *to additional categories of displaced persons* over and above those to whom the Council Decision provided for in Article 5 applies, where they are displaced for the same reasons and from the same country or region of origin. They shall notify the Council and the Commission immediately"<sup>476</sup>.

As can be noted, the wording used in each one of these two provisions differs slightly, however, from one to the other. As a result, the room for manoeuvre that the Member States have when introducing more favourable standards is not the same, being more expansive in the case of the TPD.

By contrast with the TPD, under the framework of the QD (recast) the power of Member States to introduce more favourable provisions to determine, *inter alia*, who is eligible for subsidiary protection, is limited by the legal requirement that such standards must be compatible with the Directive. In *M'Boj v. État Belge*, the CJEU interpreted this request for compatibility as requiring that situations of serious harm other than

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<sup>473</sup> Vid. sub-sections 3.2.1 and 3.3.1 for an introduction on the QD and the TPD.

<sup>474</sup> Vid. Recital 14 QD (recast) and Recital 12 TPD.

<sup>475</sup> EU, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification...*, *op. cit.*

<sup>476</sup> EU, *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection...*, *op. cit.*

those provided for in Article 15 QD (recast) must have a "connection with the rationale of international protection"<sup>477</sup>.

For instance, in *M'Bodj v. État Belge*, the CJEU found that such a connection did not exist when a Member State grants protection to third-country national suffering from a severe illness, on the basis that adequate treatment is not available in the country of origin<sup>478</sup>. A criterion later confirmed by the Court in the case of *Centre public d'action sociale d'Ottignies-Louvain-la-Neuve v. Moussa Abdida*<sup>479</sup>.

Although *M'Bodj* and *Abdida* judgments only provide examples of one situation – healthcare –, it is possible to draw from them some general principles as to which *more favourable national standards* would not have a "connection with the rationale of international protection"<sup>480</sup>. To the extent that subsidiary protection requires the identification of any actor of persecution or serious harm [Article 6 QD (recast)], cases where that actor is absent will generally have no connection with the rationale of international protection<sup>481</sup>. Such would be the case of deprivation of fundamental human rights arising, for example, from extreme socio-economic or environmental conditions<sup>482</sup>.

What stated above does not preclude Member States for granting "another kind of protection"<sup>483</sup> outside the scope of the QD (recast), "provided that that other kind of protection does not entail a risk of confusion with refugee [or subsidiary protection] status within the meaning of the directive"<sup>484</sup>. However, as Recital 15 QD (recast) states, such national protection statuses, granted by the Member States on a discretionary basis for humanitarian or compassionate reasons, "fall outside the scope of this Directive"<sup>485</sup>. As a result, beneficiaries of "such other kind of protection" would not

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<sup>477</sup> CJEU, *Case C-542/13 Mohamed M'Bodj v. État Belge*, *op. cit.*, par. 44.

<sup>478</sup> *Ibid.*, par. 43.

<sup>479</sup> CJEU, *Case C-562/13 Centre public d'action sociale d'Ottignies-Louvain-la-Neuve v. Moussa Abdida* (ECLI:EU:C:2014:2453), 18 December 2014, pars. 32-35.

<sup>480</sup> INTERNATIONAL ASSOCIATION OF REFUGEE LAW JUDGES (EUROPEAN CHAPTER), "Qualification for International Protection (Directive 2011/95/EU) A Judicial Analysis", *op. cit.*, p. 20.

<sup>481</sup> *Id.*

<sup>482</sup> *Id.*

<sup>483</sup> CJEU, *Joined Cases C-57/09 and C-101/09 B and D v. Vertreter des Bundesinteresses beim Bundesverwaltungsgericht and Bundesbeauftragter für Asylangelegenheiten beim Bundesamt für Migration und Flüchtlinge* (ECLI:EU:C:2010:661), 9 November 2010, par. 116.

<sup>484</sup> *Ibid.*, pars. 120-121 [bracketed text added].

<sup>485</sup> EU, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification...*, *op. cit.* Vid. also CJEU: *Joined Cases C-57/09 and C-101/09 B and D...*, *op. cit.*, par. 118. *Case C-542/13 Mohamed M'Bodj v. État Belge*, *op. cit.*, par. 46.

be entitled to the benefits guaranteed by Chapter VII of the QD, but only to the rights granted to them by the legislation of the Member State concerned<sup>486</sup>.

To date, only four Member States have expressly included in their legislation provisions for temporary or complementary protection for persons displaced by environmental factors, namely Finland, Sweden, Italy and Cyprus<sup>487</sup>.

### 3.4.1. Finland

In Finland, the legal framework for foreigners is the Aliens Act 301/2004<sup>488</sup>. Until its amendment in 2016<sup>489</sup>, the Act included provisions for granting both humanitarian (Section 88) and temporary protection (Section 109) to victims of natural disasters. Although only the possibility of granting temporary protection on environmental grounds has been retained after the reform, it is also worth knowing and making some considerations regarding Section 88 in its unamended version.

#### A) Humanitarian protection for environmental reasons

Before the 2004/83/EC Directive, Section 87 was dedicated to asylees/refugee seekers, while Section 88 dealt with other persons in "need of international protection"<sup>490</sup>. Alongside the groups of persons expressly mentioned in the QD – i.e. those fleeing from the death penalty, torture or inhuman or degrading treatment, or armed conflict -, Section 88 also considered as persons needed of international protection those individuals who cannot return to their State of origin or permanent residence because of an environmental disaster<sup>491</sup>.

The lack of a clear distinction in Article 88 between the protection provided at the national level and that provided under the QD, led the Finish Act 323/2009<sup>492</sup>, which

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<sup>486</sup> INTERNATIONAL ASSOCIATION OF REFUGEE LAW JUDGES (EUROPEAN CHAPTER), "Qualification for International Protection (Directive 2011/95/EU) A Judicial Analysis", *op. cit.*, p. 21, observing that "the Directive is not applicable to those situations".

<sup>487</sup> KRALER, A. ET AL., "*Climate Refugees*": *legal and policy responses to environmentally induced migration (study)*, *op. cit.*, pp. 56-57.

<sup>488</sup> FINLAND, *Aliens Act 301/2004* (amendments up to 620/2020 included), Helsinki, Ministry of Interior, 30 April 2004.

<sup>489</sup> FINLAND, *Act 332/2016 amending the Aliens Act 301/2004*, Helsinki, Ministry of Interior, 29 April 2016.

<sup>490</sup> FINLAND, *Aliens Act 301/2004* (unamended version), Helsinki, Ministry of Interior, 30 April 2004.

<sup>491</sup> *Id.*

<sup>492</sup> FINLAND, *Act 323/2009* (amending the Aliens Act 301/2004), Helsinki, Ministry of Interior, 8 May 2009.

transposed the Directive, to split Section 88 into two: Section 88 and Section 88a. The former was devoted exclusively to the new category of subsidiary protection introduced by the QD, transposing Article 2(e) – definition of a person eligible for subsidiary protection; Article 15 – definition of serious risk; and Article 17 – exclusion clause - of the Directive. Section 88a continued to deal with "other persons in need of international protection", now under the heading of *humanitarian protection*. Such a protection status would take the form of a residence permit granted to a person who, although not eligible for asylum or subsidiary protection,

"(...) *cannot return to his country of origin or his country of permanent residence because of an environmental disaster in that country or because of a poor security situation there, which may be caused by international or internal armed conflict or a difficult human rights situation*"<sup>493</sup>.

However, Section 88a has never been applied<sup>494</sup> and was repealed by the Act 332/2016<sup>495</sup>. Nevertheless, victims of environmental displacement could still get protection through the humanitarian protection provided by Sections 93 and 52 of the Aliens Act 301/2004<sup>496</sup>.

According to the first, the Finish Government "may decide in a plenary session on admitting aliens into Finland *on special humanitarian grounds* or to fulfil international obligations"<sup>497</sup>. Although Section 93, unlike Section 88 or 88a, does not expressly mention environmental disasters as a cause for gaining protection, the reference to "special humanitarian grounds" seems broad enough to cover environmentally displaced individuals.

Furthermore, Section 93 offers one advantage compared to former Section 88 or 88a. The latter referred only to "environmental disasters", which suggests that only victims of rapid-onset environmental disruptions would have been covered. By contrast, the vagueness of the term "humanitarian grounds" in Section 93 also allows for the inclusion of victims of slow-onset environmental disruptions, such as those displaced by extreme drought or sea-level rise. The only drawback is that Article 93 requires a

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<sup>493</sup> Section 88a introduced by Act 323/2009, *op. cit.* [Translated from the original in Finish using Google translate].

<sup>494</sup> EUROPEAN COMMISSION, *Commission Staff Working Document: Climate change, environmental degradation, and migration...*, *op. cit.*, p. 18.

<sup>495</sup> FINLAND, *Act 332/2016* (amending the Aliens Act 301/2004), *op. cit.*

<sup>496</sup> FINLAND, *Aliens Act 301/2004* (amendments up to 620/2020 included), *op. cit.*

<sup>497</sup> *Ibid.*, Section 93 (1) [Italics added. Translated from the original in Finish using Google translate].

political decision to be triggered<sup>498</sup>. However, the precedent that environmental factors have already been taken into account by the Finnish legislator leaves room for some hope about the political sensitivity of admitting forced environmental migrants into Finland for special humanitarian reasons.

On its part, Section 52 (1) refers to an alien who is already in Finland but has no right to reside there. It provides for the issue of a residence permit on individual human grounds, when the alien's return to their country of origin would be unreasonable due to "their health, ties to Finland or *on a discretionary basis on other humanitarian grounds*, particularly in consideration of the circumstances they would face in their home country or of their vulnerable position"<sup>499</sup>. Section 52 would therefore make it possible to take into account the environmental situation prevailing in the country of origin, either as an immediate cause of the damage – rapid-onset events - or as a catalyst for the deterioration of socio-economic conditions – slow-onset processes.

Aliens to which have been granted humanitarian protection under Section 52 (1) enjoys, along with their family members [Section 47 (3)], a continuous residence permit, which give them right to work in Finland [Section 78 (3) 1) and 2)]. In the case of Section 93, humanitarian protection is provided to the beneficiary and their family temporarily [Section 112 (1) 2) and (2)] unless the Government decides to issue them with a continuous residence permit [Section 113 (1) and (2)]. In both cases, beneficiaries of Section 93 and their family members are allowed to work [Section 78 (3) 1) to 3)].

## **B) Temporary protection**

Section 109 (1) of the Finish Aliens Act 301/2004 allows granting temporary protection

"(...) to aliens who need international protection and *who cannot return safely to their home country* or country of permanent residence, *because there has been a massive displacement of people* in the country or its

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<sup>498</sup> The decision shall be taken by the Finnish Government in a plenary session. The Ministry of the Interior, the Ministry of Foreign Affairs and the Ministry of Economic Affairs and Employment will cooperate in the preparation of a proposal for the government's decision (vid. *ibid.*, Section 93).

<sup>499</sup> *Ibid.*, Section 52 (1) [Italics added. Translated from the original in Finish using Google translate].

neighbouring areas *as a result of* an armed conflict, some other violent situation or *an environmental disaster*"<sup>500</sup>.

The decision to grant temporary protection to groups of people displaced for one of the above reasons is reserved for the Government, which will adopt it in plenary session [Section 109 (2)]. It is also for the Government in plenary session to set the maximum time for which protection is granted [Section 109 (2)], which cannot exceed three years [Section 109 (1)]. In principle, those who are granted temporary protection will be granted a residence permit for one year, renewable for equal periods either until the maximum period set by the Government or the legal period of three years is reached [Section 110 (1)]. This residence permit also carries with it the right to work in Finland [Section 78 (3) 3)]. Family members of persons enjoying temporary protection will also be granted a residence and work permit of the same duration [Sections 112 (2) and 78 (3) 2)].

However, where the reasons for which temporary protection was granted continue to exist after the expiry of the maximum period of three years, provision is made for holders of temporary protection and their family members to receive a continuous residence permit in Finland [Section 113 (2) and (3)], which also allows them to continue working [Section 78 (3) 1) and 2)].

It remains to be seen how the Finnish authorities interpret the reference to "environmental disaster"<sup>501</sup>. That is, whether it is interpreted in a *literal sense* by including only sudden environmental disruptions; or in a *broad sense* by allowing equally for slow-onset environmental degradation processes. In any case, even if a restrictive interpretation prevails, victims of the latter could still be protected through the humanitarian protection regime of Sections 52 and 93, as already analysed.

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<sup>500</sup> Ibid., Section 109 (1) [Italics added. Translated from the original in Finnish using Google translate].

<sup>501</sup> According to EUROPEAN COMMISSION, *Commission Staff Working Document: Climate change, environmental degradation, and migration...*, *op. cit.*, p. 19, "this provision has never been applied so far".



### 3.4.2. Sweden

As far as Sweden is concerned, Chapter 4, Section 2 of the Aliens Act 2005:716<sup>502</sup> defined "a person otherwise in need of protection" as an alien who, despite not qualifying for refugee status, is outside their country of nationality, because:

" (...)

1 feels a well-founded fear of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment,

2 needs protection because of external or internal armed conflict or, because of other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses,

*3 is unable to return to the country of origin because of an environmental disaster, or*

4 feels a well-founded fear for their gender or sexual orientation

The corresponding applies to a stateless alien who is outside the country in which he or she has previously had his or her usual place of residence"<sup>503</sup>.

Happening something similar to what happened with the Finish Aliens Act, the Swedish Act 2009:1542<sup>504</sup> ended up the eventual overlapping between subsidiary protection and the one provided at the national level. Thus, after the amendment, Chapter 4 currently involves three protection statuses: Sections 1 and 2 has respectively transposed refugee and subsidiary protection under the QD; while introducing a new Section 2a for "persons otherwise in need of protection", which reproduces numerals 2 and 3 of the former Section 2.

Therefore, persons who come to Sweden fleeing an environmental disaster in their home country are entitled to a residence permit. According to the Division for Migration and Asylum Policy at the Swedish Ministry of Justice, the term "environmental disasters" should be interpreted in its ordinary and restricted sense, so that

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<sup>502</sup> SWEDEN, *Aliens Act 2005:716* (unamended version), Ministry of Justice, 29 September 2005 (Entry into force: 31 March 2006).

<sup>503</sup> *Ibid.*, Chapter 4, Section 2 [Italics added. Translated from the original in Swedish using Google translate]. Numeral 4 was repealed by: SWEDEN, *Act 2005:1239* (amending the Aliens Act 2005:716), Ministry of Justice, 20 December 2005 (published: 28 December 2005).

<sup>504</sup> SWEDEN, *Act 2009:1542* (amending the Aliens Act 2005:716), Ministry of Justice, 17 December 2009 (published: 30 December 2009).

environmental slow-onset processes would not be covered<sup>505</sup>. Such a residence permit may be granted on a permanent or temporary basis; but in the latter case, it will be valid for one to three years (Chapter 5, Section 1<sup>506</sup>).

It is important to note, however, that this provision, although never used<sup>507</sup>, has been suspended since 20 July 2016, when Bill 2016:752<sup>508</sup> passed by the Swedish Parliament came into force. Indeed, according to Section 4 of the new Act 2016:752, concerning temporary restrictions on the possibility of obtaining a residence permit in Sweden, "persons who otherwise need protection" cannot obtain a residence permit in Sweden during the period from 20 July 2016 to 20 July 2021<sup>509</sup>. Regrettably, Act 2021:765 has finally deleted Section 2a, concerning the consideration as "persons otherwise in need of protection" of those who cannot return to their country of origin because of an environmental catastrophe<sup>510</sup>.

### 3.4.3. Italy

As regards Italy, its legislation on foreigners has two types of provisions regarding environmental factors as a cause for migration. On the one hand, the temporary national protection for humanitarian reasons (Art. 20 DL 286/1998<sup>511</sup>).

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<sup>505</sup> Vid. GLAHN, B., “ ‘Climate refugees?’ Addressing the international legal gaps – Part II -, *International Bar Association*, 3 August 2009. Also EUROPEAN COMMISSION, *Commission Staff Working Document: Climate change, environmental degradation, and migration...*, *op. cit.*, p. 18.

<sup>506</sup> SWEDEN, *Aliens Act 2005:716* (amendments up to 2020:598 included), Ministry of Justice, 29 September 2005 (Entry into force: 31 March 2006).

<sup>507</sup> EUROPEAN COMMISSION, *Commission Staff Working Document: Climate change, environmental degradation, and migration...*, *op. cit.*, p. 18.

<sup>508</sup> SWEDEN, *Act 2016:752 on temporary restrictions on the possibility of obtaining a residence permit in Sweden*, Ministry of Justice, 22 June 2016.

<sup>509</sup> The term of the Act 2016:752 (which ended on 19 July 2019) was extended to 20 July 2021 by: SWEDEN, *Act 2019:481 on the continued validity of the law (2016: 752) on temporary restrictions on the possibility of obtaining a residence permit in Sweden, and an amendment to the same Law*, Ministry of Justice, 19 June 2019 (published: 26 June 2019).

<sup>510</sup> SWEDEN, *Act (2021:765) on Amendments to the Aliens Act (2005:716)*, Ministry of Justice (Entry into force: 20 July 2021).

<sup>511</sup> References made to DL 286/1998 should be understood as being made to: ITALY, *Decreto Legislativo No. 286 Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*, 25 July 1998 (Entry into force: 2 September 1999), *Gazzetta Ufficiale della Repubblica Italiana*, No. 191 of 18/08/1998 – Supplemento Ordinario No. 139 [Modifications of DL 286/1998 shall be indicated in the corresponding footnote].

The update version of DL 286/1998 can be found in: NORMATTIVA: IL PORTALE DELLA LEGGE VIGENTE, *Decreto Legislativo No. 286 Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*, 25 July 1998 (amendments up to 19/05/2020 included) (last access: 30/07/2020).

On the other hand, the residence permit for cases of calamity (Art. 20 bis DL 286/1998<sup>512</sup>).

### A) The residence permit for cases of calamity (art. 20 bis DL 286/1998)

#### 1. The precedent of the previous residence permit for humanitarian reasons

Prior the reform introduced by D-L 113/2018<sup>513</sup>, the Italian legislation on foreigners allowed the *Questore*<sup>514</sup>, in various exceptional cases, to issue a residence permit to a non-EU foreigner when they did not qualify for international protection or for obtaining a residence permit in Italy. All those exceptional cases had in common that the foreigner, although not usually entitled to reside in Italy, could not return to his country of origin for *serious humanitarian reasons*.

For instance, Article 5 (6) DL 286/1998 prohibited the refusal or revocation of a residence permit when there were "serious grounds, in particular of a humanitarian nature (...)"<sup>515</sup>, providing in its final indent for the issuance by the *Questore* of a residence permit "according to the modalities provided for in the implementing regulation"<sup>516</sup>. A second case was provided for in Article 19 (1) thereof, relating to the principle of *non-refoulement*. It forbids the expulsion or rejection of aliens to a State in which they may be "(...) object of persecution on the grounds of race, sex, language,

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<sup>512</sup> As inserted by ITALY, *Decreto-Legge No. 113 Disposizioni urgenti in materia di protezione internazionale e immigrazione, sicurezza pubblica, nonché misure per la funzionalità del Ministero dell'interno e l'organizzazione e il funzionamento dell'Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata*, 4 October 2018 (Entry into force: 5 October 2018), *Gazzetta Ufficiale della Repubblica Italiana, Serie Generale, No. 231 of 04/10/2018, Article 1 (1) h*.

The D-L 113/2018 was converted into Law with amendments by: ITALY, *Legge No. 132 Conversione in legge, con modificazioni, del decreto-legge 4 ottobre 2018, n. 113, recante disposizioni urgenti in materia di protezione internazionale e immigrazione, sicurezza pubblica, nonché misure per la funzionalità del Ministero dell'interno e l'organizzazione e il funzionamento dell'Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata. Delega al Governo in materia di riordino dei ruoli e delle carriere del personale delle Forze di polizia e delle Forze armate*, 1 December 2018 (Entry into force: 04 December 2018), *Gazzetta Ufficiale della Repubblica Italiana, Serie Generale, No.281 of 03/12/2018*.

<sup>513</sup> References made to D-L 113/2018 should be understood as being made to: ITALY, *Decreto-Legge No. 113 Disposizioni urgenti in materia di protezione internazionale e immigrazione...*, *op. cit. supra*.

<sup>514</sup> The *Questore*, in the Italian administrative system, is a public security authority, with provincial competence and in charge of a police headquarters.

<sup>515</sup> Self-translated from the original in Italian.

<sup>516</sup> The final indent of Article 5 (6) DL 286/1998 was inserted by: ITALY, *Testo Coordinato del Decreto-Legge 23 giugno 2011, No. 89 (in Gazzetta Ufficiale - serie generale - n. 144 del 23 giugno 2011), coordinato con la legge di conversione 2 agosto 2011, No. 129 (in questa stessa Gazzetta Ufficiale alla pag. 4), recante: «Disposizioni urgenti per il completamento dell'attuazione della direttiva 2004/38/CE sulla libera circolazione dei cittadini comunitari e per il recepimento della direttiva 2008/115/CE sul rimpatrio dei cittadini di Paesi terzi irregolari»*, *Gazzetta Ufficiale della Repubblica Italiana, Serie Generale, No.181 of 05/08/2011, Article 3 (1) a* [Self - translated from the original in Italian].

language, or citizenship, religion, political opinions, conditions personal or social, or maybe at risk of being sent back to another State where it is not protected from persecution"<sup>517</sup>.

In both cases, letter c-ter of Article 11 (1) DPR 394/1999<sup>518</sup>, implementing Articles 5 (6) and 19 (1) DL 286/1998, provided for the issue of a residence permit on humanitarian grounds,

"after consultation with the Territorial Commissions for the recognition of refugee status, or presentation by the concerned party of the documentation relating to the reasons for the request concerning objective and serious personal situations that do not allow for the expulsion of the foreigner from national territory"<sup>519</sup>.

Article 32 (3) DL 25/2008 provided for one more case, allowing the *Questore* to release a residence permit on humanitarian reasons in cases where the Territorial Commission, even if not granting international protection (refugee or subsidiary protection status), considered that there were "serious humanitarian grounds"<sup>520</sup>.

The vagueness of the factual basis for granting this permit, "humanitarian reasons", left sufficient room for issuing it in the most varied situations, as long as they involved a certain degree of seriousness. These included cases of health or age, the risk of severe violence or political instability, or of famine or other environmental disasters<sup>521</sup>.

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<sup>517</sup> Self - translated from the original in Italian.

<sup>518</sup> References made to DPR 394/1999 should be understood as being made to: ITALY, *Decreto del Presidente della Repubblica No. 394 Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, a norma dell'articolo 1, comma 6, del decreto legislativo 25 luglio, 31 August 1999* (Entry into force: 18 November 1999), *Gazzetta Ufficiale della Repubblica Italiana, Serie Generale, No.258 of 03/11/1999 – Supplemento Ordinario No. 190* [Mentions to modifications of DPR 394/1999 shall be indicated in the corresponding footnote].

<sup>519</sup> Letter c-ter of Article 11 DPR 394/1999 was inserted by: ITALY, *Decreto del Presidente della Repubblica No. 334 Regolamento recante modifiche ed integrazioni al decreto del Presidente della Repubblica 31 agosto 1999, No. 394, in materia di immigrazione, 18 October 2004* (Entry into force: 25 February 2005), *Gazzetta Ufficiale della Repubblica Italiana, Serie Generale No. 33 of 10/02/2005 – Supplemento Ordinario No. 17, Article 11 (1) a* [self - translated from the original in Italian].

<sup>520</sup> ITALY, *Decreto Legislativo No. 25 Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato, 28 January 2008* (Entry into force: 2 Mars 2008), *Gazzetta Ufficiale della Repubblica Italiana, Serie Generale No 40 of 16/02/2008*.

<sup>521</sup> EUROINTERIM, "Modifiche alle norme in materia di immigrazione", EuroInterim, 17 December 2018, p. 2 (last access: 08/08/2020).

The duration of the residence permit on humanitarian grounds was determined by the time that the circumstances leading to its issuance persisted in the migrant's country of origin. Its duration, however, varied in administrative practice from six months to two years<sup>522</sup>. The holder had the right: a) to carry out a work activity, whether autonomous or subordinate (Art. 14 (1) c) DPR 394/1999<sup>523</sup>); b) to be converted into another type of permit - e.g. for work or family reasons - if the requirements are met (Art. 5 (9) DL 286/1998); c) to health care upon registration at the National Health Service (Art. 34 (1) b) DL 286/1998); d) to primary and higher education (Arts. 38 (1) and 39 (5)<sup>524</sup> DL 286/1998); e) and to access to social accommodation and other social assistance measures - if the permit is issued for a period longer than six months - (Arts. 40 (4) and 41 DL 286/98).

Nevertheless, the entry into force of D-L 113/2018 led to the disappearance of the residence permit on humanitarian grounds. Thus, Article 1 (1) b) 2) D-L 113/2018 amended Article 5 (6) DL 286/1998 by removing the reference to the issuance of a residence permit for humanitarian reasons<sup>525</sup>; while Article 11 (1) c-ter DPR 394/1999 was also repealed by Article 1 (6) a) D-L 113/2018. Finally, Article 1 (2) a) D-L 113/2018 narrowed the scope of article 32 (3) DL 25/2008, limiting the issuance of residence permits on humanitarian grounds – now called "special protection" - to only those cases covered by the prohibition against *refoulement*. I.e., when there is still a risk of persecution, as defined in Article 19 (1) DL 286/1998, or a risk of torture within the meaning of Article 19 (1.1) DL 286/1998<sup>526</sup>.

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<sup>522</sup> ITALY, "Il Permesso di Soggiorno per Motivi Umanitari: Scheda Sintetica", *Portale Integrazione Migranti*, p. 2 (last access: 10/08/2020).

<sup>523</sup> ITALY, *Decreto del Presidente della Repubblica No. 334 Regolamento recante modifiche ed integrazioni al decreto del Presidente della Repubblica 31 agosto 1999, No. 394, in materia di immigrazione, op. cit.*, Article 13 amending Article 14 DPR 394/1999.

<sup>524</sup> ITALY, *Decreto Legislativo No. 71 Attuazione della direttiva (UE) 2016/801 del Parlamento europeo e del Consiglio, dell'11 maggio 2016, relativa alle condizioni di ingresso e soggiorno dei cittadini di Paesi terzi per motivi di ricerca, studio, tirocinio, volontariato, programmi di scambio di alunni o progetti educativi e collocamento alla pari*, 11 May 2018 (Entry into force: 05/07/2018), *Gazzetta Ufficiale della Repubblica Italiana, Serie Generale, No.141 of 20/06/2018*, Article 1 (5) f) amending Article 39 (5) DL 286/1998.

<sup>525</sup> Instead, Article 5 (6) DL 286/1998 refers now to the possibility of refusing or withdrawing the residence permit on the basis of international conventions or agreements, which have been made enforceable in Italy, when the foreigner does not meet the conditions of residence applicable in one of the Contracting States.

<sup>526</sup> As inserted by: ITALY, *Legge No. 110 Introduzione del delitto di tortura nell'ordinamento italiano*, 14 July 2017 (Entry into force: 18 July 2017), *Gazzetta Ufficiale della Repubblica Italiana, Serie Generale, No.166 of 18/07/2017*, Article 3 (1).

Recently, the Italian Council of Ministers has approved a new D-L which includes, among other provisions, urgent measures on immigration, and international and complementary protection<sup>527</sup>. Although it has not entailed the resurrection of the former permit for humanitarian reasons, it has introduced some modifications that soothe the harshness of the previous D-L 113/2018. For example, besides the two previous cases, the residence permit for cases of "special protection" can now also be issued when the expulsion of the foreigner from the Italian territory exposes them to the risk of being subjected to inhuman or degrading treatment in the country of return. Alternatively, it can also be issued in those cases where the expulsion may infringe the right to private and family life, given the nature and effectiveness of the family ties developed by the foreigner in Italy or their effective social integration in the country<sup>528</sup>.

## 2. The temporary residence permit for cases of calamity in the country of origin

Following the D-L 113/2018, instead of a single, generic open form of residence permit for humanitarian reasons, six different permits are now provided; each of them in response to one specific circumstance of the applicant<sup>529</sup>. As a result, the reform has not only led to a fragmentation of humanitarian protection<sup>530</sup>. It would also have limited its scope, as the humanitarian grounds on which it can be granted are now legally pre-

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<sup>527</sup> ITALY, *Decreto-Legge Disposizioni urgenti in materia di immigrazione, protezione internazionale e complementare, modifiche agli articoli 131-bis, 391-bis, 391-ter e 588 del codice penale, nonché misure in materia di divieto di accesso agli esercizi pubblici ed ai locali di pubblico trattenimento, di contrasto all'utilizzo distorto del web e di disciplina del Garante nazionale dei diritti delle persone private della libertà personale*, 21 October 2018 (Entry into force: 20-12-2020), *Gazzetta Ufficiale della Repubblica Italiana*, Serie Generale, No.261 of 21/10/2020.

<sup>528</sup> Vid. Article 1 (1) e) of D-L on urgent provisions on immigration, and international and complementary protection, amending sub-paragraph 1.1) and introducing a new sub-paragraph 1.2 in Article 19 DL 286/1998.

<sup>529</sup> On the one hand, D-L 113/2018 introduces three new types of residence permit for reasons that would previously have allowed applicants to obtain humanitarian protection: i) the residence permit for medical care (Art. 1 (1) g) D-L 113/2018 inserting Art. 19 (2) d-bis DL 286/1998); ii) the residence permit for cases of calamity (Art. 1 (1) h) D-L 113/2018 inserting Art. 20 bis DL 286/1998); iii) the residence permit for acts of particular civil value (Art.1 (1) q) D-L 113/2018 inserting Art. 42 bis DL 286/1998). On the other hand, it establishes that some types of residence permits, already provided for by DL 286/1998, and previously issued with the mention "humanitarian reasons", now bear instead the mention "special cases", namely: iv) the residence permit for social protection (Art. 1 (1) e) D-L 113/2018 amending Art. 18 (4) DL 286/1998); v) the residence permit for victims of domestic violence (Art. 1 (1) f) D-L 113/2018 amending Section (1) and inserting Section 1 bis in Art. 18 bis DL 286/1998); vi) the residence permit for particular labour exploitation (Art. 1 (1) i) D-L113/2018 amending Section 12 quarter and inserting Section 12 sexies in Art. 22 DL 286/1998). In addition to these six permits, there also exists the permit "for special protection" under Article 32 (3) DL 25/2008, as amended by Article 1 (2) a) D-L 113/2018 (vid. footnote *supra* and accompanying text).

<sup>530</sup> ASSOCIAZIONE PER GLI STUDI GIURIDICI SULL'IMMIGRAZIONE, "Le modifiche in tema di permesso di soggiorno conseguenti all'abrogazione dei motivi umanitari e sull'art. 1, D.L. 113/2018. Prime osservazioni", ASGI, 25 October 2018, p. 3 (last access: 10/08/2020).

established, creating a sort of typology of protection cases<sup>531</sup>. The reform carried out by the D-L on urgent provisions on immigration, and international and complementary protection has not brought about any change in this respect.

One of the permits introduced by D-L 113/2018 has been the residence permit for cases of calamity, which is regulated in the new Article 20 bis DL 286/98<sup>532</sup>. According to this provision, the *Questore* shall issue this permit in cases where the country to which the foreign national is to return is in a "situation of grave calamity", which does not allow them to return and remain there safely [Art. 20 bis (1)]<sup>533</sup>.

It remains to be seen how the notion of "calamity" is interpreted over time. It is not clear whether it refers strictly to natural disasters, or whether it would also include slow-onset environmental disturbances – which would have been covered under the previous residence permit on humanitarian grounds. Moreover, it is arguable whether other events of natural origin – e.g. epidemics<sup>534</sup> - or of an anthropogenic nature – industrial accidents, situations of internal violence - could be considered to fall within the concept of "calamity", provided they reach a sufficient level of severity<sup>535</sup>.

In the absence of a uniform definition of the term "calamity", the *Questore* would therefore retain broad discretion to assess both the existence of the calamity and its exceptional nature<sup>536</sup>. This margin may lead to considerable divergences between the

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<sup>531</sup> Ibid., p. 14. EUROINTERIM, "Modifiche alle norme in materia di immigrazione", *op. cit.*, p. 2 (last access: 08/08/2020).

<sup>532</sup> As inserted by Article 1 (1) h) D-L 113/2018.

<sup>533</sup> Article 20 bis DL 286/98 has been amended by Article 1 (1) f) D-L on urgent provisions on immigration, and international and complementary protection.

<sup>534</sup> For example, some voices have argued that it would be possible, and even necessary in the context of the current Covid-19 pandemic, to proceed to issue the residence permit for cases of calamity to migrants already living illegally in Italy. Especially since the closure of borders due to the epidemic, both in Italy and in most other countries in the world, does not allow them to return to their country of origin in safety either. Vid. BONETTI, P., "Gli effetti giuridici della pandemia del Coronavirus sulla condizione degli stranieri", *Rivista de Diritto Pubblico Italiano, Comparato, Europeo*, Osservatorio Emergenza Covid-19, Paper-20 Maggio 2020, pp. 33-37. CAMILLI, E., "Migranti, il permesso per calamità potrebbe già regolarizzare gli stranieri?", *La Difesa del Popolo*, 7 May 2020 (last access: 10/08/2020).

<sup>535</sup> Before the amendment introduced by the D-L on urgent provisions on immigration, and international and complementary protection, Article 20 bis referred to a "situation of contingent and exceptional calamity" in the country of origin. Its replacement by the adjective "grave" suggests that the threshold would have been lowered.

<sup>536</sup> ASSOCIAZIONE PER GLI STUDI GIURIDICI SULL'IMMIGRAZIONE, "Le modifiche in tema di permesso di soggiorno conseguenti all'abrogazione dei motivi umanitari e sull'art. 1, D.L. 113/2018. Prime osservazioni", *op. cit.*, p. 6.

interpretative criteria applied in each *Questura*, which in turn could encourage a kind of *forum-shopping* among migrants<sup>537</sup>.

Unlike its predecessor, the previous residence permit for humanitarian reasons, the calamity permit is issued for a legally defined period: six months. However, the amendment introduced by D-L on urgent provisions on immigration, and international and complementary protection allows for its renewal as long as the circumstances that led to its issue persist [Art. 20 bis (2)]<sup>538</sup>.

As for the status of its holder, D-L 113/2018 had substantially reduced it compared to the former permit for humanitarian reasons. However, the D-L on urgent provisions on immigration, and international and complementary protection has significantly reversed the situation. As a result, its content is now again very similar to that of the previous humanitarian permit: (i) it allows working [Art. 20 bis (2)]; (ii) it can be converted into another type of permit, including a residence permit for work purposes<sup>539</sup>; (iii) it gives access to primary and higher education (Arts. 38 (1) and 39 (5) DL 286/1998), as well as to social housing (Art. 40.4 DL 286/1998), on the same terms as for the former residence permit for humanitarian reasons; (iv) and if the permit extends beyond six months, the holder will also be able to access social assistance measures (Art. 41 DL 286/1998)<sup>540</sup>. Nevertheless, unlike the previous permit for humanitarian reasons, the calamity permit is only valid on national territory [Art. 20 bis (2)]; and does not give the right to register at the National Health Service, so that only urgent or essential ambulatory and hospital treatment can be received (Art. 34 (1) DL 286/1998)<sup>541</sup>.

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<sup>537</sup> Id.

<sup>538</sup> Under the D-L 113/2018, there was only the possibility of renewing the residence permit for cases of calamity once for a further period of six months.

<sup>539</sup> A novelty introduced by Article 1 (1) b) D-L on urgent provisions on immigration, and international and complementary protection, which adds a sub-paragraph 1 bis to Article 6 DL 286/1998. Under the D-L 113/2018, although the residence permit for cases of calamity allowed to work, it could not be converted into a residence permit for work purposes.

<sup>540</sup> With the D-L 113/2018, it was not possible to access social assistance measures holding a residence permit for cases of calamity, since this permit was issued for a maximum duration of 6 months and Article 41 DL 286/1998 requires that the permit must have a minimum duration of no less than one year in order to benefit from such social assistance.

<sup>541</sup> Article 1 (1) o) D-L 113/2018 excluded beneficiaries of asylum on humanitarian grounds from Article 34 (1) b) of DL 286/1998; and such exclusion has not been remedied by D-L on urgent provisions on immigration, and international and complementary protection.



## **B) Temporary protection for humanitarian reasons (art. 20 DL 286/1998)**

Article 20 (1) DL 286/1998 lays down that the Italian President of the Council of Ministers, in agreement with the Ministers of Foreign Affairs, of the Interior, for Social Solidarity and with any other Ministers concerned, can establish, by decree, temporary protection measures "*for relevant humanitarian needs*, on the occasion of conflicts, *natural disasters* or other events of particular seriousness in Countries not belonging to the EU"<sup>542</sup>.

Until now, Article 20 DL 286/1998 has been activated only once, in 2011, on the occasion of the massive influx of citizens from North African countries to the Italian coast – particularly to the island of Lampedusa<sup>543</sup>. The revolts and conflicts that had begun to occur throughout the region, as a result of the phenomenon known as the *Arab Spring*, led many migrants to try to reach irregularly European soil by crossing the Mediterranean from Tunisia, Egypt or Libya<sup>544</sup>. By Decree of the Italian President of the Council of Ministers on 12 February 2011<sup>545</sup>, the state of humanitarian emergency was declared at the national level. This presidential Decree was followed by another one on 5 April 2011<sup>546</sup>, based on Article 20 DL 286/1998, which specified the temporary protection measures to be applied in favour of citizens from North African countries, as

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<sup>542</sup> ITALY, *Decreto Legislativo No. 286 Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*, *op. cit.*, Article 20 (1) [Italics added. Self-translated from the original in Italian].

<sup>543</sup> The new migratory crisis that the island of Lampedusa has been facing since the end of May of this year makes one think that the government might reactivate the mechanism of Article 20 bis, as the small island's *Sindaco*, Salvatore Martello, has been demanding of President Conte since the end of August. Compared to the crisis of 2011, the covid-19 pandemic makes it even more necessary in the current context to seek a rapid response to the lack of places in the immigrant reception centres, where immigrants live together in overcrowded conditions. On 31 August, 1219 immigrants remained on the island, for a maximum capacity of 192 places. Vid. CAMILLI, A., "C'è davvero un'emergenza migranti a Lampedusa?", *Intenzionale.it*, 02 September 2020 (last access: 02/09/2020). ZINITI, A., "Lampedusa in emergenza, il grido del sindaco: 'Sull'isola non sono garantite le norme sanitarie e di sicurezza'", *La Repubblica*, 20 August 2020 (last access: 02/09/2020). GRECO, F., "Emergenza migranti a Lampedusa: Conte convoca Musumeci e il sindaco", *Agenzia Giornalistica Italia*, 31 August 2020 (last access: 02/09/2020).

<sup>544</sup> ARIAS, G., "La crisis en el Norte de África y su impacto en la inmigración irregular a la Unión Europea", *Real Instituto Elcano*, 09 May 2011, 8 pp.

<sup>545</sup> ITALY, *Decreto del Presidente del Consiglio dei Ministri Dichiarazione dello stato di emergenza umanitaria nel territorio nazionale in relazione all'eccezionale afflusso di cittadini appartenenti ai paesi del Nord Africa*, 12 February 2011, *Gazzetta Ufficiale della Repubblica Italiana*, Serie Generale, No.42 of 21/02/2011.

<sup>546</sup> ITALY, *Decreto del Presidente del Consiglio dei Ministri Misure di protezione temporanea per i cittadini stranieri affluiti dai Paesi nordafricani*, 5 April 2011, *Gazzetta Ufficiale della Repubblica Italiana*, Serie Generale, No. 81 of 08/04/2011.

long as they had arrived on Italian territory from 1 January 2011 until midnight on 5 April 2011<sup>547</sup>.

The migration crisis that led to the application of Article 20 DL 286/1998 was not the result of any environmental disruption, but of the climate of acute political instability that had spread throughout the entire Maghreb region and Egypt<sup>548</sup>. Nevertheless, both presidential Decrees constitute a valuable precedent for the practical implementation of such a mechanism. Therefore, it is worth taking account of their content when considering Article 20 DL 286/1998. Likewise, it is appropriate to analyse this provision by noting the differences between these temporary protection measures and the calamity permit referred to in Article 20 bis DL 286/1998.

1. Differences between temporary protection for humanitarian reasons and the temporary residence permit for cases of calamity

a. *A different case of fact: natural disaster v. calamity*

At first sight, it may seem that the type of environmental disturbance for which protection can be granted is the same in both provisions: rapid-onset disasters. However, it should be noted that reference in Article 20 DL 286/1998 to "natural disasters" is considerably more restricted than the terminology used by Article 20 bis DL 286/1998. As pointed out, the term "calamity" leaves more room for argument in favour of considering as such other types of environmental disturbance which, although not qualifying as natural disasters in the traditional sense of the term, are sufficiently severe to jeopardise equally the survival of persons living in the affected territory – i.e. to be considered "grave" in nature. By contrast, Article 20 DL 286/1998 seems unequivocal that only a natural disaster, defined as a rapid environmental disturbance, could serve as a basis for the adoption of such a Decree providing for exceptional protection measures.

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<sup>547</sup> Ibid., Article 1.

<sup>548</sup> In fact, in addition to the Arab Spring, in the same year, 2011, the Horn of Africa experienced one of the worst food crises ever recorded, as a result of the severe drought that affected the entire East African region. Migrants from countries affected by famine, such as Somalia, Eritrea or Ethiopia, took advantage of open migration routes from Tunisia or Libya to reach Europe, mixed in with the flow of migrants fleeing political instability and unrest in the Arab world. Although the presidential decree declaring the state of humanitarian emergency in Italy referred only to citizens of North African countries, one might wonder whether those immigrants from the Horn of Africa who might have arrived in Lampedusa from North African countries such as Tunisia, Libya or Egypt did not also receive protection under Article 20 DL 286/1998 in a disguised manner, perhaps becoming the first environmental displaced persons to receive protection on European soil.

Nevertheless, even if a literal interpretation of the term "natural disaster" is maintained, slow-onset environmental disruptions could still be accommodated in Article 20 DL 286/1998 under the category of "other events of particular seriousness". This closing-clause would then serve as a catch-all clause, covering other situations which, despite not being expressly mentioned in Article 20 DL 286/1998, have also caused a humanitarian crisis in the aliens' country of origin<sup>549</sup>.

In any event, whether the environmental disruption is qualified for Article 20 DL 286/1998 as a "natural disaster" or as "other events of particular seriousness" becomes irrelevant. Article 20 DL 286/1998 does not require the identification of the legal category to which the factual-situation that serves as a basis for the adoption of temporary protection measures belongs. For example, the Presidential Decree of 12 February 2011 declaring the state of humanitarian emergency merely describes, generically and briefly, the geopolitical context that caused the humanitarian crisis in North Africa and led to massive population displacements towards the Italian coasts<sup>550</sup>. It did not, however, assess whether the escalation of violence in Libya, which ended in an open civil war, qualified as a conflict; while the revolts in Tunisia or Egypt did so as other particularly serious events.

Consequently, in the event of a humanitarian emergency being declared due to an environmental disruption in a third country, it would not be necessary to identify whether it was a rapid or slow-onset event that caused the flow of displaced persons to Italy. Indeed, the inclusion of such a broad closing-clause – "other events of particular seriousness" - proves that what matters for the activation of the temporary protection mechanism is the need to provide immediate humanitarian protection to the displaced persons. That need would overshadow the very situation that has prompted the

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<sup>549</sup> Indeed, the existence of such a clause should be assessed very positively if Article 20 DL 286/1998 is compared with its counterpart in Finland (Section 109 (1) Aliens Act 301/2004) or Sweden (Chapter 4 (2) Aliens Act 2005:716). The closing-clause of the latter only allows for the inclusion of other human-made situations of violence in the applicant's country of origin. Therefore, as noted, the possibility of covering victims of slow-onset environmental disruptions in Finland or Sweden would be exclusively at the expense of how generously the notion of environmental disaster may be interpreted. Vid. Sub-sections 3.4.1 and 3.4.2 of this Chapter.

<sup>550</sup> ITALY, *Decreto del Presidente del Consiglio dei Ministri Dichiarazione dello stato di emergenza umanitaria nel territorio nazionale...*, *op. cit.*, Recitals 11th to 13th. Vid. Also ITALY, *Decreto del Presidente del Consiglio dei Ministri Misure di protezione temporanea per i cittadini stranieri affluiti dai Paesi nordafricani*, *op. cit.*, Recital 3rd, which simply refers to the declaration of the state of humanitarian emergency under the terms of the DPR of 12 February 2011 as a basis for the adoption of temporary protection measures.

displacement in the country of origin<sup>551</sup>. Therefore, the express reference in Article 20 DL 286/1998 to "conflicts" or "natural disasters" should be seen merely as an example of two situations where protection and humanitarian assistance are typically required.

Thus, despite the terminological differences between the term "natural disaster" and "calamity", it can be argued that the scope of both Article 20 and Article 20 bis DL 286/1998 seems sufficiently broad to cover both types of environmental disruption. However, the power to interpret such provisions in one sense or the other belongs in each case to a different authority.

In the case of Article 20 DL 286/1998, it is the President of the Italian Council of Ministers himself who shall determine that a particular situation in a non-EU country constitutes a humanitarian emergency. Having done so, the *Questore* is limited to acting in the exercise of a regulated power: it verifies merely whether or not the conditions set out in the relevant presidential decree are met and consequently grants the residence permit or not. For instance, according to the Presidential Decree of 5 April 2011, the *Questore* had to issue one of the previous residence permits on humanitarian grounds after verifying that the applicant was from and a national of a North-African country [Article 2(1)]<sup>552</sup>.

Under Article 20 DL 286/1998, the *Questore*, therefore, has no margin of appreciation or interpretation. Quite the opposite of what happens with the issuance of the residence permit for cases of calamity. As indicated above, in this case, the *Questore* does exercise absolute discretion in determining both the meaning of the term "calamity", as well as its existence and exceptional nature. This discretion has, nevertheless, the risk of producing different outcomes, depending on the territorial circumscription in which the application is submitted<sup>553</sup>.

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<sup>551</sup> Vid. ITALY, *Decreto del Presidente del Consiglio dei Ministri Dichiarazione dello stato di emergenza umanitaria nel territorio nazionale...*, *op. cit.*, Recital 14th, which, after describing the situation in North Africa, emphasizes "the need to take extraordinary and urgent measures aimed at providing suitable structures for the necessary forms of humanitarian assistance (...)" [Self - translated from the original in Italian]. Also ITALY, *Decreto del Presidente del Consiglio dei Ministri Misure di protezione temporanea per i cittadini stranieri affluiti dai Paesi nordafricani*, *op. cit.*, Recital 4th, stressing the necessity of "adopt[ing] humanitarian measures of temporary protection with regard to the assistance and residence of foreign nationals (...)" [Self - translated from the original in Italian].

<sup>552</sup> ITALY, *Decreto del Presidente del Consiglio dei Ministri Misure di protezione temporanea per i cittadini stranieri affluiti dai Paesi nordafricani*, *op. cit.*

<sup>553</sup> Vid. footnotes 536 and 537 of this Chapter and their accompanying text.

*b. Determination of protection status on an individual or group basis: the need for a mass influx of displaced persons in the context of temporary protection for humanitarian reasons*

The way beneficiaries of temporary protection are determined also differs between Article 20 and Article 20 bis DL 286/1998. Whereas the Questore issues the permit for cases of calamity on an individual basis, i.e. after a case-by-case assessment of the circumstances in the applicant's country; temporary protection under Article 20 is granted on a group basis<sup>554</sup>. That is, all persons coming from the geographical area defined in the Presidential Decree whereby temporary protection is triggered are considered to need humanitarian protection. This geographical area may correspond to all or part of the territory of one or more countries, or even include entire regions. For example, the DPR of 5 April 2011 defined the subjective scope of application by a generic reference to citizens belonging to North African countries, without further specification<sup>555</sup>.

It should be noted, however, that Article 20 of DL 286/1998 does not quantitatively qualify the arrival of persons at Italian borders. Its silence raises the question of whether a mass influx of displaced persons would be required to trigger temporary protection, in similar terms to those of the TPD. The exceptionality of the state of humanitarian emergency, as well as the precedent of 2011, seems to suggest so.

For example, the declaration of the state of humanitarian emergency on 12 February 2011 resulted from the fact that the landing of North Africa citizens on the Italian coasts, particularly on the island of Lampedusa, "had reached particularly worrying proportions"<sup>556</sup>. Moreover, given the political situation in the region, the situation was expected to become even worse in the following days, with the arrival of more boats loaded with irregular immigrants<sup>557</sup>. Equally, the subsequent DPR of 5 April 2011 justified the need to adopt temporal measures of protection given the significant

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<sup>554</sup> ASSOCIAZIONE PER GLI STUDI GIURIDICI SULL'IMMIGRAZIONE, "Le modifiche in tema di permesso di soggiorno conseguenti all'abrogazione dei motivi umanitari e sull'art. 1, D.L. 113/2018. Prime osservazioni", *op. cit.*, p. 5.

<sup>555</sup> ITALY, *Decreto del Presidente del Consiglio dei Ministri Misure di protezione temporanea per i cittadini stranieri affluiti dai Paesi nordafricani*, *op. cit.*, Article 1. [Italics added. Self - translated from the original in Italian].

<sup>556</sup> ITALY, *Decreto del Presidente del Consiglio dei Ministri Dichiarazione dello stato di emergenza umanitaria nel territorio nazionale...*, *op. cit.*, Recitals 11th to 13th [self - translated from the original in Italian].

<sup>557</sup> *Id.*

humanitarian needs "arising from the exceptional influx of individuals from North Africa"<sup>558</sup>.

Consequently, the precedent of 2011 seems to point to the fact that temporary protection for exceptional humanitarian reasons would be activated once a large number of displaced persons had arrived in the country at a rate or in numbers exceeding Italy's response capacity. After all, Article 20 of DL 286/1998 is entitled "extraordinary reception measures in case of exceptional events"<sup>559</sup>. There does not appear to be any other exceptional event than the large-scale arrival of third-country nationals that would justify the need for equally extraordinary reception measures.

For those cases where there exists no such a massive arrival, but the individual concerned cannot return to the country of origin either because of the environmental situation prevailing in it, there would remain the possibility of applying for the residence permit for cases of calamity.

## 2. Content of temporary protection for humanitarian reasons

The Decree of the President of the Council of Ministers adopting temporary protection measures shall determine the content of the protection granted. As an example, Article 2 of the Presidential Decree of 5 April 2011 recognised the following rights for beneficiaries coming from North Africa<sup>560</sup>: (i) the right to get one of the former residence permits on humanitarian grounds valid for six months (Art. 2.1); (ii) the right to apply for international protection (Art. 2.7); (iii) the right to a travel document instead of a passport, and the right to free movement within the EU countries, under the provisions of the Convention implementing the Schengen Agreement of 14 June 1995 and EU legislation (Art. 2.3); (iv) beneficiaries of the Presidential Decree of 5 April 2011 also enjoyed the additional rights that DL 286/98 and DPR 394/1999 attached to the extinct residence permit on humanitarian grounds.

Therefore, the disappearance of the residence permit on humanitarian grounds also raises the question of what form the residence permit granted to beneficiaries of temporary protection measures will now take. Of course, given the new types of

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<sup>558</sup> ITALY, *Decreto del Presidente del Consiglio dei Ministri Misure di protezione temporanea per i cittadini stranieri affluiti dai Paesi nordafricani*, *op. cit.*, Recital 4th.

<sup>559</sup> Self - translated from the original in Italian.

<sup>560</sup> ITALY, *Decreto del Presidente del Consiglio dei Ministri Misure di protezione temporanea per i cittadini stranieri affluiti dai Paesi nordafricani*, *op. cit.*,

residence permit introduced by the D-L 113/2018<sup>561</sup>, only the permit for cases of calamity seems to be in line with the humanitarian crises to which Article 20 DL 286/1998 intends to respond. This, in turn, reinforces the need to interpret the term "calamity" in a broad sense, capable of accommodating situations of both human and natural origin.

#### 3.4.4. Cyprus

Cyprus does not provide for the granting of temporary or humanitarian protection on environmental grounds in the country of origin but does consider them for the prohibition of *non-refoulement*. Thus, Article 29 (4) of the 2000 Refugee Law<sup>562</sup> provides:

"It is forbidden to issue an order for the expulsion of a refugee or a person with a subsidiary protection status to a country where his life or freedom would be in danger or where he would be at risk of being subjected to torture or degrading or inhuman treatment or punishment on account of his sex, religion, nationality, membership of a particular community, political opinion, armed conflict or environmental destruction"<sup>563</sup>.

In any case, the first requirement for this provision to be applicable is that the foreigner has already obtained the status of refugee or beneficiary of subsidiary protection. That prohibition would therefore operate only *a posteriori*, against a possible decision to deport a person under international protection to a country gravely affected by disruptions on the environment. The loss of international protection could be the result of the existence of reasonable grounds to consider that person a risk to the security of Cyprus; or because the beneficiary has been convicted of a particularly serious crime and therefore constitutes a danger to Cypriot society [Article 29 (1)].

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<sup>561</sup> Vid. footnote 529 regarding the new types of residence permit introduced by D-L 113/2018.

<sup>562</sup> CYPRUS, *Refugee Law of 2000 (6(I)/2000)*. A Law to provide for the recognition of refugees and for the better Implementation of the Convention relating to the Status of Refugees (amendments up to Law 116(I)/2019 included).

<sup>563</sup> Translated from the original in Greek using Google translate.

# **CHAPTER IV**

## **ENVIRONMENTAL DISPLACEMENT AND STATELESSNESS**

### **UNHCR'S ROLE IN THE PROTECTION OF ENVIRONMENTALLY DISPLACED PERSONS**

#### **INTRODUCTION**

This Chapter continues to analyse the international protection that an environmentally displaced person might receive. However, it does so by assuming a completely different scenario from the one analysed in the previous Chapter. Whereas Chapter III discussed the possibility of protecting environmentally displaced persons as refugees, this Chapter considers them in their possible statelessness condition. In other words, the protection that the international community should grant to people who not only have been displaced for environmental reasons but have also witnessed their State of nationality legally and factually erased as a result of environmental disruption. The first section of this Chapter explores this hypothesis by looking at the case of sinking SIDS.

Chapter IV concludes the question of international protection by analysing UNHCR's role in protecting environmentally displaced persons at the operational or field level. Its placement at the end of this Chapter is due to UNHCR's dual mandate to protect both refugees and stateless persons.

#### **1. VANISHING SMALL ISLAND DEVELOPING STATES UNDER OCEAN WATERS: THE STATELESSNESS OF THEIR NATIONALS**

##### **1.1. Introduction**

The disappearance of all or part of a State's territory, swallowed up by the ocean's waters, is no longer mere speculation from classical mythology but a reality. In 2005, the Council of Elders and Chiefs of the Carteret Islands – Papua New Guinea - decided to start resettling their population on the nearby island of Bougainville, becoming the



first recognised "climate refugees" in the world<sup>1</sup>. However, this title is contested by the 100 inhabitants of the village of Lateau, on Tegua Island – Republic of Vanuatu - who also had to be relocated inland after several storm surges and intense waves related to climate change repeatedly flooded the coast in 2005<sup>2</sup>.

Nevertheless, the scenario is not entirely unusual. In 2000, 1,000 islanders from the Duke of York Islands, also located in Papua New Guinea, had to move. The major flooding that was ravaging the islands due to the rising tides forced to urgently relocate the population to another island in the Bismarck Archipelago, New Britain<sup>3</sup>. Another example was published by The Sunday Times in 2004, when residents from the Kandholhudoo Island had to relocate to another island because of the tsunami that struck their homes<sup>4</sup>.

More recently, in 2016, the former Solomon Islands Prime Minister, Manasseh Sogavare, announced with resignation to the UN General Assembly, meeting in its 71st session, that the ocean had swallowed up five of his islands so far that year<sup>5</sup>. Tuvalu's Prime Minister, Enele Sosene, was more adamant in stating that many SIDS, including his own State, will not survive the rise in sea-level<sup>6</sup>. This concern was shared equally by

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<sup>1</sup> PARK, S., "Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States" (PPLA/2011/04), *Legal and Protection Policy Research Series*, UNHCR, May 2011, p. 2 (last access: 02/03/2020). The initiative to resettle the population of the Carteret Islands came about after the central government of Papua New Guinea made several unsuccessful attempts at relocation. In response to this failure, the Carteret Islands Council of Elders and Chiefs decided to take the initiative and enter into discussions with the Bougainville administration on their own. Although Bougainville is also part of Papua New Guinea, it is considered an autonomous region and the Council hoped that it would be able to accelerate the relocation process. At the same time, in 2006, Tulele Peisa - which means "sailing the waves on your own" - was established as a local NGO to coordinate a voluntary resettlement programme on land donated by the Catholic Church in Bougainville. The NGO aims to accompany the islanders throughout the resettlement process, facilitating their adaptation and integration into the host communities. Both initiatives are the first community-led resettlement of "climate refugees". Of the 2,700 islanders, 50% were expected to be relocated to their new homes in Bougainville by 2020. Vid. UNDP, "Tulele Peisa. Papúa Nueva Guinea", *Equator Initiative Case Study Series*, 2016, 16 pp. (last access 22/04/2020). UNDP, *El océano se está llevando mi casa* (last access 22/04/2020); and Chapter VI of this thesis on internal population movements in low-lying SIDS.

<sup>2</sup> UNITED NATIONS, "UN environmental body hails relocation of islanders threatened by climate change", *UN News*, 6 December 2005 (last access: 22/04/2020).

<sup>3</sup> MARKS, K., "1,000 flee as sea begins to swallow New Guinea islands", *NZ Herald*, 30 November 2000 (last access: 22/04/2020). According to the news published by the NZ Herald, up to 40,000 people from the Duke of York Islands could be in need of resettlement.

<sup>4</sup> TOOMEY, C., "The Maldives: Trouble in Paradise", *The Sunday Times*, 1 February 2009 (last access: 22/04/2020).

<sup>5</sup> UNGA, *Statement by Honourable Manasseh Sogavare, Solomon Islands MP Prime Minister*, 71st Session of the United Nations General Assembly (General Debate), New York, 23 September 2016, p. 2.

<sup>6</sup> UNGA, *Statement presented by Prime Minister of Tuvalu, Honourable Enele Sosene Sopoanga*, 71st Session of the United Nations General Assembly (General Debate), New York, 23 September 2016, par. 7, noting: "Atoll nations like Tuvalu, Kiribati, the Marshall Islands, the Maldives, Tokelau, and all other

other Island States leaders during their respective addresses to the UN General Assembly<sup>7</sup>.

Although there is currently no official and definitive list of potential island countries at risk of sinking<sup>8</sup>, a 2009 study estimated at 40 the number of Small Island States whose territory could be entirely or partially submerged by sea-level rise<sup>9</sup>. For its part, the IPCC nominated the Marshall Islands, Kiribati, Tuvalu, Tonga, the Federated States of Micronesia and the Cook Islands, all located in the Pacific Ocean, as well as the islands of Antigua and Nevis – in the Caribbean Sea - and the Maldives – in the Indian Ocean - as potential candidates to repeat the myth of Atlantis<sup>10</sup>. This is an unprecedented situation in which the international community would witness the physical disappearance of a country for the first time in contemporary history. Although international law provides for States' disappearance, the ordinary rules on State succession could not apply to island countries affected by climate change and sea-level rise, as there is no successor state assuming sovereignty over the former's territory and population<sup>11</sup>.

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SIDS, are already suffering the impacts of climate change and sea level rise, and *are predicted by many of total extinction*" [italics added].

<sup>7</sup> States' interventions can be seen in UN Web TV: [UN Web TV](#) (last access 22/04/2020). In turn, paper speeches can be downloaded from the [General Assembly's web archive](#) (last access 22/04/2020).

<sup>8</sup> PARK, S., "[Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States](#)" (PPLA/2011/04), *op. cit.*, p. 2.

<sup>9</sup> WARNER, K. ET AL., "[In Search of Shelter: Mapping the Effects of Climate Change on Human Migration and Displacement](#)", *Policy paper prepared for the 2009 Climate Negotiations*, Bonn (Germany), UN University; CARE; CIESIN-Columbia University, in close collaboration with the European Commission "Environmental Change and Forced Migration Scenarios Project", the UNHCR, and the World Bank, 2009, pp. 19 *in fine* and 20 (last access 22/04/2020)

<sup>10</sup> IPCC, *Climate Change 2001: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Third Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge (Reino Unido), Cambridge University Press, 2001, p. 935.

<sup>11</sup> COMMISSION ON HUMAN RIGHTS, *Prevention of discrimination and protection of indigenous peoples: Expanded working paper by Françoise Hampson on the human rights situation of indigenous peoples in States and other territories threatened with extinction for environmental reasons* (E/CN.4/Sub.2/2005/28), 16 June 2005, par. 11. The situation of affected populations in low-lying SIDS at risk of being submerged by rising sea levels is not, however, an isolated case. The adverse effects of climate change will force the relocation of other entire communities, although in these other examples, the continuity of statehood and nationality is not at risk. Such is the case of Arctic native communities. Vid. in this regard: ARENAS HIDALGO, N., "Las poblaciones desplazadas de su hábitat natural por efecto del cambio climático: el traslado planificado de las comunidades nativas del Ártico como caso de estudio", in: Soroeta Licerias, J. (coord.), *Anuario de los cursos de derechos humanos de Donostia-San Sebastián*, Vol. XV, España, Aranzadi Thomson Reuters, 2016, pp. 203-232. ARENAS HIDALGO, N., "Climate change and human mobility: The national and international approach to native community relocation in the Arctic", in: Iglesias Sánchez, S.; Conde Pérez, E. (coords.), *Global Challenges in the Arctic Region: Sovereignty, environment and geopolitical balance*, Reino Unido, Routledge, 2007, 253-277.

Furthermore, the nine States mentioned by the IPCC have in common belonging to the *Small Island Developing States* (SIDS) group. SIDS form a distinct group of countries within the United Nations because they share the same challenges. Their small size, remote location and limited economic growth render them much more vulnerable to climate change and natural disasters because of their lower adaptability<sup>12 13</sup>.

**Table 14-Elevation of Small Island States at risk of sea-flooding according to the IPCC<sup>14</sup>**

Country name:	Highest point:	Lowest point:	Mean elevation:
Antigua and Barbuda	402 m (Mount Obama)	0 m (Caribbean Sea)	–
Cook Islands	652 m (Mount Te Manga)	0 m (Pacific Ocean)	–
Kiribati	81 m (unnamed elevation on Banaba)	0 m (Pacific Ocean)	2 m
Maldives	5 m (Mount Villingili)	0 m (Indian Ocean)	2 m
Marshall Islands	14 m (unnamed elevation on Airik Island)	0 m (Pacific Ocean)	2 m
Micronesia	782 m (Nanlaud Mount on Pohnpei Island)	0 m (Pacific Ocean)	–

<sup>12</sup> The full list of SIDS can be found at UN, [List of SIDS](#) (last access: 15/04/2020). The UN decided to declare 2014 as the "International Year of Small Island Developing States" (vid. UNGA, *Resolution 67/206 International Year of Small Island Developing States, adopted by the General Assembly at its Sixty-seventh session (A/RES/67/206)*, 5 March 2013, 2 pp.). More information and resources can be found on the website created for this purpose: UN, [International Year of Small Island Developing States \(un.org\)](#) (last access: 15/04/2020).

<sup>13</sup> Although the acronym SIDS includes 39 small island states spread over three distinct geographical regions (the Caribbean region, the Pacific region and the region consisting of Africa, the Indian Ocean, the Mediterranean and the China Sea), the SIDS considered in this communication are the nine small island states mentioned above (i.e. Marshall Islands, Kiribati, Tuvalu, Tonga, Federated States of Micronesia, Cook Islands, Antigua and Nevis and Maldives). Reference to them should be understood when the acronym SIDS is used as a generic term in the text.

<sup>14</sup> Data extracted from USA CENTRAL INTELLIGENCE AGENCY, *The World factbook 2020*, Washington, DC (USA), Central Intelligence Agency, 2020, online publishing (last access: 22/04/2020).

Saint Kitts and Nevis	1,156 m	0 m	
	(Mount Liamuiga)	(Caribbean Sea)	–
Tonga	1,046 m	0 m	
	(Kao Volcano on Kao Island)	(Pacific Ocean)	–
Tuvalu	5 m	0 m	2 m
	(unnamed location)	(Pacific Ocean)	

As shown in the table above, the low elevation of the nine SIDS cited by the IPCC is already a clear indication of their vulnerability to sea-level rise. To put it graphically, the highest point in Tuvalu or Mount Villingili in the Maldives rises modestly by 5 metres, just over twice the height of the basketball player Pau Gasol – 2.14 m. In turn, the Spanish player is higher than the average elevation of Kiribati, the Maldives, the Marshall Islands or Tuvalu.

According to the IPCC climate scenarios, an 80 cm rise in sea level would flood two-thirds of the Marshall Islands and Kiribati<sup>15</sup>, where 189,713 people currently live<sup>16</sup>. In contrast, a 90 cm rise would flood 85 per cent of Malé<sup>17</sup>, the Maldives' capital, whose population was estimated at 177,000 in 2018<sup>18</sup>. Should the global temperature climb 4 °C above pre-industrial levels, sea-level rise could reach up to 2 m, leaving a total of 1.2-2.2 million people displaced just across the Caribbean, Pacific and Indian regions<sup>19</sup>.

Even if islands do not end up completely submerged and retain part of their territory, the impact of climate change and rising sea levels will make living conditions in SIDS increasingly precarious. For example, salinisation of freshwater aquifers and agricultural land will directly impact crops, while changes in coral reefs will affect the

<sup>15</sup> IPCC, *Climate Change 2001: Impacts, Adaptation, and Vulnerability...*, *op. cit.*, p. 935.

<sup>16</sup> According to U.S. Central Intelligence Agency estimates, by 2020 Kiribati had a population of 111,796; while the Marshall Islands had one of 77,917. Vid. USA CENTRAL INTELLIGENCE AGENCY, *The World factbook 2020*, *op. cit.*

<sup>17</sup> IPCC, *Climate Change 2001: Impacts, Adaptation, and Vulnerability...*, *op. cit.*, p. 935.

<sup>18</sup> SPAIN, "Fichas País: República de las Maldivas", *Ministerio de Asuntos Exteriores, Unión Europea y Cooperación (Oficina de Información Diplomática)* (last access: 22/04/2020).

<sup>19</sup> BARROS, V.R. ET AL., *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects. Working Group II Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, USA, Cambridge University Press, 2014, p. 1639, noting, however, that "[m]ore research is needed to produce robust agreement on the impact of SLR [sea-level rise] on small islands" [bracketed text added] (last access: 22/04/2020).

distribution and quantity of fish stocks. The increased frequency and intensity of floods, storms, and other extreme weather events and their disastrous effects on sanitation and drinking water systems will also increase people's risk of contracting insects-, food-, and water-borne diseases as malaria, dengue fever, and diarrhoea. In turn, the gradual environmental degradation of the islands and their beaches will negatively affect their tourist appeal, on which the vast majority of the inhabitants of small island States depend for revenue<sup>20</sup>.

Consequently, the population and, by extension, the government itself will likely be forced to leave the islands before their territory becomes entirely flooded by sea-waters. At the same time, the loss of territory and the gradual depopulation of SIDS can threaten their very survival as a State and, therefore, as a subject of International Law<sup>21</sup>. As Park points out, "(i)n most cases, such a risk [of a State ceasing] is likely to arise due to a confluence of economic, social, geological and environmental factors, where climate change may constitute the tipping point"<sup>22</sup>.

Hence, the next sub-section will first examine the impact that climate change and rising sea-levels could have on the different elements that determine a State's existence. Subsequently, and if low-lying SIDS's statehood ceases to exist, the second sub-section addresses their nationals' statelessness and the international protection regime that would apply to them<sup>23</sup>.

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<sup>20</sup> For an in-depth analysis of the multiple manifestations of climate change impact on low-lying SIDS, vid.: MARTIN, P. ET AL. (eds.), *Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge (UK), Cambridge University Press, 2007, pp. 695-702. PÖRTNER, H.O. ET AL (eds.), "Chapter 15: Small Islands", in: *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press, in press, 107 pp. BARROS, V.R. ET AL., *Climate Change 2014...*, *op. cit.*, pp. 1619-1626.

<sup>21</sup> Vid. BORRÁS PENTINAT, S., "El estatuto jurídico de protección internacional de los refugiados ambientales", *Revista Interdisciplinar da Mobilidade Humana*, Vol. 19, No. 36, 2011, p. 35, observing that it is unclear whether these countries will continue to exist as such with the disappearance of their territory or with the relocation of their population and government to other countries if the territory becomes uninhabitable.

<sup>22</sup> PARK, S., "Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States" (PPLA/2011/04), *op. cit.*, p. 2 [bracketed text added].

<sup>23</sup> However, it should be clarified, as pointed out by BORRÁS PENTINAT, S., "El estatuto jurídico de protección...", *op. cit.*, p. 36 *in fine*, that although the 1961 Refugee Convention also covers stateless refugees within its scope of application, the population of States that disappear due to climatic or environmental disruptions could not be protected under such a consideration, as they are not considered refugees according to the conventional definition of Article 1 (2) (A), as discussed in the previous chapter. The question of how international law could protect the inhabitants of low-lying SIDS from sea-level rise has also been addressed by OCHOA RUIZ, NATALIA, "Estados que se hunden: ¿Qué soluciones

## 1.2. Statehood and low-lying island States

### 1.2.1. Low-lying island States and the criteria for statehood

When addressing the hypothetical scenario of several island nations ceasing to exist as international subjects, the first question that must be answered, albeit briefly, is what a State is and how climate change and rising sea-levels may affect that existence<sup>24</sup>. However, the elements that determine a State's existence from the Public International Law's perspective are not a peaceful debate.

There is no international treaty of universal scope reflecting an international community's consensus on what makes an entity a State. Usually, reference is made to the German-Polish joint arbitral tribunal's award, which defines the legal notion of State as the sum or concurrence of three elements: "(...) a territory, a community of men living in that territory, and a public power exercising itself over that community and that territory. These conditions are recognised as indispensable and a State cannot be conceived of without them"<sup>25</sup>.

In contrast, the Latin American doctrine usually refers to the notion of statehood contained in Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States<sup>26</sup>. This provision requires, along with a defined territory, a permanent population and a government, the ability to establish relations with other States<sup>27</sup>. However, it should be noted that only 17 of the 35 American Member States of the OAS have currently ratified the Montevideo Convention<sup>28</sup>. Therefore, it cannot be said that "the

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ofrece el Derecho internacional a los migrantes climáticos que abandonan los territorios afectados por la elevación del nivel del mar?", *Revista Española de Derecho Internacional*, Vol. 73, No. 2, 2021, pp. 389-397.

<sup>24</sup> An in-depth analysis of the issue can be found in: TORRES CAMPRUBÍ, A., *Climate change and international security: revealing new challenges to the continuation of Pacific Islands' Statehood*, PhD Thesis, Madrid (Spain), Universidad Autónoma de Madrid, 2014, pp. 202-408.

<sup>25</sup> TRIBUNAUX ARBITRAUX MIXTES; OFFICE FRANÇAIS DES BIENS ET INTÉRÊTS PRIVÉS, "German-Polish Arbitral Tribunal: case of the Deutsche Continental Gas-Gesellschaft v. Polish State", in: *Recueil des décisions des tribunaux arbitraux mixtes, institués par les traités de paix*, vol. IX, Paris, Recueil Sirey, 1930, p. 344 [self - translated from the original in French]. The case stems from the Polish government's decision to close the gas company owned by German citizens and operating in Warsaw. The company argued that Poland lacked such competence, as it could not be considered *de jure* a State with sovereignty over those territories which, accordingly, remained subject to Russia and Austria.

<sup>26</sup> MALANCZUK, P., *Akehurst's Modern Introduction to International Law*, 7th ed., London/New York, Taylor & Francis Group, 2002, p. 79.

<sup>27</sup> OAS, *Convention on Rights and Duties of States adopted by the Seventh International Conference of American (Montevideo Convention)*, 26 December 1933, UNTS, Vol. 165, No. 3802, pp. 19-43

<sup>28</sup> The list of States Parties to the 1933 Montevideo Convention can be found at OAS, [General information of the Convention on Rights and Duties of States](#) (last access: 7/05/2020).

capacity to enter into relations with other States" is generally accepted as a statehood criterion at the American regional level<sup>29</sup>.

Ultimately, the ability to engage with other States depends on whether or not the new State is recognised as such by the rest of the international community. In this regard, the question of whether the recognition of a new State has declaratory or constitutive value for its existence, as an international law subject, is a debate that has emerged in the doctrine from time to time. Currently, the majority position is that a State's existence is a factual consequence, resulting from exercising effective power over a territory and a population settled there, independent of its relations with other States and its own foreign policy capacity<sup>30</sup>.

Accordingly, the following subsections analyse each of these three elements – i.e. territory, population and public power - in the context of SIDS threatened by climate change and rising sea-levels. As it could not be otherwise, the three elements are interrelated, forming a unit, the State. Therefore, any alteration in one of them will necessarily have consequences for all three. In this sense, as Hampson notes, the first difficulty will be to determine when the affected SIDS are considered to have disappeared: "when the population can only survive by leaving, even if parts of the territory remain above water, [when the government has also gone into exile], or only when the entire territory is submerged?"<sup>31</sup>.

The second question is who determines whether a State should be considered defunct for environmental reasons<sup>32</sup>. The answer to this question is more political than legal. It will depend on the international community's willingness to recognise the

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<sup>29</sup> MALANCZUK, P., *Akehurst's Modern Introduction to International Law, op. cit.*, p. 79, observing that while the ability to engage with other States as a statehood criterion finds support in the literature, it is not generally accepted as necessary.

<sup>30</sup> *Ibid.*, p. 80. Vid. INSTITUT DE DROIT INTERNATIONAL, "Resolutions Concerning the Recognition of New States and New Governments", *The American Journal of International Law*, Vol. 30, No. 4, Supplement: Official Documents, October 1936, p. 185, art. 1, which declares that:

"The recognition of a new State is the free act by which one or more States acknowledge the existence on a definite territory of a human society politically organized, independent of any other existing State, and capable of observing the obligations of international law, and by which they manifest therefore their intention to consider it a member of the international Community.

Recognition has a declaratory effect;

The existence of a new State with all the juridical effects which are attached to that existence, is not affected by the refusal of recognition by one or more States".

<sup>31</sup> COMMISSION ON HUMAN RIGHTS, *Prevention of discrimination and protection of indigenous peoples: (...) States and other territories threatened with extinction for environmental reasons, op. cit.*, par. 13.

<sup>32</sup> *Id.*

continued legal personality of SIDS as supranational entities endowed with specific sovereign competences despite being deprived of permanent territory and population.

### A) The territory

The State is the only international subject with a territorial base since it constitutes the physical support on which the population is settled and over which public power exercises its sovereignty<sup>33</sup>. The territory includes land and some marine waters adjacent to the coast, as well as the airspace above and the earth beneath both<sup>34</sup>. It is irrelevant for a State's existence either the extension of the territory or its typology – i.e. continental, insular, peninsular, mixed or archipelago<sup>35</sup>. The essential fact is that the territory's borders have a sufficient degree of stability, even if it has not yet been possible to trace them all precisely or some are in dispute with other neighbouring countries<sup>36</sup>.

Considering the altitude of the highest elevation points reflected in the table no., it is improbable that the entire land territory of the nine SIDS at risk would be completely submerged under ocean waters<sup>37</sup>, even under the worst climate scenarios predicted by the IPCC<sup>38</sup>. However, the flooding of the coastal territories would undoubtedly condemn the affected States, already small, to exist on a limited portion of land, whose

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<sup>33</sup> JUSTE RUIZ ET AL., *Lecciones de derecho internacional público*, 3rd ed., Valencia, Tirant lo Blanch, 2018, p. 155. MALANCZUK, P., *Akehurst's Modern Introduction to International Law*, *op. cit.*, p. 75.

<sup>34</sup> JUSTE RUIZ ET AL., *op. cit. supra*. MALANCZUK, P., *op. cit. supra*, p. 76.

<sup>35</sup> JUSTE RUIZ ET AL., *op. cit. supra*, pp. 155 *in fine* and 156.

<sup>36</sup> *Ibid.*, p. 156. MALANCZUK, P., *Akehurst's Modern Introduction to International Law*, *op. cit.*, p. 76.

<sup>37</sup> Another issue will be the impact that coastline retreat will have on the delimitation of the maritime spaces of SIDS, particularly regarding the territorial sea and the exclusive economic zone, since all of them measure their width from the coast. In the case of SIDS at risk that are made up of several atolls or have coral reefs along their coasts, it is interesting to bring up Article 6 of the Montego Bay Convention, which provides: "In the case of islands situated on atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef (...)" (*vid. UN, Convention on the Law of the Sea*, 10 December 1982, UNTS, Vol. 1833, No. 31363, pp. 396-581).

To mitigate the possible adverse effects on SIDS, particularly on their economies that are highly dependent on fish stocks, some authors have proposed that the SIDS concerned should be allowed to maintain the current delimitation of their marine zones, regardless of how sea-level rise affects their coastlines. *Vid.*, for example, RAYFUSE, R.G., "W(h)ither Tuvalu? International Law and Disappearing States", *UNSW Law Research Series*, Research Paper n° 9, 2009, 13 pp. CARON, D., "Climate change, sea level rise and the coming uncertainty in oceanic boundaries: A proposal to avoid conflict", in: Hong, S.Y.; Van Dyke, J.M. (eds.), *Maritime boundary disputes, settlement processes, and the law of the sea*, Leiden/Boston, Martinus Nijhoff Publishers, 2009, pp. 1-18.

<sup>38</sup> *Vid. IPCC, Climate Change 2001: Impacts, Adaptation, and Vulnerability...*, *op. cit.*, p. 935. BARROS, V.R. ET AL., *Climate Change 2014...*, *op. cit.*, p. 1639.



size and orography render the possibility of relocating the entire population inland unsuitable and unfeasible<sup>39</sup>.

Faced with the threat of losing all or much of their territory, the Governments of several SIDS, such as Kiribati or the Maldives, have begun to acquire land in other neighbouring States with a view to relocating part or all of their population there<sup>40</sup>. However, it needs to be clarified that such acquisitions do not create a new State. They are private purchases that do not involve transferring any sovereign power from the selling State to the acquiring country. Consequently, the population resettled in the acquired territories will be subject to the sovereignty of the destination State, either as aliens – i.e. as nationals of a third State - or, in the worst case, as stateless persons – should the island State in question eventually become extinct.

The only way for these private acquisitions to have legal effect in public international law would be to formalise them in an international treaty ceding the acquired territories, which has not yet happened. In the international legal order, cession treaties are amongst the valid forms of acquiring sovereignty over a territory<sup>41</sup>. By cession, the ceding State voluntarily renounces the exercise of its sovereign powers over the territory ceded, which is completely dissociated from it and comes under the acquiring State's sovereignty<sup>42</sup>. The cession by a State of part of its territory to nationals of another State displaced for environmental reasons is not entirely unknown in International Law, finding a precedent in the late 19th century, when many Icelanders immigrated to Canada for environmental and social reasons<sup>43</sup>.

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<sup>39</sup> COMMISSION ON HUMAN RIGHTS, *Prevention of discrimination and protection of indigenous peoples: (...) States and other territories threatened with extinction for environmental reasons*, *op. cit.*, par. 23, noting that "just because the territory contains high ground does not mean that it will be capable of sustaining its population, should it lose what is at present a coastal area in which the population lives".

<sup>40</sup> CARAMEL, L., "Besieged by the rising tides of climate change, Kiribati buys land in Fiji", *The Guardian*, 1 July 2014 (last access: 27/04/2020). RAMESH, R., "Paradise almost lost: Maldives seek to buy a new home", *The Guardian*, 10 November 2008. Vid. also, TORRES CAMPRUBÍ, A., *Climate change and international security...*, *op. cit.*, pp. 277-281.

<sup>41</sup> PASTOR RIDRUEJO, J.A., *Curso de Derecho Internacional Público y Organizaciones Internacionales*, *op. cit.*, pp. 350-356.

<sup>42</sup> *Ibid.*, p. 352.

<sup>43</sup> In BORRÀS PENTINAT, S., "El estatuto jurídico de protección...", *op. cit.*, p. 34, reporting that the Canadian government gave land to the newcomers, allowing them to form a provisional government. It should be noted, however, that those displaced were granted dual citizenship, Canadian and Icelandic, and that the settlement eventually became fully integrated into Canada. Therefore, it is questionable whether this arrangement was a true acquisition of sovereignty over the territory, rather than the granting of a certain regime of self-government to the Icelandic immigrants over the land they settled on but under Canadian sovereignty.

Another option suggested by some authors would be for endangered SIDS to negotiate agreements with other States not affected by sea-level rise, whereby SIDS would join the latter in a kind of federation or confederation<sup>44</sup>. This solution would prevent islanders from becoming stateless, as they would now have the other State's nationality. However, it would not prevent SIDS from disappearing as international subjects with their own legal personality<sup>45</sup>.

More imaginative solutions involve the artificial extension or elevation of the most affected islands<sup>46</sup>, or the construction of artificial islands within the marine zones subject to national sovereignty<sup>47</sup>. Such has been the case with the artificial island Hulhumalé which the Maldives government is building<sup>48</sup>. Leaving aside the cost of this type of mega-construction, which is unaffordable for most SIDS<sup>49</sup>, and its tremendous impact on marine ecosystems, it is worth mentioning Article 60.8 of the Montego Bay Convention, which refers to the legal status of artificial islands. In this regard, this legal provision states that:

"Artificial islands, installations and structures do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf"<sup>50</sup>.

The wording seems to leave no room for doubt: low-lying SIDS would not be able to base their continuity as States on a territory composed solely or mostly of artificial islands. However, to the extent that the highest elevation points will remain above water level, it does not appear that the territorial element is the greatest threat to SIDS' statehood.

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<sup>44</sup> TORRES CAMPRUBÍ, A., *Climate change and international security...*, *op. cit.*, pp. 281-282. PARK, S., "Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States" (PPLA/2011/04), *op. cit.*, p. 18.

<sup>45</sup> TORRES CAMPRUBÍ, A., *op. cit. supra*, p. 281.

<sup>46</sup> PARK, S., "Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States" (PPLA/2011/04), *op. cit.*, p. 14, footnote 105 *in fine*, who refers to the possibility of artificially increasing the altitude of certain islands.

<sup>47</sup> TORRES CAMPRUBÍ, A., *Climate change and international security...*, *op. cit.*, p. 300, who cites the cases of Samoa or Maldives.

<sup>48</sup> The project has its own website available at HOUSING DEVELOPMENT CORPORATION, Hulhumalé - Most ambitious urban development project in Maldives (last access: 27/04/2020).

<sup>49</sup> It should be noted that the nine island States at risk of sinking are developing States, with Kiribati and Tuvalu within the category of Least Developed Countries. Vid. UN, List of Least Developed Countries (last access 20/01/2021).

<sup>50</sup> UNGA, *Convention on the Law of the Sea*, *op. cit.*, Article 60.8.

## B) The population

The population is the human community regularly inhabiting the State's territory<sup>51</sup>. The population includes both the persons bound to the State by the bond of nationality and the foreigners residing in it<sup>52</sup>. For a State to exist, the number, density or sedentary or even nomadic character of the population is irrelevant, as long as there is a significant number of permanent inhabitants<sup>53</sup>. Nor is it required that a State's population be homogeneous since groups with different ethnicities, cultures, religions, or languages can coexist within it without affecting statehood<sup>54</sup>.

As already indicated in the introduction, it is quite possible that by the time the sea has finally flooded the low-lying SIDS, the islands will already be almost uninhabited due to the progressive worsening of living conditions<sup>55</sup>. Indeed, the depopulation process has already been ongoing for some time, as evidenced by the number of asylum applications, all of them rejected, that Kiribati or Tuvaluan nationals have lodged with Australian or New Zealand authorities on the grounds of climate change and rising sea-levels<sup>56</sup>.

Although migration is being considered and even encouraged as an adaptation strategy in the face of rising sea-levels, the island governments are beginning to perceive out-migration to richer neighbouring countries, such as New Zealand or Australia<sup>57</sup>, as a real threat to the future survival of SIDS<sup>58</sup>. In any case, these voluntary

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<sup>51</sup> JUSTE RUIZ ET AL., *Lecciones de derecho internacional público*, op. cit., p. 157. MALANCZUK, P., *Akehurst's Modern Introduction to International Law*, op. cit., p. 76.

<sup>52</sup> JUSTE RUIZ ET AL., op. cit. supra.

<sup>53</sup> Id. MALANCZUK, P., *Akehurst's Modern Introduction to International Law*, op. cit., p. 76.

<sup>54</sup> JUSTE RUIZ ET AL., op. cit. supra, p. 157. MALANCZUK, P., op. cit. supra, p. 77.

<sup>55</sup> Vid. footnote 20 supra.

<sup>56</sup> Vid., *inter alia*, NEW ZEALAND REFUGEE STATUS APPEALS AUTHORITY: *Refugee Appeal No 72185*, 10 August 2000, 6 pp.; *Refugee Appeal No 72186*, 10 August 2000, 6 pp.; *Refugee Appeal Nos 72189–72195*, 17 August 2000, 7 pp.; *Refugee Appeal Nos 72179–72181*, 31 August 2000, 7 pp.; *Refugee Appeal No 72313*, 19 October 2000, 4 pp.; *Refugee Appeal No 72314*, 19 October 2000, 4 pp.; *Refugee Appeal No 72315*, 19 October 2000, 4 pp.; *Refugee Appeal No 72316*, 19 October 2000, 4 pp. REFUGEE REVIEW TRIBUNAL OF AUSTRALIA: N95/09386 (1996) RRTA 3191 (7 November 1996) (Tuvalu); N96/10806 (1996) RRTA 3195 (7 November 1996) (Tuvalu); N99/30231 (2000) RRTA 17 (10 January 2000) (Tuvalu); 1004726 (2010) RRTA 845 (30 September 2010) (Tonga); N00/34089 (2000) RRTA 1052 (17 November 2000) (Tuvalu); 0907346 (2009) RRTA 1168 (10 December 2009) (Kiribati).

For a detailed explanation of the reasons why Kiribati and Tuvalu nationals were denied "climate refugee" status by the various legal bodies in New Zealand and Australia, vid. Chapter III.

<sup>57</sup> Examples of policies undertaken to encourage labour migration to New Zealand and Australia as an adaptation strategy against climate change and sea level rise include the *Pacific Access Category Resident Visa*, which the New Zealand government grants each year to up to 650 nationals from Kiribati, Tuvalu, Toga and Fiji. Also of note is the *Recognized Seasonal Employer Policy*, which is a programme designed to encourage temporary labour immigration to New Zealand to meet the need for seasonal labour in

migration flows are not likely to diminish in the coming years. On the contrary, migration will sharpen as living conditions on the islands worsen. These voluntary movements will be compounded by forced displacement when sea-level rise will compel relocation of the most exposed communities. Such was the case in 2000 when 1,000 islanders were evacuated from the Duke of York Islands, or in 2005 when the population from the Carteret Islands and the Island of Tegua had to be resettled<sup>59</sup>.

Therefore, islanders migration will not be sudden and massive, just as sea-level rise will not be an immediate and unexpected phenomenon, but will occur gradually yet inexorably. In our view, island depopulation is the greatest threat for SIDS to continue as States.

### C) The public power

Public authority refers to the State's political and institutional organisation – i.e. the government and the public administration<sup>60</sup>. Traditionally, Public International Law has considered neither the form of political organisation – e.g. monarchy, republic, dictatorship - nor its democratic or totalitarian character<sup>61</sup>. For statehood, what matters is that the government is capable of effectively exercising the State's sovereignty domestically and internationally<sup>62</sup>. In this third element, the principle of effectiveness,

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sectors such as horticulture and viticulture. In filling quotas, preference is given to applicants from Pacific Island states. The same policy was replicated in 2009 by Australia through the *Pacific Seasonal Worker Scheme*, whose main objective is to contribute to the development of the economies of participating Pacific Island countries through remittances. Another Australian government initiative was the pilot programme known as the *Kiribati Australia Nursing Initiative*, which started in 2007 with an initial duration of 5 years. The programme focuses primarily on improving the employability of young Kiribatians (aged 16-24) overseas by training them as nurses. Vid. GRACIA PÉREZ, D., “La tragedia de los pequeños Estados insulares en desarrollo. Desplazamientos climáticos antes la subida del nivel del mar”, *op. cit.*, pp. 263-266.

<sup>58</sup> Vid. GEMENNE, F., SHEN, S., “*Tuvalu and New Zealand*”, *Case Study Report*, EACH-FOR, 15 February 2009, p. 17, (last access 28/04/2020). According to the authors, “[t]he Prime Minister of New Zealand, Helen Clark, had offered an initial quota of 300 migrants to the then Prime Minister of Tuvalu, Saufotu Sopoanga, who admitted that he had asked for a reduction of the quota to 75 migrants, because he was afraid that the island would ‘empty itself too quickly’”.

<sup>59</sup> Vid. footnotes 1 to 4 *supra*.

<sup>60</sup> JUSTE RUIZ ET AL., *Lecciones de derecho internacional público*, *op. cit.*, p. 157. MALANCZUK, P., *Akehurst's Modern Introduction to International Law*, *op. cit.*, pp. 77-79.

<sup>61</sup> JUSTE RUIZ ET AL., *op. cit. supra*, 157-158, who points out that while there is now a growing tendency in international texts to require States to have governments that represent the popular will, it cannot yet be claimed that a democratic government is an essential condition for the State's existence (*ibid.*, pp. 158 *in fine* and 159). MALANCZUK, P., *op. cit. supra*, p. 79, noting: “The rule is crude and only demands that a government must have established itself in fact”.

<sup>62</sup> JUSTE RUIZ ET AL., *op. cit. supra*, pp. 157 *in fine* and 158. MALANCZUK, P., *op. cit. supra*, p. 77: “Internally, the existence of a government implies the capacity to establish and maintain a legal order in the sense of constitutional autonomy. Externally, it means the ability to act autonomously on the international level without being legally dependent on other states within the international legal order”.

so characteristic of the international legal order, leaves its most significant mark. Indeed, the term 'failed States' has been coined to refer to those whose governments have not effectively consolidated their power over their territory and population<sup>63</sup>.

In the case of low-lying SIDS, the question arises as to whether the effectiveness requirement can still be fulfilled once island governments suffer the same fate as their populations as they are forced into exile by climate change and sea-level rise. So-called 'governments in exile' - i.e. those outside their territory and deprived of the exercise of sovereign powers over it - are not an unfamiliar phenomenon in Public International Law. However, governments' status in exile rests on the presumption that it is a temporary or transitory anomaly. Regardless of how long exile lasts, there is a territory to return to and a population attached to it. It is not a permanent situation of material impossibility, where the territory has mostly disappeared or become uninhabitable, and the population has emigrated to other States<sup>64</sup>.

Nevertheless, given that governments' recognition is a discretionary act of each State<sup>65</sup>, some countries, or even the international community, might agree to recognise the islands governments' continuity outside their borders. Even in this scenario, there would remain the question of how island governments would effectively exercise the sovereign powers inherent to statehood from abroad, and in the absence of territory and permanent population<sup>66</sup>. Its ambit will undoubtedly depend on the competencies that the other States, particularly the one hosting the government, are willing to recognise<sup>67</sup>. Indeed, such dependence clashes with the very definition of 'State sovereignty', which implies just the opposite – i.e., the absence of subjection to a higher power<sup>68</sup>.

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<sup>63</sup> Vid. MALANCZUK, P., *op. cit. supra*, p. 77, who notes that "[t]he mere existence of a government, however, in itself does not suffice, if it does not have effective control".

<sup>64</sup> Similarly, PARK, S., "Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States" (PPLA/2011/04), *op. cit.*, p. 7, who highlights: "If exile can be considered as a temporary problem, there is thus precedent for continuity of statehood. The presumption that such exile is temporary, however, implies that extinction could occur where ineffectiveness of a government or loss of independence continues over an extended period or becomes permanent".

<sup>65</sup> MALANCZUK, P., *Akehurst's Modern Introduction to International Law, op. cit.*, p. 86. PASTOR RIDRUEJO, J.A., *Curso de Derecho Internacional Público y Organizaciones Internacionales, op. cit.*, p. 324.

<sup>66</sup> As Park points out, there is no precedent for such a situation in international law (in: PARK, S., "Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States" (PPLA/2011/04), *op. cit.*, p. 7).

<sup>67</sup> *Id.*

<sup>68</sup> MALANCZUK, P., *Akehurst's Modern Introduction to International Law, op. cit.*, p. 78, observing that an effective government "only exists if it is free from direct orders from and control by other governments".

*Ad extra*, recognition of exiled governments will be vital for SIDS to continue exercising sovereign powers such as concluding treaties, establishing or maintaining diplomatic relations<sup>69</sup>, or exercising the diplomatic and consular protection of their citizens. On a practical level, SIDS will face an obstacle that goes beyond recognition, which is the challenge of financing the State's representation abroad once deprived of their sources of income, mostly from fishing and tourism. To overcome this budgetary problem, the host State could, for example, allow them to use its diplomatic and consular offices, or the international community could assist them financially. Again, however, SIDS would depend on the other countries' goodwill.

*Ad intra*, the powers of SIDS governments will be limited to those prerogatives that the host country is willing to grant them on its territory<sup>70</sup>. For example, the host State could accept that SIDS retain legislative jurisdiction and use its institutions to implement and enforce the exiled government's laws<sup>71</sup>. Much less likely is the host State to allow SIDS to establish their own executive, legislative and jurisdictional institutions and bodies<sup>72</sup>, as this would be tantamount to allowing the former State to coexist within the host State's territory. The issue is further complicated if, in turn, the island populations have not resettled in the same State hosting the government, but in another, or have been dispersed across the territory of several countries. In this case, any action the island government intends to take will also require the prior consent and cooperation of the States that have hosted the population<sup>73</sup>.

In summary, it is not plausible to think that a government deprived of territory can survive *sine die* at the host State's expense. Much less is it plausible to assert the existence of a real sovereign 'public power' capable of exercising itself effectively under such circumstances.

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<sup>69</sup> PASTOR RIDRUEJO, J.A., *Curso de Derecho Internacional Público y Organizaciones Internacionales*, *op. cit.*, p. 324.

<sup>70</sup> PARK, S., "Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States" (PPLA/2011/04), *op. cit.*, p. 7.

<sup>71</sup> *Id.*, who notes, however, that such a possibility would probably be very limited in scope.

<sup>72</sup> *Id.*, arguing that "it is unlikely that State institutions such as the police or courts, would be able to function".

<sup>73</sup> *Id.*

### 1.2.2. Low-lying island States and the presumption of statehood continuity

Some author has argued that, insofar as low-lying SIDS have already acquired statehood and have been recognised as such by the international community, they should not be deprived of that status because some of their constituent elements have subsequently been altered<sup>74</sup>. Indeed, the international community has favoured the presumption of States' continuity, even if the territorial, personal or political element has experienced changes.

While casuistry dominates the matter, it has come to be accepted that, for example, a State does not cease to exist despite being temporarily deprived of effective government, even for long periods<sup>75</sup>. Such was the case with Lebanon, which at no time during the 15-year Lebanese civil war (1975-1990) lost its statehood. The same applies to Somalia, still embroiled in a civil war dating back to 1991. Its statehood has not been disputed despite the fact the central government has gradually lost control of substantial parts of the territory to rebel forces during the conflict, culminating in the country's *de facto* division into small self-proclaimed independent States.

The continuity of a State has also been presumed in situations where its entire territory had been occupied by a foreign power, as was the case of the European countries invaded by Germany during the Second World War<sup>76</sup>. A third scenario refers to mass population exoduses, where statehood has also remained unquestioned<sup>77</sup>, such as the migration crisis that began in 2002 in Venezuela. Even regarding the USSR, despite the profound transformations its dissolution entailed for all statehood elements, the international community accepted to consider the Republic of the Russian Federation as a continuation of its legal personality. This legal fiction has allowed Russia to retain the former Soviet embassies and replace the USSR as a permanent member in the UN Security Council<sup>78</sup>.

However, in all the examples drawn from international practice, the continuity of the State concerned was not questioned because statehood elements had not definitively

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<sup>74</sup> For example, Park believes that, to the extent that the statehood elements can be restored, it is likely that the SIDS continuity will not be questioned (in *ibid*, p. 8).

<sup>75</sup> MALANCZUK, P., *Akehurst's Modern Introduction to International Law, op. cit.*, p. 77, who cites the examples of Lebanon and Somalia.

<sup>76</sup> *Ibid.*, p. 78.

<sup>77</sup> PASTOR RIDRUEJO, J.A., *Curso de Derecho Internacional Público y Organizaciones Internacionales...*, *op. cit.*, p. 317 *in fine*.

<sup>78</sup> *Ibid.* pp. 316 *in fine* and 317.

disappeared. The USSR's federal political structures disintegrated and were replaced by post-Soviet States, whose respective governments took control of the territories and populations of the former Union. The invaded European States' governments continued to fight against Nazi Germany to end the German occupation and regain control over their respective territories and populations. For their part, Somalia and Libya continue to have population and territory, albeit contested between different internal factions, including the government, in conflict since the beginning of the civil war. Finally, Venezuela maintains an effective government, a defined territory and a stable population, albeit decimated by the economic crisis.

In the case of SIDS, statehood should also not be questioned when land is submerged due to storm surges or temporary flooding, even if these phenomena occur regularly, as long as the territory is not rendered uninhabitable<sup>79</sup>. The conclusion will be different if the entire or most of the country's territory is permanently inundated due to sea-level rise, and the population and the government have to abandon it with no possibility of return. In such a scenario, it seems much more difficult to argue for the State continuity presumption, as the three elements of statehood would have disappeared without the possibility of being restored<sup>80</sup>.

### **1.2.3. Low-lying island States as de-territorialised entities: the case of the Sovereign Military Order of Malta**

Notwithstanding the above, several authors have compared SIDS statehood's continuity with the Sovereign Military Order of Malta<sup>81</sup>. Despite having no territory since 1798, when Napoleon's troops stripped it of the Maltese archipelago<sup>82</sup>, and even though its knights and ladies are scattered worldwide, the international community has continued to regard the Order as a sovereign entity assimilated to the State.

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<sup>79</sup> PARK, S., "Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States" (PPLA/2011/04), *op. cit.*, p. 14.

<sup>80</sup> Id. Cf. BORRÀS PENTINAT, S., *Flujos migratorios y refugiados climáticos (European Climate Law Papers 5/2021)*, UNED, 2021, pp. 16 *in fine* and 17, who, regarding the possible disappearance or uninhabitability of SIDS, such as Kiribati, argues that "statehood is not automatically lost with the loss of habitable territory, nor is it necessarily affected by population movements" [self-translation of the original in Spanish].

<sup>81</sup> PARK, S., "Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States" (PPLA/2011/04), *op. cit.*, pp. 8 and 15. Also, TORRES CAMPRUBÍ, A., *Climate change and international security...*, *op. cit.*, pp. 282-285.

<sup>82</sup> Information obtained from ORDER OF MALTA, [History](#), (last access 28/04/2020).



Thus, the Order has been maintaining several state-like attributes. For example, it has its own national symbols, such as the flag – the oldest in Europe -, coat of arms and anthem; it has been minting coins since 1308, issuing stamps since 1966 and also has the power to emit passports<sup>83</sup>. Domestically, the Order has its own organs and institutions through which it exercises the sovereign powers proper to a State, namely normative, executive and jurisdictional. The Chapter General holds legislative power, while executive authority is vested in the Grand Master and the Sovereign Council, and judicial competences are exercised through the Magistral Courts<sup>84</sup>. On the international level, the Order has deployed the three main capacities that sovereignty confers on all international subjects. These capacities include the *ius legationem* or the Order's capacity to establish diplomatic relations with other subjects of the international community<sup>85</sup>; the *ius tractatum* or the capacity to conclude international treaties<sup>86</sup>, and the *locus standibus* or the capacity to stand before the courts as an active and passive subject of international responsibility.

However, although comparable to a State in its internal functioning and international action, the Order of Malta cannot be entirely assimilated to one. Apart from its territory, the Order has no population in the proper sense of the word, as its members remain citizens of their respective States of nationality<sup>87</sup>. Their link with the Order is purely institutional. Although knights and ladies belong to the Hospitaller Community and, as such, are bound by the Order's Code and Constitutional Charter, this bond neither implies that the Order's members lose their former nationality nor does it create, *de jure or de facto*, a situation of dual nationality<sup>88</sup>.

Due to the lack of territory and population, the Order's sovereignty cannot be equated with States' sovereignty either. Any manifestation *ad extra* of the Order's jurisdiction will always depend on a prior agreement with the country on whose territory the Order intends to project its competences. For example, the Maltese scudo, the Order's official currency, has not been legal tender in any country in the world since

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<sup>83</sup> FERNÁNDEZ DE BÉTHENCOURT, M., “La Orden de Malta en el ordenamiento jurídico internacional”, UNED, digital edition, pp. 1061, 1065 and 1071. (last access 24/04/2020).

<sup>84</sup> *Ibid.*, pp. 1056-1059.

<sup>85</sup> Today, the Order of Malta maintains diplomatic relations with 105 States and numerous International Organisations (*ibid.*, p. 1068 and footnote 49).

<sup>86</sup> *Vid. Ibid.*, p. 1067, noting that, in the 20th century, the Order of Malta has signed countless treaties, most of them related to its hospitaller and welfare activities in the host country.

<sup>87</sup> *Ibid.*, p. 1071 *in fine*.

<sup>88</sup> *Id.*

1961, so its value today is purely numismatic<sup>89</sup>. The same applies to its stamps, which, apart from philately, only have postal value in countries with postal agreements with the Order of Malta<sup>90</sup>, as the Order is not a UPU member<sup>91</sup>. Likewise, its ability to issue passports is limited to its diplomatic agents<sup>92</sup>.

For the same reasons, the settlement of the Order on the territory of a country – in the form of Grand Priorities, Priorities, Subpriorities and National Associations<sup>93</sup> - shall comply with the international agreements signed between the Order and the relevant country and with the latter's internal legislation on associations and other non-profit entities<sup>94</sup>. Also, judgements issued by the Order's Magistral Courts are enforceable only in those countries that have recognised the Order's jurisdiction, as is the case in Italy<sup>95</sup>. The Order's seats in Rome, Vienna or Prague have a privilege of extraterritoriality equivalent to that of any other diplomatic mission, which does not mean that the portion of territory in which they stand has acquired the status of 'national territory' of the Order<sup>96</sup>. On the other hand, the establishment by third countries of a diplomatic delegation to the Order of Malta's headquarters in Rome requires Italy's prior consent in the case of countries without representation to the latter<sup>97</sup>.

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<sup>89</sup> Ibid., p. 1065.

<sup>90</sup> At present, the Order of Malta has postal agreements with more than fifty countries, including countries with which it has no diplomatic relations (ibid., p. 1071).

<sup>91</sup> Vid. UPU, Member Countries (last access 08/05/2022).

<sup>92</sup> The Order of Malta's diplomatic passport was instituted by Decree of the Lieutenancy No. 60, 2 July 1956, and has been recognised even by countries with which the Order does not maintain diplomatic relations, such as the United States, Germany, France, Greece and Jordan (in FERNÁNDEZ DE BÉTHENCOURT, M., "La Orden de Malta en el ordenamiento jurídico internacional", *op. cit.*, p. 1061 and footnotes 41-42).

<sup>93</sup> On the territorial organisation of the Order of Malta, vid. ibid., pp. 1059-1060; and ORDER OF MALTA, *Carta Constitucional y Código de la Soberana y Militar Orden Hospitalaria de San Juan de Jerusalén, de Rodas y de Malta*, promulgated on 27 June 1961, modified by the Extraordinary General Chapter of 28-30 April 1997, published in the Official Bulletin of the Order of Malta, special issue, 12 January 1998, Article 1 (2).

<sup>94</sup> Ibid., Article 2 (3).

<sup>95</sup> FERNÁNDEZ DE BÉTHENCOURT, M., "La Orden de Malta en el ordenamiento jurídico internacional", *op. cit.*, p. 1071.

<sup>96</sup> Id.

<sup>97</sup> According to the Additional Protocol to the Treaty signed between the Order of Malta and the Republic of Italy on 17 May 2012, in force since 12 December 2012, which recognises the right of active and passive legation with diplomatic immunity for agents accredited to the Order. Hence the custom of appointing as ambassadors before the Order of Malta those who are already accredited to the Holy See or to the Republic of Italy (vid. ibid., p. 1047, footnote 20).

Finally, the Order of Malta's legal system, known as the *Melitens legal order*<sup>98</sup>, limits itself to regulate the Order's organisation and internal functioning. Thus, it governs the substantive and procedural aspects of its institutions and organs, how the Order is to carry out its religious and hospitaller activity, as well as the legal relationship of its members with the Order, in particular their membership, rights, duties and, where appropriate, disciplinary measures. These aspects bring the Melitens legal system closer to the regulatory framework of an NGO or any other association than to a State's legal system, which intends to regulate the exercise of public power over the territory and the lives of people living in it.

In sum, the sovereignty conferred on the Order of Malta has an 'instrumental character'. It allows the Order to fulfil its religious and humanitarian purpose and do so in absolute independence<sup>99</sup>, thus assuring all who interact with the Order that it does not act under the authority or in the interest of any other international actor or subject, including the Holy See. However, being a sovereign or independent entity does not turn the Order into a State or an international subject fully assimilated to a State.

As Béthencourt pointed out, it would be problematic to apply today's concepts of state or sovereignty to the Order of Malta, as these notions did not exist in 1048 when the Order of Malta was constituted<sup>100</sup>. Despite the vicissitudes of time, the Order still retains the supranational character of the military orders created during the Middle Ages in the context of the Crusades, made up of knights from different kingdoms<sup>101</sup>. The Order of Malta is thus an atypical case, whose uniqueness makes it difficult to fit into the traditional classification of international subjects –i.e. States and International Organisations<sup>102</sup>. Therefore, Béthencourt is right in stating that contemporary international law accepted the existence of a historical subject, constituted according to

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<sup>98</sup> At the head of the *Melitan legal system* are the Constitutional Charter and the Order Code, followed by the other laws and regulations emanating, respectively, from the General Chapter (which holds legislative power); and from the Grand Master and the Sovereign Council (which exercise the executive power).

<sup>99</sup> The purpose of the Order today is summed up in the idea of promoting the glory of God, the service of the Faith and of the Holy Father and the help of neighbour through the sanctification of its members (vid. ORDER OF MALTA, *Carta Constitucional...*, *op. cit.*, Article 2.1).

<sup>100</sup> FERNÁNDEZ DE BÉTHENCOURT, M., "La Orden de Malta en el ordenamiento jurídico internacional", *op. cit.*, p. 1047.

<sup>101</sup> Vid., *ibid.*, p. 1072 observing that when "the Order had a territory (Rhodes and Malta), the territorial subjects were also perfectly differentiated from the institutional ones" [self-translation of the original in Spanish].

<sup>102</sup> *Ibid.*, pp. 1052-1053, noting that the Order has always been endowed with its own permanent individuality (*ibid.*, p. 1052).

rules before the formation of modern international law itself, and recognised its unique legal personality, different from that of States<sup>103</sup>.

Therefore, it does not appear that the example of the Order of Malta can be invoked to justify applying the statehood continuity presumption to SIDS whose land territory may be submerged by rising sea levels. Except for the lack of territorial basis, they are not comparable subjects. SIDS have acquired State status. Instead, the Order of Malta never constituted itself as a Kingdom, even when it had a territory under its dominion, nor did it become a State with the advent of contemporary international law<sup>104</sup>.

However, the precedent of the Order of Malta can serve to exemplify how the loss of territory does not necessarily mean for SIDS the deprivation of international legal personality, just as the Order has not been deprived of it in the course of its almost millennia-long history<sup>105</sup>. With the loss of their territories, the diaspora of their populations, and their governments' exile, SIDS will cease to be a State. Nevertheless, this fateful destiny need not entail the end of their existence.

Emulating the Order of Malta in its internal structure and functioning, SIDS could continue their international legal personality by embodying a supranational entity<sup>106</sup>. The purpose of this *sui generis* entity, if wished vested with instrumental sovereignty, would respond to a threefold social purpose. On the one hand, to preserve, and pass on to new generations, the cultural and historical heritage of SIDS<sup>107</sup>. On the other hand, to protect the former inhabitants in the subsequent phases of the resettlement process, both by facilitating their integration into the host communities and by ensuring that the host

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<sup>103</sup> *Ibid.*, p. 1065. Also PARK, S., "Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States" (PPLA/2011/04), *op. cit.*, p. 11 and footnote 65, observing that the Order of Malta "is generally not considered to be a State".

<sup>104</sup> FERNÁNDEZ DE BÉTHENCOURT, M., "La Orden de Malta en el ordenamiento jurídico internacional", *op. cit.*, p. 1065, underlining that "[t]he Order of Malta has never been asked to modify its international legal personality by assuming the form of a State" [self-translation of the original in Spanish].

<sup>105</sup> Thus, for example, when Emperor Charles V and his mother Queen Joan signed a treaty with the Order in 1530 ceding to the latter the islands of Malta and Gozo, together with the islets of Comino and San Paolo and the city of Tripoli, the Order already had no territory, as it had been expelled from Rhodes by Sultan Suleiman the Magnificent in 1523. *Vid.* the Order of Malta's website and FERNÁNDEZ DE BÉTHENCOURT, M., "La Orden de Malta en el ordenamiento jurídico internacional", *op. cit.*, p. 1046.

<sup>106</sup> In the same vein, PARK, S., "Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States" (PPLA/2011/04), *op. cit.*, p. 18.

<sup>107</sup> Preserving the common social and cultural identity becomes even more important given that in many cases it will not be possible to relocate the entire population of a SIDS to a single third State. Park advocates for applying the principle of family unity beyond the nuclear family in the strict sense, seeking to preserve the unity of entire local communities (*ibid.*, p. 20).

state respects their human rights<sup>108</sup>. Finally, it would assume the legal personality of SIDS in terms of exercising and fulfilling their rights and obligations in international relations<sup>109</sup>.

Undoubtedly, to achieve this goal, the international community's recognition and support for this new form of existence will be essential<sup>110</sup>, as it was for the Order of Malta in its time<sup>111</sup>.

### **1.3. Statelessness and low-lying island States**

The possibility that the legal personality of SIDS may be extinguished as a result of sea-level rise poses the question of what instruments the international legal system has to protect persons who become stateless. The answer to this question is addressed by differentiating between the UN's universal regime and the various initiatives that exist at the regional level.

#### **1.3.1. Low-lying island States and the 1954 Convention relating to the Status of Stateless Persons**

Unless some country cedes part of its territory to SIDS through an international treaty<sup>112</sup>, once the State ceases to exist, and with it the nationality link that bound it to

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<sup>108</sup> Vid. COMMISSION ON HUMAN RIGHTS, *Prevention of discrimination and protection of indigenous peoples: (...) States and other territories threatened with extinction for environmental reasons*, *op. cit.*, pp. 5-6, raising a number of human rights concerns for the populations of sinking States, including citizenship rights, rights related to forced relocation, rights in the state of admission and rights in relation to their state of origin.

<sup>109</sup> Vid., *ibid.*, pp. 4-5, pointing out a variety of legal questions, such as the responsibility for any national debt, the status of what were internal or territorial waters or an exclusive economic zone, the status of citizens and of legal persons registered or incorporated in such territories or the status of diplomatic representatives of the State.

The suggested supranational entity could take over the membership of the defunct SIDS in the International Organisations to which they were members, manage the exploitation of natural resources in the marine spaces previously subject to the sovereignty of SIDS, or monitor compliance with the rights and obligations established in the population resettlement agreements signed with third States.

<sup>110</sup> PARK, S., "Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States" (PPLA/2011/04), *op. cit.*, p. 19, who highlights that unless there was a cession of territory to the SIDS at risk of being submerged or they unified with another State, continuity of statehood would depend largely on continued recognition by other States.

<sup>111</sup> Thus, although in 1798 the island of Malta was occupied by Napoleon and the Order lost its sovereignty rights over the territory, leaving it without territorial subjects, it remained present in international relations thanks to European countries that continued to maintain diplomatic relations with it. Vid. FERNÁNDEZ DE BÉTHENCOURT, M., "La Orden de Malta en el ordenamiento jurídico internacional", *op. cit.*, pp. 1069-1070, which gives several examples of how the European States continued to engage with the Order through their representatives as representatives of a sovereign country.

its citizens, SIDS inhabitants will become stateless<sup>113</sup>. The very IOM was of the opinion that the CSSP "could potentially be applied in the future to protect the rights of the nationals of those States in the event of their disappearance"<sup>114</sup>.

In this vein, Park hypothesises that some countries may continue to recognise the statehood of sinking SIDS after their entire territory has disappeared or the population and government have been exiled, or even continue with their international legal personality embodied in a *sui generis* sovereign entity such as the Order of Malta<sup>115</sup>. The author points out that, in such situations, "the population could find itself abroad without access to the protection of the State and be considered *de facto* stateless"<sup>116</sup>. Herein lies the danger of using the legal presumption of statehood continuity in the case of States whose factual existence is threatened by climate change, thus continuing to regard their former inhabitants as nationals rather than *de jure* stateless persons<sup>117</sup>.

There is no internationally accepted definition of *de facto* statelessness<sup>118</sup>, as opposed to *de jure* statelessness, defined in Article 1 (1) CSSP as "a person who is not

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<sup>112</sup> PARK, S., "Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States" (PPLA/2011/04), *op. cit.*, p. 18, noting that territorial cession would be an option to avoid statelessness. She adds that, in such a scenario, the full cession of sovereignty would have to be followed by applying the principle of statehood continuity –i.e., the other countries would also have to agree that it is the same State establishing itself in a new territory.

<sup>113</sup> UN INTERNATIONAL LAW COMMISSION, "Draft Articles on Nationality of Natural Persons in Relation to the Succession of States" (with commentaries), in: *Yearbook of the International Law Commission*, Vol. II, Part Two [A/CN.4/SER.A/1999/Add.1 (Part 2)], New York (US); Geneva (Switzerland), United Nation Publications, 2003, p. 43, commentary to Articles 22 and 23, par. 1 (last access: 28/04/2020): "When a State disappears by dissolution, its nationality also disappears".

<sup>114</sup> IOM, *Outlook on Migration, Environment and Climate Change*, Geneva (Switzerland), IOM, 2014, p. 31 (last access: 28/04/2020).

<sup>115</sup> PARK, S., "Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States" (PPLA/2011/04), *op. cit.*, pp. 14-15. She adds: "If the extinction of the State concerned were accepted, whether implicitly or explicitly, the entire population of the affected State would be rendered stateless (...)" (p. 15).

<sup>116</sup> *Ibid.*, p. 14 *in fine*. She points out that it may even be the case that some States cease to recognise SIDS as States and others do not, so that their inhabitants may find that they are stateless for some countries but not for others (p. 15). Similarly, BORRÀS PENTINAT, S., "El estatuto jurídico de protección...", *op. cit.*, p. 35, noting: "Even if countries were to continue to exist in legal terms and their governments were to attempt to operate from the territory of other countries, it is unclear whether they would be able to guarantee the rights that derive from citizenship" [self-translation of the original in Spanish].

<sup>117</sup> For example, BORRÀS PENTINAT, S., *Flujos migratorios y refugiados...*, *op. cit.*, p. 17, concludes that SIDS inhabitants would not be legally stateless unless the island country in question has formally withdrawn its nationality or recognised its non-existence as a State. Even then, the author questions the applicability of the CSSP if the other States do not recognise that the pre-existing island country has disappeared.

<sup>118</sup> UNHCR, *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level* (HCR/GS/12/03), 17 July 2012, p. 14, footnote 42.

considered a national by any State under the operation of its law"<sup>119</sup>. As can be seen, the provision reproduced does not use the Latin locution *de iure* to refer to them, being the distinction between the two a doctrinal construct. Regarding the notion of *de facto* statelessness, experts participating in a series of meetings organised by UNHCR in 2010 to draft guidelines on UNHCR's mandate concerning stateless persons – known as the "Prato Conclusions" -, agreed to define *de facto* stateless persons as follows:

"persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality"<sup>120</sup>.

The risk of considering SIDS nationals displaced by sea-level rise as *de facto* stateless persons is that, while they enjoy human rights protection like any other human being, there is no international regime similar to the 1954 and 1961 Statelessness Conventions for *de facto* stateless persons<sup>121</sup>. There is only one express mention of *de facto* stateless persons in the Final Act of the 1961 Convention, and one implicit reference in the Final Act of the 1954 Convention.

The first one recommends that States should, as far as possible, treat *de facto* stateless persons as if they were *de jure* stateless persons for the sole purpose of enabling them to acquire an effective nationality<sup>122</sup>. For its part, Recommendation III of the 1954 Final Act only encourages states to extend the benefits of the CSSP to a specific situation of *de facto* statelessness: that of those who have had valid reasons to

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<sup>119</sup> UN, *Convention relating to the Status of Stateless Persons*, 28 September 1954, UNTS, Vol. 360, No. 5158, p. 130, Article 1 (1).

<sup>120</sup> UNHCR, "The Concept of Stateless Persons under International Law ("Prato Conclusions")", *Expert Meeting*, May 2010, par. 2, p. 6 (last access: 07/052020). The meetings were organised in the context of the 50th Anniversary of the 1961 Convention on the Reduction of Statelessness. They addressed the following thematic issues: i) the definition of statelessness in Article 1 (1) of the CSSP; ii) the concept of *de facto* statelessness; iii) determining whether a person is stateless; iv) the status in national law granted to stateless persons and; v) the prevention of statelessness among persons born on national territory or nationals abroad.

<sup>121</sup> *Ibid.*, p. 5 *in fine*. Also, UNHCR, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person* (HCR/GS/12/02), 5 April 2012, p. 15, par. 70.

<sup>122</sup> UN, *Convention on the Reduction of Statelessness (with Final Act of the United Nations Conference on the Elimination or Reduction of Future Statelessness held at Geneva from 24 March to 18 April 1959, and Resolutions I, II, III and IV of the Conference)*, 30 August 1961, UNTS, Vol. 989, No. 14458, p. 279, Resolution I.

renounce the protection of the state of which they are nationals<sup>123</sup>. However, it is silent on other scenarios, such as the impossibility or refusal of the nationality country to provide protection or the concerned person's inability to return to the country of nationality. As can be seen, the scope of both recommendations is limited in their application. Moreover, these recommendations are not legally binding, so their implementation will ultimately depend on States' goodwill<sup>124</sup>.

Besides, considering that island populations are *de facto* stateless because the international community or some countries continue to recognise the international legal personality of a State that no longer exists or has mutated into a *sui generis* entity confuses the very meaning of *de facto* statelessness. It is precisely the understanding of nationality as an 'effective link' between the State and its nationals that gives rise to the notion of *de facto statelessness*<sup>125</sup>. In other words, *de facto* statelessness presupposes the existence of a State which is unwilling or unable to perform one of the essential functions of nationality, which is to protect those to whom it has been conferred.

Therefore, when a person loses nationality because the State of origin disappears, that person becomes, unless holding another State's nationality, *de jure* and not *de facto* stateless. Precisely, the 1954 Convention itself requires that no State consider the person in question as national for it to be applicable [Art. 1 (1)]<sup>126</sup>. As the experts meeting noted in the Prato Conclusions, for the purposes of the definition of statelessness contained in the 1954 Convention, "[t]he meaning of 'State' should be based on the criteria generally considered necessary for a State to exist in international law"<sup>127</sup>. This

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<sup>123</sup> UN, *Convention relating to the Status of Stateless Persons*, *op. cit.*, p. 122, Recommendation III.

<sup>124</sup> UNHCR, *Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons* (HCR/GS/12/01), 20 February 2012, par. 8.

<sup>125</sup> UNHCR, "The Concept of Stateless Persons under International Law ("Prato Conclusions")", *op. cit.*, p. 6, par. 1. Indeed, some participants in the expert meeting pointed out, with good logic, that nationality may not be effective both outside and inside the country of nationality. Consequently, a person could be *de facto* stateless even within the country of nationality.

<sup>126</sup> UN, *Convention relating to the Status of Stateless Persons*, *op. cit.*, p. 136, Article 1 (1). Cf. BORRÀS PENTINAT, S., "La migración ambiental: entre el abandono, el refugio y la protección internacional", *Papeles de relaciones ecosociales y cambio global*, No. 132, 2015-2016, p. 41, who gives a different reading of this precept by pointing out that the CSSP would only be applicable to inhabitants of SIDS threatened by sea-level rise if these countries have formally denied or deprived them of nationality, which would be unlikely due to obligations under human rights law. However, it follows from the absence of a territory and population on which to apply national citizenship law and the lack of an effective government to enforce it that such formal withdrawal of nationality would not be necessary. The very disappearance of the State already entails the cessation of the bond of nationality.

<sup>127</sup> UNHCR, "The Concept of Stateless Persons under International Law ("Prato Conclusions")", *op. cit.*, pp. 4-5, par. 23.



means a permanent population, a defined territory and a government. Indeed, the very panel pointed out that:

"The position of so-called "sinking island States" raises questions under Article 1(1), as the permanent disappearance of habitable physical territory, in all likelihood preceded by loss of population and government, *may mean the "State" will no longer exist for the purposes of this provision*"<sup>128</sup>.

Consequently, in terms of Article 1 (1) of the 1954 Convention, it makes no difference whether the sinking SIDS's international legal personality continues to be recognised by other States or whether they embed their existence in other types of supranational entities. Once they no longer meet the criteria generally required under Public International Law for acquiring statehood, their nationals will become stateless within the meaning of Article 1 (1) CSSP<sup>129</sup>, thus at least benefiting from its protection, provided that the host State has ratified the Convention<sup>130</sup>.

To do otherwise, i.e. to consider that the continuity of SIDS's international legal personality implies the maintenance of the bond of nationality with their inhabitants, is an interpretation *in malam partem* that penalises islanders displaced by climate change and rising sea-levels. As UNHCR itself has stressed,

"Care must be taken that those who qualify as "stateless persons" under Article 1(1) of the 1954 Convention are recognised as such and not mistakenly referred to as de facto stateless persons as otherwise they may fail to receive the protection guaranteed under the 1954 Convention"<sup>131</sup>.

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<sup>128</sup> Ibid., par. 27, p. 5 [italics added].

<sup>129</sup> In this sense, the question of recognising the non-existence of a State is not far removed from the question of the legal effects of State recognition and its declaratory or constitutive character. In this regard, the Institute of International Law has pointed out that the existence of a State is not affected by the refusal of its recognition by one or more States, so that the same conclusion should apply in the case of the cessation of its statehood (vid. INSTITUT DE DROIT INTERNATIONAL, "Resolutions Concerning the Recognition of New States and New Governments", *The American Journal of International Law*, Vol. 30, No. 4, Supplement: Official Documents, October 1936, pp. 185-187, in particular art. 10).

<sup>130</sup> The following SIDS are part of the CSSP: Antigua and Barbuda, Barbados, Belize, Fiji, Guinea-Bissau, Haiti, Kiribati, Saint Vincent and the Grenadines, and Trinidad and Tobago. Note the absence of New Zealand, which is, along with Australia (which is a Party to the CSSP), the largest immigration receiving country from Pacific SIDS. On the other hand, only six SIDS are part of the CRS: Belize, Guinea-Bissau, Dominican Republic (only signature), Haiti, Jamaica and Kiribati. In this case, both Australia and New Zealand are Parties to the CRS. Data extracted from UNTC, [Status of Treaties: Convention relating to the Status of Stateless Persons](#) and [Status of Treaties: Convention on the Reduction of Statelessness](#) (last access 08/05/2022).

<sup>131</sup> UNHCR, *Guidelines on Statelessness No. 1...*, *op. cit.*, par. 8.

The catalogue of rights and obligations that the CSSP recognises for stateless persons is virtually identical to that of the 1951 Geneva Convention for refugees<sup>132</sup>. Particular reference should be made to the naturalisation of stateless island populations by host states favouring the customary international law principle of preventing and avoiding statelessness situations. However, this is more a moral than a legal obligation. Article 32 of the CSSP only calls on the Contracting States to facilitate, as far as possible, the integration and naturalisation of stateless persons but does not establish the right of stateless persons to acquire the host nationality<sup>133</sup>.

Likewise, it is essential not to lose sight that the CSSP does not include stateless persons' right to be admitted into a State<sup>134</sup>. Hence the importance of signing migration agreements and promoting resettlement policies between affected SIDS and third countries. These initiatives would make it possible to generate a stable and secure framework favourable to the progressive relocation of island populations before they become stateless<sup>135</sup>.

### **1.3.2. Low-lying island States and the 1961 Convention on the Reduction of Statelessness**

As noted when addressing territorial disappearance, one option that would prevent the sinking SIDS' population from becoming stateless would be to merge with another existing country. The result of such a union could be either the creation of a new State replacing the pre-existing ones or the incorporation of SIDS into the other State<sup>136</sup>.

Whatever the agreement reached by the States concerned on the form that the union will take – e.g. new State, federation, confederation or commonwealth –, there is

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<sup>132</sup> However, it should be noted that freedom of association (Art. 15) and the right to gainful employment (Art. 17) are granted to stateless persons in the same circumstances as to foreigners in general. In contrast, refugees benefit from the so-called most-favoured-nation standard of treatment. Cf. Articles 15 and 17 from the CSSP and the CSR.

<sup>133</sup> UN, *Convention relating to the Status of Stateless Persons*, *op. cit.*, p. 154, Article 32.

<sup>134</sup> However, once admitted to the territory of a Contracting State, stateless persons may not be expelled except on grounds of national security or public order, by a decision taken in accordance with due process of law and allowing the expelled stateless person a reasonable period of time to apply for legal admission to another country (Art. 31 CSSP).

<sup>135</sup> Vid. footnote 57 *supra* for some examples of migratory frameworks undertaken by New Zealand or Australia with SIDS to help islanders to cope with both climate change and sea level rise, as well as the scarcity of job opportunities on the islands.

<sup>136</sup> TORRES CAMPRUBÍ, A., *Climate change and international security...*, *op. cit.*, pp. 281-282. PARK, S., “Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States” (PPLA/2011/04), *op. cit.*, p. 18.

no doubt that it is a case of State succession. Both the Vienna Convention of 23 August 1978 on Succession of States in respect of treaties<sup>137</sup> and the Vienna Convention of 8 April 1983 on Succession of States in respect of State Property, Archives and Debts<sup>138</sup> define succession in the same way; i.e., as "the replacement of one State by another in the responsibility for the international relations of territory"<sup>139</sup>. Consequently, mere association agreements that the affected SIDS may conclude with other States are excluded, when it is clear from them that each of the States involved intends to maintain its sovereignty and its international legal personality<sup>140</sup>.

From the perspective of the nationality of island populations affected by succession, it is interesting to mention the 1961 Convention on the Reduction of Statelessness, which contains several provisions on State succession<sup>141</sup>. Reference should also be made to the Draft Articles on nationality of natural persons in relation to the succession of States<sup>142</sup>.

According to Article 10 of the 1961 Convention, the agreement by which the small island in question transfers its territory and population to another State "shall include provisions designed to secure that no person shall become stateless as a result of the transfer"<sup>143</sup>. In the absence of such provisions, the same Article 10, paragraph 2, establishes a default rule whereby the population of the transferred territory will acquire the nationality of the acquiring state. Similarly, Article 21 of the Draft Articles provides that the successor State resulting from the union, whatever form it may take, "shall attribute its nationality to all persons who, on the date of the succession of States, had the nationality of a predecessor State"<sup>144</sup>.

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<sup>137</sup> UN, *Vienna Convention on Succession of States in respect of Treaties*, 23 August 1978, UNTS, Vol. 1946, No. 33356, pp. 3-29.

<sup>138</sup> UN, *Vienna Convention on Succession of States in Respect of State Property, Archives and Debts*, 8 April 1983, UNTS.

<sup>139</sup> Vid. Article 2 (1) of both legal texts.

<sup>140</sup> UN INTERNATIONAL LAW COMMISSION, "Draft Articles on Nationality...", in: *Yearbook...1999 [A/CN.4/SER.A/1999/Add.1 (Part 2)]*, *op. cit.*, p. 42, Commentary to Article 21, par. 2. The International Law Commission cites the EU example (vid. footnote 120).

<sup>141</sup> UN, *Convention on the Reduction of Statelessness...*, *op. cit.*

<sup>142</sup> UN INTERNATIONAL LAW COMMISSION, "Draft Articles on Nationality...", in: *Yearbook...1999 [A/CN.4/SER.A/1999/Add.1 (Part 2)]*, *op. cit.*,

<sup>143</sup> UN, *Convention on the Reduction of Statelessness...*, *op. cit.*, Article 10 (1). As argued in BORRÀS PENTINAT, S., "El estatuto jurídico de protección...", *op. cit.*, p. 38, the ideal preventive mechanism would be the signing of such multilateral conventions, "setting out where, and on what legal basis, the affected populations would be allowed to migrate to, and what their legal status would be".

<sup>144</sup> Vid. UN INTERNATIONAL LAW COMMISSION, "Draft Articles on Nationality...", in: *Yearbook...1999 [A/CN.4/SER.A/1999/Add.1 (Part 2)]*, *op. cit.*, p. 42, Commentary to Article 21, par. 3.

In both cases, the island population will acquire the successor State's nationality, even if at the date of succession they had already emigrated and had their habitual residence in a third country other than the States involved in the succession<sup>145</sup>. For obvious reasons, an exception is made precisely in those cases where, besides having their habitual residence outside the successor State territory, nationals have also acquired the nationality of another country. In such cases, they cannot be forced to acquire the successor State's nationality against their will<sup>146</sup>.

Once succession has taken place, and to the extent that it occurs before the complete sinking of the islands, migrations or relocations from the former SIDS territory to the successor State's territory will already be considered as internal population movements<sup>147</sup>.

### **1.3.3. Regional initiatives to protect stateless persons and prevent statelessness**

The UN Conventions on statelessness are also the international reference texts on this matter at the regional level. Therefore, in preventing and combating statelessness, especially among children, the different regional international organisations have aimed to encourage their Member States to ratify the 1954 and 1961 Conventions. Similarly, where a regional treaty or draft international articles on statelessness exist, their provisions are directly inspired by UN-sponsored instruments. Having made the above observations, the following sub-sections set out the different initiatives and regulatory developments on statelessness in each of the continents.

#### **A) Europe**

At the European level, reference should first be made to the COE Convention on Nationality, which contains general provisions on the acquisition of nationality in the European States that are party to it<sup>148</sup>. According to Article 6<sup>149</sup>, children born to a parent who is a national of a SIDS and to a parent who is a national of one of the

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<sup>145</sup> Id., noting that "the term "persons concerned" refers to the entire body of nationals of the predecessor State or States, *irrespective of the place of their habitual residence*" [italics added].

<sup>146</sup> Ibid., par. 4.

<sup>147</sup> PARK, S., "Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States" (PPLA/2011/04), *op. cit.*, p. 19.

<sup>148</sup> COE, *European Convention on Nationality*, 06 November 1997, ETS, No. 166, 11 pp. According to COE, Chart of signatures and ratifications of Treaty 166 (last access: 08/05/2022), only twenty-one European countries have ratified or acceded to the Convention.

<sup>149</sup> Cf. with Articles 1 and 4 of the CRS.

European States party to the above Convention shall acquire *ex lege* the nationality of the relevant European State [par. 1 (a)]. Children of parents from SIDS born in a European State Party's territory may acquire nationality also at birth *ex lege* or upon application (par. 2). In the latter case, the granting of nationality may be made conditional upon legal and continuous residence in the territory of the State concerned for a period not exceeding five years [par. 2 (b)]<sup>150</sup>.

Finally, SIDS nationals who have emigrated to a European country and subsequently become stateless may be naturalised under each country's conditions (par. 3). In this regard, the CoE Committee of Ministers recommended the Member States to facilitate the acquisition of nationality for stateless persons by requiring, *inter alia*, knowledge of only one of the State's official languages or a period of legal and continuous residence shorter than required for other cases of naturalisation<sup>151</sup>, which, in any case, may not exceed ten years<sup>152</sup>.

A Convention on the Avoidance of Statelessness in relation to State Succession has also been adopted within the CoE<sup>153</sup>. However, its provisions do not apply to sinking SIDS, as its scope of application is geographically limited to successions involving European countries which have ratified the Convention<sup>154</sup>. That said, whether a SIDS merges with another State, having migrated its inhabitants to a European country, the Committee of Ministers has recommended its Member States to assist children to exercise the right to acquire the nationality of the successor State<sup>155</sup>.

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<sup>150</sup> For recommendations on reducing child statelessness, vid. CoE, *Recommendation No. 13 of the Committee of Ministers to member states on the nationality of children* (CM/Rec(2009)13), 9 December 2009.

<sup>151</sup> CoE, *Recommendation No. 18 of the Committee of Ministers to member States on the avoidance and reduction of statelessness* (CM/Rec(99)18), 15 September 1999, par. II (B). Vid. CoE, *Resolution No. 1989 (2014) of the Parliamentary Assembly on access to nationality and the effective implementation of the European Convention on Nationality* (PA/Res(2014)1989), 9 April 2014, par. 8, recommending to Member States that the period of time necessary to fulfil the condition of residence for the purpose of naturalisation should not exceed five years.

<sup>152</sup> Article 6 (3) of the European Convention on Nationality states: "In establishing the conditions for naturalisation, it shall not provide for a period of residence exceeding ten years before the lodging of an application" (in: CoE, *European Convention on Nationality*, *op. cit.*).

<sup>153</sup> CoE, *Convention on the avoidance of statelessness in relation to State succession*, 19 May 2006, CETS, No. 200, 6 pp.

<sup>154</sup> Vid. Articles 15, 18 and 19 of the Convention referred to *supra*.

<sup>155</sup> CoE, *Recommendation No. 13...* (CM/Rec(2009)13), *op. cit.*, par. 3, providing that children who are on the Member States' territory and are stateless and entitled to acquire the nationality of a third country receive all the assistance necessary to exercise this right.

Furthermore, the COE Parliamentary Assembly has indirectly clarified whether the continuity of SIDS' international legal personality implies maintaining the nationality bond. Thus, it has called on Member States not to refuse to recognise a person as stateless when finding in a situation that meets the definition of statelessness set out in Article 1 CSSP, "particularly through the introduction of "alternative" definitions of statelessness at the national level"<sup>156</sup>.

Within the EU, the TFEU<sup>157</sup> in its Article 67 (2) states that stateless persons shall be treated as third-country nationals when devising and implementing a common policy on asylum, immigration and external border control. In addition, government representatives of Member States pledged in September 2012 to accede to the 1954 Convention and consider acceding to the 1961 Convention<sup>158</sup>. In this regard, the European Parliament underlined the Member States' need to develop procedures in their national legislation to identify stateless migrants and provide them with the protection available under international law<sup>159</sup>.

The European Parliament also drew attention to the continuing need for the EU to address statelessness as part of its external relations policy<sup>160</sup>. Today, the EU collectively maintains relations with SIDS, being one of their leading donors and a prominent trading partner<sup>161</sup>. In 2014, on the occasion of the International Year of SIDS, the EU pledged to continue to support SIDS in their adaptation and mitigation efforts to cope with rising sea levels, changing weather patterns and other long-term

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<sup>156</sup> COE, *Resolution No. 1989 (2014) of the Parliamentary Assembly...* (PA/Res(2014)1989), *op. cit.*, par. 5.2.2. Furthermore, the COE Committee of Minister has recommended "[treating] children who are factually (de facto) stateless, as far as possible, as legally stateless (de jure) with respect to the acquisition of nationality" [modified infinitive form] (in COE, *Recommendation No. 13...* (CM/Rec(2009)13), *op. cit.*, par. 7).

<sup>157</sup> EU, *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*, OJEU (C 326), 26 October 2012, pp. 01-390.

<sup>158</sup> COUNCIL OF THE EUROPEAN UNION, *Conclusions of the Council and the Representatives of the Governments of the Member States on Statelessness* (Doc.14978/15 ASIM 167 RELEX 1013), 4 December 2015, fourth recital, p. 2. All EU member States have ratified the CSSP, with the exception of Cyprus, Estonia and Poland. In the case of the CRS, only Cyprus, Estonia, Greece, Malta, Poland and Slovenia have not yet ratified the 1961 Convention (data extracted from UNTC, [Status of Treaties: Convention relating to the Status of Stateless Persons](#) [Status of Treaties: Convention on the Reduction of Statelessness](#) (last access: 08/05/2022)).

<sup>159</sup> EUROPEAN PARLIAMENT, *Resolution of 25 October 2016 on human rights and migration in third countries* (P8\_TA-PROV(2016)040425), 25 October 2016, par. 6.

<sup>160</sup> *Ibid.*, par. 7.

<sup>161</sup> COUNCIL OF THE EUROPEAN UNION, *Council conclusions on EU common position for the Third International Conference on SIDS*, 27 May 2014, par. 3.

effects of climate change<sup>162</sup>. Migration issues, or even the protection of island populations in the event of the disappearance of islands, can therefore be expected to form part of European foreign policy in its relations with SIDS.

Finally, the Council of the EU has joined UNHCR's 10-year campaign to end statelessness by 2024<sup>163</sup>. Concrete actions in this area continue to focus on the dual aspect of identification and protection of stateless migrants. Thus, on the one hand, the aim is to promote the exchange of best practices among the Member States through the European Migration Network on the collection of reliable data on stateless persons, as well as on procedures for determining statelessness<sup>164</sup>. On the other hand, it seeks to strengthen the protection of stateless persons by ensuring that they enjoy basic fundamental rights and reducing the risk of discrimination or unequal treatment<sup>165</sup>.

## **B) Africa and Middle East**

In Africa, efforts in different regional fora such as the ICGLR<sup>166</sup>, ECOWAS<sup>167</sup> and the African Union have aimed in the same two directions. On the one hand, encouraging participating States to ratify the UN Convention on Statelessness<sup>168</sup>. On the

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<sup>162</sup> Ibid., par. 6.

<sup>163</sup> COUNCIL OF THE EUROPEAN UNION, *Conclusions of the Council and the Representatives of the Governments of the Member States on Statelessness*, op. cit., p. 3. Vid. also, COUNCIL OF THE EUROPEAN UNION, *EU Action Plan on Human Rights and Democracy 2020-2024* (Doc. 12848/20), 18 November 2020, letter o, "[advocating] for a human rights-based approach that focuses on persons in vulnerable situations, including (...) stateless persons". In particular, it provides for "[strengthening] the capacity of states, civil society and UN partners to implement this approach and support measures to improve integration, social cohesion and access to quality services" [verb form changed].

<sup>164</sup> COUNCIL OF THE EUROPEAN UNION, *Conclusions of the Council and the Representatives of the Governments of the Member States on Statelessness*, op. cit., p. 4.

<sup>165</sup> Id.

<sup>166</sup> The International Conference on the Great Lakes Region (ICGLR) is an intergovernmental organisation comprising the countries of the African Great Lakes Region. The Organisation is the outcome of the International Conference on Peace, Security, Democracy and Development in the Great Lakes Region convened by the UN Security Council in 2000. In the same year, the Secretariat of the International Conference was established in Nairobi, Kenya, under the umbrella of the United Nations and the African Union. The organisation is composed of twelve member States, namely: Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of Congo, Kenya, Uganda, Rwanda, Republic of South Sudan, Sudan, Tanzania and Zambia. Information extracted from ICGLR, [Overview](#) (last access: 08/05/2022).

<sup>167</sup> The Economic Community of West African States (ECOWAS) was established on 28 May 1975 by the Treaty of Lagos. ECOWAS is a regional grouping of fifteen members with a mandate to promote economic integration in all fields of activity of the constituent countries. ECOWAS member countries are Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Sierra Leone, Senegal and Togo. Information extracted from ECOWAS, [Basic Information](#) (last access: 08/05/2022).

<sup>168</sup> ICGLR, *Declaration of International Conference on the Great Lakes Region (ICGLR) Member States on the Eradication of Statelessness* (CIRGL/CIMR/DEC/15/10/2017), 16 October 2017, p. 3, par. 2. ECOWAS, *Abidjan Declaration of Ministers of ECOWAS Member States on Eradication of Statelessness*,

other hand, the regional organisations have committed to developing a common regional framework to harmonise the different national legislations and bring them into line with the 1954 and 1961 Conventions<sup>169</sup>.

The African Union has taken the lead in that latest endeavour, with the other sub-regional organisations' support<sup>170</sup>, drafting a Protocol to the African Charter on Human and Peoples' Rights on the specific aspects of the Right to a Nationality and the Eradication of Statelessness in Africa<sup>171</sup>. This Protocol does not seek to replace universal international treaties on statelessness, but rather to give effect to the right to nationality within "African realities and context such as nomadic, historical migrations and border dimensions of the phenomenon"<sup>172 173</sup>.

Thus, Article 19 (1) of the Draft Protocol provides that a State Party shall provide by law for a process for granting stateless status to those who lack the nationality of another country. More relevant is the second paragraph, addressing stateless persons' status in the States Parties' territory. According to this provision, stateless persons shall enjoy a treatment as favourable as possible and, in any case, no less favourable than that

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25 February 2015, pars. 4 and 14. ACHPR, *Resolution 234 on the Right to Nationality, adopted at its 53rd Ordinary Session* (ACHPR/Res.234(LIII)2013), 23 April 2013 par. 6.

The following African States are party to the CSSP: Algeria, Benin, Botswana, Burkina Faso, Chad, Côte d'Ivoire, Eswatini, Guinea, Guinea-Bissau, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mozambique, Niger, Nigeria, Rwanda, Senegal, Tunisia, Uganda, Zambia and Zimbabwe. Data extracted from United Nations Treaty Collection website, *Depositary: Status of Treaties, op. cit.*

The following African States are party to the CRS: Angola, Benin, Burkina Faso, Chad, Côte d'Ivoire, Eswatini, Gambia, Guinea, Guinea-Bissau, Lesotho, Liberia, Libya, Mali, Mozambique, Niger, Nigeria, Rwanda, Senegal, Sierra Leone and Tunisia. Vid. UNTC, Status of Treaties: Convention relating to the Status of Stateless Persons and Status of Treaties: Convention on the Reduction of Statelessness (last access: 08/05/2022).

<sup>169</sup> ICGLR, *Dar-Es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region*, Dar-Es-Salaam (Tanzania), 19-20 November 2004, par. 68. ICGLR, *Consolidated Action Plan: Action Plan of the International Conference on the Great Lakes Region (ICGLR) on the eradication of statelessness: 2017-2024*, 17 January 2020, p. 4, Objective 1.2. ECOWAS, *Banjul Plan of Action of the Economic Community of West African States on the Eradication of Statelessness 2017-2024*, 2017, pp. 3-4, Objective 1.2. AU, *African Union Symposium on "Citizenship in Africa..."*, *op. cit.*, pars. 8, 12 and 13.

<sup>170</sup> ICGLR, *Declaration of International Conference on the Great Lakes Region (ICGLR) Member States on the Eradication of Statelessness...*, *op. cit.*, par. 8. ECOWAS, *Abidjan Declaration of Ministers of ECOWAS...*, *op. cit.*, par. 5.

<sup>171</sup> ACHPR, *Draft Protocol to the African Charter on Human and Peoples' Rights on the specific aspects of the Right to a Nationality and the Eradication of Statelessness in Africa*, September 2015, 13 pp.

<sup>172</sup> AU, *African Union Symposium on "Citizenship in Africa..."*, *op. cit.*, par. 8

<sup>173</sup> At the African level, the right to nationality has been expressly enshrined in: OAU, *African Charter on the Rights and Welfare of the Child*, 1 July 1990, Article 6; AU, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, 11 July 2003, Article 6 (g) and (h). The right to nationality has also been inferred from Article 5 of the African Charter, considering statelessness to be a violation of the right to human dignity and legal status (in: ACHPR, *Draft Protocol to the African Charter on Human and Peoples' Rights on the specific aspects of the Right to a Nationality and the Eradication of Statelessness in Africa: Explanatory Memorandum*, June 2018, par. 7).



accorded to non-nationals generally in the same circumstances. In this sense, the explanatory memorandum to the Draft Project clarifies that a person who has received stateless status should be protected under the terms of the CSSP<sup>174</sup>. Finally, Article 19 (3) of the Draft provides that States Parties "shall provide consular and other appropriate assistance, including the issuance of identity and travel documents, to stateless persons in their territory"<sup>175</sup>.

Concerning the acquisition of the State Party's nationality in whose territory the stateless person is present, the African Draft Protocol mirrors to some extent the European Convention on nationality<sup>176</sup>. For example, naturalisation is open to aliens based on habitual residence in the country for a period that shall not exceed a maximum of ten years (Art. 6 (2) African Draft Protocol<sup>177</sup>). In the children's case, the African Protocol facilitates naturalisation more than the European Convention<sup>178</sup>. Thus, it provides for nationality acquisition *ex lege* when children are born in an African country to stateless parents (Art. 5 (1) (c) African Draft Protocol). In situations where the child was not born there but spent part of the childhood in a State Party territory and remained resident at majority, Article 6 (3) (c) urges States Parties to facilitate their naturalization as well.

Finally, in the Middle East and North Africa's geographical area, the LAS's efforts have targeted at developing a Model Arab Law on nationality<sup>179</sup>. On the one hand, this framework should ensure that all children, including displaced and refugee children, acquire nationality by birth<sup>180</sup>. On the other hand, it aims to end all forms of discrimination in the field of nationality<sup>181</sup>. In this vein, the LAS encourages all

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<sup>174</sup> ACHPR, *op. cit. supra*, par. 112.

<sup>175</sup> ACHPR, *Draft Protocol...on the specific aspects of the Right to a Nationality and the Eradication of Statelessness in Africa*, *op. cit.*, Article 19 (3).

<sup>176</sup> ACHPR, *Draft Protocol... Explanatory Memorandum*, *op. cit.*, pars. 37, 47 and 53.

<sup>177</sup> Article 6 (3) of the African Draft Protocol states that the Law shall facilitate the naturalisation of, inter alia, stateless persons, which suggests more flexible conditions or shorter periods of residence than those required for foreigners in general. In this regard, ACHPR, *Draft Protocol... Explanatory Memorandum*, *op. cit.*, par. 53, notes that "[t]he most common provision of national laws in African States is to require five years of residence, and very few provide for a period of longer than ten years".

<sup>178</sup> Cf. with Article 6 (2) of the European Convention on Nationality, which provides for the granting of nationality to children born in the territory of a State Party of alien parents either at birth *ex lege* or after a period of legal and habitual residence not exceeding five years.

<sup>179</sup> LAS, *Arab Declaration on Belonging and Legal Identity*, 28 February 2018, p. 3, par. 2, entrusting this task to the Secretariat of the Arab League.

<sup>180</sup> *Ibid.*, pars. 3-4.

<sup>181</sup> *Vid.* LAS, *The First Arab Conference on Good Practices & Regional Opportunities to Strengthen Women's Nationality Rights League of Arab States Secretariat General, 1-2 October 2017 - Final Declaration*, 3 pp., 2 October 2017.

Member States to take concrete steps to amend nationality laws and legislation to grant women and men equal rights in granting nationality to children and spouses<sup>182</sup>.

### C) America

At the normative level, the tendency in the Americas is to ratify the UN instruments to prevent and resolve statelessness<sup>183</sup>. Currently, twenty-two and nineteen countries out of the 35 sovereign States that make up the American continent are parties to the CSSP<sup>184</sup> and the CRS<sup>185</sup>, respectively. In compliance with the OAS General Assembly's request, the Inter-American Juridical Committee prepared, through consultations with the Member States, a "Guide on the Protection of Stateless Persons", in line with international standards on the matter<sup>186</sup>. This document called for the development of domestic legislation where necessary to implement the provisions of the UN Conventions effectively<sup>187</sup>.

In this regard, the statelessness status should be governed by the principle of protection of human beings, given the particular situation of vulnerability in which stateless persons find themselves<sup>188</sup>. Thus, the recognition of statelessness should include the granting of documentation that allows access to essential services such as

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<sup>182</sup> LAS, *Arab Declaration on Belonging and Legal Identity*, *op. cit.*, pars. 9-12.

<sup>183</sup> OAS, *Inter-American Juridical Committee Report: Guide on the protection of stateless persons* (CJI/doc.488/15 rev.1), 3 July 2015, par. 27. Vid. also, OAS, "Resolution of the General Assembly on prevention and reduction of statelessness and protection of stateless persons in the Americas, adopted at the second plenary session, held on June 4, 2014" [AG/RES. 2826 (XLIV-O/14)], in: *Proceeding Volume I: Forty-Fourth Regular Session* (OEA/Ser.P/XLIV-O.2), Washington, D.C., General Secretariat, 24 September 2014, par. 2. UNHCR, *A framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean (Brazil Declaration and Plan of Action)*, Brasilia, 3 December 2014, Chapter Six, letter (a), p. 17; and OAS, *Inter-American Juridical Committee Report...*, *op. cit. supra*, par. 28, encouraging those Member States that have not yet done so to consider ratifying or acceding to the international instruments on statelessness.

<sup>184</sup> The following American States are party to the CSSP: Antigua and Barbuda, Argentina, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Vincent and the Grenadines, Trinidad and Tobago and Uruguay. Vid. UNTC, Status of Treaties: Convention relating to the Status of Stateless Persons (last access: 08/05/2022).

<sup>185</sup> The following American States are party to the CRS: Argentina, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Peru and Uruguay. Vid. UNTC, Status of Treaties: Convention on the Reduction of Statelessness (last access: 08/05/2022).

<sup>186</sup> OAS, "Resolution of the General Assembly on prevention and reduction of statelessness and protection of stateless persons in the Americas..." [AG/RES. 2826 (XLIV-O/14)], *op. cit.*, par. 5.

<sup>187</sup> OAS, *Inter-American Juridical Committee Report: Guide on the protection of stateless persons*, *op. cit.*, par. 28. In this vein, UNHCR, *A framework for Cooperation...(Brazil Declaration and Plan of Action)*, *op. cit.*, p. 17, letter (b), calls for "[promoting] the harmonization of internal legislation and practice on nationality with international standards" [infinitive changed].

<sup>188</sup> OAS, *Inter-American Juridical Committee Report...*, *op. cit. supra*.

medical care, education or social welfare, as well as access to the labour market in the State in which they reside<sup>189</sup>. Moreover, recognising statelessness status requires, as a precondition, the existence of effective determination procedures that allow persons in such a situation to access protection within a reasonable period<sup>190</sup>. Finally, the Inter-American Juridical Committee recommended creating a specialised agency to deal with stateless persons' situations<sup>191</sup>.

#### D) Asia

In Asia, reference shall be made to the Conference of government representatives from Central Asia, held on 5 and 6 September 2019<sup>192</sup>. Participating States pledged to implement several measures supporting the UNHCR's #IBelong Campaign to end statelessness by 2024<sup>193</sup>, starting with achieving more significant ratification of the UN Statelessness Conventions<sup>194</sup>, and ensuring that national legislation is brought in line with these international instruments to ensure their effective implementation<sup>195</sup>.

At the normative and operational level, measures include developing national action plans to prevent and eliminate all forms of statelessness and the adoption of statelessness determination procedures in line with international standards<sup>196</sup>. Furthermore, recognition of statelessness should be accompanied by granting a legal status that guarantees the enjoyment of fundamental human rights, facilitating

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<sup>189</sup> Id. Vid. also, UNHCR, *A framework for Cooperation... (Brazil Declaration and Plan of Action)* *op. cit.*, p. 17, letters (e) and (f), calling for the adoption of legal protection frameworks that guarantee the rights of stateless persons, in order to regulate issues such as their migration status, identity and travel documents and, more generally, to ensure the full enjoyment of the rights protected by the 1954 Convention and other human rights treaties, in particular with regard to facilitating naturalisation in accordance with Article 32 of the 1954 Convention.

<sup>190</sup> OAS, *Inter-American Juridical Committee Report: Guide on the protection of stateless persons*, *op. cit.*, par. 28. Similarly, UNHCR, *A framework for Cooperation... (Brazil Declaration and Plan of Action)*, *op. cit.*, p. 17, letters (d).

<sup>191</sup> Vid. footnote *supra*. The Brazil framework suggests that the National Refugee Commissions or equivalent institutions assume this competence within their functions.

<sup>192</sup> UNHCR, *Joint Conclusions of the 2nd Regional Conference on the Right to Legal Identity and Prevention of Statelessness: Leaving No One Behind at Birth*, 6 September 2019, 3 pp.

<sup>193</sup> *Ibid.*, p. 3, pars. I-IX.

<sup>194</sup> *Ibid.*, par. VIII. Of the five Central Asian countries that took part in the regional conference, namely Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, only Turkmenistan has ratified the UN Statelessness Conventions to date. UNTC, [Status of Treaties: Convention relating to the Status of Stateless Persons](#) and [Status of Treaties: Convention on the Reduction of Statelessness](#) (last access: 08/05/2022).

<sup>195</sup> UNHCR, *Joint Conclusions of the 2nd Regional Conference on the Right to Legal Identity and Prevention of Statelessness...*, *op. cit.*, p. 3, par. VIII.

<sup>196</sup> *Ibid.*, pars. II and VI.

naturalisation<sup>197</sup>. Concerning children, establishing a legal mechanism is envisaged to allow all children born in the territory to be registered at birth and have access to a nationality<sup>198</sup>. If this is not possible, they would be granted the nationality of the country of birth to prevent them from becoming stateless<sup>199</sup>.

## **2. UNHCR'S ROLE IN PROTECTING ENVIRONMENTALLY DISPLACED PERSONS**

### **2.1. Introduction**

This section examines UNHCR's involvement in providing assistance and protection to people displaced by environmental disturbances. The analysis is carried out from a dual perspective. On the one hand, from a historical perspective, it analyses the protection mandate that UNHCR has received from the international community and the displacement scenarios related to environmental factors that would already fall within it. On the other hand, it addresses UNHCR's attempts to get States to extend its mandate by expressly including environmentally displaced persons and the challenges this poses, which explain both initiatives' failure.

Finally, the section reviews the operations that UNHCR has carried out in the field in the context of both internal and cross-border population movements, whether as a result of a natural disaster or a process of slow environmental degradation.

### **2.2. UNHCR's mandate**

UNHCR was established in 1949<sup>200</sup> – active since January 1951<sup>201</sup> –, as a subsidiary organ of the UN General Assembly<sup>202</sup> with an unequivocal mandate: "to

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<sup>197</sup> Ibid., par. VI.

<sup>198</sup> Ibid., pars. V and VII.

<sup>199</sup> Ibid., par. V.

<sup>200</sup> UNGA, *Resolution 319 (IV) Refugees and stateless persons, adopted by the General Assembly at its Fourth session* [A/RES/319(IV)], 1949, pp. 36-37.

<sup>201</sup> Ibid., par. 1. Initially, UNHCR was established for a period of three years from January 1951, and the General Assembly was to decide subsequently, "not later than at its eight regular session, (...) whether the Office (UNHCR) should be continued beyond 31 December 1953" (par. 5). According to UNHCR, "An Introduction to International Protection. Protecting Persons of Concern to UNHCR", UNHCR, 1 August 2005, p. 7 (last access: 09/06/2020), the fact that the organ was established on a temporary basis reflects "the disagreement among States over the political implications of establishing a permanent body".

<sup>202</sup> The UNHCR replaced the International Refugee Organization, which had been founded by the United Nations in 1947 as an international agency responsible for the comprehensive management of all aspects

provide, on a non-political and humanitarian basis, international protection to refugees and to seek permanent solutions for them"<sup>203</sup>. Thus, the mandate that UNHCR originally received in its Statute, annexed to Resolution 428 (V) of the General Assembly of 1950<sup>204</sup>, extends to:

"A. (i) Any person who has been considered a refugee under the Arrangements of 12 May 1926 and of 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938 the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization<sup>205</sup>.

(ii) Any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.

(...)

B. Any other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence"<sup>206</sup>.

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of refugee life (from registration and determination of refugee status to repatriation or resettlement). In the late 1940s, meagre contributions to the IRO's budget and political tension in Europe led to the disappearance of the IRO in 1951, accused of using its resettlement activities to provide sources of labour for Western countries or to assist subversive groups. Vid. UNHCR, *op. cit. supra*, pp. 6-7.

<sup>203</sup> *Ibid.*, p. 7, adding: "The international protection of refugees begins with securing their admission to a country of asylum, the grant of asylum and respect for their fundamental human rights, including the right not to be forcibly returned to a country where their safety or survival are threatened (the principle of *non-refoulement*). It ends only with the attainment of a durable solution".

<sup>204</sup> UNGA, *Resolution 428 (V) Statute of the Office of the United Nations High Commissioner for Refugees, adopted by the General Assembly at its Fifth session [A/RES/428(V)]*, 1951, pp. 46-48.

<sup>205</sup> This first section refers to post World War I refugees. The above international agreements include Russians, Armenians, Syrians, Kurds, Turks, Spaniards, Germans, Austrians, Czechs and Slovaks, who have lost the protection, in law or in fact, of their respective States and were stateless or possessed no other nationality, as well as unaccompanied children who were war orphans. Vid. UNHCR, "Definitions of "refugee" according to agreements, conventions and protocols mentioned in article 1 a (1) of the Convention relating to the status of refugees of 28 July 1951" and "Constitution of the International Refugee Organization. Annex I: Definitions" in: *Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR*, UNHCR, vol. 1, June 2007, pp. 36 and 61-62.

<sup>206</sup> UNGA, *Resolution 428 (V) Statute of the Office of the United Nations High Commissioner for Refugees, op. cit.*, par. 6.

However, from a legal perspective, the UNHCR's competence is not just defined by its core mandate reproduced above. The Agency's Statute also includes an open-enabling clause which allows the High Commissioner to be engaged "in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal"<sup>207</sup>.

The General Assembly has used this possibility on several occasions since 1950 to extend UNHCR's original mandate. For example, it has done so for UNHCR to provide humanitarian assistance and international protection for other vulnerable groups, such as returnees<sup>208</sup>, non-refugee stateless persons and occasionally IDPs. These other categories of people who, along with traditional refugees, are protected by UNHCR receive the collective designation of "other persons of concern to UNHCR"<sup>209</sup>.

Regarding statelessness, although UNHCR's mandate has covered stateless refugees since its inception, its involvement with other stateless persons stems from UN General Assembly Resolutions 3274 and 31/36 in the 1970s<sup>210</sup>. These resolutions extended UNHCR's mandate in compliance with Article 11 of the CRS, which provided

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<sup>207</sup> Ibid., par. 9.

<sup>208</sup> Returnees are former refugees who return voluntarily to their countries of origin, whether spontaneously or in an organised fashion. Although the UNHCR's Statute expressly refers to the task of promoting and facilitating the voluntary repatriation of refugees (pars. 1 and 8.c), par. 6.A.ii.d seems to imply that UNHCR's competence should end once refugees have crossed over the borders of the countries from which they had fled. Nevertheless, according to the UNGA, Resolution 49/169 of 24 February 1995, and the UNHCR's Executive Committee, Conclusions Nos.: 18 (XXXI) – 1980; 40 (XXXVI) – 1985; 74 (XLV) – 1994; and 85 (XLIX) – 1998, the existing mandate of the UNHCR "is sufficient to allow him to promote voluntary repatriation by taking initiatives to this end, promoting dialogue between all the main parties, facilitating communication between them, and by acting as an intermediary or channel of communication" (ExCom Conclusion 40 (XXXVI) 1985, letter e). Consequently, activities such as returnee monitoring would be justified provided the parties concerned agreed (ExCom Conclusion 18 (XXXI) 1980, letter h). Vid. UNHCR, "An Introduction to International Protection. Protecting Persons of Concern to UNHCR", *op. cit.*, pp. 83-84. UNGA, *Resolution 49/169 Office of the United Nations High Commissioner for Refugees, adopted by the General Assembly at its Forty-ninth session (A/RES/49/169)*, 24 February 1995, par. 9. UNHCR'S EXECUTIVE COMMITTEE, *Conclusions on the international protection of refugees: 1975 – 2009 (Conclusion No. 1 – 109)*, December 2009, 209 pp.

As an example of an international agreement where the Parties confer to the UNHCR specific competences with returnees, vid. REPUBLIC OF BOSNIA AND HERZEGOVINA, THE REPUBLIC OF CROATIA AND THE FEDERAL REPUBLIC OF YUGOSLAVIA, *General Framework Agreement for Peace in Bosnia and Herzegovina*, 14 December 1995, Annex 7: The agreement on Refugees and Displaced Persons, which calls upon the UNHCR to develop a repatriation plan (art. I.32) and coordinate all agencies assisting in the repatriation and relief of refugees and displaced persons (art. III.5).

<sup>209</sup> UNHCR, "An Introduction to International Protection. Protecting Persons of Concern to UNHCR", *op. cit.*, pp. 81-100.

<sup>210</sup> UNGA, *Resolution 3274 (XXIX) Question of the establishment, in accordance with the Convention on the Reduction of Statelessness, of a body to which persons claiming the benefit of the Convention may apply, adopted by the General Assembly at its Twenty-ninth session [A/RES/3274(XXIX)]*, 1975, pp. 92-93; *Resolution 31/36 Question of the establishment, in accordance with the Convention on the Reduction of Statelessness, of a body to which persons claiming the benefit of the Convention may apply, adopted by the General Assembly at its Thirty-first session (A/RES/31/36)*, 1977, pp. 94-95.

for the establishment of "a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance"<sup>211</sup>. Successive General Assembly resolutions and UNHCR's Executive Committee conclusions enlarge the UNHCR's role until converting it in a global mandate regarding statelessness<sup>212</sup>.

Contrary to what happens with non-refugee stateless persons, UNHCR has never received a general or exclusive mandate regarding IDPs. Instead, the UN General Assembly has authorised the UNHCR to provide humanitarian assistance to IDPs under certain circumstances and on an exceptional basis. In the early 1990s, the UN General Assembly clarified the UNHCR's role with IDPs, setting out formal criteria for the Office's engagement, namely: a) a specific request or authorisation from the UN Secretary-General or a competent principal UN organ; b) the previous consent of the State or other entity concerned; c) inter-agency cooperation, i.e. complementarity with other agencies according to their respective mandates and expertise; d) and availability of adequate resources<sup>213</sup>.

In summary, the protection mandate that UNHCR has received generally covers the following vulnerable groups: refugees, including their voluntary return to countries of origin, and stateless persons, whether or not they have refugee status. Lastly, IDPs constitute a vulnerable group eligible for assistance from UNHCR on a case-by-case basis under specific conditions.

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<sup>211</sup> UN, *Convention on the Reduction of Statelessness (with Final Act of the United Nations Conference on the Elimination or Reduction of Future Statelessness held at Geneva from 24 March to 18 April 1959, and Resolutions I, II, III and IV of the Conference)*, 30 August 1961, UNTS, Vol. 989, No 14458, pp. 175-279.

<sup>212</sup> Vid., *inter alia*, UNGA, Resolutions 49/169 of 24 February 1995, par. 20; 50/152 of 21 December 1995, pars. 14-15; and 61/137 of 19 December 2006, par. 4. UNHCR's Executive Committee, Conclusions Nos. 68 (XLIII) – 1992; 78 (XLVI) – 1995; 90 (LII) – 2001; 96 (LIV) – 2003; 106 (LVII) – 2006; and 107 (LVIII) – 2007. In: UNHCR, *Extracts relating to UNHCR's supervisory responsibility for the statelessness conventions*, 5 July 2010, 4 pp. Vid. also, UNHCR, "[An Introduction to International Protection. Protecting Persons of Concern to UNHCR](#)", *op. cit.*, p. 86.

<sup>213</sup> Vid. UNHCR, "An Introduction...", *op. cit. supra*, pp. 88 *in fine* and 89. UNGA, *Resolution 48/116 Office of the United Nations High Commissioner for Refugees, adopted by the General Assembly at its Forty-eighth session (A/RES/48/116)*, 24 March 1994, par. 12. UNHCR's EXECUTIVE COMMITTEE, *Conclusion No. 75 (XLV) Internally Displaced Persons* (1994), in: UNHCR, *Conclusions adopted by the Executive Committee ...*, *op. cit.*, pp. 107-108.

### 2.3. Environmental displacement situations already covered by UNHCR's mandate

From the literal tenor of the original UNHCR's mandate and the successive expansions it has suffered, it seems pretty clear that some situations of cross-border environmental displacements would already fall within the UNHCR's scope of action. The most obvious example was already mentioned when analysing the Geneva refugee-concept. It concerns the victims of environmental disturbances that are caused or taken advantage of by national governments to persecute them for one of the five reasons set out in the 1951 Convention relating to the Status of Refugees. While these persons have refugee status *stricto sensu*, they would also fall within the UNHCR's mandate<sup>214</sup>.

Another possibility would be the UNHCR extending its competence over those environmentally displaced persons who may qualify for refugee status under the broader definition of the OAU Convention and the Cartagena Declaration. As mentioned, regional definitions are flexible enough to include cross-border movements caused by natural disasters that have reached a sufficient magnitude to disrupt public order. The UNHCR Statute does not include any reference to regional refugee instruments for the time being. However, at least in Africa, its competence to assist "environmental refugees" could be legally rooted in Article VIII of the OAU Convention, which imposes a general obligation on the Member States to cooperate with UNHCR.

The third area where UNHCR could engage with "environmental refugees" refers to armed conflicts or generalised violence situations that are entrenched or affect the population for one or more refugee reasons mentioned in the 1951 Convention or regional refugee legal frameworks. Conflicts may be triggered or exacerbated by disputes over control of natural resources or as a result of the adverse effects of a natural disaster or climate change – e.g. drought-related famine, conflict over energy sources, fertile land or fresh water<sup>215</sup>. This interaction between internal conflicts and

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<sup>214</sup> GUTERRES, A., "Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective", UNHCR, August 2009, p. 7 (last access 06/04/2020).

<sup>215</sup> UNHCR, "Legal considerations on refugee protection for people fleeing conflict and famine affected countries", 5 April 2017, 2 pp. (last access 16/04/2020), noting: "For example, whole ethnic or religious communities may be disproportionately affected by food insecurity or famine that is the consequence of the conflict, establishing a connection between their well-founded fear of persecution and one or more reasons mentioned in the 1951 Convention definition of a refugee" (pp. 1 *in fine* and 2). Vid. also, GUTERRES, A., "Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective", *op. cit.*, p. 6 *in fine*.



environmental disturbances is known as "nexus dynamics"<sup>216</sup>. Very illustrative examples of this "link" are internal displacement in Ethiopia and Myanmar. Internal movements began due to civil wars in both countries, becoming later blended conflict/slow-onset climate change situations<sup>217</sup>. Another case of "nexus dynamics" is the mass movements of Somalis who arrived into Kenya's Dadaab and Kakuma refugee camps in 2011-2012, resulting from a combination of internal conflict and persecution, alongside drought famine extended in the whole Horn of Africa<sup>218</sup>.

Nevertheless, from the perspective of refugee law, it is necessary to clarify that environmental factors remain irrelevant in all the above examples. In other words, the recognition of refugee status, and therefore the eventual intervention of UNHCR, still takes place based on a conventional refugee ground, regardless of whether there may be environmental circumstances that act as a catalyst for persecution or aggravate the situation of persecuted persons<sup>219</sup>. The case of the Kenyan refugee camps is an excellent example of this latter idea, as it shows the contrast between the political discourse on climate change-related displacement at UNHCR headquarters and the technical perception that UNHCR field-offices have of these movements at the operational level.

The UNHCR Geneva and the OCHA took that opportunity to highlight that Kenyan refugee camps were hosting climate change victims – although they also recognised the impact of the ongoing civil war in Somalia. In contrast, UNHCR staff in Kenya did not perceive climate change as a driving force for displacement. Instead, they focused on the "prima facie" refugee status granted to Somalis because they had a well-founded fear of persecution that fit the definition of the 1951 Convention, while the lack

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<sup>216</sup> Vid. WEERASINGHE, S., "In Harm's Way: International protection in the context of nexus dynamics between conflict or violence and disaster or climate change" (PPLA/2018/05), *Legal and Protection Policy Research Series*, UNHCR, December 2018, 205 pp. (last access 16/04/2020).

<sup>217</sup> HANSEN, E. ET AL. (eds.), "Climate Change and Disaster Displacement: an overview of UNHCR's role", Geneve (Switzerland), UNHCR, 2017, p. 8 (last access 06/04/2020). GOODWIN-GILL, G.; MCADAM, J., "UNHCR & Climate Change, Disasters and Displacement", UNHCR, 2017, p. 11 (last access: 06/04/2020).

<sup>218</sup> HANSEN, E. ET AL. (eds.), *op. cit. supra*, p. 7. GOODWIN-GILL, G.; MCADAM, J., *op. cit. supra*.

<sup>219</sup> For the same reasons, UNHCR's involvement in assisting IDPs resulting from mixed conflict/environmental situations would take place under the same premises as UNHCR assists any other IDP. In this regard, the existing framework already presents a major challenge for the protection of people fleeing indiscriminate violence, "where the regime is both fragile and prone to be inconsistently applied" (in GUTERRES, A., "Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective", *op. cit.*, p. 7).

of central government in Somalia could be described as "events that would seriously disturb public order" under the refugee notion of the OAU Convention<sup>220</sup>.

A fourth and final scenario would concern the role that UNHCR could play in assisting nationals from low-lying SIDS threatened by rising sea levels and related floods. Its intervention could be legally covered by the global mandate the Agency has received to assist stateless persons and prevent statelessness in general<sup>221</sup>.

#### **2.4. Attempts to expand UNHCR's mandate to include environmentally displaced persons**

The open-ended enabling clause in UNHCR's Statute, and the preceding use of it with returnees, non-refugee stateless persons and occasionally IDPs, has led some authors to suggest the possibility of doing the same regarding environmentally displaced persons. Thus, they have proposed that UNHCR's mandate be further extended to include victims of climate change and natural disasters within its scope of protection and action<sup>222</sup>.

Although UNHCR's mandate remains unchanged in this regard, this is not because the High Commissioner has not attempted to expand it. UNHCR's engagement with climate change and natural disaster-related displacement is not as recent as it could seem. Some work on the issue can be traced back to 1991 when UNHCR Executive Committee's Working Group on Solutions and Protection published a report<sup>223</sup> "to examine protection and solutions in a coherent and comprehensive manner"<sup>224</sup> of

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<sup>220</sup> HALL, N., "Moving Beyond its Mandate? UNHCR and Climate Change Displacement", *Journal for International Organizations Studies*, vol. 4, issue 1, 2013, pp. 102-103.

<sup>221</sup> GUTERRES, A., "Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective", *op. cit.*, p. 7.

<sup>222</sup> Vid., for instance, ESPÓSITO, C.; TORRES CAMPRUBÍ, A., "Cambio climático y derechos humanos: El desafío de los 'nuevos refugiados'", *Revista de Derecho Ambiental de la Universidad de Palermo*, Año I, No. 1, May 2012, pp. 23-24. FORMALÉ, E.; DOEBBLER, C., "UNHCR and protection and assistance for the victims of climate change", *The Geographical Journal*, Vol. 183, Issue 4, November 2017, pp. 329-335. In this regard, Borràs Pentinat has underlined that the recognition of environmentally displaced persons as refugees would allow UNHCR to offer them the same solutions as political refugees –i.e. voluntary repatriation or return to the country of origin, resettlement or transfer to a third country other than the country of asylum, and local integration or permanence in the host country (in: BORRÀS PENTINAT, S., "Refugiados ambientales: El nuevo desafío del Derecho Internacional del Medio Ambiente", *Revista de Derecho*, Vol. 19, No. 2, Diciembre 2006, p. 94).

<sup>223</sup> UNHCR, *Report of the Working Group on Solutions and Protection to the Forty-second Session of the Executive Committee of the High Commissioner's Programme* (EC/SCP/64), 12 August 1991, 17 pp.

<sup>224</sup> *Ibid.*, par. 3.

several categories of persons<sup>225</sup>. Among them were "persons forced to leave or prevented from returning because of natural or ecological disasters or extreme poverty"<sup>226</sup>.

The issues raised in this report will return to centre stage sixteen years later under the High Commissioner Mr António Guterres's leadership, whose personal commitment to the cause of environmentally displaced people has been responsible for the Agency's renewed engagement with the issue since 2007<sup>227</sup>. However, the High Commissioner's efforts have not focused so much on intensifying the Agency's operational activities on the ground, where UNHCR, although unofficially, has never stopped assisting environmentally displaced persons. Instead, he has devoted his endeavours to the political arena, trying to get States to accept a development of UNHCR's mandate that would make the Agency the main UN body for coordinating the international humanitarian response in the event of natural disasters.

Without seeking a complete reconstruction of the evolution of the UNHCR's position regarding victims of environmental displacement<sup>228</sup>, it is interesting to point out the shift in UNHCR's sensitivity to the issue of environmental and climate-related displacement. It corresponds to the two moments of the High Commissioner's most significant political activity, during which Mr António Guterres intended to secure an extension of UNHCR's mandate in this respect: the 2011 pilot proposal and the 2011 Nansen Conference. With the first, UNHCR sought to assume overall responsibility for

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<sup>225</sup> Ibid., par. 8.

<sup>226</sup> Ibid., pars. 32-35.

<sup>227</sup> According to GOODWIN-GILL, G.; MCADAM, J., "UNHCR & Climate Change, Disasters and Displacement", *op. cit.*, p. 14, the opening statement to the UNHCR Executive Committee in 2007 was the first time that the High Commissioner António Guterres mentioned environmental degradation and climate change as drivers of displacement. Vid. UNHCR'S EXECUTIVE COMMITTEE, Opening Statement by Mr. António Guterres, United Nations High Commissioner for Refugees, at the Fifty-eighth Session of the Executive Committee of the High Commissioner's Programme, Geneva, 1 October 2007 (last access 16/04/2020).

Successively, the High Commissioner has delivered speeches in different international forums calling the attention of the States on the subject, highlighting the impact that climate change and increased natural disasters will have on migration and the need to address the root causes, strengthen the resilience of vulnerable communities and protect displaced persons. Vid. UNHCR, Statement by Mr. António Guterres, United Nations High Commissioner for Refugees, to the Third Committee of the United Nations General Assembly, 62nd Session, New York, 8 November 2007 (last access 16/04/2020). UNHCR, Statement by Mr. António Guterres, United Nations High Commissioner for Refugees, United Nations Security Council Briefing "Maintenance of International Peace and Security: "New Challenges to International Peace and Security and Conflict Prevention", New York, 23 November 2011 (last access 16/04/2020).

<sup>228</sup> In this regard vid., HALL, N., "Moving Beyond its Mandate? UNHCR and Climate Change Displacement", *op. cit.*, pp. 97-103. GOODWIN-GILL, G.; MCADAM, J., "UNHCR & Climate Change, Disasters and Displacement", *op. cit.*, pp. 14-23.

protecting internal victims of natural disasters. At the Nansen Conference, the High Commissioner attempted to lobby States to develop an international framework on cross-border movements in the context of disasters and climate change-related slow-onset disruptions, with UNHCR as the supervisory authority.

Before analysing them, it must be highlighted that UNHCR has at all times criticised and rejected the use of the term "environmental refugees" or "climate refugees" to refer to persons who are forced to leave their usual place of residence as a result of climate change's long-term effects or sudden natural disasters. Underlying this rejection is the UNHCR's fear that the use of such terminology, which has no legal basis in international refugee law, "could potentially undermine the international legal regime for protection of refugees whose rights and obligations are quite clearly defined and understood"<sup>229</sup>.

#### **2.4.1. The 2011 pilot proposal**

The context in which the 2011 pilot proposal developed was marked by UN General Assembly Resolution 46/182<sup>230</sup>. This decision led to creating the Inter-Agency Standing Committee (IASC) as a high-level humanitarian coordination group. The Committee brings together all operational organisations within the UN system and some non-UN organisations, such as the International Committee of the Red Cross, the League of Red Cross and Red Crescent Societies or the International Organization for Migration<sup>231</sup>. Relevant non-governmental organisations are also invited to participate on an ad hoc basis<sup>232</sup>. Its mission is to ensure improved preparedness and a rapid, coherent and coordinated humanitarian response for victims of natural disasters and other emergencies<sup>233</sup>. The IASC's leadership is held by the UN Secretary-General, who designates a high-level official – the Emergency Relief Coordinator (ERC)<sup>234</sup>.

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<sup>229</sup> GUTERRES, A., "Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective", *op. cit.*, p. 9.

<sup>230</sup> UNGA, *Resolution 46/182 Strengthening of the coordination of humanitarian emergency assistance of the United Nations, adopted by the General Assembly at its Forty-sixth session (A/RES/46/182)*, 14 April 1992, pp. 49-52.

<sup>231</sup> *Ibid.*, Annex, par. 38.

<sup>232</sup> *Id.*

<sup>233</sup> The guiding principles to be followed and the measures to be taken to achieve this objective are set out in *ibid.*, pars. 1-33.

<sup>234</sup> *Ibid.*, par. 34.

As part of the United Nations humanitarian reform process, the IASC convened in September 2005 to designate global "cluster leads" for humanitarian emergencies in nine sectors or areas of activity<sup>235</sup>. While UNHCR was designated as the global protection cluster lead, at the country level in disaster situations, the protection mandate is shared by three agencies, namely UNHCR, UNICEF and OHCHR<sup>236</sup>. However, this solution of a shared mandate has been criticised by the bodies involved. On 26 October 2010, in a letter to the ERC, UNHCR highlighted the drawbacks and delays caused by the lack of clear benchmarks for determining which Agency should lead the protection cluster at country level in the aftermath of a natural disaster<sup>237</sup>. It suggested that UNHCR take the lead in cases where there was no protection coordination mechanism led by another agency on the concerned State's territory, and no one could fill the gap. Otherwise, UNHCR would limit itself to supporting that other Agency already present in the field<sup>238</sup>.

The ERC agreed with the proposal and, after discussions with OHCHR and UNICEF, went a step further suggesting that UNHCR should overall assume the protection cluster lead in disaster situations unless the State concerned objected to it<sup>239</sup>. The ERC proposed to implement such a proposal for 12 months to assess its operability<sup>240</sup>. After UNHCR, OHCHR and UNICEF expressed their support for the ERC proposal, it was approved by the IASC Principals' meeting on 15 December 2010<sup>241</sup>, setting out that:

"Where a protection coordination mechanism already exists, that arrangement and its leadership will continue. Where OHCHR is present with adequate capacity and expertise and UNHCR is not, OHCHR will assume

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<sup>235</sup> IASC, *Guidance Note on using the Cluster Approach to strengthen humanitarian response*, 24 November 2006, p. 1. Originally, the nine areas of activity were: Nutrition; health, water/sanitation, emergency shelter, camp coordination/management, protection, early recovery, logistics and emergency telecommunications (ibid., p. 3). Subsequently, two more strategic sectors were added, namely food security and education. The Cluster Approach was first applied in the aftermath of the 2005 earthquake in Pakistan [in: UNHCR, *Emergency Handbook*, UNHCR, 4th edition, digital version (last access: 06/04/2020)].

<sup>236</sup> IASC, *op. cit. supra*, p. 3.

<sup>237</sup> GOODWIN-GILL, G.; MCADAM, J., "UNHCR & Climate Change, Disasters and Displacement", *op. cit.*, p. 18. Vid. also, GUTERRES, A., "Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective", *op. cit.*, p. 7, echoing the complaint of the UN Emergency Relief Coordinator, who also criticised that "[t]his (...) formula does not bring about the necessary predictability or rapidity of response".

<sup>238</sup> GOODWIN-GILL, G.; MCADAM, J., *op. cit. supra*, p. 18.

<sup>239</sup> Id.

<sup>240</sup> Id.

<sup>241</sup> Id.

the protection coordination role. Only where these two elements are not present will UNHCR assume the role of leading and coordinating the protection cluster"<sup>242</sup>.

Thus, the pilot arrangement sought to quickly resolve the cluster lead's designation at the country level by setting a clear set of parameters instead of leaving the lead agency's appointment fully open<sup>243</sup>.

The last step was to get approval from the UNHCR's Executive Committee. The IASC Principal presented the pilot arrangement to it in January 2011, and the discussion within the Executive Committee's Standing Committee took place at its 51st meeting from 21-23 June 2011<sup>244</sup>. Almost half of the delegations that took the floor at the meeting "expressed support in principle (...) for the Office to undertake the role of lead agency for the protection of people affected by natural disasters as a pilot arrangement"<sup>245</sup>. However, they also had reservations about the "desirability" of UNHCR taking on additional responsibilities and activities in the longer term<sup>246</sup>. Several delegations declared their preference for UNHCR to focus on its mandate responsibilities<sup>247</sup>. Others "called for further independent evaluation, as well as discussion amongst agencies and States, including at the level of the General Assembly, before assigning these overall protection coordination responsibilities [in natural disasters] to UNHCR"<sup>248</sup>.

The African Group took the opportunity to raise other concerns of governments regarding UNHCR's intervention in States affected by natural disasters, which should be subject to several requirements, namely: a) the involved State's consent is needed not only before the UNHCR's intervention but also during the entire operation, and it may be withdrawn at any time; b) the State concerned shall determine the area of operation, but in consultation with UNHCR; c) funding for any UNHCR operation in natural disaster situations shall come from voluntary contributions, so that programmes linked

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<sup>242</sup> UNHCR'S EXECUTIVE COMMITTEE, *UNHCR's role in support of an enhanced humanitarian response for the protection of persons affected by natural disasters* (EC/62/SC/CRP.19), 6 June 2011, par. 21.

<sup>243</sup> *Id.*

<sup>244</sup> UNHCR'S EXECUTIVE COMMITTEE, *Report of the fifty-first meeting of the Standing Committee (21-23 June 2011)* (A/AC.96/1104), 20 September 2011, 13 pp.

<sup>245</sup> *Ibid.*, par. 31. This support was based on the agreement that the pilot project would be evaluated subsequently, and a full report submitted to the Standing Committee, the evidence of which would be used to assess the consequences, in particular financial, of UNHCR's involvement in humanitarian assistance to victims of natural disasters (*id.*).

<sup>246</sup> *Id.*

<sup>247</sup> *Ibid.*, par. 32.

<sup>248</sup> *Id.* [bracketed text added].

to its core mandate are not undermined; d) durable solutions programs shall not apply in the case of natural disasters; e) UNHCR's intervention in the field of natural disasters should aim primarily at helping the States concerned to strengthen their response capacity so that they can cope autonomously in the future; f) any UNHCR operations will be carried out in coordination and cooperation with the State concerned<sup>249</sup>.

Overall, delegations called for further explanations, more in-depth dialogue and the "postponement of any designation of responsibility as lead agency for protection in situations of natural disaster until outstanding questions were answered"<sup>250</sup>. Finally, the pilot arrangement was discarded. At the Executive Committee's meeting on 3 October 2011, the High commissioner declared that "[a]s agreement had not yet been reached on a more predictable engagement in leading the protection cluster at country level in natural disasters, UNHCR would continue to operate on a case-by-case basis, as in the past"<sup>251</sup>.

For the time being and in the years to come, it seems that the case-by-case response will remain the prevailing operational logic both in UNHCR and in the United Nations system in general. States remain reluctant to create a new UN organisation to protect and assist environmentally displaced persons or give such a legal mandate to an existing body like UNHCR. Instead, they appear more comfortable with the current *modus operandi*, which involves a wide range of humanitarian, human rights and development actors, who inevitably need to coordinate to make the best use of their respective mandates in complementary areas of activity.

#### **2.4.2. The Nansen Conference**

In June 2011, the Norwegian Ministry of Foreign Affairs and the Ministry for the Environment organised an international conference in Oslo to commemorate the 100th anniversary of Nansen's death, the first High Commissioner for Refugees. The event was entitled "Climate Change and Displacement". UNHCR took the occasion to renew

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<sup>249</sup> GOODWIN-GILL, G.; MCADAM, J., "UNHCR & Climate Change, Disasters and Displacement", *op. cit.*, p. 18, footnote 70.

<sup>250</sup> UNHCR'S EXECUTIVE COMMITTEE, *Report of the fifty-first meeting of the Standing Committee (21-23 June 2011)*, *op. cit.*, pars. 32-36.

<sup>251</sup> UNGA, *Executive Committee of the Programme of the United Nations High Commissioner for Refugees. Sixty-second session. Summary record of the 648th meeting (A/AC.96/SR.648)*, 5 Mars 2012, par. 15.

States commitment with UNHCR's mandate expansion regarding cross-border environmentally displaced persons<sup>252</sup>.

The High Commissioner Mr António Guterres once again called for developing a new "global guiding framework for situations of cross-border displacement resulting from climate change and natural disasters"<sup>253</sup>. He also urged the attending States to endorse the Nansen Principles<sup>254</sup>. Interestingly, Principle IX states that "(a) more coherent and consistent approach at the international level is needed (...)", recommending "States, *working in conjunction with UNHCR* and other relevant stakeholders, [to develop] a guiding framework or instrument in this regard"<sup>255</sup>. Ensuring the Nansen Principles received majority support from the international community was another way for UNHCR to take a leadership role in developing this new instrument that would have helped extend its mandate<sup>256</sup>.

Government representatives, however, were strongly reluctant to support UNHCR's pretensions. Statements from the Kenyan Commissioner for Refugees Affairs, who attended to the Nansen conference, resume very well States' feelings about the involvement of UNHCR with cross-border migrants forcibly displaced by environmental causes: "UNHCR have already expanded to include statelessness, IDPs and [now] including environment-related movers, a fourth category of people, how amorphous is this organisation going to be?"<sup>257</sup>

UNHCR's Ministerial Meeting in December 2011 confirmed the lack of international consensus on developing a global guiding framework on cross-border displacement resulting from disasters and the negative impacts of climate change.

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<sup>252</sup> HALL, N., "Moving Beyond its Mandate? UNHCR and Climate Change Displacement", *op. cit.*, p. 101.

<sup>253</sup> UNHCR, *Nansen Conference on Climate Change and Displacement; Statement by António Guterres, United Nations High Commissioner for Refugees*, Oslo (Norway), 6 June 2011.

<sup>254</sup> *Id.*

<sup>255</sup> NRC, "The Nansen Conference. Climate Change and Displacement in the 21st Century", Oslo (Norway), 5-7 June 2011, p. 5 (last access: 06/04/2020) [italics added and verb tense changed].

<sup>256</sup> HALL, N., "Moving Beyond its Mandate? UNHCR and Climate Change Displacement", *op. cit.*, p. 101, observing: "UN-HCR wanted states to endorse their position as the leader and facilitator of discussions on a new protection framework. The Nansen Conference was used by UNHCR to legitimate the importance of addressing "protection gaps" and to gain a mandate in developing these new legal frameworks" (*id.*).

<sup>257</sup> *Id.* The author held telephone interviews with several UNHCR member state representatives. Some argued that it was "too early" to talk about developing soft-law frameworks for climate change displacement. Others expressed concern that UNHCR did not have the capacity or financial resources to expand in view of the financial difficulties already faced by the Agency in meeting its obligations towards refugees (*ibid.*, pp.101 *in fine* and 102).



Nevertheless, not all the High Commissioner's efforts were in vain. Based on the Nansen conference's conclusions, five States – Costa Rica, Germany, Mexico, Norway and Switzerland - pledged their support for the UNHCR initiative<sup>258</sup>. These pledges would become the seed of the Nansen Initiative on Disaster-Induced Cross-Border Displacement, created by Norway and Switzerland in October 2012. The initiative seeks "to build consensus on a protection agenda addressing the needs of people displaced across borders in the context of disasters and the effects of climate change"<sup>259</sup>.

### **2.4.3. Why has UNHCR failed in its attempts to expand its mandate? An explanation from the general theory of international organisations**

Hall has tried to explain the High Commissioner's failure to expand UNHCR's mandate by adducing its nature as a normative Intergovernmental Organisation (IGO)<sup>260</sup>. For her, the UNHCR's response to "environmental/climate refugees" has been shaped by the fact that the 1951 Refugee Convention has adopted an "almost constitutional character"<sup>261</sup> within the Agency, while the Geneva's refugee-definition has become "the heart of UNHCR's mandate and identity"<sup>262</sup>. Besides, UNHCR staff

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<sup>258</sup> Vid., RIERA, J.; STOLZE, B. (EDS.), "Pledges 2011. Ministerial Intergovernmental Event on Refugees and Stateless Persons (Geneva, Palais des Nations, 7-8 December 2011)", Geneva (Switzerland), UNHCR, October 2012, 183 pp. (last access 06/04/2020), in particular the pledges of Germany (p. 76); Mexico (p. 96 *in fine*); Norway (102) and Switzerland (p. 119). Costa Rica pledged its support after the meeting. Basic text of the pledge:

"A more coherent and consistent approach at the international level is needed to meet the protection needs of people displaced externally owing to sudden-onset disasters, including where climate change plays a role. We therefore pledge to cooperate with interested states, UNHCR and other relevant actors with the aim of obtaining a better understanding of such cross border movements at relevant regional and sub-regional levels, identifying best practices and developing consensus on how best to assist and protect the affected people" (p. 38).

<sup>259</sup> THE NANSEN INITIATIVE, "Towards a Protection Agenda for people displaced across borders in the context of disasters and the effects of climate change", Swiss Federal Department of Foreign Affairs; Norwegian Ministry of Foreign Affairs, p. 1 (last access 06/04/2020).

<sup>260</sup> HALL, N., "Moving Beyond its Mandate? UNHCR and Climate Change Displacement", *op. cit.*, pp. 92-94. She differentiates between normative and functional IGOs. The former "have supervisory authority over a body of international law, [which] means that states have mandated an IGO to promote and ensure compliance with a discrete body of international rules and norms" (*ibid.*, p. 92). For example, UNHCR supervises refugee law. Instead, functional IGOs "exist to perform specific, discrete tasks and are often project-based organizations as a result, such as the World Meteorological Organization" (*id.*).

<sup>261</sup> *Ibid.*, p. 96, citing: Türk, V., "Freedom from Fear: refugees, the broader forced displacement context and the underlying international protection regime", in: Vicent Chetail (ed.), *Globalization, Migration and Human Rights: International Law Under Review*, Brussels, Bruylant, 2007, p. 499.

<sup>262</sup> *Id.*

have a "‘very strong collective identity’ who almost universally [believe] in the principles of the organisation's core mandate"<sup>263</sup>.

In this regard, the response given by a UNHCR former manager, during one of 45 interviews conducted by McNamara to several UN ambassadors and senior diplomats in 2004, is quite symptomatic about the perception of "environmental/climate refugees" within the Agency at that time:

"If you mention this kind of issue in UNHCR, a lot of people will sigh and won't want to discuss it with you...The first and standard UNHCR response is we don't deal with such things as an environmental refugee...The position of UNHCR is that by using or appropriating the concept refugee, it blurs the boundaries between what UNHCR consider to be a refugee and what other displaced people are. We convene the international refugee protection regime; UNHCR would argue that it's a logical impossibility for somebody to be an environmental refugee because of the grounds of becoming a refugee as stipulated in the 1951 Convention does not contain any reference to environmental issues"<sup>264</sup>.

In summary, when UNHCR's Executive Committee published its report on solutions and protection for different categories of forced displaced persons in the 1990s, no one believed that those displaced for environmental reasons could fall within UNHCR's core mandate. Even when UNHCR began collaborating with the IASC working group on migration, displacement and climate change in mid-2008, being already Mr António Guterres the High Commissioner, UNHCR's focal point was to criticise the use of the term " environmental/climate refugee ", as it could undermine the Agency's core identity<sup>265</sup>.

Moving forward, when the High Commissioner Mr António Guterres sought to expand UNHCR's mandate in 2011, he did so following the logic of appropriateness typical of normative IGOs<sup>266</sup>. In other words, instead of feeling that the international community's growing concern for environmentally displaced persons might threaten

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<sup>263</sup> Id., citing: Betts et al., *UNHCR: The Politics and Practice of Refugee Protection*, Abingdon, Routledge, 2008, p. 83 [verb tense changed].

<sup>264</sup> McNAMARA, K., "Conceptualizing discourses on environmental refugees at the United Nations", *Population and Environment*, Vol. 29, Issue 1, September 2007, p. 19.

<sup>265</sup> HALL, N., "Moving Beyond its Mandate? UNHCR and Climate Change Displacement", *op. cit.*, pp. 99 and 104.

<sup>266</sup> Ibid., pp. 93-94. Normative IGOs acts under the logic of appropriateness, which "is based on whether or not it adheres to, and supports, the norms and laws at the heart of their identity and legitimacy" (ibid., p. 94). In contrast, the logic of consequences is typical of Functional IGOs, being the result "of a rational cost-benefit calculation", so that its expansion is determined by financial incentives (id.).

UNHCR's core mandate, he believed that he could use it to extend UNHCR's moral legitimacy into new areas<sup>267</sup>. It would be the first step for UNHCR to take on the legal protection of a new category of vulnerable persons ignored by States until then.

Once again, the two initiatives' failure could be explained with Hall's characterisation of normative IGOs, since this kind of IGO only expands when "there is a strong issue linkage between a new issue area and their core norm"<sup>268</sup>. In both cases, the 2011 pilot proposal and the Nansen Conference, most States did not endorse the expansion of UNHCR's mandate to the area of environmental displacement precisely because they perceived that this could end up diluting the Agency's legal regime.

Indeed, the 40 interviews Goodwin-Gill and McAdam held with UNHCR staff and other stakeholders as recently as 2017 show that:

"...while individual staff recognised that people could be displaced for multiple reasons, and that displacement drivers were often tightly interconnected (...), this does not appear to be widely understood across UNHCR as a whole. Some staff believed that climate change and disaster-related displacement must inevitably become part of UNHCR's work; others regarded it as a distinct concept that had little to do with what they perceived as UNHCR's 'core' work on conflict"<sup>269</sup>.

As can be seen, there is one argument that is continuously repeated in a circular way: UNHCR is limited by a restrictive mandate that not consider environmental reasons as grounds for refuge. At the same time, this argument shapes the dominant discourse among States and within the Agency's staff, since both are reluctant to expand the Agency's mandate to include people environmentally displaced precisely because they are not refugees in the legal sense of the term<sup>270</sup>.

For this reason, Goodwin-Gill and McAdam concluded the report they wrote for UNHCR in 2017 by suggesting, *inter alia*, that the Agency should adopt a strategic plan which enables staff "to undertake more deliberate work in this area"<sup>271</sup>. In turn, this approach would contribute to creating a "cultural change within UNHCR to accept

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<sup>267</sup> Ibid., p. 104.

<sup>268</sup> Ibid., p. 94.

<sup>269</sup> GOODWIN-GILL, G.; MCADAM, J., "UNHCR & Climate Change, Disasters and Displacement", *op. cit.*, p. 26.

<sup>270</sup> MCNAMARA, K., "Conceptualizing discourses on environmental refugees at the United Nations", *op. cit.*, p. 19.

<sup>271</sup> GOODWIN-GILL, G.; MCADAM, J., "UNHCR & Climate Change, Disasters and Displacement", *op. cit.*, p. 26.

climate change, disasters, and displacement as an integral part of the agency's work; as well as overcoming perceptions of UNHCR's limited mandate"<sup>272</sup>.

## 2.5. UNHCR's role on climate change and natural disasters-related displacement

Although UNHCR has not formally extended its mandate concerning environmentally displaced persons, this does not mean that it has not been involved in their protection or is no longer interested in the issue. Indeed, it is not futile to warn of the risk of putting pressure on States to extend UNHCR's mandate in this way, which could be counterproductive to the work the Agency does informally in this area through its *good offices*<sup>273</sup>.

Special mention should be made of the UHCR Strategic Guidelines, which serve as a roadmap for the work the Agency has committed to undertake on forced displacement over the next five years (2017-2021)<sup>274</sup>. This document already includes the issue of displacement related to climate change and natural disasters as an area of concern for the Agency<sup>275</sup>. Specifically, UNHCR is committed to:

1. *Protect* people in different regions of the world, including by "[contributing] to advancing legal policy and practical solutions for the protection of people displaced by the effects of climate change and natural disasters, in recognition of the acute

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<sup>272</sup> Id.

<sup>273</sup> The *good offices* mechanism introduces an element of flexibility and dynamism within UNHCR's mandate, allowing the agency to assist different groups of persons outside its mandated functions when requested to do so by the UN Secretary-General or the General Assembly. Vid UNHCR, "Note on the Mandate of the High Commissioner for Refugees and his Office", UNHCR, October 2013, p. 10 (last access: 10/04/2020), noting that the UHNCR has exercised its *good offices*

"especially in circumstances where it was neither feasible nor reasonable to treat them (other groups of vulnerable persons) differently from other categories of concern to the High Commissioner [particularly in the context of voluntary repatriation or special humanitarian coordination functions for internally displaced populations]. Such operational involvement has been of a humanitarian character and largely meant channeling international assistance or providing protection".

One example of UNHCR's *good offices* in favor of victims of natural disasters was the provision of humanitarian relief to those affected by the tsunami disaster in Sri Lanka and the Indonesian province of Aceh at the end of December 2004, following the request of the UN Secretary-General (id.).

<sup>274</sup> UNHCR, *UNHCR's Strategic Directions 2017–2021*, 16 January 2017, 35 pp. In April 2022, barely a month before completing the final version of this thesis, UNHCR uploaded its new strategic framework for the next five years: UNHCR, *UNHCR's Strategic Directions 2022–2026*, 1 March 2022, 35 pp. Vid. also UNHCR, *Strategic Framework for Climate Action*, 20 pp. and UNHCR, *Operational Strategy for Climate Resilience and Environmental Sustainability 2022-2025*, December 2021, 23 pp.

<sup>275</sup> In parallel, UNHCR appointed Andrew Harper as its Special Advisor on Climate Action as of 1 January 2020 to intensify UNHCR's response to the climate emergency and enhance protection and assistance to people forcibly displaced by the adverse effects of climate change and disasters. Vid. PDD, In Conversation With... Mr. Andrew Harper (last access: 21/05/2021).

humanitarian needs associated with displacement of this kind, and its relationship to conflict and instability".

2. *Respond*, by "[contributing] to any inter-agency response to emergencies resulting from natural disasters, with a particular focus on providing protection leadership, where the three criteria of field presence, a government request, and inter-agency agreement are met"<sup>276</sup>.

Aligned with these two core directions, UNHCR's role in addressing climate change and natural disaster-related displacement includes the following four areas of action<sup>277</sup>:

1. Operational engagement to avert, minimise and address internal and cross-border disaster displacement<sup>278</sup>.
2. Legal advice, guidance and normative development at national, regional and international levels to support enhanced protection of the rights of people displaced in the context of disasters and climate change<sup>279</sup>.

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<sup>276</sup> UNHCR, *UNHCR's Strategic Directions 2017–2021*, *op. cit.*, pp. 18 *in fine* and 21 [infinitive changed].

<sup>277</sup> From HANSEN, E. ET AL. (eds.), "Climate Change and Disaster Displacement: an overview of UNHCR's role", *op. cit.*, p. 5.

<sup>278</sup> UNHCR has developed *Disaster Risk Reduction Operational Administrative Instructions* to be applied when planning a refugee camp to increase the resilience of both refugees and IDPs and their host communities. Planning helps to enhance the camp's sustainability, minimising its impact on the environment and the resources of the host community, which in turn avoids tensions between hosts and hosted and the risk of secondary movements. Besides, UNHCR has put in place contingency and preparedness plans to prevent or reduce the risk of displacement due to disasters. Examples include: a) the *UNHCR Emergency Handbook*, which contributes to preparedness efforts led by the United Nations Resident Coordinator or Humanitarian Coordinator in each country for potential refugee emergencies (influx), IDP situations, natural disasters and other non-refugee emergencies; b) the *UNHCR Preparedness Package for Refugee Emergencies*, which includes advance preparedness actions to respond rapidly to displacement in both natural disaster and conflict situations; c) and finally, the *Camp Management Toolkit*, developed by UNHCR in partnership with IOM, which aims to increase the response capacity of displaced populations (both IDPs and refugees) living in community settings in the event of natural disaster or conflict, avoiding secondary displacement. Vid. HANSEN, E. ET AL. (eds.), "Climate Change and Disaster Displacement: an overview of UNHCR's role", *op. cit.*, p. 6

<sup>279</sup> The role played by UNHCR has been instrumental in the development and promotion of various soft law instruments. For example, a) the *Guiding Principles on Internal Displacement*, which protect people fleeing both conflict situations and natural disasters and are discussed in detail in Chapter VI. b) The 2014 *Brazilian Declaration and Plan of Action*, to which we referred in Chapter III. Adopted on the occasion of the commemoration of the 30th anniversary of the Cartagena Declaration, it expresses the importance that climate change and natural disasters have acquired as a factor driving cross-border displacement. c) The *Nansen Principles*, based mostly on the conclusions of the 2011 Bellagio Expert Round Table on Climate Change and Displacement organized by UNHCR. The Nansen Principles were followed by the 2015 *Nansen Initiative Protection Agenda for cross-border disaster displacement* and the *Platform on Disaster Displacement*. d) Or the 2015 *Guidance on Protection People from Disasters and Environmental Change through Planned Relocation*, developed in collaboration with the Brookings Institution and the Georgetown University. Vid. HANSEN, E. ET AL. (eds.), *op. cit. supra*, pp. 9-10.

At the regional level, UNHCR has also developed many initiatives and provided legal assistance to help States protect persons displaced by environmental factors in national legislation. For example, UNHCR

3. Global policy coherence to ensure that disaster displacement issues are effectively integrated into other relevant policy arenas<sup>280</sup>.
4. Research and knowledge production to fill the gaps underlying operational and policy work<sup>281</sup>.

Focusing on the first of these four areas, UNHCR has been involved in operations to assist people displaced across borders or within the country due to sudden or slow-onset environmental disturbances, including those linked to or exacerbated by climate

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organised a workshop in 2015 to promote national implementation and compliance with the Kampala Convention in Africa, which explicitly recognises IDPs due to natural disasters and climate change. For its part, UNHCR's Regional Office for the Americas has compiled best practices on migration options for victims of natural and environmental disasters from Argentina, Brazil, Bolivia, Cuba, Panama, Peru and Venezuela. Vid. HANSEN, E. ET AL. (eds.), *op. cit. supra*, p. 9.

<sup>280</sup> UNHCR's engagement in this area has produced some remarkable results. From 2008 to 2016, UNHCR advised Parties of the UNFCCC to consider including forced human mobility in climate change negotiations. Likewise, UNHCR is member of the Advisory Group on Climate Change and Human Mobility, whose main task is to mobilize the knowledge and expertise to support the design of effective human mobility resilience measures to climate change. UNHCR's involvement has been essential for the inclusion of a reference to "climate change induced displacement, migration and planned relocation" in the 2010 Cancun Adaptations Framework (par. 14.f); and for the establishment of a task force "to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change" within the framework of the 2015 Paris Agreement (par. 50). Additionally, UNHCR has been significantly involved in the attention the issue has received by the UNGA, which resulted in the 2016 Report from the Secretary-General and the 2016 New York Declaration for Refugees and Migrants. Both documents refer to the impacts of human mobility posed by climate change's adverse effects, natural disasters (some of which may be linked to climate change), and other environmental factors. Vid. HANSEN, E. ET AL. (eds.), *op. cit. supra*, p. 11. UNFCCC, *Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010. Addendum Part Two: Action taken by the Conference of the Parties at its sixteenth session* (FCCC/CP/2010/7/Add.1), 15 March 2011, par. 14 (f). UNFCCC, *Conference of the Parties, Twenty-first session, Paris, 30 November to 11 December 2015. Adoption of the Paris Agreement* (FCCC/CP/2015/L.9/Rev.1), 12 December 2015, par. 50. UNGA, *Report of the Secretary-General. In safety and dignity: addressing large movements of refugees and migrants* (A/70/59), 21 April 2016, pars., 3, 18, 20, 27, 47, 49 and 67. UNGA, *Draft resolution referred to the high-level plenary meeting on addressing large movements of refugees and migrants by the General Assembly at its seventieth session. New York Declaration for Refugees and Migrants* (A/71/L.1), 13 September 2016, pars. 1, 18, 43 and 50.

<sup>281</sup> UNHCR has produced, alone or in partnership with other relevant stakeholders, a good number of documents that address the lack of understanding of how the effects of climate change and natural disasters impact on human mobility. Some research has focused on collecting testimonies from refugees on how climate change may have exacerbated situations of persecution or on mapping migration patterns resulting from environmental disruptions. To this end, UNHCR has improved the tools and methods used to collect and analyse data on displacement related to environmental factors. Other studies have addressed legal gaps and challenges in protecting environmentally displaced persons in the current international system, or the specific needs of environmentally displaced persons. In the latter area, UNHCR has undertaken additional research on the implications of an expanded mandate for UNHCR to assume leadership of humanitarian operations in the context of natural disasters. In addition, the agency has also encouraged dialogue and coordination between the academic and policy communities, supporting various meeting forums or helping to disseminate the results of various research projects on the subject. Vid. HANSEN, E. ET AL. (eds.), "Climate Change and Disaster Displacement: an overview of UNHCR's role", *op. cit.*, pp. 12-13.

change. The scope of UNHCR's involvement has varied from operation to operation, from the provision of protection to material assistance<sup>282</sup>.

Before analysing UNHCR's operational engagement in the ground, it is interesting to reproduce Goodwin-Gill and McAdam's reflection. The authors have pointed out that UNHCR's involvement has so far been more "opportunistic" than strategic<sup>283</sup>. In other words, its intervention has been mostly motivated by the fact that UNHCR was already physically present on the ground through its field offices, and was requested by the host State to assist<sup>284</sup>, and not so much because UNHCR deliberately targeted those areas or regions most prone to environmental disruption.

### **2.5.1. UNHCR's field operations to assist internally displaced persons**

Most of UNHCR's operations, addressing the protection and assistance needs of persons forced to leave their place of habitual residence due to environmental disturbances, have been internal displacement situations.

After the 2011 pilot arrangement failure, UNHCR has continued to operate in the Global Protection Cluster framework, whose mission is to ensure a well-coordinated and effective protection preparedness and responses in humanitarian crises<sup>285</sup>. Scenarios for action include armed conflicts, climate change-related and natural disasters, when the national response capacity have become overwhelmed by the emergency in question<sup>286</sup>.

At the operational level, UNHCR, OHCHR and UNICEF continue to share cluster leadership in humanitarian protection in natural disasters. Therefore, the leading role continues to be decided on a case-by-case basis, depending on each of the three mandated agencies' in-country capacity to deal with the specific emergency and always

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<sup>282</sup> GOODWIN-GILL, G.; MCADAM, J., "UNHCR & Climate Change, Disasters and Displacement", *op. cit.*, p. 27.

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

<sup>285</sup> *Vid.* GLOBAL PROTECTION CLUSTER, Who we are (last access: 06/04/2020), defining the Cluster as "a network of nongovernmental organizations (NGOs), international organizations and United Nations (UN) agencies". According to GUTERRES, A., *Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective*, *op. cit.*, p. 7, the UNHCR, besides having assumed the global leadership of the Protection Cluster, also co-leads the global Camp Coordination and Camp Management Cluster with the IOM, and the Emergency Shelter Cluster with the International Federation of Red Cross and Red Crescent Societies.

<sup>286</sup> *Vid.* GLOBAL PROTECTION CLUSTER, Who we are (last access: 06/04/2020).

under the UN Humanitarian or Resident Coordinator's leadership<sup>287</sup>. In any case, the intervention always occurs at the request and with the affected State's consent.

Nevertheless, it should be noted that where "UNHCR had an established presence and programme in a country that was struck by such a disaster, the Office offered its support to the authorities as a sign of solidarity and as a contribution to broader international and UN relief efforts"<sup>288</sup>. The Agency has acted in this way whether or not the Global Protection Cluster has been formally activated<sup>289</sup>. In this regard, it is significant to note that of at least 43 operations in which UNHCR has been involved between 1999 and 2016 providing protection and assistance to IDPs displaced by natural disasters, 35 have been carried out outside the cluster model<sup>290</sup>. By contrast, UNHCR has assumed the leadership of a formally activated operation within the "protection cluster" on only eight times, such as in the aftermath of the 2009 typhoons in the Philippines or the 2010 floods in Pakistan<sup>291</sup>. UNHCR has also led the protection clusters in Ethiopia and Myanmar, both of which began as conflict but are now mixed conflict/slow-onset climate change situations<sup>292</sup>.

Other significant examples of UNHCR's past emergency interventions include the 2004 Indian Ocean tsunami, the 2005 South Asia earthquake, the 2006 floods in Somalia and the 2007 floods in Pakistan<sup>293</sup>. In 2008, UNHCR provided emergency assistance in the Yemen floods, the China earthquake and the cyclone-related floods in Myanmar<sup>294</sup>. More recently, UNHCR has supported Ecuador's government in protecting

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<sup>287</sup> GLOBAL PROTECTION CLUSTER, Themes: Protection in the context of climate change and disasters (last access: 06/04/2020). Also in: GOODWIN-GILL, G.; MCADAM, J., "UNHCR & Climate Change, Disasters and Displacement", *op. cit.*, p. 11. GUTERRES, A., "Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective", *op. cit.*, p. 7. The Humanitarian Coordinator is the highest-ranking official of the UN in a country experiencing a humanitarian emergency. The appointment is made by the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordination, who heads the UN Office for the Coordination of Humanitarian Affairs. In most cases, the role is assumed by the UN Resident Coordinator, who is the head of the UN diplomatic mission in a country, having the same rank as an ambassador. Its function is to group and coordinate the different UN agencies that are present in that country to improve the efficiency and effectiveness of their operational activities.

<sup>288</sup> GUTERRES, A., *op. cit. supra*, p. 6.

<sup>289</sup> GOODWIN-GILL, G.; MCADAM, J., "UNHCR & Climate Change, Disasters and Displacement", *op. cit.*, p. 11.

<sup>290</sup> *Ibid.*, p. 12.

<sup>291</sup> *Ibid.*, pp. 11 *in fine* and 12. In Pakistan, besides leading the inter-agency protection cluster, UNHCR also took over the cluster on camp coordination and emergency shelter management (*ibid.*, p. 11 *in fine*).

<sup>292</sup> *Id.* Also in HANSEN, E. ET AL. (eds.), "Climate Change and Disaster Displacement: an overview of UNHCR's role", *op. cit.*, p. 8.

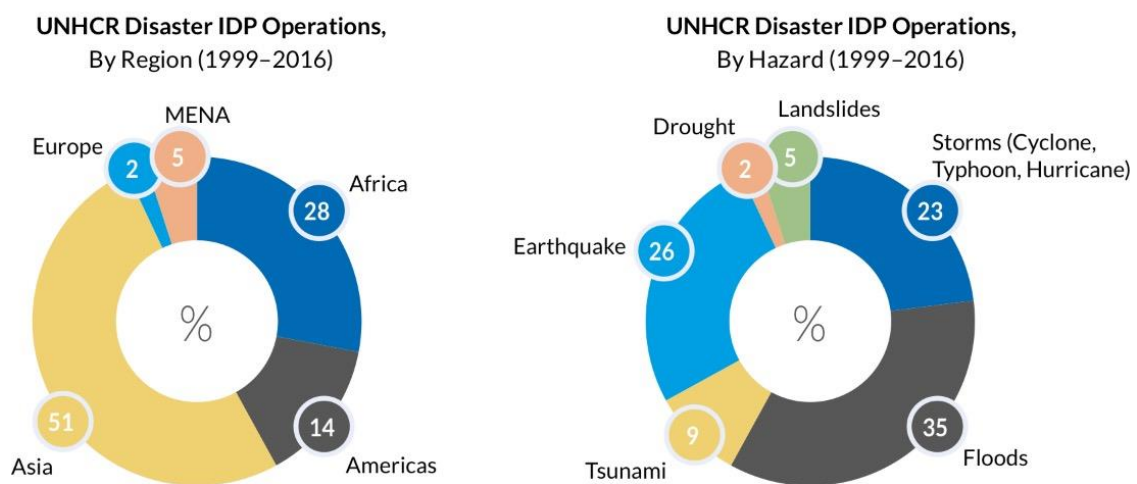
<sup>293</sup> UNHCR, "Emergency responses", in: *Global Report 2008: facing new challenges*, Geneva (Switzerland), UNHCR, June 2009, p. 43 (last access: 03/07/2020).

<sup>294</sup> *Id.*



the victims of the earthquake that struck the country in 2016<sup>295</sup>, or has assisted IDPs displaced in 2019 by Hurricane Dorian in the Bahamas or by the Idai cyclone in Mozambique and southern Africa<sup>296</sup>. The graphic below shows the most common environmental disruption UNHCR has dealt with between 1999 and 2006 has been Floods (35%), followed by earthquakes (26%). On the other hand, most operations have taken place in Asia (51%), and Africa (28%).

**Figure 30-UNHCR Disaster IDP Operations (1999-2016)**<sup>297</sup>



It is worth concluding by noting that UNHCR has reiterated its commitment, on the one hand, to continue to collaborate with any inter-agency response undertaken to protect disaster-induced internal displacement<sup>298</sup>. On the other hand, to be proactive in assuming protection leadership whenever necessary and when the three criteria that

<sup>295</sup> HANSEN, E. ET AL. (eds.), “Climate Change and Disaster Displacement: an overview of UNHCR’s role”, *op. cit.*, p. 8. Following the 2016 earthquake in Ecuador, the global protection cluster was not activated, but this did not prevent UNHCR from taking the lead in protection activities during the emergency phase, together with government counterparts. After the emergency phase, UNHCR continued to work in collaboration with UNICEF and UN Women to help build capacity and integrate protection with state and local non-governmental actors (In: GOODWIN-GILL, G.; MCADAM, J., “UNHCR & Climate Change, Disasters and Displacement”, *op. cit.*, p. 12).

<sup>296</sup> UNHCR, “Global Trends. Forced Displacement in 2019”, Copenhagen (Denmark), UNHCR (Statistics and Demographics Section), 2019, p. 34 (last access: 06/04/2020). In Mozambique, UNHCR led inter-agency protection by providing timely information and analysis to guide the broader humanitarian response, targeted assistance to IDPs and supported the authorities (vid. UNHCR, *Global Report 2019*, Geneva (Switzerland), UNHCR, 2019, p. 25).

<sup>297</sup> HANSEN, E. ET AL. (eds.), “Climate Change and Disaster Displacement: an overview of UNHCR’s role”, *op. cit.*, p. 8.

<sup>298</sup> UNHCR, *Policy on UNHCR’s engagement in situations of internal displacement* (UNHCR/HCP/2019/1), September 2019, p. 9.

have so far guided its interventions in this field are met, namely: the Agency's presence on the ground, the government's request, and the inter-agency agreement<sup>299</sup>. The scope of UNHCR's involvement in natural disaster situations will generally be limited in time and will be determined in consultation with the Senior Executive Team<sup>300</sup>.

### **2.5.2. UNHCR field operations to assist cross-border displaced persons**

Occasionally, UNHCR has also intervened to assist cross-border displaced persons affected by sudden or slow-onset environmental disruptions. Such was the case with Haitians who fled to the Dominican Republic following the 2010 earthquake<sup>301</sup>.

At that time, UNHCR was not present in Haiti, so OHCHR assumed the protection cluster's leadership<sup>302</sup>. UNHCR staff assisted IDPs by providing tents and non-food items<sup>303</sup> and finding durable solutions, including return and access to livelihoods<sup>304</sup>. The Agency also helped UNICEF and the Haitian government avoid potential statelessness problems through birth registration, the risk of trafficking, and the promotion of family reunion<sup>305</sup>. UNHCR also made efforts to prevent involuntary secondary movements and to address and combat sexual and gender-based violence<sup>306</sup>. Cross-border, UNHCR led the international community's protection response in the Dominican Republic<sup>307</sup>. UNHCR also sought to facilitate resettlement in other neighbouring countries where family reunification or complementary protection options, such as humanitarian visas, were available<sup>308</sup>.

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<sup>299</sup> Id.

<sup>300</sup> Id.

<sup>301</sup> HANSEN, E. ET AL. (eds.), “Climate Change and Disaster Displacement: an overview of UNHCR’s role”, *op. cit.*, p. 7.

<sup>302</sup> GOODWIN-GILL, G.; MCADAM, J., “UNHCR & Climate Change, Disasters and Displacement”, *op. cit.*, p. 12.

<sup>303</sup> HANSEN, E. ET AL. (eds.), “Climate Change and Disaster Displacement: an overview of UNHCR’s role”, *op. cit.*, p. 7.

<sup>304</sup> GOODWIN-GILL, G.; MCADAM, J., “UNHCR & Climate Change, Disasters and Displacement”, *op. cit.*, p. 12.

<sup>305</sup> Id.

<sup>306</sup> Id.

<sup>307</sup> HANSEN, E. ET AL. (eds.), “Climate Change and Disaster Displacement: an overview of UNHCR’s role”, *op. cit.*, p. 7.

<sup>308</sup> GOODWIN-GILL, G.; MCADAM, J., “UNHCR & Climate Change, Disasters and Displacement”, *op. cit.*, p. 12.

Finally, UNHCR has also been involved in displacement situations where there was a *dynamic nexus* between environmental factors, conflict and displacement<sup>309</sup>. The clearest example is the case mentioned above where a mass exodus of Somalis moved to Kenya's Dadaab refugee camp in 2011 and 2012, following a combination of drought and famine in the Horn of Africa, along with conflict and persecution<sup>310</sup>.

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<sup>309</sup> HANSEN, E. ET AL. (eds.), “Climate Change and Disaster Displacement: an overview of UNHCR’s role”, *op. cit.*, p. 7.

<sup>310</sup> *Id.*

# CHAPTER V

## ENVIRONMENTAL DISPLACEMENT AND HUMAN RIGHTS: THE PRINCIPLE OF *NON-REFOULEMENT*

### INTRODUCTION

The Stockholm Declaration recognises the interrelationship and interdependence between the full enjoyment of human rights and the environment<sup>1</sup>. In this way, Principle No. 1 of the Declaration recognises the fundamental right of human beings "to freedom, equality and adequate conditions of life, *in an environment of a quality that permits a life of dignity and well-being (...)*"<sup>2</sup>.

However, the enjoyment of many of these rights will be affected by global warming. The first part of this research has already addressed how climate change, as a global phenomenon, will increase the intensity and frequency of extreme natural disasters, especially those with a climate or weather-related origin. Simultaneously, it will accelerate the course of slowly evolving environmental degradation processes such as sea-level rise, degradation of fresh-water resources, erosion, desertification, ocean acidification and glacier retreat<sup>3</sup>.

During her opening speech at the "Panel discussion on human rights, climate change, migrants and persons displaced across international borders", held on 6 October 2017, the UN Deputy High Commissioner for Human Rights rightly pointed out that those who migrate as a result of the effects of climate change "(...) are not economic

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<sup>1</sup> UNGA, *Report of the United Nations Conference on the Human Environment. Stockholm, 5-16 June 1972 (A/CONF.48/14/Rev.1)*, 1973, 77 pp.

<sup>2</sup> *Ibid.*, p. 4, Principle 1. Vid. also, COMMISSION ON HUMAN RIGHTS, *Promotion and Protection of Human Rights, Science and Environment: Report of the joint OHCHR-UNEP seminar on human rights and the environment (E/CN.4/2002/WP.7)*, 22 March 2002, 19 pp. This last Report also acknowledges "the growing interrelationship between approaches to ensuring human rights and environmental protection, as well as the synergies that had developed between these previously distinct fields" (*ibid.*, par. 10).

<sup>3</sup> HUMAN RIGHTS COUNCIL, *Summary of the panel discussion on human rights, climate change, migrants and persons displaced across international borders (A/HRC/37/35)*, 14 November 2017, par. 5, estimating that 22.5 million people had been displaced, internally and across borders, since 2008 by a combination of sudden and slow-onset environmental disruptions. Vid. also HUMAN RIGHTS COUNCIL, *Resolution 35/20 Human rights and climate change, adopted by the Human Rights Council at its Thirty-fifth session (A/HRC/RES/35/20)*, 7 July 2017, 6 pp. The Resolution calls upon States to consider, *inter alia*, "human rights within the framework of the United Nations Framework Convention on Climate Change" (*ibid.* p. 5, par. 3).

migrants in search merely of a better life. (...) They do so in flight from conditions, circumstances, context, they cannot and will not provide for even their most fundamental rights. (...) This is a choiceless choice"<sup>4</sup>. As reflected in the tables and graphs in Chapter II, the continents with the highest rates of impoverished population, and therefore the lowest adaptive capacity –Asia and Africa-, are those that are already suffering and will face the most significant challenges from climate change.

The table presented below is a synthetic version of the annexe "Selected human rights standards and guidelines relevant to effects of climate change"<sup>5</sup>. The report, prepared by the UN High Commissioner for Human Rights, shows the rights that appear to be most directly related to the effects of climate change as identified by the IPCC.

**Table 15-"Selected human rights standards and guidelines relevant to effects of climate change"**

<u>Effects</u>	<u>Examples of rights affected</u>
<b>Extreme weather events</b>	<b>Right to life:</b>  Art. 5 ICCPR <sup>6</sup> ; Art. 6 CRC <sup>7</sup> ; Art. 3 UDHR <sup>8</sup> .
<b>Increased food insecurity and risk of hunger</b>	<b>Right to adequate food, right to be free from hunger:</b>  Art. 11 ICESCR <sup>9</sup> ; Art. 24 (c) CRC; Arts. 25 (f) and 28 (1) CRPD <sup>10</sup> ; Art. 14 (2) (h)

<sup>4</sup> The full video of the panel discussion is available on UN Web TV, [Intersessional Panel Discussion on Climate Change - Human Rights Council](#) (last access: 20/05/2020). The reproduced quote is found in minutes 7:57 to 8:30.5 of the video.

<sup>5</sup> UNGA, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights* (A/HRC/10/61), 15 January 2009, Annex, pp. 31-32.

<sup>6</sup> UN, *International Covenant on Civil and Political Rights*, 16 December 1966, UNTS, Vol. 999, No. 14668, pp. 171-186 (English version)

<sup>7</sup> UN, *Convention on the Rights of the Child*, 20 November 1989, UNTS, Vol. 1577, No. 27531, pp. 44-61 (English version).

<sup>8</sup> UNGA, *Resolution 217 (III) [A] Universal Declaration of Human Rights adopted by the General Assembly at its Third session* (A/RES/217(III)[A]), 1948, pp. 71-79.

<sup>9</sup> UN, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, UNTS, Vol. 993, No. 14531, pp. 3-106.

<sup>10</sup> UN, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, UNTS, Vol. 2515, No. 44910, pp. 69-95 (English version).

	CEDAW <sup>11</sup> ; Art. 5 (e) ICERD <sup>12</sup> ; Art. 25 UDHR.
<b>Increased water stress</b>	<b>Right to safe drinking water:</b>  Arts. 11 and 12 ICESCR; Art. 15 (2) (h) CEDAW; Art. 28 (2) (a) CRPD; Art. 24 (2) (c) CRC.
<b>Stress on health status</b>	<b>Right to the highest attainable standard of health:</b>  Arts. 7 (b), 10 and 12 ICESCR; Arts. 12 and 14 (2) (b) CEDAW; Art. 25 UDHR; Art. 5 (e) (iv) ICERD; Art. 24 CRC; Arts. 16 (4), 22 (2) and 25 CRPD; Arts. 43 (1) (e), 45 (1) (c) and 70 ICRMW <sup>13</sup> .
<b>Sea-level rise and flooding</b>	<b>Right to adequate housing:</b>  Art. 11 ICESCR; Art. 5 (e) (iii) ICERD; Art. 14 (2) CEDAW; Art. 27 (3) CRC; Art. 43 (1) (d) ICRMW; Arts. 9 (1) (a) and 28 (1) and (2) (d) CRPD; Art. 25 UDHR.

When the migratory movement occurs within State borders, the State remains obliged to guarantee displaced persons all the human rights they are entitled under domestic and international law, as displacement does not alter their status as citizens/regular residents or human beings<sup>14</sup>. In particular, the State must protect the

<sup>11</sup> UN, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, UNTS, Vol. 1249, No. 20378, pp. 13-23.

<sup>12</sup> UN, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, UNTS, Vol. 660, No. 9464, pp. 211-318.

<sup>13</sup> UN, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, UNTS, Vol. 2220, No. 39481, pp. 93-127 (English version).

<sup>14</sup> KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, Studies in Transnational Legal Policy, No. 38, 2<sup>nd</sup> ed., Washington, DC (USA), The American Society of International Law, 2008, pp. 4-5 (last access: 28/08/2020). CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional. Hacia un estatuto jurídico internacional de los desplazados internos*, Barcelona (Spain), ANUE, 2006, p. 42 in fine.

lives and safety of those displaced within its jurisdiction by natural disasters and take all necessary measures to prevent displacement due to environmental disruptions<sup>15</sup>. Similarly, the forced displacement of the population, in the event of environmental disruption, would only be justified where there was no other less intrusive measure to ensure their safety without displacing them from their place of habitual residence<sup>16</sup>. The requirement of necessity and proportionality of the measure is even higher when it affects communities or groups with a special connection to or dependence on their land<sup>17</sup>.

In any case, apart from emergency situations, the displacement must be planned and carried out with the participation of the individuals concerned<sup>18</sup>. Furthermore, it must be implemented without discrimination of any kind, beyond the differentiated measures adopted to protect particularly vulnerable groups such as the elderly, women, children or persons with disabilities<sup>19</sup>. It also needs to ensure that displaced persons have their essential needs met during and after displacement, as well as that they have access to basic public services in the places of destination on an equal level with local communities<sup>20</sup>. The public authorities must also protect the property left behind by the displaced persons and provide adequate compensation mechanisms when destroyed by the natural disaster or when it is impossible to return to the affected area<sup>21</sup>.

These IDPs' rights, among others, have been set out and systematised in the Guiding Principles on Internal Displacement, which apply in the event of natural disasters and reflect international human rights and humanitarian law. The following chapter will focus on their detailed analysis.

Instead, the problem arises when persons fleeing from environmental disruption cross one or more international borders and do so irregularly. In such cases, the migrant

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<sup>15</sup> COMMISSION ON HUMAN RIGHTS, *Report of the Representative of the Secretary-General, Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39. Annex Guiding Principles on Internal Displacement* (E/CN.4/1998/53/Add.2), 11 February 1998, Guiding Principles Nos. 3 and 5.

<sup>16</sup> *Ibid.*, Guiding Principles Nos. 6 (2) (d) and 7.

<sup>17</sup> *Ibid.*, Guiding Principle No. 9.

<sup>18</sup> *Ibid.*, Guiding Principles Nos. 7 (3) (d) and 28 (2).

<sup>19</sup> *Ibid.*, Guiding Principle No. 4.

<sup>20</sup> *Ibid.*, Guiding Principles Nos. 8, 18 and 29 (1).

<sup>21</sup> *Ibid.*, Guiding Principles Nos. 21 and 29 (2).

does not have the right to enter or remain in the destination State's territory<sup>22</sup>. As it was highlighted during the "Panel discussion on human rights, climate change, migrants and persons displaced across international borders":

"(...) international human rights law did provide for the protection of the fundamental rights and dignity of all people on the move, but that *gaps persisted in meeting the protection needs of those fleeing the adverse effects of climate change*, particularly those seeking to escape the impact of slow-onset processes"<sup>23</sup>.

From a human rights-based point of view, it has been argued that those who cannot reasonably be required to return to their country of origin should be considered victims of forced displacement<sup>24</sup>. Thus, if the State of origin is not protecting its population against environmental damage or where the assistance provided falls far short of international standards, cross-border displaced persons should be granted at least a temporary residence permit in the receiving State<sup>25</sup>.

However, it cannot be said that international law has a positive rule that obliges States to admit or tolerate foreigners' stay in their territory<sup>26</sup>. Both the entry and the stay of aliens in a State other than the one of nationality remains in International Public Law

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<sup>22</sup> COMMISSION ON HUMAN RIGHTS, *Summary of the panel discussion on human rights, climate change, migrants and persons displaced across international borders*, *op. cit.*, par. 15.

<sup>23</sup> *Ibid.*, par. 8. In this regard, a specific reference to the protection of the human rights of migrants resulting from sudden and slow-onset natural disasters, the adverse effects of climate change and environmental degradation, regardless of their legal status, was included in: UNGA, *Global Compact for Safe, Orderly and Regular Migration*, adopted by the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration held in Marrakech (Morocco) from 10 to 11 December 2018 (A/CONF.231/3), 30 July 2018, 31 pp. This document, which is a non-binding instrument, includes among its objectives to ensure that "persons affected by sudden-onset and slow-onset natural disasters (...) have access to humanitarian assistance that meets their essential needs with full respect for their rights wherever they are" [par. 18 (k)], while recognizing at the same time that "adaptation (to environmental disruptions) in the country of origin is a priority" [par. 18 (i)].

<sup>24</sup> KÄLIN, W., "Displacement Caused by the Effects of Climate Change: Who Will Be Affected and What Are the Gaps in the Normative Framework for Their Protection?", *Brookings*, 10 October 2008, p. 9.

<sup>25</sup> *Ibid.* Vid. also COMMISSION ON HUMAN RIGHTS, *Summary of the panel discussion on human rights, climate change, migrants and persons displaced across international borders*, *op. cit.*, par. 18, pointing out that "human rights-based approaches could help disaster-affected persons to gain admission to and to stay in States of refuge". In this sense, Susana considers that human rights law has extended countries' protection obligations beyond the refugee category, insofar as the environmental changes that trigger forced population displacement have an impact on fundamental rights such as the right to life, the right to adequate food and freedom from hunger, the right to safe drinking water, the right to the highest attainable standard of health, and the right to adequate housing. Consequently, the author concludes that international human rights law creates the basis for complementary protection of the rights of environmental migrants and their right to migrate. BORRAS PENTINAT, S., "La migración ambiental: entre el abandono, el refugio y la protección internacional", *Papeles de relaciones ecosociales y cambio global*, No. 132, 2015-2016, pp. 42-46.

<sup>26</sup> PASTOR RIDRUEJO, J.A., *Curso de Derecho Internacional Público y Organizaciones Internacionales*, 23ª ed., Madrid (Spain), Tecnos, 2019, p. 245 *in fine*.



a sovereign competence of the State, which can discretionally subject one and the other to the requirements it deems appropriate<sup>27</sup>. Consequently, once environmentally displaced persons are intercepted while unlawfully staying in the State of destination territory, they will be expelled and returned to the State of origin, without this implying the commission of an internationally wrongful act by the expelling State.

However, this sovereign competence to expel from national territory those aliens who do not or no longer meet the entry requirements, or who even pose a threat to national security or public order, is not absolute. International human rights law has been developing what is known as the "prohibition of *non-refoulement*", which prevents States from returning aliens to another country where there is a serious risk that their human rights would be seriously violated<sup>28</sup>.

The prohibition has been shaped in absolute terms; that is: (a) States cannot suspend it under any circumstances, even in the fight against terrorism or in the context of armed conflicts; (b) it protects any person under the jurisdiction of the State, including criminals, regardless of their legal status; and (c) it prohibits returning both to a country where returnees would be directly at risk of persecution or serious harm – direct *refoulement* –, as well as to countries where there is a risk of expulsion to third States in which they would face the same threats – indirect or subsequent *refoulement*<sup>29</sup>.

Although the prohibition of *non-refoulement* found its genesis in the field of refugee law<sup>30</sup>, other relevant human rights instruments have enshrined it – e.g. the OAU

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<sup>27</sup> Ibid., p. 246. The States' right to control the entry and residence of foreigners in their respective territories has been well-established in the European case-law. Vid., *inter alia*, ECtHR: *Abdulaziz, Cabales and Balkandali v. the United Kingdom* (Applications Nos. 9214/80; 9473/81; 9474/81), 28 May 1985, par. 67 *in fine*; *Boujlifa v. France* (Application No. 25404/94), 21 October 1997, par. 42; *Üner v. the Netherlands* (Application No. 46410/99), 18 October 2006, par. 54.

<sup>28</sup> UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, par. 17. EUROPEAN AGENCY FOR FUNDAMENTAL RIGHTS, *Scope of the principle of non-refoulement in contemporary border management: evolving areas of law*, Luxembourg, Publications Office of the European Union, 2016, pp. 13-15 (last access: 13/05/2020).

<sup>29</sup> UNHCR, *op. cit. supra*, par. 20. EUROPEAN AGENCY FOR FUNDAMENTAL RIGHTS, *op. cit. supra*, p. 14. Also, LAUTERPACHT, E.; BETHLEHEM, D., "The Scope and Content of the Principle of Non-Refoulement (Opinion)", *Global Consultations on International Protection/Second Track*, UNHCR, June 2001, pars. 239-243 (last access: 13/05/2020).

<sup>30</sup> UN, *Convention Relating to the Status of Refugees*, 28 July 1951, UNTS, Vol. 189, No. 2545, p. 176, Article 33(1):

"No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where *his life or freedom would be threatened* on account of his race, religion, nationality, membership of a particular social group or political opinion" [italics added].

Refugee Convention<sup>31</sup>, the ACHR<sup>32</sup>, or the CAT<sup>33</sup>. Furthermore, various jurisdictional and quasi-jurisdictional bodies of universal or regional scope have inferred such prohibition as an essential component of the content of the right to life or of the prohibition against being subjected to torture or other proscribed treatments. It has been the case of the HRC at the United Nations level, interpreting Articles 6 and 7 of the ICCPR; the ECtHR in Europe, interpreting Articles 2 and 3 of the ECHR<sup>34</sup>; the IACHR in the Americas, concerning Article I of the ADRDM<sup>35</sup>; or the AchPR, which has given a very similar interpretation in Africa of Articles 4 and 5 of the Banjul Charter<sup>36</sup>.

Therefore, it can be stated that the prohibition of *non-refoulement* has attained the status of a customary rule of universal effectiveness at the international level<sup>37</sup>.

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However, it should be noted that paragraph 2 of Article 33 allows the return of persons who, while having refugee status, represent a danger to the security of the country in which they are or have been convicted by a final judgment of a serious crime. The effectiveness of this provision would be limited in practice by the absolute nature which, as stated above, the prohibition of *non-refoulement* has achieved in the field of human rights as a universal customary norm.

<sup>31</sup> OAU, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September, 1969, UNTS, Vol. 1001, No. 14691, p. 48, Article II (3):

"No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where *his life, physical integrity or liberty would be threatened* for the reasons set out in Article I, paras. 1 and 2" [italics added].

Article I (1) and (2) refers to persecution on grounds of race, religion, nationality, membership of a particular social group or political opinion, or being forced to leave one's country of origin or place of habitual residence to seek refuge from external aggression, occupation, foreign domination or events seriously disturbing public order.

<sup>32</sup> OAS, *American Convention on Human Rights (Pact of San José)*, 22 November 1969, UNTS, Vol. 1144, No. 17955, p. 151, Article 22 (8):

"In no case may an alien be *deported or returned to a country*, regardless of whether or not it is his country of origin, *if in that country his right to life or personal freedom is in danger of being violated* because of his race, nationality, religion, social status, or political opinions" [italics added].

<sup>33</sup> UN, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, UNTS, Vol. 1465, No. 24841, pp. 112-209, Article 3 (1):

"No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture".

<sup>34</sup> CoE, *European Convention for the Protection of Human Rights and Fundamental Freedoms made in Rome, 4 November 1950, as amended by Protocols Nos. 11, 14 and 15, and supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16*, Strasbourg (France), European Court of Human Rights; Council of Europe, 62 pp.

<sup>35</sup> OAS, *American Declaration of the Rights and Duties of Man*, adopted by the Ninth International Conference of American States, Bogotá (Colombia), 2 May 1948.

<sup>36</sup> OAU GENERAL ASSEMBLY, *African Charter on Human and Peoples' Rights (the Banjul Charter)*, Nairobi (Kenya), 01 June 1981, UNTS, Vol. 1520-I-26363, pp. 217-292.

<sup>37</sup> UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement...*, *op. cit.*, pars. 21-22. EUROPEAN AGENCY FOR FUNDAMENTAL RIGHTS, *Scope of the principle of non-refoulement...*, *op. cit.*, p. 13. LAUTERPACHT, E., BETHLEHEM, D., "The Scope and Content of the Principle of Non-Refoulement (Opinion)"..., *op. cit.*, pars. 193-253.

Consequently, all States of the international community would be bound by it, whether or not they are parties to any of the international treaties mentioned above<sup>38</sup>.

Thus, when an environmentally displaced person is illegally in a foreign country, the forced return could still be avoided if fundamental rights were threatened in the country of origin because of severe environmental disruption<sup>39</sup>. Although, in theory, any violation of the human rights listed in the table above could give rise to the obligation of *non-refoulement*, international practice has usually circumscribed it to the right to life and the right not to be subjected to torture or cruel, inhuman or degrading treatment<sup>40</sup>.

Accordingly, the purpose of this chapter is to determine the extent to which sudden natural disasters, or deterioration of living conditions caused by the effects of environmental degradation, may constitute a threat to life or be equivalent in their consequences to inhuman or degrading treatment. If so, the State's obligation of non-refoulement will be triggered, preventing those displaced for environmental reasons from being returned to the country from which they have fled.

To date, the international bodies responsible for monitoring compliance with international human rights treaties have only had the opportunity to rule on State responsibility for environmental damage in two situations. On the one hand, in cases where national authorities have failed to protect their populations' lives from a foreseeable natural disaster. On the other hand, in situations where they have not protected their citizens' health from environmental damage related to dangerous human

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<sup>38</sup> Vid. PASTOR RIDRUEJO, J.A., *Curso de Derecho Internacional Público y Organizaciones Internacionales*, *op. cit.*, pp. 72 *in fine* and 73 on the effectiveness of general customs in International Law, as well as p. 80 on the parallel and autonomous existence of a customary rule and a conventional norm with identical content.

<sup>39</sup> In this sense, BORRÁS PENTINAT, S., “El estatuto jurídico de protección internacional de los refugiados ambientales”, *Revista Interdisciplinar da Mobilidade Humana*, Vol. 19, No. 36, 2011, pp. 39-44, has suggested that, given the legal vacuum in international refugee law, the protection of environmentally displaced persons could come from the conceptual extension of human rights theory and the principles of international environmental law. Also, MCADAM, J., “Climate Change Displacement and International Law: Complementary Protection Standards” (PPLA/2011/03), *Legal and Protection Policy Research Series*, UNHCR, May 2011, pp. 17 and 19; and UNHCR, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters*, 01 October 2020, par. 19, which has also accepted the possibility of extending the principle of non-refoulement to persons seeking international protection from the adverse effects of climate change and disasters, where these may pose a serious threat to their right to life in their country of origin.

<sup>40</sup> Vid. footnote *supra*. A recent paper on the principle of non-refoulement in cases of displacement due to climate change has been published by BORRÁS PENTINAT, S.; VILLAVICENCIO CALZADILLA, P., “El principio de no devolución en tiempos de emergencia climática: una revisión necesaria para la protección del refugio y el asilo climático”, *Revista Española de Derecho Internacional*, Vol. 73, No. 2, 2021, pp. 399-407.

activity. In both scenarios, victims were within the borders of their State. Never before have they ruled on the *non-refoulement* of cross-border migrants based on the risk that the environmental conditions generally prevailing in the country of return might represent for their life or integrity.

In this regard, the January 2020 HRC's decision in *Teitiota v. New Zealand*<sup>41</sup> has been a landmark in how the international legal system has addressed transboundary environmental displacement. Not only is it important because the claimant was a citizen of Kiribati, which, as seen in Chapter IV, is one of the SIDS severely threatened by rising Pacific Ocean levels. Its significance lies, above all, in the fact of having recognised for the first time that climate change effects on living conditions may result in a *non-refoulement* obligation for the country where the migrant has moved.

Therefore, part one of this Chapter discusses the implications of this transcendental decision within the ICCPR. In turn, the following sections explore to what extent the HRC's conclusions could be transferred to the regional human rights systems, i.e. the European, American and African ones. To this end, the HRC's reasoning is tested in the light of the case-law developed by the various regional courts and quasi-judicial bodies on the principle of *non-refoulement* and the right to life and to be free from torture and other cruel, inhuman or degrading treatment<sup>42</sup>.

## **1. UN'S HUMAN RIGHTS SYSTEM: THE *NON-REFOULEMENT* OF ENVIRONMENTALLY DISPLACED MIGRANTS UNDER THE ICCPR**

The deportation of Mr Teitiota and his family to the island of Tarawa, Republic of Kiribati, by the New Zealand's authorities originated the complaint before the HRC<sup>43</sup>. The claimant alleged the threat that sea-level rise in Kiribati posed to his right to life (Art. 6 ICCPR). In particular, due to (i) the scarcity of habitable space, which in turn had caused violent land disputes; and (ii) environmental degradation, including

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<sup>41</sup> HRC, *Ioane Teitiota v. New Zealand (advance unedited version)* (CCPR/C/127/D/2728/2016), 7 January 2020, 16 pp.

<sup>42</sup> In the Inter-American context, the right not to be subjected to torture or cruel, inhuman or degrading treatment is referred to as the right to personal integrity. For its part, the Inter-American and African jurisprudence has also referred to the right to life as the right not to be arbitrarily deprived of life.

<sup>43</sup> HRC, *Ioane Teitiota v. New Zealand, op. cit.*

saltwater contamination of fresh-water supplies and the impossibility of growing crops<sup>44</sup>.

Although Mr Teitiota exclusively based his complaint on Article 6 of the Covenant breaching, the HRC considered *obiter dicta* that, "without robust national and international efforts, the effects of climate change in receiving states may"<sup>45</sup> threat not only individuals' right to life. It would also expose them to ill-treatments proscribed by Article 7 of the ICCPR, triggering in both cases the *non-refoulement* obligations of sending States<sup>46</sup>.

Indeed, Articles 6 and 7 of the Covenant are almost always invoked together when dealing with the extradition, deportation or other forms of forced return of aliens<sup>47</sup>. According to them, States parties are outlawed to remove foreigners from their territory "where there are substantial grounds for believing that there is *a real risk of irreparable harm*"<sup>48</sup> to their life or their physical or mental integrity, "either in the country to which removal is to be effected or in any country to which the person may subsequently be removed"<sup>49</sup>. Nevertheless, having determined a breach of Article 6 of the Covenant, the Committee has not found it necessary to consider whether the same facts also constitute a violation of Article 7<sup>50</sup>.

Besides establishing the existence of a *real risk* – i.e. "a necessary and foreseeable consequence"<sup>51</sup> - of a violation of Articles 6 and 7 ICCPR in the country of return, the

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<sup>44</sup> Ibid., par. 3.

<sup>45</sup> Ibid., par. 9.11.

<sup>46</sup> Id.

<sup>47</sup> Vid., for example, HRC: *Kindler v. Canada* (CCPR/C/48/D/470/1991), 11 November 1993, pars. 6.5, 6.7 and 6.8; *A.R.J. v. Australia* (CCPR/C/60/D/692/1996), 11 August 1997, pars. 6.6-6.10; *G.T. v. Australia* (CCPR/C/61/D/706/1996), 4 December 1997, pars. 8.4-8.6; *Dauphin v. Canada* (CCPR/C/96/D/1792/2008), 7 September 2009, par. 3.1 (although the claim under Articles 6 and 7 ICCPR was declared inadmissible – par. 7.4-).

<sup>48</sup> HRC, *General comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (CCPR/C/21/Rev.1/Add.13), 26 May 2004, par. 12.

<sup>49</sup> Id. Vid. also, HRC, *General comment no. 36, Article 6 (Right to Life)* (CCPR/C/GC/35), 3 September 2019, pars. 30-31. HRC, *General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)* (HRI/GEN/1/Rev.9), 10 March 1992, par. 9.

<sup>50</sup> HRC, *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), 20 September 2019, par. 7.6. A *sensu contrario*, the HRC has moved on to consider the possible breach of Article 7 ICCPR after it had ruled out a violation of Article 6. Vid. for example, HRC: *Kindler v. Canada, op. cit.*, pars. 14.6, 15.1 and 16; *A.R.J. v. Australia, op. cit.*, pars. 6.13-6.14; *G.T. v. Australia, op. cit.*, pars. 8.5-8.6.

<sup>51</sup> HRC: *A.R.J. v. Australia, op. cit.*, par. 6.8; *G.T. v. Australia, op. cit.*, par. 8.1.

Committee has stressed that this risk must also be *personal*<sup>52</sup>. Nevertheless, the HRC has not excluded the possibility of estimating a non-returning obligation on the sole basis of "the general conditions in the receiving State"<sup>53</sup>, as could be a situation of widespread violence or, in our case, of environmental degradation<sup>54</sup>. However, the Committee has reserved this possibility only for "the most extreme cases"<sup>55</sup>, where the situation prevailing in the country of destination has reached a level of intensity sufficient to entail a real risk of harm by merely exposing a subject to it upon return<sup>56</sup>.

Two premises must therefore be analysed in the next subsections. On the one hand, whether environmental disruptions could qualify as a source of potential harm for life and personal integrity under Articles 6 and 7 of the Covenant. On the other hand, the level of intensity that such environmental threats would have to reach in order to satisfy the *real-risk test*.

## **1.1. Environmental disruptions as a source of potential damage to:**

### **1.1.1. The right to life (Article 6 ICCPR)**

Apart from States and other non-State actors' conduct, threats to life may arise from other reasonably foreseeable danger situations, which are not directly attributable to any material perpetrator. Where such life-threatening situations are reasonably foreseeable, States remain responsible for preventing those situations of risk from resulting in death under the Covenant<sup>57</sup>. It should also be noted that States parties may incur a violation of Article 6 ICCPR even if the situation of danger does not ultimately result in the loss of life<sup>58</sup>.

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<sup>52</sup> HRC, *General comment no. 36, Article 6 (Right to Life)*, *op. cit.*, par. 30. Vid. also, HRC: *A.R.J. v. Australia*, *op. cit.*, par. 6.6 *in fine*; *G.T. v. Australia*, *op. cit.*, par. 5.10; *Dauphin v. Canada*, *op. cit.*, par. 7.4; *Ioane Teitiota v. New Zealand*, *op. cit.*, par. 9.3.

<sup>53</sup> HRC, *General comment no. 36, Article 6 (Right to Life)*, *op. cit.*, par. 30.

<sup>54</sup> *Ioane Teitiota v. New Zealand*, *op. cit.*, par. 9.3.

<sup>55</sup> HRC, *General comment no. 36, Article 6 (Right to Life)*, *op. cit.*, par. 30.

<sup>56</sup> In this regard, the HRC has embraced the doctrine set out by the ECtHR. Vid. *id.*, footnote 136, citing the ECtHR, *N.A. v. United Kingdom* (application No. 25904/07), 17 July 2008, par. 115.

<sup>57</sup> HRC, *General comment no. 36, Article 6 (Right to Life)*, *op. cit.*, par. 7. HRC, *Portillo Cáceres et al. v. Paraguay*, *op. cit.*, par. 7.3.

<sup>58</sup> HRC, *General comment no. 36, Article 6 (Right to Life)*, *op. cit.*, par. 7. Vid., for example, HCR, *Rodger Chongwe v. Zambia* (CCPR/C/70/D/821/1998), 9 November 2000, 7 pp. In this case, the Committee found Zambia guilty of a violation of Article 6 of the Covenant because, although the complainant had not been killed, it was the State party that authorized, without legitimate reason, the use of lethal force that almost resulted in his death (pars. 5.2-5.3).

According to General Comment No. 36, "[e]nvironmental 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"<sup>59</sup>. Then adding the HRC that "[t]he obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant (...)"<sup>60</sup>.

In this regard, the Committee has considered that States parties' obligation to respect and ensure the right to life demands them to adopt appropriate measures "to address the general conditions in society" that may endanger that right<sup>61</sup>, including "the degradation of the environment"<sup>62</sup>. From an environmental perspective, the implementation of this obligation requires States parties "to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors"<sup>63</sup>. More specifically, the HRC recommended that States develop contingency and disaster management plans to

"increase preparedness and address *natural and man-made disasters that may adversely affect enjoyment of the right to life*, such as hurricanes, tsunamis, earthquakes, radioactive accidents and massive cyberattacks resulting in disruption of essential services"<sup>64</sup>.

Some authors have argued that the language used by the Committee sounds more typical of simple recommendations, "written in the language of aspiration, with the continuous use of the word 'should' and other forms of soft language"<sup>65</sup>, rather than genuine manifestations of the States' duty to protect life. In contrast to these views, the HRC has already had the opportunity to give effect to such considerations when determining the extent of the duty to protect life in situations of environmental degradation.

In *Portillo Cáceres v. Paraguay*<sup>66</sup>, the Committee found that Paraguay had violated the right to life of the family of Portillo Cáceres by omission. It was of the view that the Paraguayan authorities would have incurred in *culpa in vigilando* by having not

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<sup>59</sup> HRC, *General comment no. 36, Article 6 (Right to Life)*, *op. cit.*, par. 62.

<sup>60</sup> *Id.*

<sup>61</sup> *Ibid.*, par. 26. HRC, *Portillo Cáceres et al. v. Paraguay*, *op. cit.*, par. 7.3.

<sup>62</sup> HRC, *General comment no. 36, Article 6 (Right to Life)*, *op. cit.*, par. 26.

<sup>63</sup> *Ibid.*, par. 62.

<sup>64</sup> *Ibid.*, par. 26.

<sup>65</sup> JOSEPH, S., "Extending the Right to Life Under the International Covenant on Civil and Political Rights: General Comment 36", *Human Rights Law Review*, vol. 12, issue 2, June 2019, p. 357.

<sup>66</sup> HRC, *Portillo Cáceres et al. v. Paraguay*, *op. cit.*, 16 pp.

taken any measures to prevent an agricultural activity, which was creating dangerous environmental pollution, from resulting in the poisoning of the applicants and the death of one of them<sup>67</sup>. The HRC noted the predictability of the risk, as Paraguay had been warned on several occasions by UN treaty and non-treaty bodies about the harmful effects of large-scale fumigation methods on the inhabitants of Colonia Yeruti<sup>68</sup> – the Portillo family's place of residence. Furthermore, the residents of Colonia Yeruti had filed numerous complaints each year, during the soybean planting season, warning of the damage to their living conditions with various ministerial, administrative and judicial authorities, which were never answered<sup>69</sup>.

However, in *Portillo Cáceres v. Paraguay*, the victims were nationals of the respondent State, so that questions about deportation were not raised. Hence the importance of the precedent set in the case of *Teitiota v. New Zealand*. The Committee goes one step further in this case by recognising that the obligation to protect the right to life also compels third States not to return non-nationals to countries where an environmental threat may endanger their lives. Thus, in reasoning on the admissibility of the communication submitted by Mr Teitiota, the HRC 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 to the Republic of Kiribati a real risk of impairment to his right to life under article 6 of the Covenant*"<sup>70</sup>.

Therefore, it follows that where the receiving State has been unable or unwilling to take appropriate measures to create or maintain a safe environment for life, the sending State must consider the principle of *non-refoulement*. Otherwise, it could incur a violation of its international obligations under Article 6 ICCPR.

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<sup>67</sup> Ibid., par. 7.5.

<sup>68</sup> Ibid., par. 3.2. The HRC also noted the declarations of the Paraguayan Ministry of the Environment, acknowledging his responsibility for the lack of supervision; the declarations of the District Court which, in the writ of amparo, stated that "the State failed to honour its obligation or discharge its duty to protect", as well as the administrative sanctioning procedures followed against the two main agricultural companies operating in the area. The Committee considered that these facts constituted an acknowledgement by the State of the danger posed to the population of Colonia Yeruti by the ongoing spraying of the fields with highly toxic agro-food pesticides, despite which the fumigation continued (vid. *ibid.*, par. 7.5).

<sup>69</sup> Ibid., pars. 2.6.

<sup>70</sup> HRC, *Ioane Teitiota v. New Zealand*, *op. cit.*, par. 8.6.



### 1.1.2. The right to be free from torture and other cruel, inhuman or degrading treatments (Article 7 ICCPR)

The purpose of Article 7 ICCPR is to protect the dignity and physical and mental integrity of individuals<sup>71</sup>. It is generally understood that the prohibition in Article 7 covers acts that cause the victim physical pain and those that cause mental suffering<sup>72</sup>. Nevertheless, the Covenant does not contain any definition of what is meant by torture or cruel, inhuman or degrading treatment or punishment. In this regard, neither has the Committee found it necessary to draw up a list of prohibited acts or make specific distinctions between different forms of punishment or treatment based on their nature, purpose or severity<sup>73</sup>. Instead, the Committee seems to consider the different forms of ill-treatment "as falling on a sliding scale, or hierarchy, with torture being the most severe manifestation"<sup>74</sup> and the remaining inhuman treatment falling one degree below<sup>75</sup>.

However, it would seem clear that the acts prohibited by Article 7 had to be in any event attributable to a material perpetrator, whether by action or omission. In other words, the Committee's jurisprudence, and its General Comment on Article 7, had never referred to the possibility that the risk of harm could arise from "a foreseeable threatening situation"<sup>76</sup>, as understood in the case of the right to life<sup>77</sup>.

Article 7 was initially conceived to protect the individual from other individuals, especially when the latter hold or perform any public office or function that entitles them to use force<sup>78</sup>. Hence, the Committee, in its general comment No. 20, expressly noted the duty imposed by the Covenant to States parties "to afford everyone protection (...) against the acts prohibited by article 7, *whether inflicted by people acting in their*

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<sup>71</sup> HRC, *CCPR General Comment No. 20: Article 7...*, *op. cit.*, par. 2.

<sup>72</sup> *Ibid.*, par. 5.

<sup>73</sup> *Ibid.*, par. 4.

<sup>74</sup> MCADAM, J., "Climate Change Displacement and International Law...", *op. cit.*, p. 23.

<sup>75</sup> *Id.*

<sup>76</sup> *Vid.* the dissenting opinion of Committee member Dheerujall Seetulsingh in the case *Warda Osman Jasin v. Denmark*, where the deportation of a beneficiary of subsidiary protection to Italy was held to be contrary to Article 7 ICCPR because of the poor living conditions generally experienced by refugees in that country. He qualified this decision as "without precedent in jurisprudence of the Committee". In HRC, *Warda Osman Jasin v. Denmark* (CCPR/C/114/D/2360/2014), 25 September 2015, Appendix I (p. 12, par. 1). *Vid.* also HRC, *CCPR General Comment No. 20: Article 7...*, *op. cit.*

<sup>77</sup> *Vid.* sub-section 1.1.1. of this chapter.

<sup>78</sup> This provision connects Article 7 with Article 10 (1) ICCPR, according to which "(a)ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". In UNGA, *International Covenant on Civil and Political Rights*, *op. cit.*, Article 10 (1). *Vid.* HRC, *CCPR General Comment No. 20: Article 7...*, *op. cit.*, pars. 10-11.

*official capacity, outside their official capacity or in a private capacity*"<sup>79</sup>. Therefore, the Committee's position has been to consider that one individual should inflict the prohibited act on another<sup>80</sup>.

Nevertheless, this consolidated interpretation changed radically in *Warda Osman Jasin v. Denmark*<sup>81</sup>. In this case, the HRC considered that the Danish Refugee Appeals Board's initial decision of removing a woman beneficiary of subsidiary protection and her three minor children to Italy – the first-asylum country – would have been contrary to Article 7 ICCPR. The Committee based its decision on the situation of destitution, and extreme poverty that she and her minor children would have faced in Italy upon their return, which would amount to inhuman or degrading treatment<sup>82</sup>.

Although the decision of the HRC must be considered exceptional and highly influenced by the applicant's personal circumstances<sup>83</sup>, the case of *Jasin v. Denmark* opened the door for applying the principle of *non-refoulement* in situations where general living conditions in the receiving country fall far below the minimum international standards of Human Rights Law. The precedent it set was confirmed, *obiter dicta*, in *Teitiota v. New Zealand*. In the latter, the Committee recognised that the effects of climate change on States' livelihoods, resources and essential services might become incompatible with the obligation of sending States not to expose individuals to any of the ill-treatments proscribed by Article 7 of the Covenant<sup>84</sup>.

## **1.2. The applicability of the *real-risk test* in environmental disruptions: the notion of dignity**

It has been concluded that environmental disruptions in the receiving country could be a source of potential harm for life and personal integrity. However, it remains to analyse the level of intensity that such environmental threat would have to reach to satisfy the *real-risk test*.

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<sup>79</sup> Ibid., par. 2 [italics added].

<sup>80</sup> Vid. *ibid.*, par. 13, emphasizing that "(t)hose who violate article 7, whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible".

<sup>81</sup> HRC, *Warda Osman Jasin v. Denmark*, *op. cit.*

<sup>82</sup> Ibid., pars. 8.8-8.10.

<sup>83</sup> Vid. also the two individual opinions formulated for three Committee members in: Ibid., Appendix I (pp. 12-13) and Appendix II (pp. 14-15).

<sup>84</sup> HRC, *Ioane Teitiota v. New Zealand*, *op. cit.*, par. 8.11.

The first thing to note is that Mr Teitiota did not base his complaint on sea-level rising as a direct threat to life. Instead, his argument focused on the adverse effects that the ocean's incursion on the mainland was having on access to drinking water, the possibility of growing food or the amount of land available on the island of Tarawa<sup>85</sup>. In other words, he emphasised that living conditions in the country had deteriorated to such an extent, as a result of saltwater intrusion, that forcing him to return to it would violate his right to life.

The HRC adopted the same approach when addressing the complaint. Thus, the *real-risk test*, and hence the admissibility of Mr Teitiota's return to Kiribati, was not posed in terms of the real threat that sudden events and slow processes related to climate change might represent, *per se*, to individuals' life or integrity. The Committee rather assessed the actual impact of these disturbances on the habitability of the territory to which the applicant was to be returned<sup>86</sup>.

As interpreted by the HRC, the obligation of non-return in the context of climate change and environmental disruptions would rest in the direct link between environmental degradation and the extent to which living conditions are affected thereby. Therefore, it is the risk of exposing a person, upon returning to a country, to living conditions that are far below human dignity which, in the Committee's reasoning, would trigger the prohibition of *refoulement*<sup>87</sup>. In this regard, the HRC's decision in *Teitiota v. New Zealand* has been equally important. It has contributed to confirming the interrelationship between civil and political rights and economic, social and cultural ones<sup>88</sup>.

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<sup>85</sup> Ibid., pars. 2.1 and 3.

<sup>86</sup> Vid. *ibid.*, pars. 9.6-9.10.

<sup>87</sup> Ibid., par. 9.11 *in fine*.

<sup>88</sup> The understanding that there is an inextricable relation between civil and political rights (known as first-generation rights) and the economic, social and cultural ones (called second-generation rights) is known as the "integrated" or "holistic" human rights approach. It is based on the idea that socio-economic rights should be given the same importance and protection that civil and political rights have traditionally received.

This prominence that second-generation rights should receive has been justified in two different ways: the instrumental integrative approach and the substantive justification. The first bases on the premise that the protection of civil and political rights would be meaningless to those who live in extreme poverty. Mr Teitgen (France) splendidly illustrated this idea in his intervention during the *travaux préparatoires* of the ECHR: "What indeed does freedom mean, what does the inviolability of the home mean for the man who has got no home?". Therefore, socio-economic rights would assume an "instrumental character" with respect to first-generation rights, as the latter cannot be fully enjoyed if a minimum socio-economic content is not guaranteed.

Hence, the following sub-sections analyse, on the one hand, how the Committee has included socio-economic aspects as part of the essential core of the rights to life and to be free from ill-treatment through the notion of *dignity*. On the other hand, it questions the extent to which living conditions would have had to deteriorate in the country of origin for considering the return to it as a possible threat to those rights. Finally, these considerations will be applied in the case of *Teitiota v. New Zealand*, explaining why the Committee considered that the worsening of living conditions in Kiribati, as a result of sea-level rise, does not satisfy the *real-risk test* at present.

### 1.2.1. General living conditions as contrary to the right to live with dignity

In *Teitiota's* case, the HRC once again had the chance to confirm the legally binding nature of some of the general ideas expressed in its General Comment N° 36 about the right to life's socio-economic content. The first time the Committee had the opportunity to do so was in *Portillo Cáceres et al. v. Paraguay*<sup>89</sup>. In this case, it corroborated its general observation that "a narrow interpretation does not adequately convey the full concept of the right to life"<sup>90</sup>. The Committee then extended the scope of the right to life by establishing that it "also concerns the entitlement of individuals to *enjoy a life with dignity* and to be free from acts or omissions that would cause their unnatural or premature death"<sup>91</sup>.

The notion of a "dignified life" has become the vehicle for protecting the socio-economic dimension of the right to life<sup>92</sup>. Its content would encompass what the

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In contrast, the substantive approach considers socio-economic rights to be valuable in themselves. As such, international human rights law should provide them with protection equivalent to that afforded to civil and political rights. Consequently, there is full equality between the two generations of rights, as socio-economic rights are no longer subordinated, as instruments, to civil and political rights. In Waldron's words, the substantive justification "maintains that death, disease, malnutrition, and economic despair are as much matter of concern as any denials of political or civil liberty" (p. 11).

Vid. MANTOUVALOU, V., "Work and private life: Sidabras and Dziautas v. Lithuania", *European law review*, N° 4, 2005, pp. 573-575. CoE, *Collected Edition of the Travaux Préparatoires of the European Convention on Human Rights*, Martinus Nijhoff Publishers, 1975, vol. I, p.42. SCOTT, C., "Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights", *Osgoode Hall Law Journal*, vol. 27, issue 3, 1989, pp. 778-790. WALDRON, J., "Liberal rights: two sides of the coin", in: *Liberal Rights. Collected APapers (1981-1991)*, 1st ed., Cambridge, Cambridge University Press, 1993, pp. 1-34.

<sup>89</sup> HRC, *Portillo Cáceres et al. v. Paraguay*, *op. cit.*

<sup>90</sup> Ibid, par. 7.3. Also, UN HUMAN RIGHTS COMMITTEE, *General comment no. 36...*, *op. cit.*, par. 3. HRC, *Ioane Teitiota v. New Zealand*, *op. cit.*, par. 9.4.

<sup>91</sup> Vid. footnote *supra* [italics added].

<sup>92</sup> Scott defines the "permeability" of human rights norms as the possibility of using provisions from a treaty dealing with one category of human rights as vehicles for the direct or indirect protection of norms

UNHRC, in its Resolution 2005/16, calls an "existence (...) with the minimum necessities of life"<sup>93</sup>. General Comment No. 36 has specified what these "minimum vital needs" are, which take the form of access "to essential goods and services such as food, water, shelter, health care, electricity and sanitation"<sup>94</sup>.

There is an undeniable correspondence between the "minimum necessities" that must be covered to live a life with dignity and the rights protected by the ICESCR. Along with the general prohibition of Article 1(2) ICESCR to not deprive any person of its own means of subsistence – which is also reiterated by Article 1(2) ICCPR, the ICESCR recognises "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions" [Article 11(1)]<sup>95</sup>.

Several countries have strongly criticised this overlapping. For example, Russia considered that the reference to dignity on paragraph 3 was "an arbitrary interpretation of the right to life", as it "violates the causal link laid down" in the ICCPR between human dignity and civil and political rights<sup>96</sup>. In its view, presenting dignity as a "qualifying feature" of the right to life not only reverses that causal link but seems to establish a minimum standard of living, below which an alleged violation of article 6 ICCPR would occur<sup>97</sup>. Australia, for its part, argued that some of the assertions in draft General Comment No. 36, such as the statement that "the right to life is a right which should not be interpreted narrowly"<sup>98</sup>, "do not reflect the legal obligations contained in the text of Article 6 of the Covenant and, in some cases, extend the obligations of States Parties beyond the law of State responsibility"<sup>99</sup>.

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of another treaty dealing with a different category of human rights. Vid. SCOTT, C., "Interdependence and Permeability of Human Rights Norms...", *op. cit.*, p. 771.

<sup>93</sup> UN COMMISSION ON HUMAN RIGHTS, *Human Rights Resolution 2005/16: Human Rights and Extreme Poverty* (E/CN.4/RES/2005/16), 14 April 2005, par. 1 (b).

<sup>94</sup> HRC, *General comment no. 36...*, *op. cit.*, par. 26.

<sup>95</sup> *Ibid.*, Article 11 (1).

<sup>96</sup> Russia was referring to paragraph 2 of the ICCPR's preamble, which indeed recognises that all the rights protected by the Covenant "derive from the inherent dignity of the human person", and not vice-versa. Vid. HRC, *Preliminary comments on the draft general comment No. 36 on article 6 (right to life) of the International Covenant on Civil and Political Rights*, submitted by the Russian Government, par. 1. UNGA, *International Covenant on Civil and Political Rights*, *op. cit.*, Preamble (2).

<sup>97</sup> HRC, *Preliminary comments on the draft general comment No. 36...*, submitted by the Russian Government, *op. cit.*, par. 1.

<sup>98</sup> HRC, *General comment no. 36...*, *op. cit.*, par. 3.

<sup>99</sup> HRC, *Submission of the Australian Government Draft General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights: Right to life*, par. 5.

The wording used in General Comment No. 36 and the reference to the "minimum necessities" for a dignified life a priori seems to overlap considerably with Article 11 ICESCR. Despite this, it should not be concluded that HRC is introducing into Article 6 (1) ICCPR a right to live above a certain standard<sup>100</sup>. To do otherwise would empty Article 11(1) ICESCR of its content and mean that the Committee would be interpreting the ICCPR provisions beyond their scope<sup>101</sup>, as Russia or Australia stated. Equally, it would mean that the HRC is invading other UN human rights treaties and, most importantly, the competence of their respective supervisory bodies<sup>102</sup> – e.g. the CESCR which monitors the compliance of ICESCR by States Parties.

As the Australian government observed during the drafting of the General Comment N° 36, "not all human rights violations are connected to the right to life"<sup>103</sup>. For example, as will be seen in more detail below, in the case of Mr Teitiota, the hardship caused by water rationing or the difficulty of growing crops due to salt deposits in the soil, which may be relevant from the perspective of Article 11(1) ICESCR, was not considered by the HRC to be a breach of Article 6 ICCPR<sup>104</sup>. That is the "key point" for interpreting the enjoyment of life with dignity in the context of Article 6 ICCPR, and doing so in a way that does not go beyond the scope of the provisions of the Covenant and the Committee's own mandate. It would only address those socio-economic circumstances that undermine dignity to the point of threatening

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<sup>100</sup> JOSEPH, S., "Extending the Right to Life...", *op. cit.*, p. 358, who highlights that "it is unclear whether the reference in the General Comment to a 'life with dignity' entails more than just living a life, but rather living a life above a certain standard".

<sup>101</sup> In this regard, it is worth recalling Article 31 VCLT, which sets out the general rules for the interpretation of an international treaty. According to this precept, the terms of a treaty must be interpreted in accordance with their ordinary meaning, in their context and in the light of the treaty's object and purpose. Vid. UN, *Vienna Convention on the Law of Treaties*, 23 May 1969, UNTS, Vol. 1155, No. 18232, pp. 331-513.

<sup>102</sup> Both Australia and Russia highlighted, in their respective comments on the draft of the General Comment N° 36, that many of its paragraphs were arguably dealing with matters and States' obligations that were the subject of a separate, specific treaty or a specific area of international law, such as the ICESCR, international humanitarian law, and international environmental law. Doing so, the Committee were exceeding the ICCPR's scope and its own mandate. Vid. UN HUMAN RIGHTS COMMITTEE, *Submission of the Australian Government Draft General Comment No. 36...*, *op. cit.*, pars. 5-7. UN HUMAN RIGHTS COMMITTEE, *Preliminary comments on the draft general comment No. 36...*, submitted by the Russian Government, *op. cit.*, *inter alia* pars. 7 or 21.

<sup>103</sup> UN HUMAN RIGHTS COMMITTEE, *Submission of the Australian Government Draft General Comment No. 36...*, *op. cit.*, par. 6.

<sup>104</sup> UN HUMAN RIGHTS COMMITTEE, *Ioane Teitiota v. New Zealand*, *op. cit.*, pars. 9.8-9.9.

one's life<sup>105</sup>. Therefore, there must be "some link to a potentially deadly threat in order for Article 6 to be enlivened"<sup>106</sup>.

In *Portillo Cáceres et al. v. Paraguay*, the HRC seized the opportunity to apply for the first time the *real-risk test* in the context of environmental degradation and the right to enjoy a life with dignity. The Committee found that the fact the inhabitants of Colonia Yerutí lived surrounded by uncontrolled environmental pollution posed "a reasonably foreseeable threat to the authors' lives given that such large-scale fumigation [had] contaminated the rivers in which the authors fish, the well water they [drank] and the fruit trees, crops and farm animals that [were] their source of food"<sup>107</sup>. In other words, environmental pollution had degraded the "essential goods and services"<sup>108</sup>, on which the Portillo family was reliant on to satisfy their "minimum vital needs"<sup>109</sup>, to such an extent that they became in themselves "a potentially deadly threat"<sup>110</sup>.

Clearly, there are some differences between the Portillo family's case and the case of Mr Teitiota. In contrast to climate change and rising sea levels and their impact on living conditions in low-lying SIDS, the situation of environmental degradation in Colonia Yerutí was of easily recognisable human origin and a well-identified responsible State. However, the case of *Portillo Cáceres et al. v. Paraguay* remains relevant, regarding the *non-refoulement* of environmentally displaced persons, for two reasons. On the one hand, it shows the necessary relation of causality between the environmental disturbance and its impact on living conditions, the deterioration of which must be a direct result of the disruption. On the other hand, the high threshold of severity that such degradation of livelihoods would have to reach to satisfy the *real-risk test*.

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<sup>105</sup> JOSEPH, S., "Extending the Right to Life...", *op. cit.*, p. 358.

<sup>106</sup> *Id.*

<sup>107</sup> HRC, *Portillo Cáceres et al. v. Paraguay...*, *op. cit.*, par. 7.5 [verb tense changed].

<sup>108</sup> HRC, *General comment no. 36...*, *op. cit.*, par. 26.

<sup>109</sup> *Id.*

<sup>110</sup> JOSEPH, S., "Extending the Right to Life...", *op. cit.*, p. 358. As indeed it happened, as all the family members had to be hospitalised suffering from the same symptoms – nausea, dizziness, headaches, fever, stomach pains, vomiting, diarrhoea, coughing and skin lesions – and Mr Portillo eventually died. Besides breaching their right to live in dignity, the Committee considered that environmental pollution had also undermined the Portillo family's right to private and family life and home (Art. 17 ICCPR), as large-scale fumigations had also caused "the death of fish and livestock and the loss of crops and fruit trees on the land on which the authors live and grow crops", all of them "elements that constitute components of the way of life of the authors, who have a special attachment to and dependency on the land". Vid. HRC, *Portillo Cáceres et al. v. Paraguay...*, *op. cit.*, pars. 7.7-7.8.

### 1.2.2. General living conditions as contrary to the right to be free from inhuman or degrading treatment

The case of *Warda Osman Jasin v. Denmark*<sup>111</sup> marked a landmark on the jurisprudence of the HRC. For the first time, it was recognised that deportation of an individual to a country, in which the living conditions were far below basic human standards, would give rise to non-refoulement obligations to protect personal integrity dignity of the person returned.

The author of the complaint was a Somali girl in her twenties who had arrived in Italy fleeing her husband, a mighty 70-year-old local clansman. Her family had forced her to marry him at the age of 17 to end a tribal conflict confronting both clans<sup>112</sup>. Given the risk of persecution by her husband's clan and her own family clan whether she would be returned to Somalia, she and her eldest daughter were granted subsidiary protection and a residence permit valid for three years in Italy<sup>113</sup>.

As a beneficiary of subsidiary protection, she and her children were entitled to social benefits in Italy<sup>114</sup>. However, she did not receive social assistance, social housing benefits, or health care from the Italian authorities. As a result, she faced destitution and homelessness after leaving the Reception Centre for Asylum Seekers, living with her children in the streets, sleeping in railway stations and market places and receiving food from churches or by begging<sup>115</sup>. Furthermore, during her pregnancy, she did not receive any medical assistance or examinations, nor was she assisted during the birth either, which took place in the apartment of another woman of Somali origin<sup>116</sup>. Because of her precarious financial situation, she could not even pay the renewal fee for her Italian residence permit, which expired after three years<sup>117</sup>.

The described situation of destitution and extreme poverty that she was facing in Italy moved her to travel with her children to Sweden and later to Denmark, expecting

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<sup>111</sup> HRC, *Warda Osman Jasin v. Denmark*, *op. cit.*

<sup>112</sup> *Ibid.*, pars. 2.1-2.3.

<sup>113</sup> *Ibid.*, pars. 2.4-2.5.

<sup>114</sup> Vid. EU, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, OJEU (L 337), 20 December 2011, pp. 9-26, Chapter VII "Content of International Protection".

<sup>115</sup> HRC, *Warda Osman Jasin v. Denmark*, *op. cit.*, pars. 2.6-2.7 and 2.11.

<sup>116</sup> *Ibid.*, pars. 2.9-2.10. It is stated that the applicant could not receive any medical assistance because, in order to obtain an appointment with the medical staff, she needed an address (par. 2.9).

<sup>117</sup> *Ibid.*, par. 2.12.



to gain asylum and better living conditions<sup>118</sup>. The Danish authorities' decision to deport her and her offspring to Italy, on the grounds that the latter was the first asylum-country<sup>119</sup>, motivated the lodging of the complaint with the HRC<sup>120</sup>.

The Committee shared Denmark's views that neither the European Qualification Directive nor Article 7 ICCPR guarantees asylum seekers to "have exactly the same social and living standards as nationals of the country"<sup>121</sup>. However, they do oblige States parties to provide them "with certain social and economic elements in accordance with basic human standards"<sup>122</sup>, such as ensuring that the author and her children would be cared for in the receiving country "in conditions adapted to the children's age and the family's vulnerable status, which would enable them to remain in Italy"<sup>123</sup>. In this regard, the HRC took note of the conclusion reached by most of the Danish Refugee Appeals Board members concerning the living conditions of asylum-seekers who had obtained temporary residence permits in Italy. They were of the view that the situation "[was] approaching a level where it would no longer be secure to refer to Italy as the first country of asylum"<sup>124</sup>.

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<sup>118</sup> Id.

<sup>119</sup> According to EU, *Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national* (no longer in force), OJEU (L 50), 25 February 2003, pp. 1-10, Article 9 (4), determining as the Member State responsible for examining the application for asylum the one which issued the expired residence permit.

<sup>120</sup> HRC, *Warda Osman Jasin v. Denmark*, *op. cit.*, pars. 2.13-2.16.

<sup>121</sup> *Ibid.*, par. 8.7. Vid. also, ECtHR, *Mohammed Hussein and Others v. The Netherlands and Italy* (Application No. 27725/10), 02 April 2013, pars. 70-71. The European Court points out that the prohibition on being subjected to inhuman or degrading treatment does not imply an obligation on States to provide refugees with financial assistance to enable them to maintain a certain standard of living, a home, or that they cannot be expelled in order to continue to benefit from the medical, social or other assistance and services provided by the expelling State

<sup>122</sup> HRC, *Warda Osman Jasin v. Denmark*, *op. cit.*, par. 8.7.

<sup>123</sup> *Ibid.*, par. 8.9.

<sup>124</sup> *Ibid.*, pars. 2.16 and 8.6 [verb tense changed]. On the situation of applicants and beneficiaries of protection in those years in Italy, vid., USA, "Country Reports on Human Rights Practices for 2012: Italy", *Department of State*, 2012, pp. 10-12 (last access: 09/09/2020). SWISS REFUGEE COUNCIL, "Reception conditions in Italy: Report on the current situation of asylum seekers and beneficiaries of protection, in particular Dublin returnees", Swiss Refugee Council, October 2013, 68 pp. (last access: 09/09/2020). CoE, *Report by Nils Muiznieks... following his visit to Italy from 3 to 6 July 2012*, *op. cit.*, par. 148, observing that "the problem of the living conditions of asylum seekers in Italy has been receiving increasing attention in other EU member states, due to the growing number of legal challenges by asylum seekers to their transfer to Italy under the Dublin Regulation". The Commissioner also noted that "a series of judgments by different administrative courts in Germany have suspended such transfers, owing notably to the risk of homelessness and a life below minimum subsistence standards" and that, in view of two applications lodged against Austria, "the ECtHR decided in early 2012 to apply the interim measure under Rule 39 and requested the Austrian government to stay the applicants' transfer to Italy until further notice" (*id.*). Cf. ASYLUM INFORMATION DATABASE (AIDA), *Country report: Italy*, May 2013, pp. 34-46, on reception conditions. Also ECtHR, *Mohammed Hussein and Others...*, *op. cit.*, par.

Notwithstanding the above, the Danish Board considered that "there was not a "fully sufficient basis" for not referring to Italy as the first EU country of asylum in the author's case"<sup>125</sup>. Instead, the HRC believed these findings supported, to some extent, concerns about the humanitarian conditions in which this vulnerable group was living in Italy<sup>126</sup>. In particular, the Committee considered that Denmark "[had] (...) failed to seek proper assurance from the Italian authorities"<sup>127</sup> on "how the Italian residence permit that the author was granted and which was now expired would protect her and her three minor children from hardship and destitution, which she had already experienced in Italy, if she and her children were to be returned to that country"<sup>128</sup>. "Consequently, the Committee [considered] that, under the circumstances, [their] removal (...) would be in violation of article 7 of the Covenant"<sup>129</sup>.

The Committee's decision was strongly criticised by one of its member, Mr Dheerujall Seetulsingh. In his opinion, not only was a decision without precedent in the jurisprudence of the HRC but also allowed the dangerous entering of socio-economic considerations into the minimum content of Article 7 ICCPR. As social assistance schemes may vary from country to country depending on the national economic resources available, the HRC's decision would have the pernicious effect of legitimating secondary movements towards the wealthiest States, capable of providing better social benefits, undermining the very essence of international protection<sup>130</sup>. In the own words used by Mr Dheerujall Seetulsingh in his dissenting opinion:

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78, concluding: "while the general situation and living conditions in Italy (...) may disclose some shortcomings (...), it has not been shown to disclose a systemic failure to provide support or facilities catering for asylum seekers as members of a particularly vulnerable group of people".

<sup>125</sup> HRC, *Warda Osman Jasin v. Denmark*, *op. cit.*, par. 2.16.

<sup>126</sup> *Ibid.*, par. 8.6.

<sup>127</sup> *Ibid.*, par. 8.9 [verb tense changed].

<sup>128</sup> *Ibid.*, par. 8.8. The Committee was deeply concerned by the fact that the applicant had faced "indigence and extreme precarity" in Italy twice. Previously to travel to Denmark, Ms Warda and her children had moved to the Netherlands to try to improve their situation, having been returned from there to Italy under the same principle of "first country of asylum". Despite the Dutch authorities assured her that she would be provided with humanitarian assistance from the Italian authorities upon her arrival in Rome, she found herself and her children living again in the streets. The Commission was therefore not convinced that should the applicant return to Italy, she would not face destitution for a third time. Indeed, the HRC strongly criticised Denmark for simply "rely on general reports and on the assumption that, as she had benefited from subsidiary protection in the past, she would, in principle, be entitled to work and receive social benefits in Italy today", rather than undertaking "an individual assessment" taking into account the applicant's previous personal experiences in the country (*ibid.*, par. 8.9).

<sup>129</sup> *Ibid.*, par. 8.10 [verb tense changed and possessive pronoun added].

<sup>130</sup> *Ibid.*, *Appendix I Individual opinion of Committee member Dheerujall Seetulsingh (dissenting)*, pars. 1, 4 and 5.

1. (...) Such a finding [to consider that the applicant's deportation to Italy would violate Article 7 ICCPR] would unduly widen the ambit of article 7 and make it applicable to the situation of thousands of poor and destitute people in the world, especially those who now want to move from the South to the North.

(...)

4. The fact that living conditions are better in Denmark than in Italy is not sufficient ground to conclude that the author would be subjected to inhuman and degrading treatment if deported to the country of first asylum. (...)

5. To presume a violation of article 7 [in those situations of economic hardship and deprivation] is tantamount to introducing the concept of economic refugees within the Covenant, thus creating a dangerous precedent, whereby asylum seekers and refugees would be justified in moving from one country to another, seeking better living conditions than in the country of first asylum. Subsidiary protection may vary from country to country depending on the economic resources available in each country<sup>131</sup>.

Mr Judging Dheerujlall Seetulsingh is right pointing out that a straightforward socio-economic interpretation of the concept of inhuman or degrading treatments is dangerous and, without doubt, goes far beyond from the scope, literal sense and purpose of Article 7 of the Covenant. However, judging by the majority of the Committee members' reasoning, it does not seem they found the deportation of Ms Jasin and her children contrary to Article 7 ICCPR only because their economic position would be worse in Italy than in Denmark.

By what has been exposed above, it appears the Committee's decision was highly influenced by the applicant's past experiences in the country and the absence of guarantees that she would not face a similar situation again if she were to be returned to Italy. Furthermore, the HRC sets a very high threshold when interpreting Article 7 of the Covenant from a socio-economic perspective. Thus, a mere worsening of a person's material or social living circumstances would not be sufficient to understand that a violation of Article 7 exists. On the contrary, only those situations of genuine deprivation and extreme poverty would reach the level of severity required by the Committee in *Warda Osman Jasin v. Denmark* to amount to inhuman or degrading treatment. This is important as it gives an idea of how deteriorated living conditions would have to be in the receiving country due to environmental degradation to give raise to the prohibition of *non-refoulement* based on Article 7 ICCPR.

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<sup>131</sup> Id. [bracketed text added].

### 1.2.3. The *real-risk test*: not an entirely objective test

Basing the principle of *non-refoulement* on the general situation prevailing in the receiving country does not imply that the real risk test is entirely objective. States must continue to conduct an individualised assessment of the case by considering the applicant's subjective circumstances. The Committee made this point clear in the case of *Teitiota v. New Zealand* when, in addressing the existence of a situation of generalised violence on the island, it stated that the real risk of harm could arise "simply by virtue of an individual being exposed to such violence on return, or where *the individual in question is in a particularly vulnerable situation*"<sup>132</sup>.

For example, in *Warsame v. Canada*, the Human Rights Committee found that it was contrary to articles 6 and 7 of the Covenant to deport a 26-year-old Somali boy to an extremely violent country as it was Somalia. Not only did the Committee base its decision on the situation of civil war in which Somalia was still engaged. Instead, the Committee seemed to give more weight to the fact that the complainant had never lived there. Therefore, he was unfamiliar with the clans' practice or culture, nor did he have any social, clan or family contacts that could protect him or speak the local language. Furthermore, his condition as a young and healthy male increased exponentially the risk of being forcibly recruited by groups such as Al-Shabaab and Hizbul Islam or even the Transitional Federal Government<sup>133</sup>.

The HRC has equally considered the "particularly vulnerable situation" in which returnees found themselves in contexts other than those involving a situation of widespread violence in the country of destination. In the case of *Warda Osman Jasin v. Denmark*, alongside the general situation endured by asylum seekers and beneficiaries of international or humanitarian protection in Italy, the Committee also looked at certain personal circumstances of the applicant, which placed her in an even more vulnerable position. For example, being a single mother of three young children or suffering from asthma – an illness she had developed by living on the streets in Italy and for which she had to be hospitalised in Denmark when she did not inhale her medication in time<sup>134</sup>.

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<sup>132</sup> HRC, *Ioane Teitiota v. New Zealand*, *op. cit.*, par. 9.7 [italics added].

<sup>133</sup> HRC, *Jama Warsame v. Canada* (CCPR/C/102/D/1959/2010), 1 September 2011, pars. 8.2-8.3.

<sup>134</sup> HRC, *Warda Osman Jasin v. Denmark*, *op. cit.*, par. 2.15 and 8.4 *in fine*.

The cited case-law shows that the *real-risk test* includes an *objective element* – meaning the potential source of risk - and a subjective one. This *subjective element* could then qualify the general situation in a country, which alone may not reach the minimum threshold of severity necessary to activate the principle of *non-refoulement*, when those personal circumstances make the applicant extremely more vulnerable to it than the "average man"<sup>135</sup>.

### 1.3. Applying the *real-risk test* in the case of Mr Teitiota

In his complaint, Mr Teitiota claimed that sea-level rise in Kiribati has caused, on the one hand, a shortage of habitable land, which has created, in turn, a housing crisis resulting in violent land disputes that have endangered the complainant's life<sup>136</sup>. On the other hand, it has led to severe environmental degradation resulting in a shortage of drinking water, as fresh-water lenses had been depleted due to saltwater intrusion<sup>137</sup>. Besides, the crops on which he and his family relied had perished due to salt deposit on the ground, making it extremely difficult to grow new ones<sup>138</sup>.

However, none of the claims made by Mr Teitiota passed the *real-risk test* in the eyes of the majority of the member of the HRC. First of all, the Committee noted that the alleged land disputes were occasional and isolated events, far from constituted a situation of widespread violence in Kiribati<sup>139</sup>. The situation was not then comparable, for example, to the ongoing situation of civil war in Somalia that Mr Warsame would have faced whether he had been returned<sup>140</sup>. Moreover, the Committee noted both that Mr Teitiota had never been involved in this kind of disputes and the absence of information disclosing Kiribati authorities' incapacity or passivity in protecting population when one of these land incidents broke out<sup>141</sup>.

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<sup>135</sup> Cf. MCADAM, J., "Climate Change Displacement and International Law...", *op. cit.*, p. 53, noting that: "a word of caution is needed when it comes to special characteristics generally. There is an important difference between assessing risk on the basis of the applicant's particular circumstances, and requiring an applicant to show 'further special distinguishing features' (...), so in the case of broad-ranging climate impacts, the relevant question is whether the applicant faces a real risk of serious harm if removed, not whether the applicant risk than others".

<sup>136</sup> HRC, *Ioane Teitiota v. New Zealand*, *op. cit.*, par. 3.

<sup>137</sup> *Id.*

<sup>138</sup> *Ibid.*, par. 2.5.

<sup>139</sup> *Ibid.*, par. 9.7.

<sup>140</sup> HRC, *Jama Warsame v. Canada*, *op. cit.*, pars. 3.3-3.4.

<sup>141</sup> HRC, *Ioane Teitiota v. New Zealand*, *op. cit.*, par. 9.7.

Likewise, as opposed to the facts described in *Warsame v. Canada*<sup>142</sup>, Mr Teitiota was familiar with the way of life in the islands since he had grown up in Kiribati, where he still had relatives who were willing to help him and his family if they returned to the island. Indeed, at the time of being deported, his father-in-law had reached an agreement with the new owner of the land where Mr Teitiota had been living before migrating to New Zealand<sup>143</sup>. Therefore, on his return, he would have land to provide him and his family with accommodation and livelihood. Consequently, they would not be homeless or destitute with no food, no water, or shelter as occurred in *Jasin v. Denmark*<sup>144</sup>. Neither did Mr Teitiota present any particular circumstance that made him "particularly vulnerable"<sup>145</sup>.

In this regard, and related with Mr Teitiota's claim that his family would be private of subsistence means if they would be returned to Kiribati, the Committee paid attention to the availability of adequate supplies and water. As for groceries, the HRC expressly recognised that "the lack of alternatives to subsistence livelihoods may place individuals at a *heightened risk of vulnerability* to the adverse effects of climate change"<sup>146</sup>. However, it also pointed out the lack of information provided by Mr Teitiota "on alternative sources of employment and on the availability of financial assistance to meet basic humanitarian needs in the Republic of Kiribati"<sup>147</sup>. Additionally, the Committee noted the New Zealand Tribunal's observation that whether "it was difficult to grow crops, it was not impossible"<sup>148</sup>, and that "most nutritious crops remained available in the Republic of Kiribati"<sup>149</sup>.

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<sup>142</sup> HRC, *Jama Warsame v. Canada*, *op. cit.*, pars. 3.1-3.8.

<sup>143</sup> HRC, *Ioane Teitiota v. New Zealand*, *op. cit.*, footnote 2.

<sup>144</sup> HRC, *Warda Osman Jasin v. Denmark*, *op. cit.*, pars. 2.6-2.7 and 2.11.

<sup>145</sup> It could be argued that the fact that Mr. Teitiota has two children, even if he is not a single parent like Ms. Jasin, or the fact that one of them had fallen ill on his return to Kiribati due to the poor quality of the water, should have been enough for the HRC to consider that the environmental conditions on the island were a real threat to life, especially for children, given their greater vulnerability. This omission on the part of the Committee could, however, have a procedural explanation. Unlike Ms. Jasin, who filed the complaint on her own behalf and on behalf of her three children, in Mr. Teitiota's case he alone claimed to be an affected party. In accordance with the principle of procedural consistency, the HRC can only assess whether there is a violation of human rights with respect to the person who claimed to be a victim. Therefore, the lack of identification of Mr Teitiota's children as such made it impossible for the Committee to judge whether the environmental conditions in Kiribati represented a real threat to the life or personal integrity of the children.

<sup>146</sup> HRC, *Ioane Teitiota v. New Zealand*, *op. cit.*, par. 9.9 [italics added].

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

As far as water was concerned, the Committee accepted the report and testimony provided for the climate change researcher John Corcoran. According to him, despite the constraints caused by water rationing, 60 per cent of South Tarawa residents – the home village of the author and his family - could get fresh-water supplies from rationed provisions provided by the Public Utilities Board<sup>150</sup>.

Finally, in contrast to the Paraguayan government's passivity in ending contamination by agricultural pesticides in *Portillo Cáceres et al.*<sup>151</sup>, the Committee pointed out the Republic of Kiribati's pro-active role fighting against climate change. Based on the information available in the 2007 National Adaptation Programme of Action submitted by Kiribati under the UNFCCC, it found the country "was taking adaptive measures to reduce existing vulnerabilities and build resilience to climate change-related harms"<sup>152</sup>.

Consequently, the HRC considered that, in view of the information at its disposal, it could not conclude that the situation prevailing in Kiribati entailed a real or reasonably foreseeable risk of exposing Mr Teitiota, through his deportation, to a situation of violence, "indigence, deprivation of food, and extreme precarity that could threaten his right to life, including his right to a life with dignity"<sup>153</sup>.

#### **1.4. Satisfying the *real-risk test* in sinking SIDS: a question of time?**

Although the HRC concluded that, at the time Mr Teitiota and his family were deported from New Zealand in 2015, the environmental situation in Kiribati had not yet reached the minimum level of severity required to fall within the scope of Articles 6 and 7 ICCPR<sup>154</sup>, it did not rule out that it would not do so in the future. Indeed, the Committee recognised *obiter dicta* that sea-level rise is likely to render Kiribati and other low-lying SIDS uninhabitable even before the islands be submerged entirely, thereby triggering the *non-refoulement* obligations of sending States<sup>155</sup>.

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<sup>150</sup> Ibid., par. 9.8.

<sup>151</sup> HRC, *Portillo Cáceres et al. v. Paraguay*, *op. cit.*, par. 7.5.

<sup>152</sup> HRC, *Ioane Teitiota v. New Zealand*, *op. cit.*, pars. 9.6 and 9.12.

<sup>153</sup> Ibid., par. 10.

<sup>154</sup> Ibid., par. 9.14.

<sup>155</sup> Ibid., par. 9.11.

In this regard, the Committee notably considered that the timeframe suggested by Mr Teitiota for Kiribati to become uninhabitable was 10 to 15 years<sup>156</sup>. Therefore, there was still time for low-lying island governments and the international community to intervene and take additional adaptation measures to prevent further degradation of the islanders' habitat and enhance their living conditions<sup>157</sup>. However, if nothing is done, and the process of environmental degradation follows its course, it will reach a point where it will no longer be possible to consider SIDS as an environmentally safe environment. The underlying reason for the Committee's dismissal of Mr Teitiota's complaint was then a matter of time.

It is undeniable that climate change effects are already being felt worldwide, with low-lying SIDS being the most visible face of it. It is also true that, because of their particular morphology, they are and will be one of the victims most affected by climate change, suffering from both sudden natural phenomena – like intense storms and floods - and slow processes of environmental degradation – such as sea-level rise, salinisation or land degradation<sup>158</sup>.

Nevertheless, precedents such as *Jasin v. Denmark*, *Warsame v. Canada or Portillo Cáceres et al. v. Paraguay* show that whether the climate change impact on socio-economic living conditions was to be considered a real threat to life or personal integrity, its adverse consequences would still have to manifest themselves with greater intensity<sup>159</sup>. The exceptional high risk-threshold assumed by the Committee in the case-law mentioned above means, therefore, that it may still take some time before the HRC considers the expulsion of individuals to low-lying SIDS contrary to Articles 6 and 7 ICCPR<sup>160</sup>.

This interpretation of the principle of *non-refoulement* was strongly criticised by the Committee member Duncan Laki Muhumuza, who presented a dissenting

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<sup>156</sup> Ibid., par. 9.12.

<sup>157</sup> Id.

<sup>158</sup> Ibid., par. 9.11.

<sup>159</sup> MCADAM, J., "Climate Change Displacement and International Law...", *op. cit.*, p. 25, observing: "Notwithstanding that the impacts of climate change are already being felt in communities around the world, empirical evidence suggests that those impacts are not *yet* sufficiently severe as to amount to (...) "cruel, inhuman or degrading treatment.

<sup>160</sup> Ibid., pp. 50-52, rightly noting: "the ability of existing legal mechanisms to respond to climate-related movement (...) would depend on the point in time at which protection is sought, based on the severity of the immediate impacts on return" (p. 50).



opinion<sup>161</sup>. He considered that the higher risk-threshold the Committee has been demanding, when the threat to life or integrity derives from the general conditions in the receiving country, is so high that it becomes unreachable and therefore unreasonable<sup>162</sup>. He noted the considerable difficulties already faced by the complainant and his family upon their return to Kiribati to grow crops or access clean water, having suffered one of the applicant's children from blood poisoning due to the low quality of drinking water<sup>163</sup>. In his opinion, this current level of environmental degradation in the country already "reveals a livelihood short of the dignity that the Convention seeks to protect"<sup>164</sup>, and should therefore have been sufficient for the HRC to consider the *real-risk test* satisfied<sup>165</sup>.

He argued that "even if deaths [were] not occurring with regularity on account of the [environmental and related socio-economic] conditions"<sup>166</sup> prevailing in Kiribati, the conclusion should not have been that "the threshold [had] not been reached"<sup>167</sup>. Otherwise, it "would indeed be counterintuitive to the protection of life, to wait for deaths to be very frequent and considerable; in order to consider the threshold of risk as met"<sup>168</sup>. Metaphorically speaking, the dissenting member stated that the Committee's decision was equivalent to "forcing a drowning person back into a sinking vessel, with the 'justification' that after all there are other voyagers on board"<sup>169</sup>.

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<sup>161</sup> HRC, *Ioane Teitiota v. New Zealand*, *op. cit.* Annex 2 *Individual opinion of Committee member Duncan Laki Muhumuza (dissenting)*, pp. 15-16.

<sup>162</sup> *Ibid.*, par. 3.

<sup>163</sup> *Ibid.*, par. 5.

<sup>164</sup> *Id.*

<sup>165</sup> *Vid.* also, HRC, *Ioane Teitiota v. New Zealand*, *op. cit.* Annex 1 *Individual opinion of Committee member Vasilka Sancin (dissenting)*, pp. 13-14, who also disagreed with the Committee's conclusion, as she was concerned about the real possibility of access to safe drinking water, and the fact that children had never been exposed to water conditions in Kiribati, which made them more vulnerable to disease. She criticised the Committee's argument that "the author has not provided sufficient information indicating that the supply of fresh water is inaccessible, insufficient or unsafe so as to produce a reasonably foreseeable threat of a health risk that would impair his right to enjoy a life with dignity or cause his unnatural or premature death" (par.4). Under her view, this reasoning represents a reversal of the burden of proof, as it should be "the State Party, not the author, to demonstrate that the author and his family would in fact enjoy access to safe drinking (or even potable) water in Kiribati, to comply with its positive duty to protect life from risks arising from known natural hazards" (par. 5).

<sup>166</sup> HRC, *Ioane Teitiota v. New Zealand*, *op. cit.* Annex 2 *Individual opinion of Committee member Duncan Laki Muhumuza (dissenting)*, par. 5 [verb tense changed and bracketed text added].

<sup>167</sup> *Id.* [bracketed text added].

<sup>168</sup> *Id.*

<sup>169</sup> *Ibid.*, par. 6. In this vein, one may ask whether the HRC is not falling into the same trap for which it reproached Denmark in the case of Ms Jasin (*vid.* HRC, *Warda Osman Jasin v. Denmark*, *op. cit.*, par. 8.9). Namely, relying on general reports on the situation in Kiribati instead of taking into account the applicant's personal experience on his return to the island.

However, the dissenting opinion of Mr Laki Muhumuza overlooks some cautions and considerations made by the rest of the HRC members regarding deportations to Kiribati. To start with, they recognise "the risk of an entire country becoming submerged under water is [indeed] such an extreme risk, [that] the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realised"<sup>170</sup>. Therefore, the Committee is far from requiring that the low-lying SIDS situation has fatal consequences to consider the *real-risk test* met. Furthermore, the very Committee has emphasised that its judgment in *Teitiota v. New Zealand* does not release State parties from their obligation "to take into account in future deportation cases the situation at the time in the Republic of Kiribati and new and updated data on the effects of climate change and rising sea-levels thereupon"<sup>171</sup>.

Consequently, the HRC has not precluded the possibility of raising the obligation of *non-refoulement* in future deportation cases related to the effects of climate change on the SIDS. Either because the islands' situation has worsened; or because States has not complied with the obligation to take adaptation measures, or simply because these measures are utterly ineffective in practice.

## 1.5. Conclusion

Although the HRC did not find New Zealand to have breached its international human rights obligations, there is no doubt that the decision sets a landmark. It gives some insights on how the principle of *non-refoulement* could be shaped in the future in the context of cross-border climate-related displacement. However, this milestone must be celebrated at its proper value, without losing sight of the very nature of the principle of *non-refoulement* and the limitations it imposes.

The exceptionally high threshold of risk assumed reflects, indeed, the effort the Committee has made in trying to find a difficult balance between a human rights approach of climate change and the exceptional and absolute character of the *non-refoulement* principle. As an exception to States' sovereign competence to control foreigners' stay in their territories, the obligation of *non-refoulement* operates as an equally exceptional mechanism. Consequently, the principle of *non-refoulement* should

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<sup>170</sup> HRC, *Ioane Teitiota v. New Zealand*..., *op. cit.*, par. 9.11. [bracketed text added].

<sup>171</sup> *Ibid.*, par. 9.14.

not act as a preventive mechanism that would allow people faced with environmental hardship to displace before the conditions have become unbearable<sup>172</sup>. Situations of environmental disruption whose effects are temporary or do not make the return impossible, or where an internal flight alternative may be feasible, should not give rise to *non-refoulement* either<sup>173</sup>.

Moreover, relaxing too much the severity threshold to include as many individuals affected by environmental disruptions as possible could be counterproductive. Not only because it risks diluting the core of the principle of *non-refoulement*, which the HRC developed to protect life and personal integrity from the most severe threats pursuant Articles 6 and 7 of the Covenant. More importantly, a broad interpretation of these two legal precepts, extending their wording even further, could provoke an adverse reaction from States parties. It already happened when, for example, the Committee included the notion of dignity within the right to life in its General Comment N° 36<sup>174</sup>. Should States parties feel threatened in its sovereignty by successive and extensive interpretations of the Covenant by the HRC, the universal validity and acceptance currently enjoyed by the ICCPR in the international community might be at serious risk.

Finally, it should be noted that the principle of *non-refoulement* only prevents aliens from being returned to a country where their life or integrity is in danger. The host State is not, however, obliged to provide them with any protection status, so that those not returned could be trapped in a kind of legal limbo<sup>175</sup>. In general terms, the principle of *non-refoulement* is not, therefore, the adequate tool to protect persons who cross an international border pushed by environmental factors.

In conclusion, the HRC's decision in *Teitiota v. New Zealand* has opened up a relevant avenue for protection in the field of cross-border environmental migration and human rights. Nevertheless, the resource to it should be the exception, reserved for the

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<sup>172</sup> MCADAM, J., "Climate Change Displacement and International Law...", *op. cit.*, p. 25, noting that the principle of *non-refoulement* "would only assist a person once conditions were already very extreme. This mechanism does not allow for pre-emptive movement where conditions are *anticipated* to become dire, and thus would not assist people trying to move before the situation becomes intolerable".

<sup>173</sup> *Ibid.*, p. 28.

<sup>174</sup> *Vid., inter alia*, HRC, *Preliminary comments on the draft general comment No. 36...*, submitted by the Russian Government, *op. cit.*, par. 1. HRC, *Submission of the Australian Government Draft General Comment No. 36...*, *op. cit.*, par. 5.

<sup>175</sup> KOLMANSKOG, V.; MYRSTAD, F., "Environmental Displacement in European Asylum Law", *European Journal of Migration and Law*, vol 11, issue 4, 2009, p. 323.

most extreme cases when there is no other possible alternative for protection, and not the general rule.

## **2. REGIONAL HUMAN RIGHTS SYSTEMS: THE *NON-REFOULEMENT* OF ENVIRONMENTALLY DISPLACED MIGRANTS IN THE ECHR, THE INTER-AMERICAN HUMAN RIGHTS SYSTEM, AND THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS**

### **2.1. European Convention on Human Rights (ECHR)**

Article 2 (1) and Article 3 of the ECHR<sup>176</sup> enshrines, respectively, the right to life and the torture prohibition. Paragraph 1 of Article 2 states that:

"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law"<sup>177</sup>.

On its part, Article 3 provides that:

"No one shall be subject to torture or to inhuman or degrading treatment or punishment"<sup>178</sup>.

The present subsection examines the extent to which the ECtHR's case law has accepted the possibility that non-man-made environmental harms and their impact on living conditions could create a situation of risk for life or integrity. This assessment should allow us to conclude whether the ECtHR would share the HRC's views regarding the prohibition of *refoulement* in cases of degraded environmental conditions in the receiving country.

#### **2.1.1. Non-man-made environmental harm as a threat to the right to life (Article 2(1) ECHR)**

The European Court has had several occasions to recognise that the obligation to protect the right to life also includes protection from environmental threats. This subsection begins by briefly reviewing the most relevant judgments of the European Court that have shaped this obligation to protect. It then draws out a series of common

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<sup>176</sup> CoE, *European Convention for the Protection of Human Rights and Fundamental Freedoms...*, *op. cit.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

principles from this body of jurisprudence that outline this State obligation in the case of environmentally displaced persons.

#### **A) The obligation of States to protect life in case of threats in the ECtHR's case-law**

Case-law shows that State parties to the ECHR have a positive obligation to prevent the loss of life even in the event of natural disasters<sup>179</sup>. Certainly, insofar as these are events beyond human control, the extent of such positive obligation will depend on different factors. It could be mentioned the grade to which the environmental disruption was foreseeable or the extent to which its harmful effects could have been prevented or minimise whether the State had adopted appropriate warning and defence measures<sup>180</sup>.

In *Budayeva and Others v. Russia*, the European Court considered that Russia had failed to protect the population of the city of Tyrnauz<sup>181</sup>, frequently affected by mudslides because of its proximity to Mount Elbrus<sup>182</sup>. The Court observed it was a very well-known hazardous area, as subsequent mudslides had been registered almost every year since 1937<sup>183</sup>. Moreover, the federal government had been warned up to four times by the Mountain Institute about the necessity of maintaining the only two existing landslide protection structures. These defences consisted of a mud-retention dam, which had been severely damaged by a heavy sludge slide in 1999; and a mud-retention collector, blocked by the accumulation of debris<sup>184</sup>. The Mountain Institute had also strongly advised the government about setting up an early warning system and

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<sup>179</sup> Vid. ECtHR: *Murillo Saldias and Others v. Spain* (Application no. 76973/01), 28 November 2006, 21 pp.; *Budayeva and Others v. Russia* (Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02), 29 September 2008, 43 pp.; *Kolyadenko and Others v. Russia* (Applications nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05), 09 July 2012, 57 pp.; *Viviani and Others v. Italia* (Application no. 9713/13), 24 Mars 2015, 11 pp.; *Özel and Others v. Turkey* (Applications nos. 14350/05, 15245/05 and 16051/05), 02 May 2015, 50 pp.

This positive obligation of the State to safeguard the lives of persons under its jurisdiction has been interpreted by the ECtHR as including both substantive and procedural aspects. Substantive aspect refers to the obligation of States "to take regulatory action and to adequately inform the public about any life-threatening emergency". "Where lives have been lost in circumstances potentially engaging the responsibility of the State", the procedural one demands from the State "to ensure, by all means at its disposal – judicial or otherwise –, that no violations of the right to life remain unpunished. In ECtHR: *Kolyadenko and Others v. Russia...*, *op. cit.*, pars. 157 and 188; *Budayeva and Others v. Russia...*, *op. cit.*, pars. 131, 132 and 138; *Özel and Others v. Turkey...*, *op. cit.*, par. 180.

<sup>180</sup> In ECtHR: *Kolyadenko and Others v. Russia...*, *op. cit.*, pars. 160-161; *Budayeva and Others v. Russia...*, *op. cit.*, pars. 135 and 137; *Özel and Others v. Turkey...*, *op. cit.*, par. 171.

<sup>181</sup> ECtHR, *Budayeva and Others v. Russia...*, *op. cit.*, pars. 158-160.

<sup>182</sup> *Ibid.*, par. 13.

<sup>183</sup> *Ibid.*, pars. 14-15.

<sup>184</sup> *Ibid.*, pars. 18-25.

observation points, which would enable the population to be alerted and evacuated if the risk of mudslides was detected<sup>185</sup>.

Even though the government was aware of the potential human and material losses that may result from the failure to implement such measures, no land-planning and emergency relief policies were developed. Therefore, the Tribunal found that national authorities had negligently ignored the foreseeable risk that the mountain district posed to its residents' lives<sup>186</sup>. Consequently, it concluded that Russia was responsible, under article 2 ECHR, of the eight deaths caused by the massive mudslides that had devastated the town in July 2000<sup>187</sup>.

Previously, in the case of *Murillo Saldias v. Spain*, the Court had already had the opportunity to explore the causal link between negligence attributable to the State and the endangering of lives by a foreseeable natural disaster. In their complaint, the applicants claimed Spain's responsibility for not taking adequate preventive measures to protect users of the Biescas campsite – Spanish Pyrenees –<sup>188</sup> struck by torrential rain in August 1996<sup>189</sup>. As a result of severe flooding, 87 persons lost their lives by drowning<sup>190</sup>. In that regard, the applicants claimed that, despite being aware of the area's potential dangers, the Spanish administration concealed and manipulated the existing technical reports, which advised to search for a safer place, and instead granted permission to build the campsite<sup>191</sup>.

However, the Court did not hear the merits of the case. Consequently, it could not rule on whether the positive obligation of protecting life also extended to cases of natural disasters. It declared the application inadmissible under article 34 of the ECHR, as one of the claimants had already obtained compensation for his relatives' deaths at the national level and therefore no longer held the status of "victim". For their part, the others had not exhausted domestic remedies before filing the complaint with the ECtHR (art. 35.1 ECHR)<sup>192</sup>.

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<sup>185</sup> Id.

<sup>186</sup> Ibid., pars. 148-157.

<sup>187</sup> Ibid., pars. 158-160.

<sup>188</sup> ECtHR, *Murillo Saldias and Others v. Spain...*, *op. cit.*, pp. 17-18.

<sup>189</sup> Ibid., p. 2.

<sup>190</sup> Id.

<sup>191</sup> Ibid., pp. 13 *in fine* and 14, par. 1.

<sup>192</sup> Ibid., pp. 18-21.

Similarly, it happened in the case of *Viviani and Others v. Italia*. This case concerned the risks linked to a potential eruption of Vesuvius and the alleged failure of Italian authorities to adopt measures to combat that threat and other associated incidents, such as earthquakes. In particular, the applicants stated that no detailed safety plan establishing possible evacuation routes had been adopted so far, nor had any simulation been performed<sup>193</sup>. They also alleged that no alarm system had been installed to warn the population in the event of detecting any volcanic activity<sup>194</sup>. Nevertheless, the Court declared the application inadmissible since the applicants had not previously exhausted the domestic remedies available to them (art. 35.1 ECHR), particularly before the administrative courts or in the form of collective action<sup>195</sup>.

In addition to *Budayeva and Others v. Russia*, the Strasbourg Tribunal has confirmed its interpretation of Article 2 ECHR in cases of natural disasters both in *Kolyadenko and Others v. Russia* and in *Özel and Others v. Turkey*. As for the first, the Court found Russia guilty again because the Russian authorities had put the inhabitants of Vladivostok at risk of being drowned by releasing water from the Pionerskaya reservoir, without any prior warning, during the heavy rains of 7 August 2001<sup>196</sup>. The quick-release of water to prevent structural damage to the reservoir, along with the poor condition of the river bed, led to the instant flooding of a large area around it, including the zone where the applicants were residing<sup>197</sup>.

In the case of *Özel and Others v. Turkey*, the applicants complained Turkish authorities had not protected the population of Çınarcık from the earthquake that occurred in 1999. The collapse of several illegally built apartment blocks, including the one where the applicants and their relatives lived, killed or injured thousands of persons<sup>198</sup>. Although the Court considered local authorities to have "a frontline role in risk prevention"<sup>199</sup> by verifying buildings' conformity with urban and architectural plans<sup>200</sup>, this part of the claim was dismissed under the six-month rule (art. 35.1 ECHR)<sup>201</sup>.

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<sup>193</sup> ECtHR, *Viviani and Others v. Italia*..., *op. cit.*, par. 7.

<sup>194</sup> *Id.*

<sup>195</sup> *Ibid.*, pars. 48-54.

<sup>196</sup> ECtHR, *Kolyadenko and Others v. Russia*..., *op. cit.*, pars. 162-187.

<sup>197</sup> *Id.*

<sup>198</sup> ECtHR, *Özel and Others v. Turkey*..., *op. cit.*, pars. 7-23.

<sup>199</sup> *Ibid.*, par. 174.

<sup>200</sup> *Ibid.*, pars. 174-176.

<sup>201</sup> *Ibid.*, pars. 177-178. According to Article 35.1 ECHR, the Court must reject complaints lodged more than six months later from the date on which the final decision was taken at the national forum.

Nevertheless, the Court finally held that there had been a violation of Article 2 ECHR in its procedural aspect. It pointed out that the Turkish authorities had not proceeded promptly to assess the responsibilities and circumstances of the collapse of the buildings that had caused the deaths<sup>202</sup>.

### **B) Application of the previous jurisprudential principles to the case of environmental displaced persons**

It is possible to identify some common principles from the case-law commented above. Nevertheless, as the Court has not yet ruled on the non-refoulement of a person to a country affected by environmental degradation, it is difficult to extrapolate these criteria to the scenario of environmentally displaced persons. Despite this, they could provide some guidance on the possible outcome, whether a deportation case related to climate change or other environmental disruptions was brought before the ECtHR.

Firstly, the Court has stressed that the burden that Article 2 ECHR imposed on States to prevent natural hazards from happening and protect populations from the effects of such events cannot be impossible or disproportionate<sup>203</sup>. In particular, the Court has pointed out the scope of this positive obligation must be determined by taking into account the origin of the threat, the extent to which the risk to life could be mitigated, and the various operational options available to the State following its priorities and resources<sup>204</sup>.

The Court has systematically maintained that where the State is required to adopt positive measures, the choice of one or another means is a decision which, in principle, "falls within the Contracting State's margin of appreciation"<sup>205</sup>. Thus, the ECtHR has noted that even if the State has not implemented a specific measure provided for by domestic law, "it may still fulfil its positive duty by other means"<sup>206</sup>. This margin of appreciation is even broader in the case of natural disasters than in the sphere of dangerous human-made activities, as the former are entirely beyond human control<sup>207</sup>.

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<sup>202</sup> Ibid., pars. 191-200.

<sup>203</sup> Vid., for example, ECtHR: *Budayeva and Others v. Russia...*, *op. cit.*, par. 135; *Kolyadenko and Others v. Russia...*, *op. cit.*, par. 160.

<sup>204</sup> ECtHR *Budayeva and Others v. Russia...*, *op. cit.*, pars. 135 and 137.; *Kolyadenko and Others v. Russia...*, *op. cit.*, pars. 160-161; *Özel and Others v. Turkey...*, *op. cit.*, par. 171.

<sup>205</sup> ECtHR: *Budayeva and Others v. Russia...*, *op. cit.*, par. 134; *Kolyadenko and Others v. Russia...*, *op. cit.*, par. 160.

<sup>206</sup> Vid. footnote *supra*.

<sup>207</sup> ECtHR, *Budayeva and Others v. Russia...*, *op. cit.*, par. 135.



In that respect, the prevention obligation, in the context of natural disasters, "comes down to adopting measures to reinforce the State's capacity to deal with the unexpected and violent nature of such natural phenomena in order to keep their catastrophic impact to a minimum"<sup>208</sup>.

Secondly, the European Court has referred to this obligation of prevention and protection only regarding predictable and imminent environmental disruptions; not against unexpected, hypothetical or future environmental threats. Thus, the Court has repeatedly referred to "the imminence of a natural hazard that *had been clearly identifiable*"<sup>209</sup>, particularly when it is "a *recurring calamity* affecting a distinct area developed for human habitation or use"<sup>210</sup>. Therefore, the European Court has held States parties liable in situations of natural hazards, under Article 2 of the Covenant, only where there was an actual possibility that human losses could have been avoided or minimise had the authorities taken appropriate measures in time.

As indicated, the *raison d'être* of the prohibition of *refoulement* is to avoid the possible harm that a person might suffer in the receiving country if returned there. According to the above interpretation, its application to cases like Mr Teitiota's would depend on the extent to which the receiving State could be found responsible for not safeguarding the lives of those within its jurisdiction from foreseeable environmental threats<sup>211</sup>. Examples would include cases where, by negligent omission, preventive measures in the face of recurring hazards, such as emergency and evacuation plans or early warning systems, have not been implemented. Also, where no strategies to reduce or eliminate well-known negative environmental impacts have been developed; or where the measures chosen by the State, within the margin of appreciation it has, have been ineffective or irrelevant in practice. In all them, the ECtHR's case-law would seem to support the obligation of not returning displaced persons to those countries.

Finally, although the ECtHR has so far only addressed the protection of life in the context of rapid-onset environmental disturbances, it seems clear the same

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<sup>208</sup> ECtHR, *Özel and Others v. Turkey...*, *op. cit.*, par. 173.

<sup>209</sup> ECtHR: *ibid.*, par. 171; *Budayeva and Others v. Russia...*, *op. cit.*, par. 137 [italics added].

<sup>210</sup> Vid. footnote *supra* [italics added].

<sup>211</sup> MCADAM, J., "Climate Change Displacement and International Law...", *op. cit.*, p. 21. However, she observes that "it is questionable whether this [reasoning] would assist an applicant seeking protection against climate change impacts, given the requirement that the home State is deficient in its own response capacity –i.e. the environmental harm is caused or perpetuated by the State (or by its inaction)" (id.) [bracketed text added].

jurisprudential criteria could apply to cases of slow or progressive environmental degradation. In the end, what matters is "whether returning the particular individual to the conditions overall in the country of origin will amount to a breach of a protected right, *not* the precise cause of that harm"<sup>212</sup>. Indeed, ECtHR's case-law has emphasised the foreseeability and avoidance of the damage that a particular natural risk represents for life, not the specific type of environmental disruption it constitutes, which should then be irrelevant.

Nevertheless, it is no less accurate to point out that the negative impact slow-onset environmental disruptions can have on life, such as lack of drinking water or food, may better fall into the category of inhuman or degrading treatment, considering how the Strasbourg Court has interpreted Article 3 ECHR.

### **2.1.2. Socio-economic living conditions degraded by environmental factors (Article 3 ECHR)**

The ECtHR has not completely excluded the possibility of invoking the prohibition of non-refoulement. It has referred to situations where living conditions in the receiving country were so appalling that forcing displaced persons to return would be as much as subjecting them to inhuman or degrading treatment. However, the Court has applied two different minimum levels of severity when estimating the engagement of States parties' responsibility under Article 3 ECHR in those detrimental socio-economic situations.

One refers to humanitarian conditions "solely or even predominantly attributable to poverty or to the State's lack of resources to deal with a naturally occurring phenomenon, such as a drought"<sup>213</sup>. The other concerns humanitarian crisis caused predominantly by "the direct and indirect actions" of public authorities or non-State actors<sup>214</sup>. As will be noted, the minimum threshold to be reached is much higher in the first scenario than in the second. The reason is that in the first situation, unlike the second, the degradation of living conditions is not a consequence of any intentional act

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<sup>212</sup> Ibid., p. 54. She adds that focusing on the precise cause of the harm "may complicate and narrow climate change-related claims: the ability to take into account the full range of country and personal conditions, irrespective of their cause, may in fact enhance the claim" (id).

<sup>213</sup> ECtHR, *Sufi and Elmi v. The United Kingdom* (Applications Nos. 8319/07 and 11449/07), 28 November 2011, par. 282.

<sup>214</sup> Id.

or omission which could be attributable to public authorities or non-State bodies in the receiving State.

The ECtHR set out the *first threshold* in the case of *D. v. The United Kingdom*<sup>215</sup>, in which a terminal AIDS ill-man faced deportation from the UK to St. Kitts<sup>216</sup>. The details of this case have already been exposed when addressing subsidiary protection and the European Qualification Directive<sup>217</sup>. Suffice it to recall that were "the very exceptional circumstances of this case"<sup>218</sup> and "the compelling humanitarian considerations at stake"<sup>219</sup> which led the Tribunal to conclude that the applicant's removal would tantamount to a violation of Article 3 ECHR<sup>220</sup>. The acute mental and physical suffering that the return would have caused to the applicant, who was in the final stage of his life, was considered extreme and inhuman to activate the principle of *non-refoulement*<sup>221</sup>.

However, the exceptionality of the case of *D. v. The United Kingdom* must be strongly highlighted. Indeed, it has been the only time the ECtHR has accepted non-returning based solely on inhuman or degrading socio-economic conditions not directly created by the receiving State<sup>222</sup>.

In contrast, in the case of *MSS v. Belgium and Greece*<sup>223</sup>, the Court held a lower risk threshold since the risk situation was created directly by the action – or rather inaction - of national authorities. In this case, the ECtHR made somewhat similar reasoning that the HRC made in *Jasin v. Denmark*. The European Court found incompatible with Article 3 of the Covenant the state of absolute poverty in which the applicant, an Afghan asylum seeker, found himself in Greece for several months<sup>224</sup>.

The Court stressed that Article 3 ECHR "cannot be interpreted as obliging the High Contracting Parties to provide everyone within their jurisdiction with a home"<sup>225</sup>

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<sup>215</sup> ECtHR, *D. v. The United Kingdom* (Application no. 146/1996/767/964), 2 May 1997, 21 pp.

<sup>216</sup> *Ibid.*, pars. 8-10.

<sup>217</sup> Vid. sub-section 3.2.4 (B) (1) of Chapter III.

<sup>218</sup> ECtHR, *D. v. The United Kingdom...*, *op. cit.*, par. 54.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Ibid.*, pars. 53-54.

<sup>222</sup> MCADAM, J., "Climate Change Displacement and International Law...", *op. cit.*, p. 26 and footnote 155.

<sup>223</sup> ECtHR, *M.S.S. v. Belgium and Greece* (Application no. 30696/09), 21 January 2011, 117 pp.

<sup>224</sup> *Ibid.*, pars. 236-239.

<sup>225</sup> *Ibid.*, par. 249.

or "to give refugees financial assistance to enable them to maintain a certain standard of living"<sup>226</sup>. However, two types of considerations made the case of *MSS v. Belgium and Greece* special in the ECtHR's eyes. On one side, the applicant belonged to a particularly vulnerable group such as asylum seekers that needed superior protection<sup>227</sup>. On the other side, the positive obligations Greece has under Council Directive 2003/9/EC ("the Reception Directive") "to provide accommodation and decent material conditions to impoverished asylum-seekers"<sup>228</sup>.

The Strasbourg Tribunal paid attention to the paucity conditions in which the applicant had been living, such as the lack of food, hygiene facilities or a place to live, with no access to sanitary services<sup>229</sup> and the material impossibility of obtaining a job<sup>230</sup>. It also stressed the undue delay of the Greek authorities in examining the applicant's asylum application promptly<sup>231</sup> and his absolute dependence on the Greek State's support to improve his situation<sup>232</sup>. All these circumstances prompted the ECHR to conclude that:

"[t]he applicant has been the victim of humiliating treatment showing a lack of respect for his dignity [by the Greek State] and that this situation has, without doubt, aroused in him feelings of fear, anguish or inferiority capable of inducing desperation [which] have attained the level of severity required to fall within the scope of Article 3 of the Convention"<sup>233</sup>.

Having examined the two minimum levels of severity set by the Court, it remains to determine which one should apply when assessing a person's return to a country where the environment has degraded living conditions. However, the question of when one or the other "risk threshold" should be used does not appear to be a peaceful one. Moreover, the answer to this question is still in the conjecture realm, as the ECtHR has not yet ruled on the issue. In the case of *Sufi and Elmi v. The UK*, the European Court stated *obiter dicta*:

"If the *dire humanitarian conditions* in Somalia were solely or even predominantly *attributable to* poverty or to the State's lack of resources to deal with a *naturally occurring phenomenon*, such as a drought, *the test in N.*

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<sup>226</sup> Id.

<sup>227</sup> Ibid., par. 251.

<sup>228</sup> Ibid., par. 250.

<sup>229</sup> Ibid., par. 254.

<sup>230</sup> Ibid., par. 261.

<sup>231</sup> Ibid., par. 262.

<sup>232</sup> Ibid., par. 253.

<sup>233</sup> Ibid., par. 263 [bracketed text added].

*v. the United Kingdom may well have been considered to be the appropriate one*<sup>234</sup>.

This reference suggests that environmental-related *non-refoulement* complaints, based on Article 3 ECHR, are likely to be decided at the high-threshold required in *N v. UK*. Thus, environmental degradation and its impact on living conditions would have to be exceptional to reach the required minimum level of severity<sup>235</sup>. Nevertheless, should the receiving State be somehow responsible for the country's precarious environmental situation, the balance could tilt in favour of applying the lower level of gravity set out in *MSS v. Belgium and Greece*. It would be the case, for example, if the State unreasonably refused international assistance or did not adopt preventive or protection measures when it had means at its disposal for that. In these cases, it seems that the return of an applicant to such environmentally degraded conditions should also fulfil the threshold of Article 3.

### **2.1.3. Confronting Mr. Teitiota's case with the ECtHR's jurisprudence on Articles 2 and 3 ECHR: a different outcome than before the HRC?**

As seen, the European Court has held different risk thresholds: on the one hand, the one set up in the case-law dealing with protecting the right to life in the context of natural disasters. On the other hand, the two levels of severity distinguished in the case-law about living conditions tantamount to inhuman or degrading treatment. From the perspective of procedural strategy, then, it is worth asking whether a case like Mr Teitiota's would be more likely to succeed before the Strasbourg Court if the claim for *non-refoulement* were to be articulated either under Article 2 or Article 3 of the ECHR.

Usually, both Articles could be raised in conjunction since a given disruption of the environment can directly affect the right to life and indirectly living conditions, whose grave deterioration could eventually threaten personal integrity. Nevertheless, once a violation of Article 3 has been found, the Court has considered superfluous

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<sup>234</sup> ECHR, *Sufi and Elmi v. The United Kingdom...*, *op. cit.*, par. 282 [italics added].

<sup>235</sup> Vid. MCADAM, J., "Climate Change Displacement and International Law...", *op. cit.*, p. 27 *in fine*, pointing out: "It seems unlikely that a lack of basic services alone would substantiate an article 3 claim, unless they were to render survival – on return – entirely impossible. Something else – a distinguishing feature that makes the lack of such services particularly deleterious on the applicant – would appear to be necessary".

analysing a breaching of Article 2<sup>236</sup>. In any case, and in the face of playing with not two but three different "risk thresholds", it is important to stress again the necessity to put the focus on the nature of the potential harm, rather than in the source of that harm – i.e. the type of environmental disruption<sup>237</sup>.

The reason is that the same environmental disruption can cause different kinds of potential damage. For example, *a priori*, it might seem that negative impacts of *rapid-onset environmental disruptions* should be substantiated based on Article 2 ECHR, insofar as the legal good immediately threatened by a situation of natural disaster is life itself. Thus, before deciding the return, States parties should first assess whether the area within the receiving State to which the applicant will be deported is prone to cyclical or foreseeable natural disasters and whether their magnitude is likely to be life-threatening. Supposing the answer to both questions was positive, the sending State should then consider the effectiveness of the protection and defence measures taken by the national authorities within the margin of appreciation recognised by the Court.

However, this preliminary conclusion, without being false, overlooks that long-term migratory movements do not occur so much in the context of flight as after the disaster. Delayed recovery and rehabilitation of the affected area could, in turn, impact on the living conditions of those who, once the danger is over, return to what is left of their homes<sup>238</sup>. Thus, the material consequences of a natural disaster, such as the lack of essential services, access to drinking water or waste treatment systems, or the failure to rebuild or consolidate the affected housing areas, may become a more significant push factor for migration than the natural disaster itself<sup>239</sup>. Consequently, a claim of *non-*

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<sup>236</sup> Unlike the HRC, the ECtHR has tended to start by assessing whether the acts prosecuted were likely to be qualified as inhuman or degrading treatment. If so, it did not consider it necessary to determine whether the same acts also constituted a threat to life. For example, in ECtHR, *D. v. The United Kingdom...*, *op. cit.*, pars. 57-59, the Strasbourg Tribunal expressed itself in the following terms: "the complaints raised by the applicant under Article 2 (art. 2) are indissociable from the substance of his complaint under Article 3 (art. 3) in respect of the consequences of the impugned decision for his life, health and welfare" (par. 59), "and for that reason were best dealt with under the latter provision (art. 3)" (par. 57). Vid. also, ECtHR, *Mamatkulov v. Turkey* (Applications Nos. 46827/99 and 46951/99), 6 February 2003, par. 78.

<sup>237</sup> MCADAM, J., "Climate Change Displacement and International Law...", *op. cit.*, p. 54.

<sup>238</sup> Vid. KÄLIN, W.; SCHEREPFER, N., "Protecting People Crossing Borders in the context of Climate Change: Normative Gaps and Possible Approaches" (PPLA/2012/01), Legal and Protection Policy Research Series, UNHCR (Division of International Protection), February 2012, p. 13, observing: "The success of return of the displaced people will largely depend on the timeliness and effectiveness of recovery and reconstruction efforts".

<sup>239</sup> *Id.*, observing: "Where these [referring to the recovery and reconstruction efforts] are insufficient, people may remain displaced for years or even decades" [bracketed text added].

*refoulement* to an area where living conditions have deteriorated so much as a result of a natural disaster would be better grounded in Article 3 ECHR.

The *situation of SIDS* is also a mixed case, as the complaint of Teitiota v. New Zealand has shown. The natural disasters that occur in the Pacific Islands are mainly of meteorological origin and are therefore relatively predictable. Thus, national authorities have some scope to warn the population and prepare to deal with them. However, weather hazards' destructive potential mixes with a silent threat such as the rising sea-level and the gradual deterioration of living conditions it causes. Besides its repercussions on drinking water reserves and the viability of crops, saltwater intrusion directly impacts the amount of habitable land available. Therefore, the returning State's responsibility could be jointly based on Articles 2 and 3 ECHR, assuming that the receiving State is not taking the necessary measures to protect the life of its population in a dignified manner from frequent flooding and sea intrusion.

Considering the possibilities that a case like Mr Teitiota's would have to succeed before the ECtHR, it should not be lost sight of the wide margin the European jurisprudence has granted to States parties when deciding on the operational measures to protect their populations from natural disasters. Regarding Article 3, the worsening of living conditions due to sea-level rise would have had to reach an exceptionally high degree of severity to satisfy the minimum threshold the ECHR has been demanding in these cases for access to *non-refoulement*.

Therefore, the outcome would have probably been the same as before the HRC. The first reason would be that the island governments seem to be taking all the measures in their power to protect islanders' life and their land to be snatched by the sea<sup>240</sup>. Moreover, at the time when Mr Teitiota raised his claim, living conditions on the Islands, despite their hardship, had not proved to render the atolls virtually uninhabitable<sup>241</sup>. The crux factor will be again a matter of time. That is to say, the success of the request for non-return will depend on when protection is sought, given the severity of the environmental impacts in the receiving State at that time<sup>242</sup>.

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<sup>240</sup> Regarding the efforts undertaken by SIDS affected by sea-level rise, such as Kiribati or Tuvalu, vid. the footnote 105 of Chapter III.

<sup>241</sup> Vid. sub-section 1.3. "Applying the real-risk test in the case of Mr Teitiota" of this Chapter.

<sup>242</sup> Vid. McADAM, J., "Climate Change Displacement and International Law...", *op. cit.*, p. 50.

Finally, it remains to mention complaints about *non-refoulement* to States widely affected by *slow-onset environmental disruptions*. These claims seem more likely to succeed in invoking Article 3 ECHR, as environmental degradation is inexorably linked to the gradual degradation of socio-economic conditions, especially in rural areas of developing countries heavily dependent on natural resources. Therefore, such complaints would have enhanced prospects of success by alleging a conjunction of environmental, including climatological, economic and social determinants that make living conditions at the place of return incompatible with respect for human dignity.

## **2.2. The application of the principle of *non-refoulement* to environmentally displaced persons in the Inter-American human rights system**

In the Inter-American human rights system, the importance of a healthy environment is expressly recognised in Article 11 of the Additional Protocol of San Salvador to the ACHR. Thus, Article 11 states:

"1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.

2. The States Parties shall promote the protection, preservation, and improvement of the environment"<sup>243</sup>.

However, only seventeen American States have ratified or accessed to the Protocol so far<sup>244</sup>. Despite this, the IACtHR has inferred this right to a healthy environment from the very ACHR<sup>245</sup>. The Court has understood that Article 26 ACHR, jointly interpreted with Articles 30, 31, 33 and 34 ChOAS, establishes the Member States' obligation to achieve the "integral development" of their peoples<sup>246</sup>. The OAS Executive Secretariat for Integral Development has defined the notion of "integral development" as "the general name given to a series of policies that work together to

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<sup>243</sup> OAS, *Additional Protocol to the American Convention on Human Rights in the area of economic, social and cultural rights ("Protocol of San Salvador")*, 16 November 1999, Department of International Law, OAS, A-52.

<sup>244</sup> According to the information published in OAS, [General information of the "Protocol of San Salvador"](#) (last access: 28/05/2020).

<sup>245</sup> Vid. IACtHR, *Advisory Opinion OC-23/17: The Environment and Human Rights*, 15 November 2017, par. 57.

<sup>246</sup> Id. Vid. also IACtHR, *Case of the indigenous communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs*, Series C No. 400, 6 February 2020, par. 202 and footnote 191, where the IACtHR applied, for the first time, the above reasoning in a contentious case, holding Argentina responsible for not respecting the right to a healthy environment of indigenous communities.



promote sustainable development", one of whose dimensions is precisely the environmental field<sup>247</sup>.

Furthermore, this right to a healthy environment has been configured as an autonomous right with its own substantive content<sup>248</sup>. This means that the different components of the environment, such as forests, rivers and seas, are protected as legal assets or interests in themselves, which deserve protection even when there is no certainty or proof that their degradation may pose a risk to people<sup>249</sup>. Without denying this autonomous existence, the Inter-American Court has recognised the existence of an indissoluble link between the protection of the environment and the effective realisation of other human rights, as several of them require, as a necessary precondition for their full enjoyment, a minimally healthy environment<sup>250</sup>.

Accordingly, the IACtHR has affirmed that environmental degradation and the adverse effects of climate change do affect the actual enjoyment of human rights. In particular, the Court has considered the rights to life, personal integrity, privacy, health, water, food, housing, participation in cultural life, property and the right not to be

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<sup>247</sup> Vid. IACtHR, *Advisory Opinion OC-23/17...*, *op. cit.*, footnotes 84-85. It should be noted that, according to the information published in OAS, Ratifications of the American Convention on Human Rights (last access: 08/05/2022), twenty-five American States of the thirty-five OAS member States have ratified or accessed to the ACHR. The vast majority of these are Spanish-speaking countries, along with Brazil, which have also accepted the compulsory jurisdiction of the Inter-American Court. The United States, Canada and many English-speaking Caribbean States have not yet become parties to the American Convention. As for them, the Inter-American Commission continues to apply the standards of the American Declaration to them (on the legally binding nature of the Declaration, which is not a peaceful issue, *vid. CERNA, C.M., "Reflections on the normative status of the American Declaration of the Rights and Duties of Man"*, *University of Pennsylvania Journal of International Law*, vol. 30, issue 4, 2009, pp. 1211-1237).

<sup>248</sup> Vid. IACtHR, *Advisory Opinion OC-23/17...*, *op. cit.*, par. 63, interestingly noting that "the right to a healthy environment as an autonomous right differs from the environmental content that arises from the protection of other rights, such as the right to life or the right to personal integrity".

<sup>249</sup> *Ibid.*, par. 62.

<sup>250</sup> *Ibid.*, par. 64. The IACtHR has pointed out that this link between the right to a healthy environment and other rights operates in a double sense. On the one hand, those rights whose enjoyment is particularly vulnerable to environmental degradation, which the Court also identifies as substantive rights. On the other hand, and conversely, those rights whose exercise supports and encourages better environmental policy making, which the Court refers to as procedural rights (e.g. the rights to freedom of expression and association, to information, to participation in decision-making and to an effective remedy). As far as substantive rights are concerned, *vid., inter alia*, IACtHR: *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs*, Series C No. 125, 17 June 2005, paras. 160-178; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits, reparations and costs*, Series C No. 245, 27 June 2012, paras. 244-254. In these case-law, the Court has referred both to the right to life, in particular as regards the basic conditions of a dignified life, and to the rights to personal integrity and health. Regarding the procedural rights, *vid. IACtHR, Case of Claude Reyes et al. v. Chile. Merits, reparations and costs*, Series C No. 151, 19 September 19 2006, paras. 86, 87, 103, 107, 142 and 143, on the withholding of information by the Government of Chile related to a mining and deforestation project in Chile. Finally, the Court found a violation of the right of access to information and the right to judicial protection, but did not rule on the right to participate in public affairs.

forcibly displaced as especially vulnerable to environmental impacts<sup>251</sup>. Referring also to displacement due to environmental causes, the Court itself has pointed out that "displacements caused by environmental deterioration frequently unleash violent conflicts between the displaced population and the population settled on the territory to which it is displaced"<sup>252</sup>. Therefore, environmental displacement can indirectly affect other rights, such as the right to peace or the rights to life, liberty, and security<sup>253</sup>.

Likewise, the Inter-American Court has pointed out that the effects of environmental damage on these rights may be felt with greater intensity by certain groups or sectors of the population, which are already in special vulnerability situations<sup>254</sup>. The Court made express mention of the legal obligation that States have, based on international human rights law, to correct these vulnerabilities according to the principles of equality and non-discrimination<sup>255</sup>.

Among these particularly vulnerable groups, the Court has expressly mentioned indigenous peoples, children, individuals in situations of extreme poverty, minorities and persons with disabilities. It has also described as particularly vulnerable "communities" those that, essentially, depend economically or for their survival on natural resources extracted from the marine environment, forest areas or river basins<sup>256</sup>. Likewise, it has also identified as such those communities that due to their geographical location are especially exposed to climate change impacts, such as coastal communities and small low-lying islands States<sup>257</sup>.

As the HRC or the ECtHR did in their respective interpretations of Article 6 ICCPR and Article 2 ECHR, neither the Inter-American Court has specified the concrete measures that the positive obligation to protect and preserve the life of all persons under their jurisdiction imposes on States Parties<sup>258</sup>. Instead, the IACtHR has

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<sup>251</sup> IACtHR, *Advisory Opinion OC-23/17...*, *op. cit.*, par. 66.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *Ibid.*, par. 67.

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> However, the IACtHR has also clarified that these "positive obligations of the State must be interpreted in such a way that an impossible or disproportionate burden is not placed on the authorities". *Vid.*, IACtHR: *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs*, Series C No. 214, 24 August 2010, par. 188; *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, reparations and costs*, Series C No. 146, 29 March 2006, par. 155; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador...*, *op. cit.*, par. 245.

required States to take all necessary measures to prevent violations of this right and ensure access to the minimum conditions that guarantee a dignified existence<sup>259</sup>. Among these conditions, the Court has mentioned the access to, and the quality of, water, food and health<sup>260</sup>, as well as the protection of the environment<sup>261</sup>.

Nor has the Inter-American Court defined the various acts that may violate an individual's physical or mental integrity, which range on the classic scale from torture to other types of cruel, inhuman or degrading treatment<sup>262</sup>. Indeed, the Court has also noted the close relationship between the right to life and the right to personal integrity. Thus, the lack of access to the minimum conditions required to live with dignity may, in turn, constitute a violation of the right to personal integrity<sup>263</sup>. In this vein, the Inter-

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<sup>259</sup> IACtHR: *Case of the Xákmok Kásek Indigenous Community v. Paraguay...*, *op. cit.*, par. 187; *Case of Chinchilla Sandoval et al. v. Guatemala. Preliminary objection, merits, reparations and costs*, Series C No. 312, 29 February 2016, par. 168 (referring to the State's obligation to provide persons deprived of liberty with the essential basic needs required to lead a dignified life which they cannot satisfy on their own); *Case of the Sawhoyamaxa Indigenous Community v. Paraguay...*, *op. cit.*, par. 153; *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, Series C No. 63, 19 November 1999, par. 144; *Case of Ortiz Hernández et al. v. Venezuela. Merits, reparations and costs*, Series C No. 338, 22 August 2017, par. 100; *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs*, Series C No. 99, 7 June 2003, par. 110; *Case of the Pueblo Bello Massacre. Merits, Reparations and Costs*, Series C No. 140, 31 January 2006, par. 120; *Case of Cruz Sánchez et al. v. Peru. Preliminary objection, merits, reparations and costs*, Series C No. 292, 17 April 2015, par. 260; *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica. Preliminary objections, merits, reparations and costs*, Series C No. 257, 28 November 2012, par. 172.

<sup>260</sup> IACtHR: *Case of the Sawhoyamaxa Indigenous Community v. Paraguay...*, *op. cit.*, par. 168; *Case of the Xákmok Kásek Indigenous Community v. Paraguay...*, *op. cit.*, pars. 194-213; *Case of the Yakye Axa Indigenous Community v. Paraguay...*, *op. cit.*, pars. 164 and 167. However, the IACtHR has made clear that "access to water, food and health are obligations to be realized progressively", even though "States have immediate obligations, such as ensuring these rights without discrimination and taking measures to achieve their full realization". Vid. IACtHR, *Advisory Opinion OC-23/17...*, *op. cit.*, par. 111.

<sup>261</sup> IACtHR: *Case of the Kaliña and Lokono Peoples v. Suriname. Merits, Reparations and Costs*, Series C No. 309, 25 November 2015, par. 172; *Case of the Yakye Axa Indigenous Community v. Paraguay...*, *op. cit.*, pars. 163-164, stressing the close relationship between indigenous communities and their land, on which they critically depend to develop their different manner of life, which includes the way they nourish and heal themselves from natural resources; *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs*, Series C No. 172, 28 November 2007, par. 128, where the IACtHR notes that polluting activities such as mining on ancestral lands can only be authorised when they do not threaten the very survival of communities as tribal peoples.

<sup>262</sup> IACtHR: *Case of Loayza-Tamayo v. Peru. Merits*, Series C No. 33, 17 September 1997, par. 57; *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs*, Series C No. 329, 30 November 2016, par. 267; *Case of Herrera Espinoza et al. v. Ecuador. Preliminary objections, merits, reparations and costs*, Series C No. 316, 1 September 2016, par. 87; *Case of Quispialaya Vilcapoma v. Perú. Preliminary objections, merits, reparations and costs*, Series C No. 308, 23 November 2015, par. 127.

<sup>263</sup> IACtHR, *Case of the "Juvenile Re-education Institute" v. Paraguay. Preliminary objections, merits, reparations and costs*, Series C No. 112, 2 September 2004, par. 170, noting that "conditions at the Center were never of the kind that would have enabled those deprived of their liberty to live with dignity; instead, the inmates were forced to live permanently in inhuman and degrading conditions". In the same vein, IACtHR, *Case of Chinchilla Sandoval et al. v. Guatemala...*, *op. cit.*, par. 169. Furthermore, the Court has recognised that "certain projects and interventions in the environment in which people live may constitute a risk to their life and personal integrity" (in IACtHR, *Advisory Opinion OC-23/17...*, *op. cit.*, par. 114). Vid., for example, IACtHR: *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador...*,

American Court has followed, in no small extent, the line of jurisprudence drawn up by the HRC and the ECHR. It has also considered that what is relevant to assess, in each specific case, are the physical and mental effects that the act in question has had on the individual, since its intensity may vary depending on both endogenous and exogenous factors – duration of treatment, age, sex, health, context and vulnerability<sup>264</sup>.

Hitherto, the IACtHR has not addressed the issue of *non-refoulement* in the context of the interpretation and application of either Article 4 (1) or Article 5 ACHR to environmentally-related displacement. However, there is no reason to believe that the Court would reject this possibility if a case like Mr Teitiota's came before it. The principle of *non-refoulement* has been expressly enshrined in Article 22 (8) ACHR, stating that:

"In no case may an alien be deported or returned to a country, regard less of whether or not it is his country of origin, *if in that country his right to life or personal freedom is in danger of being violated* because of his race, nationality, religion, social status, or political opinions"<sup>265</sup>.

As seen, Article 22 (8) does not refer to the right to personal integrity alongside the rights to life or personal freedom. Nor does it include environmental factors among the threats to these rights in the country of origin. Nevertheless, these omissions represent no obstacle to applying the principle of *non-refoulement* to situations different from those expressly mentioned in Article 22 (8) ACHR.

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*op. cit.*, par. 249, finding Ecuador responsible for "having put at grave risk the rights to life and physical integrity of the Sarayaku People" by burying 1,400 Kg of explosives in its territory; or *Case of the Kaliña and Lokono Peoples v. Suriname...*, *op. cit.*, pars. 222 and 226, finding that Suriname failed to protect the rights to life and personal integrity because it did not ensure that an independent social and environmental impact assessment was carried out before bauxite mining began in a protected nature reserve that was the traditional territories of several indigenous communities.

<sup>264</sup> IACtHR: *Case of Loayza-Tamayo v. Peru...*, *op. cit.*, par. 57; *Case of Herrera Espinoza et al. v. Ecuador...*, *op. cit.*, par. 87; *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs*, Series C No. 289, 20 November 2014, par. 142. In other words, the IACtHR clarified that "the personal characteristics of a supposed victim of torture or cruel, inhuman or degrading treatment must be taken into account when determining whether his or her personal integrity has been violated, because these characteristics may change the individual perception of the reality and, consequently, increase the suffering and feelings of humiliation when subjected to certain treatment" (IACtHR: *Case of I.V. v. Bolivia...*, *op. cit.*, par. 267; *Case of Quispialaya Vilcapoma v. Perú...*, *op. cit.*, par. 127; *Case of Ximenes Lopes v. Brasil*, Series C No. 149, 4 July 2006, par. 127).

<sup>265</sup> OAS, *American Convention on Human Rights (Pact of San José)*, *op. cit.*, Article 22 (8) [italics added].

Firstly, because Article 1 (1) ACHR imposes a general obligation on States Parties to respect and ensure all the Convention's rights<sup>266</sup>. The specific obligations involved in protecting each of these rights must be determined on a case-by-case basis, depending on the right or freedom involved and the special protection needs of the person concerned –either because of their personal status or because of their specific situation<sup>267</sup>. "One of the international obligations associated with the prohibition of torture [or ill-treatment] is the principle of nonreturn or non-refoulement"<sup>268</sup>, as the very Court has declared. Besides, the IACtHR has stated that "the principle of non-refoulement in this area is absolute and also becomes a peremptory norm of customary international law; in other words, of *ius cogens*"<sup>269</sup>. This conclusion can be extended to protecting returnees' lives in circumstances other than those established in Article 22 (8) ACHR, even though, in this area, the prohibition is not absolute<sup>270</sup>.

Secondly, the rules of interpretation that the Convention itself has established in Article 29 allow for an extensive interpretation of the principle of non-refoulement beyond the limits imposed by Article 22 (8) ACHR. In particular, Article 29, paragraph (b), states that:

"No provision of this Convention shall be interpreted as:

(...)

b. Restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party,"<sup>271</sup>

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<sup>266</sup> As the IACtHR has stated in the *Case of Velásquez-Rodríguez v. Honduras. Merits*, Series C No. 4, 29 July 1988, par. 162: "Each claim alleging that one of those rights has been infringed necessarily implies that Article 1 (1) of the Convention has also been violated". Vid. also, IACtHR: *Case of Neira-Alegría et al. v. Peru. Merits*, Series C No. 20, 19 January 1995, par. 85; *Case of Vargas-Areco v. Paraguay. Merits, Reparations and Costs*, Series C No. 155, 26 September 2006, par. 73.

<sup>267</sup> Vid. IACtHR: *Advisory Opinion OC-21/14: Rights and guarantees of children in the context of migration and/or in need of international protection*, 19 August 2014, par. 225; *Case of the Massacre of la Rochela, v. Colombia. Merits Reparations and Costs*, Series C No. 163, 11 May 2007, par. 67; *Case of García Prieto et al. v. El Salvador. Preliminary objection, merits, reparations and costs*, Series C No. 168, 20 November 2007, par. 98.

<sup>268</sup> IACtHR, *Advisory Opinion OC-21/14...*, *op. cit.*, par. 225.

<sup>269</sup> *Id.*

<sup>270</sup> For example, although Article 4 ACHR does not prohibit the death penalty, the IACtHR "has established that the relevant provisions of the Convention should be interpreted in the sense of "definitively limiting its application and its sphere, so that it is progressively reduced, until it is eliminated completely"" (vid. IACtHR, *Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs*, Series C No. 297, 30 June 2015, par. 126). Thus, the Court has adopted certain restrictions and cautions regarding the return of the applicant to a country where he could be subjected to it (vid. *ibid.*, pars. 134-135).

<sup>271</sup> OAS, *American Convention on Human Rights (Pact of San José)*, *op. cit.*, Article 29 (b).

Consequently, the principle of *non-refoulement* of Article 22 (8) ACHR must be complemented, by mandate of Article 29 (b), with the prohibitions of return inferred from other international human rights instruments to which OAS States are also parties. Such would be the case, for example, of *non-refoulement* in the context of Articles 6 and 7 ICCPR<sup>272</sup>, as interpreted by the HRC.

Hence, Articles 4 and 5 ACHR, in conjunction with Article 29 (b) and the interpretation *erga omnes* the IACtHR has made of the prohibition of torture and ill-treatment, reveal a principle of *non-refoulement* that exceeds the edges of Article 22 (8) ACHR. It would prevent return in any case where life or personal integrity is threatened, regardless of the source of risk. On the other hand, the IACtHR has followed the criteria set in the European and HRC case law when applying the prohibition of return, requiring a real risk, in the sense that the applicant's damage alleged is a *necessary and foreseeable consequence* of the *refoulement*<sup>273</sup>. In order to determine the reality of the risk, the Court must examine both the general situation in that State and the petitioner's personal circumstances<sup>274</sup>.

However, in the inter-american human rights system, the assumption by the IACtHR of such criteria must be tempered with the preponderance that the American Court has conferred on the environment, as a necessary precondition for the realization of other human rights. Furthermore, it should be noted that, unlike the ICCPR or the ECHR, the environment has attained the status of an autonomous and fully realisable right under the ACHR<sup>275</sup>. In the light of the above, it appears that the *risk threshold* – i.e. the minimum level of severity that environmental degradation would have to reach in order to be considered a real risk to life or personal integrity -, would be lower than those required by the HRC or the ECHR in that regard. Thus, for example, the IACtHR has considered that

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<sup>272</sup> According to information provided by the UNTC, Status of the International Covenant on Civil and Political Rights (last access: 08/05/2022), all OAS member States are parties to the ICCPR, with the exception of Cuba and St. Lucia, which have signed but not yet acceded to or ratified it (no information is provided for St. Kitts and Nevis).

<sup>273</sup> IACtHR: *Advisory Opinion OC-21/14...*, *op. cit.*, par. 221; *Case of Wong Ho Wing v. Peru...*, *op. cit.*, par. 157.

<sup>274</sup> IACtHR: *Advisory Opinion OC-21/14...*, *op. cit.*, par. 221; *Case of Wong Ho Wing v. Peru...*, *op. cit.*, pars. 169 and 173.

<sup>275</sup> As seen, The IACtHR has considered that the right to a healthy environment is included among the economic, social and cultural rights protected by Article 26 ACHR. Vid. IACtHR, *Advisory Opinion OC-23/17...*, *op. cit.*, par 57.

"the expulsion or return of a person violates international obligations (...) in cases in which this measures would result in harming or a serious deterioration in the person's health or, even, when it could lead to her or his death"<sup>276</sup>.

Having already referred to the direct and immediate relationship between a healthy environment and the rights to a dignified life and personal integrity, it is doubtful whether the Court would have agreed with New Zealand's decision to return the Teitiota family to the Republic of Kiribati. The difficulties they faced on their return to Tarawa in accessing nutritious food and clean water were bound to affect their health, as was the case with one of the couple's children<sup>277</sup>. In this regard, the IACtHR has been exceptionally cautious when authorising minors' return to the country of origin, which "shall in principle only be arranged if such return is in the best interest of the child"<sup>278</sup>. It does not seem that forcing the family to return to a country where the children had never lived, thus not having their immune systems prepared to deal with the microbiota of the islands, was in their best interest.

Continuing with vulnerable groups, Article 22 (8) ACHR expressly refers to the social status that the returnee would have in the country of origin upon return as one of the grounds for not proceeding with it when the life of the applicant may be jeopardised as a result. The relationship between the environment and socio-economic living conditions has already been discussed elsewhere in this chapter<sup>279</sup>. The Inter-American Court has also referred to the increased vulnerability of people in extreme poverty to the impact of climate change and environmental degradation<sup>280</sup>. Therefore, Article 22 (8) ACHR should exclude the *refoulement* to countries where returnees would be forced into a socio-economic situation that would not allow them to cover their basic needs. In

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<sup>276</sup> IACtHR, *Advisory Opinion OC-21/14...*, *op. cit.*, par. 229.

<sup>277</sup> For example, the Kiribati's National Adaptation Programme of Action stated that although "[m]ost nutritious crops were available and could be prepared into long-term preserved food (...), the health of the population had generally deteriorated, as indicated by vitamin A deficiencies, malnutrition, fish poisoning, and other ailments reflecting the situation of food insecurity". Furthermore, in his comments dated 25 July 2016, Mr. Teitioa alleged that "due to the lack of clean drinking water, he and his family have had "reasonably bad health issues" since returning to Kiribati in September 2015. One of the author's children suffered from a serious case of blood poisoning, which caused boils all over his body. The author and his family are also unable to grow crops". Vid. HRC, *Ioane Teitiota v. New Zealand*, *op. cit.*, pars. 2.3, 2.4 and 5.

<sup>278</sup> IACtHR, *Advisory Opinion OC-21/14...*, *op. cit.*, par. 231. Vid. also, COMMITTEE ON THE RIGHTS OF THE CHILD, *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin (CRC/GC/2005/6)*, 1 September 2005, 27 pp., in particular pars. 84-88 (last access: 30/05/2020).

<sup>279</sup> Vid. Sub-section 1.2.

<sup>280</sup> IACtHR, *Advisory Opinion OC-23/17...*, *op. cit.*, par. 66.

the case of SIDS affected by rising sea levels, some examples would include the inability to access land to cultivate or find work in a labour market that is heavily dependent on tourism.

Finally, in the specific context of the right to personal integrity (Art. 5 ACHR) and *non-refoulement*, the Court has recognised that "threats and the real danger of a person being subjected to serious physical injuries produces, in certain circumstances, such a degree of moral anguish that it can be considered 'psychological torture'"<sup>281</sup>. Had Mr Teitiota's case been brought before the Inter-American Court, it would have been interesting to see how the Court would have assessed the couple's anguish.

In this regard, "they were concerned that the information they were receiving from television, media and from other sources meant that there would be no possibility of living on Tarawa"<sup>282</sup>. On the other hand, Mrs Teitiota feared that her children would become ill if they were to return to Kiribati, as "she had heard stories of children getting diarrhoea and even dying because of the poor quality of the drinking water"<sup>283</sup>. Although there are shortcomings in Kiribati as a result of climate change, it cannot yet be said that environmental degradation on the islands has reached a point where the atolls are uninhabitable. Nevertheless, it is no less accurate the fact that Mrs Teitiota's concern that her children would become ill was finally realised.

In view of the above, it is possible to venture that had Mr. Teitiota's case been brought before the IACtHR, the Court's judgment would have been in line with the reasoning of the dissident judges of the HRC, who conclude that the petitioner's return to Kiribati violated his rights under Article 6 ICCPR. They grounded their dissenting opinion on the actual difficulty of growing food and accessing clean water due to sea level rise, the presence of children involved, and the fact that the family's health and well-being had already been compromised upon their return to Kiribati<sup>284</sup>. All these circumstances may also have led the IACtHR to consider that New Zealand's decision to remove the applicant to such a degraded environment breached his right to a dignified life under Article 4 ACHR.

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<sup>281</sup> IACtHR, *Advisory Opinion OC-21/14...*, *op. cit.*, par. 224.

<sup>282</sup> NZIPT, *Refugee Appeal No. 800413*, 25 June 2013, par. 29.

<sup>283</sup> *Ibid.*, par. 33.

<sup>284</sup> *Vid.* HRC, *Ioane Teitiota v. New Zealand*, *op. cit.* Annex 1 Individual opinion of Committee member Vasilka Sancin (dissenting). Annex 2 Individual opinion of Committee member Duncan Laki Muhumuza (dissenting), pp. 13-16.



### 2.3. Environmental degradation, human rights and *non-refoulement* in the African Charter on Human and Peoples' Rights

At the African level, the African Charter on Human and Peoples' Rights<sup>285</sup> – better known as the Banjul Charter -, might be a valuable instrument to support claims related to environmental degradation, human rights and non-refoulement. In this regard, Article 24 of the Charter establishes that "[a]ll peoples shall have the right to a general satisfactory environment favourable to their development"<sup>286</sup>.

However, it is true that the African Commission on Human and Peoples' Rights (ACHPR), which is the monitoring body of the African Charter, has made to date limited references to the potentially adverse effects of environmental disruptions on the full enjoyment of human rights in Africa. Furthermore, all of them have been entirely related to climate change. For example, in its Resolution 153 of 2009<sup>287</sup>, the Commission decided "to carry out a study on the impact of climate change on human rights in Africa"<sup>288</sup> and "urged" the Assembly of Heads of State and Government

"... to ensure that special measure of protection for vulnerable groups such as children, women, the elderly, indigenous communities and *victims of natural disasters* and conflicts *are included in any international agreement or instruments on climate change*"<sup>289</sup>.

Resolution 271 of 2014 was much of the same, as it merely recalled the need for "an in-depth study on the impact of climate change on human rights in Africa"<sup>290</sup>. For its part, Resolution 342 of 2016 noted that the implementation of the UNFCCC and the Paris Agreement "should adequately reflect the African perspective on human and peoples' rights, especially the right to a general satisfactory environment favourable to their development, the right to development and the right to health"<sup>291</sup>. Again, it also urged the Member States "to adopt and implement the special measures of protection for

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<sup>285</sup> OAU, *African Charter on Human and Peoples' Rights (the Banjul Charter)*, *op. cit.*

<sup>286</sup> *Ibid.*, Article 24.

<sup>287</sup> ACHPR, *Resolution 153 on Climate Change and Human Rights and the Need to Study its Impact in Africa, adopted at its 46th Ordinary Session* (ACHPR/Res.153(XLVI)09), 25 November 2009,

<sup>288</sup> *Ibid.*, par. 4.

<sup>289</sup> *Ibid.*, par. 2 [italics added].

<sup>290</sup> ACHPR, *Resolution 271 on Climate Change in Africa, adopted at its 55th Ordinary Session* (ACHPR/Res.271(LV)2014271), held from 28 April to 12 May 2014.

<sup>291</sup> ACHPR, *Resolution 342 on Climate Change and Human Rights in Africa, adopted at its 58th Ordinary Session* (ACHPR/Res.342(LVIII)2016), 20 April 2016, Preamble. Vid. also par. i. of the same resolution, calling for strengthening "regional and international cooperation in order to achieve a strong, committed and comprehensive climate action that will ensure that the human rights of Africans are safeguarded to the greatest extent possible both today and for future generations".

vulnerable groups"<sup>292</sup>, including among them victims of natural disasters, and reiterated the need to undertake a "study on the impact of climate change on human rights in Africa"<sup>293</sup>. This study's preparation was entrusted to the Working Group on Economic and Social Rights, collaborating with the Working Group on Extractive Industries, Environment and Human Rights Violations<sup>294</sup>.

Resolution 417<sup>295</sup> was the response to the many deaths and displacements caused by the Cyclone Idai and the subsequent flooding in Mozambique, Malawi and Zimbabwe in March 2019, and the devastation caused by Cyclone Kenneth, which struck the east coast of Africa only one month after<sup>296</sup>. In addition to strongly call for the mobilisation of additional resources to provide urgent humanitarian relief and start as soon as possible with the process of recovery and reconstruction of affected areas, the resolution urged State Parties to the African Charter

"... to ensure that contingency plans and emergency measures are put in place to increase the level of preparedness for an increase in extreme weather events and unstable weather patterns as the consequences of climate change intensify; (...) to fully integrate climate change considerations and the human and peoples' rights consequences into their broader development plans; (and) to strengthen regional and continental cooperation in relation to climate change adaptation and mitigation and response to climate change induced humanitarian crisis"<sup>297</sup>.

Furthermore, the Commission reaffirmed its commitment to preparing a study on climate change and human rights in Africa and called on the AU "to declare 2021 the African Union Year on Climate Change"<sup>298</sup>. In this regard, and on the occasion of the African Human Rights Day 2019, the African Commission made a statement noting "with serious concern (...) the escalating impact of the climate crisis in pushing people in climate affected areas out of their areas of residence"<sup>299</sup>, and calling State Parties "to ratify and safeguard the rights and principles, including non-refoulement and burden

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<sup>292</sup> Ibid., par. ii.

<sup>293</sup> Ibid., par. iii.

<sup>294</sup> Id.

<sup>295</sup> ACHPR, *Resolution 417 on the human rights impacts of extreme weather in Eastern and Southern Africa due to climate change, adopted at its 64th Ordinary Session* (ACHPR / Res. 417 (LXIV) 2019), 14 May 2019.

<sup>296</sup> Ibid., Preamble. Cyclone Kenneth affected several countries such as Mozambique, Tanzania, Comoros, Madagascar, Seychelles, Malawi and the island of Mayotte (id.).

<sup>297</sup> Ibid., pars. 8-10.

<sup>298</sup> Ibid., par. 11-12.

<sup>299</sup> ACHPR, *Statement on the occasion of the African Human Rights Day 2019*, 22 October 2019.

sharing", enshrined both in the 1969 OAU Convention on African Refugees and in the Kampala Convention on African IDP<sup>300</sup>.

Similar rhetoric can be found in the Final Communication adopted in the "Fourth African Judicial Dialogue"<sup>301</sup>, organised by the African Court on Human and Peoples' Rights, under the African Union's auspices and in collaboration with the Government of the Republic of Uganda<sup>302</sup>. The judicial forum took place from 30 October to 1 November 2019 in Kampala (Uganda), under the theme: "Tackling Contemporary Human Rights Issues: the Role of the Judiciary in Africa"<sup>303</sup>. Regarding the topic "Migration, Internally Displaced Persons and Refugees in Africa", participants in the forum considered natural disasters among the leading causes of migration, internal displacement of persons and refugees in Africa<sup>304</sup>. Also, a reference to climate change was made in the context of statelessness and discrimination against women, although without entering into further arguments about the relationship between them<sup>305</sup>.

Moreover, it is doubtful that the African Court will ever decide a case of environmental damage and *non-refoulement*, considering that in June 2017 only seven States had accepted the Court's jurisdiction to receive complaints submitted by individuals and NGOs<sup>306</sup>. So far, the most relevant decision on the impact of environmental factors on human rights has been delivered by the AchPR pursuing its competence to accept complaints concerning alleged violations of the African Charter. These complaints, called "communications", can stem from States Parties, as well as from individuals and non-government organisations<sup>307</sup>.

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<sup>300</sup> Id.

<sup>301</sup> AchPR, *Final Communiqué - Fourth African Judicial Dialogue*, 07 November 2019.

<sup>302</sup> Ibid., par. 1.

<sup>303</sup> Id.

<sup>304</sup> Ibid., par. 20.

<sup>305</sup> Ibid., par. 24.

<sup>306</sup> OAU, *Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*, 10 June 1998, Article 34 (6): "At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol. (...)". Article 5 (3) refers to the possibility that "relevant NGOs with observer status before the Commission, and individuals" to submit cases directly before the Court.

According to OAU, List of countries which have signed, ratified or acceded to the Protocol on the establishment of an African Court on Human and Peoples' Rights (last access: 08/05/2022), the six Member States which have entered a declaration in conformity with Article 34(6) are: Burkina Faso, Gambia, Ghana, Malawi, Mali, Tunisia.

<sup>307</sup> Vid. Articles 47 and 55 of the African Charter.

In the case in question, *the Ogoni People v. Nigeria*<sup>308</sup>, the African Commission found Nigeria responsible for environmental degradation and health problems among the Ogoni people<sup>309</sup>. The Nigerian government had participated directly in the exploitation of Ogoniland's oil reserves through the Nigerian National Petroleum Company, which was the main shareholder in the joint venture formed with the Shell Petroleum Development Corporation<sup>310</sup>.

The ACHPR accepted the victims' allegations as they were uncontested by Nigeria<sup>311</sup>, which did not participate in the procedure<sup>312</sup>. Thus, complainants alleged the oil company had degraded their habitat because of the widespread and continuing contamination of air, soil and water on which the Ogoni's agricultural and fisheries depended<sup>313</sup>. They also stated that the government had withheld information on the dangers that oil activities implied for the Ogoni communities<sup>314</sup>. Nor had it allowed the development of health and environmental impact studies on the threat that toxic wastes from oil extraction represented for health and life<sup>315</sup>. Finally, the claimants noted that the extraction activities had been facilitated by making available to the oil companies the State's legal and military forces<sup>316</sup>, which attacked and burned several Ogoni villages<sup>317</sup>, also destroying their crops and killing their farm animals<sup>318</sup>. These attacks were never investigated, leaving their perpetrators unpunished<sup>319</sup>.

Thus, the ACHPR considered that the Ogoni people had suffered a violation of the following rights: the right not to be discriminated against in the enjoyment of the rights recognised by the African Charter (Article 2), the right to life (Article 4), the right to health (Article 16), the right to a family (Article 18), the right to dispose of their wealth

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<sup>308</sup> ACHPR, *Communication 155/96 The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, 27 October 2001, 16 pp.

<sup>309</sup> *Ibid.*, par. 2.

<sup>310</sup> *Ibid.*, par. 1.

<sup>311</sup> Consequently, the Commission had to "decide on the facts provided by the Complainants and treat them as given" (*vid. ibid.*, pars. 40 and 49).

<sup>312</sup> The Nigerian government limited itself to submitting a note verbale admitting the gravament of the complaints (*vid. ibid.* par. 30).

<sup>313</sup> *Ibid.*, par. 9.

<sup>314</sup> *Ibid.*, pars. 4.

<sup>315</sup> *Ibid.*, par. 5.

<sup>316</sup> *Ibid.*, par. 3.

<sup>317</sup> *Ibid.*, pars. 7-8.

<sup>318</sup> *Ibid.*, par. 9.

<sup>319</sup> *Ibid.*, par. 7 *in fine*.

and natural resources (Article 21), the right to a generally satisfactory environment (Article 24), and the right to adequate housing and food<sup>320</sup>.

From the perspective of environmental displacement, this case's relevance lies in showing that "the Commission is able and willing to adopt a creative and dynamic way of interpreting the Charter"<sup>321</sup>. Not only has the Commission's decision shown that it is possible to infer from the Charter other rights not expressly recognised in it. It has also proved that violations of the economic, social and cultural rights set out in the Charter are fully justiciable before the Commission<sup>322</sup>. In its own words, "there is no right in the African Charter that cannot be made effective"<sup>323</sup>.

Furthermore, in its General Comment No. 3<sup>324</sup>, the African Commission has also embraced the tendency of interpreting the right to life in a broad double sense<sup>325</sup>. On one side, it recognises the States' positive duty to preserve the natural environment and protect individuals and groups from real and immediate risks posed to their lives by natural disasters, famines, outbreaks of infectious diseases, or other emergencies<sup>326</sup>. On the other side, it recognises the State's positive role in assuring those economic, social and cultural rights needed to secure a full and dignified life; which, in turn, means that violations of such rights may also entail violations of the right to life<sup>327</sup>. Indeed, and related to this latter idea, the Afric AchPR an Commission expressly recognised in the Ogoni case that "the importance of a clean and safe environment that is closely linked to

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<sup>320</sup> Ibid., p. 15: "For the above reasons, the Commission, Finds the Federal Republic of Nigeria in violation of Articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter on Human and Peoples' Rights".

While the first six rights are expressly mentioned in the African Charter, housing and food rights lack explicit recognition. Therefore, the Commission had to deduce them from other Articles of the Charter. In this way, it considered the right to housing or shelter as a result of combining articles 14 (property), 16 (health) and 18 (1) (family rights); whilst the right to food was implicit in the content of articles 4 (right to life), 16 (right to health) and 22 (right to economic, social and cultural development). Vid. *ibid.*, pars. 60-62 and 64-66.

<sup>321</sup> COOMANS, F., "The Ogoni Case before the African Commission on Human and People' Rights", *The International and Comparative Law Quartely*, vol. 52, No. 3, p. 757.

<sup>322</sup> Id. As Coomans observes: "This point of view would counter the traditional view that economic, social and cultural rights require only positive obligations from the State to provide financial resources that cannot be made subject to judicial or quasi-judicial review" (*id.*).

<sup>323</sup> ACHPR, *Communication 155/96...*, *op. cit.*, par. 68.

<sup>324</sup> ACHPR, *General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)*, 18 November 2015, 17 pp.

<sup>325</sup> The African Commission has welcome the approach whereby "all rights -both civil and political rights and social and economic- generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely *the duty to respect, protect, promote, and fulfil these rights*" [*italics added*]. Vid. COOMANS, F., "The Ogoni Case before the African Commission on Human and People' Rights", *op. cit.*, pp. 752-754 for a more detailed explanation of the Commission's approach to States parties' human rights obligations.

<sup>326</sup> ACHPR, *General Comment No. 3...*, *op. cit.*, par. 41.

<sup>327</sup> *Ibid.*, par. 43.

economic and social rights in so far as the environment affects the quality of life and safety of the individual"<sup>328</sup>.

Thus, it could be argued that a broad interpretation of the African Charter such as that given by the African Commission provides a more encouraging precedent in Africa for successful *non-refoulement* claims than before the HRC or the ECtHR. The first reason is that the ownership of the African Charter's rights belongs to individuals and the community ("the Ogoni people"). This collectivist approach would remove the need for a distinctive feature that makes the risk personal, as understood by the Western approach to the principle of *non-refoulement*. As seen above, this interpretation has led to demanding very high-risk thresholds when, in the absence of the above and as a substitute, non-return has been estimated on the general conditions prevailing in the country of origin. On the other hand, recognising collective ownership of rights would allow for the protection of entire vulnerable communities settled in a natural habitat that is environmentally degraded or prone to natural disasters, as could be the case of local communities in low-lying SIDS.

Finally, the African Charter and the Commission's interpretation of it in the Ogoni case would seem to break with the traditional linkage of the principle of non-return to the right to life and personal integrity. Thus, the inclusion and alignment of second and third generation rights with classic human rights<sup>329</sup> would allow demands for *non-refoulement* to base on the threat that return represents to a much broader panoply of rights, such as the right to a healthy environment, housing and food of the person returned<sup>330</sup>.

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<sup>328</sup> ACHPR, *Communication 155/96...*, *op. cit.*, par. 51.

<sup>329</sup> COOMANS, F., "The Ogoni Case before the African Commission on Human and People' Rights", *op. cit.*, p. 750, noting: "There is no categorization between these groups of rights in the Charter". Vid. also, ACHPR, *Communication 155/96...*, *op. cit.*, par. 68, adding: "Clearly, collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa".

<sup>330</sup> After all, the African Commission made clear in the Ogoni case that it "will apply any of the diverse rights contained in the African Charter" (vid. ACHPR, *op. cit. supra*).

### 3. STATES' AD HOC APPLICATION OF THE PRINCIPLE OF NON-REFOULEMENT

There are some examples of the volunteer application by States of *non-refoulement* in situations of natural disasters. We have already referred in Chapter III to Denmark's decision not to return families with young children to Afghanistan because of the food crisis the drought had caused in the country<sup>331</sup>. The Danish authorities applied this survival criterion between 2001 and 2006 by issuing beneficiaries with a residence permit on humanitarian grounds<sup>332</sup>.

In 2004, following the devastating tsunami that hit most of the littoral countries of the Indian Ocean, the "UNHCR's call for suspension of return to the areas affected"<sup>333</sup>. This call, "though not based on a legal obligation, was well respected"<sup>334</sup>. The extent to which States responded to this call varies across Europe. The UK suspended forced returns of rejected asylum seekers to the affected areas of India, Sri Lanka, Thailand and Indonesia<sup>335</sup>. In Germany, the Federal Ministry of the Interior advised the Länder not to deport to the regions affected by the tsunami. However, this was only a non-legally binding recommendation that was followed by only a few federal States<sup>336</sup>. For its part, the Dutch government suspended foreigners' return to the affected countries until March 2005<sup>337</sup>.

At the global level, the case of the US is worth mentioning. Although this country is not part of the ACHR, it stopped the deportation of people to Central America after Hurricane Mitch in 1998. 90,000 Hondurans and 60,000 Nicaraguans received temporary protection under Section 244 of the US Immigration and Nationality Act<sup>338</sup>,

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<sup>331</sup> EUROPEAN COMMISSION, *Commission Staff Working Document: Climate change, environmental degradation, and migration. Accompanying the Communication 'An EU Strategy on Adaptation to climate change'* (SWD(2013) 138 final), Brussels, 16 April 2003, p. 19 and footnotes 52 and 53. KOLMANNKOG, V.; MYRSTAD, F., "Environmental Displacement in European Asylum Law", *op. cit.*, p. 324, noting that "[t]his practice was adjusted and eventually included landless people who came from areas where there was a lack of food and who would be in a particularly vulnerable position upon return".

<sup>332</sup> Vid. footnote *supra*.

<sup>333</sup> EXECUTIVE COMMITTEE OF THE UNHCR, *Providing international protection including through complementary forms of protection* (EC/55/SC/CRP.16), 2 June 2005, par. 22.

<sup>334</sup> Id.

<sup>335</sup> KOLMANNKOG, V.; MYRSTAD, F., "Environmental Displacement in European Asylum Law", *op. cit.*, p. 324.

<sup>336</sup> Id.

<sup>337</sup> Id.

<sup>338</sup> USA, *Immigration and Nationality Act of 1965* (Pub.L. 89–236), 3 October 1965, in: United States Code, Title 8, Chapter 12, Sub-Chapter II, Part V, Section 244 (Text contains those laws in effect on 8 January 2021). Section 244 was introduced by the *Immigration Act of 1990 To amend the Immigration*

being granted residence permits valid for six months, which could be extended to eighteen months<sup>339</sup>.

These national examples show some weaknesses in the principle of *non-refoulement*. For example, its discretionary nature, leaving its application to States' goodwill, the temporary nature with which the non-return measures have been implemented or the need for a protection status following the *non-refoulement*<sup>340</sup>.

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*and Nationality Act to change the level, and preference system for admission, of immigrants to the United States, and to provide for administrative naturalization, and for other purposes* (Pub. L. 101-649), 29 November 1990.

<sup>339</sup> EUROPEAN COMMISSION, *Commission Staff Working Document: Climate change, environmental degradation, and migration...*, *op. cit.*, p. 20.

<sup>340</sup> In this regard, UNHCR has noted that temporary protection mechanisms or time-limited stay arrangements that respect minimum human rights standards of treatment can be "a pragmatic way" of providing protection to displaced persons across borders in the immediate aftermath of a sudden disruption or when the host country faces a mass influx in the wake of a disaster and eligibility for international protection cannot be established or is not applicable. Conversely, temporary protection may be ineffective in longer-term situations, such as when the country of origin is unwilling or unable to manage the situation or adapt to climate change (vid. UNHCR, *Legal considerations...*, *op. cit.*, par. 20).



# CHAPTER VI

## ENVIRONMENTAL DISPLACEMENT UNDER INTERNATIONAL STANDARDS ON INTERNAL DISPLACEMENT

### INTRODUCTION

As noted in Chapter II, a high percentage of environmentally-induced population movements will be *ad intra*<sup>1</sup>. That is, most people displaced by environmental disruption will not cross an international border. Because of this scenario, one Chapter of the thesis should be devoted to analysing the international norms that protect those who have been forced to move within their country's borders.

The only universal instrument in this area is the Guiding Principles on Internal Displacement, adopted by the UN General Assembly in its Resolution of 11 February 1998<sup>2</sup>. Despite being a soft law norm without binding force, these Guiding Principles have become the frame of reference for the rest of the regional and national instruments that have been developed in the field of internal displacement.

At the regional level, Africa has been the most prolific continent. At the sub-regional level, we find the Great Lakes Protocol<sup>3</sup>. The importance of this text lies in being the first international legal instrument to confer binding force on the UN Guiding Principles by adopting them as mandatory for all countries in the Great Lakes region that ratify or accede to the Protocol. With a universally regional vocation, the AU has developed the Kampala Convention on Internal Displacement in Africa<sup>4</sup>. It is the first international treaty to impose legal obligations on the various actors, not just national governments, dealing with IDPs on the African continent. It disciplines both the

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<sup>1</sup> Vid. for all, EUROPEAN COMMISSION, *Climate change, environmental degradation, and migration. An Eu Strategy on adaptation to climate change* (SWD(2013) 138 final), Bruselas, Commission staff working document, 2013, p. 17.

<sup>2</sup> COMMISSION ON HUMAN RIGHTS, *Report of the Representative of the Secretary-General, Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39. Annex Guiding Principles on Internal Displacement* (E/CN.4/1998/53/Add.2), 11 February 1998, 14 pp.

<sup>3</sup> ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons*, 30 November 2006, 14 pp.

<sup>4</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa (Kampala Convention)*, 23 October 2009, UNTS, Vol. 3014, No. 52375, 89 pp.

assistance they must provide to IDPs and the protection of and respect for their fundamental rights.

The remaining regional international organisations have focused their efforts on promoting the adoption and implementation of the UN Guiding Principles among their Member States but have not developed their own legal instruments on internal displacement, as has been the case in Africa. Therefore, in the other continents, and particularly in Asia and the Middle East, where institutionalised action at the regional level has been more tenuous, national legislation and policies on the issue are particularly relevant. These frameworks are also addressed in this Chapter insofar as they include provisions relating to internal environmental displacement.

## **1. GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT**

### **1.1. Introduction**

On 5 March 1992, the Commission on Human Rights requested the UN Secretary-General, Mr Butros Butros-Ghali, to appoint a representative to deal with the issue of IDPs<sup>5</sup>. The first task to carry out was to examine the potential application to IDPs of existing international human rights, humanitarian and refugee law standards. The person chosen to undertake such a Herculean task was Francis M. Deng, a Sudanese politician and diplomatic<sup>6</sup>.

Based on the research conducted by the *Ludwig Boltzmann Institute of Human Rights* (Austria), the *American Society of International Law* and the *International Human Rights Law Group* (US), Mr Deng presented a comprehensive document to the Commission on Human Rights in 1996<sup>7</sup>. The document compiles and analyses the international legal norms that the team of legal experts found relevant by analogy to the

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<sup>5</sup> COMMISSION ON HUMAN RIGHTS, *Internally displaced persons* (E/CN.4/RES/1992/73), 5 March 1992, par. 2.

<sup>6</sup> CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional. Hacia un estatuto jurídico internacional de los desplazados internos*, Barcelona (Spain), ANUE, 2006, p. 60.

<sup>7</sup> COMMISSION ON HUMAN RIGHTS, *Internally displaced persons: compilation and analysis of legal norms: report of the Representative of the Secretary-General, Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1995/57* (E/CN.4/1996/52/Add.2), 5 December 1995, par. 2.

situation of IDPs. The compilation also benefited from the work, experience and support of several governments<sup>8</sup>, as well as a wide range of institutions and individuals<sup>9</sup>.

The final text of the Guiding Principles was concluded at an expert consultation, hosted by the Austrian government in Vienna in January 1998<sup>10</sup>, which was attended by fifty international experts<sup>11</sup>. They were submitted to the UN Human Rights Committee in April 1998, which merely "took note" of them, as well as of the IDPs Representative's intention to use them "in his dialogue with Governments and intergovernmental and non-governmental organizations"<sup>12</sup>.

As stated in the Guiding Principles themselves, their aim was not to create new law or to amend or replace the existing one. Instead, they sought to clarify "any grey areas that may exist" and to fill "the gaps identified" to adapt the existing instruments to the specific needs of this particularly vulnerable group of people<sup>13</sup>. Drawing up an international treaty in this field would have entailed several difficulties, which summed up to a question of time. It could have taken decades for States to agree on the content of a convention in a matter so sensitive which compromises the principle of sovereignty; or for the negotiated treaty to have been ratified by a minimum number of States to enter into force<sup>14</sup>. Given the urgent need for a document addressing the needs

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<sup>8</sup> Ibid. par. 3. For example, from the governments of Austria, the Governments of the Netherlands, Norway and Sweden.

<sup>9</sup> Id. Among others, from the United Nations Centre for Human Rights; the Washington College of Law of The American University and its Center for Human Rights and Humanitarian Law; the Brookings Institution and its Refugee Policy Group; the Ford Foundation and the McKnight Foundation; and the Jacob Blaustein Institute for the Advancement of Human Rights and the Hauser Foundation.

<sup>10</sup> COMMISSION ON HUMAN RIGHTS, *Report of the Representative ... Annex Guiding Principles on Internal Displacement*, *op. cit.*, p.4, par. 15.

<sup>11</sup> CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, p. 66. Resolution 1998/50 on Internally Displaced Persons, 17 April 1998, E/CN.4/RES/1998/50

<sup>12</sup> COMMISSION ON HUMAN RIGHTS, *Resolution 1998/50 on Internally Displaced Persons* (E/CN.4/RES/1998/50), 17 April 1998, pars. 1 and 6.

<sup>13</sup> COMMISSION ON HUMAN RIGHTS, *Report of the Representative ... Annex Guiding Principles on Internal Displacement*, *op. cit.*, p. 3, par. 9. Vid. also, KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, Studies in Transnational Legal Policy, No. 38, 2<sup>nd</sup> ed., Washington, DC (USA), The American Society of International Law, 2008, p. viii. (last access: 28/08/2020).

According to CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, pp. 93-95 and accompanying footnotes, the Guiding Principles have a genealogy related to the main human rights instruments. These include: the UDHRU; the ICESCR; the ICCPR; the ICERD; the CEDAW; the ILO Convention No. 169 concerning Indigenous and Tribal Peoples; as well as the Fourth Geneva Convention and its Additional Protocols, No. I relating to situations of international armed conflict and No. II for non-international armed conflicts.

<sup>14</sup> CIRERA FORTEA, M.T., *op. cit. supra*, pp. 65-66 and 118-125, also highlighting the adoption of an international treaty would not have provided any guarantee of success either, given the possibility for States to submit reservations on its content (pp. 120-121).

of IDPs<sup>15</sup>, it was decided to develop a catalogue of principles which, as guidelines or directives, would orient the actions of all actors who might be involved with IDPs<sup>16</sup>.

Thus, although its primary and natural audience is States, its provisions are not limited to governments alone. They also include insurgent groups, international organisations or non-governmental organisations<sup>17</sup>. Their scope is otherwise all-embracing, covering every stage of displacement; that is, before and during displacement and after the return, resettlement or reintegration of displaced persons<sup>18</sup>.

At the time of their adoption, the Guiding Principles became the first all-embracing international minimum standard for the treatment of persons forced to move within the borders of their State<sup>19</sup>. Today, they remain the reference framework for the protection and assistance of IDPs, as the Heads of State and Government, gathered at UN New York headquarters for the September 2005 World Summit, unanimously recognised<sup>20</sup>. At the UN level, not only has the General Assembly welcomed "the fact that an increasing number of States, United Nations agencies and regional and non-governmental organisations are applying them as a standard"<sup>21</sup>, but also the former United Nations Secretary-General, Mr Kofi Annan, urged the Member States in 2005

"to accept the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) prepared by my Special Representative *as the basic international norm for protection of such persons*, and to commit themselves to promote the adoption of these principles through national legislation"<sup>22</sup>.

At the regional level, the Protocol on Protection and Assistance to Internally Displaced Persons, adopted by the International Conference on the Great Lakes Region in 2006, was the first legally binding instrument to embody the Guiding Principles into

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<sup>15</sup> *Ibid.*, pp. 65.

<sup>16</sup> *Vid.* COMMISSION ON HUMAN RIGHTS, *Resolution 1993/95 on Internally Displaced Persons* (E/CN.4/RES/1993/95), 11 March 1993, p. 1 *in fine*, taking note of the question raised by the UN Representative for IDPs, Mr Francis Deng, to develop "general guiding principles to govern the treatment of internally displaced persons, in particular their protection and the provision of relief assistance".

<sup>17</sup> *Ibid.*, pp. 66.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> UNGA, *Resolution 60/1 2005 World Summit Outcome, adopted by the General Assembly at its Sixtieth session*, (A/RES/60/1), 24 October 2005, par. 132.

<sup>21</sup> UNGA, *Resolution 62/153 Protection of and assistance to internally displaced persons, adopted by the General Assembly at its Sixty-second session* (A/RES/62/153), 6 March 2008, par. 10.

<sup>22</sup> UNGA, *In larger freedom: towards development, security and human rights for all. Report of the Secretary-General* (A/59/2005), 21 March 2005, par. 210 [italics added].

international law<sup>23</sup>. Later, the Guiding Principles would also inspire the drafting of the Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa<sup>24</sup>. This Convention marked a milestone as the world's first regional instrument legally binding on States Parties to protect and assist internally displaced persons, including those displaced by natural or human-made disasters and development projects<sup>25</sup>.

In the Americas, the General Assembly of the Organization of American States called on member States in 2004 to consider the Guiding Principles on Internal Displacement "in designing public policy on this matter"<sup>26</sup>, having also served as a model for the drafting of the Peninsular Principles on Internal Displacement in Latin America.

More recently, in 2009, the CoE Parliamentary Assembly adopted a recommendation encouraging

"the United Nations and its other relevant partners to seek avenues for *extending the Guiding Principles to include people displaced by gradual environmental degradation*, and to consider *developing similar guiding principles or guidelines to cover the rights of those moving across international borders for compelling environmental reasons* («external displacement»)"<sup>27</sup>.

In this way, even though the Guiding Principles are not a legally binding instrument as would be an international treaty, it can be said that they enjoy broad moral

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<sup>23</sup> ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons*, *op. cit.*, Article 2 (1), which sets as one of the objectives of the Protocol the establishment of a legal framework in the Great Lakes region to ensure the adoption and implementation by Member States of the Guiding Principles on Internal Displacement.

<sup>24</sup> EUROPEAN COMMISSION, *Commission Staff Working Document: Climate change, environmental degradation, and migration. Accompanying the Communication 'An EU Strategy on Adaptation to climate change'* (SWD(2013) 138 final), Brussels, 16 April 2003, p. 17.

<sup>25</sup> *Id.*

<sup>26</sup> OAS GENERAL ASSEMBLY, *Resolution on Internally Displaced Persons* [AG/RES. 2055 (XXXIV-O/04)], 8 June 2004, par. 2, p. 354. *Vid.*, also COMMISSION ON HUMAN RIGHTS, *Specific Groups and Individuals Mass Exodus and Displaced Persons. Report of the former Representative of the Secretary-General on internally displaced persons, Francis M. Deng, on the Regional Seminar on Internal Displacement in the Americas* (E/CN.4/2005/124), 7 December 2004, par. 10, observing that the Guiding Principles on Internal Displacement has proven

"to be an effective tool in the Americas in six main ways: as a monitoring tool, as a guide for Governments in the development of national laws and policies, as a tool for advocacy and dialogue with national authorities, as an empowerment tool, as an authoritative guide for interpreting the law as it relates to IDPs, and as a tool for holding non-State actors accountable".

<sup>27</sup> ACKETOFT, T., "Environmentally induced migration and displacement: a 21st century challenge" (Doc. 11785), CoE Parliamentary Assembly (Committee on Migration, Refugees and Population), 23 December 2008, par. 6.5, p. 7 [italics added]. (last access: 13/01/2020).

authority and acceptance in the international community<sup>28</sup>. Despite it, their greatest weakness lies in the fact that their effectiveness consequently depends on their correct and full implementation by States<sup>29</sup>, which is not always the case, as will be seen in the analysis of regional frameworks. Moreover, it should not be lost sight that, while the Guiding Principles are part of the so-called soft law, the vast majority of them stem from legal provisions of hard law and are therefore mandatory<sup>30</sup>.

## 1.2. The concept of "internally displaced person"

It is already symptomatic that the definition of "internally displaced person" is not enshrined as a principle in the main body but appears in the introductory note of the text, which outlines the scope and purpose of the Guiding Principles. The chosen position was not random but intentional, as it intends to emphasise "the descriptive and non-legal nature" of the definition<sup>31</sup>.

Unlike the definition of a refugee in Article 1(A)(2) of the Geneva Convention, the IDP definition does not confer special legal status<sup>32</sup>. As long as internally displaced persons have not crossed the borders of their State, they continue to enjoy the rights to which they are entitled under both domestic and international law<sup>33</sup>. At the same time, the condition of IDP does not depend on government recognition, as is the case with refugee status, which has to be declared by the relevant national authority; but on

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<sup>28</sup> CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, pp. 91 *in fine* and 92. KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, p. vii.

<sup>29</sup> In this regard, BORRÁS PENTINAT, S., *Flujos migratorios y refugiados climáticos (European Climate Law Papers 5/2021)*, UNED, 2021, p. 20, notes that "while the Guiding Principles on Internal Displacement provide a "profound legal framework" for those who find themselves displaced within their own country, their implementation is not possible without adequate national legislation, policies and institutions" [self-translation of the original in Spanish].

<sup>30</sup> CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, pp. 90-92. KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, p. viii, noting: "The Guiding Principles reflect and are consistent with international human rights law and international humanitarian law and to a large extent thus codify and make explicit guarantees protecting internally displaced persons that are inherent in these bodies of law". Also, KÄLIN, W., "How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework", in: W., KÄLIN; F.M., Deng; R. Cohen, *Recent Commentaries about the Natures and Application of the Guiding Principles on Internal Displacement*, The Brookings-CUNY Project on Internal Displacement, 2012, p. 8.

<sup>31</sup> KÄLIN, W., "How Hard is Soft Law?...", *op. cit.*, p. 5.

<sup>32</sup> *Ibid.*, p. 4. Also, CIRERA FORTEA, M.T., CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, p. 25.

<sup>33</sup> KÄLIN, W., "How Hard is Soft Law?...", *op. cit.*, pp. 4 *in fine* and 5.

objective reality<sup>34</sup>. That is, the condition of IDP only reflects a factual situation: forced displacement within the borders of a State<sup>35</sup>.

The IDP definition, therefore, serves an eminently utilitarian function. As such, the Guiding Principles use it to more easily delimit their scope of application<sup>36</sup>, identifying vulnerable groups in need of special attention from both their States and the international community as a whole<sup>37</sup>. Accordingly, the Guiding Principles defines internally displaced persons, "for the purposes of these Principles", as

"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"<sup>38</sup>.

It is worth noting some differences between the definition of internally displaced persons and the concept of refugees. Firstly, the territorial scope of displacement, which does not involve the crossing of an internationally recognised border<sup>39</sup>. As has been reiterated, internally displaced persons, unlike refugees, remain within the borders of the State of their nationality or habitual residence.

Secondly, like the refugee-notion, the IDP definition requires the presence of a coercive factor that triggers displacement<sup>40</sup>. In both cases, the displacement is involuntary. However, in the IDP definition, this coercive element is no longer linked to the necessary existence of an agent of persecution, as is the case with refugees. It could arise from virtually any situation which forces individuals to flee from their homes.

Finally, the causes of displacement are no longer a *numerus clausus*<sup>41</sup>. The use of the adverbial phrase "in particular" in the IDP definition clearly implies that situations listed are only examples of scenarios that usually cause forced population movements within the borders of a State, but without pretending to be an exhaustive enumeration<sup>42</sup>.

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<sup>34</sup> CIRERA FORTEA, M.T., CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, p. 25.

<sup>35</sup> *Id.*

<sup>36</sup> *Ibid.*, p. 71.

<sup>37</sup> *Ibid.*, p. 29.

<sup>38</sup> COMMISSION ON HUMAN RIGHTS, *Report of the Representative ... Annex Guiding Principles on Internal Displacement*, *op. cit.*, p. 5, par. 2.

<sup>39</sup> KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, p. 3.

<sup>40</sup> *Id.*

<sup>41</sup> *Ibid.*, p. 4.

<sup>42</sup> *Id.*

It is therefore left open the possibility of including other situations not expressly provided for in the definition, but in which there is also a coercive element underlying population movement<sup>43</sup>.

### 1.2.1. Environmentally displaced persons as IDPs

Among the causes of displacement expressly mentioned in the IDP definition, are natural disasters. Victims of disasters were included

"as experience shows that they also can, as a consequence of their displacement, become victims of human rights violations such as discrimination (e.g., because they have to move to an area where they constitute an ethnic minority), sexual and gender based violence (e.g., in overcrowded camps), or disregard of their property rights"<sup>44</sup>.

The qualification of environmentally displaced persons as IDPs under the Guiding Principles does not seem, *a priori*, to pose any significant dogmatic complexities. Indeed, the words "as a result of or to avoid the effects of" recognise that people may be internally displaced not only following the effects of environmental disruptions, but also in anticipation of the effects associated with certain predictable disturbances, such as drought or floods.

Nevertheless, given the coercive element that must underlie the displacement, it is appropriate to distinguish whether the displacement is due to rapid or slow-onset environmental disruptions<sup>45</sup>. In the case of rapid-onset natural disasters, it is much easier to identify this element of coercion, e.g. in the form of the threat that natural

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<sup>43</sup> CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, p. 42, noting: "the current description of IDPs is very flexible: it can be maintained that almost anyone who has left home involuntarily could be included in the description" [self-translation of the original in Spanish].

<sup>44</sup> KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, p. 4.

<sup>45</sup> Vid. KÄLIN, W., *Displacement Caused by the Effects of Climate Change: Who Will Be Affected and What Are the Gaps in the Normative Framework for Their Protection?*, Brookings, 10 October 2008, pp. 2-3, who uses a typology of five climate change-related scenarios to help identify the character of the movement –i.e. whether it is forced or voluntary: (i) *hydro-meteorological disasters*, which would also include other natural disasters not related to climate change, such as volcanoes or earthquakes; (ii) *environmental degradation and slow onset disasters*; (iii) the case of "sinking" *small island states*; (iv) government designation of areas as *high-risk zones too dangerous for human habitation*; and (v) *armed conflict and violence over natural resources*.



disasters pose to the life, integrity, health and even property and livelihood of individuals living within the radius of their impact<sup>46</sup>.

In contrast, in the context of gradual environmental degradation, the combination of environmental, economic and social factors makes it more challenging to determine when population movements are involuntary and when they occur as part of an adaptation strategy in the face of environmental degradation<sup>47</sup>. Examples of such grey situations could be reduced water availability, desertification, the medium/long term effects of recurrent flooding, the gradual sinking of coastal areas or low-lying SIDS as a result of sea-level rise, or increased salinisation of groundwater and soil<sup>48</sup>.

Thus, as deteriorating environmental conditions gradually begin to reflect on income opportunities and living conditions, this may prompt those affected to move to other regions of the country with the prospect of finding a better life there<sup>49</sup>. The Guiding Principles do not, however, apply to people who voluntarily move from one place to another with the sole purpose of improving their socio-economic perspectives<sup>50</sup>. Of course, unless something is done to stop and reverse the degradation process, there will come a time when the affected area will become completely uninhabitable. Once this stage has been reached, there is no longer any doubt that any internal population movement will be tantamount to forced displacement, and the Guiding Principles will therefore be fully applicable<sup>51</sup>.

Between one end of the scale and the other, i.e. between displacement as a coping strategy and displacement as an imperative for survival that is no longer possible in an environmentally degraded area, the question arises as to where to draw the line from which displacement ceases to be voluntary and becomes coercive.

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<sup>46</sup> UNGA, *Protection of and assistance to internally displaced persons. Note by the Secretary-General: Report of the Representative of the Secretary-General on the human rights of internally displaced persons* (A/64/214), 3 August 2009, par. 20.

<sup>47</sup> *Id.*

<sup>48</sup> KÄLIN, W., *Displacement Caused by the Effects of Climate Change: Who Will Be Affected and What Are the Gaps in the Normative Framework for Their Protection?*, *op. cit.*, pp. 2 *in fine* and 3.

<sup>49</sup> *Ibid.*, pp. 4 *in fine* and 5. UNGA, *Protection of and assistance to internally displaced persons...*(A/64/214), *op. cit.*, par. 20.

<sup>50</sup> KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, p. 4.

<sup>51</sup> KÄLIN, W., *Displacement Caused by the Effects of Climate Change: Who Will Be Affected and What Are the Gaps in the Normative Framework for Their Protection?*, *op. cit.*, p. 5.

***Excursus: the "reasonability test". A theoretical approach to distinguish voluntary movements from forced movements in the context of slow-onset environmental disturbances.***

The Geneva refugee-definition may offer a right approach to sort it out the question raised above. As recalled, it combines a subjective criterion – fear of being persecuted - with an objective one – such fear is well-founded in an objective risk situation. In qualifying internal displacement as compulsory, this approach would imply that the subjective decision to move must be supported by the objective fact that the place of origin has become uninhabitable due to environmental causes. The objective criterion raises, however, the issue of what degree of environmental degradation should have to be reached before the affected area could be considered no longer to meet the conditions necessary to sustain human habitation.

The former Representative of the UN Secretary-General on the Human Rights of IDPs, Walter Kälin<sup>52</sup>, has proposed a set of three criteria that could help to draw a red-line beyond which demanding the return of displaced persons to their place of origin would be unreasonable<sup>53</sup>. According to him, "the point of departure should [be] the question *as to whether in light of the prevailing circumstances and the particular vulnerabilities of the persons concerned it would be appropriate to require them to go back to their original homes*"<sup>54</sup>. These three criteria, which could indeed be reduced to the test of reasonableness, would be the permissiveness, the real possibility and the reasonability of return.

*Permissibility* would relate to two fundamental principles of international human rights law, which would prohibit return *per se* in all scenarios<sup>55</sup>. One would be the well-known principle of non-refoulement, which would prevent the forced return of the displaced person when the environmental conditions in the place of origin represent a real risk to his/her life or integrity. Secondly, the UN Representative for IDPs mentions the prohibition of collective expulsions, which prohibits the mass return of the persons

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<sup>52</sup> According to information published in OHCHR, Special Rapporteur on the Human Rights of Internally Displaced Persons (last access: 10/07/2020), Mr Walter Kälin (Switzerland) acted as Representative of the UN Secretary-General on the Human Rights of IDPs from 2004 to 2010. After 2010, the position was renamed Special Rapporteur on the Human Rights of Internally Displaced Persons, while maintaining the same functions. The mandate is currently held by Ms. Cecilia Jiménez-Damary (Philippines).

<sup>53</sup> KÄLIN, W., *Displacement Caused by the Effects of Climate Change: Who Will Be Affected and What Are the Gaps in the Normative Framework for Their Protection?*, *op. cit.*, pp. 8-9.

<sup>54</sup> *Ibid.*, p. 8 [bracketed text added].

<sup>55</sup> *Ibid.*, pp. 8 *in finde* and 9.

concerned to their place of origin without a prior assessment of their particular circumstances<sup>56</sup>.

The *possibility* of return means that there are no legal, technical or even factual obstacles preventing the return to the affected area<sup>57</sup>. Impediments of the first type could include, for example, the government declaring the place of origin of those displaced as a high-risk area for human life, with the consequent prohibition of living there<sup>58</sup>. By contrast, a factual obstacle that renders return impossible would be, for instance, the disappearance of the natural resources necessary for survival or of the land itself under the waters<sup>59</sup>.

Finally, *reasonableness* implies that it is acceptable, as proportionate, to expect the affected people to return and settle again in the affected area<sup>60</sup>. The UN Representative for IDPs points out that return cannot be reasonably expected when the country of origin does not provide any assistance or protection in the affected areas, or when the durable solutions it proposes as alternatives to return fall far short of international standards<sup>61</sup>.

Of the three elements mentioned, the fact is that both the permissibility and the possibility of return can actually be reduced to the element of reasonability. Indeed, the return cannot be considered reasonable when, for example, the environmental situation in the place of origin of the displaced persons still poses a risk to their life or integrity – i.e. the principle of non-refoulement –; or when return is not straightforwardly possible. On the other hand, reasonableness already requires weighing up the vulnerabilities of displaced persons – e.g. health status, age or gender –, so that the prohibition of collective expulsions is also subsumed in it.

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<sup>56</sup> The prohibition of collective expulsions has been enshrined in several international instruments, both at universal and regional level, such as: ICCPR (Art. 13); ICRMW (Art. 22.1); the Protocol 4th to the ECHR (Art. 4); the ACHPR (Art. 12.5); and the ACHR (Art. 22.9).

<sup>57</sup> KÄLIN, W., *Displacement Caused by the Effects of Climate Change: Who Will Be Affected and What Are the Gaps in the Normative Framework for Their Protection?*, *op. cit.*, p. 9.

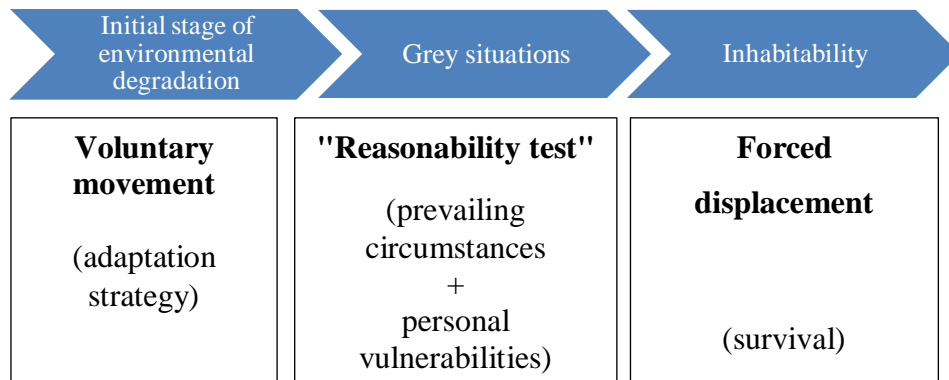
<sup>58</sup> *Ibid.*, p. 3.

<sup>59</sup> *Ibid.*, p. 9.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* Similarly, BORRÀS PENTINAT, S., “El estatuto jurídico de protección internacional de los refugiados ambientales”, *Revista Interdisciplinar da Mobilidade Humana*, Vol. 19, No. 36, 2011, p. 32, considering that if a person does not have access to the protection of basic human rights as a result of environmental disruption in the place of origin, that person should be considered a victim of internal displacement.

**Figure 31-Progressive scale of environmental degradation and related human movement**



The reasonability test, however, does not entirely solve the problem, as the criterion of acceptability remains a vague legal concept that will have to be specified on a case-by-case basis. In other words, it would have to be determined in each case what minimum living conditions in the place of origin would be acceptable for considering the return as reasonable.

If, for example, the case-law analysed in Chapter V on the principle of non-refoulement and environmentally-related cross-border movements was to be taken as a reference, the result would be a very high threshold. That is, living conditions would have to have deteriorated so significantly as a result of environmental degradation that, unless exceptional circumstances render the victim particularly vulnerable, they will almost border on inhabitability. Such an interpretation would render the reasonableness test useless in practice, as only the cases closest to the end of the continuum would qualify as forced displacement. Consequently, the whole vast area of the centre of the scale, where the grey cases locate, would be excluded; being precisely that area to which the reasonability test aims to assess.

It seems then that the threshold of reasonableness should be considerably lowered compared to how the principle of non-refoulement has been interpreted in the field of natural disasters. In particular, bearing in mind that internally displaced persons remain subject to the jurisdiction of their State of nationality or habitual residence and thus do not need international protection. As stated above, the IDPs definition mainly fulfils a practical function, and should therefore also be subject to a teleological interpretation. That is to say, an interpretation that will make it possible to identify and protect new

groups of internally displaced persons who are also in a situation of vulnerability, which is after all the aim behind the development of the Guiding Principles. Instead of being interpreted in a restrictive manner, which would ultimately frustrate their object and purpose.

### **1.3. Protection of IDPs in situations of environmental disruption: analysis of the content of the Guiding Principles in this particular context**

#### **1.3.1. Introduction**

It should be recalled from the outset that the IDP condition does not confer any special right under international law<sup>62</sup>. "This is because the rights and guarantees to which internally displaced persons are entitled stem from the fact that they are human beings and citizens or habitual residents of a particular state"<sup>63</sup>. Being displaced within the country of origin or habitual residence does not affect such status<sup>64</sup>. Thus, displaced persons will continue to enjoy the rights and freedoms to which they were entitled under national and international law, "in full equality (...) as do other persons in their country", without being subject to any discrimination on the grounds of being internally displaced [GP No. 1 (1)].

The Guiding Principles only highlight and recognise the particularly vulnerable situation in which displaced persons find themselves compared to the rest of society, as a result of having been forced to leave their homes<sup>65</sup>. Accordingly, they draw attention, by identifying and codifying in a single text, to existing legal standards of international human rights law and international humanitarian law that are relevant to the protection of IDPs<sup>66</sup>.

The text finally concluded in 1998 consists of thirty Guiding Principles, which set out the rights and guarantees that assist displaced persons in each stage of displacement,

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<sup>62</sup> KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, p. 5. CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, p. 43.

<sup>63</sup> KÄLIN, W., *op. cit. supra*, p. 4 *in fine*.

<sup>64</sup> Id. Also, CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, p. 71.

<sup>65</sup> KÄLIN, W., *op. cit. supra*, pp. 4 *in fine* and 5. CIRERA FORTEA, M.T., *op. cit. supra*, p. 43.

<sup>66</sup> KÄLIN, W., *op. cit. supra*. CIRERA FORTEA, M.T., *op. cit. supra*, p. 70, noting that the Guiding Principles reflect and do not contradict international human rights law and international humanitarian law, reflecting their dual nature as both declaratory and crystallising of customary law.

The GP No. 2 (2) itself makes it clear from the outset that the Guiding Principles "shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law".

as well as the obligations of the different actors who may be involved with the affected populations<sup>67</sup>. Being formulated as general guidelines, the Guiding Principles have the advantage of being easily adapted to the specific characteristics of each displacement or to the regional or local context in which it occurs. This flexibility is particularly appropriate in the case of environmental displacement, given the multiplicity of environmental scenarios that can trigger movement<sup>68</sup>.

The thirty Guiding Principles are grouped into five sections. Section I comprises four general principles which, as Cirera Fortea states, constitute the legal basis for the protection and assistance of all displaced persons<sup>69</sup>. Sections II to IV deal with the different phases of displacement. Thus, Section II brings together a set of principles aimed at protecting people from arbitrary displacement, whether for the unjustified reasons that motivate it or for the discriminatory way in which it is carried out. Sections III and IV deal respectively with the principles that should guide the protection of IDPs persons and the provision of humanitarian assistance. Finally, Section V groups together the principles relating to the return, resettlement and reintegration of displaced populations.

The following sub-sections address the application of the Guiding Principles in the field of environmental displacement. In addition to the Annotations to the Guiding Principles<sup>70</sup>, two reports by the former Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, Mr Walter Kälin, have been used as background texts for the development of these sub-sections. One broadly deals with protecting IDPs displaced by natural disasters, with references to specific cases<sup>71</sup>. The

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<sup>67</sup> In this regard, the above-mentioned Principle states in paragraph 1 that: "These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction".

<sup>68</sup> Vid. Chapter I for an analysis of environmental drivers of migration. Also KÄLIN, W., *Displacement Caused by the Effects of Climate Change: Who Will Be Affected and What Are the Gaps in the Normative Framework for Their Protection?*, *op. cit.*, pp. 2-3, who proposes a typology which, besides including population movements directly related to environmental disruption, also considers situations of a mixed nature –i.e. where the displacement is a direct consequence of human action underlying an environmental cause. For example, the designation by the government of areas as high natural-risk zones or armed conflicts and violence over natural resources (vid. footnote 45 of this Chapter).

<sup>69</sup> CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, p. 71.

<sup>70</sup> KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.* The footnote references to the various human rights and international humanitarian law instruments that provide the legal basis for the Guiding Principles are drawn from this book. Their inclusion is intended to show that the fundamental rights of persons internally displaced by environmental disruptions are, in most cases, already protected under International Law.

<sup>71</sup> UNGA, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin. Addendum: protection of internally displaced persons in situations of*

second recounts the working visits of the UN Representative on IDPs to several Asian countries affected by the 2004 tsunamis<sup>72</sup>. These reports have provided invaluable practical experience of the obstacles to adequate protection of IDPs under the Guiding Principles in the context of environmental disruption.

### **1.3.2. Section I (Guiding Principles 1 to 4): particular reference to the State's duty to protect the life and security of persons internally displaced by environmental disturbances and to the principle of non-discrimination**

The four Guiding Principles that Section I contains set out several general principles that shall guide the protection and assistance of IDPs at each stage. These principles, some of which have already been mentioned, are:

- The principle of equal rights and freedoms for IDPs as enjoyed by all other persons in the country [GP No. 1 (1)].
- Linked to the former, the principle of non-impairment of other rights or freedoms to which IDPs could be entitled under domestic or international law, in particular the right to seek refuge abroad [GP No. 2 (2)].
- The principle of universal observation of the Guiding Principles by all stakeholders [GP No. 2 (1)].
- The principle of primacy of national protection of IDPs and the right of IDPs to require such assistance [GP No. 3].
- The principle of non-discrimination among IDPs [GP No. 4].

The following two sub-sections focus, on the one hand, on the primary duty that national authorities have to provide protection and humanitarian assistance to IDPs in the context of environmental disruptions. On the other hand, it addresses the need to provide additional attention to specific categories of vulnerable persons, whose special needs may be exacerbated by the displacement.

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*natural disasters* (A/HRC/10/13/Add.1), 5 March 2009, 24 pp. Vid. also the recently published thematic report by the current Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damaryon, on internal displacement in the context of the slow-onset adverse effects of climate change and the impact of such displacement on the enjoyment of human rights by IDPs (UNGA, *Report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damaryon* (A/75/207), 21 July 2020, 24 pp.).

<sup>72</sup> OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia by the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, 27 February to 5 March 2005", OHCHR, 31 pp.

### A) The States' duty to protect the life and security of IDPs in the context of environmental disruption: Guiding Principle No. 3

Asserting that the responsibility to protect IDPs lies primarily with States is no more than a logical consequence of the principle of sovereignty<sup>73</sup>, and the fact that IDPs remain subject to the jurisdiction of the State inside whose borders they found. *Ad extra*, the principle of sovereignty has its corollary in the principle of non-intervention in the internal affairs of any other State, as recognised, *inter alia*, in Article 2 (7) of the UN Charter<sup>74</sup> or Resolution 2625 XXV<sup>75</sup>.

The express recognition of both principles –sovereignty and non-intervention- as general principles for the protection and assistance of IDPs reflects the manifest fear of newly independent States, more politically unstable and where precisely more IDPs tends to exist. They worried that the major powers could take advantage of humanitarian action as a way to interfere in their domestic affairs<sup>76</sup>. Accordingly, GP No. 3 echoes previous resolutions of the UN General Assembly which emphasize in this regard that:

*"Each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence, the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory"*<sup>77</sup>.

At the same time, the concept of sovereignty assumed by the Guiding Principles is conceived, *ad intra*, as a duty or form of responsibility of each State towards its citizens, whose rights must also continue to be guaranteed during displacement<sup>78</sup>. In the particular context of environmental hazards, the HRC has expressly recognised this

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<sup>73</sup> KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, p. 19.

<sup>74</sup> UN, *Charter of the United Nations*, 26 June 1945, UNTS, Publication format full, 30 pp., whose Article 2 (7) states:

*"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII"* [italics added].

<sup>75</sup> UNGA, *Resolution 2625 (XXV) Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by the General Assembly at its Twenty-fifth session [A/RES/2625 (XXV)]*, 1971, pp. 121-124

<sup>76</sup> CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, p. 69.

<sup>77</sup> UNGA, *Resolution 46/182 Strengthening of the coordination of humanitarian emergency assistance of the United Nations, adopted by the General Assembly at its Forty-sixth session (A/RES/46/182)*, 14 April 1992, par. 4 [italics added]. Vid. also, UNGA, *Resolution 45/100 Humanitarian assistance to victims of natural disasters and similar emergency situations, adopted by the General Assembly at its Forty-fifth session (A/RES/45/100)*, 29 January 1991, par. 2.

<sup>78</sup> CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, p. 68.



particular manifestation of "the State party's obligation, under article 6 of the Covenant, to protect the life of its citizens"<sup>79</sup>. Thus, in its consideration of the report submitted by the Democratic People's Republic of Korea, the Committee expressed serious concern about "the lack of measures [taken by the national authorities] to address, *in cooperation with the international community*, the causes and consequences of the drought and other natural disasters which seriously affected the country's population in the 1990s"<sup>80</sup>.

Furthermore, such responsibility to protect their citizens lies with States not only once environmental disruption has occurred. Instead, it begins much earlier with preparedness, continues with the assistance to the affected population after the environmental disruption has struck, "and extends to recovery, reconstruction and reinforced preparedness measures on the basis of lessons learned"<sup>81</sup>. This is what the former UN Representative for IDPs, Mr Walter Kälin, calls a *cycle of protection* that

"constantly adapts to the challenges posed by natural hazards and *optimizes protection* to those affected in order to *mitigate the impact of disasters, prevent displacement* and other negative consequences, and *find durable solutions for the displaced*"<sup>82</sup>.

The concrete manifestations of this primary duty of States to assist their population in all phases of an environmental disturbance are analysed in detail when addressing the particular Guiding Principles involved at each stage of displacement.

## **B) The principle of non-discrimination: specific protection needs of particularly vulnerable groups**

The aftermath of environmental disturbances could "exacerbate previous patterns of discrimination and marginalisation"<sup>83</sup> of already vulnerable members of the community. In this regard, GP No. 4 prohibits discrimination among the displaced themselves because of "race, colour, sex, language, religion or belief, political or other

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<sup>79</sup> HRC, *Consideration of Reports submitted by States Parties under Article 40 of the Covenant. Concluding observations of the Human Rights Committee: Democratic People's Republic of Korea* (CCPR/CO/72/PRK), 27 August 2001, par. 12 (last access: 23/08/2020).

<sup>80</sup> Id. [bracketed text and italics added] This duty of the international community to cooperate to assist affected States to prevent, avoid and address the risks associated with climate change, including the risk of displacement, has been underlined in UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-Damary* (A/75/207), pars. 56-58.

<sup>81</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 21.

<sup>82</sup> Id.

<sup>83</sup> *Ibid.*, par. 24.

opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria". As follows from the use of the expression "any other similar criteria", the list of prohibited discriminatory grounds provided in paragraph 1 is not exhaustive<sup>84</sup>.

In this connection, the UN Representative for IDPs drew attention to deliberate discrimination that sometimes occurs in access to and distribution of humanitarian aid to victims of environmental disruption because of their membership of a particular ethnic group or religious minority<sup>85</sup>. It should be recalled that in such cases, whether IDPs were to cross an international border, they would be eligible for refugee status, as the adverse effects of a natural hazard would be used and even exacerbated by national authorities as a form of persecution.

The formal equality that GP No. 4 enshrines among all IDPs does not prevent, however, differences in treatment in favour of certain groups of IDPs, which would be justified by the greater vulnerability they face due to their particular condition<sup>86</sup>. Thus, its second paragraph makes express reference to children, especially unaccompanied minors; pregnant women and mothers with young children; female heads of household; persons with disabilities and elderly persons. Like paragraph one of GP 4, the list in paragraph two should neither be considered a *numerus clausus*, given the words "such as" preceding the enumeration. For example, other categories of persons such as those suffering from chronic illnesses may also be at greater risk in the event of displacement<sup>87</sup>. Nevertheless, international conventions do not usually explicitly grant them additional protection<sup>88</sup>.

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<sup>84</sup> KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, p. 22.

<sup>85</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 32. Vid. also, OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 15, reporting cases of discrimination in the treatment of different groups of IDPs caused by the 2004 Asian tsunamis, sometimes attributed to political and religious factors or to caste affiliation.

<sup>86</sup> Vid. KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, p. 22. CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, p. 72. In the same vein, UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-Damary (A/75/207)*, *op. cit.*, noting that while all laws, policies, strategies and programmes addressing the protection and assistance of IDPs in the context of the slow-onset adverse effects of climate change must ensure equal treatment and non-discrimination (par. 55), this does not exclude particular attention for specific groups (par. 54).

<sup>87</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 25.

<sup>88</sup> *Id.*

In all these cases where there is an added personal vulnerability to displacement, the protection and assistance provided to IDPs must be tailored to the special needs arising from their particular condition, pursuant to GP No. 4(2)<sup>89</sup>. Indeed, the UN Representative for IDPs pointed out that, in most cases, discrimination results from the involuntary failure of disaster responders to provide, in post-disaster situations, for the specific needs of particularly vulnerable categories of persons who mix with the rest of the displaced population<sup>90</sup>.

a. For instance, the UN Representative for IDPs found that the specific needs of the elderly or persons with disabilities were not sufficiently addressed in most of the countries he visited<sup>91</sup>. Regarding disabled people, it is worth noting that Article 11 CRPD requires States Parties to take "all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the *occurrence of natural disasters*"<sup>92</sup>. Therefore, public authorities should consider their particular needs when designing preparedness measures, including evacuation programmes, in the disaster response or during post-disaster reconstruction<sup>93</sup>.

b. The Representative also noted the frequent lack of measures to address the particular needs of indigenous communities, as occurred in Honduras with the indigenous displaced by Hurricane Mitch, in terms of food, clothing and shelter<sup>94</sup>. The representative drew attention to the fact that the particular dependence between the way

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<sup>89</sup> As noted by KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations, op. cit.*, p. 22, the general rule of GP 4(2) is elaborated in other GPs that deal with specific aspects of this special attention to certain vulnerable groups. For example, Principle No. 13 (1) bans the forced recruitment of children into armed forces and their participation in hostilities; and Principle No. 23 (2) expressly guarantees their access to education. Principle No. 19, on its part, makes special reference to the health needs of women and persons with disabilities.

<sup>90</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters, op. cit.*, par. 32.

<sup>91</sup> *Ibid.*, pars. 32, 63 and 64. Vid. also UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-Damary (A/75/207), op. cit.*, par. 33.

<sup>92</sup> UN, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, UNTS, Vol. 2515, No. 44910, pp. 69-95 (English version), Article 11 [italics added].

<sup>93</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters, op. cit.*, par. 64.

<sup>94</sup> *Ibid.*, par. 32. Vid. also UNGA, *Protection of and assistance to internally displaced persons. Note by the Secretary-General: Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Mr. Walter Kälin, in accordance with General Assembly resolution 62/153 and Human Rights Council resolution 6/32 (A/63/286)*, 28 August 2008, par. 53, recommending that the authorities of Honduras take "the necessary measures to systematically address the need to protect the human rights of persons affected by natural disasters, *including displaced persons or indigenous communities affected by displacement*" [italics added].

of life of indigenous communities and their land leaves them ill-prepared to cope with displacement, especially when it involves the transition from rural to urban areas<sup>95</sup>. Furthermore, the remote location of indigenous communities or the geographical difficulty in accessing them, but also their language or culture, can be a significant barrier to their participation in the various phases of displacement<sup>96</sup>, especially concerning possible evacuation, return or resettlement<sup>97</sup>.

c. The Representative was also sensitive to "the gender dimension of the consequences of natural disasters"<sup>98</sup>. For instance, both after the tsunami that struck South and South-East Asia in 2004 and after Cyclone Nargis hitting Myanmar in 2008, women were more exposed to gender-based violence and abuse in the aftermath of disasters<sup>99</sup>. The risk was intensified when men and women were accommodated together without providing for separation in the shelters, with several allegations of rape having been reported to the Representative during his visits<sup>100</sup>.

He was also particularly concerned about the marginalization that women seem to suffer systematically in reconstruction and recovery efforts, making them vulnerable to further abuse<sup>101</sup>. The problem could be illustrated by the case of a village in Madagascar, a country regularly affected by cyclones, floods and droughts. The Representative reported that "single mothers with access to land were not included in

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<sup>95</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 65. Similarly, UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-Damary (A/75/207)*, *op. cit.*, pars. 29-30.

<sup>96</sup> UNGA, *Report of the Representative...*, *op. cit. supra*.

<sup>97</sup> OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 15, underlining that the relocation, return or reintegration of displaced indigenous communities must "be undertaken in ways that do not conflict with their traditions and culture". In the same vein, UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-Damary (A/75/207)*, *op. cit.*, par. 54, but referring to climate change mitigation and adaptation projects that may affect their ancestral lands.

<sup>98</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 34 [emphasis added]. In the same vein, UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-Damary (A/75/207)*, *op. cit.*, par. 32.

<sup>99</sup> UNGA, *Report of the Representative... Addendum*, *op. cit. supra*. Also, TRIPARTITE CORE GROUP, "Post-Nargis Joint Assessment", Union of Myanmar; Association of Southeast Asian Nations; UN, July 2008, p. 26 (last access: 24/08/2020). COMMISSION ON HUMAN RIGHTS, *Women and adequate housing. Report by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, Miloon Kothari (E/CN.4/2006/118)*, 27 February 2006, par. 58.

<sup>100</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 47, stressing the urgency and need for authorities to also adopt and implement policies to prevent gender-based violence in shelters, as the Government of Haiti did, for example, after hurricanes Fay, Gustav, Hanna and Ike struck between 18 August and 8 September 2008.

<sup>101</sup> *Ibid.*, par. 24. COMMISSION ON HUMAN RIGHTS, *Women and adequate housing...*, *op. cit.*, par. 59. OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 18.

the needs assessment lists of an international organization for seed distribution, based on the assumption that those using the seeds would be male farmers only"<sup>102</sup>.

d. The Representative also expressed concern about children as a particularly vulnerable group, as he had been informed on several of his visits that the destruction of livelihoods caused by a natural disaster had led to an increase in domestic violence against children and especially to child exploitation<sup>103</sup>. Trafficking is another serious threat that is exacerbated when children become orphaned or separated from their parents as a result of a natural disaster or subsequent displacement<sup>104</sup>. Besides, the Representative noted that "the loss of life as a result of a natural disaster can intensify efforts to recruit children to replace members of the fighting forces who were killed or injured in the disaster"<sup>105</sup>. He was also informed of an increase in child marriages where natural disasters had resulted in the death of more women than men<sup>106</sup>.

e. Finally, poverty can also intensify the harmful effects of natural events on already marginalized strata of society. For example, in Honduras, the Representative reported that those who had not yet been able to restart their previous lives after ten years of Hurricane Mitch were among the urban poor<sup>107</sup>.

In New Orleans, the Human Rights Committee expressed concern over reports that "the poor, and in particular African Americans, were disadvantaged by the rescue and evacuation plans implemented when Hurricane Katrina hit the United States, and continue to be disadvantaged under reconstruction plans"<sup>108</sup>. For instance, evacuation plans assumed the use of private vehicles, ignoring the fact that the poor do not usually

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<sup>102</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 32. Vid. also UNGA, *Protection of and assistance to internally displaced persons... (A/63/286)*, *op. cit.*, par. 60, highlighting during his visit to Mozambique, Madagascar and South Africa "the need for measures to protect the most vulnerable people from discrimination and exploitation, *particularly female heads of households and girls or elderly persons without family support*" [italics added].

<sup>103</sup> UNGA, *Report of the Representative...*, *op. cit. supra*, par. 48. The effects of climate change and associated displacement on children and young people are also highlighted in UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-Damary (A/75/207)*, *op. cit.*, par. 31.

<sup>104</sup> OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 18.

<sup>105</sup> *Id.*

<sup>106</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 48.

<sup>107</sup> *Ibid.*, par. 33.

<sup>108</sup> HRC, *Consideration of reports submitted by States Parties under Article 40 of the Covenant. Concluding observations of the Human Rights Committee: United States of America (CCPR/C/USA/CO/3/Rev.1)*, 18 December 2006, par. 26.

have cars<sup>109</sup>. Likewise, reconstruction efforts had been guided by parameters of economic viability, rather than by criteria based on need and vulnerability<sup>110</sup>. The UN Representative for IDPs thus drew attention to the slow pace of reconstruction in the lower 9th District of New Orleans, the most impoverished part of the city<sup>111</sup>. He noted that while the great majority of middle-class victims had returned to New Orleans within 6 to 8 months after the disaster, the vast majority of the remaining persons still displaced by Hurricane Katrina several years later were from socio-economically deprived areas<sup>112</sup>.

The cases reported by the Representative show, in sum, the need to further examine the particular challenges faced by vulnerable persons in the context of environmental displacement. Furthermore, the examples provided highlight the necessity to address these particular concerns by integrating the treatment of vulnerable groups into all phases of the response to natural events.

### **1.3.3. Section II (Guiding Principles 5 to 9): the States' duty to prevent displacement resulting from environmental disruptions, and special provisions in case of evacuation or forced relocation of affected communities**

Guiding Principles 5 to 9, in Section Two, are concerned with protection before the displacement occurs, also setting out several minimum guarantees to be adopted in advance in cases where displacement is unavoidable.

Of particular interest in the context of displacements related to natural hazards is the precautionary duty that Principle No. 5 imposes on States to avoid situations that may result in the internal displacement of populations. Likewise, the prohibition against arbitrary displacement (GP No. 6) is particularly relevant in situations of forced evacuation and resettlement due to natural disasters or slow environmental degradation. Where a breach of this prohibition is justified, Principles Nos. 7 and 8 provide for several safeguards to ensure that the affected population participates in the planning of their own resettlement and that the displacement is carried out in a manner that respects

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<sup>109</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 33.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* Also, UNGA, *Protection of and assistance to internally displaced persons... (A/63/286)*, *op. cit.*, par. 49.

legality and human dignity. These guarantees are further strengthened when the affected communities are strongly dependent on or attached to their lands (GP No. 9).

### **A) Preventing internal displacement from natural hazards: the importance of prevention and preparedness**

As noted by Walter Kälin, the general responsibility of States to protect the life and security of IDPs in the context of environmental disruptions (GP No.3) begins even before the environmental disruption has occurred<sup>113</sup>. As GP No. 5 states,

*"All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons"*.

As highlighted in Chapter V, in *Budayeva and others v. Russia*, the ECtHR recalled that, in the event of natural disasters, the right to life "lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction"<sup>114</sup>. The Court stressed that "[t]his positive obligation *entails above all a primary duty* on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life"<sup>115</sup>. Thus, it found Russia responsible for the deaths caused by a landslide because the competent authorities acted negligently by failing to take measures to avert and mitigate an identifiable and imminent lethal risk that could have been avoided if they had acted properly<sup>116</sup>.

Thus, while States cannot completely prevent environmental disruptions from happening, they can still alleviate their negative consequences on populations, "including through efforts to protect the environment that sustains human life and protects from natural hazards"<sup>117</sup>. As evidenced in Chapter II, and also noted by the UN Representative for IDPs, most kinds of rapid-onset environmental disruptions are

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<sup>113</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 22.

<sup>114</sup> ECtHR, *Budayeva and Others v. Russia* (Applications Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02), 29 September 2008, par. 128.

<sup>115</sup> *Ibid.*, par. 129 [italics added].

<sup>116</sup> *Ibid.*, pars. 137, 158-159. Vid. also ECtHR, *Öneryildiz v. Turkey* (Application No. 48939/99), 30 November 2004, pars. 89-90, on hazards of anthropogenic origin.

<sup>117</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 22. In the same vein, OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 11. UNGA, *Protection of and assistance to internally displaced persons... (A/64/214)*, *op. cit.*, par. 25.

recurrent phenomena meaning that States can anticipate them through developing disaster preparedness strategies.<sup>118</sup> At the same time, slow-onset environmental disruptions, because of their very progressive nature, allow for the adoption of measures to slow-down and even reverse the process of environmental degradation as well. Therefore, State preparedness for environmental disturbances can not only prevent the displacement of affected communities but more importantly, it can save lives and reduce suffering.

Preparedness entails, for example, the establishment of early warning and alert systems to detect potential natural hazards and warn at-risk populations<sup>119</sup>. Likewise, the development of contingency plans<sup>120</sup> can allow the rapid intervention of national authorities after the natural disaster has struck, minimising involuntary and expontaneous displacement as well all the potential loss of lives. There will be cases where the time between the warning and the disaster outbreak will be so short that, unfortunately, it will not prevent the disaster from hitting the population. However, such a reality does not make early warning systems a futile initiative that should not be implemented<sup>121</sup>.

As the introduction and enhancement of disaster risk reduction measures keep natural hazards from materialising into damage to the population, such measures directly prevent the occurrence of related displacement. Examples of effective preventive measures would include the construction of artificial barriers, such as dykes or protective fences against landslides and rockfalls, to avoid the risk that recurrent floods or landslides pose to populations<sup>122</sup>. The *Oosterscheldekering* in the Netherlands<sup>123</sup> or the Thames Barrier in London (UK)<sup>124</sup> are examples of massive levee

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<sup>118</sup> UNGA, *Report of the Representative...*, *op. cit. supra*, par. 23.

<sup>119</sup> *Ibid.*, par. 40. UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-Damary (A/75/207)*, *op. cit.*, par. 47, also considering the rol of evacuation drills as a preparedness measure.

<sup>120</sup> Also mentioned in the paragraphs referred to in the footnote *supra*.

<sup>121</sup> For example, in Aceh, Indonesia, one of the countries affected by the 2004 tsunamis, the time lapse between the earthquake and the tsunami it caused was less than 15 minutes. Vid. OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 12, noting, however, that "regional tsunami alert system (...) remains an important initiative to implement".

<sup>122</sup> Vid. UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-Damary (A/75/207)*, *op. cit.*, par. 45.

<sup>123</sup> The *Oosterscheldekering* was built after the great flood of 1953 as part of the Delta Plan (*Deltawerken*). It has 8 km length and links the Zeland Islands of *Schouwen-Duiveland* and *Noord-Beveland*.

<sup>124</sup> The Thames Barrier is the second largest anti-flood barrier in the world after the *Oosterscheldekering*. Its construction was also decided after the great storm that hit the North Sea in 1953, affecting the Thames Delta and several areas of London.



structures whose effectiveness in preventing exceptionally high tides or storms has been sufficiently demonstrated.

The effectiveness of such defences will certainly depend on State diligence in preserving them adequately. For example, in *Budayeva and others v. Russia*, the ECtHR found that Russian authorities have negligently ignored repeated request to repair and strengthen debris collectors<sup>125</sup>. In the case of Hurricane Katrina, the UN Representative reported that many people had argued that the real cause of the catastrophe was not the hurricane itself, but the breach of the Lake Pontchartrain dikes, in need of renovation<sup>126</sup>. In Madagascar, there also appeared to be a direct correlation between failure to maintain the canals around Antananarivo in good conditions and recurrent flooding in the surrounding low-lying areas<sup>127</sup>.

Alternatively, improving or enhancing natural barriers such as vegetation cover or reforestation helps to reduce the risk of landslides and flooding. For low-lying SIDS, planting mangroves or caring for coral reefs, besides protecting against coastal erosion caused by sea-level rise, have also proven to be natural strategies against extreme hydro-meteorological events<sup>128</sup>.

Establishing adequate administrative frameworks on building standards in areas prone to natural disasters, or a proper city-planning that prevents urban development in high-risk areas, also becomes a valuable legal tool for preventing displacement<sup>129</sup>. For example, the UN Representative for IDPs reported that in Honduras migration from

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<sup>125</sup> ECtHR, *Budayeva and Others v. Russia* (Applications Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02), 29 September 2008, pars. 147-160.

<sup>126</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 41.

<sup>127</sup> *Id.*

<sup>128</sup> UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-Damary (A/75/207)*, *op. cit.*, par. 45, also referring to the sustainable management of ecosystems as a means of disaster risk reduction and adaptation to climate change. For example, in the Carteret Islands (Papua New Guinea), a mangrove regeneration project was initiated to protect the islands from storm surges and shoreline erosion. Vid. CORCORAN, J.; VIRNIG, A. (eds.), "Tulele Peisa. Papua New Guinea", *Equator Initiative Case Studies: Local sustainable development solutions for people, nature, and resilient communities*, UNDP, 2016, p. 12 (last access: 03/09/2020).

<sup>129</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 41. UNGA, *Report of the Special Rapporteur...*, *op. cit. supra*, par. 46, also referring to better land-use planning and regulations. Similarly, on the occasion of the 2003 earthquake in Bam (Iran), the UN Commission on Human Rights' Special Rapporteur on the right to adequate housing (enshrined in Art. 11 (1) ICESCR) has pointed out that "the standards dictated by 'habitability', [include] durability of homes to withstand earthquake and other disasters" (vid. HABITAT INTERNATIONAL COALITION, BAM Tragedy Must Drive Resolve Towards Development of Safe Housing Standards Worldwide, UN Expert Says (07 January 2004) (last access: 01/09/2020) [bracketed text added]).

rural areas to urban centres had led to the development of overcrowded shantytowns in risky areas due to the country's terrain, especially in the capital, Tegucigalpa<sup>130</sup>. The same was reported for the low-lying areas of Madagascar's capital, Antananarivo<sup>131</sup>.

In summary, the adoption by national authorities of prevention and adaptation measures in the face of environmental threats is not only a requirement of the Guiding Principles, in order to avoid consequent population displacement. It is also a concrete manifestation of the obligation of States to protect the life and personal integrity of persons subject to their jurisdiction under International Law.

### **B) Freedom of movement and forced evacuation or relocation of populations at risk: Guiding Principles No. 6 in conjunction with No. 14**

As seen in the previous sub-section, the failure of national authorities to protect the right to life in the face of predictable and avoidable natural disasters would entail a breach of their human rights obligations<sup>132</sup>. This States' responsibility to protect the life and safety of persons within their jurisdiction from natural hazards (GP No. 3) would sometimes require the temporary evacuation of persons at risk<sup>133</sup>. Alternatively, when the effects of an environmental disturbance persist over time or when the area is prone to natural disasters –e.g. active seismic faults, unstable coastlines, areas exposed to landslides or flooding- governments may also declare the affected area as a high-risk zone unfit for human settlement, prohibiting IDPs from returning there<sup>134</sup>.

In parallel, GP No. 14 recognises to IDPs "the right to liberty of movement and freedom to choose his or her residence" (paragraph 1), including "the right to move freely in and out of camps or other settlements" (paragraph 2). This right to freedom of movement "includes the right not to move and to remain at the place of habitual

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<sup>130</sup> UNGA, *Report of the Representative...*, *op. cit. supra*.

<sup>131</sup> *Id.*

<sup>132</sup> *Vid. Ibid.*, par. 22. ECtHR, *Budayeva and Others v. Russia*, *op. cit.*, pars. 128, 137 and 158. OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 11. UNGA, *Protection of and assistance to internally displaced persons...*(A/64/214), *op. cit.*, par. 25.

<sup>133</sup> *Vid. UNGA, Report of the Representative...Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 22. UNGA, *Protection of and assistance...*, *op. cit. supra*.

<sup>134</sup> OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 22. KÄLIN, W., *Displacement Caused by the Effects of Climate Change: Who Will Be Affected and What Are the Gaps in the Normative Framework for Their Protection?*, *op. cit.*, p. 3. UNGA, *Protection of and assistance to internally displaced persons...* (A/64/214), *op. cit.*, par. 25.

residence"<sup>135</sup>. The UN Representative on IDPs has highlighted the potential friction between GP No. 14 and the duty to protect life in the event of natural hazards (derived from GP No. 3) when people in danger refuse to evacuate or relocate –e.g., because they are afraid of forfeiting livestock and other assets should they leave or because do not believe in the seriousness of the risk<sup>136</sup>.

The general rule is that States must respect the decision of concern persons<sup>137</sup>, as they cannot be forced to leave their homes or places of habitual residence against their will, according to GP No. 6(1), which protects against arbitrary displacement<sup>138</sup>. However, this prohibition is not absolute under International Law<sup>139</sup>. Indeed, GP 6(2)(d) does not qualify forced evacuation in the event of disasters as arbitrary displacement when such measures are necessary to protect the safety and health of persons at risk, as justification precludes arbitrariness. Therefore, in situations of risk, States' duty to save lives prevail over the individual's freedom of movement<sup>140</sup>.

However, based on international human rights law and international humanitarian law, it is possible to establish several stringent conditions that must be met to ensure

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<sup>135</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 43.

<sup>136</sup> *Id.* Also UNGA, *Protection of and assistance to internally displaced persons...(A/64/214)*, *op. cit.*, par. 27.

<sup>137</sup> UNGA, *Protection of and assistance...*, *op. cit. supra.*, par. 26, noting that public authorities must limit their intervention to providing the persons concerned with "with true and accurate information enabling them to make a free and voluntary decision".

<sup>138</sup> According to the COMMISSION ON HUMAN RIGHTS, *Internally displaced persons: Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39 (E/CN.4/1998/53)*, 11 February 1998, par. 10:

"an express prohibition of arbitrary displacement is contained in humanitarian law and in the law relating to indigenous peoples. In human rights law, by contrast, this prohibition is only implicit in certain provisions, in particular those pertaining to freedom of movement and choice of residence, freedom from arbitrary interference in one's home, and the right to housing".

International legal provisions from which a general prohibition of arbitrary displacement can be inferred are Articles 11 and 22(1) ACHR, Article 12(1) ACHPR, Article 26(1) ArCHR; Articles 12(1) and 17 CCPR; Article 8 ECHR and Article 2(1) of its Protocol No. 4; Articles 49 and 147 of the Geneva Convention IV, as well as Articles 51(7), 78(1) and 85(4) of its Protocol I and Articles 4(3)(e) and 17 of Protocol II; Article 12 UDHR; Article 16 of ILO Convention No. 169 on Indigenous and Tribal Peoples, and Article 10 of the UN Declaration on the Rights of Indigenous Peoples.

<sup>139</sup> Most of the norms mentioned in the previous note allow for forced displacement when there are compelling needs to justify it.

<sup>140</sup> *Vid.* the comment on paragraph (2) of GP 6 in KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, p. 34.

that forced evacuation or prohibition of return in cases of environmental disruption does not become an arbitrary measure<sup>141</sup>:

1- Principle of legality: there must be a sufficient legal ground for it and it must be carried out by the competent authorities in a non-discriminatory manner. Those affected must be effectively informed of the adoption of restrictions on freedom of movement to promote legal certainty.

2- Necessity: restrictions have to respond to objective and compelling reasons and have the sole purpose of protecting the life and safety of persons at risk. In this regard, restrictions on movement shall not last longer than strictly necessary and must cease immediately once the danger has passed.

3- Proportionality: the recourse to forced evacuation or prohibition of return has to be a last resort measure, when other less burdensome options are not feasible. [GP No. 7 (1)]. Proportionality becomes particularly relevant when groups to be displaced have "a special dependency on and attachment to their lands" (GP No. 9)<sup>142</sup>. In cases where return is permanently banned, such measures are only admissible in very exceptional circumstances, where: (i) protection measures are no longer sufficient to mitigate the risks in the affected area; (ii) adaptation alternatives are no longer feasible; (iii) the area in question presents "high and persistent risks" to life or safety; (iv) living conditions are inadequate; (v) and fundamental human rights cannot be secured<sup>143</sup>.

If involuntary displacement takes place outside the emergency caused by a natural disaster, for example in a preventive manner because the area has been identified as potentially risky, GP No. 7 (3) sets out a range of additional guarantees to ensure that relocation is not arbitrary. In addition to having a legal basis, being enforced by the competent authorities and meeting the requirements of necessity and proportionality,

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<sup>141</sup> Vid. UNGA, *Protection of and assistance to internally displaced persons...* (A/64/214), *op. cit.*, par. 27. UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 44. UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-Damary* (A/75/207), *op. cit.*, par. 48. Vid. also, COMMISSION ON HUMAN RIGHTS, *Report of the Representative of the Secretary-General Mr. Francis Deng... Part II: Legal Aspects Relating to the Protection against Arbitrary Displacement* (E/CN.4/1998/53/Add.1), *op. cit.*, par. 54. KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, p. 30. COMMISSION ON HUMAN RIGHTS, *Internally displaced persons: Report of the Representative of the Secretary-General, Mr. Francis M. Deng...* (E/CN.4/1998/53), *op. cit.*, pars. 11-12.

<sup>142</sup> The GP No. 9 expressly refers, without being a *numerous clausus*, to indigenous peoples, minorities, peasants and pastoralists.

<sup>143</sup> UNGA, *Protection of and assistance to internally displaced persons...* (A/64/214), *op. cit.*, par. 27.

GP No. 7 guarantees: (i) the right to be informed on the reasons for and procedures of the displacement and, where appropriate, on mechanisms for compensation or indemnification for lost property –e.g., if the displacement is permanent; (ii) the right to participate in the planning and management of the displacement, involving particularly women; (iii) the need to obtain the prior and informed consent of those affected whenever possible or, in the case of refusal, to have the forcible execution of the displacement authorised by the competent legal authorities; (iv) finally, the right to an effective remedy and review of the forced displacement decision by the competent judicial authorities<sup>144</sup>.

In any case, whether or not the persons concerned agree, the evacuation or relocation must take place respecting "the rights to life, dignity, liberty and security of those affected" (GP No. 8), ensuring that adequate conditions of shelter, nutrition, health and hygiene are provided throughout the displacement [GP No. 7(2)]. Furthermore, it should be conducted without any discrimination among IDPs, other than those addressing the particular protection needs of vulnerable groups, pursuant to GP No 4<sup>145</sup>.

#### **1.3.4. Section III (Guiding Principles 10 to 23): a brief overview of IDPs' rights during internal displacement**

Guiding Principles Nos. 10 to 23 set out the broad catalogue of fundamental rights that assist IDPs during their displacement. As will be seen, these Principles only recall the human rights to which IDPs are already entitled as human beings and citizens. Following the classification proposed by Cirera Fortea, this right can be grouped into four major blocks:

- (i) Rights related to the personal integrity and security of IDPs.
- (ii) Family rights.
- (iii) Social and economic rights.

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<sup>144</sup> Vid. the comment on paragraph (3) of GP 7 in KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, op. cit., pp. 40-41.

<sup>145</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, op. cit., pars. 44-45.

(iv) Civil, political and other rights<sup>146</sup>.

### **A) Rights related to the personal integrity and security of IDPs**

The first group reiterates several fundamental rights, common to all persons, which are of particular importance in the case of IDPs, especially when the displacement has taken place in the context of an internal armed conflict. Thus, the Guiding Principles guarantee the right to life (GP No 10<sup>147</sup>); to dignity and personal integrity (GP No 11<sup>148</sup>); as well as to personal freedom and security (GP No 12<sup>149</sup>).

Freedom of movement and choice of residence is also guaranteed (GP No.14<sup>150</sup>). The tensions that this freedom can create in the context of environmental threats, where national authorities may be compelled to evacuate or resettle populations at risk, have already been highlighted in the previous sub-section. The GP No. 15 specifies the scope of such freedom both *ad extra* and *ad intra*. *Ad extra*, IDPs cannot be prevented from leaving the country<sup>151</sup> or from seeking asylum in another State<sup>152</sup>. Within the borders of their State, IDPs have the right to seek safety in another part of the country<sup>153</sup> and not to be forced to resettle or return to areas dangerous to their life, safety, freedom or health<sup>154</sup>.

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<sup>146</sup> Vid. CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, pp. 77-84. Regarding the rights of people internally displaced by environmental disruption, the current Special Rapporteur for IDPs has drawn attention to the "common misconception (...) that protection needs in relation to disaster displacement, especially slow-onset hazards, are less relevant than in displacement triggered by armed conflict" (in: UNGA, *Report of the Special Rapporteur...Cecilia Jimenez-Damary (A/75/207)*, *op. cit.*, par. 49).

<sup>147</sup> GP No. 10 (1) reflects Article 3 UDHR, Article 6 (1) CCPR, Article 3 Geneva Convention III, Articles 27 and 32 Geneva Convention IV, Article 75 (2) Protocol I and Article 4 Protocol II.

<sup>148</sup> GP No. 11 (1) enshrines the prohibition of torture or cruel, inhuman or degrading treatment or punishment as laid down, *inter alia*, in Article 5 UDHR, Article 7 CCPR, Article 37 (a) CRC, Article 5 (2) ACHR, Article 8 ArCHR, Article 5 ACHPR, and Article 3 ECHR.

<sup>149</sup> GP No. 12 (1) draws, *inter alia*, on Article 9 (1) CCPR, Article 37 (b) CRC, Article 7 ACHR, Article 6 ACHPR, Article 14 ArCHR, and Article 5(1) ECHR.

<sup>150</sup> GP No. 14 (1) is in line with Article 12 CCPR, Article 13 (1) UDHR, Article 2 (1) Protocol No. 4 to the ECHR, Article 22 (1) ACHR, Article 12 (1) ACHPR, and Article 26 (1) ArCHR.

<sup>151</sup> This right to leave one's own country follows several human rights provisions: Article 13 (2) UDHR, Article 12 (2) CCPR, Article 2 (2) Protocol No. 4 to the ECHR, Article 22 (2) ACHR and Article 12 (2) ACHPR.

<sup>152</sup> The right to seek asylum in another country is consistent with Article 14(1) UDHR, Article 22(7) ACHR and Article 12(3) ACHPR.

<sup>153</sup> This right is covered by the fundamental freedom of movement.

<sup>154</sup> Protection against forced return or resettlement would be an application by analogy of the customary principle of non-refoulement in the context of internal displacement. Legal provisions enshrining the principle of non-refoulement include, *inter alia*: Article 33 (1) of the 1951 Convention, Article 3 (1) of the Convention against Torture, Article 7 CCPR, Article 3 ECHR, and Article 22(8) ACHR.

In this regard, reference has already been made to the possibility for national authorities to exclude the area affected by the environmental disruption from human habitation on the grounds that it is unsafe. In general terms, the UN Representative for IDPs noted that this kind of prohibitions of return or access to certain areas has to be applied "in a fair and non-discriminatory manner, balancing all relevant aspects, including geographical features, concerns for environmental protection, and impact on the livelihoods of traditional communities or indigenous peoples"<sup>155</sup>.

However, during his working visit to Asia, the Representative was informed of the abusive use of such restrictions by several governments in the aftermath of the 2004 tsunamis. On the one hand, he was informed that the Indonesian Government had confined IDPs in Aceh province to camps in an attempt to contain armed rebel groups operating in the area<sup>156</sup>. However, the Representative could neither confirm nor deny the veracity of these allegations<sup>157</sup>.

On the other hand, he found that several tsunami-hit countries had declared some coastal areas as restricted or "buffer zones"<sup>158</sup>. While national authorities justified these measures on the grounds of avoiding "destruction and devastation by future disasters of a similar nature"<sup>159</sup>, the Representative observed some inconsistencies in that argument. For instance, in some areas, authorities had prohibited reconstruction and also the returning of local residents, including traditional communities, but they had instead authorised the construction of tourism amenities<sup>160</sup>. In other cases, the established security zone extended further inland than in other areas for no apparent reason<sup>161</sup>. Finally, the local fisheries sector, although heavily affected by these constraints, had not received any attention from the national authorities prior to the enactment of such measures<sup>162</sup>.

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<sup>155</sup> OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 23.

<sup>156</sup> *Ibid.*, p. 16.

<sup>157</sup> *Id.*

<sup>158</sup> *Ibid.*, p. 23. Also, UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 58.

<sup>159</sup> *Vid. footnote supra.*

<sup>160</sup> *Id.*

<sup>161</sup> OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 23.

<sup>162</sup> *Id.*

Restrictions on movement such as those described in the examples above, which, as the UN Representative has pointed out, lack "proper scientific or other justification" or are discriminatory<sup>163</sup>, would be arbitrary, as they would no longer meet the criteria of legality, necessity and proportionality.

## **B) Family rights**

The second group of rights concerns the protection of the family. On the one hand, GP No 16 sets out the right of IDPs "to know the fate and whereabouts of [their] missing relatives", including the right to have their remains returned to them. At the same time, national authorities must search for missing persons in cooperation with relevant international organizations involved, as well as to identify those who have died and protect their gravesites<sup>164</sup>.

On the other hand, GP No. 17 refers to the right to family life<sup>165</sup>. Mainly, it guarantees family-unity and the non-separation of its members, either during displacement or in case they have been brought into a camp for displaced persons<sup>166</sup>. The competent authorities should also take all necessary measures to reunite separated family members as soon as possible, especially in the case of families with children<sup>167</sup>.

## **C) Social and economic rights**

The third group brings together the social, economic and cultural rights that Guiding Principles Nos. 18, 19, 21, 22(b) and 23 recognise for IDPs.

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<sup>163</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 58.

<sup>164</sup> GP No. 16 fills a gap, as the rights it recognizes are only partly covered by international humanitarian law. Vid. Articles 16 and 26 Geneva Convention IV, Articles 33 and 34 Protocol I, and Article 8 Protocol II.

<sup>165</sup> The right to family life has been endorsed in all relevant human rights and humanitarian law instruments, such as Article 12 UDHR, Article 8 (1) ECHR, Article 17 (1) CCPR, Article 16 (1) CRC, Article 11 (2) ACHR, Article 21 (1) ArCHR, and Article 27 (1) Geneva Convention IV.

<sup>166</sup> The obligation not to separate family members derives from the customary prohibition of disturbing family life of Article 17 CCPR. Specific provisions addressing family unity, particularly ensuring children are not separated from their parents, are: Article 9 (1) CRC, Article 19 (1) African Charter on the Rights and Welfare of the Child, and Article 49 (3) Geneva Convention IV. Even though human rights law and refugee law do not provide for the preservation of family unity for families interned or confined in camps, GP No 17(4) finds inspiration in humanitarian law provisions such as Article 82 (2) and (3) Geneva Convention IV, and Articles 75 (5) and 77 (4) Protocol I.

<sup>167</sup> Family reunification is address in various international provisions: Articles 10(1) and 22(2) CRC, Articles 24(3), 26 and 50 Geneva Convention IV, Article 74 Protocol I, Article 23(2) African Charter on the Rights and Welfare of the Child, or Article 8 ECHR. The principle of family reunification has also been reaffirmed in several UNHCR Executive Committee Conclusions, such as Conclusion 24(XXXII) on Family Reunification and Conclusion 107(LVIII) on Children at Risk.



Firstly, the relevant authorities must ensure that IDPs enjoy "an adequate standard of living" throughout their displacement, guaranteeing in any case safe access to essential food and potable water, shelter and basic accommodation, adequate clothing, and essential medical and sanitation services (GP No. 18<sup>168</sup>). Special consideration is given to medical assistance to be provided, as soon as possible, to IDPs who are disabled, women or patients with AIDS or other contagious and infectious diseases (GP No. 19<sup>169</sup>).

In this regard, the UN Representative on IDPs noted that in the context of natural disasters, while governments and civil society alike generally make "impressive efforts" to provide essential relief assistance when a sudden disruption strikes, gaps often emerge once the emergency phase<sup>170</sup>. Shortfalls often concern interventions that involve more sustained and longer-term support, such as the provision of water and sanitation facilities, accommodation suitable for extended stays, and basic non-food supplies<sup>171</sup>.

Secondly, GP No. 21 protects, on the one hand, the property and possessions of displaced persons, whether they have taken them with them or have left them in their places of origin, "against destruction and arbitrary and illegal appropriation, occupation or use"<sup>172</sup>. On the other hand, GP No. 22(b) recognises that all IDPs have "the right freely to seek employment opportunities and to participate in economic activities"

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<sup>168</sup> The "right to an adequate standard of living" can be traced in: Articles 11 (1) ICESCR, Article 25 (1) UDHR, and Article 27(3) CRC. The right to "essential food and potable water" is explicitly safeguarded by Articles 11 and 12 ICESCR, Article 27(3) CRC, Article 25(1) UDHR, Article 54 Protocol I, Article 14 Protocol II, and Articles 23(1) and 55 Geneva Convention IV. The right to shelter and housing is expressly provided for in Article 25(1) UDHR, Article 11(1) ICESCR, Article 27(3) CRC, and Article 38 ArCHR; and implicitly in Article 31 ESC, as part of the right to an adequate standard of living. The right to "appropriate clothing" is recognised in Article 11(1) ICESCR, Article 27(3) CRC and Article 25(1) UDHR. Humanitarian law does not specifically protect the right to adequate housing and clothing, but it is possible to deduce it from Articles 54(2) Protocol I and 14 Protocol II, which protect objects indispensable to the survival of the civilian population; as well as from Article 53 Geneva Convention IV, which prohibits the destruction of real or personal property belonging individually or collectively to private persons. Finally, the right of access to "essential medical services and sanitation" is found in: Article 25(1) UDHR, Article 12(1) ICESCR, Article 11 ESC, Article 16(1) ACHPR, Article 39 ArCHR, Article XI ADRDM, Article 10 Protocol I, Articles 7(2) and 8 Protocol II, and Articles 16, 23, 55 and 56 Geneva Convention IV.

<sup>169</sup> Special provisions regarding health needs of children, disable persons and women are included in Article 24(1) CRC, Article 11 CRPD, and Article 12(1) CEDAW.

<sup>170</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 49.

<sup>171</sup> *Id.*

<sup>172</sup> This Guiding Principle stems from the general right to property content in Article 17 UDHR, Article 21 ACHR, Article 31 ArCHR, Article 14 ACHPR, and Article 1 Protocol No. 1 to the ECHR.

without discrimination<sup>173</sup>. These two rights are particularly relevant where displacement persists over time or where return is not possible. Such could be the case in low-lying SIDS, where both land ownership and the already precarious employment opportunities will disappear as the territory sinks beneath the oceans.

The Representative himself noted that the exercise of the right of access to work and livelihoods was one of the most challenging to realise in the aftermath of environmental disruption<sup>174</sup>. According to the Representative's report, in Honduras, for instance, the victims of Hurricane Mitch, who were economically self-sufficient as day labourers, small entrepreneurs or subsistence farmers before the disaster, had not yet been able to access adequate livelihood opportunities several years after the hurricane had struck, being still reliant on State aid<sup>175</sup>. At the other end of the spectrum, the representative praised the work of the municipal authorities in Houston (United States) who had actively supported the integration of those displaced by Hurricane Katrina from New Orleans into the local labour market<sup>176</sup>.

Overall, the Representative considered that in most cases the problems related to IDPs' access to housing, property and possession, as well as to livelihoods and work, were mainly due to an insufficient legal and budgetary arrangements<sup>177</sup>. He also pointed to the fact that "the affected often came from traditionally or newly marginalised sectors of society which mainstream society felt it could safely ignore"<sup>178</sup>.

Finally, GP No. 23 affirms the right to education, in particular of displaced children, whether or not they live in camps<sup>179</sup>. Such education, available "as soon as conditions permit", "shall be free and compulsory at the primary level" and should guarantee the cultural identity, language and religion of displaced persons.

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<sup>173</sup> The right to work is fully guaranteed in the relevant human rights texts: Article 23 UDHR, Article 5 (e) (i) ICERD, Articles 6 and 7 ICESCR, Article XIV ADRDM, Article 34 ArCHR, Article 15 ACHPR, and Articles 1 and 2 ESC.

<sup>174</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters, op. cit.*, par. 55.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Ibid.*, par. 56.

<sup>178</sup> *Id.*

<sup>179</sup> The right to education is covered by Article 26 UDHR, Article 13 ICESCR, Articles 28(1) and 29(1)(c) CRC, Article XII ADRDM, Article 17(1) ACHPR, Article 41 ArCHR, and Article 2 Protocol No. 1 to the ECHR. Furthermore, Article 5(e)(v) ICERD bans racial discrimination in education and training, and Article 10 CEDAW urges "to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education". Humanitarian Law address the issue of children' education in Articles 24(1) and 50(1) Geneva Convention IV, Article 78(2) Protocol I, and Article 4(3)(a) Protocol II.

The Representative noted that, with the exception of the Gulf region in the context of Hurricane Katrina, everywhere he had visited, schools had served as shelters for displaced persons and that this situation often lasted for long periods of time<sup>180</sup>. As the Representative pointed out, the use of school buildings to accommodate IDPs was not an acceptable solution in the medium/long term, as it prevented both displaced and non-displaced children in the receiving sites from returning to school<sup>181</sup>. This not only compromises the children's fundamental right to education but, in turn, could create tensions with the host community<sup>182</sup>. Additionally, the Representative was made aware in that, in some cases, schools had not been rehabilitated following their use by IDPs due to lack of budget allocation<sup>183</sup>.

#### **D) Civil, political and other rights of a similar nature**

Lastly, Guiding Principles Nos. 20 and 22 refer to rights of civil, political and similar nature. The first one reaffirms the legal personality of IDPs, whose status before the law, as has been reiterated, is not affected by the fact of displacement<sup>184</sup>. To give effect to this right, GP No. 20 requires the competent authorities to issue the documents necessary for the recognition and exercise of legal rights<sup>185</sup>. The replacement of the necessary documents, such as passports, personal identification documents, birth certificates or marriage certificates, is especially relevant if the originals have been lost or destroyed during environmental disruption and related displacement. To this end, the relevant authorities shall not impose on IDPs "unreasonable conditions, such as return to the place of habitual residence in order to obtain the necessary documents" [GP 20(2)], which may remain unsafe after the natural disaster.

Indeed, the Representative noted that the problems related to the documentation of persons internally displaced by a natural disaster are similar to those arising in the

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<sup>180</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 51. OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 16, mentioning in particular the case of Sri Lanka.

<sup>181</sup> UNGA, *op. cit. supra*. OHCHR, *op. cit. supra*, p. 19.

<sup>182</sup> OHCHR, *op. cit. supra*, p. 16.

<sup>183</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 51.

<sup>184</sup> The recognition of legal personality is enshrined in Article 6 UDHR, Article 16 CCPR, Article 5 (a) ICERD, Article 3 ACHR, and Article 5 ACHPR.

<sup>185</sup> GP No. 20(2) reproduces the content of Articles 25 (2) and 27 of the 1951 Refugee Convention, applying them by analogy to the context of internal displacement. Otherwise, not many human rights instruments expressly provide for the right to identity documents. Mention can be made of Article 8(2) CRC or Article 24(2) ICCPR, both relating to the identity and identification of children.

context of an armed conflict<sup>186</sup>. For instance, in one of the Asian countries affected by the 2004 tsunamis, it was estimated that more than 70 per cent of the survivors were undocumented<sup>187</sup>. The Representative stressed that the absence of legal provisions to easily and speedily substitute lost documents has a direct and substantial impact on "how people can access existing services and rebuild their lives"<sup>188</sup>.

For example, during his visit to New Orleans, city officials informed the UN Representative that "there was a backlog of several tens of thousands of birth certificates applications due to the destruction of the records in the flooding after Hurricane Katrina"<sup>189</sup>.

As a demonstration of how these problems can be tackled in an original and proactive way, the Representative pointed to the case of Sri Lanka. Not long after the 2004 tsunami, the regional offices of the Human Rights Commission in this country began working with local administrative officials to create mobile teams to process IDP applications in order to replace lost documentation<sup>190</sup>. The Representative also welcomed the Sri Lankan government's agreement to cooperate with UNHCR in conducting a comprehensive registration of all those internally displaced by the tsunami<sup>191</sup>. Systematic registration of IDPs can also contribute to reducing discrimination against IDPs in accessing public services or in exercising their rights<sup>192</sup>.

Finally, GP No. 22 recognises for IDPs the right to freedom of thought, conscience, religion or belief, opinion and expression<sup>193</sup>, as well as the right to associate

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<sup>186</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 57.

<sup>187</sup> OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, pp. 19 *in fine* and 20.

<sup>188</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 57. Also, OHCHR, *op. cit. supra*, p. 20, concerned that the absence of documentation may result in the denial of access to public services, such as education and health care or even food and other vital relief, as well as being a major obstacle to restitution of property or compensation.

<sup>189</sup> UNGA, *op. cit. supra*.

<sup>190</sup> *Id.* Also reported in OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 20

<sup>191</sup> OHCHR, *op. cit. supra*.

<sup>192</sup> *Id.*

<sup>193</sup> The freedom of thought, conscience and religion are ensured by all relevant human rights instruments, such as Articles 18 and 19 UDHR, Articles 18 and 19 CCPR, Articles 13 and 14 CRC, Articles 12 and 13 ACHR, Article 30 ArCHR, and Articles 8 and 9 ACHPR. In the framework of Humanitarian Law, there are provisions on this matter in Article 27 Geneva Convention IV, Article 75(1) Protocol I, and Article 4(1) Protocol II.

freely<sup>194</sup>, rights of political participation<sup>195</sup> and the right to communicate in a language they understand<sup>196</sup>.

### **1.3.5. Section IV (Guiding Principles 24 to 27): principles that shall guide the provision of humanitarian assistance. Particular reference to the "responsibility to protect" principle in the context of natural disasters**

The Guiding Principles No. 24-27 set out the general conditions under which humanitarian assistance to IDPs will be provided.

#### **A) The Guiding Principle No. 25 and the coercive delivery of relief aid in the wake of a natural disaster: the case of Myanmar and the Cyclone Nargis**

In natural disaster situations, the effects of the catastrophe itself may compromise or hinder humanitarian access. Examples include damage to infrastructure, such as the destruction of roads and bridges, the remoteness or difficulty of access to the disaster site, which hampers relief efforts, and potential secondary risks, such as aftershocks or the collapse of damaged buildings<sup>197</sup>.

Despite the above, the political goodwill of national governments in countries affected by natural disasters may be the major obstacle to the success of humanitarian assistance to disaster victims and displaced persons<sup>198</sup>. In this regard, GP No. 25 is at the heart of Section IV, as it supports international intervention to assist IDPs, recognising the essential role it can play in their effective protection. In conjunction with GP No. 3 –primacy of national protection of IDPs–, both Principles reflect the tension between sovereignty as the primary and individual responsibility of each state to ensure the welfare and security of persons under its jurisdiction, and sovereignty as the

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<sup>194</sup> The right of free association is recognised by Article 20 UDHR, Article 21 CCPR, Article 15 CRC, Article 16 ACHR, Article 11 ACHPR, Article 24(5) ArCHR, and Article 11 ECHR.

<sup>195</sup> The right to participate politically in national affairs is guaranteed, *inter alia*, by Article 21 UDHR, Article 5(c) ICERD, Article 25 CCPR, Article 23 ACHR, Article 13 ACHPR, Article 24 ArCHR, and Article 3 Protocol No. 1 to the ECHR.

<sup>196</sup> Only a small proportion of international instruments specifically mention language rights. For example, Article 27 CCPR, Article 30 CRC, Article 2 of the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, or Articles 13, 14 and 16 of the 2007 UN Declaration on the Rights of Indigenous Peoples. At the regional level, in Europe, reference should be made to Articles 8 to 14 of the European Charter for Regional or Minority Languages and Article 10 of the Council of Europe Framework Convention for the Protection of National Minorities.

<sup>197</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 38.

<sup>198</sup> As noted in BORRÁS PENTINAT, S., "El estatuto jurídico de protección...", *op. cit.*, p. 33, "the dependence of the IDP situation on the authority and capacity of the state itself increases the vulnerability of the population affected by environmental degradation" [self-translation of the original in Spanish].

shared international responsibility to protect<sup>199</sup>. This shared responsibility refers to the obligation of the international community as a whole to provide humanitarian assistance and protection to the inhabitants of a State, as human beings, when their government is unable or unwilling to fulfil its responsibility to protect them from the adverse effects of natural disasters.

In line with GP No. 3, paragraph 1 of GP No. 25 gives precedence to the classic notion of sovereignty by stating that "[t]he primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities". However, the Guiding Principles do not ignore the fact that situations leading to internal displacement can often overwhelm the response capacity of the affected state, either because of the magnitude of the situation itself or because of the country's own vulnerabilities. Accordingly, paragraph 2 of GP No. 25 provides a counterbalance to State sovereignty by recognizing the right of "international humanitarian organizations and other appropriate actors (...) to offer their services in support of internally displaced persons". Nevertheless, such an offering still requires the acceptance of the State concerned in order for international actors to be able to operate on its territory.

Thus, "Governments may prefer, for a variety of reasons, to provide all necessary assistance themselves; and this is a legitimate exercise of national sovereignty and responsibility"<sup>200</sup>. However, when States are unable or unwilling to provide appropriate humanitarian assistance to affected populations, they cannot arbitrarily reject external offers of aid<sup>201</sup>. In this sense, paragraph 2 of GP No. 25 clarifies that such an offering cannot "be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith" by the receiving State, which cannot reject it "arbitrarily" – i.e. unreasonably. In doing so, the State concerned would be failing to comply with its obligations under international law<sup>202</sup>.

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<sup>199</sup> CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, p. 68.

<sup>200</sup> OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 13. Also in UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 38.

<sup>201</sup> Vid. KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, pp. 116 and 117.

<sup>202</sup> Vid. the comment on GP 25(2) by *ibid.*, pp. 117-119, arguing that this obligation not to unreasonably refuse international aid in case of need can be deduced from some international texts. For example, based on the interpretation of the CESCR in its General Comment No. 3[5] on Article 2(1) of the ICESCR (par. 14), which imposes on States Parties a general obligation to achieve the realization of the economic, social and cultural rights recognized in the treaty "individually and through international assistance and co-operation"; or Article 11(2) of the same text which, referring to the particular right of everyone to be

According to the UN Representative for IDPs, "[i]n situations of natural disaster, States may be more willing to respond quickly to provide humanitarian assistance to affected populations and to do so in collaboration with the international community than, e.g., in cases of internal armed conflict"<sup>203</sup>, where foreign humanitarian aid is more likely to be perceived as a disguised form of support for one of the parties to the conflict. Indeed, during his visit to the Asian countries affected by the 2004 tsunamis, the UN Representative noted that humanitarian workers had been allowed access to previously restricted conflict areas after they had also been hit by the tsunami<sup>204</sup>. However, the experience of Cyclone Nargis in Myanmar has shown that this is not

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free from hunger, imposes on States Parties the same obligation of international cooperation. Likewise, referring to HRC General Comment No. 6(1982) on Article 6 ICCPR on the right to life (par. 5), it is argued that "[r]efusal of a state to consent to an offer of relief might, therefore, amount to a violation of the right to life, at least in certain circumstances". The commentary also refers to the UNGA, *Resolution 60/1 2005 World Summit Outcome...* (A/RES/60/1), *op. cit.*, in which States commit to ensure "that humanitarian actors have safe and unhindered access to populations in need in conformity with the relevant provisions of international law and national laws" (par. 169). Vid. also OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 13. UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 38.

The UN Security Council has also adopted numerous resolutions in which, while reiterating the sovereignty, territorial integrity and political independence of the affected States, it maintains the obligation of national authorities or parties to the conflict to allow immediate and unimpeded access of international humanitarian organisations to the displaced civilian population. In some of them, the Security Council goes so far as to authorise the use of force, on the basis of Chapter VII of the United Nations Charter, when necessary to ensure the assistance and protection of victims and humanitarian personnel. However, all these resolutions have an armed conflict as their background, and no resolution of equivalent content has yet been adopted authorising forced humanitarian assistance to victims of natural disasters. Vid., *inter alia*, UN SECURITY COUNCIL: *Resolution 688 (1991) on repression of the Iraqi civilian population, including Kurds in Iraq* [S/RES/688(1991)], 5 April 1991, pars. 3-5; *Resolution 770 (1992) on humanitarian assistance to Sarajevo and other parts of Bosnia and Herzegovina* [S/RES/770(1992)], 13 August 1992, pars. 2, 3 and 6; *Resolution 794 (1992) on measures to establish a secure environment for humanitarian relief operations in Somalia* [S/RES/794(1992)], 3 December 1992, pars. 2, 3 and 10; *Resolution 929 (1994) on establishment of a temporary multinational operation for humanitarian purposes in Rwanda until the deployment of the expanded UN Assistance Mission for Rwanda* [S/RES/929(1994)], 22 June 1994, pars. 2-3; *Resolution 1216 (1998) on the process of peace and reconciliation in Guinea-Bissau* [S/RES/1216(1998)], 21 December 1998, par. 5; *Resolution 1502 (2003) on protection of humanitarian personnel and the UN and its associated personnel in conflict zones* [S/RES/1502(2003)], 26 August 2003, par. 4; *Resolution 1539 (2004) on children in armed conflict* [S/RES/1539(2004)], 22 April 2004, preambular paragraph (p. 1 *in fine*); *Resolution 1564 (2004) on rapid expansion of the African Union Mission in Darfur and on the rapid establishment of an international commission of inquiry to investigate violations of international humanitarian law and human rights law in Darfur, Sudan* [S/RES/1564(2004)], 18 September 2004, preambular paragraphs (p. 2) and par. 6; *Resolution 1701 (2006) on full cessation of hostilities in Lebanon and on extending and strengthening the mandate of the UN Interim Force in Lebanon (UNIFIL) to monitor the ceasefire* [S/RES/1701(2006)], 11 August 2006, par. 7; *Resolution 1738 (2006) Protection of Civilians in Armed Conflict* [S/RES/1738(2006)], 23 December 2006, par. 5; *Resolution 1744 (2007) on the political process in Somalia and establishment of the African Union Mission in Somalia (AMISOM)* [S/RES/1744(2007)], 21 February 2007, par. 11.

<sup>203</sup> OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 13. Also in UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 38.

<sup>204</sup> OHCHR, *op. cit. supra*.

always the case, and that international assistance in the context of natural disasters can also become highly politicised.

***Case study: the "responsibility to protect" in the case of Myanmar and Cyclone Nargis***<sup>205</sup>

After Cyclone Nargis had struck Myanmar, the national government feared that the Western powers, and above all the United States, might take advantage of the humanitarian assistance as a way of destabilising the country or even invading it militarily<sup>206</sup>. The paranoia that took hold of the Burmese junta led it to block the entry into the country of international humanitarian assistance in the weeks following the disaster<sup>207</sup>. Later, when access was allowed, it was subject to numerous restrictions and administrative obstacles that further delayed the arrival of aid to the victims<sup>208</sup>. Relief workers, including private volunteers, were also intimidated or detained by military authorities, further accused of theft and confiscation of relief supplies<sup>209</sup>.

The Burmese junta's refusal to accept any external offer of relief aid and the resulting helplessness of the victims of Cyclone Nargis led some voices in the political arena to call for coercive humanitarian intervention<sup>210</sup>. For example, the French

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<sup>205</sup> For a more detailed account of the Burmese junta's performance in dealing with the crisis caused by Cyclone Nargis, vid. sub-section 3.2.4 (D) of Chapter III.

<sup>206</sup> Vid. SELTH, A., "Even Paranoids Have Enemies: Cyclone Nargis and Myanmar's Fears of Invasion", *Contemporary Southeast Asia*, vol. 30, n° 3, 2008., pp. 391-394.

<sup>207</sup> Ibid., pp. 386-389. Vid. also EAT; JHU CPHHR, *After the Storm: Voices from the Delta. A Report by EAT and JHU CPHHR on human rights violations in the wake of Cyclone Nargis*, 2nd ed., EAT; JHU CPHHR, May 2009, pp. 52-53.

<sup>208</sup> Vid. footnote *supra*.

<sup>209</sup> EAT; JHU CPHHR, *After the Storm: Voices from the Delta. A Report by EAT and JHU CPHHR on human rights violations in the wake of Cyclone Nargis*, *op. cit.*, pp. 32-34.

<sup>210</sup> The reaction of the Burmese junta also led to an intense debate in academia on the implementation of the "responsibility to protect" in the case of Myanmar and more generally in the context of natural disasters. Vid. COHEN, R., "The Burma Cyclone and the Responsibility to Protect", Brookings, 21 July 2008, 5 pp. BARBER, R., "The Responsibility to Protect the Survivors of Natural Disaster: Cyclone Nargis, a Case Study", *Journal of Conflict & Security Law*, Vol. 14, No. 1 (2009), pp. 3-34. SAECHAO, T.R., "Natural Disasters and the Responsibility to Protect: From Chaos to Clarity", *Brooklyn Journal of International Law*, vol. 32, issue 2, 2007, pp. 663-707. FORD, S., "Is the Failure to Respond Appropriately to a Natural Disaster a Crime Against Humanity? The Responsibility to Protect and Individual Criminal Responsibility in the Aftermath of Cyclone Nargis", *Denver Journal of International Law and Policy*, vol. 38, 2010, pp. 227-276. JUNK, J., "Testing Boundaries: Cyclone Nargis in Myanmar and the Scope of R2P", *Global Society*, vol. 30, issue 1, 2016, pp. 78-93. KLEINE, K., "Will R2P be ready when disaster strikes? – The rationale of the Responsibility to Protect in an environmental context", *The International Journal of Human Rights*, vol. 19, issue 8, 2015, pp. 1176-1189. OZERDEM, A., "The 'responsibility to protect' in natural disasters: another excuse for interventionism? Nargis Cyclone, Myanmar", *Conflict Security and Development*, November 2010, pp. 693-713. JACKSON, T.R., "Bullets for beans: humanitarian intervention and the responsibility to protect in natural disasters", *Naval Law Review*, LIX, 2010, 19 pp.



Minister for Foreign and European Affairs, Mr Bernard Kouchner, stated on 7 May 2008 that:

"We are seeing at the United Nations whether we can implement the Responsibility to Protect, given that food, boats and relief teams are there, and obtain a United Nations' resolution which authorizes the delivery and imposes this on the Burmese government"<sup>211</sup>.

The alternative of a forced intervention initially found support in other countries such as Germany, the US<sup>212</sup> or Australia, whose Prime Minister, Kevin Rudd, claimed that: "The immediate practical need now is *to bash the doors down in Burma* so that people in critical need can get that assistance now"<sup>213</sup>. Even the UK, which at first was reluctant, seemed to change its position in light of former British Prime Minister's statement, Mr David Cameron, to BBC Radio 4's "World at One":

"If the situation hasn't radically improved by Tuesday, then we need to consider the further steps of direct aid being dropped to help people in Burma, and also looking to the United Nations about whether we can invoke the responsibility to protect. If it's the case that the regime doesn't allow the aid to get through, then that is a crime against humanity"<sup>214</sup>.

At the EU level, the former EU's High Representative for the Common Foreign and Security Policy, Javier Solana, argued that the international community "should use all possible means to get aid through to victims of Myanmar's cyclone"<sup>215</sup>. Such a declaration could be interpreted as favouring the implementation of the responsibility to protect as well.

However, the previous statements did not go beyond mere political rhetoric. The "responsibility to protect", as the Heads of State and Government endorsed it at the September 2005 World Summit, was conceived to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity<sup>216</sup>. It was not initially developed to allow forced humanitarian interventions on the territory of States in the

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<sup>211</sup> INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT, Commentary on the crisis in Burma (9 May 2008) (last access: 29/08/2020).

<sup>212</sup> CHIA, H.R., "Crisis in Myanmar and the Responsibility to Protect", *RSIS Commentaries*, 59/2008, 14 May 2008, p. 2.

<sup>213</sup> PEARLMAN, J., "Rudd says donors must bash in doors", *The Sidney Morning Herald*, 10 May 2008 (last access: 29/08/2020) [italics added].

<sup>214</sup> BBC NEWS, "Cameron urges aid drops for Burma", 12 May 2008 (last access: 29/08/2020).

<sup>215</sup> ASIA-PACIFIC CENTRE FOR THE RESPONSIBILITY TO PROTECT, "Cyclone Nargis and the Responsibility to Protect", *Myanmar/Burma Briefings*, No. 2, Asia-Pacific Centre for the Responsibility to Protect, 16 May 2008, p. 3 (last access: 29/08/2020).

<sup>216</sup> UNGA, *Resolution 60/1 2005 World Summit Outcome...* (A/RES/60/1), *op. cit.*, pars. 138-140.

wake of a natural disaster<sup>217</sup>. The very Special Adviser to the UN Secretary-General, Mr Edward Luck, argued:

*"it would be a misapplication of responsibility to protect principles to apply them at this point to the unfolding tragedy in Myanmar, (...) as there is no agreement among the Member States on applying them to other situations [than those four crimes] no matter how disturbing and regrettable the circumstances"*<sup>218</sup>.

Some voices claimed that the systematic human rights violations committed by the Burmese junta in the aftermath of Cyclone Nargis indeed amounted to crimes against humanity<sup>219</sup>, as defined by Article 7 (1) (k) of the Rome Statute of the International Criminal Court<sup>220</sup>. That is, as "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health"<sup>221</sup>, allowing *prima facie* to invoke the "responsibility to protect" principle in the case of Myanmar. This interpretation has been contested by noting, *inter alia*, the absence of the intentionality element in the Burmese junta's response, or whether it could be characterised as a widespread or systematic attack directed against the civilian population<sup>222</sup>.

Beyond the theoretical debate, the proposal for a forced intervention under the "responsibility to protect" principle was stillborn from the outset. It would have required

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<sup>217</sup> EVANS, G., "Facing up to our responsibilities", *The Guardian*, 12 May 2008 (last access: 29/08/2020), in which the former co-chair of the international commission that gave birth to the "responsibility to protect" principle, warns that identifying this principle with "human security generally, or protecting people from the impact of natural disasters, or the ravages of HIV-Aids or anything of that kind " could undermine international support for it. Vid. also, EVANS, G., "The Responsibility to Protect in Environmental Emergencies" (Presentation by Gareth Evans to ASIL, 103rd Annual Meeting, Washington DC), *International Crisis Group*, 26 March 2009, 5 pp. (last access: 29/08/2020).

<sup>218</sup> ASIA-PACIFIC CENTRE FOR THE RESPONSIBILITY TO PROTECT, "Cyclone Nargis and the Responsibility to Protect", *op. cit.*, p. 8 [italics added].

<sup>219</sup> EAT; JHU CPHHR, *After the Storm: Voices from the Delta. A Report by EAT and JHU CPHHR on human rights violations in the wake of Cyclone Nargis*, *op. cit.*, pp. 20-23. EVANS, G., "Facing up to our responsibilities", *op. cit.* BARBER, R., "The Responsibility to Protect the Survivors of Natural Disaster: Cyclone Nargis, a Case Study", *op. cit.*, pp. 17-24. FORD, S., "Is the Failure to Respond Appropriately to a Natural Disaster a Crime Against Humanity?...", *op. cit.*, pp. 236-255.

<sup>220</sup> UN, *Rome Statute of the International Criminal Court*, 17 July 1998, UNTS, Vol. 2187, No. 38544, pp. 90-152.

<sup>221</sup> *Ibid.*, Article 7 (1) (k).

<sup>222</sup> Vid. ASIA-PACIFIC CENTRE FOR THE RESPONSIBILITY TO PROTECT, "Cyclone Nargis and the Responsibility to Protect", *op. cit.*, 20 pp. (in particular pp. 8-11). INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT, "Commentary on the crisis in Burma (9 May 2008)" (last access: 29/08/2020). FORD, S., "Is the Failure to Respond Appropriately to a Natural Disaster a Crime Against Humanity?...", *op. cit.*, pp. 255-261. BARBER, R., "The Responsibility to Protect the Survivors of Natural Disaster: Cyclone Nargis, a Case Study", *op. cit.*, pp. 14-32, who, while concluding that the invocation of the "responsibility to protect" to argue for military intervention in Myanmar was certainly premature, leaves the door open for its application after a natural disaster in extreme humanitarian circumstances.

a Security Council resolution, where it would have clashed with the vetoes of China and Russia<sup>223</sup>. On the contrary, the political statements from the different Western powers had a counterproductive effect, as they fuelled the Myanmar government's paranoia<sup>224</sup>. As UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Mr John Holmes, said after hearing the French Minister's declarations: "I'm not sure that invading them would be a very sensible option at this particular moment. I'm not sure it would be helpful to the people we are actually trying to help"<sup>225</sup>.

Clearly, any attempt to deliver relief aid without the consent of the Myanmar government would have been unfeasible<sup>226</sup>, mostly if it involved the presence of foreign soldiers. In the short term, it could have led the Burmese junta to some sort of military response against their entry or against the very civilians who accepted the aid, perceived as pro-Western and against the regime<sup>227</sup>. Emergency relief related to a natural disaster could thus turn into armed conflict. In the medium and long term, it would have rendered future cooperation between the institutionalised international community and the national authorities impossible<sup>228</sup>, notably to meet the protection needs of the displaced population during the reconstruction phase.

Softer alternatives for coercive intervention, such as limiting it to the delivery of essential supplies from aircraft, would also have proved insufficient<sup>229</sup>. For example,

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<sup>223</sup> SELTH, A., "Even Paranoids Have Enemies: Cyclone Nargis and Myanmar's Fears of Invasion", *op. cit.*, p. 390. ASIA-PACIFIC CENTRE FOR THE RESPONSIBILITY TO PROTECT, "Cyclone Nargis and the Responsibility to Protect", *op. cit.*, p. 9.

<sup>224</sup> SELTH, A., *op. cit. supra*, pp. 391-394. INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT, Commentary on the crisis in Burma (9 May 2008) (last access: 29/08/2020), observing that the menace of foreign intervention in the country "will not open doors for the delivery of aid, but instead might make the regime more fearful and more paranoid about cooperating with the UN and other countries".

<sup>225</sup> INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT, *op. cit. supra*.

<sup>226</sup> ASIA-PACIFIC CENTRE FOR THE RESPONSIBILITY TO PROTECT, "Cyclone Nargis and the Responsibility to Protect", *op. cit.*, pp. 10-11. SELTH, A., "Even Paranoids Have Enemies: Cyclone Nargis and Myanmar's Fears of Invasion", *op. cit.*, p. 391.

<sup>227</sup> CHIA, H.R., "Crisis in Myanmar and the Responsibility to Protect", *op. cit.*, p. 2, pointing out that forced humanitarian assistance "will exacerbate the situation and make life worse for those who accept the aid. It could also lead to some form of military crackdown or cause the junta to close the borders completely". Similarly, INTERNATIONAL COALITION FOR THE RESPONSIBILITY TO PROTECT, Commentary on the crisis in Burma (9 May 2008), *op. cit.*, arguing: "Urging military intervention as an application of the Responsibility to Protect is a counterproductive strategy that would not be in the best humanitarian interests of the people directly affected by the cyclone in Burma".

<sup>228</sup> ASIA-PACIFIC CENTRE FOR THE RESPONSIBILITY TO PROTECT, "Cyclone Nargis and the Responsibility to Protect", *op. cit.*, p. 11 *in fine*, pointing out that coercive intervention would have made "cooperation with the local authorities more difficult, regional support less forthcoming and ultimately delaying assistance to those who need it most".

<sup>229</sup> SELTH, A., "Even Paranoids Have Enemies: Cyclone Nargis and Myanmar's Fears of Invasion", *op. cit.*, p. 391, noting that "simply dropping supplies would be of little assistance without a structured long

water purification equipment and medical supplies must be distributed and managed by qualified personnel on the ground, as they require technical expertise<sup>230</sup>. The airdrop of humanitarian supplies has also proved to be somewhat imprecise in terms of where they land. A substantial part of the aid could, therefore, end up in the water or be confiscated by the authorities<sup>231</sup>. Furthermore, without staff on the ground to ensure that aid reaches those most in need, aid launched from the air tends to be hoarded by those members of the affected population who are physically stronger and thus able to move from place to place<sup>232</sup>. Finally, it is unlikely that aircraft alone would have been able to provide sufficient assistance to all the victims of Cyclone Nargis<sup>233</sup>.

The option of applying the "responsibility to protect" doctrine was abandoned sooner rather than later. In the end, the Burmese junta accepted, after significant international pressure, to receive foreign aid, but on the basis that it could control the distribution of the aid and with many restrictions<sup>234</sup>. Neither did the International Criminal Court initiate any prosecutions against Burma for crimes against humanity.

#### **B) Principles that should guide the provision of humanitarian assistance**

From the perspective of the Guiding Principles, how the Myanmar government handled the humanitarian emergency is also manifestly contrary to the principles governing the provision of relief assistance to victims of internal displacement. The international responsibility for non-compliance with the principles in Section IV is, however, more elusive outside the context of armed conflicts, as the positive norms on which they rely come straightforwardly from the field of international humanitarian law<sup>235</sup>.

Commenting on the legal norms that serve as the legal basis for the Guiding Principles on Humanitarian Assistance to IDPs, it is suggested that the content of these

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term plan for aid delivery and the presence on the ground of specialists able to manage such a massive relief effort".

<sup>230</sup> ASIA-PACIFIC CENTRE FOR THE RESPONSIBILITY TO PROTECT, "Cyclone Nargis and the Responsibility to Protect", *op. cit.*, p. 11.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> EAT; JHU CPHHR, *After the Storm: Voices from the Delta. A Report by EAT and JHU CPHHR on human rights violations in the wake of Cyclone Nargis*, *op. cit.*, pp. 52-53. SELTH, A., "Even Paranoids Have Enemies: Cyclone Nargis and Myanmar's Fears of Invasion", *op. cit.*, p. 387 *in fine* and 388.

<sup>235</sup> For a detailed account of the rules of international humanitarian law that served as a basis for the drafting of the Guiding Principles contained in Section IV, *vid.* KÄLIN, *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, pp. 111-124.

principles could also be derived from the right to life (Art. 6 ICCPR) or from social rights such as the right to food and the right to health (Arts. 11 and 12 ICESCR), for the realisation of which a duty of international cooperation and assistance is foreseen (Art. 2(1) CESCR and par. 5 of the HRC General Comment No. 6(1982) on Article 6 ICCPR)<sup>236</sup>. However, the fact remains that human rights law does not expressly cover international humanitarian assistance for the realisation of human rights<sup>237</sup>. In this regard, the Guiding Principles develop existing written law by extending the rules of humanitarian law to non-conflict situations like natural disasters.

The GP No. 24 sets out that humanitarian assistance shall be provided under the principles of humanity, impartiality and non-discrimination<sup>238</sup>, and shall not be diverted from its intended recipients for any reason, including political or military ones. In addition to Myanmar, cases of diversion of humanitarian supplies were also reported to the UN Representative for IDPs during his visit to Mozambique, where local community leaders had deviated aid intended to particularly vulnerable families affected by recurrent floods<sup>239</sup>.

Likewise, once the national government has agreed to international humanitarian aid, the provision of such aid should not be hindered. Accordingly, the competent authorities must "grant and facilitate free passage" of relief workers and their "rapid and unimpeded" access to IDPs [GP No. 25(3)]. The assisted State will also be responsible for protecting "[p]ersons engaged in humanitarian assistance providing, their transport and supplies" from "attack or other acts of violence" (GP No. 26).

Paragraph 1 of GP 27 underlines the importance of international action encompassing both the provision of material aid to meet IDPs' essential needs and the securing of their human rights. Thus, assistance and protection go hand in hand, the former being instrumental to the latter, meaning that any intervention must address both

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<sup>236</sup> Ibid., pp. 112 *in fine* and 113.

<sup>237</sup> Ibid., p. 112 *in fine*.

<sup>238</sup> Based on the meetings the UN Representative on IDPs held during his working trip to Asian countries affected by the 2004 tsunamis, he stressed the need to avoid discrimination in assistance among IDPs, for example by prioritising relief to those displaced by natural disaster over those displaced by conflict, or by focusing assistance only on those IDPs accommodated in official structures, such as camps or government-run relocation centres, while neglecting support to those living with host families. Such discrimination has the potential to breed resentment and tensions between the different groups, thus hindering the reintegration of IDPs and threatening local peace. Vid. OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, pp. 14-15.

<sup>239</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 32.

components to provide a comprehensive response to internal displacement<sup>240</sup>. Thus, the above Principle states that "[i]nternational humanitarian organizations and other appropriate actors should give due regard to the protection of the needs and human rights of internally displaced persons and take appropriate measures in this regard".

The UN Representative for IDPs has emphasised the relevant role that national human rights institutions, local NGOs and regional organizations can play in strengthening the protection IDPs rights<sup>241</sup>. Besides, he has called for the development of an action framework, involving all relevant actors, to address both the protection and assistance needs of IDPs in the context of natural disasters<sup>242</sup>. In particular, the Representative highlighted the remarkable work done by National Human Rights Commissions in the aftermath of the 2004 tsunamis to actively promote the protection of the human rights of IDPs according to the Guiding Principles<sup>243</sup>, notably in the Maldives, which faced the problem of internal displacement for the first time<sup>244</sup>, and in Sri Lanka. In this latter country, for example, an entire unit was set up to monitor respect for human rights following the tsunami<sup>245</sup>.

Finally, GP 27(1) provides that international humanitarian organisations and other actors participating in the protection of and assistance to IDPs must conduct themselves

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<sup>240</sup> KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations, op. cit.*, p. 122. CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, pp. 85-86. OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 28, noting that "while a human rights focus had been largely absent in the initial phase of the response to the 26 December tsunamis, now that the immediate emergency phase was over, it was important to include human rights in the next phases".

<sup>241</sup> OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 26. Regarding the role of regional bodies, the UN Representative noted the work that, in the case of the 2004 tsunamis, could have been done by, for example ASEAN; SAARC; the Commonwealth, to which several of the countries affected by the tsunamis also belonged; or the Inter-Governmental Authority on Development in East Africa, which also felt the effects of the earthquake that caused the tsunamis (vid. pp. 26 *in fine* and 27). The leadership that ASEAN could have played in the wake of Cyclone Nargis in Myanmar has also been stressed in: ASIA-PACIFIC CENTRE FOR THE RESPONSIBILITY TO PROTECT, "Cyclone Nargis and the Responsibility to Protect", *op. cit.*, pp.13-14.

<sup>242</sup> OHCHR, *op. cit. supra*, p. 27.

<sup>243</sup> *Ibid.*, p. 26. Additionally, the Representative spurred on the OHCHR to further engage in the protection of IDPs, in particular by "supporting the National Human Rights Institutions in their monitoring role and advising the relevant actors" (p. 30).

<sup>244</sup> Vid. HUMAN RIGHTS COMMISSION OF THE MALDIVES, "Tsunami Appeal", *Press Release*, 02 January 2005 (last access: 01/09/2020) warning that the catastrophe had deprived "thousand of affected people of their basic needs such as water, food, shelter, clothing and essential medical care, pushing them to abject poverty (...) [which was a] breeding grounds for abuse of human rights", and then calling on "the international community for further quick action in assisting the country in the relief and reconstruction effort (...)".

<sup>245</sup> OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 26.

in the territory of the host State with due respect for "relevant international standards and codes of conduct". In this regard, the commentary on this GP refers, for example, to the *Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief*<sup>246</sup> or the *Sphere Standards*<sup>247</sup>. Leaving aside the Sphere Standards, which will be referred to in the review of the Kampala Convention, the IFRC Code aims "to maintain the high standards of independence, effectiveness and impact to which disaster response NGOs and the International Red Cross and Red Crescent Movement aspires"<sup>248</sup>. Despite its voluntary character, it has been embraced by a large number of NGOs<sup>249</sup> and has served as a model for the drafting of other codes of conduct<sup>250</sup>.

### **1.3.6. Section V (Guiding Principles 28 to 30): principles relating to return, resettlement and reintegration. Particular reference to participation rights of affected communities and housing and property rights**

The last expression of States' duty to protect the life and security of IDPs is their obligation to promote durable solutions to resolve the displacement situation as soon as possible<sup>251</sup>. These remedies may include the safe return of IDPs to the affected area, their integration into the local host communities to which they moved or were evacuated, or their resettlement and integration in another part of the country<sup>252</sup>. Section V precisely deals with these issues. The principles contained in this section draw on the idea of free choice, as it derives from the freedom of movement and choice of domicile,

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<sup>246</sup> IFRC; ICRC, *The Code of Conduct for the International Red Cross and Red Crescent Movement and NonGovernmental Organisations (NGOs) in Disaster Relief*, December 1994, 7 pp.

<sup>247</sup> KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, p. 123.

<sup>248</sup> IFRC; ICRC, *The Code of Conduct...*, *op. cit.*, p. 1.

<sup>249</sup> CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, p. 86.

<sup>250</sup> Vid. KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, p. 147, note 26, mentioning the 1997 Code of Conduct for Humanitarian Agencies in Sierra Leone and the 2005 Code of Conduct for NGOs engaged in Humanitarian Action, Reconstruction, and Development in Afghanistan.

<sup>251</sup> Vid. on this issue, THE BROOKINGS INSTITUTION; UNIVERSITY OF BERN, "Framework on durable solutions for Internally Displaced Persons", *Project on Internal Displacement*, The Brookings Institution – University of Bern, April 2010, 46 pp. (last access: 02/09/2020).

<sup>252</sup> UNGA, *Protection of and assistance to internally displaced persons...* (A/64/214), *op. cit.*, par. 29. KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, p. 125. However, as UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-Damary* (A/75/207), *op. cit.*, par. 51 notes, internal displacement associated with slow-onset environmental disruptions, such as those related to climate change, raises particular obstacles to finding durable solutions, with the risk of protracted displacement being particularly high in these cases.

as well as from the principle of voluntary repatriation or voluntary return of refugees<sup>253</sup>. According to GP No. 28, paragraph 1, national authorities

"have the *primary duty and responsibility to establish conditions*, as well as provide the means, which allow internally displaced persons *to return voluntarily, in safety and with dignity*, to their homes or places of habitual residence, or *to resettle voluntarily* in another part of the country".

Besides rehabilitating housing and other infrastructure, creating safe and dignified living conditions for return may require government intervention to create livelihoods as well. This can be done by reviving income-generating activities that existed before the disaster –e.g., by recovering destroyed farmland, business infrastructure or fishing boats- or by creating new sources of income and involving returning displaced persons in them<sup>254</sup>. Security concerns related to damage caused by natural disasters can also hinder return<sup>255</sup>. It would also be advisable to use lessons learned to improve preparedness for future disasters, including the application of adaptation or risk reduction protocols in the (re)construction of new infrastructure and buildings, both public and private<sup>256</sup>.

In the case of resettlement, security issues are not a minor concern either. Thus, the site for resettlement should be chosen with consideration and avoidance of exposure to new sources of risk that may result in secondary displacement of the resettled population<sup>257</sup>. Resettlers must also be guaranteed access to sources of income, essential utilities such as water and sanitation, and basic public services such as education and health at the resettlement site<sup>258</sup>. In this regard, authorities must ensure that resettled persons are not discriminated against by existing local communities, pursuant GP No. 29(1)<sup>259</sup>.

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<sup>253</sup> KÄLIN, W., *op. cit. supra*, pp. 129 *in fine* and 130. CIRERA FORTEA, M.T., *Los desplazados internos: un problema internacional...*, *op. cit.*, p. 86.

<sup>254</sup> OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 22.

<sup>255</sup> *Id.*

<sup>256</sup> *Vid.* Priority 4 and the "Build Back Better" principle of the SFDRR, which is discussed in Chapter VII of this thesis.

<sup>257</sup> UNGA, *Protection of and assistance to internally displaced persons... (A/64/214)*, *op. cit.*, par. 30.

<sup>258</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 61. UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-Damary (A/75/207)*, *op. cit.*, par. 46 *in fine*.

<sup>259</sup> UNGA, *Report of the Representative...*, *op. cit. supra*. The GP No. 29 (1), besides reiterating the generic principle of non-discrimination because of displacement, expressly refers to the right of IDPs "to



However, according to the UN Representative for IDPs, the issue that poses the greatest challenges, and receives the least attention from public authorities, is the creation of livelihoods at resettlement sites. Thus, providing sources of income at resettlement sites becomes critical to the success of relocation, so that the displaced do not end up returning to the risky areas from which they came<sup>260</sup>.

For example, the UN representative described the failed attempt in Mozambique to permanently resettle communities living in the Zambezi river basin because of cyclical flooding. The failure was due to the fact that the sites chosen to resettle the affected communities were, in some cases, too far from the fertile land that served as the basis of their livelihoods. Without other options to earn revenue, the resettlers ended up returning to the fertile lowlands after the flood season ended<sup>261</sup>. Also in several Asian countries, the Representative was informed that fishing families, including female-headed households, had been pushed into poverty as they were relocated away from coastal areas after the 2004 tsunamis without being offered viable livelihood solutions in relocation areas<sup>262</sup>.

Finally, GP No. 30 extends the obligation in GP No. 25 for national authorities to allow international humanitarian organisations and other relevant actors "rapid and unimpeded access" to IDPs to assist them also during the return or resettlement and reintegration phase.

**A) Participation of affected communities in the planning and management of their return or relocation: the case of the Carteret Islands (Papua New Guinea)**

While the urgency of the intervention justifies the exemption from seeking "[t]he free and informed consent of those to be displaced" during the emergency phase of a disaster [vid., *a sensu contrario*, GP No. 7(3)(c)], their subsequent participation

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participate fully and equally in public affairs at all levels and to have equal access to public services", whether they have returned to their homes of origin or resettled elsewhere.

<sup>260</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, op. cit., par. 61. The current Special Representative extends this challenge to any durable solution to internal displacement and refers to some good practices undertaken to support durable solutions in countries hit by drought and desertification, such as providing new livestock to affected pastoralists, establishing community farms or offering training and grants to help diversify livelihoods (vid. UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-Damary (A/75/207)*, op. cit., par. 52).

<sup>261</sup> UNGA, *Report of the Representative...*, op. cit. supra, par. 58.

<sup>262</sup> Ibid., par. 55.

becomes essential "in the planning and management of their return or resettlement and reintegration", as stated in paragraph 2 of GP No. 28. To this end, the information provided to them "has to be true and accurate, consultation processes truly representative and participation inclusive and possible from the very beginning"<sup>263</sup>, giving affected communities "ownership of the process of finding a solution to their situation"<sup>264</sup>.

However, the UN Representative for IDPs has noted that there are still very few cases in which the authorities "included displaced persons and other affected persons in the very decisions that directly affect their lives in terms of disaster preparedness, response or reconstruction (...)"<sup>265</sup>. The Representative also noted that, where participation channels had been established for affected people through civil society organisations, these organisations were not part of the disaster response coordination bodies. As a result, their contributions could not reach decision-making levels and was therefore not incorporated into the disaster response<sup>266</sup>.

This lack of citizen participation not only contributes to the sense of powerlessness, "confusion and insecurity experienced by disaster survivors"<sup>267</sup>, but can also thwart the entire resettlement process. The failure of the various initiatives to resettle the Carteret Islands' inhabitants by the Bougainville government provides an excellent example of this reality<sup>268</sup>.

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<sup>263</sup> UNGA, *Protection of and assistance to internally displaced persons...* (A/64/214), *op. cit.*, par. 30.

<sup>264</sup> Id. According to UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-Damary* (A/75/207), *op. cit.*, par. 53: "States must ensure the participation of affected persons in decision-making, obtain their free, prior and informed consent and ensure transparency and access to information, equality and non-discrimination, accountability and access to effective remedies". This broad right to participation and information does not only apply to the search for durable solutions but extends to all phases of displacement, even before a disaster strikes, informing and preparing the population about potential dangers and risks and warning of impending threats (par. 54). For these rights to be effective, individuals must have access to relevant information in a language and format that they can understand and that is tailored to their particular needs and circumstances (id.).

<sup>265</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 36.

<sup>266</sup> Ibid., par. 37.

<sup>267</sup> Ibid., par. 36. BOEGE, V.; RAKOVA, U., "Climate Change-Induced Relocation: Problems and Achievements—the Carterets Case", *Policy Brief*, No. 33, Toda Peace Institute, p. 2 (last access: 04/09/2020), note that planned relocation involves a voluntary component that can help minimize the sense of forced displacement, as the people affected may have some influence on the conditions or circumstances of the resettlement. Nonetheless, this reasoning would only be true when a high degree of citizen participation or involvement is ensured.

<sup>268</sup> An account of these attempts can be found in CORCORAN, J.; VIRNIG, A. (eds.), "Tulele Peisa. Papua New Guinea", *op. cit.*, p. 6. The need for the participation of affected communities in resettlement processes has also been underlined in UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-*

The Carteret Islands are located in the far eastern part of Papua New Guinea, 86 kilometres northeast of the main island of Bougainville<sup>269</sup>, and are home to around 3,000 persons<sup>270</sup>. They form a chain of six small coral atolls arranged in a circle around the Tulun Lagoon<sup>271</sup>. The atolls have a maximum elevation of 1.2 metres above sea level and have a combined land area of 0.6 square kilometres<sup>272</sup>. Because of their situation, close to the boundary where the Australian and Pacific plates converge, and their particular geophysical morphology, with a low altitude and a high ratio of coastline to surface land area, the atolls are particularly sensitive to subsidence, tectonic movements, sea level rising and rapid-onset hydrological and meteorological phenomena, such as storm surges or "king tides"<sup>273</sup>.

During the 1980s and 1990s, there were two attempts to resettle Carteret communities<sup>274</sup>. The first large-scale resettlement initiative began in 1982 under the name "Atolls Resettlement Project"<sup>275</sup>. The project provided for the resettlement of a total of 40 families in an area of neighbouring Bougainville Island called Kuveria. Of these 40 families, ten were initially relocated, increasing the official final number of relocated families to 15 families<sup>276</sup>. However, the project failed, and by the end of the

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*Damary (A/75/207)*, *op. cit.*, par. 46, with relocation being undertaken "with full respect for human rights, cultural practices and traditions".

<sup>269</sup> EDWARDS, J., "The Logistics of Climate-Induced Resettlement: Lessons from the Carteret Islands, Papua New Guinea", *Refugee Survey Quarterly*, vol. 32, No. 3, 2013. p. 59.

<sup>270</sup> BOEGE, V.; RAKOVA, U., "Climate Change-Induced Relocation: Problems and Achievements—the Carterets Case", *op. cit.*, p. 3. EDWARDS, J., "The Logistics of Climate-Induced Resettlement: Lessons from the Carteret Islands, Papua New Guinea", *op. cit.*, p. 71, pointing out that the total number of persons living the Carteret Islands makes it the most densely populated area in Papua New Guinea.

<sup>271</sup> Vid. footnote *supra*. Also, O'COLLINS, M., "Carteret islanders at the Atoll Resettlement Scheme: a response to land loss and population growth", in: J.C. Pernetta; P.J. Hughes (eds.), *Implications of expected climate changes in the South Pacific region: an overview*, UNEP Regional Seas Reports and Studies, No. 128, UNEP, 1990, p. 250 *in fine* (last access: 03/09/2020).

<sup>272</sup> EDWARDS, J., "The Logistics of Climate-Induced Resettlement: Lessons from the Carteret Islands, Papua New Guinea", *op. cit.*, p. 59.

<sup>273</sup> *Ibid.*, p. 61-62. CORCORAN, J.; VIRNIG, A. (eds.), "Tulele Peisa. Papua New Guinea", *op. cit.*, p. 4. CONNELL, J., "Vulnerable Islands: Climate Change, Tectonic Change, and Changing Livelihoods in the Western Pacific", *The Contemporary Pacific*, Vol. 27, No. I, January 2015, p. 6.

<sup>274</sup> Previously, in 1967, the Assistant District Officer of the Bougainville government had recommended the resettlement of the Carteret Islanders in response to population growth and food shortages on the atolls. However, the proposal did not materialise at that time because it was not possible to acquire suitable land. Vid. O'COLLINS, M., "Carteret islanders at the Atoll Resettlement Scheme: a response to land loss and population growth", *op. cit.*, p. 253 *in fine* and 254. A table of actions taken for the resettlement of Carterets communities from the 1960s to the 2020 horizon can be found at: EDWARDS, J., "The Logistics of Climate-Induced Resettlement: Lessons from the Carteret Islands, Papua New Guinea", *op. cit.*, p. 65.

<sup>275</sup> O'COLLINS, M., *op. cit. supra*, pp. 255-267.

<sup>276</sup> *Ibid.*, pp. 255 and 257. EDWARDS, J., "The Logistics of Climate-Induced Resettlement: Lessons from the Carteret Islands, Papua New Guinea", *op. cit.*, p. 63, noting that the number of families settled unofficially was more than 15.

1980s, before the Bougainville Civil War broke out, most of the settlers had returned to the Carteret Islands<sup>277</sup>. Similarly, in 1997, the Bougainville Administration decided to move 12 families from Carterets to Buka Island to ease food shortages. Several families were relocated, but again most returned to their place of origin<sup>278</sup>.

Both resettlement attempts share several common weaknesses that explain their failure<sup>279</sup>. These include a lack of local voices in the design and implementation of resettlement – including site selection<sup>280</sup> -, which contributed to the reluctance of communities to relocate, the absence of adequate land and livelihoods<sup>281</sup>, and the insufficient attention paid to social integration with host communities<sup>282</sup>. These were all factors in the two resettlement projects that prompted resettled families to decide to return to the Carteret Islands.

The failure of government-driven resettlement attempts contrasts with the success of grassroots initiatives undertaken from within the Carterets communities. The gradual subsidence of the atolls and the resulting environmental degradation due to saltwater intrusion, together with increasing tension between local communities over control of dwindling fish stocks, led the Council of Elders and Chiefs of the Carterets to embark on a community-driven process to boost relocation endeavours<sup>283</sup>. In 2005, they established the "Carterets Integrated Relocation Program", starting negotiations with the

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<sup>277</sup> CORCORAN, J.; VIRNIG, A. (eds.), *“Tulele Peisa. Papua New Guinea”*, *op. cit.*, p. 6.

<sup>278</sup> EDWARDS, J., “The Logistics of Climate-Induced Resettlement: Lessons from the Carteret Islands, Papua New Guinea”, *op. cit.*, pp. 63 *in fine* and 64.

<sup>279</sup> Vid. BARNET, J.; O’NEILL, S., “Islands, resettlement and adaptation”, *Nature Climate Change*, vol. 2, January 2012, p. 9, pointing out that, in general, resettlement programmes as an adaptation strategy to the effects of climate change entail a high risk of maladaptation, with adverse social and environmental consequences. Among them, they mention problems of landlessness, unemployment, homelessness, social marginalization, food insecurity, reduced access to common property resources and increased morbidity. As an alternative, the authors propose other types of migration strategies, such as increasing voluntary labour mobility

<sup>280</sup> For example, in the 1982 attempt, the only land available for relocation was adjacent to the provincial prison, a location that made resettled families feel unsafe and uncomfortable. Vid. O’COLLINS, M., *“Carteret islanders at the Atoll Resettlement Scheme: a response to land loss and population growth”*, *op. cit.*, pp. 255 and 257.

<sup>281</sup> Families resettled in 1982 complained that they were denied fishing rights at the resettlement sites, which caused protein deficiencies in their diet in addition to eliminating any income opportunities from the sale of surplus stock (*ibid.*, pp. 257 and 265).

<sup>282</sup> The fact that the government withdrew its support for the resettled families after the initial period of relocation was critical to the failure of the 1997 resettlement attempt, as clashes began to occur between the resettled families themselves for control of the land as well as with the host community. Vid. EDWARDS, J., “The Logistics of Climate-Induced Resettlement: Lessons from the Carteret Islands, Papua New Guinea”, *op. cit.*, pp. 63 *in fine* and 64.

<sup>283</sup> CORCORAN, J.; VIRNIG, A. (eds.), *“Tulele Peisa. Papua New Guinea”*, *op. cit.*, p. 6.

Bougainville Government to expedite the relocation of the Carterets islanders<sup>284</sup>. In parallel in 2006, the Council of Elders and Chiefs constituted *Tulele Peisa* as a local NGO aimed to coordinate a voluntary relocation programme<sup>285</sup>.

In the local Halia language, *Tulele Peisa* means "sailing the waves on our own", "a nod to the empowerment goal of putting Carterets Islanders in control of their own destiny through leadership at the forefront of relocation efforts"<sup>286</sup>. To date, *Tulele Peisa* represents a unique initiative in the context of environmental displacement and internal resettlement of communities as a strategy for adaptation to climate change. Most importantly, it represents an innovative shift to a bottom-up, NGO-led policy that can inspire other relocation efforts for environmentally displaced communities in the Pacific and overseas.

***Case study: the Tulele Peisa project as an example of a bottom-up resettlement initiative***

The *Tulele Peisa* initiative was born to locally relocate 1,700 islanders from the Carteret Islands to the main island of Bougainville, Papua New Guinea, within five years<sup>287</sup>. However, the NGO has approached resettlement from an all-encompassing and integrative perspective, avoiding repeating the previous two attempts' mistakes. Thus, the resettlement programme assumes that the physical relocation of Carterets residents is not sufficient in itself. Instead, it must also entail: (i) the construction of housing and infrastructure, as well as the development of income-generation schemes, food security measures and sustainable land-use management strategies<sup>288</sup>; as well as (ii) support mechanisms for social integration, helping incorporate Carterets islanders into their new

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<sup>284</sup> Id.

<sup>285</sup> Id.

<sup>286</sup> Id.

<sup>287</sup> MORTON, A., "[First climate refugees start move to new island home](#)", *The Sidney Morning herald*, 29 July 2009 (last access: 03/09/2020). The original forecast from 2008 estimated that the resettlement programme would be completed by 2012 [vid. STRUCK-GARBE, M., "[The Storms and Waves Eat Away our Islands](#)". An interview with Basil Peso from Tulele Peisa, Carteret Islands", *Pacific News*, No. 31, January/February 2009, p. 22 (last access: 03/09/2020)]. Subsequently, the time horizon was extended until 2020. By this date, it was estimated that about 1,350 people, or 50% of the total population, would have moved to Bougainville, with the remaining 50% staying in the Carteret Islands (vid. EDWARDS, J., "The Logistics of Climate-Induced Resettlement: Lessons from the Carteret Islands, Papua New Guinea", *op. cit.*, pp. 66 *in fine* and 67).

<sup>288</sup> CORCORAN, J.; VIRNIG, A. (eds.), "[Tulele Peisa. Papua New Guinea](#)", *op. cit.*, p. 6 *in fine*.

communities without conflict and in a manner which allows them to preserve their traditions and cultural heritage<sup>289</sup>.

To ensure the effective participation of the local communities involved throughout the resettlement process, two of the seven members of the Board of Directors governing the NGO are the Chairmen of the Council of Elders and Chiefs in the Carteret Islands and at the Tinputz site – which in 2009 became the first host community in Bougainville<sup>290</sup>.

The first challenge faced by the organisation was the acquisition of land on which to carry out resettlement. The problem was exacerbated by the land ownership system, as 96% of Bougainville is governed by customary land tenure<sup>291</sup>. Thanks to the Catholic Diocese of Bougainville's intervention, arrangements were made to cede 295 hectares in four different locations on Bougainville, namely Tinputz, Tearouki, Mabiri and Tsimba<sup>292</sup>.

The land involved mainly was run-down or abandoned plantations that had been 'alienated' to the Catholic Diocese in 1964 on a 99-year lease<sup>293</sup>. Consequently, it was necessary to negotiate with the landowners the land's fate once the lease term had expired. The Catholic Diocese of Bougainville supported negotiations with them, allaying their initial misgivings to cede the land to the displaced Carterets

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<sup>289</sup> Ibid., p. 8.

<sup>290</sup> Ibid., p. 7. The Council of Elders and Chiefs acts as a local authority on the ground, being a political body recognised by the House of Representatives of the Autonomous Bougainville Parliament. The Council of Elders and Chiefs meets quarterly to discuss issues of concern to the Carterets community, varying from inter-community conflict to health, education and the effects of climate change on the islanders' ability to cope (id.).

<sup>291</sup> DISPLACEMENT SOLUTIONS, "The Bougainville Resettlement Initiative", *Meeting Report*, Canberra (Australia), Displacement Solutions, 11 December 2008, par. 11 (last access: 03/09/2020). Also, EDWARDS, J., "The Logistics of Climate-Induced Resettlement: Lessons from the Carteret Islands, Papua New Guinea", *op. cit.*, p. 8, observing that: "In most cases, individuals and clans do not have the authority to give land away, and therefore, acquiring land has proved a primary obstacle in the resettlement task".

<sup>292</sup> CORCORAN, J.; VIRNIG, A. (eds.), "Tulele Peisa. Papua New Guinea", *op. cit.*, p. 6. There are contradictions in the sources consulted about the location of the land donated by the Catholic Diocese of Bougainville. For example, EDWARDS, J., "The Logistics of Climate-Induced Resettlement: Lessons from the Carteret Islands, Papua New Guinea", *op. cit.*, p. 67, mentions, along with the above-mentioned, a fifth location: Kereaka. On their part, BOEGE, V.; RAKOVA, U., "Climate Change-Induced Relocation: Problems and Achievements—the Carterets Case", *op. cit.*, p. 5, only mention Tinputz, Tearouki and Keriaka, as a gift from the Catholic Diocese on humanitarian grounds, and add two other locations: Wakunai and Tenapo, which are family plantations privately owned by two Carterets families.

In any case, the size of the land received, regardless of its exact location, will not be sufficient to relocate the Carteret Islands' entire population. According to DISPLACEMENT SOLUTIONS, *op. cit. supra*, par. 10, it is estimated that approximately 1,500 hectares would be needed to provide housing and food gardens for the 300 families that need to be relocated.

<sup>293</sup> CORCORAN, J.; VIRNIG, A. (eds.), *op. cit. supra*, p. 8.

community<sup>294</sup>. Finally, a Memorandum of Understanding was reached between the Catholic Church, the Council of Elders and Chiefs of the Carterets, and the Council of Elders of the host communities, whereby *Tulele Peisa* would hold the four sites in trust for the relocated families<sup>295</sup>.

For its part, the progressive deterioration of living conditions on the atolls has also forced the Carterets islanders to overcome their initial reluctance for new resettlement. In 2006, when *Tulele Peisa* was founded, only three families expressed their willingness to move; by 2008, that number had risen to 38 families<sup>296</sup>. In March 2009, the heads of the first five families selected for relocation moved to Tinputz<sup>297</sup>.

Requests for resettlement are considered by the Board of Directors on the proposal of the Council of Elders and Chiefs of the Carteret Islands<sup>298</sup>. Selection of the families bases on a process developed by *Tulele Peisa* in consultation with the Council of Elders and Chiefs of both the Carteret Islands and the host community<sup>299</sup>. The process seeks to identify those families most vulnerable to the effects of climate change. Selection criteria take into account, for instance, the absence or scarcity of crops or the difficulty to access farmland in the future, as well as the presence of young children in the family, who can also adapt more quickly to cultural differences in the host communities<sup>300</sup>.

Experience has shown how ensuring adequate livelihoods at the host site is crucial to ensuring successful resettlement<sup>301</sup>. The two previous attempts at resettlement by the Bougainville government have sufficiently evidenced this reality. To promote the

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<sup>294</sup> Id.

<sup>295</sup> Id.

<sup>296</sup> DISPLACEMENT SOLUTIONS, “The Bougainville Resettlement Initiative”, *op. cit.*, par. 4.

<sup>297</sup> MORTON, A., “First climate refugees start move to new island home”, *op. cit.* According to BOEGE, V.; RAKOVA, U., “Climate Change-Induced Relocation: Problems and Achievements—the Carterets Case”, *op. cit.*, p. 5, ten families of approximately 103 members lived in the Tinputz relocation site in 2018.

<sup>298</sup> CORCORAN, J.; VIRNIG, A. (eds.), “Tulele Peisa. Papua New Guinea”, *op. cit.*, p. 8.

<sup>299</sup> Id. For example, in 2007, the “Carterets/Tinputz Relocation Task Force Committee” was set up, made up of representatives from the Carterets Islands, Tinputz, Tulele Peisa and the Catholic Church, to select and plan the relocation of the first Carterets families to Tinputz; while in November 2013, it was established the Tearouki Relocation Committee (vid. BOEGE, V.; RAKOVA, U., “Climate Change-Induced Relocation: Problems and Achievements—the Carterets Case”, *op. cit.*, pp. 5 and 7 *in fine*).

<sup>300</sup> CORCORAN, J.; VIRNIG, A. (eds.), *op. cit. supra*, p. 8.

<sup>301</sup> Vid. UNGA, *Report of the Representative ... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, pars. 55 and 58, referring to cases of fishing families from Mozambique and several Asian countries resettled away from coastal and riverine zones prone to flooding, who suffered food insecurity due to lack of access to coastal resources. Regarding Pacific Islands, vid. EDWARDS, J., “The Logistics of Climate-Induced Resettlement: Lessons from the Carteret Islands, Papua New Guinea”, *op. cit.*, pp. 72-74.

relocated families' self-sufficiency, they have been provided with one hectare of land to cultivate<sup>302</sup>. However, this alone may not be enough, as Carteret islanders have been dependent on marine resources and may lack the agricultural skills to grow their own crops in an unfamiliar environment<sup>303</sup>. To meet this challenge, families are previously trained in small-scale farming techniques, including the cultivation of cash crops such as cacao and coconut<sup>304</sup>. The organisation has also established an agricultural research station to support small farmers through training in crop diversification, mangrove regeneration and home gardening<sup>305</sup>. The aim is for the relocated islanders to be able to not only meet their livelihood needs but also to generate income from the sale of cash crops and even send food to family members who remain in the atolls<sup>306</sup>.

As part of its commitment to climate change and sustainability, *Tulele Peisa* has also set up a tree nursery in Tinputz, known as the "*Tulele Peisa's* Mini Food Forest", which was home to over 34,000 trees in 2019, with the plan to replicate this initiative at the other relocation sites<sup>307</sup>. This forest project includes "hard and soft wood, fruit and nut trees and five varieties of palm trees, with cassava, bananas and swamp taros planted inside the forest"<sup>308</sup>. All of them are highly adaptive species to climate variability, providing local food security while having the potential to regenerate degraded ecosystems<sup>309</sup>. Besides, the NGO is also examining the possibility of training the families in organic farming practices and supporting them to apply for fair trade certification<sup>310</sup>.

To minimize the risk of failure to adapt to the new environment, the organization provides resettled families with several support services, including counselling and

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<sup>302</sup> CORCORAN, J.; VIRNIG, A. (eds.), "*Tulele Peisa. Papua New Guinea*", *op. cit.*, p. 9.

<sup>303</sup> EDWARDS, J., "The Logistics of Climate-Induced Resettlement: Lessons from the Carteret Islands, Papua New Guinea", *op. cit.*, p. 70, points out that "for small island communities especially, the transfer of environmental (place-based) knowledge has been essential for their long term survival. For displaced people, the risk is that their traditional knowledge becomes irrelevant in their new surroundings, creating a feeling of being ill at ease among the community and potentially threatening food security".

<sup>304</sup> CORCORAN, J.; VIRNIG, A. (eds.), "*Tulele Peisa. Papua New Guinea*", *op. cit.*, p. 9.

<sup>305</sup> *Ibid.*, p. 10.

<sup>306</sup> *Id.* In parallel, *Tulele Peisa* has launched the "Supsup Gardens" initiative in the Carteret Islands to improve food security on the atolls. The gardens are constructed at a height of one metre and are based on a mixture of soil and cow dung for the planting of crops that can tolerate high levels of soil salinity (*ibid.*, p. 12).

<sup>307</sup> BOEGE, V.; RAKOVA, U., "*Climate Change-Induced Relocation: Problems and Achievements—the Carterets Case*", *op. cit.*, p. 6.

<sup>308</sup> *Id.*

<sup>309</sup> CORCORAN, J.; VIRNIG, A. (eds.), "*Tulele Peisa. Papua New Guinea*", *op. cit.*, p. 11.

<sup>310</sup> *Ibid.*, p. 9.



trauma management, to help families cope with uprooting or homesickness feelings<sup>311</sup>. For example, the resettlement plan provides for establishing a regular shipping service for cargo and passengers to maintain links between those relocated and those remaining in the Carteret Islands<sup>312</sup>. Moreover, *Tulele Peisa* is advocating for the Carterets to be declared a Marine Protected Area under national legislation as a way to maintain that area as a customary fishing zone and, thus, preserve socio-cultural and spiritual links with the traditional land<sup>313</sup>.

Integration into host communities and the avoidance of tension or misgivings with their members is no less critical. One of the approaches adopted by *Tulele Peisa* has been to show from the outset the resettlement process as a win-win process, which not only benefits the Carteret islanders but could also become an additional source of well-being and wealth for the host communities<sup>314</sup>. For example, the relocation plan contains provisions to improve education and health services to benefit both the settlers and the host communities<sup>315</sup>. Furthermore, workers from host communities have been employed to help construct housing and infrastructure at resettlement sites<sup>316</sup>. Another example would be the "Bougainville CocoaNet", a collective commercial enterprise established in 2009 to rehabilitate cacao trees in Tinputz. It was set up as an income generation strategy for relocated families and the local cacao producers<sup>317</sup>.

Similarly, to facilitate the integration process, *Tulele Peisa* has launched some initiatives to link the two communities before resettlement. Examples include the so-called "Young People Speaking Tours", where young people from Carterets, accompanied by the elders, meet their counterparts in Bougainville<sup>318</sup>. These "tours" allow both new and older generations of the communities involved "to discuss the context for their relocation, the pressures of climate change, and the ways they can work

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<sup>311</sup> Id.

<sup>312</sup> BOEGE, V.; RAKOVA, U., "Climate Change-Induced Relocation: Problems and Achievements—the Carterets Case", *op. cit.*, p. 8.

<sup>313</sup> CORCORAN, J.; VIRNIG, A. (eds.), "Tulele Peisa. Papua New Guinea", *op. cit.*, p. 11.

<sup>314</sup> The reason is to avoid situations where members of the host communities feel that they are worse off or receive less attention than newcomers, as this could easily lead to resentment and conflict (in: BOEGE, V.; RAKOVA, U., "Climate Change-Induced Relocation: Problems and Achievements—the Carterets Case", *op. cit.*, p. 5). The need to pay attention to host communities is also highlighted in UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-Damary (A/75/207)*, *op. cit.*, par. 50.

<sup>315</sup> CORCORAN, J.; VIRNIG, A. (eds.), "Tulele Peisa. Papua New Guinea", *op. cit.*, p. 6.

<sup>316</sup> Id.

<sup>317</sup> Ibid., p. 12.

<sup>318</sup> Ibid., p. 9.

together to make the most of the relocation reality"<sup>319</sup>. Another example would be the "chiefs exchange", which allows the host communities' chiefs to travel to the Carterets Islands to experience island life and witness first-hand the environmental and survival challenges faced by the families being relocated<sup>320</sup>. This exchange allows host communities heads to become ambassadors for the resettlement programme within their communities on Bougainville<sup>321</sup>.

Another initiative that has aroused our misgivings has been the celebration of "inter-marriages" – i.e. arranged marriages between young members from the Carteret Islands and the host communities - to build confidence and strengthen ties between the two groups<sup>322</sup>. The deliberate pursuit of these marriages can generate significant social group pressure on the couple, raising doubts about the true voluntariness of those who consent to marry. This vulnerability is accentuated because these mixed marriages are sought among young boys and girls, who are more easily influenced.

Despite *Tulele Peisa's* efforts to undertake initiatives to make the relocation of the Carteret Islanders to Bougainville a sustainable reality in the long term, the organisation itself defines its relationship with the autonomous Bougainville government as "contentious at best, and policy progress has been hard-won"<sup>323</sup>. The government accused the NGO of "running a parallel relocation programme to the ABG's programme and refused to support Tulele Peisa"<sup>324</sup>. Indeed, the Bougainville Administration established its own state-led relocation programme in 2007, following the Papua New Guinea government's allocation of 2 million Kina (800,000 US\$) to set up an official "Carterets Relocation Programme"<sup>325</sup>.

The governmental obstacles encountered by the NGO Tulele Peisa demonstrate, on the one hand, the difficulties that resettled populations often face in participating

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<sup>319</sup> Id.

<sup>320</sup> Id.

<sup>321</sup> Id. Taking advantage of the common cultural heritage, as both the Carterets and Bougainvilleans are Melanesian, resettlement was accompanied by a series of customs ceremonies to bid farewell to the Carterets and welcome them to the Bougainvillean host communities. These rituals included the exchange of shell money, pigs and food with the Catholic diocese and the Tinputz land-owning clans (in: BOEGE, V.; RAKOVA, U., "Climate Change-Induced Relocation: Problems and Achievements—the Carterets Case", *op. cit.*, p. 6.

<sup>322</sup> BOEGE, V.; RAKOVA, U., *op. cit. supra*, also noting that while some settlers agree with this initiative, others oppose intermarriage, arguing that it will endanger the preservation of their own culture.

<sup>323</sup> CORCORAN, J.; VIRNIG, A. (eds.), "*Tulele Peisa. Papua New Guinea*", *op. cit.*, p. 12.

<sup>324</sup> BOEGE, V.; RAKOVA, U., "Climate Change-Induced Relocation: Problems and Achievements—the Carterets Case", *op. cit.*, p. 10.

<sup>325</sup> *Ibid.*, p. 9.

effectively in their own relocation process, even though GP No. 28 itself refers to IDPs participation as a right to be realised through "special efforts" by the competent authorities. On the other hand, it confirms the UN Representative for DPIs' criticism that "their input [from civil society organisations] cannot reach the appropriate instances and the opinions and wishes of the affected persons are not integrated into the disaster response"<sup>326</sup>.

In this regard, it has been the prominence and prestige that *Tulele Peisa* has gained from the international community that has enabled the organisation to become a genuine lobbyist in the Bougainville Parliament and government<sup>327</sup>. This international attention has allowed the organisation to continue to push at various political levels for more ambitious and legally binding policies that support relocation as a matter of urgency, provide for the rights of the displaced community of Carteret and include *Tulele Peisa* as a central actor in the process<sup>328</sup>.

## **B) Housing and property rights**

Displacement in the face of a natural disruption does not erase property or other real rights that displaced persons may have in the place of origin<sup>329</sup>. The GP No. 29(2) addresses what the former UN Representative for IDPs identifies as a particular manifestation of the general principle that IDPs shall not be discriminated against in the enjoyment of their rights and freedoms because of their displacement [GP No. 1(1)]<sup>330</sup>.

Where return to the area affected by the environmental disruption is possible, IDPs have the right to recover possession of the property they abandoned because of their displacement, whether this occurred spontaneously or as part of an evacuation [GP No. 29(2)]. In this vein, it should be recalled that national authorities have the duty to protect the property and possessions of IDPs during displacement (GP No. 21). However, restitution of property and possessions after a sudden-onset disruption may be

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<sup>326</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 37 [bracketed text added].

<sup>327</sup> CORCORAN, J.; VIRNIG, A. (eds.), "*Tulele Peisa. Papua New Guinea*", *op. cit.*, p. 12.

<sup>328</sup> *Id.*

<sup>329</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 53.

<sup>330</sup> *Id.* In the same vein, UNGA, *Report of the Special Rapporteur... Cecilia Jimenez-Damary (A/75/207)*, *op. cit.*, par. 55, noting that remedies such as land restitution or compensation for loss and damage can greatly contribute to enabling those internally displaced in the context of climate change and disasters to rebuild their lives and find durable solutions.

impossible, as they are often destroyed or seriously damaged<sup>331</sup>. In such situations, or when displaced persons have decided to resettle permanently elsewhere or cannot return, "competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation" [GP No. 29(2)].

In this sense, the lack of a title to ownership or possession may additionally hamper restitution or the provision of compensation or funding for post-disaster housing reconstruction. Thus, the UN Representative on IDPs has highlighted the vulnerability of IDPs whose land titles had been lost during the disaster or displacement, or who had no formal title at all, as their possession was based on customary law or on the continued and uncontested use of real estate<sup>332</sup>. Property claims can be further aggravated when the disaster has removed demarcation markers, or when property and cadastral records have been lost<sup>333</sup>. Likewise, registration and inheritance rules that discriminate against women in favour of men as owners pose an additional obstacle to women's ability to regain ownership and possession when the male relatives on whom they depend have died in the disaster<sup>334</sup>.

Drawing on the past experiences of many countries that have faced similar problems of property restitution in the wake of mass population displacement, the Representative advocates the centralisation of IDP property claims in one or more administrative bodies as the most effective option. Besides flexibility in the types of remedies, these bodies should be competent for both mediation and adjudication of disputed property, with the possibility of recourse to the courts<sup>335</sup>.

During his working visits, the Representative also found that, after several years, a significant proportion of people displaced by natural disasters had still not been able to find stable housing<sup>336</sup>. The Representative pointed out as causes the inadequacy of the legal and budgetary framework to assist them in buying new houses or rebuilding their

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<sup>331</sup> Ibid., par. 52. Also OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, pp. 23 *in fine* and 24, noting that "the loss of property was a problem common to all countries affected by the tsunamis".

<sup>332</sup> UNGA, *Report of the Representative...*, *op. cit. supra*, par. 52. OHCHR, *op. cit. supra*, p. 24.

<sup>333</sup> OHCHR, *op. cit. supra*.

<sup>334</sup> Id.

<sup>335</sup> Id.

<sup>336</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 54.

old ones<sup>337</sup>. The Representative also noted that, where funding had been made available for the reconstruction of public and private buildings, the funds allocated were not always sufficient to cover the increased reconstruction costs with the improvements needed to withstand future disasters<sup>338</sup>. The case of Madagascar is cited as an example, where no public or private donors could be found to cover the 20 per cent budget increase needed to cyclone-proof the schools, which were also used as shelters during the cyclone season<sup>339</sup>.

### ***Excursus: the Pinheiro Principles***

Finally, it should be noted that the problem of housing, land and property restitution in general, for both IDPs and cross-border displaced persons, has been dealt with in-depth by the UN's Special Rapporteur on Housing and Property Restitution, Mr Sergio Pinheiro. His work in this area resulted in the UN Principles on Housing and Property Restitution of Refugees and IDPs, which the UN Sub-Commission on the Promotion and Protection of Human Rights adopted in August 2005<sup>340</sup>.

As Mr Francis Deng did when drafting the Guiding Principles on Internal Displacement, Mr Sergio Pinheiro drew on existing international humanitarian and human rights law<sup>341</sup> to develop a set of principles on housing and property restitution for refugees and displaced persons "who have been arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence"<sup>342</sup> (Principle 1). Thus, the Pinheiro Principles constitute the first comprehensive set of international standards intended to guide States, UN agencies and other international actors in dealing

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<sup>337</sup> Ibid., par. 52.

<sup>338</sup> Ibid., par. 54.

<sup>339</sup> Id.

<sup>340</sup> COMMISSION ON HUMAN RIGHTS, *Housing and property restitution in the context of the return of refugees and internally displaced persons. Final report of the Special Rapporteur, Paulo Sérgio Pinheiro: Principles on housing and property restitution for refugees and displaced persons* (E/CN.4/Sub.2/2005/17), 28 June 2005, 15 pp. Vid. also, INTER-AGENCY INTERNAL DISPLACEMENT DIVISION ET AL., *Handbook on Housing and Property Restitution for Refugees and Displaced Persons. Implementing the 'Pinheiro Principles'*, March 2007, 112 pp., which "is intended to practically assist a variety of actors and institutions, including headquarters and field staff, to secure protection and durable solutions for refugees and other displaced persons through the application of the Principles on Housing and Property Restitution to various situations of displacement" (p. 12).

<sup>341</sup> CENTRE ON HOUSING RIGHTS AND EVICTIONS, "[The Pinheiro Principles: United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons](#)", COHRE, 17 October 2017, p. 4 (last access: 15/05/2020).

<sup>342</sup> COMMISSION ON HUMAN RIGHTS, ... *Principles on housing and property restitution for refugees and displaced persons* (E/CN.4/Sub.2/2005/17), *op. cit.*, p. 5, par. 1.1. For an introduction to the Pinheiro Principles, vid.

with the legal and technical aspects related to one of the critical issues in ensuring the success of any process of return and reintegration of displaced nationals to their places of origin: the recovery of real property left behind as a result of displacement<sup>343</sup>.

The UN Principles are composed of 23 Principles grouped into VII Sections. After defining their application scope, which extends to all refugees, IDPs, and displaced persons who have crossed an international border but do not have refugee status (Principle 1), Principles 2 to 10 begin by reaffirming some human rights in the specific area of housing and property restitution<sup>344</sup>. Section V (Principles 11-21) addresses the principles that should guide States in establishing national housing and property restitution procedures and institutions (Principle 12), guaranteeing that all displaced persons can access them (Principle 13). Principle 14 notes the importance of consultation and participation of returnees in decision-making, while Principle 15 addresses technical issues of housing, land and property records and documentation. The rights of tenants and other non-owners and the complex problem of secondary occupants are considered in Principles 16 and 17<sup>345</sup>. Legislative measures, the prohibition of arbitrary and discriminatory laws, the enforcement of restitution decisions and judgments and the question of compensation are further discussed in Principles 18 to 21.

Section VI encompasses Principle 22, which focuses on the international community's responsibility to protect housing and property restitution rights. In particular, it underlines the usefulness in this regard of peacekeeping operations, which should aim to ensure a favourable climate for the return of displaced persons and the recovery of their property. The last Principle, Principle 23, reiterates the interpretation

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<sup>343</sup> For an introduction to the Pinheiro Principles, vid. CENTRE ON HOUSING RIGHTS AND EVICTIONS, "The Pinheiro Principles: United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons", *op. cit.*, pp. 3-5. Also, INTER-AGENCY INTERNAL DISPLACEMENT DIVISION ET AL., *Handbook on Housing and Property...*, *op. cit.*, pp. 10-11.

<sup>344</sup> Among the existing human rights reiterated in Sections II to IV is the right to housing and property restitution (Principle 2), the right to non-discrimination (Principle 3), the right to equality between men and women (Principle 4), the right not to be arbitrarily displaced (Principle 5), the right to privacy and inviolability of the home (Principle 6), the right to enjoy peaceful possession of property (Principle 7), the right to adequate housing (Principle 8), the freedom of movement (Principle 9) and the right to voluntary return in dignity and safety (Principle 10).

<sup>345</sup> Principle 17 resolves ownership conflicts between displaced persons and those who have taken possession of their property without their consent in favour of the first *de jure* owner. However, it also protects *second de facto* possessors who are in a vulnerable situation, as well as the third party who in good faith acquired the property from an illegitimate second possessor.

and application of the Pinheiro Principles according to international humanitarian and human rights law.

In conclusion, as the NGO Centre on Housing Rights and Evictions has stated, the Pinheiro Principles contribute to realising the right of all displaced persons to return to their places of origin and do so in their original homes<sup>346</sup>. Therefore, its usefulness in environmentally induced internal displacement is undeniable where restoration of the area affected by an environmental disturbance is possible, and thus the subsequent safe return of its inhabitants.

## 2. REGIONAL FRAMEWORKS

### 2.1. Africa

The Great Lakes Protocol on Internal Displacement<sup>347</sup> and the Kampala Convention<sup>348</sup> are the two vital instruments to protect people on the African continent who have been forced to flee their homes due to environmental disruption without having crossed an internationally recognised border. Both are multilateral treaties. However, the Great Lakes Protocol has a sub-regional geographical scope<sup>349</sup>, while the Kampala Convention is open to all countries on the African continent<sup>350</sup>.

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<sup>346</sup> CENTRE ON HOUSING RIGHTS AND EVICTIONS, “The Pinheiro Principles: United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons”, *op. cit.*, p. 3.

<sup>347</sup> ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons*, *op. cit.* This Protocol is part of the Pact on Security, Stability and Development For the Great Lakes Region, which is an ambitious instrument that comprises, besides the Pact itself, the Dar-Es-Salaam Declaration, ten protocols, four programmes of action with 33 priority projects, and a set of implementing mechanisms and institutions including a Special Fund for Reconstruction and Development [in: IDMC; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, “The Great Lakes Pact and the rights of displaced people: A guide for civil society”, IDMC; International Refugee Rights Initiative, September 2008, p. 10 (last access: 01/05/2020)]. The text of the Pact can be found in: ICGLR, *The Pact on Security, Stability and Development For the Great Lakes Region*, December 2006 (Amended November 2012), 24 pp.

<sup>348</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa (Kampala Convention)*, *op. cit.*

<sup>349</sup> According to Article 7 (1) and (2) of the Protocol, with the latter subparagraph stating: "For any Member State which has ratified the Pact in terms set out in Article 30 of the Pact, this Protocol shall automatically enter into force at the same time as the Pact in accordance with Article 33 of the Pact". The pact has been signed by eleven of the twelve countries that are members of the ICGLR (vid. UN, Pact on Security, Stability and Development in the Great Lakes Region (last access: 08/05/2022).

<sup>350</sup> Currently, thirty-three African countries out of the fifty-five that make up the African Union have ratified or acceded to the Kampala Convention. Vid. AU, List of countries which have signed, ratified or accede to the Kampala Convention (last access: 08/05/2022).

To date, the Great Lakes Protocol is the first and only international instrument that aims to make the UN Principles on Internal Displacement legally binding<sup>351</sup>, committing its States Parties to adopt and implement them through their respective domestic legislation<sup>352</sup>. The importance of the Guiding Principles for the Great Lakes Protocol is reflected not only in drawing heavily in their substantive content, but also in the fact that the UN Principles themselves form part of the African Protocol in the form of an annexe<sup>353</sup>.

The Kampala Convention, for its part, chronologically followed the Great Lakes Pact, being the first international treaty in the world to regulate the issue of internal displacement<sup>354</sup>. The Kampala Convention also recognises in its preamble the importance of the UN Guiding Principles as the international frame of reference for the protection of internally displaced persons<sup>355</sup> and, indeed, its articles draw directly from them as a source of inspiration<sup>356</sup>. However, the Kampala Convention goes a step further, reinterpreting the Principles themselves in those aspects where the problem of internal displacement in Africa requires it<sup>357</sup>.

In any case, both treaties are the result of a regional process that seeks to respond to some of Africa's most significant challenges, such as forced migration and arbitrary displacement – especially those linked to development projects; environmental

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<sup>351</sup> NORWEGIAN REFUGEE COUNCIL; IDMC; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, *The Great Lakes Pact and the rights of displaced people...*, *op. cit.*, p. 12. DOS SANTOS, A., "Protecting Environmentally Displaced Persons under the Kampala Convention: a brief assessment", *Revista Catalana de Dret Ambiental*, vol. IX, No 1, 2018, p. 12. BEYANI, C., "The Politics of International Law: Transformation of the Guiding Principles on Internal Displacement from Soft Law into Hard Law", *Proceedings of the Annual Meeting (ASIL)*, vol. 02, April 9-12, 2008, pp. 195-196.

<sup>352</sup> Read Articles 2 and 4 (1) (a) in conjunction with Article 6 of the Protocol.

<sup>353</sup> KIGOZI, D., "Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact", International Refugee Rights Initiative, January 2014, p. 2 (last access: 01/05/2020). Furthermore, "Member States [also] accept to use the "Annotations of the Guiding Principles on Internal Displacement" as an authoritative source for interpreting the application of the Guiding Principles" (Art. 6.2) [bracketed text added].

<sup>354</sup> ABEBE, A.M., "The Kampala Convention and environmentally induced displacement in Africa", *IOM Intersessional Workshop on Climate Change, Environmental Degradation and Migration, 29-30 March 2011, Geneva (Switzerland)*, IOM, 9 pp. (last access: 08/03/2020).

<sup>355</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa (Kampala Convention)*, *op. cit.*, whose Preamble states: "Recognising the inherent rights of internally displaced persons as provided for and protected in internationally human rights an humanitarian law and as set out in the 1998 United Nations Guiding Principles on Internal Displacement, which are recognized as an important international framework for the protection of internally displaced persons".

<sup>356</sup> KIGOZI, D., "Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact", *op. cit.*, p. 3, noting that "the Kampala Convention builds on international humanitarian law and international human rights law, as well as the UN Guiding Principles on Internal Displacement".

<sup>357</sup> DOS SANTOS, A., "Protecting Environmentally Displaced Persons under the Kampala Convention: a brief assessment", *op. cit.*, p. 12.



degradation, with particular reference to ancestral communities with a special attachment to their land; and the responsibility of States and non-State actors for human rights violations in both conflict and non-conflict situations<sup>358</sup>.

The following sub-sections look at each of these two international instruments, focusing on those most relevant provisions to protect environmental IDPs.

### **2.1.1. The Great Lakes Protocol on Internal Displacement**

#### **A) Background**

The origins of the Pact on Security, Stability and Development in the Great Lakes Region, of which the Protocol on Internal Displacement is part, must be traced to the very origins of the ICGLR<sup>359</sup>. In November 2004, the heads of state of the eleven countries that make up the Great Lakes region met in Dar-Es-Salaam, Tanzania. The meeting concluded with the signing of the Declaration on Peace, Security, Democracy and Development<sup>360</sup>. This historic Declaration, known as the Dar-Es-Salaam Declaration, set out a plan of action and the principles that would ultimately lead the ICGLR to adopt the Great Lakes Pact with its ten Protocols on 15 December 2006<sup>361</sup>.

These Protocols are the mechanisms "to translate into reality the priority political options and the guiding principles of the Dar-es-Salaam Declaration"<sup>362</sup> in each of the four thematic areas identified in the Pact: peace and security; democracy and good governance; economic development and regional integration; and humanitarian, social and environmental issues<sup>363</sup>. Two of these Protocols deal specifically with protecting

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<sup>358</sup> For a comparative analysis between the Kampala Convention and the IDP Protocol, vid. KIGOZI, D., "Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact", *op. cit.* Vid. also, CERVERA VALLETERA, M., "Avances y mejoras del marco normativo para la asistencia y protección de los desplazados internos en África", *Revista Española de Derecho Internacional*, Vol. 67, No. 1, enero-junio 2015, pp. 157-178.

<sup>359</sup> The ICGLR was conceived as a joint inter-regional process of the UN, the AU and regional countries to promote peace, security, democracy and development in the Great Lakes region. It formally began in 1996, when the former UN Secretary-General, Kofi Annan, assigned special envoys to conduct initial consultations with states and experts in the region (in: NORWEGIAN REFUGEE COUNCIL; IDMC; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, *The Great Lakes Pact and the rights of displaced people...*, *op. cit.*, p. 9.

<sup>360</sup> ICGLR, *Dar-Es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region*, Dar-Es-Salaam (Tanzania), 19-20 November 2004, 13 pp.

<sup>361</sup> INTERNATIONAL REFUGEE RIGHTS INITIATIVE, *The Great Lakes Pact and the rights of displaced people...*, *op. cit.*, p. 9.

<sup>362</sup> ICGLR, *The Pact on Security, Stability and Development For the Great Lakes Region*, *op. cit.*, Preamble, p. 1 *in fine*.

<sup>363</sup> Vid. Article 4 (1) of the Pact, setting out its field of application.

the human rights of IDPs, namely: the Protocol on Protection and Assistance to Internally Displaced Persons<sup>364</sup> and the Protocol on Property Rights of Returned Populations<sup>365</sup>. Together, they form the Pact's social and humanitarian pillar, along with the Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children<sup>366</sup>, which is also relevant for protecting displaced women and girls – more exposed to suffer sexual aggressions during displacement<sup>367</sup>.

While not specifically addressing the protection of IDPs' rights, the other seven protocols are also relevant insofar as they address the underlying causes of displacement<sup>368</sup>. For example, in the Protocol Against the Illegal Exploitation of Natural Resources<sup>369</sup>, States Parties undertake to prevent the illegal exploitation of natural resources, while mitigating the negative effects that the lawful *exploitation* of such resources *may have on the environment and human settlements* (Art. 8). There is no doubt that the exploitation of natural resources, especially minerals, is one of the leading causes of displacement in Africa today. In this sense, this obligation to protect also includes the national authorities' duty to ensure that other third parties, such as multinational companies, exercise the exploitation concessions granted with full respect for the affected communities' human rights.

## **B) Content**

As noted, the IDP Protocol aims to implement the Deng Principles at the regional level. Therefore, its content is substantially aligned with the UN Guiding Principles. However, the African Protocol does not merely reproduce the latter but adapts them to the particular regional context. In this way, its Articles include provisions that address

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<sup>364</sup> ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons*, *op. cit.*

<sup>365</sup> ICGLR, *Protocol on the Property Rights of Returning Persons, including the Model Legislation on Property Rights of Returning Persons made in Nairobi, 5-7 September 2006 (Annex)*, 30 November 2006, 19 pp.

<sup>366</sup> ICGLR, *Protocol on the Prevention and Suppression of Sexual Violence against Women and Children*, 30 November 2006, 8 pp.

<sup>367</sup> In the same vein, NORWEGIAN REFUGEE COUNCIL; IDMC; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, *The Great Lakes Pact and the rights of displaced people...*, *op. cit.*, p. 24, also noting that "[s]exual violence is not only a cause of displacement, but displacement in turn heightens women and children's vulnerability to sexual violence".

<sup>368</sup> *Ibid.*, p. 12. The other seven protocols are: the Protocol on Non-aggression and Mutual Defense in the Great Lakes Region; the Protocol on Democracy and Good Governance; the Protocol on Judicial Cooperation; the Protocol for the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination; the Protocol Against the Illegal Exploitation of Natural Resources; the Protocol on the Specific Reconstruction and Development Zone and the Protocol on the Management of Information and Communication.

<sup>369</sup> ICGLR, *Protocol Against the Illegal Exploitation of Natural Resources*, 30 November 2006, 15 pp.

specific issues that are not foreseen or scarcely developed in the Guiding Principles but are present in the Great Lakes' reality.

### 1. The IDP concept and Development-Induced Displacement

The first difference between the two instruments lies in the very concept of IDPs. From the legislative technique's perspective, it is significant that the IDP Protocol includes the IDP definition in the legal body itself, rather than in the preamble, as is the case in the Guiding Principles. This change means that the IDP definition no longer has a purely descriptive value but acquires a truly normative character.

The two definitions' material scope does not coincide either, with the African Protocol's definition being broader than the one contained in the Deng Principles. Thus, Article 1 (4) of the Protocol reproduces the definition set out in the second paragraph of the UN Principles' introduction<sup>370</sup>. However, paragraph 5 of Article 1 extends that definition also to include those "persons who have been forced or obliged to flee or to leave their homes or places of habitual residence (...) as a result of or in order to avoid the effects of large scale development projects (...)"<sup>371</sup>.

Likewise, while the Guiding Principles limit themselves to mentioning development-induced displacement once to qualify it as arbitrary in the absence of overriding and public interests justifying the project [GP No 6 (2) (c)], the Great Lakes Protocol devotes Article 5 entirely to this issue. Nevertheless, this provision merely replicates, in the context of large-scale development projects, the principles and guarantees that GP No. 7 sets out, generally, for any forced displacement that is not an evacuation in the context of armed conflict or natural disaster situations<sup>372</sup>.

The IDP Protocol only goes further than the Guiding Principles as far as the free and informed consent of persons to be displaced is concerned. Whereas under the Guiding Principles such consent must merely be "sought" [GP No. 7 (3) (c)], the Great Lakes Protocol requires States Parties to "obtain" such consent "as far as possible" [Art. 5 (3)]. More interesting is the clause S.3 (5) included in the model law that Member States are recommended to follow to implement the Protocol in their national

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<sup>370</sup> Vid. COMMISSION ON HUMAN RIGHTS, *Report of the Representative... Annex Guiding Principles on Internal Displacement*, *op. cit.*, p. 5, par. 2.

<sup>371</sup> ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons*, *op. cit.*, p. 2.

<sup>372</sup> Cf. Article 5 of the Great Lakes IDP Protocol and GP No. 7.

legislation. This provision obliges "[p]ublic and private sectors engaged in large-scale development projects (...) [to] bear the costs for relocating and/or compensating persons displaced by such projects"<sup>373</sup>.

## 2. Responsibility for protecting IDPs

As does GP No. 3 (1), Article 3 (1) of the Great Lakes Protocol reiterates that the responsibility to protect IDPs rests with the Member States, which "undertake to prevent arbitrary displacement and to eliminate the root causes of displacement"<sup>374</sup>. In particular, Article 3 (2) expressly refers to national authorities' obligation to mitigate, to the extent possible, "the consequences of displacement caused by natural disasters and natural causes"<sup>375</sup>. Finally, Article 3 (3) of the IDP Protocol also expressly sets out the temporal scope of the obligation to protect and assist, which in the Guiding Principles is only referred to in the introductory note. Thus, the protection and assistance are provided "during flight, in places of displacement, and upon return, or resettlement elsewhere within the territory of the State"<sup>376</sup>.

Unlike the Guiding Principles, which do not elaborate on which national authorities are competent to protect and assist IDPs, States Parties to the African Protocol undertake to include this aspect in the national legislation they adopt to implement the Guiding Principles. While this issue is a matter of national sovereignty, it is also true that the competence to address IDPs' assistance and protection needs is often spread across several government ministries and agencies at the national, regional and local levels<sup>377</sup>. This multiplicity of administrative levels can, in practice, render the protection of IDPs ineffective or inoperative – e.g. simply because the persons concerned do not know to which administration to turn.

Therefore, the Great Lakes Protocol adopts certain safeguards to ensure that "member states not only enact national legislation to implement the Guiding Principles in domestic law, but also to create a practical implementation framework"<sup>378</sup>. In this

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<sup>373</sup> ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons*, *op. cit.*, p. 5 [capital letter changed and verb form changed to infinitive].

<sup>374</sup> *Ibid.*, p. 2.

<sup>375</sup> *Id.* Cf. with GP No. 5, which limits itself to establishing the States' generic duty of to prevent and avoid any situation that may lead to internal displacement of populations.

<sup>376</sup> *Ibid.*, p. 3.

<sup>377</sup> NORWEGIAN REFUGEE COUNCIL; IDMC; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, *The Great Lakes Pact and the rights of displaced people...*, *op. cit.*, p. 14.

<sup>378</sup> *Id.*

way, the national legislations on internal displacement must "[s]pecify the organs of government responsible for providing protection and assistance to internally displaced persons, disaster preparedness and the implementation of the legislation incorporating the Guiding Principles" [Art. 6 (4) (c)]<sup>379</sup>.

Article 3 (10) of the Great Lakes Protocol transposes GP No. 25 (2), which recognises the international community's right to offer assistance in support of IDPs when national authorities do not have the capacity to do so. However, the Protocol's wording suggests that the scope of such an offer, and thus the possibility of its refusal by the State concerned, differs from GP No. 25. The latter merely states that such an offer "shall be considered in good faith" and "shall not be arbitrarily withheld"<sup>380</sup>. By contrast, Article 3 (10) reinforces this right of the international community by providing that a country unable to protect IDPs "shall accept"<sup>381</sup> such an offer of assistance<sup>382</sup>.

In addition to international organisations, the right of assistance is also recognised for institutionalised civil society – e.g. national NGOs<sup>383</sup>. The GP No. 25 refers to them under the generic term "other appropriate actors"<sup>384</sup>, while the Great Lakes Protocol expressly mentions them, guaranteeing their effective participation. Thus, Article 6 (4) (d) obliges the States Parties to provide in their domestic legislation "the channels of engagement and cooperation between the organs of government, organs of the United Nations, the African Union, and civil society"<sup>385</sup>.

### 3. Documentation and registration

Surprisingly, the Great Lakes Protocol makes no mention of the States Parties' obligation to provide IDPs with all the documents they need to exercise and enjoy the rights they are legally entitled. However, this omission is remedied since the Guiding Principles, which, as noted above, form part of the same Protocol, expressly provide for

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<sup>379</sup> ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons*, *op. cit.*, p. 5.

<sup>380</sup> COMMISSION ON HUMAN RIGHTS, *Report of the Representative... Annex Guiding Principles on Internal Displacement*, *op. cit.*, p. 13.

<sup>381</sup> ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons*, *op. cit.*, p. 3.

<sup>382</sup> KIGOZI, D., "Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact", *op. cit.*, p. 3, observing that, compared to the Deng Principles, the Great Lakes Protocol places "a positive responsibility on states where they "lack the capacity to protect and assist"".

<sup>383</sup> Vid. NORWEGIAN REFUGEE COUNCIL; IDMC; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, *The Great Lakes Pact and the rights of displaced people...*, *op. cit.*, p. 14, citing as an example the national Red Cross societies.

<sup>384</sup> COMMISSION ON HUMAN RIGHTS, *Report of the Representative... Annex Guiding Principles on Internal Displacement*, *op. cit.*, p. 13.

<sup>385</sup> ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons*, *op. cit.*, p. 5.

this duty<sup>386</sup>. Furthermore, paragraph 68 of the Dar-Es-Salaam Declaration, which is also part of the broader Great Lakes Pact on Security, Stability and Development, pledges States to

"[a]dopt a common regional approach for the ratification and implementation of the UN Conventions on Statelessness, harmonize related national laws and standards, and provide refugees and displaced persons with identification documents enabling them to have access to basic services and exercise their rights"<sup>387</sup>.

The Guiding Principles do not require States to establish a system of registration of IDPs. Nevertheless, IDPs' systematic registration can help identify and locate IDPs, determine their needs, identify particularly vulnerable groups<sup>388</sup>, or even contribute to reducing discrimination against IDPs in accessing public services or exercising their rights<sup>389</sup>. Hence, Article 3 (4) of the Protocol provides that "Member States shall maintain a national data base for the registration of internally displaced persons"<sup>390</sup>.

However, subordinating the provision of assistance, access to certain services or benefits or the exercise of rights specifically granted to IDPs to registration may end up being an obstacle that frustrates in practice the effectiveness of the intended protection<sup>391</sup>. Thus, registration, where it is regarded as necessary, should be as easy and accessible as possible.

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<sup>386</sup> Vid. GP No. 20 (2).

<sup>387</sup> ICGLR, *Dar-Es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region*, *op. cit.*, p. 9.

<sup>388</sup> NORWEGIAN REFUGEE COUNCIL; IDMC; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, *The Great Lakes Pact and the rights of displaced people...*, *op. cit.*, p. 16.

<sup>389</sup> OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 20

<sup>390</sup> ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons*, *op. cit.*, p. 3.

<sup>391</sup> Vid. NORWEGIAN REFUGEE COUNCIL; IDMC; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, *The Great Lakes Pact and the rights of displaced people...*, *op. cit.*, p. 16, pointing to a number of reasons why IDPs may choose not to register. For example, because procedures are overly bureaucratic, because registration centres are far away from where IDPs are located or because they did not need the kind of assistance they were initially offered. In other situations, failure to register may be due to fear of being targeted by other groups for accepting assistance from the government or by the national authorities themselves when they have caused the displacement. In the same vein, it may also happen that the authorities manipulate registration procedures in such a way that only certain groups are allowed to register as IDPs. In this regard, the national Model Legislation included in the Protocol clarifies and emphasises that such registration shall be for reasons of ascertaining the identification, profile, conditions, and numbers of internally displaced persons *for the sole purpose of protection and assistance* (in: ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons*, *op. cit.*, p. 21, S.6 (8) [italics added]).

Not surprisingly, Article 3 (4) itself provides that States "shall assist [IDPs] with registration"<sup>392</sup>. In this regard, it is desirable, for example, that registration offices establish in areas closest to the places of significant reception or concentration of IDPs. Documents required to prove identity, which in many cases may have been lost during displacement or destroyed during the disaster, should also be kept to a minimum. Registration should also not be limited to male heads of households. This discriminatory practice may leave women and children in a destitution situation when families have been separated, or male relatives have disappeared or perished in the disaster<sup>393</sup>.

#### 4. Freedom of Movement

Article 4 (1) (g) only ensures "freedom of movement and choice of residence *within designated areas of location*"<sup>394</sup>, which may also be restricted where justified on the grounds of public security, public order or public health. This provision is a significant step backwards from Guiding Principle No. 14 (1), which recognises all IDPs' right "to liberty of movement and freedom to choose his or her residence"<sup>395</sup>. Moreover, the second paragraph guarantees, in particular, the right of IDPs "the right to move freely in and out of camps or other settlements"<sup>396</sup>.

Article 4 (1) (g) reflects, in the specific area of internal displacement, the general tendency of most African countries to limit refugees' freedom of movement<sup>397</sup>. However, a literal interpretation of this provision, which would restrict IDPs' freedom of movement to the camps or other establishments in which they stay, as is the case for refugees, would be in direct conflict with the prohibition of non-discrimination based on displacement [GP No. 1 (1)].

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<sup>392</sup> ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons*, *op. cit.*, p. 3 [bracketed text replaces the pronoun "them"].

<sup>393</sup> NORWEGIAN REFUGEE COUNCIL; IDMC; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, *The Great Lakes Pact and the rights of displaced people...*, *op. cit.*, p. 16. OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, p. 24.

<sup>394</sup> ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons*, *op. cit.*, p. 4 [italics added].

<sup>395</sup> COMMISSION ON HUMAN RIGHTS, *Report of the Representative... Annex Guiding Principles on Internal Displacement*, *op. cit.*, p. 9.

<sup>396</sup> *Id.*

<sup>397</sup> NORWEGIAN REFUGEE COUNCIL; IDMC; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, *The Great Lakes Pact and the rights of displaced people...*, *op. cit.*, p. 17, which notes, however, that the African states "have not generally entered reservations to the right to freedom of movement of citizens under the ICCPR or the ACHPR" (*id.*).

As noted in section one, IDPs, as human beings and citizens or habitual residents of a particular country, will continue to enjoy the rights and freedoms they are entitled to under national and international law, regardless of displacement<sup>398</sup>. Therefore, any restriction on IDPs' freedom of movement and residence choice would only be legally acceptable under the same strict conditions and guarantees established in international human rights law to limit the enjoyment of this fundamental right to any person<sup>399</sup>.

#### 5. Protection for families of mixed ethnic identity

Family protection in the UN Guiding Principles refers only to preserving its unity during all phases of displacement, especially in the case of internment in camps, and to rapid and effective reunification as a reparation mechanism when family members are separated<sup>400</sup>. Reflecting the particular regional context in the Great Lakes, the IDP Protocol goes further, also granting special protection to families of mixed ethnic composition [Art. 4 (1) (h)].

However, the Protocol does not detail, even for purely exemplary purposes, the measures that States should take to give effect to this protection. In the refugee context, some Western countries have prioritised the resettlement of mixed Hutu/Tutsi refugee families from Rwanda and Burundi<sup>401</sup>. Drawing on these past experiences, intra-regional resettlement, which prioritises relocation to other safe ICGLR member countries, could be a possible avenue to protect families of mixed ethnic identity in the Great Lakes.

#### 6. Protection and assistance to host communities

An innovative aspect of the Great Lakes IDP Protocol is its explicit recognition of the need to support and assist host communities, an issue not addressed in the Guiding Principles. According to Article 5 (1) (e), Member States undertake to "[e]xtend protection and assistance, according to need, to communities residing in areas hosting

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<sup>398</sup> KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, p. 4 *in fine*.

<sup>399</sup> In this regard, it should be noted that all ICGLR member States, with the exception of South Sudan, are parties to the ICCPR, and that all of them except the Democratic Republic of Congo, Kenya and South Sudan have ratified, adhered or acceded to the ACHPR. Both international instruments recognise freedom of movement and choice of domicile (vid. UNTC, [Status of the International Covenant on Civil and Political Rights](#) (last access: 08/05/2022); UNTC, [List of countries which have ratified, adhered or acceded to the African Charter on Human and Peoples' Rights](#) (last access: 08/05/2022)).

<sup>400</sup> Vid the Guiding Principles Nos. 7 (2) and 17.

<sup>401</sup> NORWEGIAN REFUGEE COUNCIL; IDMC; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, *The Great Lakes Pact and the rights of displaced people...*, *op. cit.*, p. 17.



internally displaced persons". The inclusion of such a provision must be considered highly appropriate<sup>402</sup>.

Undoubtedly, the arrival of IDP flows puts additional pressure on the natural and socio-economic resources of host communities. The potential scarcity of resources may lead to new arrivals competing for control with host community members. In turn, host communities may feel that they receive less treatment or less attention from the international community or national authorities than those displaced, leading to envy and resentment<sup>403</sup>. Similarly, ethnic, racial, cultural, or religious differences can also create friction and confrontation. These tensions between groups can eventually lead to conflict, resulting in secondary displacement movements and instability in the region.

Therefore, attention to the host community's needs is essential to ensure stable, peaceful coexistence, preventing host communities from perceiving displaced persons as intruders who threaten their own livelihoods or lifestyle.

#### 7. Participation of IDPs and civil society in the drafting of national legislation on internal displacement

The Guiding Principles give a central role to IDPs' participation "in the planning and management of their return or resettlement and reintegration"<sup>404</sup>. The Great Lakes Protocol reinforces this right, with particular reference to displaced women, in development-induced displacement situations [Article 5 (6)]. The IDP Protocol also broadens its scope, providing in Article 6 (5) that "Member States shall ensure the effective participation of internally displaced persons in the preparation and design"<sup>405</sup> of national legislation incorporating and implementing the Guiding Principles.

It follows from those provisions that the Great Lakes Protocol seeks not only to ensure the participation of IDPs in the management and planning of their own displacement. By ensuring the effective participation of IDPs in the national law-making process, the Protocol also seeks to ensure that national legislators themselves

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<sup>402</sup> Vid. *ibid.*, p. 16, observing that "[s]uch communities often bear a considerable burden of supporting displaced people, which too often goes unrecognised".

<sup>403</sup> Vid. OHCHR, "Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...", *op. cit.*, pp. 14-15.

<sup>404</sup> COMMISSION ON HUMAN RIGHTS, *Report of the Representative... Annex Guiding Principles on Internal Displacement*, *op. cit.*, p. 14.

<sup>405</sup> ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons*, *op. cit.*, p. 5 *in fine*.

get firsthand experience of IDPs. Although all IDPs own the right to participation, it will be those displaced when the legislative process begins who will exercise this right. Moreover, this participation should be formally articulated, either through institutionalised representations created for this purpose or by building on other IDP representation structures already existing in civil society.

In any event, this participatory approach seems very promising<sup>406</sup>, particularly in the mostly uncharted legislative terrain of environmental displacement. Such an exchange of experiences will undoubtedly make it easier for national legislation on displacement to directly contact the reality of displacement in each country, offering genuinely effective solutions and responses. In achieving this objective, however, the participation of international organisations and NGOs with competence in the field of human rights and humanitarian assistance is lacking. It is precisely these actors who can best identify gaps or deficiencies in protection and assistance frameworks, given their extensive experience in displacement situations and their direct contact with the displaced people and their needs. Nevertheless, this shortcoming can be mitigated to the extent that representatives from these civil society sectors are included in the organisations through which IDP representation and participation are institutionalised.

## 8. Property rights of IDPs

The protection of property, particularly real estate, left behind by IDPs, and its recovery once displacement has ended, is one of the most complex challenges. The issue is particularly contentious when the property has been destroyed, or its ownership has been occupied or acquired by third parties, which is not uncommon after prolonged periods of absence.

The Great Lakes Protocol on the Property Rights of Returning Persons<sup>407</sup> is the first legally binding international instrument to address this issue<sup>408</sup>. It develops Guiding Principles 21 and 29 (2), which protect the property and possession of displaced persons

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<sup>406</sup> Vid. *ibid.*, NORWEGIAN REFUGEE COUNCIL; IDMC; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, *The Great Lakes Pact and the rights of displaced people...*, *op. cit.*, p. 15, blue box, noting that the participatory approach adopted by the IDP Protocol draws on "progressive developments in the region, particularly in Angola and Uganda. Both the Angolan legislation and the Ugandan policy on IDPs are examples of IDP frameworks with clear requirements for consultation with, and participation of, IDPs and their communities in processes and decisions affecting their interests".

<sup>407</sup> ICGLR, *Protocol on the Property Rights of Returning Persons...*, *op. cit.*

<sup>408</sup> NORWEGIAN REFUGEE COUNCIL; IDMC; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, *The Great Lakes Pact and the rights of displaced people...*, *op. cit.*, p. 18.

from destruction or illegal appropriation, occupation or use by third parties, including national authorities, ensuring their subsequent return to their rightful owners – or compensation if this is not possible. However, the Protocol addresses these issues considering the particularities of property and land rights in Africa, where state law and customary systems coexist and interact with each other, not always peacefully<sup>409</sup>.

The Protocol consists of 10 Articles. Despite its title, the Protocol applies both to IDPs who have returned to their places of origin and those who have chosen to remain elsewhere<sup>410</sup>. The Member States' primary objective was indeed to facilitate the return of displaced persons by eliminating the difficulties often encountered by displaced persons in recovering their property. This concern is evident both from the Preamble<sup>411</sup> to the Protocol and from Article 2 thereof, which, in listing the Protocol's objectives, sets out as one of them the establishment of legal principles to enable IDPs to recover their property upon their return<sup>412</sup>.

Notwithstanding the above, none of the substantive provisions of the Protocol discriminates between returned and non-returned IDPs. For example, Article 1, which defines the basic terms used in the Protocol, retains the same definition of IDPs as the Protocol on Internal Displacement. Article 3 enshrines the right of everyone to property, the principle of non-discrimination and equal protection of the law for all persons, and, finally, Member States' obligation to protect IDPs' property in all possible circumstances, including situations of war or conflict. As seen, Article 3 makes no distinction in recognising these general principles, which would otherwise have put it in contradiction with GP No. 21.

Concerning property restitution, the Protocol entrusts States Parties with the obligation to "*assist internally displaced persons and refugees and/or resettled internally displaced persons* to recover, to the extent possible, their property and

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<sup>409</sup> Ibid., pp. 18 and 21.

<sup>410</sup> Ibid., p. 19.

<sup>411</sup> The States Parties reaffirm the commitment assumed in the Dar-Es-Salaam Declaration (Art. 69) "to ensure that refugees and displaced persons, upon return to their areas of origin, recover their property with the assistance of the local traditional and administrative authorities" (ICGLR, *Protocol on the Property Rights of Returning Persons...*, *op. cit.*, p. 1, Preamble).

<sup>412</sup> The Protocol's goals can be summarised in two main areas: on the one hand, to establish a legal framework, as well as means of dispute resolution, for the protection and restitution of property to IDPs and refugees in the region, with special attention to vulnerable groups; on the other hand, to ensure legal remedies in case of loss or destruction of property.

possessions" [Art. 4 (1)]<sup>413</sup>, without precluding their right "to take legal action aimed at recovering their properties through national courts and/or the African Commission or African Court on Human and Peoples' Rights" [Art. 3 (4)]<sup>414</sup>.

Nor does the compensation mechanism, provided for in Article 8, distinguish between IDPs who return and those who do not. The only relevant criterion is the imputation of responsibility. Thus, the State must compensate for material losses for which its authorities are directly responsible. Where responsibility rests with a non-state actor, the latter must provide compensation, with Article 8 requiring only States to establish in their national law an adequate framework for claiming and enforcing such responsibility<sup>415</sup>.

In conclusion, it can be argued that those displaced by environmental disturbances in the Great Lakes region will be entitled under this Protocol to recover property they have left behind upon displacement or to receive appropriate compensation. This right is independent of whether they return to their places of origin, have been integrated into host communities or resettled elsewhere because the return is not possible. This statement is not contradicted by the fact that the Protocol includes specific provisions to facilitate the repossession, and thus the return, of particularly vulnerable groups such as women<sup>416</sup>, children<sup>417</sup> or communities with a special attachment to their land<sup>418</sup>.

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<sup>413</sup> ICGLR, *Protocol on the Property Rights of Returning Persons...*, *op. cit.*, p. 5.

Concrete measures to facilitate property restoration would include [Art. 4 (3)]: (i) the development of procedures that allow local traditional and administrative authorities to assist claimants to recover their property; (ii) the development of simplified judicial procedures that allow IDPs and refugees to claim the loss or recovery of their property; (iii) the establishment of alternative and informal community-based mechanisms to resolve property disputes through simple means of evidence, such as reliable and verifiable testimony; (iv) and the creation of an affordable property registration system that recognises ownership of property, including land, under both customary and statutory land tenure systems.

Finally, Article 4 (5) and (6) set out a number of safeguards in the event that the state acquires or expropriates property belonging to IDPs or refugees, including property they have abandoned.

<sup>414</sup> ICGLR, *Protocol on the Property Rights of Returning Persons...*, *op. cit.*, p. 5.

<sup>415</sup> In the case of a natural disaster, it seems that national authorities should assume direct responsibility for compensating the material losses suffered by displaced persons when the State was aware of the disaster sufficiently in advance to have taken measures that would have prevented or minimised its impact. In cases of force majeure, for example because the disaster could not have been foreseen or because its magnitude was greater than expected, State liability should only intervene as a last resort and in addition to private insurance, which does not usually cover extraordinary risks such as natural disasters. In these extraordinary cases, State liability could be articulated through an insurance compensation fund.

<sup>416</sup> Article 5 deals with protecting the property of returning spouses, ensuring that all returnees, with particular emphasis on women, can recover property belonging to the deceased spouse.

<sup>417</sup> Article 6 protects the right of returning children to inherit their parents' property when they have died during displacement or refuge, based upon the principle of the child's best interest.

<sup>418</sup> Article 7 recognises superior protection of returning communities' property whose way of life depends on a special attachment to their land, such as pastoralists. In such cases, Member States are obliged to

Finally, Article 9 mandates a Sub-Committee of Experts, established within the Coordinating Committee of the Programme of Action on Humanitarian and Social Issues, to monitor the Protocol's implementation by Member States. In contrast, Article 10 contains several final provisions concerning the Protocol's entry into force and its interaction with other provisions of the Great Lakes Pact or other international treaties, such as the Constitutive Act of the African Union or the Charter of the United Nations.

#### 9. Monitoring mechanism and implementation

Article 4 (1) (j) establish that States Parties have to institute "a regional mechanism in the Great Lakes Region for monitoring the protection of internally displaced persons under this Protocol"<sup>419</sup>. Following the disappearance of the AU High Commissioner for IDPs from the Kampala Convention's final text<sup>420</sup>, this mechanism is now unique as the first to monitor the situation of IDPs against a specific and legally binding set of standards<sup>421</sup>.

As stated in the provision mentioned above, in carrying out its mission, this regional mechanism must respect the monitoring role generally entrusted to the UN Commission on Human Rights and the African Commission and African Court on Human and Peoples' Rights, without precluding the right of IDPs to lodge complaints with these bodies. A reference to the desirable and even necessary coordination between the Great Lakes Protocol mechanism and the UN Special Rapporteur on IDPs' human rights is, however, missing.

As the main objective of the IDP Protocol is to ensure the implementation of the UN Guiding Principles, the IDP Protocol provides, in its Article 6 (3), that "Member States shall enact national legislation to domesticate the Guiding Principles fully and to provide a legal framework for their implementation within national legal systems"<sup>422</sup>. Article 6 (4) establishes the minimum content of those national frameworks. In helping States Parties comply with this duty, a legislation model was developed simultaneously

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ensure the reintegration of such communities in the areas they previously occupied, or on a land of at least equal value to that which they had when reintegration or return is impossible. If the latter remedy is also not feasible, appropriate financial compensation must be paid.

<sup>419</sup> ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons*, *op. cit.*, p. 4.

<sup>420</sup> BEYANI, C., "The Elaboration of a Legal Framework for the Protection of Internally Displaced Persons in Africa," *Journal of African Law*, Vol. 50, No. 2, 2006, pp. 196 *in fine* and 197.

<sup>421</sup> NORWEGIAN REFUGEE COUNCIL; IDMC; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, *The Great Lakes Pact and the rights of displaced people...*, *op. cit.*, p. 17 *in fine*.

<sup>422</sup> ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons*, *op. cit.*, p. 5.

that IDP Protocol's deliberations, even though it was not ultimately adopted as part of the Protocol<sup>423</sup>.

## 2.1.2. The Kampala Convention

### A) Background

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, better known as the *Kampala Convention*<sup>424</sup>, is the first regionally binding instrument that regulates the complex problem of internal displacement covering an entire continent<sup>425</sup>. Being a genuine brainchild of the African Union, the Kampala Convention is the result of a unique partnership between the African organization and core international actors such as UNHCR, IOM, ICRC, and the UN's former Representative Secretary-General on internally displaced persons<sup>426</sup>.

The germ of the idea of drafting an African Convention dedicated exclusively to regulating specific aspects of IDPs protection and assistance can be traced back to the symposium that the OAU organised with UNHCR in 1994 to commemorate the twenty-fifth anniversary of the adoption of the 1969 OAU Convention on Refugees<sup>427</sup>. The outcome document of this meeting recognised that "the international community remains inadequately equipped to respond effectively to all [challenges of internal displacement]. Indeed, the problem of internally displaced persons represents one of the most tragic humanitarian and human rights crises in Africa today"<sup>428</sup>, with the number of IDPs on the continent estimated at that time at almost 20 million<sup>429</sup>.

Nevertheless, the AU did not take any concrete steps in this direction until 2004, i.e. ten years after the symposium was held. This new political momentum was due to

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<sup>423</sup> NORWEGIAN REFUGEE COUNCIL; IDMC; INTERNATIONAL REFUGEE RIGHTS INITIATIVE, *The Great Lakes Pact and the rights of displaced people...*, *op. cit.*, p. 18

<sup>424</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa (Kampala Convention)*, *op. cit.*

<sup>425</sup> ABEBE, A.M., "The Kampala Convention and environmentally induced displacement in Africa", *op. cit.*, p. 2. DOS SANTOS, A., *Migraciones forzosas y las nuevas "categorías" de desplazados internos – desplazados medioambientales y del desarrollo: problemas y desafíos para el sistema internacional de protección*, PhD thesis, Madrid (Spain), Universidad Pontificia de Comillas, 2012, p. 274.

<sup>426</sup> ABEBE, A.M., *op. cit. supra*, p. 4.

<sup>427</sup> BEYANI, C., "The Politics of International Law: Transformation of the Guiding Principles on Internal Displacement from Soft Law into Hard Law", *op. cit.*, p. 197.

<sup>428</sup> OAU, *Addis Ababa Document on Refugees and Forced Population Displacements in Africa*, 10 September 1994, par. 18.

<sup>429</sup> *Id.*

the emergence of new political initiatives that sought to address the issue of internal displacement at the sub-regional level<sup>430</sup>. Thus, in 2004, the ICGLR adopted the Dar-Es-Salaam Declaration, which led to adopting the Great Lakes Protocol on Internal Displacement as part of the Pact on Security, Stability and Development, while ECOWAS initiated consultations on a possible framework for IDPs in West Africa<sup>431</sup>. These developments raised fears of fragmentation in the legal frameworks for IDPs on the African continent<sup>432</sup>.

Thus, in 2004, the AU Executive Council, deeply concerned by the absence of a specific and binding international legal regime for IDPs, urged the Commission "to collaborate with relevant cooperating partners and other stakeholders to ensure that Internally Displaced Persons are provided with an appropriate legal framework to ensure their adequate protection and assistance"<sup>433</sup>. Indeed, it "[was] to address this gap in Africa, a continent disproportionately affected by internal displacement that the African Union embarked on the development of a binding legal framework"<sup>434</sup>.

The AchPR set up a consultative group, including representatives of UNHCR, IOM, ICRC and the Representative of the UN Secretary-General on IDP, which shaped the first text of the Convention<sup>435</sup>. Progressive drafts of the Convention were reviewed by Member States' legal experts between 2007 and 2008<sup>436</sup>. The Third African Union Ministerial Meeting on Refugees, Returnees & IDPs adopted the final draft of the Convention in 2008 in Addis Ababa, Ethiopia<sup>437</sup>. This draft was finally submitted to the first regional Summit of African Union Heads of State and Government in October

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<sup>430</sup> BEYANI, C., "The Politics of International Law: Transformation of the Guiding Principles on Internal Displacement from Soft Law into Hard Law", *op. cit.*, p. 197.

<sup>431</sup> *Id.*

<sup>432</sup> *Id.*

<sup>433</sup> AU, "Decision on the situation of refugees, returnees and displaced persons" [EX.CL/Dec.127 (V)], in: *Executive Council Decisions adopted at its Fifth Ordinary Session held in Addis Ababa, Ethiopia, from 25 June-3 July 2004* [EX.CL/Dec.93-164 (V)], pp. 50-51. Vid. also, DOS SANTOS, A., *Migraciones forzosas y las nuevas "categorías" de desplazados internos...*, *op. cit.*, p. 269, who identifies African States' awareness of the seriousness of the situation of internal displacement, and the continuing instability and tensions within states resulting from it, as the departure point for undertaking the Kampala Convention.

<sup>434</sup> AU, *Explanatory Note on the African Union Convention for the Protection and Assistance of the Internally Displaced Persons in Africa*, p. 2 *in fine* [verb tense changed].

<sup>435</sup> ABEBE, A.M., "The Kampala Convention and environmentally induced displacement in Africa", *op. cit.*, p. 4.

<sup>436</sup> AU, *Explanatory Note on the African Union Convention...*, *op. cit.*, p. 2.

<sup>437</sup> *Id.*

2009 in Kampala, Uganda, which discussed and adopted the final text of the Convention<sup>438</sup>.

The Kampala Convention is a highly relevant instrument from the perspective of environmental displacement. It protects not only those fleeing natural disasters [Art. 1 (k)], but also those displaced as a result of climate change [Art. 5 (4)]. In this regard, its provisions are genuinely innovative by legally recognising, for the first time, environmental factors, including climate change, as a cause of forced displacement<sup>439</sup> and establishing obligations for States to minimise its impact to prevent population movements<sup>440</sup>.

There is no doubt that the Kampala Convention offers a regional solution that can serve as a model for other multilateral international treaties and national legislation addressing the challenge of environmental displacement, not only internal but also transboundary<sup>441</sup>. Simultaneously, the Kampala Convention will contribute to the development of customary international law regarding countries' obligations to prevent environmental disruptions and protect affected populations<sup>442</sup>.

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<sup>438</sup> Id. The Kampala Convention entered into force on 6 December 2012, 30 days after it was ratified by Swaziland – the 15th Member State to do so according to Article XVII of the Convention [vid. AU, List of countries which have signed, ratified or accede to the Kampala Convention (last access: 08/05/2022)]. It had been barely a month since the text of the Convention had been adopted at the AU Special Summit, making it one of the fastest international treaties to enter into force.

<sup>439</sup> In the Declaration adopted at the African Union summit in Kampala, the Member States regretted that "large numbers of people within our Continent are displaced, either as refugees or internally displaced persons and some are even stateless *as a result of conflicts, natural disasters, and increasingly climate change* and other causes of forced displacement in Africa" [italics added] (in: AU, *Kampala Declaration on Refugees, Returnees and Internally Displaced Persons in Africa* (Ext/Assembly/AU/PA/Draft/Decl.(I) Rev.1), 23 October 2009, foreword). Vid. also the Kampala Convention's Preamble, where Member States determine to eradicate the root causes, especially persistent and recurrent conflicts and natural disasters, "which have a devastating impact on human life, peace, stability, security, and development" (in: AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa (Kampala Convention)*, *op. cit.*, p. i).

<sup>440</sup> AU, *Kampala Declaration...* (Ext/Assembly/AU/PA/Draft/Decl.(I) Rev.1), *op. cit. supra*, par. 22, where Member States "commit [themselves] to deal with challenges of climate change, increased pressure on natural resources, issues of land management, water and sanitation, rural infrastructure in our efforts to find durable solutions to the problem of refugees and internally displaced persons" [reflexive pronoun changed and italics added].

<sup>441</sup> ABEBE, A.M., "The Kampala Convention and environmentally induced displacement in Africa", *op. cit.*, p. 2. UNHCR, "Convención de la Unión Africana para la protección y la asistencia de los desplazados internos en África (Convención de Kampala)", *Breve resumen de la Convención realizado por ACNUR y Unión Interparlamentaria (UIP)*, 22 May 2010, p. 2 (last access: 05/05/2020).

<sup>442</sup> Vid. footnote *supra*. Also, ICRC, *Root causes and prevention of internal displacement: the ICRC perspective. Statement by Jakob Kellenberger, President of the ICRC*, Special summit on refugees, returnees and IDPs in Africa, Kampala (Uganda), 23 October 2009, noting that "the convention goes further than international humanitarian law treaties in some aspects, for example in the rules it contains on



Unanimously acclaimed as a ground-breaking convention<sup>443</sup>, the Kampala Convention's success has been well recognised by the General Assembly, the Human Rights Council, the UNHCR or the IOM<sup>444</sup>.

## B) Content

Like the Guiding Principles, the Kampala Convention's content builds on regional and international instruments of human rights law, international humanitarian law and refugee law<sup>445</sup>, many of which have not yet been ratified by a large number of countries in Africa<sup>446</sup>. The Convention itself stands as a solid legal endorsement of the UN Guiding Principles, transforming soft law principles into hard law rules<sup>447</sup>.

Both are also all-encompassing instruments, covering all causes and phases of displacement – i.e. from prevention to protection, assistance and durable solutions<sup>448</sup>. However, there is a substantial difference in the two instruments' structure that reveals a shift in perspective. The Guiding Principles focus primarily on identifying and guaranteeing the rights to which IDPs are entitled at each stage of displacement. In contrast, the Kampala Convention adopts an accountability-based approach<sup>449</sup>.

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safe and voluntary return, and on access to compensation or other forms of reparation. This is of course very positive in terms of enhancing the protection of IDPs".

<sup>443</sup> DOS SANTOS, A., "Protecting Environmentally Displaced Persons under the Kampala Convention: a brief assessment", *op. cit.*, p. 11. GETAHUN, M.A. (Ambassador); AUCIL Special Rapporteur, "Report of the Draft AU Model Law for the Implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa" [AUCIL/Legal/Doc.6 (IX)], in: AU, *African Union Model Law for the Implementation of the African Union Convention for the Protection of and Assistance to Internally Displaced Persons in Africa*, April 2008, p. 38, par. 6, noting that the Kampa Convention is the "major progress in the development of international law on internal displacement since the publication of the United Nations Guiding Principles of Internal Displacement".

<sup>444</sup> ABEBE, A.M., "The Kampala Convention and environmentally induced displacement in Africa", *op. cit.*, p. 2.

<sup>445</sup> *Ibid.*, p. 4. DOS SANTOS, A., *Migraciones forzosas y las nuevas "categorías" de desplazados internos...*, *op. cit.*, pp. 269 *in fine* and 270. AU, *Explanatory Note on the African Union Convention for the Protection and Assistance of the Internally Displaced Persons in Africa*, *op. cit.*, p. 2 *in fine*, noting that although IDPs are protected by a network of international humanitarian and human rights law, they lack a specific and binding international legal regime.

<sup>446</sup> DOS SANTOS, A., *Migraciones forzosas y las nuevas "categorías" de desplazados internos...*, *op. cit.*, p. 270.

<sup>447</sup> JAKSA, B.; SMITH, J., "África: de los principios voluntarios a las normas vinculantes", *Revista Migraciones Forzadas*, No. Especial, December 2008, pp. 18-19. BEYANI, C., "The Politics of International Law: Transformation of the Guiding Principles on Internal Displacement from Soft Law into Hard Law", *op. cit.*, p. 198, observing that "[s]ince AU practice does not permit annexes, the Guiding Principles could not be annexed as was the case in the Great Lakes Protocol", so that the AU Convention "applies the Guiding Principles directly in the text of the Convention".

<sup>448</sup> AU, *Explanatory Note on the African Union Convention...*, *op. cit.*, p. 3.

<sup>449</sup> ABEBE, A.M., "The Kampala Convention and environmentally induced displacement in Africa", *op. cit.*, p. 4, noting that "[u]nlike the Guiding Principles which lists the needs and rights of IDPs, the Kampala Convention underscores the framework of state responsibility (...)".

However, unlike the Great Lakes Protocol, which focuses almost exclusively on States' responsibility, the African Convention disciplines the protection and assistance obligations of both state and non-state actors to IDPs<sup>450</sup>. In any case, this difference in approach is more formal than substantive; i.e. protection and assistance can be formulated either as rights of IDPs or as obligations of those obliged to provide it<sup>451</sup>.

Thus, after Articles 1 and 2 have respectively defined the main concepts used in the Convention and the objectives it pursues, Articles 3 to 13 are devoted to setting out the obligations of each of the stakeholders which may interact with IDPs. Of course, a good number of these duties are primarily incumbent upon States (Arts. 3 to 5, and 9 to 13). However, as a novelty, the Convention also refers to the specific obligations of International Organisations and Humanitarian Agencies (Art. 6), armed groups (Art. 7), and the AU, which assumes a collective responsibility to protect (Art. 8).

Another novelty, which should also be valued as positive, refers to establishing a body in charge of supervising the degree of compliance and implementation of the Convention by the States Parties (Art. 14). There is no similar provision in the Guiding Principles, as they are not binding. Finally, Articles 15 to 23 contain a series of final provisions relating to application, signature, ratification or accession, entry into force, amendment and revision, denunciation, saving clause, reservations, settlement of disputes, and deposit of the ratification instruments.

To assist States Parties in fulfilling their obligation under Article 3 (2) (a) of the Kampala Convention to implement the Convention's content at the domestic level, the African Union Commission on International Law has developed a Model Law<sup>452</sup>. The Model Law has been drafted flexibly so that national legislators can easily adapt it to the specific situations relating to the causes and challenges of displacement in each

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Also, KIGOZI, D., "Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact", *op. cit.*, p. 3. DOS SANTOS, A., *Migraciones forzosas y las nuevas "categorías" de desplazados internos...*, *op. cit.*, p. 275.

<sup>450</sup> KIGOZI, D., *op. cit. supra*, p. 3.

<sup>451</sup> Cf. ABEBE, A.M., "The Kampala Convention and environmentally induced displacement in Africa", *op. cit.*, p. 4; KIGOZI, D., *op. cit. supra*, p. 3; and DOS SANTOS, A., *Migraciones forzosas y las nuevas "categorías" de desplazados internos...*, *op. cit.*, p. 275, with MARU, M.T., "The Kampala Convention and its contribution in filling the protection gap in international law", *Journal of Internal Displacement*, Vol. 1, No. 1, 2011, p. 96, who instead observes that the Kampala Convention "has a human rights-based approach designed to meet the specific needs of IDPs".

<sup>452</sup> AU, *African Union Model Law for the Implementation of the African Union Convention...*, *op. cit.*, 50 pp.

country, as well as to the different legal systems – continental and common law - that coexist on the African continent<sup>453</sup>.

The Model Law closely follows "the letter and spirit" of the Kampala Convention<sup>454</sup>. However, where the Convention only includes general principles or obligations, the AchPR has drawn on other treaty or soft law sources to draft the Model Law's articles that elaborate or concretise them<sup>455</sup>. The AU Model Law is organised in 14 chapters and 63 articles, following the structure of the Kampala Convention, covering all aspects of internal displacement: prevention, protection, assistance and durable solutions<sup>456</sup>. It also contains "provisions for compensation, remedy and penal provisions to prevent arbitrary internal displacement and prosecution of criminal acts against IDPs"<sup>457</sup>. In particular, Chapter 3 deals with displacement caused by disasters, including climate change.

The following sub-sections are devoted to analysing those provisions of the Kampala Convention that are most relevant to protecting IDPs for environmental reasons<sup>458</sup>. Where relevant, references are also made to the AU Model Law.

### 1. Definition

As the IDP definition in the Great Lakes Protocol on Internal Displacement, the Kampala definition, enshrined in Article 1 (k), is also a normative definition. Like the Guiding Principles, the Kampala Convention not only covers "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence"<sup>459</sup> as a result of events including natural or human-made disasters. Persons who move to avoid the effects of relatively predictable environmental disruptions, such as those associated with meteorological phenomena, are also protected<sup>460</sup> – as Article 1 (k) also covers those who move "in order to avoid" such

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<sup>453</sup> Ibid., p. 48, par. 41.

<sup>454</sup> Ibid., p. 39, par. 9.

<sup>455</sup> Id.

<sup>456</sup> Ibid., p. 46, par. 31.

<sup>457</sup> Id.

<sup>458</sup> For a detailed analysis of the text of the Kampala Convention, vid. MARU, M.T., "The Kampala Convention and its contribution in filling the protection gap in international law", *cit.*, pp. 91-130.

<sup>459</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa*, *op. cit.*, p. 34.

<sup>460</sup> ABEBE, A.M., "The Kampala Convention and environmentally induced displacement in Africa", *op. cit.*, p. 5, who mentions the adverse effects associated with environmental factors such as drought or flooding.

effects. However, this definition of environmental displacement must be judged incomplete, as it only refers to those internally displaced by rapid-onset environmental disturbances. Therefore, it has to be complemented by Article 5 (4), which mandates States Parties also to protect those displaced by climate change-related processes –i.e. slow-onset events<sup>461</sup>.

Unlike the Great Lakes Protocol, the Kampala definition does not include an express reference to internal displacement resulting from adaptation measures or development projects undertaken by States<sup>462</sup>. Nevertheless, these situations would also fall within the African Convention's scope<sup>463</sup>, as Article 1 (1) likewise refers to the "involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders"<sup>464</sup>. Furthermore, in the context of environmental displacement, the Convention adds that any "[f]orced evacuations in cases of natural or human made disasters or other causes" [shall be considered arbitrary] if the evacuations are not required by the safety and health of those affected"<sup>465</sup> [Art. 4 (4) (f)].

Finally, it is worth noting the definition of disaster that is included in the AU Model law, but not in the Kampala Convention itself:

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<sup>461</sup> Cf. DOS SANTOS, A., "Protecting Environmentally Displaced Persons under the Kampala Convention: a brief assessment", *op. cit.*, p. 13; DOS SANTOS, A., *Migraciones forzosas y las nuevas "categorías" de desplazados internos...*, *op. cit.*, p. 322, who considers the term "disaster" to encompass both rapid- (e.g. floods) and slow-onset disruptions (e.g. droughts and soil degradation).

<sup>462</sup> KIGOZI, D., "Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact", *op. cit.*, p. 2.

<sup>463</sup> DOS SANTOS, A., "Protecting Environmentally Displaced Persons under the Kampala Convention: a brief assessment", *op. cit.*, p. 13. DOS SANTOS, A., *Migraciones forzosas y las nuevas "categorías" de desplazados internos...*, *op. cit.*, p. 322. ABEBE, A.M., "The Kampala Convention and environmentally induced displacement in Africa", *op. cit.*, p. 5.

<sup>464</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa*, *op. cit.*, p. 34 *in fine*. Moreover, displacement resulting from development projects has its own article (Article 10). Regarding displacement carried out as an adaptation strategy, the AU Model Law does include a provision calling on competent national authorities to "integrate internal displacement in their contingency plans and adaptation programs" [Art. 6 (3)], adding that where mitigation measures involve the relocation of populations or communities, they "shall be undertaken with the full participation and consultation with affected communities and should comply with human rights standards and norms" [Art. 6 (5)] (in: AU, *African Union Model Law for the Implementation of the African Union Convention...*, *op. cit.*, p. 4).

<sup>465</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa*, *op. cit.*, p. 38 [italics and bracketed text added]. Also, AU, Model Law, Article 7 (8), while Article 8 refers to evacuations as an appropriate measure "[i]n situations where the imminent natural disaster [has] created a serious risk to the life, physical integrity or health of affected individuals and communities" (in: AU, *African Union Model Law for the Implementation of the African Union Convention...*, *op. cit.*, p. 5 [capital letter changed and bracketed text added]).

“Disaster” means a *calamitous event or series of events* resulting in widespread loss of life, great human suffering and distress, displacement of population or large-scale material or environmental damage, thereby *seriously disrupting the functioning of society*<sup>466</sup>.

Thus, the Model Law seeks to ensure that all States Parties to the Convention work with the same concept of disaster, guaranteeing homogeneity in the protection afforded to IDPs in any country on the continent in the face of events with disparate causes but similar consequences. Indeed, the definition does not distinguish between natural and human-made environmental disturbances, nor between rapid and slow-onset disasters, with the decisive factor being that they seriously disrupt the functioning of society.

This broad definition of the concept of "disaster" makes less obvious the absence of the term "climate change", which is not included in the catalogue of definitions, despite being listed as a cause of displacement. The Model Law report explains that "[t]he terminology is not defined in the Kampala Convention and it is not attempted in the Draft Model Law"<sup>467</sup>. However, the Kampala Convention does not include the concept of disaster either, and yet it has been defined in the Model Law. In any case, as the report itself points out, "[t]he elements of what constitutes climate change are most acutely known in Africa, which is suffering from persistent droughts, floods, desertification and other calamities"<sup>468</sup>.

## 2. Protection from internal displacement

The UN Representative for IDPs already noted that the implementation of both early warning systems and natural disaster risk reduction strategies is part of the core content of the States' obligation to prevent and avoid conditions that might lead to the displacement of persons (GP No. 5)<sup>469</sup>. As an essential step towards prevention as the best strategy to avoid environmentally-related displacement, the Kampala Convention for the first time makes this obligation explicit.

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<sup>466</sup> AU, *African Union Model Law for the Implementation of the African Union Convention...*, *op. cit.*, p. 1.

<sup>467</sup> *Ibid.*, p. 46, par. 32.

<sup>468</sup> *Id.*

<sup>469</sup> UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, *inter alia*, pars. 23 and 40.

Thus, Article 4 (2) states that "States Parties shall devise early warning systems, in the context of the continental early warning system, in areas of potential displacement, establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures (...)"<sup>470</sup>. In order to ensure coordinated action among African states, it is envisaged that national systems will evolve within the common framework of a continent-wide early warning system [Art. 4 (2)], the achievement of which has been assumed by the African Union under Article 13 of its Constitutive Act<sup>471</sup>.

There is no doubt that the exchange of information, data, and best practices within this continental strategy can help African countries to design climate adaptation or risk reduction strategies and better anticipate and prepare for eventual natural disasters<sup>472</sup>. Simultaneously, the implementation of early warning systems can also help identify in advance "potential hotspots", i.e. the most exposed populations to natural hazards, being their usefulness twofold. On the one hand, it allows national authorities to detect and correct vulnerabilities at an early stage. On the other hand, it ensures that both the public administration and the population is adequately informed about the hazards they face, thus enabling them to better prepare for and respond to actual emergencies<sup>473</sup>.

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<sup>470</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa*, *op. cit.*, p. 37. Article 51 of the AU Model Law provides for the creation of National Disaster Early Warning, Preparedness and Management Mechanisms as part of the National Coordination Mechanism.

Additionally to early warning mechanisms, Article 6 (2) of the AU Model Law also calls on the competent national authorities to take the necessary measures "to prevent and mitigate displacement induced by effects of climate change, environmental hazards, and other disasters". It further adds that "[t]hese measures shall comply with human rights standards and be guided by the fundamental principles of humanity, human dignity, human rights and international cooperation, and shall be guided by consent, empowerment, participation and partnership and to reflect age, gender and diversity aspects" (in: AU, *African Union Model Law for the Implementation of the African Union Convention...*, *op. cit.*, p. 4).

Undoubtedly, public awareness, sensitisation, training and education on the causes, impact and consequences of internal displacement, including means of prevention, early warning, disaster risk reduction and relocation, is essential to preventing displacement. Hence, Article 5 (3) of the AU Model Law contains an obligation on competent national authorities to undertake initiatives to promote awareness-raising in these areas.

<sup>471</sup> Article 13 (1) (e) sets out that the AU Executive Council "shall coordinate and take decisions on policies in areas of common interest to the Member States, including the following: (...) environmental protection, humanitarian action and disaster response and relief" (in: AU, *Constitutive Act of the African Union*, *op. cit.*, p. 11).

<sup>472</sup> Similarly, ABEBE, A.M., "The Kampala Convention and environmentally induced displacement in Africa", *op. cit.*, p. 6, who points out that developments by both the African Union and its sub-regional blocs will open up "opportunities for collaborations among states, international organizations and research institutions to fill important gaps on evidence and information regarding displacement patterns".

<sup>473</sup> Vid. ADEOLA, R., "Climate Change, Internal Displacement and the Kampala Convention", *Policy Briefing: Climate Change and Migration*, African Portal; Centre for International Governance Innovation; South African Institute of International Affairs, May 2020, p. 4 (last access: 08/05/2020).

In the case of displacement induced by development projects carried out by public or private actors, States are obliged to conduct a prior environmental impact assessment of the project [Art. 10 (3)] and to explore other viable alternatives that do not involve displacement [Art. 10 (1) and (2)]<sup>474</sup>. Such a search for alternative options should be carried out in consultation with potentially displaced persons, who should be kept fully informed. [Art. 10 (2) in fine]<sup>475</sup>. When the affected communities have a "special attachment to, and dependency, on land due to their particular culture and spiritual values", displacement is only admissible "for compelling and overriding public interests"<sup>476</sup> [Art. 4 (5)].

Furthermore, States should ensure the accountability of those "non-State actors involved in the exploration and exploitation of economic and natural resources leading to displacement"<sup>477</sup> [Art. 3 (1) (i)]. This provision is relevant to situations where private companies' business activity, such as the mining industry, is primarily responsible for environmental degradation that ultimately leads to the displacement of communities living near the areas of exploitation or prospecting<sup>478</sup>.

### 3. Protection during displacement: the responsibility to protect

Assistance and protection to persons who have been internally displaced due to natural or human-made disasters, including climate change, is expressly guaranteed in

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ADEOLA, R., "Protecting Climate Change Induced Internally Displaced Persons in Africa: Relevance of the Kampala Convention", in: Leal Filho W. (eds), *Handbook of Climate Change Resilience*, Springer, Cham, 2018, pp. 2029-2030.

In the AU Model Law, Article 11 ensures the right to information for all communities affected by a natural disaster. The content of this right includes: "a) the nature and level of the disaster they are facing; b) the possible risk mitigation measures that can be taken; c) early warning information; and d) information on on-going humanitarian assistance, recovery efforts and their respective entitlements, if any". All this information must be easily accessible (in: AU, *African Union Model Law for the Implementation of the African Union Convention...*, *op. cit.*, p. 7).

<sup>474</sup> Vid. JAKSA, B.; SMITH, J., "África: de los principios voluntarios a las normas vinculantes", *op. cit.*, p. 18, who criticise the fact that there is no mention in the Convention of public or parliamentary oversight of projects that may cause displacement.

<sup>475</sup> In the same vein, Articles 15 (4) and 16 (1) of the AU Model Law provides that the competent authorities and non-state actors, including companies involved in projects, shall first carry out, with the participation of the affected communities, an assessment of the socio-economic and environmental impact of a project that could lead to displacement.

<sup>476</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa*, *op. cit.*, p. 38.

<sup>477</sup> *Ibid.*, p. 36.

<sup>478</sup> DOS SANTOS, A., "Protecting Environmentally Displaced Persons under the Kampala Convention: a brief assessment", *op. cit.*, p. 14. ABEBE, A.M., "The Kampala Convention and environmentally induced displacement in Africa", *op. cit.*, p. 7.

This provision is complemented by the State's obligation to prosecute and enforce the responsibility of non-State actors concerned, including multinational companies, for acts of arbitrary displacement or complicity in such acts [Art. 3 (1) (h)].

Article 5 (4). However, this Article does not specify what measures the State should take to assist and protect environmentally IDPs<sup>479</sup>. Nevertheless, a holistic reading of the Convention suggests that it will be all necessary measures to "ensure respect and protection of the human rights of internally displaced persons"<sup>480</sup> [Art. 3 (1) (d)], including "that internally displaced persons are received, without discrimination of any kind and live in satisfactory conditions of safety, dignity and security"<sup>481</sup> [Art. 9 (2) (a)].

As a minimum, adequate humanitarian assistance should ensure that IDPs receive sufficient food and water, as well as access to shelter, medical and other health care, sanitation, education, and any other necessary social services [Art. 9 (2) (b)]<sup>482</sup>. In particular, the Kampala Convention mentions the Sphere Standards as a relevant practice for monitoring and evaluating the effectiveness and impact of the humanitarian assistance delivered to IDPs [Art. 9 (2) (m)]<sup>483</sup>.

Articles 8 and 11 of the AU Model Law develop this obligation of assistance and protection respectively in the context of evacuations and relocations, which "shall not involve actions more than what is proportionate and necessary" [Art. 11 (1)]<sup>484</sup> and be

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<sup>479</sup> In the AU Model Law, States' obligations towards those displaced by disasters are detailed in Article 7. In particular, they must "take effective measures to ensure the safety of disaster-affected populations" [Art. 7 (3)], including protection "against the dangers of potential secondary hazards and other disaster risks" [Art. 7 (2)] (in: AU, *African Union Model Law for the Implementation of the African Union Convention...*, *op. cit.*, pp. 4 *in fine* and 5). They also have the responsibility to trace persons missing during the disaster, cooperating with international organisations working in this field [Art. 7 (10)]; and to collect, identify and protect the remains of the deceased, facilitating their return to their families or, if this is not possible, providing them with a respectful destination [Art. 7 (11)].

<sup>480</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa*, *op. cit.*, p. 36.

<sup>481</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa*, *op. cit.*, p. 43. Article 7 (1) of the AU Model Law ensures that people displaced by disasters have "unimpeded and non-discriminatory access to basic services necessary to meet their needs" (in: AU, *African Union Model Law for the Implementation of the African Union Convention...*, *op. cit.*, p. 4 *in fine*).

<sup>482</sup> Article 7 (7) of the AU Model Law also guarantees access to psychosocial assistance for those displaced by disasters.

<sup>483</sup> The Sphere Standards were developed in 1997, emerging as one of the first initiatives to enhance quality and responsibility in the humanitarian field. It consists of "a set of principles and minimum humanitarian standards in four technical areas of humanitarian response: water supply, sanitation and hygiene promotion; food security and nutrition; shelter and settlement; and health". It is argued that the Sphere Standards are currently "the most widely recognised humanitarian standards across the globe", setting the benchmark for humanitarian agencies, advocacy groups, governments and donors. Information extracted from SPHERE, [What are humanitarian standards? | Sphere Standards](#) (last access: 05/05/2020). Vid. also, SPHERE, *The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response*, Sphere, 2018, ebook.

<sup>484</sup> AU, *African Union Model Law for the Implementation of the African Union Convention...*, *op. cit.*, p. 7.



"consistent with human rights standards and norms" [Art. 8]<sup>485</sup>. In particular, evacuation and relocation measures should be undertaken with full respect for the right to life, dignity, liberty and security of all those displaced [Arts. 8 (2) and 11 (2)]; while securing the homes and common assets left behind by evacuees [Arts. 8 (2) (a) and 11 (5)]. In the case of relocations, a right of consultation and participation of those involved is also guaranteed [Art. 11 (2)].

Article 7 of the AU Model Law indicates that establishing camps or other settlements should only be considered a last resort when "the possibility of self-sustainability or fast rehabilitation assistance does not exist"<sup>486</sup> [Art. 7 (4)]. If established, national authorities are responsible for maintaining law and order in and around camps and other sites where displaced persons have spontaneously settled [Art. 7 (5)]<sup>487</sup>.

Unlike relocation, which is a more durable or permanent solution, evacuation is limited to the time necessary until the danger has passed. Thus, after the emergency phase, evacuees "should be granted the opportunity to choose freely whether they want to return to their homes and places of origin, to remain in the area to which they have been displaced, or to resettle to another part of the country" [Art. 8 (2) (d)]. Respect for this right of choice is essential, as any restriction not grounded in reasons of security, health, or public order would render the displacement arbitrary [Art. 8 (3)]<sup>488</sup>.

Much like the Guiding Principles, the African Convention emphasises that when providing the due protection, States shall take into account the particular needs of the most vulnerable individuals and groups, such as "separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children,

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<sup>485</sup> Ibid., p. 5.

<sup>486</sup> AU, *African Union Model Law for the Implementation of the African Union Convention...*, *op. cit.*, p. 5.

<sup>487</sup> Under Article 52 (1) of the AU Model Law, the National Disaster Early Warning, Preparedness and Management Mechanism is responsible for coordinating the National Focal Point and the competent local authorities on internal displacement in the administration of IDP settlement areas. Inter alia, they shall ensure the adequate provision of basic social and health services; as well as safeguard and maintain the civilian character of the settlement.

<sup>488</sup> Vid. also Article 45 (5) of the AU Model Law, which only allows for prohibiting the return of IDPs to their homes or places of habitual residence "if these homes or places are in areas where there are real dangers of potential secondary hazards and other disaster risks. Such restrictions should only last as long as such dangers and risks exist and only be implemented if other less intrusive measures of protection are not available or possible" (in: AU, *African Union Model Law for the Implementation of the African Union Convention...*, *op. cit.*, p. 27).

the elderly, and persons with disabilities or with communicable diseases"<sup>489</sup> [Art. 9 (2) (c)]. In this regard, IDPs engagement is key to ensure that protection and assistance measures also reflect these specific groups' interests<sup>490</sup>.

Similar to the Great Lakes Protocol, the Kampala Convention also pays special attention to host communities<sup>491</sup>. Thus, Article 3 (2) (c) generally calls on States to take into account the needs of host communities when implementing "strategies and policies on internal displacement at national and local levels"<sup>492</sup>. Likewise, Article 5 (5) provides explicitly that "States Parties shall assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons and *host communities*"<sup>493</sup>, while Article 9 (2) (b) calls for the extension of humanitarian assistance provided to IDPs to host communities where necessary.

Furthermore, the Kampala Convention introduces as a novelty the obligation of States Parties to preserve the ecosystem where IDPs are hosted, which does not appear in either the Great Lakes Protocol or the Deng Principles. Thus, Article 9 (2) (j) of the Kampala Convention calls on States to "[t]ake necessary measures to safeguard against environmental degradation in areas where [IDPs] are located"<sup>494</sup>. This innovative

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<sup>489</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa*, *op. cit.*, p. 43. In the same vein, Article 7 (6) of the AU Model Law ensures priority access to these vulnerable groups, and that special attention is given to their health needs, such as access to female health personnel and services such as reproductive health care for women [Art. 7 (7)].

<sup>490</sup> Vid. Article 9 (2) (k): "States Parties shall consult internally displaced persons and allow them to participate in decisions relating to their protection and assistance" (in: AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa*, *op. cit.*, p. 44). The AU Model Law also urges States Parties to ensure, in their respective national legislation, "meaningful and informed participation" of those communities likely to be affected by internal displacement as a result of climate change, environmental hazards and other disaster-related processes at the national and local levels [Art. 6 (4)] (in: AU, *African Union Model Law for the Implementation of the African Union Convention...*, *op. cit.*, p. 4).

<sup>491</sup> KIGOZI, D., "Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact", *op. cit.*, p. 4.

<sup>492</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa*, *op. cit.*, p. 37.

<sup>493</sup> *Ibid.*, p. 39 [italics added]. The creation and maintenance under Article 13 of the Kampala Convention of an up-to-date register of all IDPs under the jurisdiction or effective control of the State can help national authorities to comply with this obligation of assessment. This registration obligation is strengthened in the AU Model Law, whose Article 29 (2) places special emphasis on national authorities ensuring that those displaced in rural areas are also registered.

On the advantages and risks involved in registering IDPs, *vid.* the discussion on the registration obligation included in the Great Lakes Protocol on Internal Displacement [sub-section 2.1.1 (B) (3)]. *Vid.* also, ADEOLA, R., "Protecting Climate Change Induced Internally Displaced Persons in Africa: Relevance of the Kampala Convention", *op. cit.*, p. 2030, considering that "the existence of adequate data aids the formulation of emergency response and durable solutions to the needs of the displaced populations".

<sup>494</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa*, *op. cit.*, p. 44. Article 52 (1) (c) of the AU Model Law mandates the National Disaster Early

provision stems from experience in refugee camps<sup>495</sup>. The additional pressure that displaced populations place on natural resources – e.g. obtaining firewood from forests - has not only created tensions with host communities but has accelerated the degradation of camp ecosystems, which in most cases were already fragile environments. The depletion of the natural resources, on which both local and refugee communities depended for their basic needs, led to conflict and subsequent displacement in search of new resources.

### ***Excursus: The responsibility to protect in the Kampala Convention***

As in the other IDPs instruments, States Parties "bear the primary duty and responsibility for providing protection of and humanitarian assistance to IDPs internally displaced persons within their territory or jurisdiction without discrimination of any kind"<sup>496</sup> [Art. 5 (1)]. The Kampala Convention also underlines that, where available national resources are not sufficient to allow for this, States "shall cooperate in seeking assistance from international organisations and humanitarian agencies, civil society organisations and other relevant actors[, which] may offer their services to all those in need"<sup>497</sup> [Art. 5 (6)].

However, the Kampala Convention present a remarkable difference compared to the Guiding Principles or the Great Lakes Protocol. The incipient idea, already present

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Warning, Preparedness and Management Mechanism to coordinate the National Focal Point and local authorities on internal displacement to take preventive and rehabilitation measures to protect the environment of settlement areas from degradation.

<sup>495</sup> Vid., *inter alia*, BLACK, R., "Forced Migration and Environmental Change: the Impact of Refugees on Host Environments", *Journal of Environmental Management*, Vol. 42, Issue 3, November 1994, pp. 261-277. BABU, S.C.; HASSAN, R., "International migration and environmental degradation—The case of Mozambican refugees and forest resources in Malawi", *Journal of Environmental Management*, Vol. 43, Issue 3, March 1995, pp. 233-247. KIBREAB, G., "Environmental Causes and Impact of Refugee Movements: A Critique of the Current Debate", *Disasters*, Vol. 21, Issue 1, March 1997, pp. 20-38. BERRY, L., "The impacts of environmental degradation on refugee—host relationships", *African Security Review*, Vol. 17, Issue 3, 2008, pp. 125-131. BERRY, L., "The impact of environmental degradation on refugee-host relations: a case study from Tanzania", *New issues in refugee research*, Research Paper No. 151, UNHCR, January 2008, 25 pp. (last access: 05/05/2020). BRAUN, A.; LANG, S.; HOCHSCHILD, V., "Impact of Refugee Camps on Their Environment A Case Study Using Multi-Temporal SAR Data", *Journal of Geography, Environment and Earth Science International*, Vol. 4, Issue 2, 2016, pp. 1-17.

<sup>496</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa*, *op. cit.*, p. 38. In the same vein, AU, *African Union Model Law for the Implementation of the African Union Convention...*, *op. cit.*, p. 4, Article 6 (1):

"Competent authorities bear the primary duty to protect people and give particular attention to the special needs of the people most vulnerable to and most affected by climate change, environmental hazards, and other disasters, including IDPs, hosting communities and those at the risk of displacement".

<sup>497</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa*, *op. cit.*, p. 39 [bracketed text added].

in the Guiding Principles, of conceiving the obligation of States to protect IDPs within their borders as a logical consequence of sovereignty takes on particular relevance in the Kampala Convention, to the extent that it becomes a collective responsibility to protect<sup>498</sup>.

The OAU's ending and its replacement by the AU in 2004 marked a paradigm shift in the African integration process<sup>499</sup>. In the framework of the new Union, the values of pan-African solidarity have replaced the principle of non-intervention, as a corollary of sovereignty, with that of non-indifference<sup>500</sup>. This transition implies that Member States have assumed, at least on paper, a collective responsibility. Thus, the AU could intervene regionally in the event of displacement resulting from serious violations of human rights and humanitarian law, following a decision of the AU Assembly adopted under Article 4 (h) of the AU Constitutive Act [Art. 8 (1)].

However, the scope of this collective responsibility to protect is somewhat limited in the area of environmental displacement, as Article 4 (h) of the AU Constitutive Act only empowers the AU to intercede in cases of war crimes, genocide and crimes against humanity<sup>501</sup>. Therefore, what is one of the most innovative and significant provisions of the Kampala Convention has become a missed opportunity to have implemented a real responsibility to protect, authorising the AU to act on any serious human rights violation, whatever its origin or cause. Such a provision would have prevented the recurrence of tragic events like the victims of Cyclone Nargis in Myanmar.

Instead, for situations other than war crimes, genocide and crimes against humanity, the AU's intervention is limited to "support the efforts of the States Parties to

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<sup>498</sup> Vid. Article 8 of the Kampala Convention. Also on the issue, DOS SANTOS, A., *Migraciones forzadas y las nuevas "categorías" de desplazados internos...*, *op. cit.*, pp. 289-295. DOS SANTOS, A., "Protecting Environmentally Displaced Persons under the Kampala Convention: a brief assessment", *op. cit.*, pp. 11-12. ABEBE, A.M., "The Kampala Convention and environmentally induced displacement in Africa", *op. cit.*, p. 5.

<sup>499</sup> BEYANI, C., "The Politics of International Law: Transformation of the Guiding Principles on Internal Displacement from Soft Law into Hard Law", *op. cit.*, p. 198, noting that "[t]his change in mindset was confirmed by the meeting of AU ministers for refugees and internally displaced persons in Burkina Faso in February 2006, where they gave the concept paper and outline underlining the proposed Convention unanimous approval".

<sup>500</sup> Vid. on this issue, WILLIAMS, P.D., "From Non-Intervention to Non-Indifference: The Origins and Development of the African Union's Security Culture", *African Affairs*, Vol. 106, No. 423, April 2007, pp. 253-279. MURITHI, T., "The African Union's Transition from Non-Intervention to Non-Indifference: An Ad Hoc Approach to the Responsibility to Protect?", *IPG*, No. 1, 2009, pp. 90-106. SHARPE, M., "From Non-Interference to Non-Indifference: The African Union and the Responsibility to Protect", International Refugee Rights Initiative, September 2017, 32 pp. (last access: 05/05/2020).

<sup>501</sup> Vid. AU, *Constitutive Act of the African Union*, 11 July, 2000, UNTS, Vol. 2158, No. 37733, p. 37.

protect and assist internally displaced persons under this Convention"<sup>502</sup> [Art. 8 (3)] and at their request [Art. 8 (2)]<sup>503</sup>. The Kampala Convention indeed establishes that State Parties have an obligation to "respect the mandates of the African Union and the United Nations, as well as the roles of international humanitarian organisations in providing protection and assistance to internally displaced persons, in accordance with international law" [Art. 5 (3)].

However, the wording of that last provision is closer to a political commitment than a real legal obligation to cooperate<sup>504</sup>. Therefore, its proper scope and effectiveness will depend on the willingness of the AU, or the international community as collectively represented in the UN, to adopt sanctions, if necessary, against a State that unjustifiably refuses to allow international humanitarian access to IDPs. This weakness is accentuated because it is the State that bears the primary responsibility for assessing IDPs' needs and vulnerabilities, as the Kampala Convention limits humanitarian agencies' intervention to mere cooperation with it [Art. 5 (5)]. This State pre-eminence carries the risk that the State may decide that IDPs' needs are met, regardless of the actual situation in which they find themselves<sup>505</sup>.

In the AU Model Law, the National Coordinating and Implementation Mechanism<sup>506</sup> is the body responsible for assessing IDPs' needs to determine whether local capacities are sufficient to address the needs of affected communities effectively [Art. 9]. Such an assessment will be carried out in consultation with relevant government authorities at all levels and based on an initial estimate. If national response capacities are found to be insufficient, the National Mechanism is to advise the higher executive authority to request international assistance without further delay [Art. 9 (1)].

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<sup>502</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa*, *op. cit.*, p. 42.

<sup>503</sup> Article 8 provides for the AU to work with Member States in the search for durable solutions to the problem of displacement. In particular, paragraph 3 provides for the AU to strengthen its institutional framework and capacity to protect and assist IDPs; coordinate resource mobilisation; collaborate with international organisations and humanitarian and other relevant agencies to support measures taken by States Parties; share information with the AchPR on the situation of displacement; and cooperate with the Special Rapporteur of the African Commission on Human and Peoples' Rights on Refugees, Returnees, Internally Displaced Persons and Asylum Seekers.

<sup>504</sup> Similarly, JAKSA, B.; SMITH, J., "África: de los principios voluntarios a las normas vinculantes", *op. cit.*, p. 18, noting that references to situations in which States are unable to protect or assist IDPs are worded in such a way as to sometimes suggest that States "must" request international assistance and sometimes only that they "can" do so.

<sup>505</sup> *Id.*

<sup>506</sup> Chapter XII of the AU Model Law is devoted to regulating this National Coordination Mechanism, in terms of its establishment, composition and functions.

Therefore, the country's government retains the last word on requesting international assistance, meaning that the National Mechanism's assessment is not binding, even if it determines that international assistance is necessary.

The second paragraph of Article 9 provides for the National Mechanism to periodically reassess national capacities in light of the information it receives on the needs and scale of IDPs and the affected population. It is interesting to note that it is not necessary to wait until a disaster has occurred to undertake such an assessment of domestic capacities and the IDPs' estimated needs. Article 9 (1) itself refers to the possibility for the National Mechanism to carry out such an assessment in advance in anticipation of a possible disaster, thus minimising its impact on the population.

The decision to end international assistance, including international relief efforts, shall also be taken after an adequate assessment of both IDPs and the affected population's needs. This assessment has to draw on broad and effective consultation with IDPs and international organisations providing such assistance [Art. 10 (1)]. Intending to minimise the negative impacts that the termination decision may have on the affected population, including IDPs, Article 10 (3) provides all actors involved to take the necessary measures to this end. The provision does not go into detail, except to indicate that a moratorium of at least three months shall elapse between the date on which the decision to terminate international assistance is announced and the date on which such termination becomes effective [Art. 10 (2)].

#### 4. Protection relating to sustainable return, local integration or relocation

States are called upon to create satisfactory conditions for achieving durable solutions to end displacement in safety and dignity for IDPs. [Art. 11(1)]<sup>507</sup>. To this end, States Parties shall consult IDPs and enable them to participate in finding what these sustainable solutions are, so that they can make a free and informed choice on whether to return, integrate locally or relocate elsewhere [Art. 11 (2)]<sup>508</sup>. In this regard, IDPs

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<sup>507</sup> In the search for and implementation of durable solutions to displacement, including long-term reconstruction, Article 11 (3) calls on States Parties to cooperate with the African Union and international organisations, as well as with humanitarian agencies and civil society organisations.

<sup>508</sup> According to ADEOLA, R., "Protecting Climate Change Induced Internally Displaced Persons in Africa: Relevance of the Kampala Convention", *op. cit.*, p. 2031; and ADEOLA, R., "Climate Change, Internal Displacement and the Kampala Convention", *op. cit.*, p. 4, IDPs engagement "not only confers legitimacy on the process but also ensures that specific needs are considered", such as those of women, children or communities with a special attachment to their land. The author also notes that in the context of climate-related conflicts, such platforms for community participation should include conflict resolution

cannot be obliged to return to or resettlement in any place where environmental degradation, or the lasting effects of a natural or human-made catastrophe, could still endanger their life, safety, liberty or health [Art. 9 (2) (e)]<sup>509</sup>.

The natural and most desirable end of displacement is the return of those displaced to their homes. To facilitate it, the Kampala Convention calls for articulate simplified procedures for resolving disputes relating to IDPs' property [Art. 11 (4)]<sup>510</sup>. Unlike the Great Lakes Protocol on the Property Rights of Returning Persons, the Kampala Convention does not mention the role of customary or traditional institutions in settling disputes related to property or land rights, the relevance of which is instead acknowledged in the AU Model Law [Art. 44 (4)].

In the case of communities with a strong dependency and attachment to land from where they were displaced, the right to return is of even greater importance, being firmly committed States Party to restore their homelands whenever possible, ensuring their reintegration and reinsertion there [Art 11 (5)].

When the return is not possible because of severe or irreversible environmental damage or risks, States Party must seek local integration of those displaced within the host communities or their relocation to other areas [Art. 11 (1)]. Unlike the Great Lakes Protocol on IDPs Property Rights [Art. 7 (3)], the Kampala Convention does not provide for in-kind compensation of communities with a particular land dependency by providing them with similar ones<sup>511</sup>.

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mechanisms. Where displacement is due to climate mitigation projects, community engagement platforms should serve to ensure that adequate compensation is provided.

<sup>509</sup> Vid. DOS SANTOS, A., "Protecting Environmentally Displaced Persons under the Kampala Convention: a brief assessment", *op. cit.*, p. 14, comparing this prohibition with the principle of *non-refoulement* in the refugee field.

<sup>510</sup> Vid. JAKSA, B.; SMITH, J., "África: de los principios voluntarios a las normas vinculantes", *op. cit.*, p. 18, who criticise the vagueness of the terms in which Article 11 (4) expresses itself. In their view, these "simplified procedures" may not sufficiently guarantee women's right to recover property in cases where they are not entitled to inherit what is considered to be their husband's sole property. This risk is sought to be avoided in the AU Model Law, through provisions such as Article 43 (4) or 44 (3). The former calls on national authorities to commit themselves to adopt "[s]pecific arrangements shall be made to enable women, particularly widows, as well as orphans and vulnerable children to (re-)claim housing, land or property" (in: AU, *African Union Model Law for the Implementation of the African Union Convention...*, *op. cit.*, p. 25). The second states that "[t]he Competent authorities shall ensure the rights to property restitution and compensation to all internally displaced persons, including in particular women and children, regardless of existing obstacles to ownership and inheritance" (in: *ibid.*, p. 26).

<sup>511</sup> In contrast, the AU Model Law does, whose Article 47 (4) is very similar in its wording to Article 7 of the Great Lakes Protocol

In what must be considered one of its most innovative and notable provisions, the Convention requires States Parties to make reparation for damage caused to IDPs when that State Party has failed to protect and assist IDPs in the event of a natural disaster [Art. 12 (3)]. This provision does not further develop the content of this compensation obligation.

From its wording, it seems that the State would be liable for damages resulting from both the willful failure to provide protection and assistance and negligence – i.e. failure to act with the due diligence required of the competent national authorities<sup>512</sup>. As natural disasters are a case of force majeure because they are beyond human control, State liability for negligence would be limited only to those cases of gross negligence, where the disaster was relatively predictable, and its adverse effects could have been avoided or minimised had appropriate preventive or response measures been taken. Where damages result from an inadequate response due to a lack of domestic means, the State would seem to be exonerated from liability only if it has complied with its obligation to request international assistance under Article 5(2) of the Kampala Convention.

Regarding compensable damages, it follows from the full set of obligations that the Kampala Convention imposes on the States Parties that such an obligation would cover both personal injury and property damage suffered by a person at any stage of displacement. Regarding the former, the question arises as to whether it would extend not only to physical harm but also to moral damages suffered by IDPs, especially by those who, due to their personal circumstances, find themselves in a situation of particular vulnerability towards which the State assumes a special duty of care and protection<sup>513</sup>. Concerning material damage, the point at issue is whether States would be obliged to compensate for loss or damage suffered only to the property that IDPs left behind upon displacement or also to the property they brought with them, considering the State is obliged to protect IDPs' property in both cases [Art. 9 (2) (i)]<sup>514</sup>.

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<sup>512</sup> DOS SANTOS, A., “Protecting Environmentally Displaced Persons under the Kampala Convention: a brief assessment”, *op. cit.*, p. 15.

<sup>513</sup> Vid. Article 9 (2) (c) of the Kampala Convention for a non-exhaustive list of groups of IDPs with special needs that States parties are required to address.

<sup>514</sup> Similarly, DOS SANTOS, A., “Protecting Environmentally Displaced Persons under the Kampala Convention: a brief assessment”, *op. cit.*, p. 15, noting that “[t]his provision is particularly relevant in with regard to assets left behind by IDPs (...)”.



### C) Implementation

The Kampala Convention entered into force on 6 December 2012, after 15 African countries ratified it<sup>515</sup>. From that moment on, the Convention is legally binding for all its States Parties, according to the principle of *pacta sunt servanda*<sup>516</sup>. Therefore, the Kampala Convention does not need a national law transposing its content into domestic law to be fully applicable. However, the effectiveness of an international treaty may, in some cases, be conditioned by both the speed with which national governments adopt laws implementing the treaty provisions and the content of such national legislation. This is mainly the case when the treaty sets out principles or obligations of a general nature, as occurs with the Kampala Convention, which must be materialised or implemented by the States Parties, thus requiring the *domestication of the treaty*, – i.e. the corresponding legislative development at the national level.

Not surprisingly, one of the most significant weaknesses of the AU, formerly the OAU, lies in the difficulty of getting its Member States to implement its political and legal instruments<sup>517</sup>. In its Article 3 (2) (a), the Kampala Convention actually provides for incorporating States' obligations under the Convention into domestic law by enacting or amending relevant legislation on the protection of and assistance to IDPs according to their obligations under international law. Indeed, as the ICRC points out, "the Kampala Convention can only truly realize its full potential once all States across the continent have not only joined it, but have also taken the necessary steps to fully implement it"<sup>518</sup>.

To monitoring compliance with the treaty, Article 14 of the Kampala Convention establishes a double mechanism. On the one hand, States must include "the legislative

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<sup>515</sup> Vid. Article XVII of the Convention and AU, List of countries which have signed, ratified or accede to the Kampala Convention (last access: 08/05/2022).

<sup>516</sup> In the field of International legal order, this Roman principle of private law has been codified in Article 26 VCLT, which states that: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith" (vid. UN, *Vienna Convention on the Law of Treaties*, 23 May 1969, UNTS, Vol. 1155, No. 18232, pp. 331-513).

<sup>517</sup> DOS SANTOS, A., "Protecting Environmentally Displaced Persons under the Kampala Convention: a brief assessment", *op. cit.*, p. 35 *in fine*.

<sup>518</sup> ICRC, "Translating the Kampala Convention into practice. A stocktaking exercise", ICRC, 12 June 2020, p. 66 (last access: 07/05/2020). Similarly, UNGA, *Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani (A/HRC/26/33)*, 4 April 2014, par. 65: "An effective response to internal displacement almost always requires a solid enabling policy and legislative framework".

and other measures that have been taken to give effect to this Convention"<sup>519</sup> within the report they have to present every two years to the AchPR under Article 62 of the ACHPR<sup>520</sup>. If the States Parties have accepted the African Peer Review Mechanism, this body will also monitor States' compliance with the Kampala Convention<sup>521</sup>. On the other hand, Article 14 provides for establishing "a Conference of States Parties to this Convention to monitor and review the implementation of the objectives of this Convention"<sup>522</sup>. The inclusion of this mechanism was deliberate, seeking to foster a framework for cooperation and solidarity among States Parties, while serving as a structured platform for implementing the Convention through interaction between States and other relevant stakeholders, such as the African Union, international organisations or civil society<sup>523</sup>.

The first Conference meeting took place on 5th April 2017 in Harare (Zimbabwe)<sup>524</sup> and has been considered a "good starting point" for putting in practice the Kampala instrument<sup>525</sup>. The Participant States recognised that "the effectiveness of the Convention lies in its holistic implementation and in the translation of its provisions

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<sup>519</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa (Kampala Convention)*, *op. cit.*

<sup>520</sup> OAU, *African Charter on Human and Peoples' Rights (the Banjul Charter)*, 27 June 1981, UNTS, Vol. 1520, No. 26363, pp. 217-292, whose Article 62 states: "Each State Party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter".

<sup>521</sup> According to information published in AU, *The African Peer Review Mechanism* (last access: 07/05/2020), the APRM was established in 2003 by the New Partnership for Africa's Development Heads of State and Government Implementation Committee. It was conceived as an instrument for AU member states to voluntarily self-assess their progress in governance in four thematic areas: (i) democracy and political governance; (ii) economic governance and management; (iii) corporate governance; and (iv) socio-economic development. Each review results in a national action programme for the country concerned to address the problems identified. A national monitoring body prepares six-monthly and annual progress reports on the implementation of the national action plan for submission to the meetings of the APRM Forum of Heads of State and Government. The country review reports are made publicly available after the APRM Forum peer review.

<sup>522</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa (Kampala Convention)*, *op. cit.* In the AU's Draft Convention, it was envisaged that this monitoring function would be undertaken by a High Commissioner on Internal Displacement, under the oversight of the newly created (2004) African Commission on Human and Peoples' Rights' Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons (in: BEYANI, C., "The Elaboration of a Legal Framework for the Protection of Internally Displaced Persons in Africa", *op. cit.*, pp. 196 *in fine* and 197).

<sup>523</sup> AU, *First Session of Conference of States Parties for the African Union Convention for the protection and assistance of internally displaced persons in Africa (Kampala Convention). Theme: from norm setting to implementation (Concept Note)*, Harare (Zimbabwe), 3-5 April 2017, p. 3.

<sup>524</sup> *Ibid.*, 6 pp.

<sup>525</sup> DOS SANTOS, A., "Protecting Environmentally Displaced Persons under the Kampala Convention: a brief assessment", *op. cit.*, p. 36.

to assure effective protection and assistance of IDPs across Africa"<sup>526</sup>. To this end, the Conference adopted a five-year Action Plan, which set

"key priorities and strategic actions in the following areas:

- Measures for the effective protection and assistance of IDPs in Africa
- Mechanisms for monitoring and reporting on situations of internal displacement
- Ways and means of strengthening solidarity and cooperation among Member States
- Strategy for addressing rootcauses and durable solutions."<sup>527</sup>

In this regard, there is a synergy between the specific Harare Action Plan and the more general framework of Agenda 2063<sup>528</sup>, whose goal No. 7 aims to achieve environmentally sustainable economies and communities resilient to climate change and natural disasters [priority area No. 3]<sup>529</sup>. Strategic approaches to achieve these objectives include, among others, strengthening "inter-continental cooperation to deal with slow onset events related to climate change such as sea level rise and desertification"<sup>530</sup>. Through goal 7, the AU directly addresses the underlying causes of environmental displacement, thus being aligned with the Kampala Convention Plan of Implementation<sup>531</sup>.

However, as the table below shows, domestication of the Kampala Convention has achieved limited reach among African states that are party to the instrument.

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<sup>526</sup> AU, *First Session of Conference of States Parties...*, *op. cit.*, p. 2 *in fine*.

<sup>527</sup> *Ibid.*, p. 6.

<sup>528</sup> AU, *Agenda 2063: the Africa we want (Popular version)*, September 2015, 20 pp. Regarding the degree of implementation of Agenda 2063 since it was adopted in January 2013, *vid.* AU, *First Continental Report on the Implementation of Agenda 2063*, February 2020, 91 pp. Concerning the extent to which goal 7 has been achieved, the report limits itself to stating: "The continent made slow progress in increasing the proportion of important sites for terrestrial and freshwater biodiversity that are protected areas by ecosystem type – meeting 25% of the 2019 target" (*ibid.*, p 14). Nothing is said about the extent to which community resilience to climate change, natural disasters and displacement related to climate change and natural disasters has been strengthened.

<sup>529</sup> AU, *Agenda 2063: the Africa we want (Popular version)*, *op. cit.*, Aspiration 1, pars. 16-18. AU, *Agenda 2063 : The Africa We Want. A Shared Strategic Framework for Inclusive Growth and Sustainable Development. First ten-year implementation plan 2014-2023*, September 2015, Table 2.1: Goals and Priority Areas for First Ten Years, p. 41

<sup>530</sup> *Ibid.*, p. 62.

<sup>531</sup> AU, *First Session of Conference of States Parties for the African Union Convention for the protection and assistance of internally displaced persons in Africa (Kampala Convention). Theme: from norm setting to implementation (Concept Note)*, Harare (Zimbabwe), 3-5 April 2017, p. 4, noting that "the collective implementation of the Kampala Convention and strengthening of mechanisms for coordination among member States present yet another opportunity in pursuit of the aspirations of Agenda 2063".

**Table 16-Development of legal or policy frameworks on internal displacement by the AU Member States<sup>532</sup>**

<b>Country (Date of ratification/ accession to the Kampala Convention<sup>533</sup>)</b>	<b>Legislation providing for natural disaster- related IDPs</b>	<b>Policies providing for natural disaster- related IDPs</b>	<b>Ongoing legislation providing for natural disaster- related IDPs</b>	<b>Ongoing policies providing for natural disaster- related IDPs</b>
<b>Angola (14/05/2013)</b>		2002 – Council of Ministers Decree No. 79 <sup>534</sup>		
<b>Central African Republic (20/12/2010)</b>			2015 – IDP Bill <sup>535</sup>	2015 – <i>Politique Nationale sur la Protection et l'Assistance aux Personnes Déplacées Internes en Centrafrique and Action Plan</i> 2017 – National Strategy for

<sup>532</sup> Based on information contained in: GLOBAL PROTECTION CLUSTER, *Global Database on IDP Laws and Policies* (last access: 09/05/2020).

<sup>533</sup> Data extracted from AU, *List of Countries which have signed, ratified or acceded to the Kampala Convention* (last access: 01/05/2020).

<sup>534</sup> ANGOLA, *Council of Ministers Decree No. 79, Implementation of Norms on the Resettlement of Displaced Populations*, 6 December 2002, which also applies to the resettlement of those displaced by natural or human-made disasters and development projects (Article 1). It only includes measures to enable durable solutions, but not measures to prevent displacement and protect IDPs.

<sup>535</sup> In 2015, the Central African Republic drafted an IDP bill which has not yet been passed. The latest news is that UNHCR, on the occasion of the celebration of the 20th anniversary of the Guiding Principles on Internal Displacement in 2018, expressed its full support for the government to proceed with the revision and adoption of the IDP Law as soon as possible (in: GLOBAL PROTECTION CLUSTER, *Global Database on IDP Laws and Policies, op. cit.*).

				Durable Solutions <sup>536</sup>
<b>Côte d’Ivoire</b> <b>(20/12/2013)</b>			Civil society's lobby <sup>537</sup>	
<b>Democratic Republic of the Congo</b> <b>(only signature – 02/02/2010)</b>			2014 – <i>Projet de loi portant protection et assistance aux personnes déplacées internes</i> <sup>538</sup>	
<b>Ethiopia</b> <b>(only signature – 23/10/2009)</b>		2017/2020 – Durable Solutions Strategy <sup>539</sup>		

<sup>536</sup> In 2015, the Central African Republic developed a draft policy on internal displacement entitled "*Politique Nationale sur la Protection et l'Assistance aux Personnes Déplacées Internes en Centrafrique*" which includes natural disasters among the causes of displacement (in: CENTRAL AFRICAN REPUBLIC, *Politique nationale sur la protection et l'assistance aux personnes déplacées internes en centrafrique - Draft*, July 2015, 53 pp.). In the same year, the government developed an action plan of the national IDP committee (*Comité National Permanent de Concertation et de Coordination pour la Gestion de la Protection des Droits des Personnes Déplacées à l'Intérieur du Territoire de la République Centrafricaine*). In 2017, a decision was announced to draft a "National Strategy for Durable Solutions" with the help of a consultant. None of these documents have so far been endorsed (in: GLOBAL PROTECTION CLUSTER, *Global Database on IDP Laws and Policies, op. cit.*).

<sup>537</sup> Despite more than seven years having passed since Côte d'Ivoire ratified the Kampala Convention in December 2013, the country has yet to implement any national framework domesticating it. The *Réseau des Professionnels des Médias* and a group of NGOs are actively lobbying the government, and in particular the *Ministère de la Femme, de la Protection de l'Enfant et de la Solidarité*, to develop national legislation on internal displacement (in: GLOBAL PROTECTION CLUSTER, *Global Database on IDP Laws and Policies, op. cit.*).

<sup>538</sup> DEMOCRATIC REPUBLIC OF THE CONGO, *Projet de loi portant protection et assistance aux personnes déplacées internes*, 29 September 2014, addressing forced displacement on national territory following, *inter alia*, natural or human-made disasters, or as a result of large-scale development projects (Arts. 2 and 16). The draft law was submitted in September 2016 to the Law Commission and the Council of Ministers, but is still pending approval due to an overloaded legislative agenda and lack of political momentum [in: GLOBAL PROTECTION CLUSTER, *Global Database on IDP Laws and Policies, op. cit.*. GIORGI, J., "Regulatory frameworks on internal displacement: Global, regional and national developments", Global Protection Cluster, 2016, p. 25 (last access: 08/05/2020)].

<sup>539</sup> ETHIOPIA, *The Durable Solutions Strategy of the Somali Regional Government of Ethiopia 2017/2020*, October 2017, identifying a changing trend in the typology of internal displacement, which is now being induced by natural disasters and climate change-related phenomena such as drought, the latter being responsible for the highest percentage of internal displacement in Somalia in recent years. (p. 9). As its name suggests, the strategy only addresses durable solutions to internal displacement, not including prevention and assistance measures.

<b>Kenya</b> <b>(No part)</b>	2012 – The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act <sup>540</sup>			2011 – National policy on the prevention of internal displacement and the protection and assistance to internally displaced persons in Kenya (Final Draft) <sup>541</sup>
<b>Liberia</b> <b>(23/02/2014)</b>		2004 – Liberia Government National		

<sup>540</sup> KENYA, *Act No. 56 of 2012, The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act*, 4 January 2013. The Act takes a comprehensive view of internal displacement, including that caused by natural or man-made disasters (par. 2), by setting out a catalogue of principles (Part II) to guide the actions of the administrative structure provided for in Part III regarding prevention, protection and assistance and the search for durable solutions to internal displacement. Part IV is concerned with encouraging public awareness, sensitization, training and education on the issue, while Part V deals with development-related displacement.

<sup>541</sup> KENYA, *National policy on the prevention of internal displacement and the protection and assistance to internally displaced persons in Kenya (Final Draft)*, August 2011. Building largely on international and regional instruments and standards, the policy covers internal displacement caused by, *inter alia*, natural disasters, whether or not triggered by the change of climate, and development projects or projects on the preservation of the environment (*ibid.*, par. 6). The strategy establishes a comprehensive framework to prevent, manage, and avoid or minimise displacement risks and to protect and assist IDPs, while helping them to find durable solutions. The draft was developed by members of the Legal and Advocacy Sub-Working Group, in close collaboration with the Ministry of Special Programmes, the Ministry of Justice and Constitutional Affairs and a technical adviser from the Office of the Special Rapporteur on the Human Rights of IDPs, and was finalised in April 2010. In November 2010, the draft policy was revised to align it with the newly promulgated Kenyan Constitution. Following these revisions, a draft cabinet memorandum was prepared and submitted to the Ministry of State for Special Programmes in March 2011, and subsequently presented to the relevant cabinet sub-committee. In July 2012, the policy was further revised to bring it in line with developments in the land sector, in particular with the provisions of the Land Act, the Land Registration Act and the National Land Commission Act with regard to the protection of IDPs in the context of landlessness. The draft IDP policy was approved by the cabinet in October 2012, but there has been no subsequent progress towards its final adoption [vid. CATERINA, M.; GIORGI, J., “A review of the normative framework in Kenya relating to the protection of IDPs: In the context of the Kampala Convention and other supranational frameworks”, NRC; IDMC, August 2015, p. 11 (last access: 09/05/2020)].

		Community Resettlement and Reintegration Strategy <sup>542</sup>		
<b>Mali</b> <b>(07/11/2012)</b>			2017 – Technical Committee for the Domestication of the Kampala Convention <sup>543</sup>	
<b>Niger</b> <b>(10/05/2012)</b>	2018 – <i>Loi 2018-74 relative a la protection et a l'assistance aux personnes déplacées internes</i> <sup>544</sup>			

<sup>542</sup> LIBERIA, *Government National Community Resettlement and Reintegration Strategy*, 2 June 2004. The strategy is primarily designed to facilitate the return and reintegration in their places of origin of people displaced, including ex-combatants, as a result of the armed conflicts that have ravaged Somalia since 1989. However, the definition of IDPs also includes those forced to move due to a natural disaster (ibid., p. 13, footnote 3).

<sup>543</sup> GIORGI, J.; HIRST, H. (coords.), “Examen du cadre normatif et institutionnel malien relatif à la protection des personnes déplacées à l’intérieur du Mali”, Global Protection Cluster, March 2017, 65 pp. (last access: 08/05/2020). The study recommended adopting a national definition of IDPs that includes those displaced by climate change and natural disasters (vid., p. 46).

Following this study, Terms of Reference for the development of a national legislative framework on internal displacement were developed in May 2018. Both initiatives had as a starting point Mali’s ratification of the Kampala Convention in 2010. This event prompted the *Ministre de la Solidarité et de l’Action Humanitaire* to set up a Technical Committee for the Domestication of the Kampala Convention (*Comité Technique pour la Domestication de la Convention de Kampala*) through the Decision No. 2016 0109 MSAHRN-SG in April 2016 (in: GLOBAL PROTECTION CLUSTER, *Global Database on IDP Laws and Policies*, op. cit.)

<sup>544</sup> NIGER, *Loi 2018-74 relative a la protection et a l'assistance aux personnes déplacées internes*, 10 December 2018, including IDPs forced or obliged to move as a result of or to avoid the effects of a natural or human-made disaster (Art. 2). The law deals with all phases of displacement, i.e. before, during and after.

<b>Nigeria</b> <b>(17/04/2012)</b>			2016 – Rights of Internally Displaced Persons (IDPs) Bill <sup>545</sup>	2012 – Policy on internal displacement <sup>546</sup>
<b>Sierra Leone</b> <b>(15/07/2010)</b>		2001 – Resettlement Strategy <sup>547</sup>		
<b>Somalia</b> <b>(26/11/2019)</b>		2019 – Somalia National Policy on Refugee-Returnees and Internally		Policy initiatives on IDPs from South-West Somalia State

<sup>545</sup> At the time of the visit of the UN Special Rapporteur on the IDP's human rights, in 2017, the Nigerian Parliament had before it a bill to incorporate the Convention into its legislation (in: HRC, *Report of the Special Rapporteur on the human rights of internally displaced persons on his mission to Nigeria* (A/HRC/35/27/Add.1), 12 April 2017, par. 18). Vid. NIGERIA, *Rights of Internally Displaced Persons (IDPs) Bill*, May 2016, pp. C 1759- C 1794, refers, among others, to *Disaster-Induced Displacement*. "This category includes displacement of people caused by natural hazards, disasters (floods, volcanoes, landslides, earthquakes), environmental change (deforestation, desertification, land degradation, global warming) and human-made induced disasters (industrial accidents, radioactivity)" (ibid., p. C 1787, par. 11). To date, it is not known to have been passed into law (in: GLOBAL PROTECTION CLUSTER, *Global Database on IDP Laws and Policies*, op. cit.).

<sup>546</sup> In 2012, Nigeria began developing a policy on internal displacement which listed natural disasters, especially flooding in the north and west of the country and erosion in the east, among the main causes of internal displacement. It is a comprehensive policy framework that sets out a broad catalogue of rights for IDPs and obligations for state and non-state actors, as well as strategies for prevention, protection and durable solutions to address the challenge of internal displacement in the country (vid. NIGERIA, *National Policy on Internally Displaced Persons*, 1 August 2012, 65 pp.).

Difficulties in identifying an institutional focal point and sharing responsibilities between the two main institutions involved in national-level responses were initially an obstacle to its adoption. A law and policy working group was set up in 2015 to renew technical discussions on the draft text and thus push for its adoption (in: GIORGI, J., "Regulatory frameworks on internal displacement: Global, regional and national developments", op. cit., p. 25). In 2017, during his visit to the country, the UN Special Rapporteur on the IDPs' human rights reported that the draft policy had been approved at the level of the Attorney General's Office and that the National Commission on Refugees, Migrants and Internally Displaced Persons had reactivated the process of reviewing the draft policy for approval (in: HRC, *Report of the Special Rapporteur... on his mission to Nigeria*, op. cit., par. 18). However, three years later, there is still no news that the draft has been approved by the country's federal executive council (in: GLOBAL PROTECTION CLUSTER, *Global Database on IDP Laws and Policies*, op. cit.).

<sup>547</sup> SIERRA LEONE, *Resettlement Strateg: Enabling the displaced to rebuild their lives back in their communities with safety and dignity*, 1 October 2001. The strategy is designed to support the resettlement and reintegration of IDPs, refugees and ex-combatants with their dependants in their communities, while strengthening livelihood security and promoting reconciliation. While the strategy is designed to provide a durable solution for the more than 1.2 million displaced people left behind by ten years of conflict in the country since 1991, the definition of IDPs also includes those displaced by natural disasters, who will thus be able to benefit from resettlement and reintegration programmes.



		Displaced Persons <sup>548</sup> 2019 – Benadir Regional Administration Policy for Internally Displaced Persons and Returnees in Mogadishu <sup>549</sup> 2015 – Somaliland Internal Displacement Policy 2012 – Puntland Policy Guidelines on Displacement <sup>550</sup>		and Jubaland <sup>551</sup>
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<sup>548</sup> SOMALIA, *National Policy on Refugee-Returnees and Internally Displaced Persons*, 2019. Besides recognising all causes of displacement in Somalia, including the impact of natural disasters, climate change and development projects (ibid., p. 13), the IDP definition expressly mentions pastoralists "who have lost access to their traditional nomadic living space through loss of livestock, or loss of access to grazing and water points or markets, and have therefore left their habitual living space" (ibid., p. 7). Since it is not specified, the causes of such loss may be natural or human-induced. For the purposes of IDP status, it is irrelevant whether IDPs remain in IDP-identified locations or live in urban areas alongside non-displaced communities or with host families, as well as the cause and duration of their displacement or their clan and area of origin (id.). The national policy commits all relevant stakeholders, both national and international authorities and actors, to develop "adaptation strategies and longer term measures that can help communities *cope with the impact of recurrent droughts and other natural disasters*" (ibid., p. 21 [italics added]). The strategy also foresees the establishment of safety nets and social assistance to ensure social protection in areas where communities are or will be permanently or seasonally at risk from natural shocks (ibid., p. 26), such as floods or especially droughts.

<sup>549</sup> At the local level, Mogadishu has developed its own IDP and refugee returnee policy, including prevention, protection and assistance measures, and durable solutions. The strategy aims to realise the vision that there will be no more IDPs in the city by 2023, which in 2019 hosted more than 550,000 people displaced by conflict and drought. Vid. SOMALIA, *Banadir Regional Administration & Municipality of Mogadishu: Internally Displaced Person & Refugee Returnees Policy*, January 2019, 32 pp.

<sup>550</sup> Somaliland and Puntland, both self-proclaimed independent States in Somalia, have adopted their own policies on internal displacement, which include natural and man-made disasters as a cause of displacement, measures to prevent it and protect IDPs, and provisions on durable solutions. Vid.

<b>South Sudan</b> <b>(26/09/2018)</b>		2017 – National Framework for the Return, Resettlement and Reintegration of Displaced Persons <sup>552</sup>	2019 – Protection and Assistance to Internally Displaced Persons Bill <sup>553</sup>	
<b>Sudan</b> <b>(No part)</b>		2009 – The National Policy for Internally Displaced Persons <sup>554</sup>		
<b>Uganda</b> <b>(29/01/2010)</b>		2004 – The National Policy for Internally		

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SOMALIA: *Puntland Policy Guidelines on Displacement*, 2014; *Somaliland Internal Displacement Policy*, 10 September 2015. In the case of Somaliland, specific mention is made of people displaced as a result of drought or competition over natural resources (ibid., p. 8).

<sup>551</sup> South West Somalia State has also initiated its own IDP policy drafting process, while Jubaland has launched an initial consultation with the same objective (in: GLOBAL PROTECTION CLUSTER, *Global Database on IDP Laws and Policies*, op. cit.).

<sup>552</sup> SOUTH SUDAN, *National Framework for the Return, Resettlement and Reintegration of Displaced Persons*, February 2017, 24 pp. This framework intends to guide the Government of South Sudan's response to current and future IDP situations, specifically during armed conflict or natural disasters (ibid., p. 7). The strategy addresses protection, assistance and durable solutions to internal displacement, but not how to prevent it.

<sup>553</sup> In 2018, the Government of South Sudan embarked on a process to domesticate the Kampala Convention, which it had ratified that same year, five years after it had signed it in 2013. This process culminated in 2019 in the Protection and Assistance to Internally Displaced Persons Bill, which is still pending review by the Ministry of Justice (vid.: GLOBAL PROTECTION CLUSTER; UNHCR, "[South Sudan Building Consensus on the Drafting of a National Law on Internal Displacement](#)", Global Protection Cluster, 22 November 2020, 2 pp. (last access: 08/05/2020). BEYANI, C.; KULANG, G.P.; MWEBI, R., "The potential of South Sudan's national law on protection and assistance to IDPs", *Forced Migration Review*, No. 65, November 2020, pp. 64-66).

<sup>554</sup> SUDAN, *National Policy for Internally Displaced Persons (IDPs)*, 1 January 2009, 8 pp., which covers all causes of displacement, "in particular, as a result of natural or human-made disaster" (ibid., p.3). It is highly criticisable that the Preface recognises only Sudanese citizens as IDPs, omitting non-nationals under Sudan's jurisdiction, who should also be protected in the event of internal displacement without discrimination of any kind (ibid., p. 2). The framework covers prevention, protection and durable solutions.

		Displaced Persons <sup>555</sup>		
<b>Zambia</b> <b>(14/01/2011)</b>		2013 – Guidelines for the compensation and resettlement of internally displaced persons 2015 – National Resettlement Policy <sup>556</sup>		

Of the thirty-one countries that have ratified or acceded to the Kampala Convention, only eight States have developed frameworks on internal displacement – Angola, Liberia, Niger, Sierra Leone, Somalia, South Sudan, Uganda and Zambia. Only in the case of Niger, has such a framework taken the form of a law. The rest have opted only to develop strategies of a political nature to address internal displacement. Kenya is the only other country with national law on internal displacement, although it is not a party to the Kampala Convention<sup>557</sup>. Sudan has also developed its own policy on

<sup>555</sup> UGANDA, *National Policy for Internally Displaced Persons*, 1 August 2004, includes natural and human-induced disasters (p. x-xii). Nevertheless, based on the definitions of disaster or hazard, it seems that only rapid onset environmental disruptions would be covered as cause of displacement (id.). The strategy comprises prevention of displacement drivers, assistance to IDPs, and durable solutions. Vid. also, UGANDA, *National Climate Change Policy*, April 2015, which provides for the implementation of various measures to prevent the risk of natural disasters, including those related to climate change, thus avoiding the resulting population displacement (p. 27).

<sup>556</sup> ZAMBIA, *Guidelines for the compensation and resettlement of internally displaced persons*, October 2013, 14 pp., recognises natural and human induced disasters, as well as development projects, among the main causes of displacement in Zambia. Despite its title, the strategy provides guidelines to protect and assist IDPs during all stages of displacement. This general set of principles was complemented in 2015 through the National Resettlement Policy, which assists and protects IDPs resettled as a result of, *inter alia*, natural disasters (vid. ZAMBIA, *National Resettlement Policy*, 1 October 2015, 47 pp.).

<sup>557</sup> Kenya's Act relies on the UN Guiding Principles and the Great Lakes Protocol on Internal Displacement which are incorporated as an annex to the text of the Act. To date, Kenya is not a party to the Kampala Convention, having declared no need to ratify it as "there is already an Act on internal displacement that was adopted in 2012 and because there are no IDPs left in the country" (in: GLOBAL PROTECTION CLUSTER, *Global Database on IDP Laws and Policies*, op. cit.).

internal displacement outside the Kampala Convention, to which it is also not a State Party. Furthermore, it should be noted that five of the eight States Parties – Angola, Liberia, Sierra Leone, South Sudan and Uganda - had developed their own policies on internal displacement long before ratifying the Kampala Convention.

The table shows a clear State preference for internal displacement policies over the development of legislative frameworks. This trend is reversed when comparing the instruments currently being developed by four countries party to the Kampala Convention – Central African Republic, Mali, Nigeria and South Sudan. These states have opted either to develop a focused law on the issue, as in the case of Mali and South Sudan; or to develop policy and legal instruments in parallel, as in the Central African Republic or Nigeria.

The Democratic Republic of the Congo and Ethiopia deserve special mention. Both States have signed the Kampala Convention but have not yet ratified it. Ethiopia has a policy framework on durable solutions to internal displacement and the Democratic Republic of the Congo is in the process of drafting a national law on internal displacement.

Comparing the different policy and legal frameworks currently in place and ongoing initiatives, one cannot but agree with the UN Special Rapporteur on IDPs' human rights when stating that the national frameworks adopted to date "vary in scope, the guarantees of protection and assistance to internally displaced persons, and the coverage of relevant issues"<sup>558</sup>. As can be seen from the table above and the footnotes, not all legislative and policy frameworks adopted or emerging in African countries cover both types of environmental disruption. While reference to natural disasters is usual, less common is the inclusion of climate change or other related processes of slow environmental degradation as a cause of internal displacement. Moreover, most lack a comprehensive approach, addressing only some specific phase of displacement, either by focusing on prevention of displacement, protection of some rights of the displaced or the search for durable solutions.

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<sup>558</sup> UNGA, *Report of the Special Rapporteur...Chaloka Beyani, op. cit.*, par. 68.

## 2.2. The Americas

The OAS General Assembly has adopted several resolutions on internal displacement<sup>559</sup>. They urge Member States to protect the rights of internally displaced persons, including in situations of natural disasters. Resolution 2956 of 20 October 2020 is noteworthy in this regard. Although this resolution does not directly address the protection of IDPs, its significance lies in its explicit recognition of the link between natural disasters and climate change and the food insecurity that leads to displacement<sup>560</sup>.

A common thread runs through all these resolutions, which conceives the protection of IDPs in a broad sense, not limited only to assisting victims during the emergency. Thus, the OAS follows a comprehensive protection approach, in which the obligation to protect remains primarily with States. As usual, this obligation to protect begins with prevention, calling the OAS on States to take measures to avoid or mitigate the risk of natural disasters, with particular reference to early warning systems. During displacement, this assistance must be tailored to the particular needs faced by IDPs, with due consideration to gender and other needs of vulnerable groups. Finally, assistance also extends to the search for durable solutions to end displacement as soon as possible, particularly concerning the recovery of livelihoods.

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<sup>559</sup> Vid. OAS: “Resolution of the General Assembly on promotion and protection of human rights, adopted at the fourth plenary session, held on October 21, 2020” [AG/RES. 2961 (L-O/20)], in: *Proceedings Volume I: Fiftieth Regular Session* (OEA/Ser.P/L-O.2), Washington, D.C., General Secretariat, 21 June 2021, section xvii, first recital and par. 1, p. 169. “Resolution of the General Assembly on promotion and protection of human rights, adopted at the fourth plenary session, held on June 28, 2019 [AG/RES. 2941 (XLIX-O/19)], in: *Proceedings Volume I: Forty-Ninth Regular Session* (OEA/Ser.P/XLIX-O.2), Washington, D.C., General Secretariat, 4 November 2019, section iii, par. 5, p. 135. “Resolution of the General Assembly on promotion and protection of human rights, adopted at the fourth plenary session, held on June 5, 2018 [AG/RES. 2928 (XLVIII-O/18)], in: *Proceeding Volume I: Forty-Eight Regular Session* (OEA/Ser.P/XLVIII-O.2), Washington, D.C., General Secretariat, 16 November 2018, section xxiii, par. 3, p. 180. “Resolution of the General Assembly on promotion and protection of human rights, adopted at the second plenary session, held on June 14, 2016 [AG/RES. 2887 (XLVI-O/16)], in: *Proceeding Volume I: Forty-Sixth Regular Session* (OEA/Ser.P/XLVI-O.2), Washington, D.C., General Secretariat, 17 January 2017, section vi, pars. 1-2, p. 150. “Resolution of the General Assembly on Internally Displaced Persons, adopted at the second plenary session, held on June 4, 2014 [AG/RES. 2850 (XLIV-O/14)], in: *Proceeding Volume I: Forty-Fourth Regular Session* (OEA/Ser.P/XLIV-O.2), Washington, D.C., General Secretariat, 24 September 2014, pars. 1, 2, 6, 8, 11 and 12, pp. 188-189.

<sup>560</sup> OAS, “Resolution of the General Assembly on the challenges to food security and nutrition in the Americas in the context of the covid-19 pandemic within the framework of the Plan of Action of Guatemala 2019, adopted at the first plenary session, held on October 20, 2020” [AG/RES. 2956 (L-O/20)], in: *Proceedings Volume I: Fiftieth Regular Session* (OEA/Ser.P/L-O.2), Washington, D.C., General Secretariat, 21 June 2021, twenty-second recital, p. 92. The resolution takes a precautionary approach as it does not call on its Member States to implement measures to protect those displaced by hunger but to strengthen their support for the implementation of an Inter-American Agenda for Social Development on the basis of the Guatemala Plan of Action 2019 (*ibid.*, par. 4, p. 93).

In addition to emphasising the need to strengthen national efforts, the adopted resolutions call for international and regional cooperation, including responsibility-sharing mechanisms. To the extent possible, the OAS underlines the need to maintain a constant dialogue with all relevant actors involved, particularly with IDPs and affected communities, as a precondition for ensuring the effectiveness of the measures and strategies adopted, particularly in particular the sustainability of displacement solutions.

As relevant normative frameworks, these resolutions mention international human rights law and, of course, the Guiding Principles on Internal Displacement, whose incorporation into national law is repeatedly urged. States are also invited to consider the Framework on Durable Solutions for Internally Displaced Persons and the Operational Guidelines on Human Rights and Natural Disasters. At the regional level, they highlight the importance of the Brazil Plan of Action to strengthen international protection for refugees, displaced and stateless persons in Latin America and the Caribbean, adopted in 2014 and valid for ten years<sup>561</sup>, and the Comprehensive Regional Protection and Solutions Framework, adopted in 2017<sup>562</sup>.

However, according to information in the Global Protection Cluster database, it does not appear that American states are heeding these repeated calls, at least as far as implementation of the Guiding Principles is concerned. Based on the Global Database on Internal Displacement Law and Policy, only Mexico and Peru have legislative frameworks that address internal displacement related to natural disasters or development projects<sup>563</sup>.

### **2.2.1. Peru**

In Peru, Law No. 28223, "On Internal Displacement"<sup>564</sup>, does not include natural disasters among internal displacement causes (Art. 2). does not include natural disasters among the causes of internal displacement (Art. 2). However, its implementing

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<sup>561</sup> Vid. UNHCR, *A framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean (Brazil Declaration and Plan of Action)*, Brasilia, 3 December 2014, 19 pp. – already referred to in this thesis when addressing the protection of refugees and stateless persons in Latin America and the Caribbean.

<sup>562</sup> Vid. COMPREHENSIVE REGIONAL PROTECTION AND SOLUTIONS FRAMEWORK, "San Pedro Sula Declaration as a Regional Contribution to the Global Compact on Refugees", adopted by the Governments of Belize, Costa Rica, Guatemala, Honduras, Mexico and Panama (El Salvador joined in 2019), San Pedro Sula (Honduras), 26 October 2017.

<sup>563</sup> GLOBAL PROTECTION CLUSTER, *Global Database on IDP Laws and Policies*, op. cit.

<sup>564</sup> PERU, *Law N. 28223 on Internal Displacement*, 28 April 2004.

Regulation, by clarifying the scope of both the Law and the Regulation, has remedied this omission by including within the definition of IDPs those "forced or obliged to leave their home or place of habitual residence *as a result of or to avoid the effects of (...) natural or man-made disasters* and which has not resulted in the crossing of an internationally recognised state border" [Art. 4° (1)]<sup>565</sup>.

Subsequently, Article 4 distinguishes between two broad types of internal displacement: forced displacement and evacuation. The former is described as spontaneous and unpredictable and is caused by armed conflict or armed groups' action. On the other hand, "evacuation" is organised and conducted in contexts such as natural or human-induced disasters. The distinction between the two groups is only relevant for the additional safeguards that Article 10 of the Regulation imposes on national authorities to ensure that forced displacement is not arbitrary.

However, from the perspective of environmental displacement, the proposed classification is highly questionable. It forgets that displacement in the context of natural disasters can also occur spontaneously and unpredictably, especially when national authorities were unable to foresee the disaster and evacuate the population before it struck. Furthermore, assuming that such a classification is not merely for descriptive purposes but is intended to legally define the IDP definition's contours. In that case, the dangerous conclusion to be drawn is that environmental displacement occurring outside an evacuation operation would be excluded from the scope of the Law and the Regulation.

Both normative frameworks address IDPs rights and protection from forced displacement (Section II of the Law and Title II of the Regulation); humanitarian care and assistance to displaced persons, with particular attention to vulnerable groups such as disabled persons, women, children and the elderly, or indigenous communities or minorities (Sections III and VII of the Law and Titles III to V of the Regulation). They also cover return, resettlement and relocation as solutions to end displacement (Section IV of the Law and Title VI of the Regulation). Critically, however, displacement

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<sup>565</sup> PERU, *Decree 004-2005, Regulation on the Law on Internal Displacement*, 1 January 2005, pp. 215 *in fine* and 216 [self-translation of the original in Spanish and italics added].

prevention measures, such as disaster risk reduction strategies or early warning systems, are not included<sup>566</sup>.

### 2.2.2. Mexico

In Mexico, the National Human Rights Commission presented a special report in 2016, addressing the issue of forced displacement within the country<sup>567</sup>. It recommended to Congress the "drafting of a general law on forced internal displacement in which the rights of the victims of this phenomenon, the duties of the State in this area, the prevention and control actions necessary to combat it, as well as the sanctions for those who do not comply with the law, considering the economic impact, are set out"<sup>568</sup>. In 2017, following this recommendation, a draft federal law to prevent, address and redress forced internal displacement was presented to the legislature<sup>569</sup>.

The IDP definition in the draft law is strongly inspired by that of the Deng Principles, so that natural disasters are included as a cause of displacement (Art. 4)<sup>570</sup>. The draft law regulates the diligence duty incumbent on national authorities to "preventively avoid the creation of conditions that lead to a situation of forced internal displacement" [Art. 5 (I)]; the IDPs' rights during displacement (Arts. 7-12), including the right to receive humanitarian assistance from both national and international instances (Arts. 1-14), and the right to obtain durable solutions to their situation through their return, resettlement or reintegration (Arts. 15-21). Additionally, it provides for the creation of a National System for the Prevention and Attention to Internal Forced

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<sup>566</sup> There is only one reference to the Ministry of Women and Social Development as the competent authority for the formulation and monitoring of policies to prevent internal displacement (vid. Arts. 22 of the Law N. 28223 and Arts. 20° and 21° of the Decree 004-2005).

<sup>567</sup> MEXICO, "Informe especial sobre Desplazamiento Forzado Interno (DFI) en México", *Comisión Nacional de los Derechos Humanos*, May 2016, 232 pp. (last access: 10/05/2020).

<sup>568</sup> *Ibid.*, p. 196 [self-translation of the original in Spanish].

<sup>569</sup> MEXICO, *Iniciativa con Proyecto de Decreto por el que se expide la Ley General para la Atención de las Víctimas de Desplazamiento Forzado Interno*, 28 September 2017.

<sup>570</sup> Those displaced by development projects that are not justified by an overriding public interest would also be protected by this law, as a final clause in the IDP definition, which does not appear in the UN Principles' definition, includes persons displaced by an arbitrary decision of an authority. Contrary to the Deng Principles, which refer to displacement "as a result or to avoid the effects", the Mexican definition only refers to displacement "to avoid the effects". A literal interpretation would lead to the exclusion of displacement resulting from or occurring after the event in question. In order to avoid a considerable reduction of the intended scope of protection that would frustrate the purpose of the norm, it would be highly advisable to take advantage of the fact that the law is still in the parliamentary process and amend this subparagraph in the sense of the Guiding Principles.



Displacement (Arts. 22-26). This entity will centralise all issues related to internal displacement, including the design of the National Programme for the Prevention and Attention to Internal Forced Displacement and the maintenance of a National Register of Victims of Internal Forced Displacement (Art. 24).

The latest known steps of this bill is that it was presented in the Senate in April 2018, and sent to the Human Rights and Legislative Studies commissions<sup>571</sup>. A nivel subnacional, los Estados federados de Guerrero y de Chiapas han aprobado sus propias legislaciones sobre desplazamiento interno en las que se incluyen las catástrofes naturales como causa del mismo<sup>572</sup>.

### 2.3. Europe

In Europe, the most significant numbers of IDPs are found mainly in Turkey and countries in Eastern Europe or formerly part of the Republic of Yugoslavia<sup>573</sup>. Population movements have primarily been linked to ethnically based internal

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<sup>571</sup> COORDINACIÓN DE COMUNICACIÓN SOCIAL DEL SENADO DE LA REPÚBLICA (México), "Presentan propuesta de ley para atender a víctimas de desplazamiento forzado interno", *Boletines*, 3 April 2018 (last access: 10/05/2020). The explanatory memoranda of both laws state that population displacement in Chiapas and Guerrero has been occurring for decades due to a variety of causes such as the impact of natural phenomena like earthquakes, hurricanes, volcanic eruptions and large-scale landslides, combined with the socio-environmental vulnerability of the affected communities.

<sup>572</sup> MEXICO: *Decree N. 158: Law for the Prevention of and Response to Internal Displacement in the State of Chiapas*, 22 February 2012; *Decree No. 487: Law for the Prevention of and Response to Internal Displacement in the State of Guerrero*, 22 February 2012. The explanatory memoranda of both laws state that population displacement in Chiapas and Guerrero has been occurring for decades due to a variety of causes such as the impact of natural phenomena like earthquakes, hurricanes, volcanic eruptions and large-scale landslides, combined with the socio-environmental vulnerability of the affected communities (vid. *Decree N. 158*, p. 2; *Decree No. 487*, p. 4).

<sup>573</sup> CoE, "Explanatory memorandum by Mrs Terezija Stoisits, Austria, Socialist Group", in: *Report from the Committee on Migration, Refugees and Population: Internal displacement in Europe* (Doc. 9989), 31 October 2003, par. 10, reporting between 3.2 and 3.7 million internally displaced persons in Europe when the report was written. The Report estimated that in 2002 there were between 400,000 and 1 million internally displaced persons in Turkey (2 million according to some NGOs); 570,000 IDPs in Azerbaijan; between 410,000 and 520,000 IDPs in Bosnia and Herzegovina; between 300,000 and 500,000 IDPs in the Russian Federation; between 288,000 and 480,000 IDPs in Serbia and Montenegro; between 267,000 and 278,000 IDPs in Georgia; between 210,000 and 265,000 IDPs in Cyprus; 50,000 to 72,000 IDPs in Armenia; 22,000 to 34,000 IDPs in Croatia; 10,000 IDPs in Moldova and between 7,500 and 20,000 IDPs in "the former Yugoslav Republic of Macedonia" (ibid., par. 11).

These figures were updated in a 2018 report, estimating that there were 1,312,000 IDPs in Turkey; between 582,000 and 789,000 IDPs in Azerbaijan; 98,000 IDPs in Bosnia and Herzegovina; between 208,000 and 275,000 IDPs in Georgia; between 228,125 and 272,000 IDPs in Cyprus; and between 1,582,565 and 1,762,000 IDPs in Ukraine. Additionally, IDMC estimated that in 2016 there were 31,000 IDPs in Italy due to disasters, 22,600 IDPs in the Russian Federation (19,000 due to conflict and 3,600 due to disasters), as well as 17,000 IDPs in Kosovo due to conflict. The 2018 report also noted that the number of IDPs was considerably lower in other countries in Europe and was mainly related to natural disasters (vid. CoE, "Explanatory memorandum by Mr Killion Munyama, rapporteur", in: *Report from the Committee on Migration, Refugees and Population: Humanitarian needs and rights of internally displaced persons in Europe* (Doc. 14527), 09 April 2018, pars. 33-34).

conflicts<sup>574</sup>, with environmental disturbances having little impact on internal displacement<sup>575</sup>. The exception is Italy, where 80,000 IDPs were recorded in 2009 due to several earthquakes in Aquila<sup>576</sup>.

The CoE's and the EU's action has primarily focused on ensuring respect for the displaced populations' human rights and promoting the incorporation of the UN Guiding Principles into national domestic law. Besides, in the case of the EU, noteworthy is the humanitarian assistance it has been providing to displaced populations in third countries, including non-European countries, who have been forced to flee their homes as a result of conflict or natural disasters.

### 2.3.1. The Council of Europe

In 2003, on the occasion of a motion for a recommendation on internal displacement in Europe tabled in 2001<sup>577</sup>, the Parliamentary Assembly's Committee on Migration, Refugees and Population prepared a report on the issue<sup>578</sup>. In this document, the CoE noted with concern that more than ten Member States were facing situations of internal displacement on their territories<sup>579</sup>. At the same time, it highlighted the well-known lack of a legally binding international instrument to protect and safeguard IDPs' fundamental rights<sup>580</sup>.

In the Recommendation it adopted in 2003, the Parliamentary Assembly urged the Committee of Ministers to examine the situation of displaced populations in the Member States concerned, paying particular attention to their respective domestic legislation's conformity with the Deng Principles<sup>581</sup>. The Recommendation made

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<sup>574</sup> CoE, “Explanatory memorandum by Mrs Terezija Stoisits, Austria, Socialist Group”, *op. cit.*, par. 12. CoE, *Resolution No. 2214 (2018) of the Parliamentary Assembly on Humanitarian needs and rights of internally displaced persons in Europe* (PA/Res(2018)2214), 25 April 2018, par. 4.

<sup>575</sup> Cf. the numbers of those displaced by natural disasters and those displaced by conflict according to the estimations reported in footnote 573 *supra*.

<sup>576</sup> CoE, “Explanatory memorandum by Mr Killion Munyama, rapporteur”, *op. cit.*, par. 65. IDMC reported that in 2016 there were still 31,000 people internally displaced in Italy due to natural disasters and mainly to the Aquila earthquake. Although many of the original 80,000 IDPs from Aquila had been relocated to newly built accommodation facilities, they reported dissatisfaction with conditions there (in *id.*).

<sup>577</sup> CoE, *Motion for a recommendation tabled by Mr Iwinski and others on Internal displacement in Europe* (Doc. 9247), 08 October 2001.

<sup>578</sup> CoE, “Explanatory memorandum by Mrs Terezija Stoisits, Austria, Socialist Group”, *op. cit.*

<sup>579</sup> *Ibid.*, par. 11

<sup>580</sup> *Ibid.*, par. 19.

<sup>581</sup> CoE, *Recommendation No. 1631 (2003) of the Parliamentary Assembly on Internal displacement in Europe* (PA/Rec(2003)1631), 25 November 2003.

particular reference to Turkey, Azerbaijan, Serbia and Montenegro, Bosnia and Herzegovina, the Russian Federation, Georgia, Cyprus, Armenia, Croatia, Moldova and the former Yugoslav Republic of Macedonia. It called on them to review their national legislation to bring it into line with the Guiding Principles; to ensure that existing legislation concerning IDPs is fully implemented, especially at the local level; and to systematically use the UN Guiding Principles as a basis for their present and future policies and programmes in support of IDPs<sup>582</sup>. It also called on the Committee of Ministers to promote the Guiding Principles generally at the European level<sup>583</sup>.

As evidenced by the Committee of Ministers in its response to the Parliamentary Assembly's Recommendation, several of the Guiding Principles on Internal Displacement are already incorporated in existing binding instruments of the CoE, including the ECHR<sup>584</sup>. For example, according to their obligations under articles 2, 3 and 5 ECHR, Member States must take appropriate measures to prevent acts that may violate the right to life, physical integrity, liberty and security of IDPs, including safeguarding the civilian character of any IDP camps, while effectively investigating alleged violations of these rights. Nor may it return IDPs to areas where they face a real risk of being subjected to treatment contrary to Articles 2 and 3 ECHR. Another example is the Member States' obligation to take appropriate measures to protect the IDPs possessions and property under Article 1 of the Protocol to the Convention or facilitate the reunification of families separated by internal displacement following Article 8 ECHR, which guarantees the right to private and family life<sup>585</sup>.

Notwithstanding the above, the Committee of Ministers adopted a Recommendation in 2006 advising Member State governments to take the UN's guiding principles and other relevant international human rights or humanitarian law instruments as a reference when drafting their domestic legislation and practice on internal displacement<sup>586</sup>. The Recommendation also invited the Member States to

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<sup>582</sup> Id.

<sup>583</sup> Id.

<sup>584</sup> CoE, *Reply from the Committee of Ministers to Recommendation No. 1631 (2003) on Internal Displacement in Europe* (Doc. 10247), 2 July 2004, par. 9.

<sup>585</sup> Vid. CoE, *Recommendation No. 6 of the Committee of Ministers to member states on internally displaced persons* (CM/Rec(2006)6), 5 April 2006, pars. 5-6. CoE, "Explanatory memorandum by Mr Killion Munyama, rapporteur", *op. cit.*, par. 74.

<sup>586</sup> CoE, *Recommendation No. 6...*, *op. cit. supra*, par. 1.

develop additional international instruments to fill the gaps in international law regarding IDPs' treatment<sup>587</sup>.

On the occasion of the 20th anniversary of the Deng Principles on Internal Displacement, the Parliamentary Assembly adopted a Resolution in 2018<sup>588</sup> expressing alarm by the fact that, within Europe, more than 4 million people were displaced within their own countries due to armed conflict and violence<sup>589</sup> and, in a considerably smaller proportion, to natural disasters<sup>590</sup>. In not a few cases, such as Cyprus and Azerbaijan, most IDPs had been forcibly displaced decades ago and were still displaced. In Georgia, meanwhile, new forced population movements in recent years have added to long-term displacement<sup>591</sup>. Finally, Ukraine is the European country where internal population movements have occurred most recently due to Russia's conflict and the annexation of Crimea and Sevastopol, and continue today<sup>592</sup>.

In the report that served as a basis for adopting the 2018 resolution<sup>593</sup>, the rapporteur reiterated that the UN Guiding Principles contain several basic standards to be respected globally, to which the report refers<sup>594</sup>. More noteworthy, however, is the spokesperson's regret that there is no legal instrument or treaty in Europe comparable to the Kampala Convention and the regional scope of the latter<sup>595</sup>. In this vein, the rapporteur not only acknowledged that "[his] report is guided by the spirit of the Kampala Convention in its analysis of the humanitarian needs of IDPs in Europe"<sup>596</sup>. He also called for incorporating the general principles of the African Union Convention into domestic and international law in Europe<sup>597</sup>.

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<sup>587</sup> Ibid., par. 13.

<sup>588</sup> CoE, *Resolution No. 2214 (2018) of the Parliamentary Assembly...* (PA/Res(2018)2214), *op. cit.*, par.1.

<sup>589</sup> Id. Also, CoE, *Motion for a resolution tabled by Mr Chikovani and others addressing the humanitarian needs of internally displaced persons: recent lessons and future challenges in Europe* (Doc. 13973), 03 February 2016.

<sup>590</sup> Vid. CoE, "Explanatory memorandum by Mr Killion Munyama, rapporteur", *op. cit.*, pars. 33-34 and footnote 573 *supra*.

<sup>591</sup> CoE, *Resolution No. 2214 (2018) of the Parliamentary Assembly...* (PA/Res(2018)2214), *op. cit.*, par.1. CoE, *Motion for a resolution tabled by Mr Chikovani...* (Doc. 13973), *op. cit.*

<sup>592</sup> Vid. footnote *supra*.

<sup>593</sup> CoE, *Report from the Committee on Migration, Refugees and Population...*, *op. cit.* (Doc. 14527), 09 April 2018.

<sup>594</sup> CoE, "Explanatory memorandum by Mr Killion Munyama, rapporteur", *op. cit.*, pars. 2 and 74, the latter listing the IDPs' rights that must be respected and enforced.

<sup>595</sup> Ibid., par. 8.

<sup>596</sup> Id. [possessive pronoun changed].

<sup>597</sup> Ibid., par. 68.

Moving on to Member States' practical implementation of the recommendations received from the various COE instances, only ten European countries have developed policies or normative frameworks related to internal displacement<sup>598</sup>. All of them are countries heavily affected by population movements caused by conflict or violence and primarily located in Eastern Europe<sup>599</sup>. This reality explains why only two of them have paid attention to displacement resulting from natural disasters. These are Azerbaijan<sup>600</sup> and Ukraine<sup>601</sup>, which have national laws that include natural disasters as a cause of displacement in their respective IDP definitions.

In Ukraine, Law No. 1706-VII restricts IDP status only to Ukrainian citizens permanently residing in the country [Art. 1 (1)], leaving foreigners residing in the territory at the time of the event that triggered displacement wholly unprotected. Furthermore, registration of IDP status, as provided for in Articles 4 and 5, is a prerequisite for accessing IDP benefits on employment, pension benefits, mandatory state social insurance, social services, and education (Art. 7).

Access to registration is relatively easy, as it does not require proof of the facts that gave rise to the displacement, as these are situations that, due to their gravity, are in the public domain. In particular, Article 1 (1) states that the circumstances of displacement are considered known, and therefore do not require proof, when information about them is contained in the official records ("messages") of the High Commissioner of the United Nations Commission on Human Rights, the Organisation for Security and Cooperation in Europe, the International Committee of the Red Cross, or the Ukrainian Parliament Commissioner for Human Rights and have been published on the websites of these organisations. The fact of internal displacement shall also be deemed to be known when authorised State bodies have taken decisions on this matter. Furthermore, to avoid the lack of registration, and the resulting deprotection, because registration centres are far from the places where victims have been displaced, Article

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<sup>598</sup> According to the information provided by the GLOBAL PROTECTION CLUSTER, *Global Database on IDP Laws and Policies*, *op. cit.*

<sup>599</sup> Namely, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Montenegro, Russian Federation, Serbia, Turkey and Ukraine (vid. footnote *supra.*).

<sup>600</sup> AZERBAIJAN, *Law No. 668-IQ of 1999 on IDP (Internally Displaced Person) and Refugee Status*, 21 May 1999.

<sup>601</sup> UKRAINE, *Law No. 1706-VII, on Ensuring Rights and Freedoms of Internally Displaced Persons*, November 2014.

4.3 establishes that IDPs can register with the local state administration of the place where they *de facto* reside.

In contrast, Azerbaijani Law No. 668-1Q not only does not distinguish between foreigners and citizens, but also provides for an improper case of internal displacement. This is the case where an Azerbaijani citizen, permanently residing in a third country, is forced to move back to Azerbaijan territory due to military aggression, natural or human-made disaster in the country of residence (Art. 1). In any case, to obtain IDP status, it is necessary to apply for recognition to the competent executive authority (Art. 10), which has one month to decide on the application (Art. 12). The beneficiaries of IDP status are guaranteed a series of additional rights that ensure their basic needs for accommodation, food and assistance services are covered (Art. 11), as well as access to durable solutions to displacement such as assistance in finding a job (Art. 16) or a new place of residence (Art. 17).

### **2.3.2. The European Union**

The EU has shown strong support for the UN Guiding Principles on Internal Displacement by systematically promoting these principles' inclusion in international and national law<sup>602</sup>. Nevertheless, EU action in the field of internal displacement related to environmental factors has mainly focused on assisting victims of natural or human-made disasters, including those who have fled as a result.

In this sense, the EU's humanitarian assistance has been less focused on intra-EU displacement and more on the international scene. Therefore, these EU-funded humanitarian aid operations have not been primarily aimed at assisting European citizens in the Member States, except in highly exceptional gravity cases<sup>603</sup>, but rather at

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<sup>602</sup> EUROPEAN COMMISSION, Factsheet: Forced displacement (last access: 24/03/2021).

<sup>603</sup> Vid. EU, *Council Regulation (EU) 2016/369 of 15 March 2016 on the provision of emergency support within the Union*, OJEU L 70, 16 Mars 2016, pp. 1-6.

Until the adoption of the Regulation 2016/369, there was no independent and sufficiently predictable instrument at the Union level to help Member States alleviate a disaster's economic impact on the affected population and thus prevent that their basic needs would be uncovered (*ibid.*, recitals 2 and 4). There were other mechanisms such as the EU Solidarity Fund - which was set up in the aftermath of the major floods in Central Europe in the summer of 2002 - or the European Civil Protection Mechanism to provide financial assistance to a Member State facing an emergency situation, but both are limited in scope and scale (*ibid.*, recital 5). For example, following the earthquake that struck the Italian city of Aquila and its province in 2009, EUR 493.7 million was mobilised from the European Union Solidarity Fund for Abruzzi. However, a 2013 report to the European Parliament found that EU financial resources had been misspent and had gone in part to companies linked to organised crime (*vid.*, EUROPEAN PARLIAMENT,

supporting third countries and their populations in conflict or disaster situations. This humanitarian assistance is an expression of the principle of international solidarity that underpins the EU's external action [Art. 21 (1) TUE]<sup>604</sup> and helps avoid or minimise the risk of victims being forced to move within the country and, ultimately, embark on dangerous migratory routes to neighbouring countries or the European continent itself.

Article 21 TEU defines the general purposes that should guide the EU's external action, including "[assistance to] populations, countries and regions confronting natural or man-made disasters;"<sup>605</sup>. The legal basis on which the EU provides international humanitarian assistance is completed by Article 214 of the TFEU. In particular, paragraph 1 states that "[t]he Union's operations in the field of humanitarian aid (...) shall be intended to provide ad hoc assistance and relief and protection for people in third countries *who are victims of natural or man-made disasters*, in order to meet the humanitarian needs resulting from these different situations"<sup>606</sup>.

The main objectives, principles and procedures for implementing EU humanitarian aid operations are laid down in Council Regulation (EC) No. 1257/96 on

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*Working Document on Special Report No 24/2012 - The European Union Solidarity Fund's response to the 2009 Abruzzi earthquake: The relevance and cost of the operations*, 23 October 2013, p. 9). According to a newspaper article, almost a decade after the earthquake, only half of the centre of Aquila appeared to have been rebuilt. Vid. LOTZ, C., "Can L'Aquila rise from the rubble of the 2009 earthquake?", *Apollo*, 24 March 2017 (last access: 12/05/2020).

The migration crisis that the EU experienced during 2015 changed the normative situation described above. The European Council of 19 February 2016 called on the Commission to equip itself with an instrument that would allow it to provide humanitarian assistance internally, supporting those Member States that had to cope with large numbers of refugees and migrants (EU, *Council Regulation (EU) 2016/369...*, *op. cit.*, recital 3). The result was the 2016 Regulation, which establishes the framework for granting emergency assistance from the Union in the event of an ongoing or potential natural or human-made disaster of exceptional character [Art. 1 (1)]. It is not necessary for the disaster to have occurred on the EU territory itself, as it may have taken place in a third country. What is relevant is that, due to its scale and impact, it has severe wide-ranging humanitarian consequences in one or several Member States [Art. 1 (1)]. For example, the 2015 migration crisis was caused by a combination of natural and human factors in North and Horn of Africa and the Middle East, but resulted in the collapse of the assistance capacities of European States, which were overwhelmed by the massive influx of migrants and refugees and were unable to care for their local populations at the same time. Finally, it should be noted that the 2016/369 Regulation provides for a mechanism of last resort, as it can only be used when no other instrument available to the Member States or the Union is sufficient [Art. 1 (1)].

<sup>604</sup> Vid. also, EU, *Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission: The European Consensus on Humanitarian Aid*, OJEU (C/25), 30 January 2008, par. 1, noting that "[h]umanitarian aid is a fundamental expression of the universal value of solidarity between people and a moral imperative".

<sup>605</sup> EU, *Consolidated versions of the Treaty on European Union*, OJEU (C 326), 26 October 2012, p. 29 [verb form changed to noun].

<sup>606</sup> EU, *Consolidated version of the Treaty on the Functioning of the European Union*, OJEU (C 326), 26 October 2012, p. 143 [italics added].

humanitarian aid<sup>607</sup>. According to Article 1, EU humanitarian aid operations shall be aimed at providing assistance, relief and protection, without discrimination of any kind, to populations in third countries affected by natural or human-made disasters and similar emergencies, such as war or conflict. The Regulation pays particular attention to the most vulnerable populations or those belonging to developing countries. Humanitarian assistance will be maintained for as long as necessary to meet the humanitarian needs resulting from these different situations. It can also cover pre-preparedness and preventive actions for disasters or similar exceptional circumstances.

In 2007, the Council and the Representatives of the Member States, as well as the European Parliament and the European Commission, adopted a joint declaration setting out their "common vision" on the approach that European action, by both Member States and the Union, should take in the field of humanitarian aid in third countries.<sup>608</sup>

In this European consensus on humanitarian aid, the three leading EU institutions and the Member States recognise that humanitarian crises are becoming increasingly severe due to several factors: the changing nature of conflicts, climate change, competition for access to energy and control of natural resources, poor governance, or extreme poverty<sup>609</sup>. Indeed, the same report recognises that precarious situations make the poorest layers of society even more vulnerable, being the primary victims of these humanitarian crises that result in massive movements of people, both refugees and internally displaced persons<sup>610</sup>. This situation is aggravated by the fact that the most vulnerable people live mostly in developing countries, which are also the least prepared to deal with natural disasters and the effects of climate change<sup>611</sup>.

The report echoes projections that the need for humanitarian aid could increase in the short to medium term due to demographic, political, security and environmental factors, including climate change<sup>612</sup>. Consequently, meeting humanitarian needs is

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<sup>607</sup> EU, *Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid*, OJEU (L 163), 02 July 1996, pp. 1-6.

<sup>608</sup> COUNCIL OF THE EUROPEAN UNION, *Joint Statement...The European Consensus on Humanitarian Aid*, *op. cit.*, par. 6.

<sup>609</sup> *Ibid.*, par. 2.

<sup>610</sup> *Id.*

<sup>611</sup> *Id.* Vid. also par. 75, referring to the EU's commitment to enhance disaster risk reduction and disaster preparedness in developing countries.

<sup>612</sup> *Ibid.*, par. 37.



likely to require an increase in the resources available internationally, particularly by broadening the donor base<sup>613</sup>.

The European institutions and the Member States also showed their consensus on the vital role that civil protection resources play in humanitarian interventions in natural disasters and technical or environmental emergencies<sup>614</sup>. The same joint statement underlines that the Member States increasingly prefer to use their civil protection resources in humanitarian actions in third countries in the event of natural or human-induced catastrophes<sup>615</sup>.

At the EU level, recourse to civil protection capabilities takes place through the European Civil Protection Mechanism. The legal basis for European civil protection lies in Article 196 TFEU, further developed by Decision No. 1313/2013/EU of the European Parliament and the Council<sup>616</sup>. This mechanism's main objective is to strengthen cooperation between the Union and the Member States by facilitating coordination between them in the field of civil protection, thereby improving the effectiveness of systems for prevention, preparedness and response to natural or human-made disasters [Art. 196 (1) TFEU and Art. 1 (1) Decision No. 1313/2013/EU]<sup>617</sup>.

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<sup>613</sup> Id.

<sup>614</sup> Ibid., par. 59.

<sup>615</sup> Ibid., par. 58.

<sup>616</sup> EU, *Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism*, OJEU (L 347), 20 December 2013, pp. 924-947.

<sup>617</sup> The European civil protection mechanism has been strengthened at intra-EU following the EU, *Decision (EU) 2019/420 of the European Parliament and of the Council of 13 March 2019 amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism*, OJEU (LI 77/1), 20 March 2019, pp. 1-15. The new Decision was motivated by the European authorities' awareness that disasters, whether natural or human-induced, are becoming more frequent, extreme and complex, and are being aggravated by the effects of climate change. Such disasters can occur anywhere in the world and their human, environmental, social and economic consequences can reach previously unknown magnitudes regardless of national borders (recital 3).

Consequently, the reform aims to strengthen the capacity of the EU and its Member States to prepare for and cope with possible disasters within the EU's territory. To this end, the Decision seeks to optimise the Union's overall support to disaster risk management and to reinforce Member States' levels of prevention and preparedness (recitals 5-9). At the same time, it intends to reinforce the collective capacity to respond to disasters (recitals 11-13).

The explanatory memorandum of the Decision highlights that the EU Mechanism, which relies on voluntary offers of mutual assistance, does not always ensure that sufficient capabilities are in place to respond satisfactorily to basic protection requirements, particularly when Member States have been simultaneously affected by recurrent and unexpected disasters (recital 4). To address this shortcoming, the 2019/420 Decision, apart from reinforcing existing comprehensive capabilities, establishes the so-called RescEU capabilities (Art. 12).

RescEU is a last resort response to extreme situations when existing national capacities, and those previously committed by Member States to the European Civil Protection Pool, cannot alone ensure an effective response to different types of disasters [Art. 12 (1)]. Nevertheless, Article 12 (10) of the Decision only provides that EU rescue capabilities may be deployed to third countries when the effects of

It is important to note that the protection to be ensured by the Union Mechanism covers not only and above all persons, but also *the environment* and property, including cultural heritage [Art. 1 (2) Decision No. 1313/2013/EU], while the scope of application of the Mechanism is primarily intra-EU<sup>618</sup>. However, in the case of actions aimed at helping to cope with the immediate adverse consequences of a disaster, the civil protection mechanism can be directly activated both inside and outside the Union's territory [Art. 196 (1) (c) TFEU and Art. 2 (1) (b) Decision No. 1313/2013/EU].

Therefore, humanitarian action and civil protection are clearly interlinked. Indeed, organically, both operate under the Commission's Directorate-General for Civil Protection and Humanitarian Aid Operations (DG ECHO). However, they should not be confused. Arguably, civil protection has an instrumental role in humanitarian aid. That is, it is one of the instruments through which the EU and the Member States can provide humanitarian assistance in third countries in the event of an emergency, but it is not the only one<sup>619</sup>.

Currently, DG ECHO has ex-ante contractual agreements with more than two hundred partners, mainly NGOs, UN agencies and international organisations such as the International Red Cross/Crescent<sup>620</sup>. Once an event requiring humanitarian assistance has occurred, DG ECHO's humanitarian experts carry out an initial assessment of the situation on the ground, which then serves as the basis for the disbursement of funds. DG ECHO's working method can thus be defined as a "needs-based approach" as funding depends on the humanitarian needs brought forward during

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a disaster outside the Union are likely to significantly affect one or more Member States or their citizens. In such a case, Member States may refuse to deploy their own personnel.

<sup>618</sup> In general terms, Art. 196 (1) (c) TFEU provides, among the objectives of the Mechanism, to promote the coherence of actions undertaken by the Union and Member States at international level in the field of civil protection. Pursuant to this provision, Arts. 2 (1) (a), 5 (2) and 13 (3) of the Decision provide for the possibility for the Commission to deploy a team of experts on site outside the Union to advise on prevention and preparedness measures at the request of a Member State, a third country or the United Nations or its agencies. For its part, Article 28 of the Decision regulates the participation in the civil protection mechanism of international organisations and third countries, including acceding countries, candidate countries and potential candidates.

<sup>619</sup> COUNCIL OF THE EUROPEAN UNION, *Joint Statement...The European Consensus on Humanitarian Aid*, *op. cit.*, par. 58, clarifying that "European humanitarian aid *may draw on various* Community and Member State instruments, including civil protection resources, which cover a wide range of State-owned and non-State assets" [italics added].

<sup>620</sup> EUROPEAN PARLIAMENT, Fact Sheets on the European Union: Humanitarian Aid (last access: 12/05/2020).

the assessment<sup>621</sup>. Accordingly, DG ECHO does not implement humanitarian aid programmes on its own, but finances operations conducted by its partners<sup>622</sup>.

In contrast, the European Civil Protection Mechanism involves direct humanitarian intervention by the Union in the area where the disaster has occurred. As such, it requires the prior authorisation of the affected country, whether or not it is a Member State, and it is precisely its request for assistance, addressed to the Emergency Response Coordination Centre (ERCC)<sup>623</sup>, that triggers the Civil Protection Mechanism<sup>624</sup>. It is then that Member and Participating States<sup>625</sup> offer the assistance resources, such as personnel or equipment, at their disposal. Once the requesting country has accepted this offer, the ERCC coordinates the dispatch and delivery of the assistance pledged, and may also deploy a team of civil protection experts<sup>626</sup>. After the humanitarian assistance has been delivered and the emergency is over, the civil protection teams, if any, return and the civil protection mechanism is definitively deactivated<sup>627</sup>.

The EU Civil Protection and Humanitarian Aid Operations department has an annual humanitarian budget of just over €1 billion<sup>628</sup>. For the period 2014-2020, €7.1 billion has been allocated to the Humanitarian Aid Instrument, being the EU the world's largest humanitarian aid donor and providing a large share of global emergency relief funds to victims of natural or human-made disasters<sup>629</sup>. While part of the funds come directly from the Member States, the largest share comes from the very EU budget<sup>630</sup>.

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<sup>621</sup> Id.

<sup>622</sup> Id.

<sup>623</sup> The ERCC is defined as the "heart of the EU Civil Protection Mechanism". It coordinates the delivery of assistance to disaster-affected countries, such as relief items, technical expertise, civil protection teams and specialised equipment. In this way, the ERCC acts as a coordination centre between all EU Member States, the 6 additional participating states, the affected country and experts in civil protection and humanitarian aid. The centre operates 24 hours a day, 7 days a week, managing a pre-committed pool of assistance from EU Member States, participating states and the UK during the transition period, which can be deployed immediately. Vid. EUROPEAN COMMISSION, Factsheet: Emergency Response Coordination Centre (last access: 11/02/2020).

<sup>624</sup> EUROPEAN COMMISSION, Factsheet: EU Civil Protection Mechanism (last access: 11/02/2021)

<sup>625</sup> Besides the EU Member States, there are currently 6 participating States in the Mechanism, namely: Iceland, Norway, Serbia, North Macedonia, Montenegro and Turkey (id.).

<sup>626</sup> Id.

<sup>627</sup> Id.

<sup>628</sup> KRALER, A.; KATSIAFICAS, C.; WAGNER, M., "Climate Change and Migration. Legal and policy challenges and responses to environmentally induced migration" (PE 655.591), European Parliament's Committee on Civil Liberties, Justice and Home Affairs, July 2020, p. 70 (last access: 14/09/2020).

<sup>629</sup> EUROPEAN PARLIAMENT, Fact Sheets on the European Union: Humanitarian Aid (last access: 12/05/2020).

<sup>630</sup> Id.

Following the agreement reached in November 2020 under the German Presidency, the volume of resources allocated by the EU to finance humanitarian and civil protection assistance operations is expected to rise to €10.3 billion during the next Multiannual Financial Framework (2021-2027)<sup>631</sup>.

According to the latest Annual Report published in 2020, concerning the humanitarian aid operations that the EU funded in 2019<sup>632</sup>, DG ECHO allocated a total of €2,146 million to humanitarian assistance and civil protection<sup>633</sup>, with the latter accounting for 4% of the total – €95 million<sup>634</sup>. The table below shows the most significant humanitarian aid operations related to environmental disruptions financed by the EU during 2019.

**Table 17-Main humanitarian aid operations related to environmental disruptions financed by the EU during 2019<sup>635</sup>**

<b>Region/country</b>	<b>Environmental disruption</b>	<b>Funded action</b>	<b>Amount allocated (in million €)</b>
<b>Kenya</b>	Sudden-onset disasters	Disaster Preparedness	<b>1.3</b>
<b>Kenya</b>	Drought/Floods	Emergency response	<b>3.15</b>
<b>Somalia</b>	Riverine floods	Emergency response	<b>63</b>
<b>Southern Africa and the Indian Ocean</b>	Cyclones	Humanitarian assistance and disaster preparedness	<b>66</b>
<b>Colombia</b>	Conflict/natural	Protection,	<b>11</b>

<sup>631</sup> Id.

<sup>632</sup> EUROPEAN COMMISSION, *Report from the Commission to the European Parliament and the Council. Annual report on the European Union's humanitarian aid operations financed in 2019* (COM(2020) 358 final), 7 August 2020, 12 pp.

<sup>633</sup> Ibid., “Table ECHO 2019 budget implementation”, pp. 11-12

<sup>634</sup> Id.

<sup>635</sup> The table has been compiled from the information contained in the Annual report on the European Union's humanitarian aid operations financed in 2019 (vid. footnote 632 *supra*). The report cites other regions and countries where the EU has carried out humanitarian assistance operations in 2019, mainly related to food security, which have not been included in the table because the report did not specify whether this need for multi-sectoral humanitarian aid was caused by environmental disruption or conflict.

	disasters	health care, water and sanitation, education and disaster preparedness.	
<b>Haiti</b>	Not specified	Disaster preparedness	<b>3</b>
<b>Rohingya refugee camps (Myanmar/Bangladesh)</b>	Locations extremely prone to suffer natural disasters	Basic health care, water, sanitation, shelter, nutrition, education, protection, psychosocial support and disaster risk reduction.	<b>36</b>
<b>Philippines</b>	Conflict/natural disasters	Humanitarian assistance to conflict-affected people in Mindanao, and emergency response to natural disasters and disaster preparedness actions.	<b>6.7</b>

Finally, the European Civil Protection Mechanism was activated 102 times during 2020<sup>636</sup>. While more than 2/3 of the requests for assistance were related to the COVID-19 pandemic<sup>637</sup>, the Mechanism was also used to respond to humanitarian emergencies created by heavy floods in Ukraine, Niger and Sudan, by an earthquake in Croatia or by tropical cyclones in Latin America and Asia<sup>638</sup>.

## 2.4. Asia

Asian countries continue to view the issue of internal displacement as a domestic question of individual States. This shared view explains why there has been no multilateral response to the enormous challenge posed by the high number of IDPs afflicting the Asian continent. None of the international regional or sub-regional integration organisations, such as ASEAN or SAARC, have taken an active role in the protection of IDPs by, for example, promoting the implementation of the UN Guiding Principles into their Member States' national laws or the adoption of a regional treaty, similar to the Kampala Convention in Africa<sup>639</sup>. An illustrative example of this absence can be found in the three-day regional conference held in February 2000 in Bangkok to develop strategies to address internal displacement in Asia. It brought together representatives of non-governmental and international organisations, academic institutions and journalists from 16 Asian countries. However, neither ASEAN nor SAARC sent delegates to the meeting<sup>640</sup>.

Their scrupulous adherence to a rigid and traditionalist conception of the principle of sovereignty, devoid of humanitarian considerations, means that they avoid positioning themselves on issues considered Member States' internal affairs. Thus, Asian international organisations have yet to tread the path that led the OAU to move

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<sup>636</sup> EUROPEAN COMMISSION, Factsheet: Emergency Response Coordination Centre (last access: 11/02/2020).

<sup>637</sup> *Id.*

<sup>638</sup> EUROPEAN COMMISSION, Factsheet: EU Civil Protection Mechanism (last access: 11/02/2021).

<sup>639</sup> COHEN, R., "Addressing Internal Displacement in Asia: A Role for Regional Organizations", *Brookings*, March 2003, pp. 1, 5-6. BANERJEE, P., "IDP protection at the national level in South Asia", *Forced Migration Review*, Special Issue: Putting IDPs on the map: achievements and challenges, December 2006, p. 18. LECAMWASAM, M., "The Internally Displaced in South Asia: Lessons from Kampala", *Asia-Pacific Journal on Human Rights and the Law*, Vol. 15, Issue 1-2, April 2014, pp., 168-173. PHIL, O., "Regionalizing Protection: au and asean Responses to Mass Atrocity Crimes against Internally Displaced Persons", in: Charles T. Hunt, C.T.; Morada, N.M. (eds.), *Regionalism and Human Protection: Reflections from Southeast Asia and Africa*, Brill; Nijhoff, 2018, pp. 18-19.

<sup>640</sup> COHEN, R., "Addressing Internal Displacement in Asia: A Role for Regional Organizations", *op. cit.*, p. 1.

from a position of non-intervention to one of non-indifference to the inalienable human rights of IDPs<sup>641</sup>.

It follows that the most significant progress in IDP protection has been made at the national level. According to the Global Protection Cluster database on IDP Laws and Policies, only Kyrgyzstan has a national law on internal displacement covering IDPs displaced by environmental disturbances<sup>642</sup>. In Indonesia, there is a law from 2007 on disaster management that includes some provisions referring generically to the protection and assistance of those forced to leave their place of habitual residence due to a disaster – who are referred to in the legislation as refugees<sup>643</sup>. Finally, in the Philippines, a 2019 Law for protecting IDPs' rights and forbidding arbitrary displacement is pending<sup>644</sup>. It encompasses displacement caused by development projects and natural or human-made disasters<sup>645</sup>.

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<sup>641</sup> PHIL, O., “Regionalizing Protection: au and asean Responses to Mass Atrocity Crimes against Internally Displaced Persons”, *op. cit.*, who appreciates that, in the last decades, there has been a shift in ASEAN's position towards strengthening human rights in its Member States, marked by the adoption of the ASEAN Charter on Human Rights in 2007 (pp. 30-31).

<sup>642</sup> KYRGYZSTAN, *Law No.133 (2002) About internal migration*, July 2002 (only available in Russian). For an in-depth analysis of how environmental factors, including climate change, are impacting on internal migration in Kyrgyzstan, vid. CHANDONNET, A. ET AL., *Environment, climate change and migration in the Kyrgyz Republic*, Bishkek (Kyrgyzstan), IOM, 2016, 111 pp. (last access: 15/05/2020). The study identifies the main reasons for environmental migration in Kyrgyzstan as: i) sudden natural disasters, mainly landslides; ii) slow deterioration of the environment; iii) health problems caused by a harmful environment; iv) poor water and soil quality, water shortages, drought and crop failure; and v) man-made disasters (p. 91).

Thanks to the authors' analysis of Kyrgyzstan's legislative framework, we know that the following categories of environmentally displaced persons are considered as forced internal migrants and are, therefore, protected by the Law No, 133 (2002) and its implementing Regulation No. 222 (2004). These are:

- "a) environmental migrants: citizens who left their place of residence and moved based on a decision of the Government of the Kyrgyz Republic to other location within the Kyrgyz Republic due to drastic deterioration of the environment or natural disasters;
- b) migrants on sites of natural disasters, major accidents or catastrophes: citizens who left their residence as a result of an emergency situation within the territory of their residence in accordance with the Constitutional Law of the Kyrgyz Republic “On Emergency Situation”." (p. 90).

The authors criticise that, according to Article 32 of the Law "On Internal Migration", economic and labour migration is excluded from the notion of forced migration. The authors rightly point out that environmental factors, such as desertification or land degradation, can worsen the economic situation (e.g. because no profitable agricultural activities can be developed), forcing citizens to move to other, less environmentally degraded regions, while not being protected by law (*id.*).

<sup>643</sup> INDONESIA, *Law of the Republic of Indonesia Number 24 of 2007 Concerning Disaster Management*, 26 January 2008.

<sup>644</sup> PHILIPPINES, *Act Protecting the rights of internally displaced persons and penalizing the acts of arbitrary internal displacement, Senate Bill No. 813 (2019)*, 29 July 2019. The bill has undergone its first reading and been referred to the Committees on Justice and Human Rights; Social Justice, Welfare and Rural Development; and Finance, where it remains pending. This legislative initiative had previously been introduced in 2016 by the same senator, Ms. Ana Theresia "Risa" Hontiveros Baraquel (*vid.*

National policies on internal displacement have been more prolific. The table below shows what countries have developed policy frameworks addressing this issue and the type of measures that have been included.

**Table 18-Policy frameworks on internal displacement in Asia countries<sup>646</sup>**

<b>Country</b>	<b>Policy instrument</b>	<b>Prevention measures</b>	<b>Protection and Assistance</b>	<b>Durable Solutions</b>
<b>Afghanistan</b>	2013 - National Policy on Internally Displaced Persons <sup>647</sup>	Yes <sup>648</sup>	Yes <sup>649</sup>	Yes <sup>650</sup>

PHILIPPINES, *Act Protecting the rights of internally displaced persons and penalizing the acts of arbitrary internal displacement, Senate Bill No. 1142 (2016)*, 14 September 2016).

<sup>645</sup> PHILIPPINES, ... *Senate Bill No. 813 (2019), op. cit.*, Section 3 (g) and (h), respectively defining the terms "Internal displacement " and "Internally displaced person or group of persons". From the Draft Law's content, the following points stand out as the most important:

- a) It details all IDPs' rights during and after displacement (Sections 9-10), including the right to receive international humanitarian assistance (Section 13). It regulates return, local integration or resettlement elsewhere as durable solutions to displacement (Sections 11-12). It also establishes civil liability for those who in any way violate or obstruct the exercise of any of the rights and freedoms recognised in the Act (Section 19) and the possibility of obtaining non-monetary reparations (Section 21). Specific measures to prevent environmental displacement are not included as the main environmental factors causing it are addressed in separate laws (see Republic Act No. 9729, also known as the Climate Change Act of 2009; and Republic Act No. 10121, also known as the Disaster Risk Reduction and Management Act of the Philippines of 2010).
- b) It criminalises prohibited acts of arbitrary internal displacement (Sections 6-8), determines the competent jurisdiction to prosecute perpetrators and the sanctions to be imposed (Sections 14-17). It also provides a mechanism to compensate IDPs who have been arbitrarily displaced and to provide them with financial assistance (Sections 18 and 20).
- c) It creates a Joint Congressional Oversight Committee (Section 24) and an Inter-agency Coordination Committee (Section 25) that will oversee compliance with this law.
- d) It sets up a Human Rights Commission (HRC) as the institutional focal point for IDPs (Section 22).

<sup>646</sup> Table compiled from the GLOBAL PROTECTION CLUSTER, *Global Database on IDP Laws and Policies, op. cit.*

<sup>647</sup> AFGHANISTAN, *The National Policy on Internally Displaced Persons*, 25 November 2013. Apart from the ongoing conflicts that have plagued the country since 1978, both nationally and locally, Afghanistan's difficult geography and harsh climatic conditions render the country vulnerable to both rapid-onset natural disasters, such as flash floods, landslides, severe storms and earthquakes, and slow-onset environmental disruptions such as drought and desertification (*ibid.*, p. 14). The 2013 National Policy on IDPs aims to establish "a comprehensive, effective and realistic framework" to guide national authorities at all levels - national, provincial and local - as well as other agencies, humanitarian actors and other stakeholders to ensure a predictable, systematic and coordinated approach to addressing current and future situations of internal displacement in Afghanistan (*ibid.*, pp. 15-16). The policy has been designed along the lines of the Deng Principles, which are incorporated as an annex. Indeed, the strategy adopts the UN definition of IDPs, although it includes two groups that are not explicitly mentioned in the Guiding Principles, namely: (a) returning refugees and migrants deported to Afghanistan who are unable to settle



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in their places of origin due to insecurity resulting from conflict, general violence, disputes, including tribal and land disputes, human rights violations and the presence of mines or other explosive remnants of war; (b) persons or groups of persons displaced as a result of a development project who have not received adequate alternative housing or land or appropriate compensation to enable them to re-establish their lives "in a sustainable manner" (ibid., p. 19).

The 2013 framework was complemented in 2017 by a national policy on return (vid. AFGHANISTAN, *Policy Framework for Returnees and IDPs*, 1 March 2017). This new framework aimed to support the return, resettlement and reintegration of the thousands of Afghans displaced by the war who had begun to return home since 2016. The return not only took place from other regions of the country but also, and mainly, from other neighbouring countries such as Iran or Pakistan, or even from the EU, mostly from Germany (ibid., "overview", pars. 1-8). However, its scope of application is open to "all returnees who are determined to be citizens of Afghanistan and to internally displaced Afghans" (ibid., par. 16). Consequently, Afghans displaced internally or across borders for environmental reasons, and wishing to return to Afghanistan, could also benefit from this regulatory framework.

<sup>648</sup> Preventive measures include early warning and emergency preparedness measures such as the design of contingency plans, mapping of population areas at risk, monitoring of potential disasters, dissemination of early warning information and organisation of education and awareness raising activities. Disaster risk reduction and large-scale development interventions such as infrastructure repair and riverbank reconstruction are also key interventions. The policy also provides for the voluntary relocation to safe areas of communities affected by recurrent hazards, such as seasonal floods or avalanches, which force them to leave their land on a regular basis, and the prohibition of rebuilding in flood plains or other disaster-prone areas. Finally, the strategy recognises early recovery efforts in the aftermath of a disaster as a key element in preventing displacement (ibid., pp. 30 *in fine* and 31).

<sup>649</sup> During the emergency phase, the strategy focuses on life-saving measures to provide IDPs, where necessary, with emergency shelter, medical care, safe water, food, non-food items and protection from harm. In this regard, the strategy refers to the Sphere standards for assessing the needs of the displaced population. Special attention is given to persons with disabilities, the chronically ill, the elderly and other particularly vulnerable persons such as women, children and adolescents (vid. ibid., pp. 34-35). The strategy entrusts the Afghan National Security Forces with the task of ensuring that humanitarian actors can reach populations in need and that the latter, in turn, can access humanitarian assistance and essential services (vid. Ibid., pp. 35-36). The policy is well aware that the personal documents of people fleeing their homes and areas of habitual residence are often lost or destroyed and that IDPs are often unable to obtain or replace such documents while displaced. In this regard, the policy calls for the identification and removal of existing obstacles to their replacement from the current legal system. Special attention is given to the national identity card (tazkera), which is a vital document for all Afghans, as its lack can lead to discrimination, marginalisation and even denial of citizenship and subsequent statelessness. To overcome these problems, the Ministry of Interior is introducing a new E-Tazkera (Electronic National Identification Card), giving priority to IDPs to receive it (vid. ibid, pp. 36-37). Finally, the policy recognises that while IDPs do not lose the rights enjoyed by all Afghans, they may find it more difficult to exercise and benefit from those rights due to their displacement. Relevant rights that must be enjoyed and protected by the Afghan authorities during displacement include: protection of life, integrity, liberty and security; the right to freedom of movement and residence; the right to adequate housing and access to land; the right to means of subsistence; the right to an adequate standard of living (water, food, clothing); the right to health care; the right to family protection; the right to education; the right to property protection and compensation; the right to freedom of expression and access to information; and participation rights, including the right to vote (vid. ibid, pp. 38-49).

<sup>650</sup> The strategy recalls the right of IDPs, as citizens, to settle anywhere in the country, being a manifestation of the constitutionally recognised right to move and choose one's place of residence freely (art. 39). In return, Afghan authorities are obliged to respect the free and informed choice of IDPs regarding their final destination, even if they decide not to return to their places of origin (vid. ibid., p. 49). In the latter case, integration into host communities or resettlement elsewhere does not exclude the right to return to places of origin in the future (vid. ibid., pp. 52 *in fine* and 53). In any case, return shall not be encouraged or forced where it can be carried out in safe and healthy conditions (vid. ibid., pp. 51 *in fine* and 52). Although the strategy requires the development of a National Implementation Plan within six months following its adoption (vid. ibid., p.51), it is the Action Plans to be drawn up by provinces hosting significant numbers of IDPs that are key to finding durable solutions capable of responding to the particular and unique displacement situation in each province. To this end, IDPs are guaranteed their right to information and participation both in the drafting phase of these provincial plans and in their implementation. The Ministry of Refugees and Repatriation must be informed of the provincial action

<b>Bangladesh</b>	2015 - National Strategy on the Management of Disaster and Climate-Induced Internal Displacement <sup>651</sup>	Yes <sup>652</sup>	Yes <sup>653</sup>	Yes <sup>654</sup>
<b>Nepal</b>	2007 - National	Yes <sup>656</sup>	Yes <sup>657</sup>	Yes <sup>658</sup>

plans and is obliged to assist the provincial and local authorities in their implementation, especially with regard to the mobilisation of the necessary financial resources and the allocation of land for IDPs. These plans must be reviewed annually, and each province must submit a follow-up report to the monitoring mechanism, including progress and obstacles found, as well as a plan of action for the year ahead (vid. *ibid.*, pp. 49 in fine and 50).

<sup>651</sup> BANGLADESH, *National Strategy on the Management of Disaster and Climate Induced Internal Displacement*, September 2015. As noted in Annex II, Bangladesh is one of the most vulnerable countries in the world and in Asia to weather-related hazards. Due to its particular geographical features, the country regularly experiences floods, tropical cyclones, storms and droughts. As a result of climate change, these extreme weather events, which are already causing displacement, are expected to increase in frequency and intensity in the coming years, as well as exacerbating sea-level rise and riverbank erosion. Therefore, the strategy aims to strengthen the resilience of communities most exposed to natural disasters and the effects of climate change - i.e. those living in coastal areas or in the Ganges Delta (vid. *ibid.* "background" and "vision, goal and objective of the strategy"). It is interesting to reproduce the Bangladesh strategy's IDP definition as it is an innovative combination of the general definition of IDPs enshrined in the UN Guiding Principles and the Peninsula Principles' adaptation of that definition in the context of climate change-related displacement:

*"Persons, group of persons, households, or an entire community who have been forced or obliged to flee or to leave their homes or places of habitual residence temporarily or permanently or who have been evacuated as a result of disasters caused by sudden and slow-onset climatic events and processes, and who have not crossed an internationally recognized State border."* (*ibid.*, p. 7).

<sup>652</sup> Prevention strategies not only aim to avoid displacement by reducing the risk of natural disasters and improving adaptation to climate change. It also aims to prepare vulnerable communities for possible migration or relocation/resettlement in contexts where local adaptation and prevention is no longer a viable option, such as in the case of sea level rise or desertification. The relevant rights to be protected in this pre-displacement phase are: the right to security, the right to life and the right to development. Vid., *ibid.*, pp. 12-18).

<sup>653</sup> The main objective of the strategy during this phase is to provide the authorities with key guidelines to enable them, once displacement has occurred, to manage internal migratory movement quickly and effectively, providing displaced persons with humanitarian and relief assistance to ensure their essential needs while promoting the rapid recovery of the affected area. Relevant rights during the displacement phase are: protection of life, integrity, liberty and security; right to freedom of movement and residence; right to adequate housing and access to land; right to means of subsistence; right to water, food, clothing and an adequate standard of living; right to health care; and right to family protection. Vid., *ibid.*, pp. 18-21).

<sup>654</sup> The latter part of the strategy is dedicated to preventing protracted displacement by addressing durable solutions such as return or, if return is not possible or desired, through local integration and resettlement/relocation. To this end, the strategy takes into account other policy areas and instruments already in place in Bangladesh that are relevant in the post-displacement phase: Rehabilitation/Resettlement; Urban Development (The National Urban Sector Policy, 2014- Draft); Rural Development [National Rural Development Policy, 2001]; Land Policy (The National Land Use Policy, 2001); Housing Policy (The National Housing Policy, 2008). Vid., *ibid.*, pp. 21-24.

	Policies for Internally Displaced Persons <sup>655</sup>			
<b>Sri Lanka</b>	2016 - National Policy on	Yes	Yes	Yes

<sup>656</sup> Although the strategy includes among its objectives the adoption of preventive and remedial measures to minimise the need for internal displacement in the long term (par. 6.1), the document does not specify the specific policies to develop to achieve this objective. It merely states that "strategies for minimizing internal displacement will be taken in the policies to be adopted by the Government of Nepal" (par. 7.5). The inclusion of internal displacement as a priority area of national development policy (par. 7.1) or the commitment to develop and strengthen the institutional, technical and financial capacity of national authorities at different administrative levels (pars. 7.2, 7.3, 7.4 and 7.13) may contribute to this objective. Dissemination and awareness-raising activities on the causes and negative effects of displacement can also help to this end (par. 7.11).

<sup>657</sup> Paragraphs 8.1 and 8.2 deal respectively with policies relating to the protection of human rights and emergency relief. In general terms, special attention is given to the principle of non-discrimination and equal treatment (pars. 8.1.1-8.1.4), prohibition of arbitrary displacement (pars. 8.1.6 and 8.1.9), protection of property (pars. 8.1.8 and 8.1.10) and political participation rights (par. 8.1.11). Concerning emergency assistance, rapid and unimpeded access to displaced persons is ensured so that they can receive food, health care and be relocated and adequately housed temporarily in a safe place as soon as possible (pars. 8.2.1-8.2.3). Special attention is given to the specific needs of vulnerable groups such as orphan children not having guardians, pregnant women, single women and mothers with small children, disabled and aged persons, who will receive priority assistance (pars. 8.2.4, 8.2.6 and 8.2.7). The strategy also pays attention to the adverse effects that the arrival of displaced persons may have on local communities, providing for the implementation of "necessary programmes" to minimise additional pressures on economic and social infrastructures (par. 8.2.8).

<sup>658</sup> Regarding the search for durable solutions, the strategy prioritises and encourages the voluntary return of displaced persons to their places of habitual residence (par. 7.12). To this end, par. 8.3 is devoted exclusively to the rehabilitation of places affected by conflict or natural or human catastrophe. In particular, persons and families displaced by natural disasters will benefit from specific programmes designed for this purpose (par. 8.3.2), including subsidised loans and other assistance for the purchase of land (par. 8.3.5).

<sup>655</sup> NEPAL, *National Policies on Internally Displaced Persons 2063*, 1 January 2007. The Nepalese strategy adopts the definition of the UN Guiding Principles on IDPs [letter (a)]. However, it further distinguishes, for conceptual purposes, between sub-groups according to the cause of displacement: conflict (b); man-made disasters (c); and natural disasters (d). Letter (d) defines "Person or Family displaced due to natural disasters" as "a person or family displaced internally by compulsion owing to creation of such a situation where it is not possible to live in one's home or place habitual residence due to natural disasters".

However, the same definition clarifies that if the affected persons resided in an area declared uninhabitable by the national authorities due to the risk of natural disasters, they will not be considered IDPs. Thus, the strategy penalises those who have voluntarily placed themselves in a situation of risk. However, in order to shift the responsibility for displacement onto those displaced, it will be necessary for the public authorities to have fulfilled their obligation to adequately inform the population that settlement in areas considered dangerous was restricted. These deterrents, while intended to serve a good purpose, are neither appropriate nor desirable. Such penalising measures forget that, in impoverished countries such as Nepal, these disaster-prone areas often coincide with the slums of urban centres where the lower social strata live. In any case, the legal non-consideration of these people as IDPs cannot imply the denial of humanitarian assistance and the protection of their human rights since, at the international level, IDP status is a mere de facto reality and does not alter the legal status of a national or a human being. Nor should this sanction imply the exclusion of transgressing IDPs from strategies seeking a durable solution to displacement. To do so would be counterproductive, as it would perpetuate displacement or the risk situation itself, if IDPs return to vulnerable areas where they are exposed to recurrent displacement.

	Durable Solutions for Conflict- Affected Displacement <sup>659</sup>			
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## 2.5. The Middle East

As highlighted in the in the Annexes, data on disaster displacement in the Middle East is scarce. However, this deficiency does not mean that the risk of environmental disruption and associated displacement is low. Indeed, successive IDMC global annual reports since 2018 have shown an upward trend in the number of people internally displaced in the region due to earthquakes or extreme weather events such as drought and desertification, heavy flooding and sand- and snow-storms<sup>660</sup>.

The LAS adopted an eight-year DRR strategy in 2012<sup>661</sup>, which was replaced in 2018 by a new one until 2030<sup>662</sup>. The LAS's DRR strategy explicitly refers to incorporating risk reduction measures into national and local policies, plans and legal frameworks for all critical sectors related to achieving the Sustainable Development Goals, including IDPs<sup>663</sup>. Besides, the strategy calls on the Member States to ensure

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<sup>659</sup> SRI LANKA, *National Policy Framework on Durable Solutions*, August 2016. The scope of this policy limits itself to seeking durable solutions for IDPs, returning refugees and populations affected by displacement resulting from the 30 years of civil conflict in Sri Lanka (ibid., Preamble). However, this policy recognises that other IDPs exist today and may be displaced in the future in Sri Lanka because of natural or man-made disasters, climate change, development projects or possible future conflicts. Moreover, some of those displaced by the civil war have been or are also affected by displacement due to natural disasters (both during displacement and after resettlement) and by development or infrastructure projects (ibid., p. 5, par. 2.1). For this reason, the policy recommends that the Sri Lankan government develop a comprehensive law addressing all displaced persons and communities, regardless of the cause of displacement (ibid., p. 6, par. 2.2). Therefore, although environmentally displaced people do not fall within the scope of this policy, the principles and norms set out in it can give an idea of how the new law will seek to respond to these other displaced communities.

<sup>660</sup> IDMC; NRC, *Global Report on Internal Displacement (2018)*, IDMC, May 2018, pp. 22-23 (last access: 16/05/2020). IDMC; NRC, *Global Report on Internal Displacement (2019)*, IDMC, May 2019, pp. 20-22 (last access: 16/05/2020). IDMC; NRC, *Global Report on Internal Displacement (2020)*, IDMC, April 2020, pp. 29-33 (last access: 16/05/2020).

<sup>661</sup> IDMC; NRC, *Global Report on Internal Displacement (2018)*, *op. cit.*, p. 23.

<sup>662</sup> LAS, *Arab Strategy for Disaster Risk Reduction 2030*, adopted by virtue of the League of Arab States Resolution at the Summit Level No. (S.S 733 G.O (29)- E 3- 15/04/2018), Riyadh (Kingdom of Saudi Arabia), 15 April 2018, 26 pp.

<sup>663</sup> Ibid., p. 20.

IDPs' participation in the development, at all administrative levels, of disaster preparedness, contingency, recovery and reconstruction plans<sup>664</sup>.

Also, in 2017, the League signed a Memorandum of Understanding with UNHCR<sup>665</sup>. This new agreement aims to establish a comprehensive cooperation framework for an effective response to the needs of refugees, IDPs and stateless persons in the Arab region<sup>666</sup>. At the same time, it aims to support the communities hosting them, as well as to facilitate improved humanitarian access and emergency response<sup>667</sup>.

At the national level, the Global Protection Cluster database lists Iraq and Yemen as the only countries that have developed internal displacement policy strategies that cover environmental considerations<sup>668</sup>.

Iraq's National Displacement Policy<sup>669</sup> provides, first and foremost, a framework to ensure that the fact of being internally displaced does not undermine the fundamental rights recognised by the Iraqi Constitution and national and international laws<sup>670</sup>. The Strategy reflects the Iraqi government's commitment to guarantee all displaced and returnee Iraqis the same human rights and access to assistance and services as the rest of the Iraqi people<sup>671</sup>, while pledging to find durable solutions to displacement<sup>672</sup>.

To ensure a comprehensive and coherent implementation of this policy, the Iraqi government will take all necessary measures<sup>673</sup>. At the financial level, it is determined to mobilise the necessary resources at the national level and, where necessary, from the

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<sup>664</sup> Ibid., p. 21 *in fine*.

<sup>665</sup> UNHCR, "[UNHCR and League of Arab States sign agreement to address refugee challenges in the Arab region](#)", *Press Release*, 22 September 2017 (last access: 15/05/2020).

<sup>666</sup> Id.

<sup>667</sup> Id.

<sup>668</sup> Vid. GLOBAL PROTECTION CLUSTER, *Global Database on IDP Laws and Policies*, *op. cit.*

<sup>669</sup> IRAQ, *National Policy on Displacement*, July 2008.

<sup>670</sup> Ibid., pp. 6-8. In particular, express mention is made of political participation rights; the right to participate in decision making and implementation of those policies affecting them; the right to non-discrimination; the right to protection against arbitrary displacement; the right to a legal status and official recognition as IDPs; the right to property protection and compensation; the right to social care; the right to health care; the right to freedom of expression and access to information; the right to freedom of movement; the right to family unity; the IDP families' right to rehabilitation and job opportunities; and the right of having the needs of persons with special needs met (ibid., pp. 8-12).

<sup>671</sup> The Strategy refers to the international "Sphere Standards" as a reference for addressing the basic needs of IDPs and returnees, including food, shelter, clean water, sanitation, health care, education, social protection and safety nets, and employment (ibid., pp. 12-17).

<sup>672</sup> Ibid., p. 5.

<sup>673</sup> Vid. id., detailing the various activities that the government intends to undertake to achieve the objectives of this National Policy on Internal Displacement.

international community<sup>674</sup>. At the institutional level, the government will strengthen its judicial and administrative system to protect and enforce IDPs and returnees' rights and investigate and stop any human rights violations<sup>675</sup>. As part of this goal, the Government of Iraq will reinforce and enhance the role of the Ministry of Human Rights (MoHR) or a national human rights committee<sup>676</sup>. It will also pay special attention to protecting displaced and returnee women and children, and other vulnerable groups from all forms of exploitation and violence<sup>677</sup>.

In Yemen, the National Policy for Addressing Internal Displacement<sup>678</sup> brings together in a single document, in a coherent and comprehensive manner, the main lines of the action plan that the government intends to implement to respond effectively to displacement within the country<sup>679</sup>. This national framework identifies current strategic objectives and priority actions to address internal displacement in all its phases through four interrelated areas of action:

Area 1. Protection of civilians from involuntary displacement, including during armed conflict and natural disasters, and preparedness to respond to potential displacement<sup>680</sup>;

Area 2. Protection and assistance to IDPs during displacement, ensuring their rights, and support of displacement-affected communities<sup>681</sup>;

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<sup>674</sup> Ibid., p. 17.

<sup>675</sup> Id.

<sup>676</sup> Id.

<sup>677</sup> Id.

<sup>678</sup> YEMEN, *National Policy for Addressing Internal Displacement in the Republic of Yemen*, 6 July 2013.

<sup>679</sup> Ibid., pp. 3-5.

<sup>680</sup> Vid. *ibid.*, pp. 8-10. In natural disasters, displacement is forbidden unless the safety and health of those affected require evacuation. Regarding displacement prevention due to natural disasters, the strategy aims to improve early warning systems and emergency preparedness. In particular by: (a) identifying and periodically monitoring, through the General Authority for Geological and Mineral Surveys and the Civil Aviation and Meteorology Authority, areas at risk of natural disasters; (b) preparing contingency plans that include measures to reduce the risk of displacement and minimise the effects of displacement in the event of natural disasters; (c) favouring and supporting the resettlement of those people residing in areas classified as uninhabitable or dangerous due to the risk of natural disasters; (d) establishing an operational cell, composed of all relevant government entities, to coordinate the response to a natural disaster; (e) ensuring that an adequate supply of humanitarian assistance, including food and medicine, is stockpiled for use in emergency situations, in particular through the Executive Unit for IDPs.

<sup>681</sup> Vid. *ibid.*, pp. 10-25. The government shall take the necessary measures to ensure the physical security of IDPs during and after displacement, including registration of IDPs, as well as to ensure that they have safe access to essential food and safe drinking water; adequate shelter; appropriate clothing; essential health care and medical services; and sanitation. Additionally, the government will facilitate the replacement of documents that have been lost or destroyed. Displaced people's property rights, freedom of movement and their rights to political participation are also protected To avoid tensions with host

Area 3. Creation of the necessary conditions for safe, voluntary and durable solutions to internal displacement<sup>682</sup>.

Area 4. Determine institutional responsibilities at each level and define the next steps for implementing this National Policy<sup>683</sup>.

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communities, the strategy refers to the need to avoid the collapse of public services, and competition over livelihoods by improving IDPs employability and autonomy and ensuring equal access to the labour market. It will also ensure that both displaced and local children have access to schooling. Finally, special mention is made in the strategy to protect children from military recruitment.

<sup>682</sup> These necessary conditions include ensuring safety and security, an adequate standard of living and access to livelihoods in those areas where durable solutions are to be implemented. Freedom of movement, restitution of property and possessions, recovery of lost documentation, maintenance of family unity, participation in public affairs and access to justice must also be guaranteed in the field of durable solutions (vid. *ibid.*, pp. 26-30).

<sup>683</sup> *Ibid.*, pp. 30-35. Within the institutional framework established in this policy, the Executive Unit for IDPs stands out. This body is the designated national institutional focal point for internal displacement, and is assigned the main role and responsibility for the implementation of this Policy, including the elaboration and supervision of the operationalisation of the Implementation Plan (*ibid.*, pp. 31-32).

**PART THREE**  
**PREVENTING ENVIRONMENTAL DISPLACEMENT**  
**AND *DE LEGE FERENDA* PROPOSALS TO PROTECT**  
**ENVIRONMENTALLY DISPLACED PERSONS**



# CHAPTER VII

## ENVIRONMENTAL DISPLACEMENT IN THE UN CLIMATE CHANGE REGIME, THE FRAMEWORK FOR NATURAL DISASTER REDUCTION AND THE SUSTAINABLE DEVELOPMENT AGENDA

### INTRODUCTION

The three international frameworks analysed in this Chapter share several features that recommend discussing them together. All three "took place in the context of a broader process of global policy reform"<sup>1</sup>. On 3 June 2015, the UNGA formally endorsed the Sendai Framework for Disaster Risk Reduction 2015-2030 (SFDRR)<sup>2</sup> that the Third World Conference on Disaster Risk Reduction had adopted in March 2015 to replace the Hyogo Framework for Action. Over three months later, on 25 September 2015, the UNGA also approved the 2030 Agenda for Sustainable Development<sup>3</sup>, continuing along the UN Millennium Development Goals path. Finally, the Conference of the Parties (COP), gathered at its twenty-first meeting, adopted on 12 December 2015 the Paris Agreement<sup>4</sup>, which strengthens and evolves the UNFCCC<sup>5</sup> on climate change mitigation and adaptation.

There is an evident link between the different thematic areas they address, with 2030 as a common time horizon. For example, SDG 11 of the 2030 Agenda aims to build resilient cities by, *inter alia*, implementing "holistic disaster risk management at all levels" in line with the Sendai Framework<sup>6</sup>. Climate change is also a cross-cutting issue throughout the Agenda for Sustainable Development. Besides targets 2.4 and 11.b, which mention it, SDG 13 targets specifically calls for "[taking] urgent action to combat

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<sup>1</sup> GUADAGNO, L., "Human Mobility in the Sendai Framework for Disaster Risk Reduction", *International Journal of Disaster Risk Science*, Vol. 7, March 2016, p. 30.

<sup>2</sup> UNGA, *Resolution 69/283 Sendai Framework for Disaster Risk Reduction 2015–2030, adopted by the General Assembly at its Sixty-ninth session (A/RES/69/283)*, 23 June 2015, 24 pp.

<sup>3</sup> UNGA, *Resolution 70/1 Transforming our world: the 2030 Agenda for Sustainable Development, adopted by the General Assembly at its Seventieth session (A/RES/70/1)*, 21 October 2015, 35 pp.

<sup>4</sup> UNFCCC, "Annex Paris Agreement", in: *Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015. Addendum Part two: Action taken by the Conference of the Parties at its twenty-first session (FCCC/CP/2015/10/Add.1)*, 29 January 2016, pp. 21-36.

<sup>5</sup> UN, *Framework Convention on Climate Change*, 09 May 1992, UNTS, Vol. 1771, No. 30822, pp. 165-190.

<sup>6</sup> UNGA, *Resolution 70/1... (A/RES/70/1)*, *op. cit.*, target 11.b, p. 22.

climate change and its impacts"<sup>7</sup>, "acknowledging that the United Nations Framework Convention on Climate Change is the primary international, intergovernmental forum for negotiating the global response to climate change"<sup>8</sup>. Priority 4 of the Sendai Framework calls for "considering climate change scenarios" when preparing, reviewing or updating disaster preparedness and contingency policies<sup>9</sup>, and guiding principle 19 (h) states that "[d]isaster risk reduction is essential to achieve sustainable development"<sup>10</sup>. Finally, the Paris Agreement, the latest framework adopted, welcomes the endorsement of both the 2030 Agenda for Sustainable Development, in particular the SDG 13, and the Sendai Framework for Disaster Risk Reduction<sup>11</sup>.

There is also a common approach to human mobility related to environmental change. All three regard migration as a positive strategy that brings with it opportunities to reduce development inequalities within and between countries and help vulnerable households both adapt to or avert the adverse effects of climate change or disaster risk. However, none of them ignore the risks that migration also brings for migrants and the challenges it poses for both communities of origin and destination.

Above all, the importance of these international frameworks concerning environmental displacement lies in their extraordinary potential to prevent it. All three directly address the complex web of economic, social and environmental factors, including climate change, which acts as underlying drivers of displacement. Therefore, to achieve the goals they set for disaster risk reduction, sustainable development, and climate change is to minimise or prevent environmental displacement.

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<sup>7</sup> Ibid., p. 23 [verb form changed].

<sup>8</sup> Id., footnote.

<sup>9</sup> UNGA, "Annex II Sendai Framework for Disaster Risk Reduction 2015–2030", in: *Resolution 69/283...* (A/RES/69/283), *op. cit.*, par. 33(a), p. 16.

<sup>10</sup> Ibid., par. 19(h), p. 8.

<sup>11</sup> UNFCCC, "Decision 1/CP.21 Adoption of the Paris Agreement", in: *Report of the Conference of the Parties on its twenty-first session...* (FCCC/CP/2015/10/Add.1), *op. cit.*, fourth preambular paragraph, p. 2.

# 1. ENVIRONMENTAL DISPLACEMENT IN THE UN CLIMATE CHANGE FRAMEWORK

## 1.1. Introduction

The legal reference framework for climate change is the UNFCCC<sup>12</sup>, complemented first with the Kyoto Protocol<sup>13</sup> and later with the Paris Agreement<sup>14</sup>. In none of these international treaties is there any reference to population movements due to climate-related environmental changes. However, the COP, as the supreme governing body of the UNFCCC –article 7 –, has gradually recognised the impact the adverse effects of climate change can have on human mobility. This recognition has not yet translated into any normative change to protect displaced persons in the context of climate change within the UN legal regime. Nevertheless, for the time being, it has resulted in creating a task force entrusted with making recommendations to the COP to prevent, minimise and address climate change-related displacement.

This section begins with a historical overview of those COP meetings whose outcomes were milestones in the institutionalisation of climate displacement within the UNFCCC, namely: the Cancun Agreements (COP16), the establishment of the Warsaw International Mechanism for Loss and Damage associated with climate change impacts (COP19); and the Paris Agreement (COP21), which ultimately led to the creation of the task force on displacement. The second part analyses progress on the task force's plan of action. In particular, attention is paid to the task force's 2018 recommendations, which are the primary outcome of the first phase of implementation of the plan of action; and the recommendations submitted to the 2021 COP, which show progress made during the second phase of implementation, starting in April 2019 and concluding in 2021.

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<sup>12</sup> UN, *Framework Convention on Climate Change*, *op. cit.*

<sup>13</sup> UNFCCC CONFERENCE OF THE PARTIES, *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, 11 December 1997, UNTS, Vol. 2303, No. 30822, pp. 214-234.

<sup>14</sup> UNFCCC CONFERENCE OF THE PARTIES, *Paris Agreement*, 12 December 2015, UNTS, Vol. number not assigned, No. 54113, 195 pp.

## 1.2. From Cancun to Paris: institutionalising the relationship between human mobility and climate change

### 1.2.1. COP16: The Cancun Agreements

The sixteenth Conference of the Parties, held in Cancun from 29 November to 11 December 2010, concluded by adopting a series of decisions known as the *Cancun Agreements*<sup>15</sup>. Despite the term "agreements", these are not genuine international treaties. As a rule, COP decisions are not, in a formal sense, legally binding<sup>16</sup>, tending instead to be commitments of a political or non-normative nature. Indeed, the very COP16 decision adopting the Agreements announces in its Preamble that "*nothing in this decision shall prejudge prospects for, or the content of, a legally binding outcome in the future*"<sup>17</sup>. Furthermore, it requests the Ad Hoc Working Group on Long-term Cooperative Action "*to continue discussing legal options with the aim of completing an agreed outcome based on decision 1/CP.13 (Bali Action Plan), the work done at the sixteenth session of the Conference of the Parties and proposals made by Parties under Article 17 of the Convention*"<sup>18</sup>. This legally binding outcome would be the future Paris Agreement.

While recognising the need for Parties to strengthen their commitments and efforts to mitigate greenhouse gas emissions for keeping the global average temperature below 2°C above pre-industrial levels<sup>19</sup>, the Cancun Agreements affirm that "adaptation" should receive the same priority as "mitigation"<sup>20</sup>. To provide "appropriate institutional arrangements"<sup>21</sup> to this end, the Agreements establish the *Cancun*

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<sup>15</sup> UNFCCC, "Decision 1/CP.16. The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention", in: *Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010. Addendum Part Two: Action taken by the Conference of the Parties at its sixteenth session (FCCC/CP/2010/7/Add.1)*, 15 March 2011, 31 pp.

<sup>16</sup> RAJAMANI, L., "The Cancun Climate Agreements: Reading the text, subtext and tea leaves", *The International and Comparative Law Quarterly*, Vol. 60, No. 2, April, 2011, p. 518, also noting: "The enabling clause in the relevant treaty may authorize a COP decision to be binding, but in its absence formally COP decisions are not legally binding" (footnote 160).

<sup>17</sup> UNFCCC, "Decision 1/CP.16 The Cancun Agreements..." (FCCC/CP/2010/7/Add.1), *op. cit.*, second preambular paragraph, p. 2 [italics added].

<sup>18</sup> *Ibid.*, par. 145 [italics added].

<sup>19</sup> *Ibid.*, pars. 2(a) and 4. The latter, in connection with par. 138, also strongly suggests to committing to a more ambitious long-term global objective of a maximum global temperature increase of 1.5°C.

<sup>20</sup> *Ibid.*, par. 2(b).

<sup>21</sup> *Id.*

*Adaptation Framework*, which is mandated to enhance action and support for adaptation both under the UNFCCC and through international cooperation<sup>22</sup>.

Adaptation was not an unfamiliar issue within the UN framework on climate change prior to the Cancun COP. The UNFCCC itself includes, among the manifestations of the principle of common but differentiated responsibilities (Art. 4), support from developed countries to developing Parties "that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects"<sup>23</sup>, calling for cooperation

"in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods"<sup>24</sup>.

All of the climate change-related environmental stressors mentioned in that paragraph of the UNFCCC have been identified as drivers of environmental displacement in Chapter I. Indeed, many States Parties included human mobility issues in their national communications on climate change from the outset. Such national communications are provided for in Article 12.1 UNFCCC, which requires Parties to report, consistent with Article 4.1, on their "anthropogenic emissions by sources and removals by sinks", the measures implemented or planned by the Party to implement the Convention; and "[a]ny other information that the Party considers relevant to the achievement of the objective of the Convention"<sup>25</sup>.

Specifically, the IOM examined national communications submitted between 1997 and 2018 by non-Annex I Parties –mainly developing countries, including those recognised as particularly vulnerable to the adverse effects of climate change because they have low-lying coastal areas or are prone to desertification and drought<sup>26</sup>. Out of the 143 national communications submitted, the IOM found that 70% –equivalent to

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<sup>22</sup> Ibid., par. 13 [italics added]. In order to ensure coherence in adaptation actions undertaken under the Convention, the Agreements create an *Adaptation Committee*, the functions of which are listed in a non-exhaustive manner in par. 20.

<sup>23</sup> UN, *Framework Convention on Climate Change*, *op. cit.*, Article 4.4, p. 173.

<sup>24</sup> Ibid., Article 4.1 (e), p. 171.

<sup>25</sup> Ibid., Article 12.1, pp. 180 *in fine* and 181.

<sup>26</sup> Vid. UNFCCC, Parties & Observers (last access: 23/11/2021).

100 communications- included references to human mobility<sup>27</sup>. While this figure is encouraging, it should be read with caution. The IOM does not specify whether these national communications only mention human mobility aspects or include specific provisions, nor the form(s) of human mobility they address –migration, displacement or planned relocation.

Despite this State practice, the inclusion of the relationship between climate change, human mobility and adaptation in the climate framework will not occur until COP16, with the Cancun Framework explicitly including, among the adaptation strategies it "*invite[s]*" Parties to undertake, the following reference: "*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*"<sup>28</sup>. In addition, Parties were invited to develop plans, actions or strategies for adaptation to climate change<sup>29</sup>, establishing a process to assist developing countries, particularly the least developed countries, "*to formulate and implement national adaptation plans (...)* as a means of identifying medium- and long-term adaptation needs and developing and implementing strategies and programmes to address those needs"<sup>30</sup>.

As follows from the language used, these two quotes from the Cancun Agreements are no more than "invitations" reliant on the States' goodwill. However, one should not lose sight that, at least theoretically, Article 4.1(b) of the UNFCCC had already legally enshrined the commitment of Parties to submit mitigation and adaptation programmes<sup>31</sup>. The real significance of these invitations is that they represent the first step taken at the COP towards official recognition of the adverse effects of climate change on human mobility. More importantly, these recommendations call for a better understanding of the relationship between the two phenomena and, for the first time, call on the UNFCCC Parties to cooperate in a coordinated manner to address both phenomena together.

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<sup>27</sup> IOM, "Mapping Human Mobility and Climate Change in Relevant National Policies and Institutional Frameworks", TFD, August 2018, p. 10 (last access: 25/12/2021).

<sup>28</sup> UNFCCC, "Decision 1/CP.16 The Cancun Agreements... (FCCC/CP/2010/7/Add.1), *op. cit.*, par. 14(f).

<sup>29</sup> *Ibid.*, par. 14(a).

<sup>30</sup> *Ibid.*, pars. 15-16 [italics added].

<sup>31</sup> *Vid.* UN, *Framework Convention on Climate Change*, *op. cit.*, Article 4.1(b), p. 170.

Regarding the degree of compliance, the 2018 IOM report found that 43 Parties had communicated national adaptation policies to the UNFCCC registry<sup>32</sup> –which does not sound very optimistic considering that 197 States are currently Parties to the UNFCCC<sup>33</sup>. The 43 adaptation policies comprised 56 documents, of which 16 were national adaptation plans of action from 10 developing countries and 40 adaptation plans and strategies from 33 developed countries<sup>34</sup>. Of the submissions from these 43 Parties, IOM was able to review the submissions from 37 Parties<sup>35</sup>, as language difficulties prevented the IOM from reviewing the adaptation policies submitted by six developed countries, namely: Czech Republic, Lithuania, Luxembourg, Norway, Slovenia, Norway, Sweden and the Czech Republic<sup>36</sup>. Of the 37 policies that could be reviewed, only 30 covered aspects of human mobility<sup>37</sup>. However, the IOM does not specify how many corresponded to developing countries' National Adaptation Plans or developed countries' plans and strategies.

Finally, Parties gathered at Cancun were also sensitive to "consider" possible adaptive approaches to address losses and damages, of both economic and non-economic nature, related to the adverse effects of climate change in developing countries, identified as particularly vulnerable to its impact<sup>38</sup>. With this aim, COP16 further decided to establish a work programme on this issue under the Cancun Adaptation Framework<sup>39</sup>, inviting Parties and relevant organisations to submit "views and information on what elements should be included in the work programme"<sup>40</sup>. In the light of those submissions<sup>41</sup>, the Subsidiary Body for Implementation was tasked with

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<sup>32</sup> IOM, "Mapping Human Mobility and Climate Change in Relevant National Policies and Institutional Frameworks", *op. cit.*, p. 9.

<sup>33</sup> View its status of ratification at: UNTC, Status of the UNFCCC (last access: 21/11/2021).

<sup>34</sup> IOM, "Mapping Human Mobility and Climate Change in Relevant National Policies and Institutional Frameworks", *op. cit.*, footnote 40.

<sup>35</sup> *Ibid.*, p. 9.

<sup>36</sup> *Ibid.*, footnote 40.

<sup>37</sup> *Ibid.*, p. 9.

<sup>38</sup> Note that the UNFCCC defines "Adverse effects of climate change" as "changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare" (Vid. UN, *Framework Convention on Climate Change*, *op. cit.*, Article 1.1, p. 168.).

<sup>39</sup> UNFCCC, "Decision 1/CP.16 The Cancun Agreements..." (FCCC/CP/2010/7/Add.1), *op. cit.*, par. 26.

<sup>40</sup> *Ibid.*, par. 28.

<sup>41</sup> Vid. UNFCCC: *Synthesis report on views and information on the elements to be included in the work programme on loss and damage* (FCCC/SBI/2011/3), 27 April 2011, 21 pp.; and *Views and information on elements to be included in the work programme on loss and damage. Submissions from Parties and relevant organizations* (FCCC/SBI/2011/MISC.1), 19 April 2011, 136 pp.

defining the activities and thematic areas comprising the programme<sup>42</sup>, which were agreed at its thirty-fourth session<sup>43</sup> and confirmed and expanded at COP17, held in Durban from 28 November to 11 December 2011<sup>44</sup>. Progress on the work programme<sup>45</sup> was presented to the Parties during the following year's Conference in Doha<sup>46</sup>.

### **1.2.2. COP 19: Establishing the Warsaw International Mechanism for Loss and Damage associated with climate change impacts**

At COP18, which took place in Doha (Qatar) from 26 November to 8 December 2012, Parties recognised the need to improve further understanding of loss and damage related to the adverse effects of climate change, including, *inter alia*, "[h]ow impacts of climate change are affecting patterns of migration, displacement and human mobility"<sup>47</sup>. Parties also decided to give a more proactive impetus to the Convention's role in climate change-related loss and damage<sup>48</sup> by committing to establish, at their next session, the necessary "institutional arrangements" in this regard<sup>49</sup>. Responding to this pledge, the Conference of the Parties meeting in Warsaw (Poland) at COP19, on 11-23 November 2013, laid the groundwork for establishing, under the Cancun Adaptation Framework,

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<sup>42</sup> UNFCCC, "Decision 1/CP.16 The Cancun Agreements... (FCCC/CP/2010/7/Add.1), *op. cit.*, pars. 27 and 29.

<sup>43</sup> UNFCCC, *Report of the Subsidiary Body for Implementation on its thirty-fourth session, held in Bonn from 6 to 17 June 2011* (FCCC/SBI/2011/7), 12 August 2011, pars. 109-116.

<sup>44</sup> Vid. UNFCCC, "Decision 7/CP.17 Work programme on loss and damage", in: *Report of the Conference of the Parties on its seventeenth session, held in Durban from 28 November to 11 December 2011. Addendum Part Two: Action taken by the Conference of the Parties at its seventeenth session* (FCCC/CP/2011/9/Add.2), 15 March 2012, pp. 5-8.

<sup>45</sup> UNFCCC: *Current knowledge on relevant methodologies and data requirements as well as lessons learned and gaps identified at different levels, in assessing the risk of loss and damage associated with the adverse effects of climate change. Technical paper* (FCCC/TP/2012/1), 10 May 2012, 45 pp.; *Report on the expert meeting on assessing the risk of loss and damage associated with the adverse effects of climate change* (FCCC/SBI/2012/INF.3), 11 May 2012, 18 pp.; *Report of the Subsidiary Body for Implementation on its thirty-sixth session, held in Bonn from 14 to 25 May 2012* (FCCC/SBI/2012/15), 6 July 2012, pars. 145-157.

<sup>46</sup> UNFCCC, "Decision 3/CP.18 Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity", in: *Report of the Conference of the Parties on its eighteenth session, held in Doha from 26 November to 8 December 2012. Addendum Part Two: Action taken by the Conference of the Parties at its eighteenth session* (FCCC/CP/2012/8/Add.1), 28 February 2013, pp. 21-24.

<sup>47</sup> *Ibid.*, par. 7(a)(vi).

<sup>48</sup> *Ibid.*, par. 5, in connection with the UNFCCC definition of "Adverse effects of climate change" (Art. 1.1).

<sup>49</sup> *Ibid.*, par. 9. The possibility of establishing an international mechanism to address loss and damage had already been appreciated at COP17 (vid. UNFCCC, "Decision 7/CP.17"... (FCCC/CP/2011/9/Add.2), par. 5).



an international mechanism to address "loss and damage related to climate change impacts, including extreme and gradual events, in developing countries"<sup>50</sup>.

This international mechanism, named the *Warsaw International Mechanism* or WIM after the Polish city where it was founded<sup>51</sup>, was created in "acknowledging" that "loss and damage associated with the adverse effects of climate change include, and in some cases involves more than, that which can be reduced by adaptation"<sup>52</sup>. The COP entrusted an executive committee with the operation of the WIM, "under the guidance of, and be accountable to, the Conference of the Parties"<sup>53</sup>, reporting to it annually and making recommendations as it deems appropriate<sup>54</sup>. The first work-plan of the WIM Executive Committee<sup>55</sup> was approved during COP20, held in Lima (Peru) from 1 to 12 December 2014<sup>56</sup>. It had an initial duration of two years and started implementing, with some delay, between September 2015 and October 2017<sup>57</sup>.

From the outset, one of the action areas of the work programme was to advance knowledge, "based on sound science", of how climate change influences human mobility patterns<sup>58</sup>. To this end, relevant organisations, agencies and experts, both from within and outside the UN family, were invited to collaborate with the WIM Executive

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<sup>50</sup> UNFCCC, "Decision 2/CP.19 Warsaw international mechanism for loss and damage associated with climate change impacts", in: *Report of the Conference of the Parties on its nineteenth session, held in Warsaw from 11 to 23 November 2013. Addendum Part two: Action taken by the Conference of the Parties at its nineteenth session* (FCCC/CP/2013/10/Add.1), 31 January 2014, pp. 6-8.

<sup>51</sup> Its full name is *Warsaw international mechanism for loss and damage*, established under par. 1 of the UNFCCC, "Decision 2/CP.19...(FCCC/CP/2013/10/Add.1), *op. cit. supra*.

<sup>52</sup> *Ibid.*, second preambular paragraph, p. 6.

<sup>53</sup> *Ibid.*, par. 2.

<sup>54</sup> *Ibid.*, par. 3.

<sup>55</sup> UNFCCC, "Annex II: Initial two-year workplan of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts in accordance with decisions 3/CP.18 and 2/CP.19", in: *Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts* (FCCC/SB/2014/4), 24 October 2014, pp. 7-13.

<sup>56</sup> UNFCCC, "Decision 2/CP.20 Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts", in: *Report of the Conference of the Parties on its twentieth session, held in Lima from 1 to 14 December 2014. Addendum Part two: Action taken by the Conference of the Parties at its twentieth session* (FCCC/CP/2014/10/Add.2), 2 February 2015, par. 1.

<sup>57</sup> COP20 established that the Executive Committee would begin implementing its work plan at its first meeting, which was to take place no later than March 2015. However, the delay in electing the members of the Committee prevented the meeting from taking place until 24 September 2015 (vid. UNFCCC: "Decision 2/CP.20... (FCCC/CP/2014/10/Add.2), *op. cit.*, par. 13; UNFCCC: "Decision 3/CP.22 Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts", in: *Report of the Conference of the Parties on its twenty-second session, held in Marrakech from 7 to 18 November 2016. Addendum Part two: Action taken by the Conference of the Parties at its twenty second session* (FCCC/CP/2016/10/Add.1), 31 January 2017, third preambular paragraph and par. 2, p. 8).

<sup>58</sup> UNFCCC, "Annex II: Initial two-year workplan of the Executive Committee of the Warsaw International Mechanism...(FCCC/SB/2014/4), *op. cit.*, Action area 6, p. 11.

Committee by providing it with "scientific information on projected migration and displacement based on projected climate and non-climate related impacts in vulnerable populations"<sup>59</sup>. The Executive Committee was to synthesise this information with a threefold objective (i) to improve "understanding and collaboration" in the field of climate migration; (ii) to increase the "understanding (...) of migration and displacement", with a particular focus on identifying the characteristics of vulnerable populations more prone to displacement; (iii) and to draw "lessons learned and good practices from the activities of organisations and experts"<sup>60</sup>.

### 1.2.3. The Paris Agreement and the launching of the Task Force on Displacement

The Paris Agreement, adopted on 12 December 2015 during COP21<sup>61</sup>, marked a milestone somewhat by mentioning migration and human rights in an international treaty on climate change for the first time. In its Preamble, it "acknowledges" that

"climate change is a common concern of humankind, [and that] *Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity*"<sup>62</sup>.

However, this recognition cannot justify claiming that the Paris Agreement has crystallised any legal obligation for its States Parties regarding climate displaced persons. Formally, preambles of international treaties lack the binding force predicated on the normative part. Substantively, this paragraph is not about protecting climate migrants but about States considering migrants in general, along with the other vulnerable groups it mentions, when designing and implementing their climate action. This reference is aligned with other international instruments adopted in 2015, such as

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<sup>59</sup> Id.

<sup>60</sup> Id.

<sup>61</sup> UNFCCC, "Annex Paris Agreement", in: *Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015. Addendum Part two: Action taken by the Conference of the Parties at its twenty-first session* (FCCC/CP/2015/10/Add.1), 29 January 2016, pp. 21-36. The Paris Agreement entered into force on 4 November 2016, thirty days after the date on which Austria, Bolivia, Canada, France, Germany, Hungary, Malta, Nepal, Portugal, Slovakia and the EU deposited their instruments of ratification with the UN Secretary-General. It was thus fulfilled the requirements of Article 21 for the treaty's entry into force, which required the Agreement to be ratified by at least 55 Parties to the Convention representing a total of at least 55% of the world's total greenhouse gas emissions.

<sup>62</sup> Ibid., eleventh preambular paragraph, p. 21 [italics added].

the SFDRR or the Agenda 2030 for Sustainable Development, which also promote migration as a positive adaptation and development strategy, and migrants as active and valuable actors that foster resilience and equitable development within and between societies<sup>63</sup>.

The above is not to deny the relevance of the Preamble of the Paris Agreement from a climate displacement perspective. On the contrary, the reference to human rights is a valuable expression of the *mens legislatoris* of the COP, which, meeting in Paris, expressed its willingness for Parties to incorporate human rights considerations into their policies on climate change. Thus, it could well be argued that the Paris Agreement marks the incipient formation of an *opino iuris* among the international community in this regard. That is, the conviction that climate change may affect human rights and that States would therefore be obliged to protect individuals from harmful climatic conditions, whether at home or abroad –in the latter case through, for example, the application of the principle of non-refoulement or the issuance of a humanitarian visa.

While the reference to human rights and migration in the preamble of the Paris Agreement is significant, more important in practice has been the progress in including human mobility as part of climate change adaptation and the creation of the Task Force on Displacement (TFD).

#### **A) Human Mobility and adaptation in the Paris Agreement: the Nationally Determined Contributions (NDCs)**

Article 7 of the Paris Agreement reiterates adaptation as a "global goal" which is to "[enhance] adaptive capacity, [strengthen] resilience and [reduce] vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response" under the 1.5-2°C temperature increase scenario envisaged in Article 2<sup>64</sup>. The Agreement recognises that "adaptation is a global challenge" and therefore the importance of international cooperation in adaptation

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<sup>63</sup> Vid. UNGA, "Annex II Sendai Framework for Disaster Risk Reduction 2015–2030", in: *Resolution 69/283...* (A/RES/69/283), *op. cit.*, pars. 7, 27(h), and 36(a)(vi). UNGA, *Resolution 70/1...* (A/RES/70/1), *op. cit.*, par. 29.

<sup>64</sup> UNFCCC, "Annex Paris Agreement", in: *Report of the Conference of the Parties on its twenty-first session...* (FCCC/CP/2015/10/Add.1), *op. cit.*, Article 7.1, pp. 25 *in fine* and 26 [verb form changed].

efforts that support "developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change"<sup>65</sup>.

However, it is up to each country to define its own adaptation strategy based on its particular circumstances and vulnerabilities<sup>66</sup>. Paragraph 9 provides some guidance on the extremes that Parties should take into account in their efforts to adapt to climate change. In addition to giving particular consideration to "vulnerable people, places and ecosystems" in these efforts, Parties should seek to build "the resilience of socioeconomic and ecological systems, including through economic diversification and sustainable management of natural resources"<sup>67</sup>. This strategy would minimise the impact of climate change on the living conditions of the most vulnerable people, preventing them from deteriorating to such an extent as to force those affected to leave their homes.

Linked to adaptation is the importance, recognised by Article 8, "of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, *including extreme weather events and slow onset events*, and the role of sustainable development in reducing the risk of loss and damage"<sup>68</sup>. Paragraph 4 lists several "areas of cooperation and facilitation" to achieve this goal, such as early warning systems, emergency preparedness or comprehensive risk assessment and management<sup>69</sup>. All these initiatives can undoubtedly mitigate loss and damage due to climate change and, complementarily, prevent or reduce associated population movements.

To monitor progress towards these goals, Article 3 requires Parties to report on the "ambitious efforts" they commit *to reducing domestic emissions and adapting to climate change*<sup>70</sup>. Elaborating on this provision, Article 7 states that "[e]ach Party should, as appropriate, submit and update periodically an adaptation communication"<sup>71</sup>. These adaptation communications may be submitted "as a component of or in conjunction with (...) a nationally determined contribution"<sup>72</sup>. Nationally Determined

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<sup>65</sup> Ibid., Article 7.6, p. 26. Vid. also, pars. 3, 4, 5 and 7 of Article 7.

<sup>66</sup> Ibid., Article 7.5, p. 26.

<sup>67</sup> Ibid., Article 7.9(c) and (e), p. 27.

<sup>68</sup> Ibid., Article 8.1, p. 27 [*italics added*].

<sup>69</sup> Ibid., Article 8.4, p. 28.

<sup>70</sup> Ibid., Article 3 (p. 22), in conjunction with Articles 4, 7, 9, 10, 11 and 13.

<sup>71</sup> Ibid., Article 7.10, p. 27.

<sup>72</sup> Id., Article 7.11.

Contributions (NDCs) express the individual emission reduction commitments of each Party to achieve the long-term global temperature goal<sup>73</sup>.

According to Article 4.9, "each Party shall communicate a nationally determined contribution every five years"<sup>74</sup>, submitting its first NDC no later than when the Party ratifies the Agreement<sup>75</sup>. Therefore, there is still no common timeframes for submitting NDCs, as the moment from which the five years start to run varies from Party to Party. Following Decision 6/CMA.1, common deadlines for Parties' NDCs are expected to apply from 2031<sup>76</sup>. Parties may update their current NDCs at any time by submitting successive NDCs<sup>77</sup>. Submitted NDCs and their updates will be recorded in a public registry managed by the UNFCCC secretariat<sup>78</sup>.

Prior to the Paris Agreement, Decision 1/CP.19, paragraph 2(b), and Decision 1/CP.20, paragraph 9, invited Parties to advance their mitigation commitments by communicating their respective Intended Nationally Determined Contributions (INDCs) before COP21<sup>79</sup>. The IOM reports that by 15 July 2016, 162 INDCs had been formulated<sup>80</sup>, corresponding to 190 States Parties, as the EU had submitted an INDC common to its 28 Member States<sup>81</sup>, without prejudice to INDCs submitted by them individually. Of these 162 INDCs, 20% –equivalent to 33 INDCs - included in their text

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<sup>73</sup> Vid. *ibid.*, Article 4, pp. 22 *in fine* to 24.

<sup>74</sup> *Ibid.*, Article 4.9, p. 23.

<sup>75</sup> UNFCCC, "Decision 1/CP.21 Adoption of the Paris Agreement", in: *Report of the Conference of the Parties on its twenty-first session...* (FCCC/CP/2015/10/Add.1), *op. cit.*, par. 22.

<sup>76</sup> UNFCCC, "Decision 6/CMA.1 Common time frames for nationally determined contributions referred to in Article 4, paragraph 10, of the Paris Agreement", in: *Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on the third part of its first session, held in Katowice from 2 to 15 December 2018. Addendum Part two: Action taken by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement* (FCCC/PA/CMA/2018/3/Add.1), 19 March 2019, p. 17.

<sup>77</sup> UNFCCC, "Annex Paris Agreement", in: *Report of the Conference of the Parties on its twenty-first session...* (FCCC/CP/2015/10/Add.1), *op. cit.*, Article 4.3, p. 23.

<sup>78</sup> *Ibid.*, Article 4.12, p. 23. Submitted NDCs and their updates can be found at UNFCCC, [All NDCs \(unfccc.int\)](https://unfccc.int) (last access: 23/11/2021).

<sup>79</sup> Vid. UNFCCC, "Decision 1/CP.19 Further advancing the Durban Platform", in: *Report of the Conference of the Parties on its nineteenth session, held in Warsaw from 11 to 23 November 2013. Addendum Part two: Action taken by the Conference of the Parties at its nineteenth session* (FCCC/CP/2013/10/Add.1), 31 January 2014, par. 2(b), p. 4. UNFCCC, "Decision 1/CP.20 Lima Call for Climate Action", in: *Report of the Conference of the Parties on its twentieth session, held in Lima from 1 to 14 December 2014. Addendum Part two: Action taken by the Conference of the Parties at its twentieth session* (FCCC/CP/2014/10/Add.1), 2 February 2015, par. 9, p. 3.

<sup>80</sup> CHAZALNOËL, M.T.; MACH, E., "Migration in the Intended Nationally Determined Contributions (INDCs) and Nationally Determined Contributions (NDCs)", IOM, 24 August 2016, p. 3 (last access: 25/11/2021).

<sup>81</sup> *Ibid.*, p. 4, footnote 5.

references to some form of human mobility related to climate change<sup>82</sup>. By region, 15 INDCs (46%) were from Africa; 11 (33%) from the Asia-Pacific and Oceania regions; and 7 (21%) from Latin America<sup>83</sup>. The EU INDC did not contain any reference to human mobility<sup>84</sup>. In August 2018, IOM updated its data for the period 2015 to 2017 in the report that it produced as part of the TFD work plan<sup>85</sup>. Since its 2016 report, the INDCs number had increased from 162 to 165, and the number of those referring to climate change mobility from 33 to 34<sup>86</sup>.

Besides reiterating the invitation to all Parties that had not yet submitted their INDCs to do it before COP22<sup>87</sup>, the Paris Agreement Declaration envisaged the automatic conversion of INDCs into NDCs upon ratification of the Agreement. Nevertheless, the ratifying Party retained the possibility of submitting a new NDC or revising its previous INDC<sup>88</sup>. In addition, Parties that had communicated INDCs with 2025 or 2030 time horizons were required to submit a new INDC by 2020 and every five years thereafter<sup>89</sup>. The IOM reported that of the 18 new NDCs formulated, only Uruguay addressed human mobility through the planned relocation of socially disadvantaged families living in flood-prone or contaminated areas<sup>90</sup>. On the other hand, Sri Lanka and Venezuela decided to revise their INDCs and remove references to human mobility in the NDCs that replaced them<sup>91</sup>.

In June 2021, SLYCAN Trust, a non-profit think tank working on climate change, environment and sustainable development<sup>92</sup>, published a briefing note with updated data

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<sup>82</sup> Ibid., p. 3. Regarding the exact content of these references, vid. the “Summary table of references to human mobility in the INDCs and NDCs”, in *ibid.* pp. 5-7.

<sup>83</sup> Ibid., p. 3.

<sup>84</sup> According to the “Summary Table” contained in *ibid.* pp. 5-7.

<sup>85</sup> IOM, “Mapping Human Mobility and Climate Change in Relevant National Policies and Institutional Frameworks”, *op. cit.*, 15 pp.

<sup>86</sup> Ibid., p. 10.

<sup>87</sup> UNFCCC, “Decision 1/CP.21 Adoption of the Paris Agreement”, in: *Report of the Conference of the Parties on its twenty-first session...* (FCCC/CP/2015/10/Add.1), *op. cit.*, par. 13.

<sup>88</sup> Ibid., par. 22.

<sup>89</sup> Ibid., pars. 23-24.

<sup>90</sup> IOM, “Mapping Human Mobility and Climate Change in Relevant National Policies and Institutional Frameworks”, *op. cit.*, p. 10 and footnote 42.

<sup>91</sup> Ibid., p. 10. There is, however, some inconsistency between the numerical data reported by the IOM in its two reports. If in 2016 there were 33 INDCs including human mobility and in 2017 Venezuela and Sri Lanka had withdrawn them while Uruguay included it, the net result is 32 INDCs referring to climate change mobility, not 34 as reported in 2018.

<sup>92</sup> Vid. SLYCAN Trust website (last access: 25/11/2021).

on the presence of human mobility in NDCs as of 31 May 2021<sup>93</sup>. Of the 87 States Parties reported having submitted their first or second NDCs or updates to previous NDCs between 2020 and 2021, 29% (25 countries) included reference to human mobility<sup>94</sup>. Out of these 25 Parties, nine were already among the number of INDCs with human mobility references that the IOM counted in 2016<sup>95</sup>, now converted in NDCs. The remaining 16 NDCs belonged to Parties that in 2020-2021 included references to climate mobility in their updates or second NDCs –except for Russia, which submitted its first NDC in 2020<sup>96</sup>. The Maldives, a SIDS with an average elevation of only 2 metres that appeared in the IOM's 2016 report<sup>97</sup>, would have decided in 2020 to withdraw human mobility considerations from its current NDC, according to the table produced by Slycan Trust<sup>98</sup>.

Subtracting those ten countries (9 NDCs already counted as converted INDCs plus Maldives) from the 34 States reported by the IOM in 2018<sup>99</sup> leaves 24 Parties that have not yet submitted updates or second NDCs. Assuming that they do not follow the Maldives and, therefore, these 24 States retain references to human mobility, the total number of NDCs that now include climate mobility considerations would amount to 49 NDCs (25+24). This figure would represent 25% of the current 193 Parties to the Paris Agreement, meaning an increase of 44% over the number of States Parties reported by the IOM in 2018<sup>100</sup>.

While 49 States out of 193 Parties is not a very encouraging figure, it should be borne in mind that, as the IOM warns, INDCs and NDCs aimed to capture commitments on mitigation, not on adaptation, let alone human mobility<sup>101</sup>. Nor should it be forgotten that, as the Slycan Trust also points out, NDCs are not the only instrument available to

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<sup>93</sup> SLYCAN TRUST, “Human Mobility in Nationally Determined Contributions”, *Briefing Note*, Slycan Trust, June 2021, 5 pp. (last access: 15/11/2021).

<sup>94</sup> *Ibid.*, p. 4.

<sup>95</sup> These nine Parties are: Colombia, Fiji, Mexico, Nigeria, Papua New Guinea, Rwanda, Senegal, South Sudan and Viet Nam (vid. CHAZALNOËL, M.T.; MACH, E., “Migration in the Intended Nationally Determined Contributions (INDCs) and Nationally Determined Contributions (NDCs)”, *op. cit.*, pp. 5-7).

<sup>96</sup> Vid. SLYCAN TRUST, “Human Mobility in Nationally Determined Contributions”, *op. cit.*, pp. 2-3.

<sup>97</sup> CHAZALNOËL, M.T.; MACH, E., “Migration in the Intended Nationally Determined Contributions (INDCs) and Nationally Determined Contributions (NDCs)”, *op. cit.*, p. 6.

<sup>98</sup> SLYCAN TRUST, “Human Mobility in Nationally Determined Contributions”, *op. cit.*, p. 2 *in fine*.

<sup>99</sup> IOM, “Mapping Human Mobility and Climate Change in Relevant National Policies and Institutional Frameworks”, *op. cit.*, p. 10.

<sup>100</sup> Cf. SLYCAN TRUST, “Human Mobility in Nationally Determined Contributions”, *op. cit.*, p. 5, reporting a total of 51 NDCs –an increase of 26.6%.

<sup>101</sup> IOM, “Mapping Human Mobility and Climate Change in Relevant National Policies and Institutional Frameworks”, *op. cit.*, p. 10.

States to address climate change-related human mobility<sup>102</sup>. Given the accessory nature of adaptation communications to the NDCs<sup>103</sup>, human mobility considerations may appear in other communication instruments under the UNFCCC, such as the national adaptation plans or the national communications referred to above<sup>104</sup>, or in other national policies and regulations not reported to the UNFCCC –e.g. disaster risk reduction strategies, development plans or even in migration policies themselves.

Reviewing the different forms of human mobility to which the 2020-2021 NDCs refer, migration, understood as the voluntary movement of people, appears in 14 of the 25 NDCs referred to (56%); displacement, understood as forced movement, is provided for in 16 NDCs (64%); and relocation, understood as permanent resettlement elsewhere, is included in 12 NDCs (48%)<sup>105</sup>. It should be noted that frequently the same NDC addresses multiple forms of human mobility, with only two NDCs –from Marshall Islands and Papua New Guinea- including references to all three forms of mobility<sup>106</sup>.

The extent to which the 25 NDCs address each of these forms of human mobility also differs. Broadly speaking, the SLYCAN Trust's briefing note distinguishes between those that only mention them and those that contain specific provisions<sup>107</sup>. Concerning migration, only four countries –Grenada, the Marshall Islands, Nigeria and Papua New Guinea- have included specific provisions addressing it<sup>108</sup>. Specific provisions related to forced displacement have been provided for in the NDCs of eight countries –Argentina, Cape Verde, Georgia, Grenada, Mexico, Papua New Guinea, Russia, and Saint Lucia<sup>109</sup>. Finally, the NDCs of 10 countries contain specific provisions on forced relocation – Colombia, Cuba, Dominican Republic, Fiji, Marshall Islands, Nicaragua, Nigeria, Rwanda, South Sudan, and Viet Nam<sup>110</sup>.

Geographically, it is promising that the bulk of the 25 NDCs (85%) are from developing regions that Chapter II identifies as most likely to experience displacement linked to climate change-exacerbated disasters. Thus, Central and South America

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<sup>102</sup> SLYCAN TRUST, “Human Mobility in Nationally Determined Contributions”, *op. cit.*, p. 4.

<sup>103</sup> Vid. Article. 7.11 of the Paris Agreement.

<sup>104</sup> Vid. sub-epigraph “1.2.1. COP16: The Cancun Agreements” of this chapter.

<sup>105</sup> SLYCAN TRUST, “Human Mobility in Nationally Determined Contributions”, *op. cit.*, pp. 1 and 3 *in fine*.

<sup>106</sup> Vid. the Table contained in *ibid.*, pp. 2-3.

<sup>107</sup> Vid. *id.*

<sup>108</sup> *Ibid.*, p. 4.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*



account for 35% of NDCs in 2020-2021, Africa 23%, Asia 15% and the Pacific 12%<sup>111</sup>. Russia is the only Party from Annex I –industrialised countries<sup>112</sup>- that has included specific provisions on human mobility in its NDC referring to displacement through evacuation and temporary resettlement as part of post-crisis adaptation measures<sup>113</sup>. The EU updated its NDC in 2020, which remains silent on human mobility<sup>114</sup>. In contrast, Papua New Guinea is the only country that, being a developing country with SIDS status, has adopted an integrated approach to climate change mobility in its NDC. It has been included as one of nine priority areas for adaptation, with specific provisions addressing migration, displacement due to hazards and environmental degradation, and relocation<sup>115</sup>.

## B) Setting up the working group on displacement

COP21 also decided to take forward the commitment made at COP16 in Cancun and later confirmed at COP18 in Doha to improve understanding of how climate change affects human mobility patterns and ways to cope with it. To this end, the Parties mandated the Executive Committee of the WIM to set up a specific working group "to develop *recommendations for integrated approaches to avert, minimise and address displacement* related to the adverse impacts of climate change"<sup>116</sup>. In doing so, it shall cooperate with existing bodies and expert groups both under the UNFCCC –such as the Adaptation Committee and the Least Developed Countries Expert Group- and outside the Convention<sup>117</sup>.

That request led to the creation of the *Task Force on Displacement* (TFD), whose terms of reference the WIM Executive Committee adopted at its fourth meeting in September 2016<sup>118</sup>. Its composition, with a maximum of fourteen members, comprises a

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<sup>111</sup> Id.

<sup>112</sup> Vid. UNFCCC, Parties & Observers (last access: 23/11/2021).

<sup>113</sup> SLYCAN TRUST, "Human Mobility in Nationally Determined Contributions", *op. cit.*, p. 3.

<sup>114</sup> *Ibid.*, p. 2.

<sup>115</sup> *Ibid.*, p. 3.

<sup>116</sup> UNFCCC, "Decision 1/CP.21 Adoption of the Paris Agreement", in: *Report of the Conference of the Parties on its twenty-first session...* (FCCC/CP/2015/10/Add.1), *op. cit.*, par. 49 [italics added]

<sup>117</sup> Id.

<sup>118</sup> UNFCCC, *Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts* (FCCC/SB/2016/3), 14 October 2016, par. 23. For the Terms of Reference of the Task Force on Displacement, vid. UNFCCC, *Terms of Reference: Task Force on Displacement*, 3 pp. These Terms of Reference include: its mandate (section II) and scope of work (section III); meetings, guidelines for the drafting of its work plan and actors to whom it may address its recommendations (IV); requirements for technical experts (V); composition of the Task Force (VI); methodology (VII); reports to be submitted (VIII); and duration of its mandate (IX).

balanced representation of Annex I and non-Annex I Executive Committee members, corresponding to Annex I and non-Annex I Parties to the UNFCCC; technical experts reflecting regional diversity; one representative from the Adaptation Committee and one from the Least Developed Countries Expert Group<sup>119</sup>.

The following subsection reviews the work developed by the TFD and the results obtained so far.

### **1.3. An overview of the Task Force on Displacement's work**

#### **1.3.1. First phase: The initial two-year work plan (2017-2018)**

The first meeting of the new working group took place in Bonn (Germany), on 18-19 May 2017<sup>120</sup>. The event concluded with a draft biennial work plan (2017-2018) which the Executive Committee of the Warsaw Mechanism subsequently approved intersessionally, sometime between May and August 2017<sup>121</sup>.

The work plan activities followed the recommendations that emerged from the technical meeting on migration, displacement and human mobility that IOM and the Executive Committee jointly organised, with the support of the French Ministry of Foreign Affairs and International Development, in Casablanca, Morocco, from 27 to 30 July 2016<sup>122</sup>. The meeting brought together members of the Executive Committee of the Warsaw Mechanism, the United Nations and its specialised agencies and other international organisations, as well as representatives of the academic and scientific

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<sup>119</sup> UNFCCC, *Terms of Reference...*, *op. cit. supra*, section VI, pars. 11-17. According to information published in UNFCCC, [Task Force on Displacement - Membership](#) (last access: 23/11/2021), the composition of the TFD was as follows as of March 2021: UNDP (1 member); UNHCR (1); ILO (1); Advisory Group on Climate Change and Human Mobility (1); IOM (1); International Federation of Red Cross and Red Crescent Societies (1); Platform on Disaster Displacement (1); UNFCCC NGO constituency group 'Youth NGOs' (1); UNFCCC Adaptation Committee (1); UNFCCC Least Developed Countries Expert Group (1); WIM Executive Committee (4).

<sup>120</sup> UNFCCC, *Summary of proceedings of the first meeting of the Task Force on Displacement, the Executive Committee of the Warsaw International Mechanism for Loss and Damage*, 7 June 2017, 4 pp., including a draft work plan as annex.

<sup>121</sup> UNFCCC, *Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts* (FCCC/SB/2017/1), 24 August 2017, par. 16. Table 1, pp.14-17, includes the TFD workplan as endorsed by the WIM Executive Committee.

<sup>122</sup> UNFCCC, *Technical Meeting. Action Area (6): Migration, Displacement and Human Mobility, 27-29 July 2016, Casablanca (Morocco), Recommendations: Draft 1 – September 2016*, 8 pp. Among the wide range of actors to whom these recommendations were addressed, the Executive Committee was the main target audience, given the thematic focus of Action Area 6 of its Work Programme and its mandate related to the Task Force on Displacement, as well as the catalytic role of proposing a vision for future action that the Executive Committee is mandated for (*vid. ibid.*, p. 3).

community<sup>123</sup>. The experts' contributions were articulated around three pillars of work<sup>124</sup> –in line with the three main functions COP21 assigned to the WIM Executive Committee<sup>125</sup>:

- Pillar I: Improving the "collection, sharing and management" of knowledge and information on human mobility, including migration, displacement and planned relocation, in the context of climate change.
- Pillar II: Providing "an overview of existing mechanisms, frameworks, processes, and entities that promote dialogue, coordination, coherence and synergies" on climate change-related mobility.
- Pillar III: "Enhancing action and support, including finance, technology and capacity-building," to address the challenges and enhance the opportunities associated with human mobility and climate change, promoting a rights-based approach<sup>126</sup>.

As endorsed by the WIM Executive Committee, the TFD work plan was structured in four areas of action: i) policy/practice – national/subnational; ii) policy – international/regional; iii) data and assessment; iv) and framing and linkages<sup>127</sup>. Leaving aside the last area, which deals with organisational and working issues of the TFD, the other three do have substantive content that reflects the three Pillars elaborated at the Casablanca technical meeting, namely:

Activities in area (i) aim to improve "policies and institutional framework", including the "capacities of national and local governments", to address climate displacement, also covering "climate-related drivers and impacts of displacement" (Pillar III–action and support). In this first phase, TFD activities focus, on the one hand, on "[m]apping of existing relevant policies and institutional frameworks (...) at the national level, including identification of key actors in the policy formulation" (Activity

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<sup>123</sup> Ibid., p. 1 *in fine* and 2.

<sup>124</sup> Ibid., p. 2. The resulting recommendations for each of these work pillars are listed on pp. 5-8.

<sup>125</sup> Vid. UNFCCC, "Decision 2/CP.19...(FCCC/CP/2013/10/Add.1), *op. cit.*, par. 5.

<sup>126</sup> Key knowledge and information, good practices, key challenges and lessons learned for each work pillar are documented separately in the following three documents: UNFCCC, *Technical Meeting. Action Area (6): Migration, Displacement and Human Mobility, 27-29 July 2016, Casablanca (Morocco), Synthesis of relevant information, good practices and lessons learned in relation to Pillar 1: Enhancing Knowledge and Understanding*, 21 pp.; *Synthesis of relevant information, good practices and lessons learned in relation to Pillar 2: Strengthening Dialogue, Coordination, Coherence and Synergies*, 18 pp.; *Synthesis of relevant information, good practices and lessons learned in relation to Pillar 3: Enhancing Action and Support*, 25 pp.

<sup>127</sup> UNFCCC, *Report of the Executive Committee...* (FCCC/SB/2017/1), *op. cit.*, Table 1, pp.14-17.

I.1). On the other hand, it "[synthesizes] the state of knowledge to better understand displacement related to slow onset events" (Activity I.2)<sup>128</sup>.

The second set of activities maps how climate-related displacement is considered at all levels (Pillar II) by identifying strengths and gaps in: a) "institutional frameworks and mandates within the United Nation's system" (Activity II.3), including under the UNFCCC (Activity II.1); b) "existing international/regional guidance/tools" (Activity II.4); c) and national adaptation plans, nationally determined contributions, national communications and other relevant policy agendas, such as the Sendai Framework for Disaster Risk Reduction 2015 –2030, the Sustainable Development Goals, the World Humanitarian Summit, the Global Forum on Migration and Development, or the Global Compacts on Migration and Refugees (Activity II.2)<sup>129</sup>.

Finally, activity area (iii) would fulfil the objective of Pillar I. Thus, to better understand human mobility in the context of climate change, the TFD intends to: a) produce a report "providing an overview of data sources, common methodologies and good practice for displacement related data collection and assessment, as relevant to different contexts and regions" (Activity III.1); b) develop a model on climate-related disaster displacement risk at global and regional scale (Activity III.2); c) and a report "analysing available data on [sudden and slow onset events-related displacement] and its impacts on different regions and groups of countries in specific circumstances (e.g. least developed countries)" (Activity III.3)<sup>130</sup>.

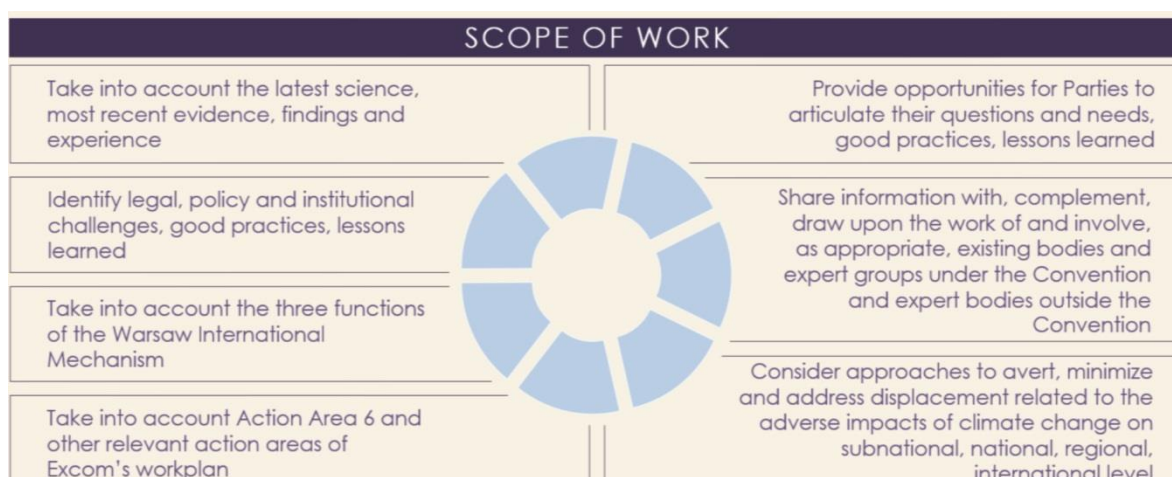
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<sup>128</sup> Ibid., p. 14 [verb form changed].

<sup>129</sup> Ibid., pp. 14 *in fine* and 15.

<sup>130</sup> Ibid., p. 16 [bracketed text rewrites from the original].

**Figure 32-Scope of the work of the TFD<sup>131</sup>**



### A) The COPs of Marrakech (2016) and Fiji (2017)

COP 22 and 23 resulted in little concrete, albeit important, progress on climate mobility, pending the presentation of the TFD's recommendations at the 2018 COP, once its two-year work plan had been completed. Aside from congratulating the WIM Executive Committee on the establishment of the TFD, in fulfilment of the mandate it had received at the Paris COP<sup>132</sup>, the Marrakech Conference (Morocco), which took place from 7-18 November 2016, encouraged for the first time States Parties to take climate mobility considerations into account when designing their national climate change adaptation plans and strategies. Specifically, paragraph 9 of Decision 3/CP.22

*"Encourages Parties to incorporate or continue to incorporate the consideration of extreme events and slow onset events, non-economic losses, displacement, migration and human mobility, and comprehensive risk management into relevant planning and action, as appropriate, and to encourage bilateral and multilateral entities to support such efforts;"<sup>133</sup>*

The Fiji COP23, celebrated in Bonn (Germany), 6-17 November 2017, was the first to be held after US President Donald Trump formally notified the UN of his decision for the US to leave the Paris Agreement<sup>134</sup>. As a result, the Conference focused primarily on redefining the "rules of the game" in terms of the implementation of the

<sup>131</sup> UNFCCC, *Report of the Executive Committee ...* (FCCC/SB/2017/1), *op. cit.*, p. 6.

<sup>132</sup> UNFCCC, "Decision 3/CP.22..." (FCCC/CP/2016/10/Add.1), *op. cit.*, par. 1.

<sup>133</sup> *Ibid.*, par. 9 [underlined added].

<sup>134</sup> US DEPARTMENT OF STATE, "On the U.S. Withdrawal from the Paris Agreement", *Press Release*, 4 November 2019 (last access: 23/11/2021). The US rejoined the Paris Agreement on 20 January 2021 after the election of Joe Biden as the new US president, entering into force again for the US on 19 February 2021 [vid. USA, "Acceptance Paris Agreement" (Reference (Depositary Notification): C.N.10.2021.TREATIES-XXVII.7.d), 20 January 2021, (last access: 23/11/2021)].

Paris Agreement, so that the US withdrawal would not affect the achievement of the Agreement's ambitious goal: limiting the increase in global average temperature to no more than 1.5°C above pre-industrial levels. On climate displacement, the final report the COP adopted merely congratulated the TFD on its work to date, but encouraged it

*"to take into consideration both cross-border and internal displacement, in accordance with its mandate, when developing recommendations for integrated approaches to averting, minimising and addressing displacement related to the adverse impacts of climate change;"*<sup>135</sup>

Such explicit reference to both internal and cross-border displacement should, however, be seen as a significant and important step forward. In theory at least, it would signal the willingness of the Parties to ensure that future integrated approaches, addressing the gaps identified by the TFD in existing institutional, policy and legal frameworks, cover both modalities of displacement equally.

Finally, the Bonn COP continues to encourage Parties, in very similar terms to the Marrakech declaration, to integrate human mobility considerations, "including migration, displacement and planned relocation", into their "relevant policy, planning and action" on climate change, "encouraging relevant bilateral and multilateral entities to support such efforts"<sup>136</sup>.

**B) *Recommendations from the first phase-work of the TFD on integrated approaches to averting, minimising and addressing displacement related to the adverse impacts of climate change: the culmination of its two-year programme of work***

In 2018, the TFD concluded the extensive initial work programme it had developed during that year and the previous one<sup>137</sup>. The resulting outcomes were debated at the TFD Stakeholder Meeting on *Recommendations for integrated approaches to avert, minimise and address displacement related to the adverse impacts of climate change*, which took place in Bogis-Bossey (Switzerland), from 14-15 May 2018<sup>138</sup>.

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<sup>135</sup> UNFCCC, "Decision 5/CP.23 Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts", in: *Report of the Conference of the Parties on its twenty-third session, held in Bonn from 6 to 18 November 2017. Addendum Part two: Action taken by the Conference of the Parties at its twenty third session* (FCCC/CP/2017/11/Add.1), 8 February 2018, par. 8.

<sup>136</sup> *Ibid.*, par. 13(c).

<sup>137</sup> UNFCCC, *Report of the Task Force on Displacement. Advanced unedited version, 17 September 2018*, 82 pp.

<sup>138</sup> UNFCCC, *Meeting Report: Task Force on Displacement Stakeholder Meeting "Recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change"*, 40 pp.

Apart from TFD members, 70 experts on displacement, migration and climate change, coming from governments, regional organisations, civil society, academia and international organisations, joined the meeting<sup>139</sup>. As the title of the Meeting indicates, its overall objective was to seek the views of international experts for the drafting of recommendations on human mobility and climate change that the TFD was to submit to the WIM Executive Committee in fulfillment of its mandate<sup>140</sup>.

The TFD proposed its recommendations for approval to the Executive Committee at its eighth meeting<sup>141</sup> and were subsequently submitted for consideration by the Parties at COP24, held in Katowice (Poland) from 2 to 15 December 2018<sup>142</sup>. The WIM Executive Committee and the TFD also organise a side event during the COP<sup>143</sup>, with the collaboration of IOM and PDD, "to highlight the significance of the recommendations (...), generate support (...) leading to their adoption by the Parties, and stimulate a discussion on what needs to be done for enhanced implementation at the sub-national, national, regional and international level."<sup>144</sup>

**Figure 33-Timeline of the first working phase of the TFD<sup>145</sup>**



<sup>139</sup> Ibid., p. 6.

<sup>140</sup> Id.

<sup>141</sup> UNFCCC, "Item 8: Report of the Executive Committee", in: *Summary of decision points at Excom 8 As at 21 September 2018*, p. 3.

<sup>142</sup> UNFCCC, "Annex Recommendations from the report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts on integrated approaches to averting, minimizing and addressing displacement related to the adverse impacts of climate change (Decision 10/CP.24)", in: *Report of the Conference of the Parties on its twenty fourth session, held in Katowice from 2 to 15 December 2018. Addendum Part two: Action taken by the Conference of the Parties at its twentyfourth session (FCCC/CP/2018/10/Add.1)*, 19 March 2019, pp. 43-45.

<sup>143</sup> UNFCCC, *Recommendations for Integrated Approaches on How to Avert, Minimize and Address Displacement and Next Steps*, COP24, WIM Excom and Task Force on Displacement Side Event, 06 December 2018, 4 pp.

<sup>144</sup> Ibid., p. 2.

<sup>145</sup> UNFCCC, *Report of the Task Force on Displacement...*, *op. cit.*, p. 3.

The COP "welcom[ed]" the TFD Report and the WIM Executive Committee recommendations<sup>146</sup>, inviting "Parties, bodies under the Convention and the Paris Agreement, United Nations agencies and relevant stakeholders to consider [it] (...) when undertaking relevant work"<sup>147</sup>. The recommendations drew on the gaps and shortcomings the TFD identified across the main policy, regulatory and institutional frameworks it had analysed and aimed to fill them to achieve truly integrated approaches to prevent, minimise and address displacement resulting from the negative impacts of climate change. For expository purposes, these recommendations can be grouped into three clusters: (1) improving methodologies for collecting and monitoring relevant data; (2) filling policy and regulatory gaps; and (3) improving coordination within the UN system.

#### 1. Improving methodologies for collecting and monitoring relevant data

First, the TFD confirmed the limited availability of databases on human mobility in the context of climate change, with the IDMC being the only global dataset on disaster displacement currently available<sup>148</sup>. The task force noted certain limitations and biases of the IDMC in terms of data collection, collation and analysis<sup>149</sup>, and also acknowledged the ongoing challenges in gathering reliable data on displacement related to slow-onset events<sup>150</sup> –as also highlighted in Chapter II of the thesis. Likewise, the absence of data on the duration of displacement or its social and economic impacts hampers recovery and reconstruction planning and financing, as well as preventive measures and risk reduction<sup>151</sup>. To address the identified gaps, the TFD suggested joint efforts at the institutional level of the UNFCCC and the Paris Agreement to better understand the nexus between climate change and human mobility, both transboundary and internal<sup>152</sup>. However, it did not specify which measures could contribute to improve "coordination, coherence and collaboration" between the different agencies, programmes and platforms.

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<sup>146</sup> UNFCCC, "Decision 10/CP.24 Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts", par. 1(a) and (c), in: *Report of the Conference of the Parties on its twenty fourth session...*(FCCC/CP/2018/10/Add.1), *op. cit.*, p. 40.

<sup>147</sup> *Ibid.*, par. 3, p. 40 [bracketed text added].

<sup>148</sup> UNFCCC, *Report of the Task Force on Displacement...*, *op. cit.*, par. 108.

<sup>149</sup> *Ibid.*, par. 109.

<sup>150</sup> *Ibid.*, pars. 58-59.

<sup>151</sup> *Ibid.*, letters (b) and (c), p. 41.

<sup>152</sup> UNFCCC, "Annex Recommendations..." (FCCC/CP/2018/10/Add.1), *op. cit.*, par. 1(c), p. 43.



At the national level, the TFD invited Parties "to enhance research, data collection, risk analysis and sharing of information to better map, understand and manage" climate-related mobility, and to do it in a way that involves communities either displaced or likely to be dislocated in the context of climate change<sup>153</sup>. In this regard, it also invited the Convention and Paris Agreement organs to help countries both to develop climate change-related risk assessments and enhance standards for the collection and analysis of human mobility data<sup>154</sup>.

## 2. Filling policy and regulatory gaps

In its report, the TFD acknowledged that, thanks to the catalytic role of the Paris Agreement, there has been a significant awakening of global political awareness around climate change-related human mobility since 2015<sup>155</sup>. However, the working group found that significant gaps remain in terms of the inclusion of climate displacement in political agendas or the absence of specific international law provisions for climate migrants and forced-displaced persons<sup>156</sup>. In this regard, the working group noted that more guidance is required "to clarify the relevance and application" of existing international and regional frameworks to protect displaced persons in the context of climate change<sup>157</sup>.

On that matter, the TFD stressed the importance of the Guiding Principles on Internal Displacement in seeking durable solutions to situations of internal displacement resulting from the negative impacts of climate change<sup>158</sup>. It further noted the importance that the UN and other relevant organisations and interested stakeholders "continue [to develop and share] good practices, tools and guidance" regarding the provision of assistance and protection to displaced persons and communities within existing national and international law<sup>159</sup>. The literal wording of this recommendation can be interpreted as legitimising UNHCR in its work to assist victims of natural disasters and processes of slow environmental degradation –as discussed in Chapter IV.

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<sup>153</sup> Ibid., par. 1(g)(ii), p. 43.

<sup>154</sup> Ibid., par. 1(d), p. 43.

<sup>155</sup> UNFCCC, *Report of the Task Force on Displacement...*, *op. cit.*, pars. 75-76.

<sup>156</sup> Ibid., "(c) Gaps and challenges", letters (a) and (c), p. 23.

<sup>157</sup> Ibid., "(d) Identified gaps", letter (a) *in fine*, p. 30.

<sup>158</sup> UNFCCC, "Annex Recommendations..." (FCCC/CP/2018/10/Add.1), *op. cit.*, par. 1(g)(v), p. 44.

<sup>159</sup> Ibid., par. 1(h)(iii)(c), p. 44 [verb form changed].

At the regional and national level, the TFD found a prevalent absence of comprehensive frameworks on human mobility due to climate change, as well as on related issues such as the human rights of affected populations. To begin with, the TFD noted that existing international instruments that could serve to protect the human rights of migrants, displaced or relocated persons in the context of climate change, and provide them with durable solutions, have not yet been transposed at the regional level<sup>160</sup>. Furthermore, its mapping showed that "guidelines and tools" are not equally present worldwide and that they do not take a truly holistic approach, focusing more on prevention, minimisation or treatment of displacement depending on what the priority is in each region<sup>161</sup>. Moreover, the mapping revealed that the majority of available frameworks address "the present and immediate future" rather than the longer term<sup>162</sup>.

At the national level, the TFD observed that "specialised legislation" covering areas of climate change and human mobility, was "limited to non-existent". This was compounded in some instances by "a lack of coherence and coordination" in the development of national policies and legislation, which typically did not simultaneously encompass both issues and interactions between them. This deficiency was also evident in national policy development committees, which rarely integrate specialists from the environmental or climate fields, or migration or labour actors. Finally, of the countries that the TFD identified as in the process of developing national policies that included human mobility and climate change issues, most of these policies were not yet at the implementation stage<sup>163</sup>.

Accordingly, the TFD invited Parties "[t]o consider formulating laws, policies and strategies" on human mobility and climate change with an integrated approach that includes prevention, mitigation and management, "taking into consideration their respective human rights obligations and, as appropriate, other relevant international standards and legal considerations"<sup>164</sup>. In view of the Human Rights Committee's decision in the case of Mr Teitiota, discussed in Chapter V, a legislative development in the direction suggested by the TFD should expressly incorporate, for greater legal certainty, the principle of non-refoulement of migrants to their countries of origin when

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<sup>160</sup> UNFCCC, *Report of the Task Force on Displacement...*, *op. cit.*, "(d) Identified gaps", letter (a), p.30.

<sup>161</sup> *Ibid.*, letter (b), pp. 30 *in fine* and 31.

<sup>162</sup> *Id.*

<sup>163</sup> *Ibid.*, "(c) Identified gaps", p. 11.

<sup>164</sup> UNFCCC, "Annex Recommendations... (FCCC/CP/2018/10/Add.1), *op. cit.*, par. 1(g)(i), p. 43.

the adverse effects of climate change have deteriorated living conditions throughout the country to the point of posing a risk to the life or integrity of the returnee.

The lack of inclusion of migration policies within adaptation strategies<sup>165</sup>, or the lack of attention to the integration of migrants in destination communities, when return is not possible<sup>166</sup>, were other shortcomings the working group identified. The TFD emphasises that empirical evidence suggests that, in the face of slow-onset events, "migration does not necessarily represent a failure of adaptation policies, but may also be an actual adaptation strategy" for those who decide to migrate<sup>167</sup>. Thus, the TFD calls on Parties to "facilitate orderly, safe, regular and responsible migration and mobility of people", taking into account "the needs of migrants and displaced persons, communities of origin, transit and destination", such as favouring employment migration in accordance with international labour rules<sup>168</sup>. An example of countries that have undertaken such initiatives is Australia and New Zealand, which have unfolded temporary work and training programmes for the populations of Kiribati or Tuvalu – which are SIDS affected by rising sea levels caused by climate change<sup>169</sup>.

Similarly, the TFD invited Parties to incorporate the "challenges and opportunities" that human mobility poses into their respective national climate change adaptation plans, and to communicate to the WIM Executive Committee the initiatives carried out in this regard<sup>170</sup>. In the same vein, but within the institutional framework of the UNFCCC, the TFD also urged the Adaptation Committee and the Least Developed Countries Expert Group, "in accordance with their mandates and workplans, and in collaboration with the Executive Committee", to help developing country Parties in that regard<sup>171</sup>.

To prevent or minimise climate displacement, the TFD recommends to States Parties that these adaptation plans be designed on three key pillars: prevention –e.g.

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<sup>165</sup> UNFCCC, *Report of the Task Force on Displacement...*, *op. cit.*, "(d) Identified gaps", letter (c), p.15.

<sup>166</sup> *Ibid.*, letter (d), p.15.

<sup>167</sup> *Ibid.*, letter (c), p.15.

<sup>168</sup> UNFCCC, "Annex Recommendations... (FCCC/CP/2018/10/Add.1), *op. cit.*, par. 1(g)(vi), p. 44.

<sup>169</sup> Vid. GRACIA PÉREZ, D., "La tragedia de los pequeños Estados insulares en desarrollo. Desplazamientos climáticos antes la subida del nivel del mar", *Anuario Hispano-Luso-Americano de derecho internacional*, No. 24, 2020, pp. 257-268. Vid. also, ARENAS HIDALGO, N.C., "El cambio climático y los desplazamientos de población. La migración como estrategia de adaptación", in: Giles Carnero, R., (coord.), *Cambio Climático, Energía y Derecho Internacional: Perspectivas de Futuro*, 1<sup>st</sup>ed., Pamplona (Spain), Aranzadi, 2012, pp. 221-235.

<sup>170</sup> UNFCCC, "Annex Recommendations... (FCCC/CP/2018/10/Add.1), *op. cit.*, par. 1(g)(iv), p. 44.

<sup>171</sup> *Ibid.*, par. 1(e), p. 43.

early warning systems; preparedness –e.g. development of contingency and evacuation plans; and strengthening resilience –e.g. forecast-based financing<sup>172</sup>. However, the TFD detected a paucity of "specific tools and guidance" designed to facilitate access to funding for projects to prevent, minimise and address displacement while guaranteeing that funded projects protect the rights of displaced persons<sup>173</sup>. Therefore, it invites "UN agencies, relevant organisations and other stakeholders (...) to continue supporting" Parties' efforts in funding, technology and capacity building, paying particular attention to communities and local actors<sup>174</sup>.

Finally, for these integrated approaches to be truly effective, preventing or minimising the need for displacement, while strengthening capacities to address it when it cannot be avoided, the TFD stresses the importance of "[supporting and enhancing] regional, subregional and transboundary cooperation", particularly in the context of "risk and vulnerability assessments, mapping, data analysis, preparedness and early warning systems"<sup>175</sup>.

### 3. Improving coordination within the UN system

The third set of recommendations aims to improve coherence of action within the UN family in addressing climate-related human mobility. In this regard, the TFD noted in its report that "[t]he UN currently lacks a system-wide lead, coordination mechanism, or strategy on disaster displacement, including related to climate change". In consequence, "functions and activities related to disaster displacement and climate change" remain spread "across multiple entities and processes", without necessarily being coordinated or assigned to different agencies based on comparative advantages. In this vein, the TFD drew attention to the fact that "many UN entities view displaced people as a sub-set of the larger populations they serve". This absence of "overall leadership" hampers the UN's ability "to ensure coordinated contributions to relevant international frameworks and processes", and to effectively assist States severely burdened by climate change-related displacement, including the protection and assistance needs of IDPs or those crossing an international border<sup>176</sup>.

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<sup>172</sup> Ibid., par. 1(g)(iii), p. 43.

<sup>173</sup> UNFCCC, *Report of the Task Force on Displacement...*, *op. cit.*, "(d) Identified gaps", letter (c), p.31.

<sup>174</sup> UNFCCC, "Annex Recommendations... (FCCC/CP/2018/10/Add.1), *op. cit.*, par. 1(h)(i).

<sup>175</sup> Ibid., par. 1(h)(ii) [verb form changed].

<sup>176</sup> UNFCCC, *Report of the Task Force on Displacement...*, *op. cit.*, par. 93.

At the UNFCCC level, the TFD evidenced that "displacement is a relatively new topic" on its agenda, and that "[t]here is little duplication of mandates" under its framework. Apart from the work programme of the WIM Executive Committee and the TFD, climate displacement does not appear on the agendas of the other bodies under the UNFCCC<sup>177</sup>, which regard displacement "as a risk associated with the impacts of climate change in some societies"<sup>178</sup>. As a result, those bodies indirectly engaging with issues linked to climate displacement lack "a specific mandate" to include it as a topic in their respective work-streams<sup>179</sup>. Furthermore, "information, guidance or tools to avoid, minimise and address displacement in the context of climate change are currently not readily available or consolidated on the UNFCCC website", which hinders this knowledge from reaching climate change policymakers<sup>180</sup>.

To improve coherence within the UN family in addressing the issue of climate change-related displacement, the TFD recommended, on the one hand, that the UN Secretary-General undertake a "strategic review" of the entire UN system, and facilitate the inclusion of this issue in the work of the High-Level Panel on Internal Displacement<sup>181</sup>. On the other hand, "to avoid duplication" on climate change and human mobility, it invited "relevant UN agencies and other stakeholders" to collaborate with UNFCCC bodies, in particular the Executive Committee, "when facilitating" States' efforts in this regard, including efforts in "relevant international frameworks and programmes of action", such as the Global Compact for Migration, the International Migration Review Forum, or the United Nations Migration Network<sup>182</sup>. The TFD further invited them "to provide the Executive Committee with information" on activities they have undertaken to averting, minimizing and addressing climate change-related displacement, "with a view to informing the work and future action of the Executive Committee and its expert groups, Parties and other stakeholders"<sup>183</sup>.

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<sup>177</sup> Ibid., par. 67(a) and (b).

<sup>178</sup> Ibid., par. 68. The TFD's position on the securitisation of climate-related displacement, and its limited contribution to the conceptualisation of displacement risk at the COP, is analysed by examining the TFD's discussions in: ODEYEMI, C., "UNFCCC's posture on displacement riskification: Conceptual suggestions", *Progress in Disaster Science*, Vol. 10, Article 100164, April 2021, 8 pp.

<sup>179</sup> UNFCCC, *Report of the Task Force on Displacement...*, *op. cit.*, par. 67(b).

<sup>180</sup> Ibid., par. 68.

<sup>181</sup> UNFCCC, "Annex Recommendations... (FCCC/CP/2018/10/Add.1), *op. cit.*, par. 1(k).

<sup>182</sup> Ibid., par. 1(j).

<sup>183</sup> Ibid., par. 1(i).

### 1.3.2. Second phase: TFD's Plan of Action for 2019-2021

Before the initial Executive Committee work plan expired, COP23 in Fiji adopted its next five-year work<sup>184</sup>. It was intended to further develop the WIM's functions on loss and damage associated with the adverse effects of climate change based on the previous biennial work plan<sup>185</sup>. Like its predecessor, the new work plan included a thematic area aimed at enhancing "cooperation and facilitation in relation to human mobility, including migration, displacement and planned relocation", in the context of climate change –strategic workstream (d)<sup>186</sup>. As priority activities for the Executive Committee in 2019-2021 in the area of human mobility, the five-year work identifies the promotion of policy cooperation and exchange of experiences between regions and countries, the identification of relevant tools and strategies, and the engagement in relevant international policies and processes<sup>187</sup>.

To continue to assist it in the development of strategic workstream (d), the WIM Executive Committee decided to extend the TFD' mandate during its eighth meeting, held from 18-21 September 2018<sup>188</sup> –a decision that was lately ratified by the Parties during the 2018 COP24 in Katowice (Poland)<sup>189</sup>. Thus, during its ninth meeting (9-11 April 2019), the Executive Committee elaborated the terms of reference for the second phase of the TFD and endorsed the agenda for its first meeting on 1-2 July 2019 in Geneva<sup>190</sup>. During this meeting, the third one since the TFD was established in 2015,

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<sup>184</sup> UNFCCC, "Decision 5/CP.23... (FCCC/CP/2017/11/Add.1), *op. cit.*, par. 4. For the five-year rolling work plan, *vid.* UNFCCC, "Annex: The five-year rolling workplan of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts", in: *Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts. Addendum* (FCCC/SB/2017/1/Add.1), 2 November 2017, pp. 6-16.

<sup>185</sup> *Vid.* "Action area 9: Develop a five-year rolling workplan for consideration at COP 22 building on the results of this two-year workplan to continue guiding the implementation of the functions of the Warsaw International Mechanism" from the initial two-year work plan of the WIM Executive Committee (in: UNFCCC, "Annex II: Initial two-year workplan of the Executive Committee... (FCCC/SB/2014/4), *op. cit.*, p. 13). The Executive Committee began defining the activities of its five-year rolling work plan at its fifth meeting (21-25 March 2017) and concluded its work at its sixth meeting (11-13 October 2017) (*vid.* UNFCCC, *Report of the Executive Committee...* (FCCC/SB/2017/1/Add.1), *op. cit.*, par. 3).

<sup>186</sup> UNFCCC, "Annex: The five-year rolling workplan of the Executive Committee... (FCCC/SB/2017/1/Add.1), *op. cit.*, pp. 13-14.

<sup>187</sup> *Id.*

<sup>188</sup> UNFCCC, "Item 5: Report by the expert groups: (a) Task Force on Displacement", in: *Summary of decision points at Excom 8...*, *op. cit.*, par. 1, p. 1.

<sup>189</sup> UNFCCC, "Decision 10/CP.24...", par. 4, in: *Report of the Conference of the Parties on its twenty fourth session...* (FCCC/CP/2018/10/Add.1), *op. cit.*, p. 41.

<sup>190</sup> UNFCCC, "Item 7: Elaboration of terms of reference of the task force on displacement", in: *Summary of decision points at Excom 9*, p. 1. For the TFD terms of reference as updated by the WIM Executive Committee at its ninth meeting, *vid.* UNFCCC, *Terms of Reference: Task Force on Displacement*, 8 pp.

the working group elaborated its action plan for this second phase of action (2019-2021)<sup>191</sup>, which was discussed and approved by the WIM Executive Committee during its tenth meeting (23-25 October 2019)<sup>192</sup>.

Parties "welcom[ed]" the new work plan of the TFD during COP25 in Chile, held in Madrid from 2-23 December 2019<sup>193</sup>. Again, the TFD took advantage of the COP to organise a side event to raise awareness on the climate change impacts on human mobility and build support for the work of the Working Group<sup>194</sup>. Entitled *Moving Forward Together: Averting, Minimizing and Addressing Displacement. The Second Phase of the Task Force on Displacement*, the event served "to mark the launch of [its] second phase (...), present the new Plan of Action and provide a sample of activities being implemented at the global, regional and national level"<sup>195</sup>.

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<sup>191</sup> A summary of the deliberations of the third meeting of the TFD can be found at: UNFCCC, "Annex II: Summary of the proceedings of the 3rd meeting of the task force on displacement, its membership and its workplan", in: *Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts* (FCCC/SB/2019/5), 15 October 2019, pp. 18-19.

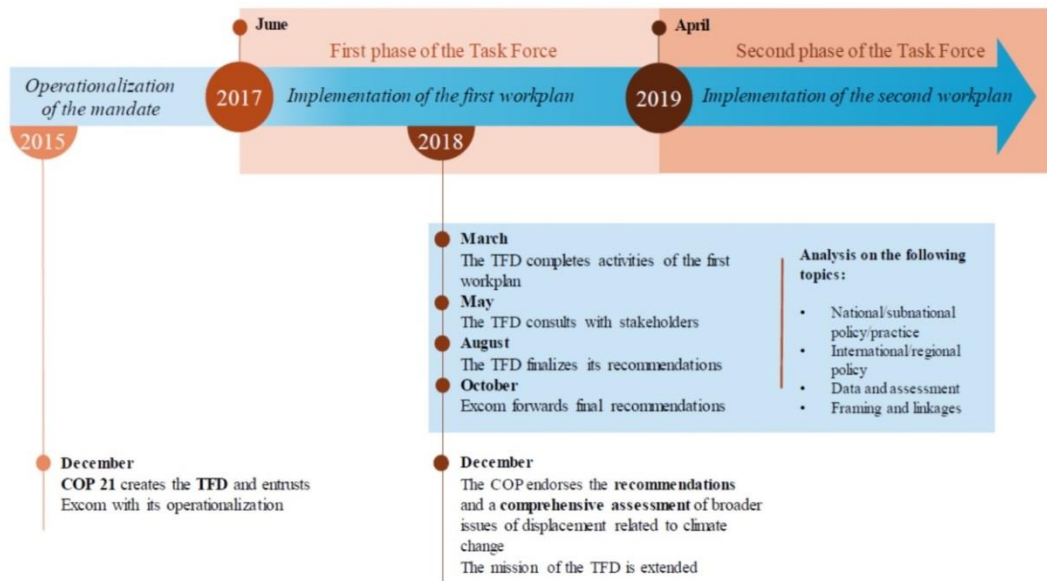
<sup>192</sup> UNFCCC, "Item 5: Work of the expert groups of the Executive Committee", in: *Summary of Decision Points Excom 10*, p. 1 *in fine*. The TFD action plan for the second phase can be found at: UNFCCC, "Annex I Task force on displacement: plan of action for 2019-2021", in: *Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts Addendum* (FCCC/SB/2019/5/Add.1), 15 November 2019, pp. 9-15.

<sup>193</sup> UNFCCC, "Decision 2/CMA.2 Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts and its 2019 review", in: *Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its second session, held in Madrid from 2 to 15 December 2019 Addendum Part two: Action taken by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its second session* (FCCC/PA/CMA/2019/6/Add.1), 16 March 2020, par. 2 [verb tense changed].

<sup>194</sup> UNFCCC, *Moving Forward Together: Averting, Minimizing and Addressing Displacement. The Second Phase of the Task Force on Displacement*, COP25, WIM Executive Committee and Task Force on Displacement Side Event, 03 December 2019, 3 pp.

<sup>195</sup> *Ibid.*, p. 2.

Figure 34-Working Timeline of the TFD during its first and second phase<sup>196</sup>



### A) Summary of the second Plan of Action and implementation progress

The second TFD work plan is structured around a total of twenty-two activities<sup>197</sup>, all of them oriented towards the same general objective of deepening the understanding of climate mobility, raising awareness of its existence, challenges and opportunities, and promoting action. Taking as a classification criterion the field of action on which they focus, these twenty-two activities can be grouped into five clusters:

1- A first set of activities aimed at increasing the visibility of human movement in the context of climate change by a) disseminating the results of the first phase of TFD work (activity 1); b) ensuring that climate change and displacement is at the forefront of the agendas of relevant processes (activity 8); (c) distributing fact sheets offering an annual picture of disaster displacement worldwide, with data disaggregated by type of disruption, regions affected, gender or socio-economic status (activity 2); (d) organising training/awareness-raising workshops for youth (activity 19), as well as seminars on labour migration and climate resilience (activity 10); (e) or inviting experts to deliver technical talks to the Executive Committee and its sub-groups on innovative approaches (activity 21).

<sup>196</sup> UNFCCC, *Report of the Executive Committee...* (FCCC/SB/2019/5), *op. cit.*, p. 9.

<sup>197</sup> Vid. UNFCCC, "Annex I Task force on displacement: plan of action for 2019-2021"... (FCCC/SB/2019/5/Add.1), *op. cit.*, pp. 9-15.



2- A second group would seek to build and strengthen the capacity of countries to cope with displacement related to the adverse effects of climate change, including an increased incidence of natural disasters. On the one hand, by providing "guidance, case studies, lessons learned, briefing papers and funding" on preparedness, including "early warning systems, contingency planning, evacuation planning, resilience-building strategies and plans, or on the development of innovative approaches such as forecast-based financing" (activity 15). On the other hand, by training national authorities to include migration, environment and climate change in their long-term national planning (activity 12), including the implementation of integrated approaches that include displacement risk in both their disaster risk reduction strategies (activity 14) and national climate change adaptation plans (activity 16).

3- The third cluster intends to enhance understanding of the economic implications of climate mobility in relation to a) the economic cost/impact of displacement at the national level (activity 9); b) and possible ways to finance strategies to avoid, minimise and address such displacement. On the latter issue, the TFD activity focuses on developing "guidance" on the preparation of project proposals for the Green Climate Fund and other funds and donors (activity 20); raising awareness among Parties and donors, including that Fund, on the importance of improving access to financial support in this regard (activity 6); and compiling case studies of success stories that have integrated climate mobility into relevant projects or programmes such as the green economy (activity 6).

4- The fourth group would comprise activities designed to improve understanding of and support for a range of other issues related to climate mobility such as: (a) displacement related to slow-onset events (activity 4) or occurring in situations of climate change/disaster and conflict/violence nexus (activity 3); (b) damage and loss associated with disaster displacement and possible approaches to address them (activity 5); (c) the formulation of national laws, policies and strategies, including disaster response (activity 7); (d) or improved capacity for data collection, risk assessment and analysis regarding displacement (activity 13).

5- Finally, a fifth set of activities would attempt to better coordinate the work of the TFD with that of other related actors by a) engaging with relevant stakeholders (activity 22); b) exchanging and sharing information on human mobility with the other

expert groups of the Executive Committee (activity 11); as well as with the Least Developed Countries Expert Group and the Adaptation Committee (activity 17); c) or advocating for the mainstreaming of climate displacement in the work plan of the UN High Level Panel on Internal Displacement (activity 18)<sup>198</sup>.

During its fourth meeting, which took place from 7 to 9 September 2020, the TFD updated on the progress made in the development of its second action plan<sup>199</sup>, whose implementation has been hampered by the COVID-19 emergency. Thus, documentation-based activities were able to continue as planned. In contrast, activities consisting of developing user-friendly knowledge products or those whose working methodology required face-to-face dialogues or field visits were affected by the restrictions on social contact and mobility imposed by the pandemic<sup>200</sup>. In other activities, it has been possible to modify the working methodology to adapt it to the new circumstances. Such was the case for capacity building and training activities, which moved from face-to-face to online. For example, the Disaster Displacement Platform converted its disaster displacement guidelines for the Central American and Caribbean regions into e-learning modules, and the ILO carried out its training on Labour Migration Governance for Pacific Island countries to online<sup>201</sup>.

During the meeting, the challenge of keeping climate displacement relevant and prominent in a context where all attention is focused on COVID-19 was also highlighted<sup>202</sup>. However, the global pandemic situation has also created interesting working synergies. For example, the ILO has initiated a new research project on the impact of COVID-19 on the nexus between climate change, labour markets and migration in South Asia, and the IFRC is addressing the broader challenges that COVID-19 poses for humanitarian response<sup>203</sup>.

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<sup>198</sup> The status of implementation of each of the twenty-two activities that make up the TFD Action Plan as of 30 August 2021 is shown in: UNFCCC, *Task force on displacement: plan of action for 2019–2021 with progress updates on implementation*, 16 pp.

<sup>199</sup> UNFCCC, *Fourth Meeting of the Task Force on Displacement (TFD4) Summary, 7-9 September 2020*, 5 pp.

<sup>200</sup> *Ibid.*, par. 16 (b) and (d).

<sup>201</sup> *Ibid.*, par. 16 (c).

<sup>202</sup> *Ibid.*, par. 16 (e).

<sup>203</sup> *Ibid.*, par. 18 (a) and (b).

## B) Outcomes from the second Plan of Action

Still with mobility constraints in place to contain COVID-19, the TFD held its fifth meeting virtually on 13 April 2021<sup>204</sup>. Although the internet had allowed the working group to develop its action plan without major changes or delays, the group recognised that connectivity constraints, especially among the most vulnerable or marginalised, could *de facto* prevent their virtual participation in TFD activities. Given the special interest of these groups for the TFD, due to their increased vulnerability to the adverse effects of climate change, the group members emphasised the implementation of activities at regional and sub-regional levels as an alternative approach to simply converting the activities planned at the global level from face-to-face to an online format<sup>205</sup>.

Apart from noting these methodological challenges posed by the pandemic, the workshop focused on three objectives: a) firstly, possible ways to enhance the expert group's collaboration and dissemination of its inputs through other complementary initiatives, platforms and actors at the global level –such as the UN Migration Network, in which several TFD members also participate - and at regional scale –e.g. the Issue-based Colation on Enviroment and Climate Change in Europe and Central Asia -, including also academia, regional NGOs and local actors. b) Secondly, development of technical guidelines for addressing long-term climate change risks that the COP had requested from the WIM Executive Committee and its expert groups in their respective thematic areas. c) Finally, presentation to the Executive Committee of recommendations resulting from the implementation of the TFD second work plan to date<sup>206</sup>.

The Executive Committee considered the inputs from the TFD<sup>207</sup> during its fourteenth meeting and incorporated them into its recommendations<sup>208</sup> to the Parties during COP26, which, after the 2020 hiatus because of the health emergency, was held from 31 October to 13 November in Glasgow (UK). The UN Network on Migration, the

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<sup>204</sup> A summary of the meeting can be found at UNFCCC, *Fifth Meeting of the Task Force on Displacement (TFD5). Summary of proceedings*, 4 pp.

<sup>205</sup> *Ibid.*, p. 2 *in fine*.

<sup>206</sup> *Ibid.*, pp. 2-3.

<sup>207</sup> UNFCCC, *Inputs from the TFD for consideration by the ExCom for inclusion in its recommendations to Parties, 16 September 2021. Unedited*, 2 pp.

<sup>208</sup> UNFCCC, *Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts. Addendum (FCCC/SB/2021/4/Add.2)*, 25 October 2021, par. 30. For a summary of decision points adopted on ExCom 14, *vid.* UNFCCC, *ExCom 14 Decision points adopted on 24 September 2021*, 7 pp.

International Organization for Migration, the Platform on Disaster Displacement and the Advisory Group on Climate Change and Human Mobility –the latter three being TFD members - conveyed key messages on Migration and Climate Change to COP26<sup>209</sup>, and several side events were held on the topic –e.g. *Climate Induced Migration in South Asia - impact of loss and damage*; or *Climate Displacement: Towards a Pragmatic Global Response* or *Migration and Climate Adaptation*<sup>210</sup>. The WIM also organised a side event, *Moving forward: presenting the work of the WIM ExCom and its five expert groups*, to present its three new expert groups, and update the implementation of the action plan of the two already in place, including the TFD<sup>211</sup>.

The Conference of the Parties agreed with the recommendations submitted to it by the WIM Executive Committee<sup>212</sup>, based on the work of its expert groups. The contributions of the TFD focused on assessing "the progress of the recommendations adopted at COP 24 and evaluating the current level of ambition, measures of success and gaps in existing guidelines"<sup>213</sup>. As such, the Executive Committee:

1- Reminds Parties of "the relevance and importance" of the 2018 recommendations<sup>214</sup>.

2- Encourages them to remain committed to the challenges and opportunities posed by human mobility in the context of climate change, by "further engagement and support" to the TFD Action Plan Framework and the five-year work plan of the WIM Executive Committee<sup>215</sup>, and by "raising awareness" on climate displacement in other relevant international fora, such as the Sendai Framework for Disaster Risk Reduction,

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<sup>209</sup> Vid. IOM, "Messages to the 26th UN Climate Change Conference of the Parties", 1 p. (last access: 27/11/2021). UN NETWORK ON MIGRATION, Migration Scenarios in a Changing Climate: Building Resilient Communities is Needed Now More than Ever (last access: 27/11/2021); PDD, "Key Messages for COP26: Increasing Action and Support to Better Avert, Minimize and Address Displacement Related to the Adverse Effects of Climate Change", PDD, 4 pp. (last access: 27/11/2021); ADVISORY GROUP ON CLIMATE CHANGE AND HUMAN MOBILITY, "Calling for Climate Action on Human Mobility", *Twenty-sixth session of the United Nations Framework Convention on Climate Change (UNFCCC) Conference of the Parties (COP26)*, IOM, 7 pp. (last access: 27/11/2021).

<sup>210</sup> The full list of side events that took place during COP26 can be found at COP26, SEORS | Side events list (unfccc.int) (last access: 27/11/2021).

<sup>211</sup> Vid. COP26, Side event - Moving forward: presenting the work of the WIM ExCom and its five expert groups | UNFCCC (last access: 27/11/2021).

<sup>212</sup> UNFCCC, "Decision -/CP.26 Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts" (Advance unedited version), par. 1.

<sup>213</sup> UNFCCC, *Fifth Meeting of the Task Force on Displacement...*, op. cit., 2 p.

<sup>214</sup> UNFCCC, *Report of the Executive Committee...* (FCCC/SB/2021/4/Add.2), op. cit., par. 46(o).

<sup>215</sup> Id.

the Global Compact for Safe, Orderly and Regular Migration and its associated Forum, the Global Compact on Refugees, or the 2030 Agenda for Sustainable Development<sup>216</sup>.

3- Highlights the need for both the Committee and its expert groups to continue to draw not only on the "best available science", but also on "indigenous and local knowledge"<sup>217</sup>, in line with the previous recognition in the 2018 TFD report that "affected communities can also be drivers of community based solutions"<sup>218</sup>.

4- Calls for expanded action and support, in particular funding, for developing country Parties to prepare for and address climate displacement, including by facilitating safe, orderly and regular migration and, as a last resort, relocation planning<sup>219</sup>. However, the WIM Executive Committee now uses more hortatory language with respect to the 2018 recommendation, stating "the urgent need to scale up action and support and mobilize resources (...) to enable access to sustainable and predictable climate financing"<sup>220</sup>. Additionally, it re-emphasises the importance of the "application of international policy instruments and normative frameworks, and [of] taking into account Parties' respective obligations on human rights"<sup>221</sup>.

5- Continues to promote improved "understanding" of climate mobility and "support" for developing country Parties by "strengthen[ing] coordination, coherence, collaboration and joint programming" among relevant actors and other stakeholders, "both under and outside" the UN climate change framework<sup>222</sup>, including among the five expert groups of the WIM Executive Committee in pursuing their respective action plans<sup>223</sup>.

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<sup>216</sup> Ibid., par. 46(r).

<sup>217</sup> Ibid., par. 46(e).

<sup>218</sup> UNFCCC, *Report of the Task Force on Displacement...*, *op. cit.*, "(d) Identified gaps", letter (d), p. 15.

<sup>219</sup> UNFCCC, *Report of the Executive Committee...* (FCCC/SB/2021/4/Add.2), *op. cit.*, pars. 46 (p) and (q)(ii).

<sup>220</sup> Ibid., par. 46(p).

<sup>221</sup> Ibid., par. 46(q)(ii).

<sup>222</sup> Ibid., par. 46(q).

<sup>223</sup> Ibid., par. 46(g). For example, the rolling plan of action of the expert group on non-economic losses provides for the creation of a small working group, along with the TFD, to draft guidelines on how to avoid, minimise and address non-economic losses related to human mobility (vid. UNFCCC, "Annex IV: Expert group on non-economic losses: rolling plan of action", in: *Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts* (FCCC/SB/2021/4), 20 August 2021, p. 18 *in fine*).

6- Finally, the Executive Committee encourages "organizations, bodies, networks and experts working on human mobility to join the Santiago network"<sup>224</sup>, which was established during COP25 in Chile as part of the Warsaw International Mechanism<sup>225</sup>. The network aims "*to catalyse the technical assistance of relevant organizations, bodies, networks and experts, for the implementation of relevant approaches* [to avoid, minimise and address loss and damage caused by climate impacts] at the local, national and regional level, *in developing countries that are particularly vulnerable to the adverse effects of climate change*"<sup>226</sup>.

### 1.3.3. The way ahead

With some activities still to conclude, scheduled for completion in 2022, it can be said that the second work plan of the TFD has now been almost fully implemented. Given the success of the working group, it is expected that the WIM Executive Committee will renew the mandate of the TFD for a third term, in line with its future work plan –the WIM Executive Committee's current five-year work plan ends in 2022.

While we will have to wait for the adoption of the TFD's third action plan to confirm where the expert group's work is heading, it is possible to predict that the TFD's work is likely to continue to deliver the most significant results in three key areas of climate mobility, namely knowledge, adaptation and the human rights of migrants and displaced people. The first line of action will continue to improve visibility and understanding, especially regarding mobility related to slowly evolving phenomena, where distinguishing the climate factor from other drivers of mobility remains a challenge.

The second will be to enhance the climate resilience of developing country Parties that are more vulnerable to experience population movements due to the impact of climate change. In this regard, it is vital to ensure and facilitate access to the necessary sources of funding to enable them to effectively implement their climate change

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<sup>224</sup> UNFCCC, *Report of the Executive Committee ...* (FCCC/SB/2021/4/Add.2), *op. cit.*, par. 46(n).

<sup>225</sup> UNFCCC, "Decision 2/CMA.2 Warsaw International Mechanism...(FCCC/PA/CMA/2019/6/Add.1), *op. cit.*, par. 43.

<sup>226</sup> Id [italics and bracketed text added]. However, Decision 2/CMA.2 did not operationalise the Santiago Network, whose functions were developed and funded at COP26, where progress was also made on the Network's institutional arrangements, although they have not yet been established (vid., UNFCCC: *Decision -/CP.26 Warsaw International Mechanism...* (Advance unedited version), *op. cit.*, pars. 9-10; "Decision -/CMA.3 Glasgow Climate Pact" (Advance unedited version), pars. 66-70).

adaptation strategies, including addressing human mobility aspects. To this purpose, the launch of the Glasgow Dialogue between Parties, relevant organisations and stakeholders to discuss funding arrangements for activities to avoid, minimise and address loss and damage associated with the adverse impacts of climate change, including the risk of displacement, is encouraging. Similarly, the operationalisation of the Santigado Network, as a coordination tool and catalyst for technical assistance to address climate change-related loss and damage, also offers great potential. Given the affinity and complementarity of their functions, it would be desirable and convenient to create working synergies between the TFD, the Glasgow Dialogue and the Santiago Network within the WIM Executive Committee.

Third and finally, the TFD should also continue to play a key role in promoting pathways for legal, safe and orderly climate migration, as has already been done in some regions of the world such as the Pacific or the Dry Corridor in Central America. At the same time, regarding the protection of displaced persons, its activity is, and should continue to be, geared towards advocating for a human rights-based approach to integrating climate change-related displacement considerations into legal or policy frameworks. In this vein, it would be important for the TFD to broaden the range of actors with which it engages, including by organising joint activities. Thus, it should not only limit itself to cooperating with UN agencies but also with other potential and relevant stakeholders, including NGOs. An approach to regional human rights organisations and bodies could also prove mutually beneficial. For example, at the European level, the EU or the CoE could become key allies in fostering such human rights approaches to climate mobility.

In conclusion, there is no doubt that, despite its brief existence, the TFD has emerged and consolidated as the relevant point of reference for displacement within the UN framework on climate change. In this way, it joins the cast of other pertinent actors in the field such as the UNHCR, the IOM or the ILO. The outcomes of its activity, although promising, remain, however, more in the realm of knowledge dissemination than in the political arena of COPs as a lobby for Parties.

## 2. DISASTERS-RELATED DISPLACEMENT: THE SENDAI FRAMEWORK

### 2.1. Introduction

On 21 December 2012, the UNGA decided "to convene the Third World Conference on Disaster Risk Reduction (...) to review the implementation of the Hyogo Framework for Action and to adopt a post-2015 framework for disaster risk reduction"<sup>227</sup>. The Conference took place from 14 to 18 March 2015, in Sendai (Japan)<sup>228</sup>, and concluded with 187 country delegations adopting the Sendai Framework for Disaster Risk Reduction 2015-2030<sup>229</sup>, which the UNGA later formally endorsed on 3 June 2015<sup>230</sup>.

Building on the lessons learned from the previous Hyogo Framework for Action (2005-2015)<sup>231</sup>, the Sendai Framework has replaced it since 2015. Despite being a voluntary and non-binding agreement<sup>232</sup>, the SFDRR has positioned itself as the global benchmark framework for "the substantial reduction of disaster risk and losses of lives, livelihoods and health, as well as economic, physical, social, cultural and environmental assets of people, businesses, communities and countries"<sup>233</sup>.

The term "disaster" is defined in a broad sense, encompassing both natural and man-made hazards, including related environmental, technological and biological hazards and risks, regardless of their scale (small/large scale), frequency (frequent/infrequent) and onset (sudden/slow)<sup>234</sup>. "[T]he primary responsibility to prevent and reduce disaster risk" lies with States<sup>235</sup>. However, "[w]hile recognizing their leading, regulatory and coordination role, Governments should engage with relevant stakeholders" when designing and implementing policies, plans and standards, including

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<sup>227</sup> UNGA, *Resolution 67/209 International Strategy for Disaster Reduction, adopted by the General Assembly at its Sixty-seventh session (A/RES/67/209)*, 12 March 2013, par. 10.

<sup>228</sup> UNGA, *Resolution 69/283... (A/RES/69/283)*, *op. cit.*, par. 1.

<sup>229</sup> IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *Briefing paper*, IDMC, 16 February 2017, p. 2 (last access: 11/12/2021).

<sup>230</sup> UNGA, *Resolution 69/283... (A/RES/69/283)*, *op. cit.*, par. 2. Annex I of the Resolution 69/283 contains the Sendai Declaration and Annex II the framework itself.

<sup>231</sup> UNGA, "Annex I Sendai Declaration", in: *Resolution 69/283... (A/RES/69/283)*, *op. cit.*, par. 2.

<sup>232</sup> IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, p. 2.

<sup>233</sup> UNGA, "Annex II Sendai Framework for Disaster Risk Reduction 2015–2030", in: *Resolution 69/283... (A/RES/69/283)*, *op. cit.*, par. 16. Vid. also par. 19(c).

<sup>234</sup> *Ibid.*, par. 15.

<sup>235</sup> *Ibid.*, par. 19(a).



vulnerable groups, volunteers and professionals, public and private sectors, civil society organisations, as well as academia and scientific and research institutions<sup>236</sup>.

The Framework adopts "a more people centred", multi-hazard, multi-sectorial and multilevel approach to reduce disaster risk<sup>237</sup>. In achieving this goal, the post-2015 strategy sets out, on the one hand, four "priorities for action", namely: Priority 1: Understanding disaster risk. Priority 2: Strengthening disaster risk governance to manage disaster risk. Priority 3: Investing in disaster risk reduction for resilience. Priority 4: Enhancing disaster preparedness for effective response and 'Build Back Better' in recovery, rehabilitation and reconstruction<sup>238</sup>.

On the other hand, it establishes seven "global targets" to accomplish over the next fifteen years. Four of them aim to reduce (a) global disaster mortality; (b) the number of affected people globally; (c) direct disaster economic loss; (d) and disaster damage to critical infrastructure and disruption of essential services. The last three seek to increase (e) the number of countries with national and local DRR strategies (by 2020); (f) international cooperation to developing countries; (g) and the availability of and access to multi-hazard early warning systems and disaster risk information and assessments to people<sup>239</sup>.

As the IDMC and the Norwegian Refugee Council note, progress on each of these "priorities for action" and "global targets" will contribute to averting, minimising and addressing displacement and its impacts<sup>240</sup>.

## **2.2. Disasters-related displacement in the text of the Sendai Framework**

Regarding disaster-related displacement in the Sendai framework, the IDMC and the NRC have highlighted the growing attention the issue has received in the DRR process<sup>241</sup>. The Hyogo Framework<sup>242</sup> only referred to displacement on two occasions.

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<sup>236</sup> Ibid., par. 7.

<sup>237</sup> Id.

<sup>238</sup> Ibid., par. 20.

<sup>239</sup> Ibid., par. 18.

<sup>240</sup> IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, p. 3.

<sup>241</sup> Id.

<sup>242</sup> UNGA, "Resolution 2 Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters", in: *Report of the World Conference on Disaster Reduction held in Kobe, Hyogo, Japan, 18-22 January 2005 (A/CONF.206/6)*, 16 March 2005, pp. 6-27 (last access: 24/08/2020).

First, it is mentioned in the Hyogo Declaration, where country delegations showed "deeply concerned" because "communities continue to experience (...) major displacements due to various disasters worldwide"<sup>243</sup>. However, the Framework does not provide any action to alleviate this situation.

Second, paragraph 19 (i) of the Hyogo Framework includes, as a "key activity", "endeavour to ensure, as appropriate, that programmes for displaced persons do not increase risk and vulnerability to hazards"<sup>244</sup>. As follows from its wording, this provision is not intended to protect displaced persons in the context of disasters. Instead, it aims to prevent efforts addressing forced population movements *from turning into an additional underlying risk factor* that increases exposure and vulnerability to hazards<sup>245</sup>. The only form of displacement, directly related to disasters, that appears in the Hyogo Framework refers to "evacuation drills", which are mentioned as "disaster preparedness exercises" that should be practised regularly for "ensuring rapid and effective disaster response" [par. 20 (d)]<sup>246</sup>.

Compared to the Hyogo Framework, the final adopted version of the Sendai Framework embraces a much broader approach to disaster-related mobility, even though its original pre-draft, which was disseminated in Geneva in the summer of 2014, only superficially mentioned this issue<sup>247</sup>. Walter Kälin, who participated in the Sendai Framework negotiations, notes that the development of the topic was due to the joint work of the Nansen Initiative, IOM and UNHCR, which put forward several draft texts addressing displacement, migration and relocation<sup>248</sup>.

However, the ambition that that partnership breathed into the Sendai Framework drafting process was "largely toned down"<sup>249</sup> as negotiations progressed, due to "the reticence of a part of the Member States to discuss [migration and displacement issues]

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<sup>243</sup> UNGA, "Resolution 1 Hyogo Declaration", in: *ibid.*, third preambular paragraph, p. 3.

<sup>244</sup> UNGA, "Resolution 2 Hyogo Framework for Action...", in: *ibid.*, par. 19(i), p. 16.

<sup>245</sup> GUADAGNO, L., "Human Mobility in the Sendai Framework for Disaster Risk Reduction", *op. cit.*, p. 31.

<sup>246</sup> UNGA, "Resolution 2 Hyogo Framework for Action...", in: *Report of the World Conference on Disaster Reduction... (A/CONF.206/6)*, *op. cit.*, par. 20(d), p. 18.

<sup>247</sup> KÄLIN, W., "Sendai Framework: An important step forward for people displaced by disasters", *Brookings*, 20 March 2015, unnumbered.

<sup>248</sup> *Id.*

<sup>249</sup> GUADAGNO, L., "Human Mobility in the Sendai Framework for Disaster Risk Reduction", *op. cit.*, p. 37.

at all in a DRR policy forum"<sup>250</sup>. Anecdotally, Walter Kälin says that "when very late in the evening the news broke that the text was ready for adoption, I wondered whether references to the disaster-related displacement had survived"<sup>251</sup>. Guadagno blames the States' attitude on

"the perceived political sensitivity of the topic, in particular when "displacement" was not explicitly referred to as disaster-induced movements, leaving some confusion on the possible inclusion of movements triggered by violence or conflict in the SFDRR provisions"<sup>252</sup>.

Still, Walter Kälin describes how, thanks to the vigour with which negotiators from Bangladesh, Norway, the Philippines and Switzerland fought through the negotiations, the Sendai Framework managed to retain "important language on human mobility"<sup>253</sup>. In contrast, Guadagno, who also took part in the SFDRR consultation and drafting process<sup>254</sup>, opines that the final

"text does not explicitly address a number of mobility-related issues that are fundamental to risk creation and reduction processes, such as the role internal and international migration policies play in shaping people's exposure and vulnerability, the centrality of remittance transfers and household-level translocal networks to individual and collective resilience building, and the need to address displacement situations to reduce direct and indirect consequences of disasters"<sup>255</sup>.

Political sensitivities regarding displacement also fed into the newly formed open-ended intergovernmental expert working group<sup>256</sup>, which was tasked with developing global indicators on the Sendai Framework's implementation and recommendations on terminology related to disaster risk reduction<sup>257</sup>. As the IDMC and the NRC highlight,

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<sup>250</sup> Ibid., p. 36.

<sup>251</sup> KÄLIN, W., "Sendai Framework: An important step forward for people displaced by disasters", *op. cit.*, unnumbered.

<sup>252</sup> GUADAGNO, L., "Human Mobility in the Sendai Framework for Disaster Risk Reduction", *op. cit.*, p. 37.

<sup>253</sup> KÄLIN, W., "Sendai Framework: An important step forward for people displaced by disasters", *op. cit.*, unnumbered.

<sup>254</sup> GUADAGNO, L., "Human Mobility in the Sendai Framework for Disaster Risk Reduction", *op. cit.*, p. 31.

<sup>255</sup> Id.

<sup>256</sup> IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, p. 4.

<sup>257</sup> The working group was established in: UNGA, *Resolution 69/284 Establishment of an open-ended intergovernmental expert working group on indicators and terminology relating to disaster risk reduction, adopted by the General Assembly at its Sixty-ninth session (A/RES/69/284)*, 25 June 2015, 2 pp. Its final report can be found in: UNGA, *Report of the open-ended intergovernmental expert working group on indicators and terminology relating to disaster risk reduction (A/71/644)*, 1 December 2016, 41 pp.

of the seven global targets the Sendai Framework set out, Target B is the only one that focuses on the human impact of disasters globally, assessing progress in terms of the number of people affected. For this reason, it was the most appropriate target to include a global sub-indicator on the number of people displaced from their homes due to disasters. However, despite the support expressed by several States for the inclusion of such a global sub-indicator, it was not possible to reach a consensus, and the proposal was eventually withdrawn<sup>258</sup>.

The final five sub-indicators that were grouped under Global Target B refer to the number of people injured or sickened by the disaster (B-2), or whose livelihoods were affected or destroyed (B-5), or whose houses were damaged (B-3) or destroyed (B-4)<sup>259</sup>. Displaced persons, although not explicitly referred to, would fall under sub-indicator B-1, which refers to the number of persons directly affected by disasters. According to the definition of "affected" proposed by the working group, persons evacuated, displaced or relocated would also be considered as such<sup>260</sup>. Similarly, sub-indicators relating to the number of people whose homes were destroyed or damaged or the percentage of the population protected through preventive evacuation mechanisms (sub-indicator G-6) may also be sources of additional information on the extent of displacement<sup>261</sup>. In any case, the lack of disaggregated data keeps displaced persons invisible while preventing the assessment of progress in preventing displacement in the disaster risk reduction framework.

Despite all these shortcomings, it is undeniable that the SFDRR encompasses a broader set of provisions on disaster-induced displacement than the Hyogo Framework. Just in quantitative terms, there is four times more mobility-related terminology in the Sendai Framework than in its predecessor. Across the Preamble and the main body text, "the term "displaced" or "displacement" [appears] four times, the related terms "evacuation" or "evacuated" twice, and the term "relocation" [and "human mobility"] once"<sup>262</sup>.

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<sup>258</sup> IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, p. 4.

<sup>259</sup> UNGA, *Report...on indicators and terminology relating to disaster risk reduction (A/71/644)*, *op. cit.*, p. 5.

<sup>260</sup> *Ibid.*, p. 11.

<sup>261</sup> IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, p. 4.

<sup>262</sup> *Ibid.*, p. 3 [bracketed text added].

Overall, the SFDRR considers human mobility in the face of disaster risk from a dual perspective. On the one hand, it considers migration as a positive adaptation strategy and migrants as key stakeholders whose "knowledge, skills and capacities" can "contribute to the resilience of communities and societies" [par. 36(a)(vi)]<sup>263</sup>. Accordingly, the SFDRR calls on national authorities to take migrants into account when designing, implementing and managing DRR processes [par. 7] at all levels, including the local [par. 27(h)]<sup>264</sup>. On the other hand, the Framework refers generically to disaster-induced "human mobility" itself [par. 30(l)], as well as to the "evacuation" [par. 33(h) (m)] and "relocation" of affected persons [par. 27(k)].

Guadagno has suggested a third way whereby the SFDRR would implicitly consider human mobility as an aggravating factor of disaster risk through its impact on demographic change. The author argues that mobility is "one of the key drivers of global and local demographic change" and, therefore, "[t]he role population movements can play as a compounding factor of risk"<sup>265</sup>. If this deductive reasoning is accepted as valid, when paragraph 6 calls for "[m]ore dedicated action to be focused on (...) compounding factors such as demographic change"<sup>266</sup>, it would also be advocating for addressing the population movements that contribute to it. Paragraph 30 (f) would provide an example of such "more dedicated action" by calling for incorporating considerations of anticipated demographic and, according to Guadagno, migratory changes into land-use policy monitoring guidelines and tools<sup>267</sup>.

Following this overview of how the SFDRR addresses disaster-induced displacement of people, the remaining sub-sections examine each of the Sendai Framework's provisions in this regard.

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<sup>263</sup> UNGA, "Annex II Sendai Framework for Disaster Risk Reduction 2015–2030", in: *Resolution 69/283...* (A/RES/69/283), *op. cit.*, par. 36(a)(vi), p. 19.

<sup>264</sup> Vid. the commentary by GUADAGNO, L., "Human Mobility in the Sendai Framework for Disaster Risk Reduction", *op. cit.*, pp. 32-34, on the linguistic, administrative and cultural barriers that both international and internal migrants may encounter, resulting in marginalisation and consequently aggravating their exposure and vulnerability to disaster risks, and the measures he proposes introducing in areas of destination and origin to redress this situation.

<sup>265</sup> *Ibid.*, p. 34.

<sup>266</sup> UNGA, "Annex II Sendai Framework for Disaster Risk Reduction 2015–2030", in: *Resolution 69/283...* (A/RES/69/283), *op. cit.*, par. 6, p. 4.

<sup>267</sup> *Ibid.*, par. 30(f), p. 14.

### 2.2.1. Human mobility

The main text includes a general reference to "human mobility" in the context of disasters. Thus, paragraph 30(1) of the SFDRR calls on national and local authorities for "the adoption of policies and programmes *addressing disaster-induced human mobility to strengthen the resilience of affected people and that of host communities*"<sup>268</sup> as part of their investment in disaster risk reduction for resilience (Priority 3). Initially, the draft of this paragraph considered it essential to adequately manage any human movement within disaster risk reduction efforts, ensuring that mobility takes place in legal, safe and dignified conditions that do not expose the displaced to further vulnerability. However, this version was reformulated throughout the negotiations into the current one, which refers only to the management of disaster-induced movements<sup>269</sup>.

According to the IDMC, the NRC and Guadagno, the choice of the broad term "human mobility intends to encompass the full spectrum of movement associated with both sudden- and slow-onset disasters"<sup>270</sup>. In line with this reading, the Sendai Framework would cover from "predominantly voluntary to predominantly forced mobility"<sup>271</sup>, "from short-term evacuations to permanent, long-distance migration", before, during or after the disaster<sup>272</sup>. As the IDMC and NRC rightly point out, this approach overcomes the definitional challenges of mobility in the context of slow-onset disasters, where "the distinction between displacement and migration is often blurred"<sup>273</sup>.

Overall, paragraph 30(1) recognises that disaster-induced mobility, whatever form it takes, leaves those on the move more vulnerable<sup>274</sup> to human rights violations. Strengthening their resilience means, first and foremost, ensuring their human rights while they are away from home, including their labour rights to prevent disaster-

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<sup>268</sup> Ibid., par. 30(1), p. 15 [italics added].

<sup>269</sup> GUADAGNO, L., "Human Mobility in the Sendai Framework for Disaster Risk Reduction", *op. cit.*, p. 37, also noting that "[t]his might be an indication of a lack of capacity or willingness to address underlying, structural drivers of risk as part of DRR policy and operational efforts".

<sup>270</sup> IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, p. 3. GUADAGNO, L., "Human Mobility in the Sendai Framework for Disaster Risk Reduction", *op. cit.*, p. 36.

<sup>271</sup> IDMC; NRC, *op. cit. supra*, p. 3.

<sup>272</sup> GUADAGNO, L., "Human Mobility in the Sendai Framework for Disaster Risk Reduction", *op. cit.*, p. 36.

<sup>273</sup> IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, p. 3.

<sup>274</sup> GUADAGNO, L., "Human Mobility in the Sendai Framework for Disaster Risk Reduction", *op. cit.*, p. 36.

induced or aggravated hardship from making them victims of exploitation. Special attention must also be paid to the specific needs of particularly vulnerable groups, such as women, children, the elderly and the disabled. To this end, resilience-building support should be provided regardless of whether movement was spontaneous or occurred as part of an evacuation or relocation programme or whether those who have moved are housed in government-run camps or relocation centres or living with host families<sup>275</sup>.

Secondly, resilience implies that recovery and reconstruction of disaster-affected areas should proceed expeditiously. The longer the duration away, the more exposed those affected are to human rights abuses<sup>276</sup> and the less likely they are to return to their places of origin due to the loss of roots and new ties formed in the host places. In this sense, resilience also means facilitating voluntary return once the reconstruction phase of the disaster-affected area has been completed.

A final aspect related to the resilience of displaced persons, linked to the previous idea, is to provide for their integration and peaceful coexistence with host populations while living with them, even if they eventually decide not to return to their places of origin and remain there. As discussed in the analysis of IDP protection framework, population flows exert additional pressure on host communities and their natural and socio-economic asset base, including the environment. Competition for scarce livelihoods or resentment because locals feel that new arrivals receive more assistance and aid can easily lead to tension and conflict<sup>277</sup>.

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<sup>275</sup> During his working trip to the Asian countries affected by the 2004 tsunamis, former UN Representative on the Human Rights of Internally Displaced Persons Walter Kälin underlined the importance of preventing any form of discrimination among IDPs, including based on where they are staying (OHCHR, “Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...”, *op. cit.*, pp. 14-15).

<sup>276</sup> As Walter Kälin has also pointed out, the living conditions of those displaced in the context of natural disasters generally tend to deteriorate once the emergency phase is over, especially as reconstruction efforts are prolonged over time while external assistance decreases in parallel. Vid. UNGA, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin. Addendum: protection of internally displaced persons in situations of natural disasters* (A/HRC/10/13/Add.1), 5 March 2009, par. 49. In the same vein, IDMC; NRC, “Positioned for action Displacement in the Sendai Framework for disaster risk reduction”, *op. cit.*, p. 5; and GUADAGNO, L., “Human Mobility in the Sendai Framework for Disaster Risk Reduction”, *op. cit.*, p. 35.

<sup>277</sup> Vid. OHCHR, “Protection of internally displaced persons in situations of natural disaster: a working visit to Asia...”, *op. cit.*, pp. 14-15. Also, BOEGE, V.; RAKOVA, U., “Climate Change-Induced Relocation: Problems and Achievements—the Carterets Case”, *Policy Brief*, No. 33, Toda Peace Institute, p. 5 (last access: 04/09/2020).

With such conciliation need in mind, it is significant and most welcome that paragraph 30(l) of the SFDRR also mentions host communities alongside those affected by movement. Ensuring their resilience to absorb the population increase brought about by the influx of people fleeing a disaster must also be a priority for public authorities in addressing disaster risk and associated human mobility. After all, as Guadagno rightly points out, paying particular attention to host communities' "preexisting vulnerabilities" is essential to ensure that those displaced enjoy "adequate living conditions" there<sup>278</sup>.

Alongside the resilience of displaced persons and host communities, the IDMC and the NRC argue that paragraph 30(l) of the SFDRR "also highlights the role that "human mobility" more generally may play in strengthening the economic, social, health and cultural resilience of persons, communities, countries and their assets"<sup>279</sup>. However, a literal interpretation of paragraph 30(l) would disagree with this reading, as it does not generally cover disaster-affected individuals and communities. Instead, it only refers to strengthening the resilience of persons affected by the disaster-induced movement and host communities. In any case, this idea on the potential of human mobility to boost the resilience of communities of origin and destination through the exchange of tangible and intangible resources would be better captured in paragraph 36(a)(vi)<sup>280</sup>, which recognises that "[m]igrants contribute to the resilience of communities and societies"<sup>281</sup>.

Indeed, Guadagno recounts that facilitating the transfer of remittances to migrants' countries of origin was discussed during the negotiation of the Sendai framework as an option to enhance household resilience against hazards and support post-disaster recovery<sup>282</sup>. However, the proposal to include such a reference in the text was ultimately rejected, although arguably its spirit would have been retained through the generic reference in paragraph 36(a)(vi) to migration as a way for building resilience<sup>283</sup>. As the primary reason for that opposition, Guadagno points to the concern of "a few countries

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<sup>278</sup> GUADAGNO, L., "Human Mobility in the Sendai Framework for Disaster Risk Reduction", *op. cit.*, p. 36.

<sup>279</sup> IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, p. 5.

<sup>280</sup> GUADAGNO, L., "Human Mobility in the Sendai Framework for Disaster Risk Reduction", *op. cit.*, pp. 32 and 36.

<sup>281</sup> UNGA, "Annex II Sendai Framework for Disaster Risk Reduction 2015–2030", in: *Resolution 69/283... (A/RES/69/283)*, *op. cit.*, par. 36(a)(vi), p. 19.

<sup>282</sup> GUADAGNO, L., "Human Mobility in the Sendai Framework for Disaster Risk Reduction", *op. cit.*, pp. 32 an 37.

<sup>283</sup> *Ibid.*, p. 32.



that such measures would infringe on private choices and initiatives related to the allocation of privately earned funds for the achievement of individual and household-level goals"<sup>284</sup>.

### 2.2.2. Displacement

The SFDRR preamble reports that "between 2008 and 2012, 144 million people were displaced by disasters" and that this figure is likely to increase in the not too distant future, as climate change will exacerbate disasters by increasing their frequency and intensity<sup>285</sup>. This statement is consistent with the review of the "maximalist" literature in Chapter I and the findings of the IPCC reports discussed therein. The SFDRR also acknowledges that damage and losses resulting from disasters "significantly impede progress towards sustainable development"<sup>286</sup>. In this vein, it notes that a high percentage of all losses result from "[r]ecurring small-scale disasters and slow-onset disasters", which "particularly affect communities, households and small and medium-sized enterprises"<sup>287</sup>. Furthermore, the SFDRR confirms the evidence shown by figures and graphs in Chapter II that developing countries have "disproportionately higher" mortality and economic losses rates than developed States<sup>288</sup>.

The SFDRR uses the term "displacement" primarily with a negative connotation, denoting the movement of people as an additional adverse impact of disasters. According to IDMC and the Norwegian Refugee Council, "[d]isplacement is one of the most prevalent human impacts of disasters"<sup>289</sup> – the displacement figures associated with hydrological, meteorological, climatological and geophysical environmental disturbances set out in Chapter II would corroborate this assertion. They go on to argue that "[l]arge-scale displacements may have destabilising effects on both disaster-affected and receiving areas"<sup>290</sup>. At the same time, cyclical or long-term displacement

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<sup>284</sup> Ibid., p. 37.

<sup>285</sup> UNGA, "Annex II Sendai Framework for Disaster Risk Reduction 2015–2030", in: *Resolution 69/283... (A/RES/69/283)*, *op. cit.*, par. 4, p. 3.

<sup>286</sup> Id.

<sup>287</sup> Id.

<sup>288</sup> Id.

<sup>289</sup> IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, p. 2

<sup>290</sup> Id.

can further exacerbate disaster risk by worsening existing vulnerabilities while eroding resilience to new hazards<sup>291</sup>.

Despite being the displacement an adverse consequence to be prevented by achieving the Sendai Framework's goal of eliminating or minimising disaster risk, it can also retain a "protective value" by placing people out of immediate hazard or reducing their exposure to injury<sup>292</sup>. The SFDRR is not oblivious to this duality and therefore also contains specific provisions on evacuation and relocation of people at risk from a disaster, as will be discussed in the following sub-sections.

As used by the SFDRR, the term "displacement" likewise reflects a lack of voluntariness that is consistent with the traditional meaning it has in the context of internal displacement, where the notion evolved<sup>293</sup>. It is also coherent with the connotation of "forced movement" that the term "environmental displacement" has maintained in the specialised literature. Accordingly, with the term "displacement", the SFDRR text describes those situations in which people are compelled to flee their places of habitual residence to seek shelter somewhere else owing to the impending threat or impact of a disaster<sup>294</sup>.

Besides the reference in the preamble, the main text of the SFDRR includes three additional references to displacement in paragraphs 28(d), 33(h) and (j). Nevertheless, Guadagno highlights that

"the SFDRR is weaker on this point than its zero [Paragraph 31(a)] and pre-zero draft [Paragraph 16(d)] texts, both of which included more targeted provisions on preparing for and addressing displacement as a core element of disaster risk management (and more specifically recovery) efforts."<sup>295</sup>

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<sup>291</sup> *Id.*

<sup>292</sup> *Ibid.*, p. 5.

<sup>293</sup> On the connection between the provisions of the Sendai Framework on Displacement and Disaster Risk Reduction and the Guiding Principles on Internal Displacement, *vid.* KÄLIN, W., "Sendai Framework: An important step forward for people displaced by disasters", *op. cit.*, unnumbered.

<sup>294</sup> *Vid.* IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, pp. 3 *in fine* and 4, discussing the meaning of term "displacement" in the disaster context.

<sup>295</sup> GUADAGNO, L., "Human Mobility in the Sendai Framework for Disaster Risk Reduction", *op. cit.*, p. 35.

### A) Cross-border cooperation to reduce disaster and displacement-related risks

Paragraph 28(d) responds to the reality that ecosystems and their potential to create disaster risks know no boundaries. The "maximalist" author Westing formulated this idea in 1989 when he wrote about the environmental dimension of comprehensive security<sup>296</sup>. He argued that eco-geographical regions, i.e. "a region defined (delimited) by ecological plus geographical parameters", should be managed as a "unit of shared concern" by "its occupants"<sup>297</sup>. Since ecogeographic regions are, in most cases, shared by several countries, the attainment of environmental security requires that cooperation extends to the whole region and that "decision making [is] based primarily on scientific considerations rather than primarily on political ones" or on regional rivalries or competitions<sup>298</sup>. Westing cites as typical examples of eco-geographical regions "a sea plus its drainage basin, a major river plus its drain-age basin, a large island or peninsula, or a desert area"<sup>299</sup>. The IDMC and NRC also cite the example of regional river basins, where "actions taken upstream in one country may impact countries downstream"<sup>300</sup>.

Accordingly, paragraph 28(d) of the SFDRR encourages "*transboundary cooperation (...) for the implementation of ecosystem-based approaches* with regard to shared resources, such as within river basins and along coastlines, *to build resilience and reduce disaster risk, including epidemic and displacement risk*"<sup>301</sup>. As Guadagno points out, it is curious that States did not resist the inclusion of joint management of cross-border displacement risk in the Sendai text as strongly as they opposed other issues related to the movement of people associated with disasters<sup>302</sup>. Despite affecting the much more sovereignty-sensitive issue of border control, Guadagno believes that the awareness-raising work that the Nansen Initiative carried out in parallel to the pre-

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<sup>296</sup> WESTING, A., "The Environmental Component of Comprehensive Security", *Bulletin of Peace Proposals*, Vol. 20, No. 2, June 1989, pp. 129-134.

<sup>297</sup> *Ibid.*, p. 131.

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, p. 8.

<sup>301</sup> UNGA, "Annex II Sendai Framework for Disaster Risk Reduction 2015–2030", in: *Resolution 69/283... (A/RES/69/283)*, *op. cit.*, par. 28(d), p. 13 [italics added].

<sup>302</sup> GUADAGNO, L., "Human Mobility in the Sendai Framework for Disaster Risk Reduction", *op. cit.*, p. 35.

Sendai consultations on assistance and protection for people displaced internationally by environmental disruptions helped to build this consensus<sup>303</sup>.

In order to strengthen disaster risk governance (Priority 2) in shared eco-geographical regions, disaster and displacement risk co-management measures should cover all phases of DRR. For example, before any event, cooperation measures could take the form of joint implementation of early warning systems and emergency response plans; joint investments and efforts in prevention and preparedness measures; or enhanced coordination and cross-border cooperation between authorities with responsibilities for civil protection and disaster management, such as joint evacuation drills. During and after the disaster, cross-border cooperation should focus, *inter alia*, on mutual assistance, including evacuation and protection of displaced populations across borders, e.g. by facilitating the granting of temporary stay permits; or mutual support to rebuild affected areas in a safer way<sup>304</sup>.

#### **B) Preparedness for effective response and protection of displaced persons**

Displacement, whether spontaneous or as part of an evacuation, also can impact the human rights of those affected if their essential needs, and their particular vulnerabilities, are not adequately addressed for the duration of the displacement<sup>305</sup>. Because of this risk, and as part of improving disaster preparedness (Priority 4), paragraph 33 (h) stresses the convenience for national and local authorities to develop, through regular training exercises, the necessary capacity to mobilise and deploy, in the shortest possible time, the required assistance in disaster situations. Such a prompt and effective response will thus ensure that displaced persons have immediate access to safe shelter and essential relief supplies, both food and non-food, thereby reducing their vulnerability during displacement<sup>306</sup>.

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<sup>303</sup> *Id.*

<sup>304</sup> *Vid.* IDMC; NRC, “Positioned for action Displacement in the Sendai Framework for disaster risk reduction”, *op. cit.*, p. 8; and GUADAGNO, L., *op. cit. supra*, p. 36, identifying possible avenues for cross-border cooperation, especially in border areas with large movements of people, both to prevent cross-border displacement and to assist those displaced across frontiers.

<sup>305</sup> *Vid.*, IDMC; NRC, *op. cit. supra.*, p. 7; and GUADAGNO, L., *op. cit. supra*, p. 36, emphasising the importance of displacement management, including evacuations, taking into account the particular circumstances of the displaced, such as their age, gender, family circumstances, health condition, migrant, ethnic or minority background or social status.

<sup>306</sup> *Vid.* UNGA, “Annex II Sendai Framework for Disaster Risk Reduction 2015–2030”, in: *Resolution 69/283... (A/RES/69/283)*, *op. cit.*, par. 33(h), p. 17:

Simultaneously, the authorities must ensure that informal or non-permanent housing sheltering those who have fled or been evacuated are safe from further disaster risk, according to paragraph 30(f)<sup>307</sup>, thus avoiding secondary movements.

### **C) Rehabilitation of former settlements of people displaced by disasters**

So far, paragraphs 28(d) and 33(h) have addressed displacement in the context of disaster preparedness and risk reduction. By contrast, the last provision that mentions displacement, paragraph 33(j), addresses the recovery, rehabilitation and reconstruction of disaster-affected areas under the guidance of the 'Build Back Better' principle. Paragraph 33(j) states that "[t]his should also apply to temporary settlements for persons displaced by disasters"<sup>308</sup>. The provision seems relatively obscure. The IDMC and the NRC have argued that the SFDRR would be mandating "particular attention to the needs of displaced people living in temporary settlements"<sup>309</sup>. However, for this reasoning to be accurate, the preceding clause that the pronoun "this" replaces should refer to the needs of disaster-affected persons in general, among which the clause introduced by the pronoun "this" would give visibility and stress the needs of those displaced living in temporary settlements.

This assumption fails because, as noted above, paragraph 33(j) actually refers to recovery efforts during the post-disaster phase. Therefore, the clause "this should also apply to temporary settlements for persons displaced by disasters" only makes sense as referring to the rehabilitation of areas where temporary settlements have been

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"h) To promote regular disaster preparedness, response and recovery exercises, including evacuation drills, training and the establishment of area-based support systems, with a view to ensuring rapid and effective response to disasters and related displacement, including access to safe shelter, essential food and nonfood relief supplies, as appropriate to local needs;"

<sup>307</sup> Ibid., par. 30(f), p. 14, encouraging national and local authorities to conduct "disaster risk assessments into land-use policy", including "informal and non-permanent housing" sites.

<sup>308</sup> Ibid., par. 33(j), p. 17:

"(j) To promote the incorporation of disaster risk management into postdisaster recovery and rehabilitation processes, facilitate the link between relief, rehabilitation and development, use opportunities during the recovery phase to develop capacities that reduce disaster risk in the short, medium and long term, including through the development of measures such as land-use planning, structural standards improvement and the sharing of expertise, knowledge, postdisaster reviews and lessons learned and integrate post-disaster reconstruction into the economic and social sustainable development of affected areas. *This should also apply to temporary settlements for persons displaced by disasters;*" [italics added].

<sup>309</sup> IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, p. 5.

established. That is to say, the reversal of the potential impact that those displaced may have had on it, returning the zone to its pre-settlement state.

This reasoning would explain why paragraph 33(j) seems to refer more to temporary settlements in the form of official camps or relocation centres – although a case could also be made to include spontaneous settlements - rather than to shelter with host families. The omission is not because the SFDRR has overlooked "the situation of many displaced people who end up being temporarily sheltered by friends and family", as IDMC and NRC argue<sup>310</sup>. Conversely, this situation is not mentioned because host families, unlike a host camp, do not represent an external alien element impacting on the human environment of destination, insofar as the families are already part of the host community. This is not to say that the resource base of friends, family or even the host community does not erode as a result of hosting people displaced by the disaster. Indeed, the SFDRR does not ignore this reality either, which is why paragraph 30(l) calls for "strengthening the resilience (...) of host communities", as discussed above.

Having clarified the meaning of the last indent of paragraph 33(j), the most relevant provision it establishes, from the perspective of the recovery of areas that have hosted temporary settlements, is the one that encourages the integration of "post-disaster reconstruction into the economic and social sustainable development of affected areas", facilitating "the link between relief, rehabilitation and development"<sup>311</sup>.

### 2.2.3. Evacuation

As noted earlier when analysing the Guiding Principles on Internal Displacement, the duty of States to protect the life and safety of persons under their jurisdiction justifies that public authorities proceed with the evacuation or permanent relocation of persons at risk of disaster, even against their will<sup>312</sup>. Therefore, evacuation or relocation may have the character of voluntary displacement –when citizens at risk agree to move-,

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<sup>310</sup> Id.

<sup>311</sup> UNGA, "Annex II Sendai Framework for Disaster Risk Reduction 2015–2030", in: *Resolution 69/283...* (A/RES/69/283), *op. cit.*, par. 33(j), p. 17.

<sup>312</sup> Vid. KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, Studies in Transnational Legal Policy, No. 38, 2<sup>nd</sup> ed., Washington, DC (USA), The American Society of International Law, 2008, p. 34 (last access: 28/08/2020); and UNGA, *Protection of and assistance to internally displaced persons. Note by the Secretary-General: Report of the Representative of the Secretary-General on the human rights of internally displaced persons* (A/64/214), 3 August 2009, par. 25.

or forcible –when they are obliged<sup>313</sup>. Nevertheless, in the latter case, since evacuation or relocation constitutes a restriction on freedom of movement and jeopardises other fundamental rights, it is subject to certain legal conditions and limits, besides the subsequent judicial control, to ensure that it is not arbitrary<sup>314</sup>.

However, the Sendai Framework does not provide any safeguards for evacuation, nor does it refer to the rights and protection of those affected. Like the Hyogo Framework, the SFDRR merely mentions the desirability of regular "evacuation drills" to strengthen disaster preparedness. It appears under Priority 4, which groups together measures aimed at both preparedness and "building back better" in recovery, rehabilitation and reconstruction. In that capacity, paragraph 33(h) stresses the importance of training "evacuation drills" for "ensuring rapid and effective response to disasters and related displacement"<sup>315</sup>.

This wording is almost identical to that of the previous paragraph 20(d) of the Hyogo Framework<sup>316</sup>. However, as a difference, paragraph 33(m) SFDRR makes a particular reference to local authorities, calling for strengthening their capacity "to evacuate persons living in disaster-prone areas"<sup>317</sup>. This provision is to be welcomed as proximity ensures a more expeditious intervention in a disaster situation, diminishing the likelihood of casualties. Nevertheless, fostering local response capacity does not mean excluding complementary or subsidiary intervention from higher levels of government when the situation requires it.

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<sup>313</sup> However, people' consent to evacuate or relocate does not change the qualification of the movement as forced displacement. As highlighted by IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, p. 7, the need to evacuate (or relocate) population is "also a consequence of exposure and vulnerability to disaster".

<sup>314</sup> Vid. COMMISSION ON HUMAN RIGHTS, *Report of the Representative of the Secretary-General Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolution 1997/39. Addendum: Compilation and Analysis of Legal Norms, Part II: Legal Aspects Relating to the Protection against Arbitrary Displacement (E/CN.4/1998/53/Add.1)*, 11 February 1998, par. 54. KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, *op. cit.*, p. 30. COMMISSION ON HUMAN RIGHTS, *Internally displaced persons: Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39 (E/CN.4/1998/53)*, 11 February 1998, pars. 11-12. UNGA, *Protection of and assistance to internally displaced persons...* (A/64/214), *op. cit.*, par. 27. UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, par. 44.

<sup>315</sup> UNGA, "Annex II Sendai Framework for Disaster Risk Reduction 2015–2030", in: *Resolution 69/283...* (A/RES/69/283), *op. cit.*, par. 33(h), p. 17.

<sup>316</sup> Cf. UNGA, "Resolution 2 Hyogo Framework for Action...", in: *Report of the World Conference on Disaster Reduction...(A/CONF.206/6)*, *op. cit.*, par. 20(d), p. 18.

<sup>317</sup> UNGA, "Annex II Sendai Framework for Disaster Risk Reduction 2015–2030", in: *Resolution 69/283...* (A/RES/69/283), *op. cit.*, par. 33(m), p. 18.

#### 2.2.4. Relocation

The IDMC and the NRC define "relocation" in the context of disaster risk reduction as "a process of resettling people in alternative locations when their current home areas are deemed uninhabitable or when relocation is considered the best option to reduce vulnerability to the future risk of disasters"<sup>318</sup>. However, the failure of the Bougainville government's various initiatives to resettle Carteret Islanders, discussed in the Chapter on IDPs, illustrates the challenges and difficulties of successful resettlement processes, especially when both resettlers and host communities are not actively involved in and committed to resettlement<sup>319</sup>.

For that reason, relocation should be an option of last resource<sup>320</sup>. However, there are situations where it cannot be avoided or where, in cost-benefit terms, relocation is the best option to protect populations highly exposed to disaster risk<sup>321</sup>. Low-lying islands threatened by sea-level rise and extreme meteorological phenomena are the most evident (and exceptional) examples but not the only ones. More common instances include slum dwellers in Latin American cities such as Rio de Janeiro, who live in favelas on steep, deforested hillsides, washed away by water and mud or threatened by landslides in the event of heavy rains. Also, millions of poor Nepalese and those in Guatemala City and its suburbs have to flee their precarious dwellings with every earthquake. A final example is the millions of poorer squatters living in cyclone- and flood-prone areas such as the dry lake bed of Texcoco (Mexico City), the silt and sand bars of the Bengal delta, or many other Asian floodplains such as the cities of Delhi, Bangkok, Calcutta, Dhaka or Manila<sup>322</sup>.

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<sup>318</sup> IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, p. 6.

<sup>319</sup> Vid. CORCORAN, J.; VIRNIG, A. (eds.), "Tulele Peisa. Papua New Guinea", *Equator Initiative Case Studies: Local sustainable development solutions for people, nature, and resilient communities*, UNDP, 2016, p. 6 (last access: 03/09/2020). BARNET, J.; O'NEILL, S., "Islands, resettlement and adaptation", *Nature Climate Change*, vol. 2, January 2012, p. 9. EDWARDS, J., "The Logistics of Climate-Induced Resettlement: Lessons from the Carteret Islands, Papua New Guinea", *Refugee Survey Quarterly*, vol. 32, No. 3, 2013, pp. 52-78. BOEGE, V.; RAKOVA, U., "Climate Change-Induced Relocation: Problems and Achievements—the Carterets Case", *op. cit.*, 18 pp.

<sup>320</sup> Vid. IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, p. 6; and GUADAGNO, L., "Human Mobility in the Sendai Framework for Disaster Risk Reduction", *op. cit.*, p. 34. Both point to the complexities, costs, economic and otherwise, and risks also involved in relocation processes undertaken as a disaster risk reduction strategy.

<sup>321</sup> Vid. footnote *supra*.

<sup>322</sup> Examples referenced in: EL-HINNAWI, E., *Environmental refugees*, Nairobi, United Nations Environment Programme (UNEP), 1985, pp. 10 and 15; and JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, Worldwatch Institute, November 1988, p. 17.



It is worth recalling that "maximalist" authors use the wordplay "unnatural disasters" to refer to those natural hazards that become disasters because human activity has exacerbated their frequency or impact on human communities<sup>323</sup>. One argument was that growing poverty and overpopulation would force more destitute people to settle informally in areas more prone to natural disasters, more vulnerable to rapid environmental deterioration or more hazardous to health due to pollution<sup>324</sup>. At the same time, the combination of poverty and population growth would compound environmental degradation, as people in the lower social strata would be obliged to overexploit existing natural resources, rendering ecosystems more vulnerable to sudden and slow-onset disasters<sup>325</sup>.

To prevent these socio-economic factors from increasing the risk of disasters and future displacement, paragraph 27(k) of the SFDRR calls on the competent authorities to "formulate public policies", such as on land use and zoning<sup>326</sup>, with a two fold objective. On the one hand, they aim to prevent humans from settling in disaster-prone areas, thus avoiding the need of subsequent relocation. On the other hand, these policies should also support the relocation of existing human settlements in these at-risk areas to safer locations<sup>327</sup>.

Paragraphs 30(f) and 33(l) complement provision 27(k) on relocation. The former reinforces the mandate to avoid human settlements in hazardous areas by promoting the integration of "*disaster risk assessments into land-use policy development and*

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<sup>323</sup> For instance, JACOBSON, J.L., *op. cit. supra*, pp. 17 and 20.

<sup>324</sup> Vid., *inter alia*, WESTING, A., "Environmental Refugees: A Growing Category of Displaced Persons", *Environmental Conservation*, Vol. 19, No. 3, Autumn 1992, pp. 205 *in fine* and 206; MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, Washington DC (USA), Climate Institute, June 1995, p. 25; EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 10 and 15; and JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, *op. cit.*, p. 17.

<sup>325</sup> Vid., for example, MYERS, N., "Population/Environment Linkages: Discontinuities Ahead", *Ambio*, Vol. 21, No. 1: Population, Natural Resources and Development, February 1992, p. 117; MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, *op. cit.*, pp. 37, 38, 42 and 49; JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, *op. cit.*, pp. 16-20; EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 10, 13-16 and 18; DÖÖS, BO R., "Can large-scale environmental migrations be predicted?", *Global Environmental Change*, Vol. 7, No. 1, 1997, p. 45; and HOMER-DIXON, T.F., "On the Threshold: Environmental Changes as Causes of Acute Conflict", *International Security*, Vol. 16, No. 2, Fall 1991, p. 97 *in fine*.

<sup>326</sup> IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, p. 7.

<sup>327</sup> UNGA, "Annex II Sendai Framework for Disaster Risk Reduction 2015–2030", in: *Resolution 69/283... (A/RES/69/283)*, *op. cit.*, par. 27(k), p. 13:

"To formulate public policies, where applicable, aimed at addressing the issues of prevention or relocation, where possible, of human settlements in disaster risk-prone zones, subject to national law and legal systems" [italics added].

implementation, *including* urban planning, *land degradation assessments* and informal and non-permanent housing"<sup>328</sup>. The explicit reference to "land degradation assessment" should further exclude human habitation of areas vulnerable to slow-evolving environmental degradation<sup>329</sup>, such as steep slopes or watersheds. In parallel, the prescribed "disaster risk assessments" should also be conducted when assessing potential relocation sites<sup>330</sup> to avoid eventual secondary displacement and the additional suffering it entails for victims.

After the disaster has struck, paragraph 33(l) calls for considering "the relocation of public facilities and infrastructures to areas outside the risk range" "in the post-disaster reconstruction process"<sup>331</sup>. This manifestation of the 'Build Back Better' principle will avoid circular displacements, where affected communities return to what is left of their homes and community services once the risk is over until the next disaster forces them to move again.

### **2.3. Assessing the implementation of displacement-related provisions in the SFDRR: the 2019 and 2022 Global Platform for Disaster Risk Reduction**

The UNGA established the Global Platform for Disaster Risk Reduction as a successor to and with the same mandate as the former Inter-Agency Task Force for Disaster Risk Reduction<sup>332</sup>, and has recognised it as

"a useful forum for Member States and other stakeholders to assess progress made in the implementation of the Hyogo Framework for Action, enhance awareness of disaster risk reduction, share experiences and learn from good practice, identify remaining gaps and identify actions to accelerate national and local implementation"<sup>333</sup>.

Therefore, the main function of the mechanism is to bring together all actors engaged in disaster risk reduction to jointly assess and review progress and advance the implementation of the global framework for disaster risk reduction –currently the

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<sup>328</sup> Ibid., par. 30(f), p. 14.

<sup>329</sup> As also noted by IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, p. 7.

<sup>330</sup> Id.

<sup>331</sup> UNGA, "Annex II Sendai Framework for Disaster Risk Reduction 2015–2030", in: *Resolution 69/283...* (A/RES/69/283), *op. cit.*, par. 33(l), p. 17.

<sup>332</sup> UNGA, *Resolution 61/198 International Strategy for Disaster Reduction, adopted by the General Assembly at its Sixty-first session* (A/RES/61/198), 16 February 2007, par. 15.

<sup>333</sup> UNGA, *Resolution 62/192 International Strategy for Disaster Reduction, adopted by the General Assembly at its Sixty-second session* (A/RES/62/192), 11 February 2008, par. 15.

Sendai Framework. The Platform meets every two years. The latest meeting took place in Geneva, Switzerland from 13-17 May 2019, and was the second meeting since the adoption of the SFDRR –the first took place from 22-26 May 2017 in Cancun, Mexico<sup>334</sup>.

### **2.3.1. Resilience Dividend: Towards Sustainable and Inclusive Societies (2019 Global Platform)**

During the 2019 Global Platform, attended by some 4,000 participants from 182 countries<sup>335</sup>, the thematic focus was the *Resilience Dividend: Towards Sustainable and Inclusive Societies*<sup>336</sup>, conveying the overall message that "investing in resilience pays off"<sup>337</sup>. Disaster-induced displacement was a prominent topic on the agenda, and a seminar on "Disaster Displacement and Disaster Risk Reduction" was held as one of the official events<sup>338</sup>. The Co-Chairs' Summary noted that the implementation of the Sendai Framework had progressed, congratulating for the development of "new and innovative guidance, tools and instruments", including in the area of displacement<sup>339</sup>. In this regard, the seminar argued in favour of governments including "displacement among their national DRR targets and indicators", arguing that it is "a useful and important people-centred marker" that reflects whether they are making good progress in implementing the SFDRR<sup>340</sup>.

However, the Co-Chairs recognised that "[g]overnments and the international community must [still] do more to reduce the risk of disaster displacement before disasters strike"<sup>341</sup>. As the seminar on "Disaster Displacement and Disaster Risk Reduction" highlighted, the risk of displacement due to disasters will continue to intensify in the future as the number of people vulnerable to climate and geological hazards increases<sup>342</sup>. For that reason, the Co-Chairs called for equally considering

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<sup>334</sup> Proceedings of the 2017 Global Platform on Disaster Risk Reduction can be consulted at UNDRR, *2017 Global Platform for Disaster Risk Reduction: Proceedings*, Cancun (Mexico), UNISDR, 22-26 May 2017, 107 pp.

<sup>335</sup> UNDRR, *Final Concept Note. Seventh Session of the Global Platform for Disaster Risk Reduction (GP2022)*, 19 April 2021, p. 2.

<sup>336</sup> UNDRR, *2019 Global Platform for Disaster Risk Reduction: Proceedings*, Geneva (Switzerland), UNISDR, 13-17 May 2019, 109 pp.

<sup>337</sup> UNDRR, *Final Concept Note... (GP2022)*, *op. cit.*, p. 2.

<sup>338</sup> *Ibid.*, UNDRR, *2019 Global Platform... Proceedings*, *op. cit.*, pp. 46-47.

<sup>339</sup> *Ibid.*, par. 6, p. 7.

<sup>340</sup> *Ibid.*, p. 47.

<sup>341</sup> *Ibid.*, par. 28, p. 9.

<sup>342</sup> *Ibid.*, p. 47.

"[c]limate and disaster risks (...) as factors of migration"<sup>343</sup>. Therefore, there was broad agreement that additional investment should not be targeted solely at reactive action aimed at managing the consequences of disaster displacement once it has occurred and finding durable solutions for the displaced. Equally important are prevention and mitigation efforts, which address the underlying drivers of displacement, including climate change mitigation policies<sup>344</sup>.

The Co-Chairs also welcomed the "strong commitment" that States had shown "to multilateralism in pursuit of integrated approaches to disaster risk reduction, climate change mitigation and adaptation, and sustainable development"<sup>345</sup>. Furthermore, the seminar underlined the need to apply this "multilateralist" approach also in the field of disaster-related displacement by strengthening displacement-related policies and areas of action. Among the areas of concern, besides climate change and natural disaster reduction, sustainable urbanisation and development, humanitarian assistance and protection, human rights, migration governance and refugee protection were mentioned<sup>346</sup>. In the same vein, "[g]overnance frameworks (policies, legal, regulatory and institutional mechanisms) should be [also] strengthened to address disaster displacement at local, national and regional level"<sup>347</sup> coherently and comprehensively and with a human rights-based approach that allows for the participation of those affected<sup>348</sup>.

The seminar also emphasised that efforts to protect displaced disaster victims should pay more attention to those with specific vulnerabilities<sup>349</sup>. In this vein, the Co-Chairs regretted that "*[c]ommitments towards an inclusive approach to disaster risk reduction*" that includes "disproportionately affected at-risk groups" such as "women, *displaced people*, persons with disabilities, elderly, and children (...) *have not yet sufficiently translated into action*"<sup>350</sup>. In this regard, the seminar emphasised the importance of improving the collection and processing of disaster-related displacement data, in a disaggregated form, to identify "differentiated vulnerabilities to disaster

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<sup>343</sup> Ibid., par. 28, p. 9.

<sup>344</sup> Vid. id. for the conclusions of the Co-Chairs, and p. 47 for the recommendations of the seminar on "Disaster Displacement and Disaster Risk Reduction" pointing in the same direction.

<sup>345</sup> Ibid., par. 6, p. 7.

<sup>346</sup> Ibid., p. 47.

<sup>347</sup> Id. [bracketed text added].

<sup>348</sup> Id.

<sup>349</sup> Id.

<sup>350</sup> Ibid., par. 12, p. 8 [italics added].

displacement risk"<sup>351</sup>, with the Co-Chairs regretting that "[d]isaggregated data by sex, age, and disability are still lacking to a large extent"<sup>352</sup>.

To raise awareness of the importance of paying particular attention to vulnerable groups in situations of disaster displacement, an event entitled "Women and youth speak: Faces of disaster displacement" took place during the 2019 Global Platform<sup>353</sup>. At the event, several affected people shared their experiences of displacement with the audience. Their testimony served to underline the importance of designing evacuation and temporary shelter plans with due regard for the treatment or reduced mobility needs of the sick or disabled<sup>354</sup>, adequate privacy and security for women, and schooling for youth and children<sup>355</sup>. The meeting also stressed that evacuation and accommodation centres must be located and built with all possible safety measures to withstand aftershocks, avoiding the need to evacuate people again<sup>356</sup>.

The 2019 Global Platform also featured several activities with a regional focus. There was a meeting of representatives from Africa, the Caribbean and the Pacific<sup>357</sup>, which recommended: "*Accelerating the development of risk-informed and inclusive national DRR strategies by 2020 and support their implementation for inclusive, resilient and sustainable development and achieving durable solutions to forced displacement*"<sup>358</sup>.

Additionally, the IGNITE Stage hosted short presentations from Regional Platforms on disaster risk reduction<sup>359</sup>, some of which included references to displacement. For example, strengthening the resilience of camps and host communities in Cox's Bazar (Bangladesh)<sup>360</sup>, or building urban resilience for disaster risk reduction in the context of climate change, conflict and displacement in the Arab region were discussed<sup>361</sup>. The UN Office for Disaster Risk Reduction also presented at the IGNITE Stage three new "Words into Action" guidelines, as part of its "range of pragmatic

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<sup>351</sup> Ibid., p. 47.

<sup>352</sup> Ibid., par. 11, p. 8.

<sup>353</sup> Ibid., pp. 62-63.

<sup>354</sup> Ibid., p. 63.

<sup>355</sup> Ibid., p. 62.

<sup>356</sup> Ibid., p. 63.

<sup>357</sup> Ibid., pp. 78-79.

<sup>358</sup> Ibid., p. 79 [italics added].

<sup>359</sup> Ibid., pp. 89-91.

<sup>360</sup> Ibid., p. 89.

<sup>361</sup> Ibid., p. 90.

roadmaps" to guide actors involved in disaster risk reduction. One of them was on "Disaster Displacement: How to Reduce Risk, Address Impacts and Strengthen Resilience"<sup>362</sup>.

### **2.3.2. From Risk to Resilience: Towards Sustainable Development for All in a COVID-19 Transformed World (2022 Global Platform)**

The next session of the Global Platform is expected to take place from 23-28 May 2022 in Bali, Indonesia<sup>363</sup>. This seventh meeting is particularly relevant because it marks the end of the first half of the Sendai Framework implementation period (2015-2030). Therefore, it is the last opportunity for all stakeholders to meet at the global level before the mid-term intergovernmental review of the Sendai Framework in 2023<sup>364</sup>. It will also be the first Global Platform to be held in a global biological disaster scenario due to the COVID-19 pandemic.

Against the current context, the overall theme of the 2022 Global Platform will focus on "how the COVID-19 pandemic has challenged the traditional understanding of risk and disaster risk governance"<sup>365</sup>. Outcomes are expected to show "*how the global crisis can be turned into an opportunity* for the necessary radical transformation needed to achieve the goal and targets of the Sendai Framework, as well as of the 2030 Agenda"<sup>366</sup>. Entitled *From Risk to Resilience: Towards Sustainable Development for All in a COVID-19 Transformed World*, the upcoming event's agenda will be organised around three main sub-themes and three cross-cutting themes. All six will inform the overarching theme of further enhancing disaster resilience through sustainable development in a socio-economic context shaped by COVID-19.

The three main sub-themes are i) strengthening disaster risk governance to address systemic risk; ii) COVID-19 social and economic recovery for all; iii) and financing for DRR and risk-informed investments and development. On their part, the three cross-cutting themes focus on: i) stocktaking and accelerating progress towards the Sendai Framework goal and targets; ii) leaving no one behind: investing in local

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<sup>362</sup> Ibid., p. 89.

<sup>363</sup> UNDRR, *Final Concept Note... (GP2022)*, *op. cit.*, p. 3.

<sup>364</sup> Id.

<sup>365</sup> Ibid., p. 7.

<sup>366</sup> Id. [italics added].

action and empowering those most at risk; iii) and accelerating and integrating disaster risk management into sustainable development and climate action<sup>367</sup>.

Although the actual agenda of the event has not yet been published, it is to be expected that disaster-induced displacement will once again feature prominently as a cross-cutting theme that permeates the various thematic axes outlined. Climate impacts have turned natural phenomena such as weather events, climate fluctuations or sea-level oscillations into "systemic risks" that threaten entire eco-regions. Monsoons in South Asia, droughts in Africa, the ocean threat to SIDS or El Niño for Latin America are all examples of natural hazards that can potentially displace entire populations. Investing in DRR strategies and in developing these regions to strengthen the resilience of their institutions and citizens remains an unmet challenge. At the same time, the economic and social impacts of COVID-19 threaten to severely slow down development processes in the so-called Third World, increasing their vulnerability to disaster risk.

Progress in achieving the Sendai Framework targets, in synergy with the goals of sustainable development and climate change, is thus essential to avoid, minimise and address the risk of increasingly frequent and numerous population movements. Consequently, Global Platform 2022 provides an excellent opportunity to take the pulse of stakeholders involved in DRR on progress in implementing the Sendai Framework's provisions on displacement associated with rapid- and slow-onset environmental disruptions. Its outcomes will undoubtedly be enlightening and of great interest for making the necessary adjustments to the Sendai mechanism for its second implementation period (2023-2030).

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<sup>367</sup> Ibid., p. 8.

### 3. ENVIRONMENTALLY INDUCED HUMAN MOBILITY AND THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT

#### 3.1. Introduction

The 2030 Agenda for Sustainable Development was adopted by the UNGA on 25 September 2015<sup>368</sup>. It culminated more than two years of work<sup>369</sup> that began with the establishment of the UNGA Open Working Group on Sustainable Development Goals through Resolution 66/288, "The Future We Want"<sup>370</sup>. During this time, an "intensive public consultation and engagement with civil society and other stakeholders around the world" was carried out, "[paying] particular attention to the voices of the poorest and most vulnerable"<sup>371</sup>. Upon its completion, the Open Working Group submitted a synthesis report, attaching the proposed Agenda for consideration and adoption by the General Assembly<sup>372</sup>.

In drafting the text of the Agenda, the Working Group has drawn inspiration from various instruments of international law, such as the United Nations Charter, the Universal Declaration of Human Rights, international human rights treaties, the Millennium Declaration and the 2005 World Summit Outcome, and the Declaration on the Right to Development<sup>373</sup>. At the same time, the Agenda recognises the existence of other relevant fora that are core for sustainable development, such as climate change or natural disaster risk reduction, and encourages States to continue their efforts under their auspices. "We intend that the Agenda and its implementation would support, and be without prejudice to, those other processes and the decisions taken therein", the General Assembly states<sup>374</sup>.

As a continuation of the Millennium Development Goals, the 2030 Agenda aims to achieve the ambitious goal of fully sustainable development worldwide within a short

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<sup>368</sup> UNGA, *Resolution 70/1 Transforming our world: the 2030 Agenda for Sustainable Development, adopted by the General Assembly at its Seventieth session (A/RES/70/1)*, 21 October 2015, 35 pp.

<sup>369</sup> *Ibid.*, par. 6.

<sup>370</sup> UNGA, "Annex: The future we want", in: *Resolution 66/288 The future we want, adopted by the General Assembly at its Sixty-sixth session (A/RES/66/288)*, 11 September 2012, par. 248.

<sup>371</sup> UNGA, *Resolution 70/1 ... (A/RES/70/1)*, *op. cit.*, par. 6 [verb form changed].

<sup>372</sup> *Vid.* UNGA, *Report of the Open Working Group of the General Assembly on Sustainable Development Goals (A/68/970)*, 12 August 2014, 24 pp.

<sup>373</sup> UNGA, *Resolution 70/1 ... (A/RES/70/1)*, *op. cit.*, par. 10.

<sup>374</sup> *Ibid.*, par. 58.



timeframe of 15 years<sup>375</sup>. While maintaining some of the priorities of the Millennium Development Goals, such as poverty eradication, health, education and food security and nutrition, the 2030 Agenda has a much broader scope<sup>376</sup>. With 17 goals and 169 targets, the 2030 Agenda pursues a genuinely sustainable development in its three core dimensions – economic, social and environmental - in more peaceful and inclusive societies<sup>377</sup>.

These 17 objectives and their corresponding targets are closely interrelated and therefore have an integrated and indivisible character<sup>378</sup>. While their formulation reflects global aspirations, being universal in scope, their concrete implementation has a strong national character<sup>379</sup>. Each government will set "its own national targets" according to their different realities and circumstances, capacities and levels of development, as well as their priorities<sup>380</sup>. This global yet individualistic nature of the Agenda also manifests itself when addressing the Agenda's implementation. First and foremost, "each country has primary responsibility for its own economic and social development"<sup>381</sup>. However, at the same time, the Agenda establishes channels for international cooperation to support States in its implementation, aware that developing countries may lack the necessary financial, technological and knowledge resources to pursue SDGs<sup>382</sup>.

The interrelationship between the SDGs also appears at this point. Aside from the specific implementation provisions accompanying the individual Goals, the implementation of the Agenda as a whole emerges as an SDG in its own right. Thus, SDG 17 calls for a revitalised Global Partnership for Sustainable Development that "facilitate[s] an intensive global engagement (...), bringing together Governments, civil society, the private sector, the United Nations system and other actors and mobilizing all available resources"<sup>383</sup>. Finally, implementation efforts will also build on "the

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<sup>375</sup> Ibid., third preambular paragraph and par. 16.

<sup>376</sup> Ibid., par. 17.

<sup>377</sup> Ibid., pars. 2 and 17.

<sup>378</sup> Ibid., par. 55.

<sup>379</sup> Id.

<sup>380</sup> Id.

<sup>381</sup> Ibid., par. 41.

<sup>382</sup> Id.

<sup>383</sup> Ibid., par. 60.

concrete policies and actions outlined in the Addis Ababa Action", which the UNGA declares as "an integral part of the 2030 Agenda for Sustainable Development"<sup>384</sup>.

### **3.2. Environmental factors, human mobility and the 2030 Agenda**

The 2030 Agenda recognises that environmental disruptions and the resulting forced population displacements "threaten to reverse much of the development progress made in recent decades"<sup>385</sup>. In particular, among other risks, it refers to the increased frequency and intensity of natural disasters, the depletion of natural resources and the negative effects of environmental degradation<sup>386</sup>. Among the forms of environmental degradation that "add to and exacerbate the list of challenges which humanity faces" in achieving sustainable development, the Agenda mentions, in particular, desertification, drought, land degradation, freshwater scarcity and loss of biodiversity<sup>387</sup>.

A separate mention goes to climate change, which the Agenda describes as "one of the greatest challenges of our time"<sup>388</sup>. Although, to a greater or lesser extent, the adverse effects of climate change will "undermine the ability of all countries to achieve sustainable development", the Agenda pays special mention of coastal zones and low-lying coastal countries<sup>389</sup>. This reference shows, once again, the global consensus that these sensitive areas will suffer the most from rising global temperatures, sea-level rise, ocean acidification and other impacts associated with climate change<sup>390</sup>. However, the Agenda does not ignore that many of these most affected States will be least developed countries and SIDS, and therefore the challenges of adapting to climate change will compound their existing development problems and vice versa. "The survival of many societies, and of the biological support systems of the planet, is at risk" due to climate change, concludes the UNGA Declaration to the 2030 Agenda in a lapidary but accurate way<sup>391</sup>.

Despite recognising that rapid- and slow-onset environmental disruptions and associated forced population movements put development at risk, the 2030 Agenda does

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<sup>384</sup> Ibid., par. 62.

<sup>385</sup> Ibid., par. 14.

<sup>386</sup> Id.

<sup>387</sup> Id.

<sup>388</sup> Id.

<sup>389</sup> Id.

<sup>390</sup> Id.

<sup>391</sup> Id.

not address environmental displacement directly. The Agenda's Institutional Declaration only expresses the international community's commitment to cooperate to ensure "full respect for human rights and the humane treatment of migrants regardless of migration status, of refugees and of displaced persons"<sup>392</sup>, as well as to "strengthen support and meet the special needs of people living in areas affected by complex humanitarian emergencies"<sup>393</sup>. The absence of additional qualifiers implies that people who migrate or become displaced in the face of the risk or imminent threat or impact of environmental disruption would also be included. Beyond such a broad statement of intent, the SDGs of the 2030 Agenda remain even more relevant to promoting environmental migration and preventing forced displacement, as will be discussed below.

### **3.2.1. Environmental migration as a strategy for development**

The most apparent reference to human mobility related to environmental factors derives from SDG 10, which refers generically to migration as a vehicle for reducing inequality within and among countries. This recognition aligns with the statement that "international migration is a multidimensional reality of major relevance for the development of countries of origin, transit and destination" and that migrants contribute positively to "inclusive growth and sustainable development"<sup>394</sup>. Against this background, the largely voluntary mobility that may occur in the face of environmental stress should also be regarded, in light of the 2030 Agenda, as a positive development strategy that could ameliorate the amplified impact that environmental changes have on the socio-economic structure of developing countries. In line with this approach, target 10.7 calls for "[facilitating] orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies"<sup>395</sup>.

One way to facilitate the migration of people affected by environmental disruptions, such as nationals of SIDS affected by sea-level rise, would be the creation of work visa quotas. These visas should be targeted at those labour sectors in the destination country where the demand for labour cannot be met by domestic supply.

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<sup>392</sup> Ibid., par. 29.

<sup>393</sup> Ibid., par. 23.

<sup>394</sup> Ibid., par. 29.

<sup>395</sup> Ibid., p. 21 [verb form changed].

That way, labour competition between the immigrant community and the national population, and thus the creation of tensions between the two, would be avoided. However, it is essential that labour segregation does not imply a reduction of migrant workers' labour rights, which must, in any case, be guaranteed in a safe working environment following international labour migration standards (target 8.8)<sup>396</sup>.

Encouraging migration from environmentally stressed locations would not only avoid exposing those affected to increasingly deteriorating living conditions. It has been argued that the migration of some family members can help the rest of the household cope with environmental stress through remittances<sup>397</sup>. To incentivise this resilience strategy, target 10.c aims to "reduce to less than 3 per cent the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5 per cent" by 2030<sup>398</sup>.

Implementing such labour migration policies to enhance environmental resilience would also contribute to achieving other SDG targets. For example, creating orderly, safe and regular migration channels would prevent contemporary forms of slavery and trafficking in persons (target 8.7)<sup>399</sup> associated with irregular migration. At the same time, building the capacity of developing communities exposed to environmental disruption risks would serve target 8.5, helping to provide "full and productive employment and decent work for all"<sup>400</sup> and "reduce the proportion of youth not in employment, education or training" (target 8.6)<sup>401</sup>.

Regarding the upskilling of young nationals from developing countries less resilient to environmental disruptions, migration can also adopt a non-labour character through scholarships to enable them to pursue higher education programmes, including university studies, in developed countries. Such scholarship-based student migration

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<sup>396</sup> Ibid., p. 20.

<sup>397</sup> The role of migration and remittances as a coping strategy that reduces the environmental and financial vulnerabilities of households has been highlighted in: BILSBORROW, R.E., "Rural Poverty, Migration, and the Environment in Developing Countries: Three Case Studies", *Background paper for World Development Report 1992*, World Bank, November 1992, pp. 3 *in fine* and 4. DAVID, R., *Changing places? Women, resource management and migration in the Sahel: case studies from Senegal, Burkina Faso, Mali and Sudan*, London (UK), SOS Sahel, 1995, pp.15 and 19. MASSEY, D.S. ET AL., "Theories of International Migration: A Review and Appraisal", *Population and Development Review*, Vol. 19, No. 3, September 1993, pp. 436 *in fine* and 437. GUADAGNO, L., "Human Mobility in the Sendai Framework for Disaster Risk Reduction", *op. cit.*, pp. 32 and 37.

<sup>398</sup> UNGA, *Resolution 70/1... (A/RES/70/1)*, *op. cit.*, p. 21.

<sup>399</sup> Ibid., p. 20.

<sup>400</sup> Ibid., p. 19.

<sup>401</sup> Id.

would support the achievement of target 4.b, which sought to significantly increase globally, by 2020, the number of scholarships available to developing countries, in particular the least developed countries, SIDS and African countries<sup>402</sup>. It would also meet target 4.3 to ensure, by 2030, "equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university"<sup>403</sup>.

These scholarships could also focus on professional sectors that are strategic for the awarding country, the beneficiaries' countries of origin, or both. This approach would serve a double purpose. On the one hand, it would strengthen the resilience of countries and communities of origin, which would benefit from the intellectual capital of those who decide to return. On the other hand, it would also enhance the resilience of young grantees, who would get better employability prospects in the global labour market, in line with target 4.4 to "substantially increase the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs and entrepreneurship"<sup>404</sup>.

These two examples of labour and educational incentives for the mobility of people under environmental stress demonstrate how migration, if well managed, can be a viable and positive strategy. It contributes to the adaptation of populations to changes in their human environment, enables the sustainable development of affected communities through the flow of remittances and knowledge, and reduces inequalities in vulnerability and exposure to environmental disruptions.

### **3.2.2. Avoidance and minimisation of environmental displacement through sustainable development**

Beyond migration as an adaptation strategy, forced displacement caused by environmental disruptions, including climate change, is a cross-cutting issue that can be integrated into the SDGs and their targets in terms of prevention<sup>405</sup>. As the presence of environmentally displaced people reflects unsustainable development or lack of development, the entire 2030 Agenda serves to avert or minimise their occurrence. The

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<sup>402</sup> Ibid., p. 17.

<sup>403</sup> Id.

<sup>404</sup> Id.

<sup>405</sup> Vid. MACH, E., "Implementation of the migration, environment and climate change related commitments of the 2030 Agenda"; and BANERJEE, S.; MISHRA, A., "Migration and environmental change in the Sustainable Development Goals", in: Appave, G.; Sinha, N. (eds.), *Migration in the 2030 Agenda*, Genève (Switzerland), IOM, 2017, pp. 23-37 and 101-120.

proper implementation of the economic, social and environmental dimensions of sustainable development, which the Agenda brings together, will address the deep root causes of environmental displacement. Achieving the SDGs will eliminate or reduce the impact of environmental disruptions on the population while increasing communities' resilience to cope with environmental stress without moving.

The following are some of the goals and targets that could contribute most to preventing future environmental displacement of populations.

### **A) Poverty and population growth**

As already noted in Chapter I, poverty and environmental degradation are two profoundly interrelated and mutually reinforcing phenomena<sup>406</sup>. Hence, the achievement of SDG 1, which aims to "[e]nd poverty in all its forms everywhere"<sup>407</sup>, is essential to break this vicious circle. This SDG should be linked to target 10.1, which aims to "[p]rogressively achieve and sustain income growth of the bottom 40 per cent of the population at a rate higher than the national average"<sup>408</sup>.

Likewise, the unbalanced land tenure patterns prevailing in developing countries are at the root of poverty-related over-exploitation of natural resources<sup>409</sup>. Hence the importance of target 1.4 linking sustainable development to access by "the poor and vulnerable" to economic and natural resources, including "ownership and control over land"<sup>410</sup>, ensuring that women are treated equally in this regard (target 5.a)<sup>411</sup>. In developing countries, a high percentage of the population remains heavily dependent on subsistence agriculture and livestock to meet their minimum nutritional needs. Therefore, guaranteeing "secure and equal access to land" for women, indigenous

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<sup>406</sup> Vid., *inter alia*, MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, *op. cit.*, pp. 26 *in fine*, 31 (Figure II.2) and 49. JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, *op. cit.*, p. 9. TUCHMAN, J., "Redefining Security", *op. cit.*, p. 167. MYERS, N., "Population/Environment Linkages: Discontinuities", *op. cit.*, p. 117. HOMER-DIXON, T.F., "On the Threshold: Environmental Changes as Causes of Acute Conflict", *op. cit.*, pp. 94 *in fine* and 95.

<sup>407</sup> UNGA, *Resolution 70/1... (A/RES/70/1)*, *op. cit.*, p. 15.

<sup>408</sup> *Ibid.*, p. 21.

<sup>409</sup> Vid., *inter alia*, JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, *op. cit.*, pp. 9 and 15. TUCHMAN, J., "Redefining Security", *op. cit.*, p. 166. MYERS, N., "Environment and Security", *op. cit.*, p. 37. MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, *op. cit.*, pp. 32 and 40. MYERS, N., "Population/Environment Linkages: Discontinuities", *op. cit.*, pp. 116-117. EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 24. OTUNNU, O., "Environmental refugees in Sub-Saharan Africa: causes and effects", *op. cit.*, pp. 13-14.

<sup>410</sup> UNGA, *Resolution 70/1... (A/RES/70/1)*, *op. cit.*, p. 15.

<sup>411</sup> *Ibid.*, p. 18.

peoples, family farmers, pastoralists and fisherfolk, in line with target 2.3, will also contribute to reducing poverty and hunger in these States.

Moreover, SDG 1 implicitly recognises that both rapid- and slow-onset environmental disruptions hinder poverty eradication because of their impact on affected populations' social and economic fabric, especially the most vulnerable social strata. In this context, target 1.5 aims to reduce the increased exposure and vulnerability of the poor to the impacts of "climate-related extreme events and other (...) environmental shocks and disasters"<sup>412</sup>. Ultimately, this goal of improving the resilience of vulnerable people is equally shared by the UNFCCC, encouraging the implementation of climate change adaptation plans, and by the Sendai Framework, advocating disaster risk reduction strategies.

The demographic component is the other non-natural factor that the "maximalist" literature associates, along with poverty, with increased environmental degradation. These authors argued that excessive population growth in developing countries taxes natural resources at unsustainable consumption rates in the long term<sup>413</sup>. In order to reduce the high population rates that characterise countries from the so-called Third World, it is relevant to bring up target 3.7. Place under SDG 3 on good health and well-being, this target calls for ensuring "universal access to sexual and reproductive health-care services, including for family planning, information and education"<sup>414</sup>.

## **B) Land degradation**

Land degradation is one of the most prominent environmental drivers of migration in the "maximalist" literature of the 1980s and 1990s, which blamed unsustainable agricultural and livestock practices and excessive logging<sup>415</sup>. In addition, drought and

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<sup>412</sup> Ibid., p. 15.

<sup>413</sup> Vid., *inter alia*, MYERS, N., "Population/Environment Linkages: Discontinuities Ahead", *op. cit.*, p. 116. MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, *op. cit.*, pp. 2, 49 *in fine*, 50, and 54-57. TUCHMAN, J., "Redefining Security", *op. cit.*, p. 163. WESTING, A., "Environmental Refugees: A Growing Category of Displaced Persons", *op. cit.*, p. 204, Table IV. WESTING, A., "Population, Desertification, and Migration", *op. cit.*, p. 112, Table IV. DÖÖS, BO R., "Can large-scale environmental migrations be predicted?", *op. cit.*, pp. 43 and 44 (Figure 2). OTUNNU, O., "Environmental refugees in Sub-Saharan Africa: causes and effects", *op. cit.*, pp. 12 *in fine* and 13. JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, *op. cit.*, p. 8.

<sup>414</sup> UNGA, *Resolution 70/1... (A/RES/70/1)*, *op. cit.*, p. 16.

<sup>415</sup> Among others, JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, *op. cit.*, pp. 7-16. EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 23-32. MYERS, N., "Population/Environment Linkages: Discontinuities Ahead", *op. cit.*, pp. 116-117. MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, *op. cit.*, pp. 37, 40-46. WESTING, A.,

heavy rains associated with climate change will exacerbate the impact of human activity on gradual soil erosion, leading to desertification in its most advanced stage<sup>416</sup>.

SDG 15 focuses specifically on protecting, restoring and promoting the sustainable use of terrestrial ecosystems, "in particular forests, wetlands, mountains and drylands" (target 15.1)<sup>417</sup>. The ultimate goal is "to achieve a land degradation-neutral world", prioritising efforts to combat desertification and rehabilitate degraded land and soils, including land affected by desertification, drought and floods (target 15.3)<sup>418</sup>. Pursuing the same goal of zero environmental degradation, target 15.2 emphasises halting deforestation and restoring degraded forests<sup>419</sup>, including through appropriate incentives for developing countries to promote sustainable forest management (target 15.b)<sup>420</sup>, also seeking to "ensure the conservation of mountain ecosystems" (target 15.4)<sup>421</sup>.

Moreover, SDG 15 is to be achieved, *inter alia*, through target 12.2, which pursues "the sustainable management and efficient use of natural resources" under the broader goal of "[ensuring] sustainable consumption and production patterns" (SDG 12)<sup>422</sup>. Interestingly, target 15.9 could support this responsible and sustainable consumption by considering ecosystems and biodiversity as assets to be accounted for in national and local accounts<sup>423</sup>.

"Green education", which ensures "that people everywhere have the relevant information and awareness for sustainable development and lifestyles in harmony with nature" (target 12.8)<sup>424</sup>, will be also essential in reducing the impact of human activity

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"Population, Desertification, and Migration", *op. cit.*, p. 111 and Table III. TUCHMAN, J., "Redefining Security", *op. cit.*, p. 165. HOMER-DIXON, T.F., "On the Threshold: Environmental Changes as Causes of Acute Conflict", *op. cit.*, pp. 91-94. DÖÖS, BO R., "Environmental Degradation, Global Food Production, and Risk for Large-Scale Migrations", *Ambio*, Vol. 23, No. 2, March 1994, pp. 125-127.

<sup>416</sup> In the "maximalist" literature, the impact of drought and desertification has been described in: WESTING, A., "Population, Desertification, and Migration", *op. cit.* EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 10-12, 26, 28-29 and Table 4. TUCHMAN, J., "Redefining Security", *op. cit.*, p. 167. JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, *op. cit.*, pp. 10 *in fine*, 11-12 and Table 1. MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, *op. cit.*, pp. 39-41. HOMER-DIXON, T.F., "On the Threshold: Environmental Changes as Causes of Acute Conflict", *op. cit.*, p. 94.

<sup>417</sup> UNGA, *Resolution 70/1... (A/RES/70/1)*, *op. cit.*, p. 24.

<sup>418</sup> *Id.*

<sup>419</sup> *Id.*

<sup>420</sup> *Ibid.*, p. 25.

<sup>421</sup> *Id.*

<sup>422</sup> *Ibid.*, p. 22 [verb form changed].

<sup>423</sup> *Ibid.*, p. 25.

<sup>424</sup> *Ibid.*, p. 23.



on the environment and thus the degradation that underlies displacement. Future generations are of particular concern as, under SDG 4 on quality education, it must be ensured that "all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles" (target 4.7)<sup>425</sup>.

### C) Conservation of marine ecosystems

Preserving the integrity of marine ecosystems is as essential as ensuring the sustainability of terrestrial ecosystems. Worldwide, fish supplied more than 3.3 billion people with 20% of their average per capita animal protein diet<sup>426</sup>. This proportion rises to 50% or more in countries such as Bangladesh, Cambodia, Gambia, Ghana, Indonesia, Sierra Leone, Sri Lanka and several SIDS<sup>427</sup>.

Economically, the OECD estimated that the value-added generated by the ocean economy globally could double in 20 years, from \$1.5 trillion in global value-added in 2010 to \$3 trillion in 2030<sup>428</sup>. In 2018, global fisheries accounted for 97 million tonnes, excluding aquaculture production, with a total first-sale value estimated at US\$151 billion<sup>429</sup>. In the same year, the value of global international fish trade reached US\$ 164 billion, of which 60% corresponded to developing countries<sup>430</sup>. In terms of employment, 39.0 million people worked in the primary capture fisheries sector. Most of them lived in developing countries and were small-scale artisanal fishers and aquaculture workers<sup>431</sup>.

Finally, oceans play a crucial role in climate change. Coastal and marine ecosystems such as mangroves, tidal marshes and seagrass meadows are often referred to as "blue carbon" because of their ability to "sequester and store more carbon per unit area than terrestrial forests"<sup>432</sup>. 83% of the global carbon cycle circulates through the ocean. Thus, although coastal habitats represent less than 2% of the total ocean area,

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<sup>425</sup> Ibid., p. 17.

<sup>426</sup> FAO, *The State of World Fisheries and Aquaculture 2020. Sustainability in action*, Rome (Italy), FAO, 2020, p. 5.

<sup>427</sup> Id.

<sup>428</sup> OECD, "The Ocean Economy in 2030. The Ocean as a Sustainable Source of Economic Growth", *Policy Note*, April 2016, 4 pp. (last access: 12/12/2021).

<sup>429</sup> FAO, *The State of World Fisheries and Aquaculture 2020...*, *op. cit.*, p. 2.

<sup>430</sup> Ibid., p. 8.

<sup>431</sup> Ibid., p. 7.

<sup>432</sup> INTERNATIONAL UNION FOR CONSERVATION OF NATURE, "Blue Carbon", *Issues Brief*, November 2017, p. 1 (last access: 12/12/2021).

they are responsible for sequestering approximately 50% of the total carbon stored in ocean sediments<sup>433</sup>. In parallel, coral reefs, mangroves and other beachfront forests or even beach dunes provide a natural barrier that protects near-shore human communities from sea-level rise, erosion, cyclones and storm surges<sup>434</sup>.

Given the importance of marine ecosystems for the reasons outlined above, SDG 14 considers the conservation and sustainable use of oceans, seas and marine resources as fundamental to sustainable development<sup>435</sup>. In order to achieve it, 14.2 was intended to have consolidated by 2020 a sustainable management and protection of marine and coastal ecosystems, as well as "take action for their restoration in order to achieve healthy and productive oceans restore the health and productivity of the oceans"<sup>436</sup>.

Goal 14.c recognizes the United Nations Convention on the Law of the Sea as the appropriate international law framework for adopting and implementing the necessary policies to attain SDG 14. Nevertheless, putting them in practice will require the necessary transfer of knowledge and marine technology to developing countries, particularly SIDS and least developed countries, so that they can also benefit from the sustainable use of marine resources for their development (targets 14.7 and 14.a)<sup>437</sup>.

Protecting the seas and oceans also requires "[preventing] and significantly [reducing] marine pollution of all kinds"<sup>438</sup>. Target 14.1 has set this goal for 2025, particularly concerning pollution from land-based activities, being its achievement essential to minimize the effects of ocean acidification that target 14.3 aims to address<sup>439</sup>. Likewise, sustainable management of marine resources involves an effective regulation of fishing exploitation, "[ending] overfishing, illegal, unreported and unregulated fishing and destructive fishing practices" (target 14.4)<sup>440</sup>. Eradicating these unsustainable and harmful forms of fishing demands the prohibition of subsidies

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<sup>433</sup> *Id.*

<sup>434</sup> EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 18.

<sup>435</sup> Some "maximalist" authors, such as Tuchman, were already warning in the late 1980s of the security risks posed by unsustainable exploitation of fish stocks (vid. TUCHMAN, J., "Redefining Security", *op. cit.*, p. 167).

<sup>436</sup> UNGA, *Resolution 70/1... (A/RES/70/1)*, *op. cit.*, p. 23.

<sup>437</sup> *Ibid.*, p. 24.

<sup>438</sup> *Ibid.*, p. 23 [verb form changed].

<sup>439</sup> *Id.*

<sup>440</sup> *Ibid.*, p. 24 [verb form changed].

supporting them (target 14.6)<sup>441</sup>. Lastly, target 14.4 aims to "restore fish stocks in the shortest time feasible" through the application of science-based management plans<sup>442</sup>.

#### D) Hunger

If SDGs 14 and 15 address human action as the leading underlying cause of land and ocean degradation, SDG 2 deals with one of the primary consequences of the destruction of terrestrial and marine ecosystems that the "maximalist" authors warned about: insufficient food production to meet the nutritional needs of a growing global population leading to migratory flows of the hungry. Nor did it go unnoticed by these scholars that this anthropogenic destruction will be exacerbated by climate change and associated adverse effects, such as rising sea levels, altered weather patterns or exacerbated droughts, which threaten to escalate food shortages into acute famines<sup>443</sup>.

To combat hunger associated with land degradation, target 2.4 promotes the implementation of long-term "sustainable food production systems". It proposes implementing "resilient agricultural practices", which increase productivity and food production while contributing to the maintenance of ecosystems, *the strengthening of the capacity to adapt to climate change, extreme weather events, droughts, floods and other catastrophes*, and progressively improve the quality of land and soil<sup>444</sup>.

However, such resilient and sustainable practices are hampered in developing countries by the lack of public incentives and the centrifugal and centripetal forces of the world economic system<sup>445</sup>. Coupled with short-sighted, government-led exploitation

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<sup>441</sup> Id.

<sup>442</sup> Id.

<sup>443</sup> MYERS, N., "Environmental Refugees in a Globally Warmed World", *op. cit.*, pp. 756-757. MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, *op. cit.*, pp. 40, 139, 146-148. DÖÖS, BO R., "Environmental Degradation, Global Food Production, and Risk for Large-Scale Migrations", *op. cit.*, pp. 125 and 130. HOMER-DIXON, T.F., "On the Threshold: Environmental Changes as Causes of Acute Conflict", *op. cit.*, p. 94. JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, *op. cit.*, pp. 34 *in fine* to 36. TUCHMAN, J., "Redefining Security", *op. cit.*, p. 167. EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 10-12, and JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, *op. cit.*, pp. 11-12. Cf. with "minimalist" authors such as: MCGREGOR, J., "Climate change and involuntary migration: Implications for food security", *op. cit.*, p. 122. KIBREAB, G., "Climate Change and Human Migration: a Tenuous Relationship Symposium", *op. cit.*, pp. 363, 366, 381 *in fine* and 382. BLACK, R., "Environmental refugees: myth or reality?", *op. cit.*, p. 6.

<sup>444</sup> UNGA, *Resolution 70/1... (A/RES/70/1)*, *op. cit.*, p. 15.

<sup>445</sup> The implications of capitalism and international debt for Third World environmental problems have been addressed in the following "maximalist" works: CAVANAGH, J.; GEORGE, S., "The first boomerang: The Environment", in: George, S., *The Debt Boomerang: How Third World Debt Harms Us All*, eBook Published, New York (USA), Routledge, 2009, 33 pp., JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, *op. cit.*, p. 13. OTUNNU, O., "Environmental refugees

policies<sup>446</sup>, the absence of public investment and financing facilities deprives producers, especially smallholders, of the necessary resources and long-term prospects to invest in soil and forest conservation measures or move towards sustainable farming and grazing patterns<sup>447</sup>.

Against this background, target 2.4 must be read in conjunction with target 2.a, which calls for "[increased] investment, including through enhanced international cooperation, in rural infrastructure, agricultural research and extension services, technology development, and plant and livestock gene banks", seeking to improve "agricultural productive capacity in developing countries, in particular least developed countries"<sup>448</sup>. Similarly, "[correcting and preventing] trade restrictions and distortions in world agricultural markets" (target 2.b)<sup>449</sup> will allow developing countries to continue to grow sustainably through exportation without resorting to resource-intensive policies that are lucrative in the short term but environmentally destructive in the long term.

Equally, guaranteeing "the proper functioning of food commodity markets" and limiting the extreme volatility of food prices (target 2.c)<sup>450</sup> will prevent shortages of primary foodstuffs in developing countries whose production suffers most from land degradation and climate change. Enabling them to compensate for shortages by importing supplies will prevent hunger-driven population movements. At the same time, "[halving] per capita global food waste" (target 12.3)<sup>451</sup>, within the framework of sustainable consumption (SDG 12), would increase the amount of food available, favouring the global distribution of the surplus among populations at risk of malnutrition.

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in Sub-Saharan Africa: causes and effects", *op. cit.*, pp. 12 and 14. ISLAM, M., "Natural calamities and environmental refugees in Bangladesh", *op. cit.*, p. 9.

<sup>446</sup> Examples of these policies are cited in: TUCHMAN, J., "Redefining Security", *op. cit.*, p. 166. HOMER-DIXON, T.F., "On the Threshold: Environmental Changes as Causes of Acute Conflict", *op. cit.*, p. 91. WESTING, A., "Population, Desertification, and Migration", *op. cit.*, p. 111. JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, *op. cit.*, p. 14.

<sup>447</sup> This conclusion was already advanced by "maximalist" authors such as: JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, *op. cit.*, p. 9. MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, *op. cit.*, pp. 38 and 43. MYERS, N., "Population/Environment Linkages: Discontinuities", *op. cit.*, p. 117. TUCHMAN, J., "Redefining Security", *op. cit.*, p. 167.

<sup>448</sup> UNGA, *Resolution 70/1 ... (A/RES/70/1)*, *op. cit.*, p. 16 [verb form changed and italics added].

<sup>449</sup> Id. [verb form changed].

<sup>450</sup> Id.

<sup>451</sup> *Ibid.*, p. 22 [verb form changed].

## E) Drinking water

The need to guarantee food security is matched by the need to guarantee the supply of drinking water. In this regard, it should be remembered that the difficulty of accessing food and water in Tuvalu was one of the main arguments put forward by Mr Teitiota before the HRC against New Zealand's decision not to grant him the status of "climatic" refugee. He alleged that his forced return to the Small Island State of Tuvalu put his life at serious risk because climate change-related sea-level rise had resulted in seawater intrusion, contaminating freshwater sources, and the salinisation of farmland. Although the HRC considered that the situation in Tuvalu was not serious enough to qualify his return as a violation of human rights, it did recognise that, in the future, the impact of climate change on living conditions could serve as a basis to sustain States' responsibility for violating the principle of non-refoulement.

In light of the Committee's obiter dictum reasoning, SDG 2 should be read in conjunction with Goal 6, ensuring water availability for all. Together, both Goals cover two vital needs of the human being –i.e. water and food. In the context of climate change and environmental degradation, satisfying them becomes essential to minimize population displacements associated with their scarcity. In this regard, SDG 6 comprises several targets related to the conservation and management of water resources.

On the one hand, target 6.6 refers to conservation, which establishes as a priority "[protecting] and [restoring] water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes"<sup>452</sup> since they are the natural base of the water resources on which the human being depends. In this sense, goal 15.1 also calls for "[ensuring] the conservation, restoration and sustainable use of (...) inland freshwater ecosystems and their services" by 2020<sup>453</sup>.

On the other hand, targets 6.4 and 6.5 refer to management. The first one calls for efficient and sustainable use of water resources "across all sectors" to "substantially reduce the number of people suffering from water scarcity"<sup>454</sup>, equally involving local communities in improving their management (target 6.b)<sup>455</sup>. Special reference is made

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<sup>452</sup> Ibid., p. 18 [verb form changed].

<sup>453</sup> Ibid., p. 24 [verb form changed].

<sup>454</sup> Ibid., p. 18.

<sup>455</sup> Ibid., p. 19.

to ensure that freshwater extraction does not exceed the replacement capacity of its sources, thereby assuring its continuity and avoiding its exhaustion<sup>456</sup>.

The fact that 153 countries worldwide share rivers, lakes and aquifers<sup>457</sup> makes inter-state cooperation equally necessary to ensure truly effective and sustainable water management for the benefit of all. Thus, paragraph 28(d) of the SFDRR on disaster risk co-management in shared sovereignty eco-regions has its particular correlate, in terms of water management, in target 6.5. It refers to transboundary cooperation in the integrated management of those water resources that are shared<sup>458</sup>. This provision is significant in the current context, where rising tensions for controlling this increasingly scarce resource could lead to conflicts and further population movements with an environmental undertone<sup>459</sup>. Such an international cooperation extends, within the framework of target 6.a, to "capacity-building support to developing countries in water- and sanitation-related activities and programmes, including water harvesting, desalination, water efficiency, wastewater treatment, recycling and reuse technologies"<sup>460</sup>.

#### **F) Human settlements resilience**

Making human settlements resilient to rapid- and slow-onset environmental disruptions is the most effective strategy to reduce the associated risk of environmental displacement. As recalled when analyzing relocation within the SFDRR text, human settlements in areas exposed to natural hazards or environmentally vulnerable and accommodation in precarious structures are the two factors that most influence the number of persons killed or affected by disasters<sup>461</sup>.

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<sup>456</sup> Ibid., p. 18.

<sup>457</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 39.

<sup>458</sup> UNGA, *Resolution 70/1... (A/RES/70/1)*, *op. cit.*, p. 18.

<sup>459</sup> On unsustainable patterns of human water consumption, *vid.* MYERS, N., "Population/Environment Linkages: Discontinuities", *op. cit.*, pp. 117 *in fine* and 118; and for estimates of populations facing water scarcity and potentially the risk of displacement, MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, *op. cit.*, p. 42. For the security implications of water scarcity, *vid.* the contemporary work of: CHELLANEY, B., *Water, Peace, and War. Confronting the Global Water Crisis*, Rowman & Littlefield Publishers, April 2013, 424 pp. SHIVA, V., *Water Wars: Privatization, Pollution and Profit*, North Atlantic Books, July 2016, 192 pp.

<sup>460</sup> UNGA, *Resolution 70/1... (A/RES/70/1)*, *op. cit.*, p. 19.

<sup>461</sup> *Vid.* footnotes 322-325 *supra* and the body text to which they refer. The higher exposure of informal settlements to natural disaster impacts has been demonstrated in: EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 6, 10, 19 *in fine* and 20. MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, *op. cit.*, p. 25. They compare the number of deaths and damages in developing

Target 11.b and target 11.1 address both risk factors. On the one hand, target 11.b focuses on "substantially [increasing]", by 2020, "the number of cities and human settlements adopting and implementing [both] integrated policies and plans towards (...) mitigation and adaptation to climate change [and] resilience to disasters, and (...) holistic disaster risk management at all levels" in line with the SFDRR<sup>462</sup>. For its part, target 11.1 guarantees "access for all to adequate, safe and affordable housing (...) and upgrade slums"<sup>463</sup>. In connection with the goal of making human settlements resistant to disasters, target 9.1 aims at "developing quality, reliable, sustainable and resilient infrastructure, including regional and transborder infrastructure, to support economic development and human well-being"<sup>464</sup>.

The combined implementation of the above targets would significantly reduce casualties in the event of a disaster and the number of displaced people. However, aware of the most significant challenges the least developed countries face in achieving resilience to disasters, target 11.c and target 9.a call for support, including financial, technological and technical assistance, to build sustainable and resilient buildings and infrastructure in these countries<sup>465</sup>. It should be noted that target 9.a also mentions SIDS as beneficiaries of aid for the development of infrastructures that could include the construction of barriers to protect their low coasts against sea-level rise<sup>466</sup>. Moreover, although not expressly stated, the goals and targets aimed at attaining human settlements that are resilient to climate change and disasters should also be integrated into the subsequent recovery phase of disaster-affected areas, following the SFDRR principle of "Building Back Better"<sup>467</sup>.

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and developed countries under similar natural disaster scenarios, noting the higher incidence in poor countries.

<sup>462</sup> UNGA, *Resolution 70/1 ... (A/RES/70/1)*, *op. cit.*, p. 22 [verb form changed and bracketed text added].

<sup>463</sup> *Ibid.*, p. 21.

<sup>464</sup> *Ibid.*, p. 20.

<sup>465</sup> *Ibid.*, pp. 20 and 22.

<sup>466</sup> The capacity gap between developed and developing countries to adapt to environmental change, especially regarding sea-level rise, has been widely noted in the "maximalist" literature: JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, *op. cit.*, p. 37. TUCHMAN, J., "Redefining Security", *op. cit.*, p. 170. MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, *op. cit.*, pp. 134 *in fine* and 135. HOMER-DIXON, T.F., "On the Threshold: Environmental Changes as Causes of Acute Conflict", *op. cit.*, p. 88. EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 22 MYERS, N., "Environmental Refugees in a Globally Warmed World", *op. cit.*, p. 753.

<sup>467</sup> UNGA, "Annex II Sendai Framework for Disaster Risk Reduction 2015–2030", in: *Resolution 69/283 ... (A/RES/69/283)*, *op. cit.*, par. 32.

Besides reducing personal losses "caused by disasters, including water-related disasters", target 11.5 also aims to "substantially decrease the direct economic losses relative to global gross domestic product, with a focus on protecting the poor and people in vulnerable situations"<sup>468</sup>. The provision is relevant since developing countries, being more vulnerable and less prepared for disasters, tend to suffer more significant material losses, widening the development gap between the First and Third Worlds<sup>469</sup>. Neither should it be forgotten that the poor find it more challenging to replace the assets they have lost due to environmental disruption<sup>470</sup>.

As a result, the adverse economic effects of disasters worsen the already precarious situation of developing countries and their populations, fuelling migration as a survival strategy. In this regard, the impact of repeated low-intensity, rapid-onset environmental disruptions may end up generating the same effect that large-scale ones by gradually eroding the socioeconomic base of the most vulnerable population until they have no more option than to move. It similarly occurs with the sustained impact of slow-onset environmental disruptions on the domestic economy of the most disadvantaged<sup>471</sup>.

### **G) Climate change**

As noted, climate change is the backdrop to many environmental disruptions that are likely to cause the most considerable population movements, exacerbating their effects, frequency, or intensity. Therefore, strengthening the resilience of human settlements, referred to in SDG 11, also requires "urgent action to combat climate change and its impacts" within the framework of SDG 13<sup>472</sup>. In particular, target 13.1

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<sup>468</sup> UNGA, *Resolution 70/1 ... (A/RES/70/1)*, *op. cit.*, p. 22.

<sup>469</sup> Examples of this reality are cited in: TUCHMAN, J., "Redefining Security", *op. cit.*, p. 170. MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, *op. cit.*, p. 25. EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 20. ISLAM, M., "Natural calamities and environmental refugees in Bangladesh", *op. cit.*, pp. 8-9.

<sup>470</sup> As pointed out by some "maximalist" authors such as: ISLAM, M., "Natural calamities and environmental refugees in Bangladesh", *op. cit.*, p. 7. OTUNNU, O., "Environmental refugees in Sub-Saharan Africa: causes and effects", *op. cit.*, p. 11,

<sup>471</sup> Vid. the "maximalist" author ISLAM, M., "Natural calamities and environmental refugees in Bangladesh", *op. cit.*, p. 5. More recently, IDMC; NRC, "Positioned for action Displacement in the Sendai Framework for disaster risk reduction", *op. cit.*, p. 6, reaching the same conclusion. Their report notes that an area can be rendered uninhabitable by a single major event of great magnitude (intensive risk) or by the gradual degradation of the environment or the cumulative impacts of multiple losses and repeated displacements from frequent, less extreme events (extensive risk).

<sup>472</sup> UNGA, *Resolution 70/1 ... (A/RES/70/1)*, *op. cit.*, p. 23.



speaks of "[strengthening] resilience and adaptive capacity to climate-related hazards and natural disasters in all countries"<sup>473</sup>.

To that end, target 13.2 reiterates the need to "integrate climate change measures into national policies, strategies and planning"<sup>474</sup>. For its part, target 13.3 continues to emphasize the importance of enhancing "human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning"<sup>475</sup>. Since mitigating climate change remains the best strategy to prevent related displacement, it is essential to redouble efforts to notably increase "the share of renewable energy in the global energy mix" (target 7.2)<sup>476</sup>, particularly to the detriment of fossil fuels, as well as "[doubling] the global rate of improvement in energy efficiency" by 2030 (target 7.3)<sup>477</sup>.

Lastly, it is interesting to highlight the specific reference that target 13.b makes regarding "least developed countries and small island developing States"<sup>478</sup>. It calls for "[promoting] mechanisms for raising capacity for effective climate change-related planning and management" in these developing countries, with particular concern for the protection of especially vulnerable groups such as women, youth, and local and marginalized communities<sup>479</sup>. This target is consistent with the transfer of resources, including knowledge and technology, from developed countries that the UNFCCC advocates to help developing countries adapt to the challenges of climate change – a commitment to which also alludes to target 13.a<sup>480</sup>.

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<sup>473</sup> Id.

<sup>474</sup> Id.

<sup>475</sup> Id.

<sup>476</sup> Ibid., p. 19.

<sup>477</sup> Id.

<sup>478</sup> Ibid., p. 23.

<sup>479</sup> Id.

<sup>480</sup> Id. Vid. UNFCCC, "Decision 1/CP.16 The Cancun Agreements... (FCCC/CP/2010/7/Add.1), *op. cit.*, par. 102, establishing a Green Climate Fund as a financial mechanism to assist developing countries in climate change adaptation and mitigation efforts. Developed country Parties also committed to jointly mobilise \$100 billion per year by 2020 to respond to the adaptation and mitigation needs of developing countries (ibid., par. 98). During COP21 in Paris, this commitment was extended until 2025 (vid. UNFCCC, "Decision 1/CP.21 Adoption of the Paris Agreement", in: *Report of the Conference of the Parties on its twenty-first session...* (FCCC/CP/2015/10/Add.1), *op. cit.*, par. 53).

## H) Pollution

Although the object of study is forced displacement related to environmental disruptions of natural origin, Chapter I exposed how the "maximalist" literature also addressed displacement related to environmental disruptions of anthropic origin. Along with development projects, the "maximalist" authors referred to the relocation of communities because the places where they lived had reached such levels of contamination that toxicity threatened human life<sup>481</sup>.

Hence, before concluding this review of the 2030 Agenda, it is worth bringing up target 11.6 of "[reducing] the adverse per capita environmental impact of cities, including by paying special attention to air quality and municipal and other waste management"<sup>482</sup>. Achieving this target will simultaneously fulfil target 3.9 of "substantially [reducing] the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination"<sup>483</sup>, also avoiding the need to resort to the relocation of affected populations in the future.

In connection with the SDG 11 of making human settlements environmentally sustainable and toxic-free are target 12.5, focused on "substantially [reducing] waste generation through prevention, reduction, recycling and reuse"<sup>484</sup>, and target 12.4. The latter pretended to "achieve", by 2020, "the environmentally sound management of chemicals and all wastes throughout their life cycle" and "significantly reduce their release to air, water and soil in order to minimize their adverse impacts on human health and the environment"<sup>485</sup>.

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<sup>481</sup> Vid. JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, *op. cit.*, pp. 20-29. EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 30, 33-37. WESTING, A., "The Environmental Component of Comprehensive Security", *op. cit.*, p. 132. MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, *op. cit.*, p. 25. WESTING, A., "Environmental Refugees: A Growing Category of Displaced Persons", *op. cit.*, pp. 205 *in fine* and 206. RICHMOND, A., *Global Apartheid: Refugees, Racism and the New World Order*, Toronto (Canada), Oxford University Press, 1994, as cited by O'LEAR, S., "Migration and the Environment: A Review of Recent Literature", *Social Science Quarterly*, Vol. 78, No. 2, June 1997, p. 614.

<sup>482</sup> UNGA, *Resolution 70/1... (A/RES/70/1)*, *op. cit.*, p. 22 [verb form changed].

<sup>483</sup> *Ibid.*, p. 16 [verb form changed].

<sup>484</sup> *Ibid.*, p. 22 [verb form changed].

<sup>485</sup> *Id.*

### 3.3. Attainment of the Sustainable Development Goals: Towards the virtual eradication of environmental disturbances by 2030?

The 2030 Agenda establishes the channels for follow-up and review of the degree of achievement of the Goals and targets at all levels –national, regional and global<sup>486</sup>, recognising that such responsibility rests primarily with States' governments<sup>487</sup>. Consequently, participation in the systematic monitoring mechanism that the Agenda provides for is voluntary<sup>488</sup>. The review process relies on a set of global indicators<sup>489</sup>, complemented by indicators at the regional and national levels that States will develop<sup>490</sup>, assessing where progress has been achieved and where efforts need to be strengthened. The periodic reports voluntarily produced by the participating States will serve as a basis for regional review processes<sup>491</sup>, with countries encouraged "to identify the most suitable regional forum in which to engage" forum for this purpose<sup>492</sup> under the principle of building on existing processes and platforms and avoiding duplication<sup>493</sup>.

At the global level, the high-level political forum, which replaced the Commission on Sustainable Development<sup>494</sup>, has "the central role in overseeing follow-up and review" of the 2030 Agenda<sup>495</sup>. It will carry out its monitoring function based on the UN Secretary-General's annual progress report on the Sustainable Development Goals, also considering the Global Sustainable Development Report –which aims to "strengthen the science-policy interface"<sup>496</sup>. In preparing his report, the Secretary-General will draw "on the global indicator framework and data produced by national statistical systems and information collected at the regional level"<sup>497</sup>. The high-level

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<sup>486</sup> Ibid., pars. 47-48 and 72-91.

<sup>487</sup> Ibid., pars. 47 and 74 (a).

<sup>488</sup> Ibid., pars. 72 and 74 (a).

<sup>489</sup> For the global indicator framework, vid. UNGA, *Resolution 71/313 Work of the Statistical Commission pertaining to the 2030 Agenda for Sustainable Development, adopted by the General Assembly at its Seventy-first session (A/RES/71/313)*, 10 July 2017, 25 pp.

<sup>490</sup> UNGA, *Resolution 70/1... (A/RES/70/1)*, *op. cit.*, par. 75.

<sup>491</sup> Ibid., par. 80.

<sup>492</sup> Ibid., par. 81.

<sup>493</sup> Ibid., par. 74 (f).

<sup>494</sup> UNGA, "Annex: The future we want", in: *Resolution 66/288...(A/RES/66/288)*, *op. cit.*, par. 84. Vid. also, UNGA, *Resolution 67/290 Format and organizational aspects of the high-level political forum on sustainable development, adopted by the General Assembly at its Sixty-seventh session (A/RES/67/290)*, 23 August 2013, 7 pp.

<sup>495</sup> UNGA, *Resolution 70/1... (A/RES/70/1)*, *op. cit.*, par. 47.

<sup>496</sup> Ibid., par. 83.

<sup>497</sup> Id.

political forum will meet "every four years under the auspices of the General Assembly"<sup>498</sup>, with the next session scheduled for 2023.

Since these global indicators measure the extent to which the SDGs and their targets are being met worldwide, they also reflect progress in avoiding, minimising or addressing the environmental causes and the associated poverty and overpopulation factors that underlie displacement, including migration as an adaptation strategy. Should the Agenda's targets be fully met, there would be no more environmentally forced displacement by 2030 than temporary evacuations –equally kept to the minimum had the disaster risk resilience targets, including the SFDRR, been adequately implemented by then.

However, with less than a decade to go before the deadline, the UN Secretary-General's last two annual reports show that the international community is still far from achieving sustainable development<sup>499</sup>, with development aid to underdeveloped countries still insufficient. Thus, although official development assistance reached a record US\$ 161 billion net in 2020, it is still far from meeting target 17.2 of 0.7% of developed countries' combined gross national income<sup>500</sup>. By contrast, in 2020, foreign direct investment decreased by as much as 40%, falling below US\$ 1 trillion –compared to US\$ 1.5 trillion in 2019- for the first time since 2005<sup>501</sup>. Outside of the renewable energy sector, investment flow dropped abruptly in all SDG sectors, with the sharpest drop in the poorest regions<sup>502</sup>. With the Covid-19 pandemic worsening the global picture, the SDGs are likely to be only partially realised and with modest progress.

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<sup>498</sup> Ibid., par. 87.

<sup>499</sup> Vid. JENSEN, L. (ed.): *The Sustainable Development Goals Report 2020*, New York (USA), United Nation Publications, 2020, 68 pp. *The Sustainable Development Goals Report 2021*, New York (USA), United Nation Publications, 2021, 68 pp.

<sup>500</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 60.

<sup>501</sup> Id.

<sup>502</sup> Id.

### **3.3.1. Review of the UN Secretary-General's 2021 report on the Sustainable Development Goals: a not-so-bright future in reducing environmental disruptions**

#### **A) Migration as a strategy for development**

According to data provided by 111 countries, only 54% of countries had a complete set of migration policies in 2019<sup>503</sup>. This is still a relatively low proportion. Moreover, it does not necessarily follow that countries with integrated migration policies include channels to facilitate the legal, safe and orderly mobility of people living in countries with environmental problems. There is no disaggregated data in this regard.

As for remittances, as mentioned above<sup>504</sup>, they are an indirect means of strengthening household resilience to the risk posed by environmental shocks. Indeed, in 2020, remittances exceeded foreign direct investment for the second year in developing countries<sup>505</sup>. Despite Covid-19, remittances to low- and middle-income countries declined less than expected, falling only 1.6% below the 2019 level –i.e. from US\$ 548.64 billion in 2019 to US\$ 540 billion in 2020<sup>506</sup>. However, this positive picture requires some qualification as, in regional terms, remittances to some of the regions potentially most susceptible to environmental displacement flows notably declined in 2020. Thus, flows to sub-Saharan Africa fell by 12.5%, Central Asia by 9.7%, and East Asia and the Pacific by 7.9%<sup>507</sup>. In contrast, the cost of sending money during the pandemic reached an all-time low of 6.5% in the last quarter of 2020, which is still far from the target of a global average cost of 3% (target 10.c)<sup>508</sup>. As for regional remittance costs, only in South and Central Asia did they fall below the 5% target<sup>509</sup>.

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<sup>503</sup> Ibid., p. 46.

<sup>504</sup> Vid. footnote 397 *supra* and the body text to which it refers.

<sup>505</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 60.

<sup>506</sup> Id.

<sup>507</sup> Id.

<sup>508</sup> Ibid., p. 47.

<sup>509</sup> Id.

## B) Poverty and population growth

Like its predecessor<sup>510</sup>, the 2021 report finds that poverty is far from eradication by 2030. On the contrary, according to current projections, the global poverty rate is expected to reach 7% –some 600 million people- by that date<sup>511</sup>. The COVID-19 emergence has been primarily responsible for the worsening projections, reversing all the progress made in the fight against poverty since 2016 and causing the first increase in poverty since the Asian financial crisis of the late 1990s<sup>512</sup>. The report estimates that between 119 and 124 million people fell into extreme poverty in 2020 alone, with 60 per cent in South Asia<sup>513</sup>.

If global economic growth was decelerating before the pandemic, COVID-19 has resulted in a 0.3 per cent decline in real GDP in the least developed countries in 2020<sup>514</sup>. Although projections for 2021 and 2022 indicate that real GDP growth in these countries is recovering, they will still fall far short of the 7% growth expected in the 2030 Agenda (target 8.1)<sup>515</sup>. Furthermore, the pandemic's impact on international tourism has disproportionately affected SIDS, where foreign tourism expenditure represents, on average for the countries for which data is available, 25% of GDP, with international tourism not expected to return to 2019 levels for another four years<sup>516</sup>. As a result, the least developed countries and significantly the SIDS are much more impoverished in achieving the SDGs, including adopting adaptation strategies and protection measures against natural disasters and the adverse effects of climate change, particularly sea-level rise, rendering their populations even more prone to migration as an alternative livelihood option.

In terms of population growth, the proportion of women of reproductive age –15-49 years- worldwide who have access to modern contraception increased slightly in 2020 –from 75.7 per cent in 2010 to 76.8 per cent in 2020<sup>517</sup>. However, more than 250 million women still lack access to modern contraceptives<sup>518</sup>. Globally, the adolescent birth rate has steadily declined from 48 births per 1,000 women aged 15-19 in 2010 to

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<sup>510</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2020*, *op. cit.*, p. 24.

<sup>511</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 26.

<sup>512</sup> *Id.*

<sup>513</sup> *Id.*

<sup>514</sup> *Ibid.*, p. 42.

<sup>515</sup> *Id.*

<sup>516</sup> *Ibid.*, p. 43.

<sup>517</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2020*, *op. cit.*, p. 29.

<sup>518</sup> *Id.*

41 in 2020<sup>519</sup>. Sub-Saharan Africa remains the region facing the most significant challenges regarding access to modern contraceptives –which account for only 55.5 per cent of women in the region. Indeed, this region is expected to experience a 15% increase in annual births between 2019 and 2030<sup>520</sup>. Moreover, sub-Saharan Africa exhibits one of the highest adolescent birth rates –standing at 101 births per 1,000 women per year<sup>521</sup>.

In light of these data, the world's population will continue to grow in the coming decades, albeit at an increasingly slower pace, if the impact of the pandemic on the contraceptive supply does not reverse this trend by dramatically boosting the number of unwanted pregnancies in the developing World<sup>522</sup>. In any case, the population growth rate is still unsustainable compared to the proportion of natural resources required to sustain it. Moreover, geographically, the sharpest population increases will continue to occur in the world's poorest and already most environmentally vulnerable regions, as noted by the "maximalist" authors<sup>523</sup>.

### **C) Land degradation and conservation of marine ecosystems**

The global material footprint increased by 70% between 2000 and 2017<sup>524</sup>, meaning that the national per capita consumption of natural resources remains unsustainable. In particular, the metric volume of tonnes consumed annually had climbed from 8.7 in 2000 to 12.2 metric tonnes in 2017<sup>525</sup>.

According to the 2021 report, land degradation has advanced dramatically, affecting one-fifth of the world's land area<sup>526</sup>. Despite significant progress in sustainable forest management, the share of forest area declined from 31.9 per cent of the world's total area in 2000 to 31.2 per cent in 2020, representing a net loss of almost 100 million hectares<sup>527</sup>. The rate of forest loss worsened in Southeast Asia and Africa, the least developed countries, landlocked developing countries, and SIDS, primarily due to

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<sup>519</sup> Id.

<sup>520</sup> Id.

<sup>521</sup> Id.

<sup>522</sup> Id.

<sup>523</sup> Vid. footnote 413 *supra* and the body text to which it refers.

<sup>524</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 50.

<sup>525</sup> Id.

<sup>526</sup> *Ibid.*, p. 56.

<sup>527</sup> *Ibid.*, p. 57.

deforestation to clear cropland<sup>528</sup>. Progress in safeguarding key biodiversity areas, and the local and indigenous communities that depend on them, has stalled over the past five years. On average, by 2020, more than half of each key biodiversity area falls outside protected area coverage<sup>529</sup>.

In parallel to land degradation, marine pollution, overfishing, ocean warming, and the exacerbation of acidification and eutrophication processes threaten the marine ecosystems on which more than 3 billion people depend for their livelihoods<sup>530</sup>. From 2008 to 2019, the number of "dead zones" –i.e. waters lacking sufficient oxygen to sustain marine life - increased alarmingly from 400 to 700<sup>531</sup>. The area covered by coastal mangroves, which are carbon sinks and provide a natural defence against sea-level rise and extreme weather events<sup>532</sup>, is estimated to have shrunk globally by 4.9% between 1996 and 2016<sup>533</sup>. Besides exacerbating the concentration of greenhouse gases, this marked decline leaves coastal populations more exposed to the effects of cyclones and tidal surges and thus more vulnerable to displacement.

#### **D) Hunger and drinking water**

The population at moderate or severe risk of food insecurity has steadily increased<sup>534</sup>. The Covid-19 adds to traditional threats to food systems from climatic shocks, recurrent locusts and other pest crises and conflict<sup>535</sup>. The pandemic has indirectly reduced purchasing power and disrupted food production and distribution chains, increasing the vulnerability of the most disadvantaged<sup>536</sup>. In terms of food security, the 2021 report estimates that the pandemic has translated globally into an increase of 70 to 161 million people suffering hunger in 2020, bringing the total number to 720-811 million people<sup>537</sup>.

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<sup>528</sup> Id.

<sup>529</sup> Ibid., p 56.

<sup>530</sup> Ibid., p. 54.

<sup>531</sup> Ibid., p. 54.

<sup>532</sup> Vid. the "maximalist" author EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, p. 18.; and more recently INTERNATIONAL UNION FOR CONSERVATION OF NATURE, "[Blue Carbon](#)", *op. cit.*

<sup>533</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 39.

<sup>534</sup> Vid. graphic "Prevalence of moderate or severe food insecurity, 2014 and 2019 averages (percentage)", in: JENSEN, L. (ed.), *The Sustainable Development Goals Report 2020*, *op. cit.*, p. 26; and graphic "Number and proportion of undernourished people in the world, 2005–2020 (millions and percentage)", in: JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 28.

<sup>535</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2020*, *op. cit.*, p. 7.

<sup>536</sup> Ibid., p. 26. JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 28.

<sup>537</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, pp. 9 and 28.



At the same time, investment in agriculture to increase productivity sustainably has continued to decline since 2001 compared to the agricultural sector's contribution to GDP<sup>538</sup>. Smallholder farmers, whom the "maximalist" literature blames for being unintentionally responsible for a high percentage of land degradation<sup>539</sup>, remain the most disadvantaged in terms of average labour productivity and income, especially when they are women, leaving them more exposed to hunger and extreme poverty<sup>540</sup>. Failing to achieve the SDGs of zero poverty and hunger will continue to force these small-scale farmers to overexploit the ecosystems they heavily depend on until their depletion forces them to leave in search of new livelihoods.

Despite the food shortage to meet the minimum nutritional needs of the entire world's population, global progress in sustainable production and consumption remains very uneven. In particular, the 2020 report finds that around 14% of the world's food is lost along the supply chain before it reaches consumers<sup>541</sup>. Still, the most significant increases in food prices occurred in sub-Saharan Africa<sup>542</sup>, which is the poorest region on the planet and where the highest levels of food insecurity were evidenced<sup>543</sup>.

Nor will it be possible to meet the target of all people having access to safely managed drinking water services by 2030, which 2 billion people still lacked in 2020 – including 771 million who did not have access to even basic drinking water<sup>544</sup>. In 2018, approximately 2.3 billion people were reported to be living in water-stressed countries, of which 721 million were in countries with high or critical levels<sup>545</sup>. The lack of freshwater in least developed countries and SIDS, which have substantially less freshwater endowments, will further increase their vulnerability to climate change and water scarcity<sup>546</sup>. The 2020 report estimates that water stress could displace some 700 million people worldwide by 2030<sup>547</sup>. It is also worrying that by 2020 only 58% of

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<sup>538</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2020*, *op. cit.*, p. 27.

<sup>539</sup> *Inter alia*, JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, *op. cit.*, p. 9. MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, *op. cit.*, p. 49.

<sup>540</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2020*, *op. cit.*, p. 26 *in fine*. JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 28 *in fine*.

<sup>541</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2020*, *op. cit.*, p. 49.

<sup>542</sup> *Ibid.*, p. 27 *in fine*.

<sup>543</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 28.

<sup>544</sup> *Ibid.*, p. 38.

<sup>545</sup> *Ibid.*, p. 39.

<sup>546</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2020*, *op. cit.*, p. 37.

<sup>547</sup> *Id.*

transboundary basins had, on average, an operational water cooperation agreement<sup>548</sup>. This percentage is still too low to ensure peaceful regional coexistence and prevent the risk of future conflicts over control of shared water resources and associated population displacement<sup>549</sup>.

#### **E) Human settlement and disaster risk reduction**

The global urban population living in slums grew by one percentage point between 2014 and 2018, reaching 24% of the world's population<sup>550</sup>. This increase means that an additional 1 billion people reside in settlements that render them potentially more vulnerable to the harshness of environmental shocks, notably rapid-onset disruptions, and displacement. The 2021 report reveals that only three regions account for most of the world's slum dwellers: East and Southeast Asia (370 million), sub-Saharan Africa (238 million) and Central and South Asia (226 million)<sup>551</sup>. Although no specific figures are provided, the report also states that the number of slum dwellers has increased during the pandemic as a result of the impact Covid-19 has had on low-income households and informal workers, worsening their already precarious living conditions<sup>552</sup>.

Despite the rise in the number of people living in vulnerable conditions, available data shows that progress on disaster risk reduction is slow<sup>553</sup>. Throughout 2015-2020, only 80 countries have reported having national DRR strategies aligned in some measure with the Sendai Framework<sup>554</sup> –of which only 26 States reported complete alignment of their national DRR strategies with the SFDRR<sup>555</sup>. In addition, 43 countries reported in 2018 that at least some of their local governments had a local DRR strategy<sup>556</sup>.

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<sup>548</sup> *Id.*

<sup>549</sup> For the security implications of water scarcity, *vid.* the bibliographical references cited *supra* in footnote 459.

<sup>550</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 48.

<sup>551</sup> *Id.*

<sup>552</sup> *Id.*

<sup>553</sup> *Vid.* UNDRR, *Monitoring the Implementation of Sendai Framework for Disaster Risk Reduction 2015-2030: A Snapshot of Reporting for 2018*, Bonn (Germany), UNDRR, 2020, 31 pp.

<sup>554</sup> *Ibid.*, p. 23.

<sup>555</sup> *Ibid.*, Figure 15: Degree of Coherence of National DRR Strategies with Relevant Global Frameworks, p. 23.

<sup>556</sup> *Ibid.*, p. 23.

## F) Climate change

Despite the pandemic causing a temporary reduction in human activities and thus a decrease in emissions, greenhouse gas concentrations continued to rise in 2020 and reached new record highs<sup>557</sup>. For example, by December 2020, emissions had fully recovered and even recorded a 2% increase compared to the same month in 2019<sup>558</sup>. As a result, 2020 was one of the three warmest years on record, with the global average temperature standing at 1.2°C above pre-industrial levels<sup>559</sup>. Not only is it improbable that the 1.5-2°C target of the Paris Agreement will be reached, but the 2020 report warns that global temperatures could rise by as much as 3.2°C by 2100<sup>560</sup>.

In this context, the transition to clean energies, which are non-polluting in their production process, remain a corner sector for combating greenhouse gas emissions and climate change. The data show a positive development in this regard. Since 2010, the share of renewable energies has been gaining ground in total final energy consumption, reaching 17.1% in 2018 –compared to 16.4% in 2010<sup>561</sup>. However, these positive data mainly relate to the electricity sector. Hence, the report points to the need to intensify the transition to renewable energy sources in transport and heating, which accounts for 79% of the final energy use<sup>562</sup>. Likewise, it should be noted that international financing in support of renewables in developing countries decreased by a significant 35% in 2018 compared to 2017 investments, with only 20% of total financing from 2010 to 2018 reaching least developed countries<sup>563</sup>.

This strong commitment to renewables must be matched by improved energy efficiency. In order to meet the 2030 Agenda target, the annual efficiency improvement rate would have to increase from 2% to 3% by 2030, which is a significant challenge<sup>564</sup>. Moreover, advances in phasing out public subsidies for fossil fuels differ from region to region, with Central and South Asia and North Africa and West Asia lagging the

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<sup>557</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 52.

<sup>558</sup> *Id.*

<sup>559</sup> *Id.*

<sup>560</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2020*, *op. cit.*, p. 50.

<sup>561</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 41.

<sup>562</sup> *Id.*

<sup>563</sup> *Id.*

<sup>564</sup> *Id.*

furthest behind<sup>565</sup>. This uneven progress globally further jeopardises the achievement of the Paris Agreement and the 2030 Agenda goals to curb global temperature rise<sup>566</sup>.

Faced with the challenges of climate change, an increasing number of countries are turning to adaptation measures, such as erecting flood defences, establishing cyclone early warning systems or introducing drought-resistant crops<sup>567</sup>. At first glance, the data for developing countries is promising, with the 2021 report noting that 125 of 154 developing countries were formulating and implementing national adaptation plans<sup>568</sup>. The report also welcomes intensified efforts by developed countries to provide technical assistance and support to the least developed countries<sup>569</sup>. However, it does not specify what proportion of those national adaptation plans is still in the drafting phase and what are already being executed and to what extent. The 2021 report indicates that, as of May 2021, the UNFCCC secretariat had only 22 countries' adaptation plans on record – a decrease of 48.83% from the 43 countries that had submitted adaptation plans according to the 2018 IOM report<sup>570</sup>. Furthermore, the report does not specify how many of these 22 countries were developing or developed Parties.

There is also no mention of the extent to which these 125 developing countries – or the 22 registered adaptation plans - have included measures to prevent, minimise and address human movement associated with climate change, in line with the 2018 TFD recommendations<sup>571</sup>. Adaptation plans should also prioritise the mobility dimension, as many of the effects of climate change, such as sea-level rise, will not be halted, even if emissions decline.

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<sup>565</sup> Ibid., p. 51.

<sup>566</sup> Id.

<sup>567</sup> Ibid., p. 53.

<sup>568</sup> Id.

<sup>569</sup> Id.

<sup>570</sup> IOM, “Mapping Human Mobility and Climate Change in Relevant National Policies and Institutional Frameworks”, *op. cit.*, p. 9.

<sup>571</sup> Vid. UNFCCC, “Annex Recommendations from the report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts on integrated approaches to averting, minimizing and addressing displacement related to the adverse impacts of climate change (Decision 10/CP.24)”, in: *Report of the Conference of the Parties on its twenty fourth session, held in Katowice from 2 to 15 December 2018. Addendum Part two: Action taken by the Conference of the Parties at its twentyfourth session (FCCC/CP/2018/10/Add.1)*, 19 March 2019, pp. 43-45.

## G) Pollution

Based on data from 2016, the 2020 report estimates that the quality of air breathed by 9 out of 10 people living in cities does not meet the World Health Organisation's air quality guidelines for particulate matter (PM<sub>2.5</sub>)<sup>572</sup>. What is more, air pollution would have caused the premature deaths of 4.2 million people in 2016<sup>573</sup>. The population confinement forced by the Covid-19 pandemic caused a significant decrease in air pollution attributed to the factories shutting down and a significant drop of vehicles in circulation<sup>574</sup>. This situation, although temporary, served to show how clear the skies would have to be in some of the world's most air-polluted cities if progress were to be made in meeting SDG 11. The oceans do not escape human pollution either, as in the case of plastics that seriously affect marine life<sup>575</sup>.

Advances in promoting sustainable consumption and production continue unevenly globally, with developed countries leading and developing countries lagging. The 2021 report reveals that, "[b]y 2020, 83 countries and the EU [had] reported a total of 700 policies and implementation activities under the 10-Year Framework of Programmes on Sustainable Consumption and Production"<sup>576</sup>. Nevertheless, only 50 policies and implementation activities took place in sub-Saharan Africa. A tiny number compared to the 374 in Europe and North America combined<sup>577</sup>. Additionally, the vast bulk of the poor in underdeveloped countries –86% of the population in sub-Saharan Africa - continue to depend on harmful, inefficient and polluting fuels, such as wood and charcoal, for cooking<sup>578</sup>. The 2020 and 2021 reports estimate that one-third of the world's population –2.3 billion people- will still lack clean cooking fuels and technologies in 2030, with the harmful health implications and environmental degradation that this will entail<sup>579</sup>. Pollution of freshwater sources is also a significant challenge<sup>580</sup>.

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<sup>572</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2020*, *op. cit.*, p. 47.

<sup>573</sup> *Id.*

<sup>574</sup> *Id.*

<sup>575</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 54.

<sup>576</sup> *Ibid.*, p. 50.

<sup>577</sup> *Id.*

<sup>578</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2020*, *op. cit.*, p. 38. JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 40.

<sup>579</sup> *Vid. footnote supra.*

<sup>580</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2020*, *op. cit.*, p. 36. JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 38.

Digital societies have brought with them a new form of pollution through e-waste. The volume of electronic waste increased by 38% between 2010 and 2019, but less than 20% is recycled<sup>581</sup>. Each person produced about 7.3 kilograms of e-waste in 2019 – compared to 5.3 kilograms in 2010-, of which only 1.7 kilograms was ecologically recycled –compared to 0.8 kilograms in 2010<sup>582</sup>. Electronic waste generation is expected to increase by 0.16 kilograms per capita per year, amounting to 74.4 million metric tons in total by 2030 –or 9.0 kilograms per capita<sup>583</sup>. In order to ensure the sustainable recycling of all this waste, the recycling rate would have to be ten times higher than the average of 0.05 kilogrammes per capita of the last decade<sup>584</sup>. If these trends are confirmed, in the not so distant future, it will be easier to find gold in landfills than in mines, as it is currently estimated that 7% of the world's gold may be in electronic waste<sup>585</sup>. Nor will it be the only mineral to be found easier in human waste than in the earth's bowels. Other scarce and precious raw materials such as platinum, cobalt and rare earths are lost due to the lack of proper and efficient recycling of e-waste<sup>586</sup>.

Likewise, inadequate removal of e-waste discharges toxic chemicals into the soil and water, thereby threatening the environment and human health<sup>587</sup>. If some of the authors later christened "maximalists" wrote in the late 1980s about the environmental displacement and forced relocation of entire communities living on the poisonous waste from industrial development – and its deadly accidents<sup>588</sup> – the future relocations will be due to the waste from e-development. The most affected will be developing countries, lacking proper infrastructures to handle e-waste produced locally and imported from other countries –often illegally<sup>589</sup>. According to the 2020 report, waste is mainly processed "by the informal sector through open burning or acid baths", which worsens

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<sup>581</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2020*, *op. cit.*, p. 17.

<sup>582</sup> *Ibid.*, p. 48. JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 51.

<sup>583</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2021*, *op. cit.*, p. 51.

<sup>584</sup> *Id.*

<sup>585</sup> *Id.*

<sup>586</sup> *Id.*

<sup>587</sup> *Id.*

<sup>588</sup> *Vid.* JACOBSON, J.L., *Worldwatch Paper 86: Environmental Refugees: a yardstick of habitability*, *op. cit.*, pp. 20-29. EL-HINNAWI, E., *Environmental refugees*, *op. cit.*, pp. 35-37. WESTING, A., "The Environmental Component of Comprehensive Security", *op. cit.*, p. 132. MYERS, N.; KENT, J., *Environmental Exodus: an emergent crisis in the global arena*, *op. cit.*, p. 25. WESTING, A., "Environmental Refugees: A Growing Category of Displaced Persons", *op. cit.*, pp. 205 *in fine* and 206. Richmond, A., *Global Apartheid: Refugees, Racism and the New World Order*, Toronto (Canada), Oxford University Press, 1994, as cited by O'LEAR, S., "Migration and the Environment: A Review of Recent Literature", *Social Science Quarterly*, Vol. 78, No. 2, June 1997, p. 614.

<sup>589</sup> JENSEN, L. (ed.), *The Sustainable Development Goals Report 2020*, *op. cit.*, p. 48.

environmental pollution and seriously endangers the health and lives of "workers and their children, who live, work" and play close to where these practices take place<sup>590</sup>.

### 3.3.2. The UN High-level Political Forum on Sustainable Development (SDG Summit 2019)

The first UN summit on the SDGs since the adoption of the 2030 Agenda in September 2015 took place on 24-25 September 2019<sup>591</sup>. World leaders noted that, clearly, "the world [was not] on track to meet the SDGs by 2030"<sup>592</sup> and that more significant efforts were needed. In response, the Political Declaration closing the SDG Summit committed "to make the coming decade one of action and delivery" by "launching an ambitious and accelerated response to reach our common vision by 2030"<sup>593</sup>. Within the areas of accelerated action mentioned in the Declaration, State representatives agreed "to pursue policy, investment and innovation to reduce disaster risk and build the resilience of countries, economies, communities and individuals to economic, social and environmental shocks and disasters"<sup>594</sup>.

As part of the preparations for the Summit, the UN Department of Economic and Social Affairs launched an online platform to operationalise States' commitment to intensify action towards the 2030 Agenda<sup>595</sup>. This database aims to collect what is known as SDG Acceleration Actions –i.e. initiatives undertaken voluntarily to accelerate the implementation of the SDGs by both national governments and other non-state actors, either individually or in partnership<sup>596</sup>. The SDG Summit Political Declaration indeed took place in a very different scenario, where nothing foreshadowed that the WHO would declare a pandemic just six months later. However, the SDG Acceleration Actions platform has proven to be a valuable vehicle to spark and drive action across the world to help build resilience and achieve a comprehensive and

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<sup>590</sup> Id.

<sup>591</sup> Vid. UNGA, *SDG Summit 2019. Summary of the President of the General Assembly (Mr Tijjani Muhammad-Bande)*, 21 October 2019, 12 pp.

<sup>592</sup> Ibid., p. 2.

<sup>593</sup> UNGA, "Annex: Gearing up for a decade of action and delivery for sustainable development: political declaration of the Sustainable Development Goals Summit", in: *Resolution 74/4 Political declaration of the high-level political forum on sustainable development convened under the auspices of the General Assembly, adopted by the General Assembly at its Seventy-fourth session (A/RES/74/4)*, 21 October 2019, par. 4.

<sup>594</sup> Ibid., par. 27(f).

<sup>595</sup> UN GENERAL SECRETARY, "Information Brief on SDG Acceleration Actions", *Department of Economic and Social Affairs*, 20 February 2020, p. 1 (last access: 30/01/2021).

<sup>596</sup> Id.

inclusive recovery from the effects of Covid-19 as part of implementing the 2030 Agenda in this new reality.

As of 20 February 2020, a total of 147 acceleration actions had registered, 79% of which addressed several interlinked SDGs<sup>597</sup>. Of the six SDGs that received the most momentum through acceleration actions, SDGs 13 "Climate action", 8 "Decent work and economic growth", and 1 "No poverty" ranked third, fourth and sixth, respectively, in terms of the number of acceleration actions registered –between 50 and 60<sup>598</sup>. All three SDGs are pivotal to addressing the underlying causes of environmental displacement.

Other SDGs, which are equally relevant to minimising or preventing displacement resulting from environmental degradation, also received reinforced, albeit less intense, attention<sup>599</sup>. For example, SDG 14, "Life below water", is mentioned in just over twenty acceleration actions worldwide. The number of Acceleration Actions addressing SDG 15 "Life on land", so crucial for halting land degradation, is less than forty. A similar figure corresponds to SDG 3, "Good health and well-being". However, it specifies nothing about whether any of these Acceleration Actions consider family planning, which would reduce birth rates in the poorest countries exposed to environmental disruption. SDG 2 "Zero hunger" and SDG 10 "Reduce inequalities" have similar values close to forty Acceleration Actions, with SDG 6 "Clean water and sanitation" reaching this figure. Similarly, SDG 11, "Sustainable cities and communities", which is also core for increasing the resilience of human settlements to disaster risk, narrowly exceeds that quantity. Finally, SDG 12, "Responsible Consumption and Production", which would prevent the depletion of natural resources, almost reaches fifty Acceleration Actions.

However, these figures can be misleading, as the country breakdown by GDP shows that 61% of proposals come from high-income countries, while 34% are from middle-income countries and 5% from low-income countries<sup>600</sup>. In particular, the least developed countries and SIDS, which are the most prone to generate environmental displacement flows, represent only 5% and 1% of the total number of captured

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<sup>597</sup> Id.

<sup>598</sup> Vid. graphic "Number of Acceleration Actions per SDG", in id.

<sup>599</sup> Id.

<sup>600</sup> Ibid., p. 2.



actions<sup>601</sup>. The geographical location of the initiatives confirms this trend, with 41% of the registered actions coming from Europe, while all Africa and West Asia account for only 8% and 5%, respectively<sup>602</sup>. In the case of the Pacific and the Caribbean, which are equally vulnerable regions and where low-lying SIDS are located, the percentage of acceleration actions they represent cannot be individualised, as they form part of Latin America (20%) and Asia (13%) regions<sup>603</sup>. Nevertheless, even taken together, these regions still lag far behind Europe (41%) or even North America (11%)<sup>604</sup> in comparative terms, given their larger size and the broader number of countries and populations they cover.

In conclusion, the country breakdown by GDP or geographical location keeps pointing to the need for developed countries to provide enhanced support to developing countries, which continue to show a significantly lower capacity to achieve the goals and targets of the 2030 Agenda on their own. Only in this way can the social, economic and environmental realities that prevail in these countries, and underlie population movements in and out of them, be redressed.

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<sup>601</sup> Id.

<sup>602</sup> Ibid., p. 1.

<sup>603</sup> Id.

<sup>604</sup> Id.

**CAPÍTULO VIII**  
**PROPUESTAS DE *LEGE FERENDA* PARA LA**  
**PROTECCIÓN DE LOS DESPLAZADOS AMBIENTALES:**  
**COMENTARIO AL PROYECTO DE CONVENIO**  
**RELATIVO AL ESTATUTO INTERNACIONAL**  
**DE LOS DESPLAZADOS AMBIENTALES**  
**DE LA UNIVERSIDAD DE LIMOGES<sup>1</sup>**

**INTRODUCCIÓN**

Este último Capítulo de la tesis parte de la constatación de que *Nihil novum sub sole* –"nada nuevo hay bajo el sol"<sup>2</sup>. La Agenda 2030 ha convertido en objetivos de desarrollo sostenible las mismas problemáticas medioambientales que los autores "maximalistas" denunciaron en los años 80 como responsables de forzar el desplazamiento de millones de personas. Sin embargo, valerse de esta corroboración para argumentar que el debate en torno a la protección de los desplazados medioambientales es una distracción de los verdaderos problemas políticos, económicos y sociales subyacentes supone decir una verdad a medias<sup>3</sup>.

No se discute que continuar avanzando hacia un desarrollo medioambientalmente sostenible deber ser el fin último. Los esfuerzos de quienes nos hemos dedicado a analizar e intentar solventar el desafío de los desplazamientos ambientales, incluido los climáticos, se darán por bien servidos incluso si antes de que se subsane el vacío legal que esta tesis ha pretendido evidenciar llega el día en que ello resulte innecesario, porque la sostenibilidad y la adaptación han hecho de las disrupciones medioambientales algo del pasado. Sin embargo, del mismo modo que la consecución de la Paz no impide proteger entretanto a quienes huyen de la guerra, tampoco debiera

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<sup>1</sup> A summary of the University of Limoges' draft international treaty on the international status of environmentally displaced persons is included at the end of the chapter in English and Italian.

<sup>2</sup> *Nueva Versión de La Biblia del P. Serafín de Ausejo, O.F.M. Cap.*, Barcelona, Ed. Herder S.A., 1975, Ecles. c.1, v.9 [el texto en latín pertenece a la *Vulgata*].

<sup>3</sup> En este sentido, vid. la aseveración de CASTLES, S., "Environmental change and forced migration: making sense of the debate", *New issues in refugee research*, Working paper No. 70, UNHCR, October 2002, p. 2 (último acceso: 21/07/2020), acerca de que el "énfasis en los factores ambientales es una distracción de las cuestiones centrales del desarrollo, la desigualdad y la resolución de conflictos" [traducción del autor del original en inglés].

obviarse la protección de quienes escapan de una situación de estrés ambiental mientras se logra la sostenibilidad del medio humano.

Partiendo de esta convicción, este Capítulo final expone, analiza y comenta el proyecto de convenio relativo al estatuto internacional de los desplazados medioambientales de la Universidad de Limoges. Este proyecto, elaborado por un grupo interdisciplinar de expertos juristas encabezados por el Prof. Dr. Michel Prieur, representa a día de hoy la propuesta más completa y verosímil de lo que podría ser el texto de un futuro tratado internacional que supla, en el ordenamiento jurídico universal, la ausencia de un régimen legal que proteja a las personas desplazadas por motivos medioambientales.

## 1. PRESENTACIÓN DE LAS DISTINTAS PROPUESTAS NORMATIVAS FORMULADAS

El proyecto de Limoges no ha sido, sin embargo, el único esfuerzo emprendido desde la Academia para colmar esta laguna jurídica. Varios autores, ya sea en solitario, como Williams<sup>4</sup>, o aunando esfuerzos, como Biermann y Boas<sup>5</sup>, Hodgkinson et al.<sup>6</sup>, o Docherty y Giannini<sup>7</sup>, han ideado sus propios instrumentos para proteger jurídicamente a estos desplazados forzosos, si bien limitados al ámbito de los desplazamientos climáticos.

En el ámbito de los principios, la asociación sin ánimo de lucro *Displacement Solutions*<sup>8</sup> ha formulado los llamados "Principios de Península"<sup>9</sup>, que reciben su nombre de la península de Mornington, Australia, donde fueron acordados formalmente el 18 de agosto de 2013 por un "grupo de eminentes juristas, redactores, estudiosos del Derecho

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<sup>4</sup> WILLIAMS, A., "Turning the tide: Recognizing climate change refugees in International Law", *Law & Policy*, Vol. 30, No. 4, October 2008, pp. 502-529.

<sup>5</sup> BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *Global Environmental Politics*, Vol. 10, Issue 1, February 2010, pp. 60-88.

<sup>6</sup> HODGKINSON, D. ET AL., "'The Hour when the ship comes in': a convention for persons displaced by climate change", *Monash University Law Review*, Vol. 36, Issue 1, 2010, pp. 69-120.

<sup>7</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *Harvard Environmental Law Review*, Vol. 33, No. 2, 2009, pp. 349-403.

<sup>8</sup> Vid. el sitio web de la asociación en la dirección de Internet [Displacement Solutions](#) (último acceso: 13/12/2021).

<sup>9</sup> DISPLACEMENT SOLUTIONS, "[The Peninsula Principles of Climate Displacement within States](#)", Victoria (Australia), Displacement Solutions, 18 August 2013, 29 pp. (último acceso: 13/08/2020). Para una explicación e interpretación detallada de los Principios de Península, vid. el libro publicado por su artífice: LECKIE, S.; HUGGINS, C. (eds.), *Repairing Domestic Climate Displacement: The Peninsula Principles*, 1ªed., Routledge, 2017, 198 pp.

y expertos en cambio climático"<sup>10</sup>. Inspirado en los Principios Rectores de los Desplazamientos Internos de las Naciones Unidas<sup>11</sup>, este nuevo catálogo de principios se propone proporcionar "a los gobiernos, a las organizaciones internacionales y a las comunidades amenazadas"<sup>12</sup> un conjunto de directrices, basadas "en principios del derecho internacional, obligaciones en materia de derechos humanos y buenas prácticas"<sup>13</sup>, para proteger los derechos de las personas desplazadas dentro de sus Estados debido al cambio climático.

Mención aparte merece *the Platform on Disaster Displacement*<sup>14</sup>. A diferencia de las propuestas academicistas arriba mencionadas, esta Plataforma surgió en julio de 2016 como una iniciativa impulsada y promovida por Estados<sup>15</sup> de diferentes regiones del mundo, en la que también participa la UE<sup>16</sup>. Su objetivo es continuar la labor emprendida por la Iniciativa Nansen en la ejecución de la *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*<sup>17</sup>, cuyo contenido fue sometido a una consulta intergubernamental celebrada en Ginebra (Suiza), los días 12 y 13 de octubre de 2015, donde recibió el apoyo de 109 países<sup>18</sup>.

Resulta innegable que estas coaliciones de Estados pueden influir de manera significativa a la hora de lograr la apertura de un proceso negociador que conduzca a la adopción de un tratado internacional sobre el desplazamiento medioambiental. Sin embargo, la Plataforma ha rehusado por el momento "abogar por la elaboración de nuevas normas e instrumentos jurídicos vinculantes para la admisión y la estancia de los

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<sup>10</sup> DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, p. 29 [traducción del autor del original en inglés].

<sup>11</sup> *Ibíd.*, p. 8, tercer considerando del preámbulo (p. 12) y Principio 1.b. (p. 16).

<sup>12</sup> *Ibíd.*, p. 9 [traducción del autor del original en inglés].

<sup>13</sup> *Ibíd.*, Principio 1.a., p. 16 [traducción del autor del original en inglés].

<sup>14</sup> El sitio web de la Plataforma puede visitarse en: Platform on Disaster Displacement (último acceso: 13/12/2021).

<sup>15</sup> PDD, *Platform on Disaster Displacement (PDD) Strategy 2019-2022*, p. 1.

<sup>16</sup> A fecha de 13 de diciembre de 2021, son miembros de la Plataforma: Alemania, Australia, Bangladesh, Brasil, Canadá, Costa Rica, Fiyi, Francia, Kenia, Madagascar, Maldivas, Marruecos, México, Noruega, Filipinas, Senegal, Suiza y la UE. Todos los miembros de la Plataforma están representados en su Consejo Directivo (*the Steering Group*) a través de sus Misiones Permanentes en Ginebra (Suiza). El ACNUR y la OIM tienen la condición de invitados permanentes en dicho Comité. Vid. PDD, The Steering Group (disasterdisplacement.org) (último acceso: 13/12/2021).

<sup>17</sup> THE NANSEN INITIATIVE, "Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change", *Volume I*, the Nansen Initiative, December 2015, 56 pp., (último acceso: 02/08/2020).

<sup>18</sup> *Ibíd.*, párr. 9, p. 15. Tb. PDD, (...) *Strategy 2019-2022*, *op. cit.*, p. 1. Esta consulta mundial fue la culminación del proceso de consultas regionales intergubernamentales y reuniones con la sociedad civil que la Iniciativa Nansen llevó a cabo entre 2013 y 2015 (vid. THE NANSEN INITIATIVE, *op. cit. supra*, nota al final 11, p. 52).

desplazados globales a través de las fronteras debido a las catástrofes", prefiriendo en su lugar "promover una mejor aplicación de las normas e instrumentos jurídicos existentes"<sup>19</sup>.

Este posicionamiento contrasta con el hecho de que la Agenda Nansen reconozca expresamente las limitaciones del sistema jurídico internacional para abordar los desplazamientos humanos en el contexto de las catástrofes naturales. Así, con respecto a los desplazados transfronterizos, la Agenda admite que "el derecho internacional no aborda cuestiones críticas como la admisión, el acceso a los servicios básicos durante la estancia temporal o permanente y las condiciones para el retorno"<sup>20</sup>. Por otro lado,

"[a] pesar del reconocimiento generalizado de los principios esbozados en los Principios Rectores de los Desplazamientos Internos de las Naciones Unidas, la mayoría de los Estados no cuentan con leyes y políticas que aborden específicamente los desplazamientos internos en contextos de desastre, ni abordan dichos desplazamientos en sus marcos jurídicos de gestión y respuesta a los desastres"<sup>21</sup>.

Entre las diversas propuestas de *lege ferenda* para subsanar estas deficiencias, cabe interrogarse acerca de las características que hacen que el proyecto de convenio de Limoges sobresalga en términos comparativos y que pueden resumirse de manera concisa del modo siguiente: se trata de un convenio autónomo con vocación universal, de alcance general y de aplicación global. El siguiente apartado completa esta exposición a grandes rasgos de los diferentes planteamientos normativos que se han estudiado para la elaboración de este Capítulo, y lo hace examinando con mayor detalle cada una de estas características del proyecto de Limoges y contrastándolas con los enfoques de los demás autores.

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<sup>19</sup> PDD, (...) *Strategy 2019-2022*, *op. cit.*, p. 5 [traducción del autor del original en inglés].

<sup>20</sup> THE NANSEN INITIATIVE, "Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change", *Volume I*, *op. cit.*, párr. 28, p. 18 [traducción del autor del original en inglés].

<sup>21</sup> *Ibíd.*, párr. 104, p. 41 [traducción del original en inglés y énfasis del autor].

***Excursus: ¿Por qué la propuesta de Limoges? Un proyecto de convenio autónomo con vocación universal, de alcance general y de aplicación global***

Ante todo, el proyecto de Limoges es la única propuesta de entre las examinadas que tiene un alcance general, ya que se aplica a cualquier desplazamiento causado por una disrupción ambiental, y no sólo al subconjunto de los desplazamientos climáticos. Ejemplos como la erupción del volcán Cumbre Vieja en la isla de La Palma, en el archipiélago español de las Islas Canarias, demuestran, sin embargo, que no conviene discriminar entre las poblaciones forzosamente desplazadas por el cambio climático y aquéllas obligadas a abandonar sus hogares por disrupciones medioambientales de origen no climático, como las relacionadas con procesos geológicos<sup>22</sup>.

No hay diferencia alguna entre las necesidades de protección y asistencia de las poblaciones desplazadas por la subida del nivel del mar o el avance de las coladas de lava, incluida la posibilidad de tener que ser reubicadas permanentemente<sup>23</sup>. Por consiguiente, tampoco debiera haberlas en cuanto al instrumento jurídico que las proteja. Incluso la situación creada por el covid-19 durante la cual se ha completado esta tesis, tan diferente a cuando se inició, donde el escenario de una pandemia era un relato inverosímil, relegado a los tiempos de la peste negra y las historias de ciencia ficción, obliga a replantearse la limitación inicialmente asumida en el Capítulo II, al definir las disrupciones ambientales, de no incluir las amenazas biológicas como causa de desplazamiento de la población<sup>24</sup>.

Además de su alcance general, el proyecto de Limoges es global en cuanto a su ámbito de aplicación, pues abarca tanto los desplazamientos internos como los transfronterizos. Esta característica lo distingue de otros modelos con una cobertura parcial, limitada a una sola de estas formas de desplazamiento, como son la propuesta de Docherty y Giannini o los Principios de Península.

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<sup>22</sup> El 19 de noviembre de 2021, dos meses después del inicio de la erupción del Cumbre Vieja y menos de un mes antes de su finalización, el 13 de diciembre, el número de desplazados superaba ya los 7.000 [vid. VEGA, G.; MORENO ARANDA, J.; CLEMENTE POMEDA, Y., “Dos meses de erupción en el volcán de La Palma, en cifras: 906 millones en daños, 5.100 terremotos, 7.000 proyectos de vida en punto muerto”, *El País*, 19 de noviembre de 2021 (último acceso: 19/11/2021)].

<sup>23</sup> EUROPA PRESS, “‘Cumbre Vieja’, el proyecto que plantea la construcción de una nueva ciudad en La Palma para los afectados por el volcán”, *elDiario.es*, 17 de noviembre de 2021 (actualizado el 18/11/2021) (último acceso: 18/11/2021).

<sup>24</sup> UN SECRETARY-GENERAL, *Documento de políticas del Secretario General sobre la COVID-19 y las personas en movimiento* (20-07486X (S)), 26 pp. (último acceso: 15/12/2021).

En el caso de Docherty y Giannini, aunque reconocen que la cuestión de la protección y asistencia a los desplazados internos debido al cambio climático "merece atención"<sup>25</sup>, prefieren centrarse sólo en los desplazamientos internacionales para evitar fricciones con el espinoso asunto de la soberanía de los Estados y el principio de no intervención<sup>26</sup>. Sin embargo, si, como se ha puesto de manifiesto en el Capítulo II, se prevé que un alto porcentaje de las personas desplazadas por motivos medioambientales permanezca dentro de las fronteras de su Estado, no parece que una propuesta de tratado internacional de carácter asistencial pueda o deba dejar fuera de su ámbito de aplicación aquella modalidad de desplazamiento en la que precisamente se espera que se concentre el grueso de las personas necesitadas de protección.

Hodgkinson et al. señalan a este respecto que un tratado internacional centrado exclusivamente en los desplazamientos transfronterizos equivaldría a atender únicamente las preocupaciones del mundo desarrollado, que ve la llegada de desplazados climáticos como una amenaza para su seguridad o incluso reacciona de forma xenófoba ante ella<sup>27</sup>. No obstante, en la medida en la que el tratado internacional propuesto por Docherty y Giannini adopta una perspectiva proteccionista de los derechos humanos y de prestación de asistencia humanitaria a los "refugiados" climáticos, y no un enfoque orientado al control de las fronteras, no parece que al menos su tratado pueda ser aprovechado por los países desarrollados con este fin. Es más, para denegar la entrada en su territorio a los desplazados ambientales transfronterizos, los Estados desarrollados no necesitan un tratado internacional. La propia laguna legal que existe actualmente ya les permite calificar este tipo de movimientos de inmigración económica y expulsar o devolver a los desplazados interceptados irregularmente en sus fronteras.

También los redactores de los Principios de Península, pese a ser conscientes de que "los desplazamientos climáticos pueden implicar tanto desplazamientos internos

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<sup>25</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, p. 360 *in fine*.

<sup>26</sup> *Ibíd.*, p. 369 *in fine*. los autores dejan la cuestión de los desplazados internos, así como el tratamiento de otros movimientos migratorios relacionados con el cambio climático, para "otros esfuerzos políticos" y "enfoques más inclusivos" que "complementen el instrumento vinculante sobre los refugiados del cambio climático" (p. 360).

<sup>27</sup> HODGKINSON, D. ET AL., "The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, p. 83.

como transfronterizos"<sup>28</sup>, optan por restringir el alcance de sus principios circunscribiendo su aplicación sólo a los primeros<sup>29</sup>. Aducen que "la mayor parte de los desplazamientos climáticos probablemente se producirán dentro de las fronteras de los Estados"<sup>30</sup>. Sin embargo, el hecho de que los desplazamientos medioambientales o climáticos tengan fundamentalmente una dimensión interna no justifica que se descuide la protección de quienes se desplazan a través de una frontera internacional, sobre todo teniendo en cuenta su mayor vulnerabilidad precisamente porque no pueden acogerse a la protección del Estado de su nacionalidad.

Tampoco puede obviarse que estos desplazamientos difícilmente revestirán alcance transcontinental (sur-norte), siendo sustancialmente movimientos intrarregionales entre países vecinos con fronteras muy porosas, como es el caso de los países del Sahel<sup>31</sup>. En otras palabras, serán mayoritariamente flujos sur-sur, en los que tanto los países de origen como los de acogida serán países en desarrollo. Esta circunstancia hace aún más necesario que los instrumentos propuestos tengan en cuenta tanto los desplazamientos internos como los transfronterizos.

Desde un punto de vista formal, la propuesta de Limoges supera la fragmentación del modelo de Williams, quien sugiere una amalgama de acuerdos regionales operando bajo el marco internacional común de la CMNUCC<sup>32</sup>. En cambio, Limoges se suma a la tendencia seguida por los demás autores examinados al proyectar un régimen uniforme de alcance universal<sup>33</sup>. Asimismo, al no distinguir las disrupciones ambientales según su origen climático, la propuesta de Limoges se libera de adoptar la

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<sup>28</sup> DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, sexto considerando, p. 12 [traducción del autor del original en inglés].

<sup>29</sup> *Ibíd.*, Principio 2.b., p. 16.

<sup>30</sup> *Ibíd.*, sexto considerando, p. 12 [traducción del autor del original en inglés].

<sup>31</sup> Vid. LACZKO, F.; AGHAZARM, C., "Contextualizing the migration, environment and climate change debate", in: *Migration, Environment and Climate Change: Assessing the evidence*, Geneva (Switzerland), IOM, 2009, p. 329, citando como ejemplo de movimientos sur-norte los flujos de desplazados de México a EEUU.

<sup>32</sup> WILLIAMS, A., "Turning the tide: Recognizing climate change refugees in International Law", *op. cit.*, pp. 518-519.

<sup>33</sup> BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, p. 75, abogando por un "régimen sui generis para gobernar la crisis de los refugiados climáticos". DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, p. 391; HODGKINSON, D. ET AL., "The Hour when the ship comes in: a convention for persons displaced by climate change", *op. cit.*, p. 82, ambos trabajos proponiendo un nuevo convenio multilateral de alcance global. También los Principios Península fueron diseñados como "un marco normativo aplicable a nivel mundial" (vid. DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, decimonoveno considerando, p. 13).



forma de un protocolo adicional a la CMNUCC, como sugieren por ejemplo Biermann y Boas<sup>34</sup>, pudiendo erigirse en una convención autónoma, desvinculada del régimen de cambio climático de las NU.

Como señalan Docherty y Gianni o Hodgkinson et al., que a pesar de centrarse únicamente en la protección de los desplazados climáticos también optan por un modelo de convención independiente<sup>35</sup>, el régimen del cambio climático no se diseñó pensando en las consecuencias humanas de este fenómeno. Su principal preocupación es prevenir y mitigar el calentamiento global, por lo que las obligaciones impuestas a los Estados no consisten en proteger directamente a las personas afectadas, sino en corregir las emisiones de gases de efecto invernadero<sup>36</sup>. Incluso cuando el Acuerdo de París institucionalizó el desplazamiento asociado al cambio climático creando el TFD, lo hizo considerándolo como un daño o pérdida relacionada con sus efectos adversos<sup>37</sup>, pero sin contemplar responsabilidades específicas de los Estados hacia los migrantes o desplazados.

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<sup>34</sup> BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, p. 76 *in fine*. Biermann y Boas abogan por la opción de un protocolo a la CMNUCC alegando que su adopción podría verse facilitada por la adhesión política de que goza este tratado internacional, además de por el hecho de estar basado en principios generales del régimen de cambio climático que cuentan con un amplio consenso y aceptación entre los Estados, como el de responsabilidades comunes pero diferenciadas y el reembolso íntegro de los costes incrementales. Señalan que los países en desarrollo, al ser los más afectados por el desplazamiento climático, podrían ser especialmente proclives a negociar un protocolo inspirado en estos principios, aprovechando el interés de los Estados desarrollados en que los países en desarrollo avanzados se adhieran a un régimen de mitigación global con objetivos cuantificados de reducción y limitación como moneda de cambio para impulsar su adopción. Por último, sostienen que entrelazar la protección de los "refugiados" climáticos con la CMNUCC podría redundar en su propio beneficio, por ejemplo, posibilitando el recurso a los avances científicos para identificar la presencia de riesgos climáticos para las poblaciones de determinadas regiones.

<sup>35</sup> HODGKINSON, D. ET AL., "The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, p. 82. DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, pp. 397-402.

<sup>36</sup> Vid. DOCHERTY, B.; GIANNINI, T., *op. cit. supra*, pp. 358 y 394. Además de las limitaciones señaladas en cuanto al mandato de la CMNUCC, "que se centra en las medidas preventivas que protegen el medio ambiente y no en las medidas correctivas que protegen a las personas" (pp. 394 *in fine* y 395 [traducción del autor del original en inglés]), los autores refieren otras dos limitaciones importantes a la hora de vincular a la CMNUCC cualquier instrumento relativo a la protección de los "refugiados" climáticos, a saber: "la reticencia histórica a incorporar cuestiones de derechos humanos de forma explícita en los tratados medioambientales; y el historial de inacción de la CMNUCC" (p. 394 *in fine* [traducción del autor del original en inglés]). Also, HODGKINSON, D. ET AL., *op. cit. supra*, pp. 81 *in fine* y 82, compartiendo el parecer de Docherty y Giannini.

<sup>37</sup> Vid. UNFCCC, "Decision 1/CP.21 Adoption of the Paris Agreement", in: *Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015. Addendum. Part two: Action taken by the Conference of the Parties at its twenty-first session (FCCC/CP/2015/10/Add.1)*, 29 January 2016, párr. 49.

Adicionalmente, Docherty y Giannini señalan tres ventajas que la adopción de una convención autónoma ofrece en comparación a la adición de un protocolo a la CMNUCC o incluso a la Convención sobre los Refugiados de 1951, cuyas limitaciones para dar cabida a los desplazados medioambientales o climáticos en la definición de refugiado que contempla quedaron señaladas en el Capítulo III. En primer lugar, una convención independiente reconoce la relevancia y sustantividad propia de la cuestión del desplazamiento ambiental o climático respecto a otras preocupaciones internacionales como el cambio climático o las crisis refugiados. En segundo lugar, brinda la flexibilidad suficiente para construir *ex novo* un marco especializado que tenga en cuenta la naturaleza multidisciplinar de cualquier solución al desplazamiento medioambiental, que necesariamente ha de combinar los principios del derecho medioambiental internacional con los de otros marcos legales como el derecho de los refugiados, los derechos humanos y la asistencia humanitaria internacional. Finalmente, permite que la negociación del nuevo instrumento se plantee como un proceso independiente e inclusivo en el que participen la sociedad civil en general y, sobre todo, las comunidades afectadas<sup>38</sup>.

Por último, el que la propuesta de Limoges se presente en formato de texto articulado le confiere un mayor impacto gráfico en comparación con el estilo narrativo que adoptan los demás autores, que exponen de manera explicativa cómo podría ser el futuro instrumento internacional. En el caso de Limoges, el borrador no sólo describe detalladamente el contenido sustantivo y procedimental del estatuto de protección de los desplazados por motivos medioambientales, así como el aparato institucional que ha de velar por la correcta aplicación y cumplimiento del convenio, sino que también permite visualizar cómo quedaría estructurado en capítulos y artículos este proyecto de tratado, cuyo contenido se expone y comenta a continuación.

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<sup>38</sup> Vid. DOCHERTY, B.; GIANNINI, T., “Confronting a rising tide: a proposal for a convention on climate refugees”, *op. cit.*, pp. 392 y 397-400.

## **2. COMENTARIO AL PROYECTO DE CONVENIO RELATIVO AL ESTATUTO INTERNACIONAL DE LOS DESPLAZADOS AMBIENTALES DE LA UNIVERSIDAD DE LIMOGES**

### **2.1. Introducción**

#### **2.1.1. Génesis del proyecto**

En 2005 se celebró en Limoges (Francia) un coloquio internacional que sería el germen de un proyecto académico de tratado internacional para regular el estatuto internacional de los desplazados ambientales. La primera versión del texto articulado fue el resultado de siete jornadas de trabajo, que se desarrollaron entre junio y diciembre de 2008 en la Facultad de Derecho y Economía de la Université de Limoges con el apoyo del CIDCE (Centre International de Droit Comparé de l'Environnement)<sup>39</sup>.

En el grupo de trabajo que acometió su primigenia redacción participaron representantes del Centre de Recherches interdisciplinaires en Droit de l'Environnement, de l'Aménagement et de l'Urbanisme; el Centre de Recherches sur les Droits de la Personne, y el Observatoire des Mutations Institutionnelles et Juridiques. A ellos se unieron economistas y juristas, especializados en derecho público y privado, tanto en su vertiente interna como internacional, así como en el Derecho del Medio Ambiente y de los Derechos Humanos<sup>40</sup>.

Desde entonces, el texto ha experimentado sucesivas revisiones. La última versión del proyecto, la cuarta, que es la que a continuación se comenta, data de abril de 2018 y puede encontrarse publicada en el sitio web del CIDCE en seis idiomas: inglés, francés, italiano, español, ruso y ucraniano<sup>41</sup>.

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<sup>39</sup> Información extraída de la página web del CIDCE: [\[:en\]Environmentally displaced persons\[:fr\]Déplacés environnementaux / réfugiés écologiques\[:\]](#) (último acceso: 09/02/2020).

<sup>40</sup> Íd.

<sup>41</sup> Vid. *supra* la página web del CIDCE.

### **2.1.2. Estructura del proyecto de Convenio**

El proyecto consta de cuarenta y cuatro artículos, agrupados en nueve capítulos y precedidos de un preámbulo. El capítulo primero (arts. 1 a 3) delimita el objeto y ámbito de aplicación del futuro instrumento y establece el sentido que ha de darse a ciertos términos clave que posteriormente se emplean en la parte sustantiva del tratado. Se completa, además, con una serie de principios jurídicos generales, recogidos en el capítulo segundo (arts. 4 a 8), que han de guiar la aplicación del convenio e inspirar su interpretación.

Las disposiciones sustantivas se encuentran en los capítulos tercero (arts. 9 a 11) y cuarto (arts. 12 y 13), que regulan los derechos que asisten a los desplazados, tanto potenciales como efectivos. Por su parte, las disposiciones adjetivas aparecen en los capítulos cinco a siete. El capítulo quinto (arts. 14 a 19) regula el procedimiento para la solicitud y eventual concesión del estatuto de desplazado ambiental, así como su extinción. Por otra parte, el capítulo sexto (arts. 20 a 26) establece el aparato institucional que ha de regir el convenio, incluidos una serie de mecanismos para una correcta y eficaz aplicación del tratado, que aparecen en el capítulo siete (arts. 27 a 29).

Por último, los capítulos octavo (arts. 30 a 39) y noveno (arts. 40 a 44) contienen, respectivamente, una serie de "disposiciones diversas", que se propone renombrar como disposiciones adicionales, además de las disposiciones finales del tratado. Así, el capítulo octavo se ocupa de regular las relaciones del convenio con otros instrumentos (art. 30) así como con terceros (art. 31), examen de aplicación de sus disposiciones (art. 32), solución de controversias entre las Partes (art. 33), adopción de protocolos adicionales a la convención (art. 35), relaciones entre ambos (art. 36), derecho de voto de las Partes (art. 36), exclusión de reservas (art. 38) y mecanismos de enmienda y denuncia de la convención y sus protocolos (arts. 34 y 39). Por su parte, el Capítulo nueve se refiere a la firma, ratificación, aceptación, aprobación o adhesión al convenio (arts. 40 y 41), entrada en vigor (art. 42), nombramiento del depositario (art. 43) y las lenguas de los textos del tratado considerados auténticos (art. 44), que se corresponden con los seis idiomas oficiales de NU.

### 2.1.3. Estructura de la exégesis

A efectos expositivos, los epígrafes bajo los que se organiza este comentario siguen la misma estructura del proyecto, de cuyos capítulos adopta su rúbrica. El único cambio en el orden de exposición concierne al capítulo 6, que se trata a continuación del capítulo 2. Se ha preferido explicar el marco institucional de la convención antes de entrar a analizar el procedimiento de reconocimiento del estatuto de desplazado ambiental y el catálogo de derechos que lleva aparejado, habida cuenta del papel activo que algunas de las instituciones del tratado asumen tanto a nivel sustantivo como procedimental. Asimismo, las disposiciones diversas y finales de los capítulos 8 y 9 no han sido objeto de comentario separado, dada su naturaleza, si bien se hace referencia a ellas en los comentarios de otros preceptos. Se exceptúa de lo dicho el artículo 42 del capítulo 9, relativo a la entrada en vigor del tratado, que es objeto de atención al final del comentario.

La exégesis del proyecto se ha realizado teniendo en cuenta las versiones del proyecto en francés<sup>42</sup>, como lengua de redacción original, en inglés<sup>43</sup> y en castellano<sup>44</sup>. Salvo que se indique expresamente lo contrario en la nota a pie de página correspondiente, el texto que aparezca entrecomillado en el cuerpo del comentario debe entenderse referido al texto del proyecto de convención en una de estas versiones, según la lengua en la que figure.

Por otra parte, aunque este capítulo se centra en el proyecto de tratado de la Universidad de Limoges, las propuestas normativas expuestas en la sección introductoria han sido igualmente consideradas durante la elaboración del comentario. Ello ha permitido enriquecerlo con los puntos de vista de los demás autores examinados en relación con los componentes institucional, financiero y de protección y asistencia del nuevo instrumento, incorporando, en su caso, algunos de sus planteamientos al texto del propio convenio de Limoges.

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<sup>42</sup> PRIEUR, M. ET AL., “Project de Convention relative au Statut des Déplacés Environnementaux”, Quatrième version, CIDCE, avril 2018, 22 pp. (último acceso: 09/02/2020).

<sup>43</sup> CIDCE (traductor desconocido), “Draft Convention on the Status of Environmentally Displaced Persons”, Fourth Version, CIDCE, April 2018, 21 pp. (último acceso: 09/02/2020).

<sup>44</sup> JUSTE RUIZ, J.; CATILLO DAUDÍ, M. (trads.), “Proyecto de Convenio relativo al Estatuto Internacional de los Desplazados Ambientales”, Cuarta versión, CIDCE, abril 2018, 14 pp. (último acceso: 09/02/2020).

Por último, para presentar gráficamente las modificaciones sugeridas a lo largo de esta exégesis, se ha optado por mantener la forma de texto articulado elegida por los autores de Limoges. Así, las alternativas planteadas se han incorporado al proyecto de convenio que aparece al final de la tesis como Anexo V. Las adiciones se han resaltado en rojo, mientras que el texto que se propone suprimir o modificar aparece tachado.

## **2.2. Preámbulo**

El proyecto de tratado se inicia con una serie de considerandos, a modo de preámbulo, que justifican la conveniencia y necesidad de la convención que las Partes se proponen adoptar. Es posible distinguir, con fines expositivos, cuatro componentes que se destacan en el preámbulo: a) los efectos adversos que las disrupciones ambientales tienen sobre las poblaciones; b) el vínculo causal entre este impacto y el desplazamiento de las comunidades afectadas; c) los riesgos que el desplazamiento implica tanto para los desplazados a título individual como para la comunidad internacional en su conjunto, así como la ausencia de un marco jurídico suficiente para abordar el desplazamiento medioambiental, y d) una serie de principios de Derecho Internacional que legitiman la obligación de los Estados de adoptar el nuevo estatuto de protección internacional que se propone.

### **2.2.1. Impacto de las disrupciones medioambientales en las comunidades humanas**

Se comienza, acertadamente, reconociendo la rápida degradación que está sufriendo el medio ambiente a nivel global (considerando primero) y enumerando "las causas de ese deterioro" (considerando segundo). Estas "causas" se corresponden con los factores ambientales que la literatura "maximalista" de la década de los 80 y 90 abordó como impulsores de los movimientos de población, a saber: el cambio climático; la escasez de agua; la deforestación, la erosión del suelo y la desertificación –todas ellas formas de degradación del suelo–; los riesgos naturales, como la sequía, las inundaciones, los huracanes o los ciclones, y los riesgos tecnológicos.

Aunque la expresión "tales como" que aparece en el considerando segundo deja claro que la enumeración no tiene pretensiones de exhaustividad, quizás convendría incluir en ella una mención expresa a la subida del nivel del mar. La salinización resultante de este fenómeno afectará a la fertilidad de las tierras de cultivo próximas así

como a las fuentes de agua dulce, siendo igualmente un factor de degradación de los ecosistemas con un impacto significativo en el desplazamiento de las poblaciones que dependen de ellos.

También sería significativo reconocer en el preámbulo que los desplazados ambientales son los menos responsables de estos procesos, como se afirma en los Principios de Península<sup>45</sup>. Sin embargo, son ellos los que sufren directamente el impacto que la degradación del entorno en el que habitan tiene sobre su salud y la dignidad de las condiciones en las que viven. Este reconocimiento de su condición de víctimas refuerza la justificación de la convención internacional cuya adopción se propone, como mecanismo para reparar la amenaza que "la desaparición de su medio ambiente" puede suponer para la propia vida, tal y como se señala en el tercer considerando del proyecto de Limoges.

Este considerando tercero recoge acertadamente la jurisprudencia y los comentarios de los tribunales y órganos cuasi-jurisdiccionales internacionales y regionales sobre el impacto del deterioro medioambiental en los derechos humanos. Como se destacó en el Capítulo V, este acervo subraya que el riesgo serio e inminente de catástrofe natural o la degradación grave del medio ambiente puede amenazar efectivamente el derecho a vivir y a hacerlo con dignidad, dando lugar a la consiguiente responsabilidad internacional del Estado cuando, teniendo conocimiento del peligro, no hubiera actuado para evitarlo. En este sentido, sería deseable que el tercer considerando incluyera, junto al derecho a la vida que menciona, una referencia explícita a que la vida en condiciones ambientales gravemente degradadas puede equivaler igualmente a una violación de la prohibición de tratos inhumanos o degradantes.

### **2.2.2. Relación de causalidad entre las disrupciones medioambientales y los desplazamientos de población**

Una vez establecidos los efectos adversos que el deterioro del medio humano tiene sobre sus mismos habitantes, los considerandos cuarto y sexto adoptan el planteamiento de la doctrina "maximalista". El primero establece la relación de causalidad propia de este enfoque, en la que "la gravedad de estos impactos" sobre las

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<sup>45</sup> Vid. DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, quinto considerando, p. 12: "Conscientes de que la gran mayoría de los desplazados climáticos no son responsables de los procesos que impulsan el cambio climático".

condiciones de vida de "los individuos, familias y poblaciones" los "obliga a (...) desplazarse", ya sea dentro o fuera de las fronteras de sus países –como especifica el undécimo considerando. A este respecto, sería positivo que en el preámbulo de un futuro tratado sobre el desplazamiento ambiental se diera cuenta de la importancia que tiene la correcta aplicación de marcos como el MSRRD, el sistema de la CMNUCC o la Agenda 2030 sobre los ODS en la prevención de interrupciones medioambientales que obliguen al desplazamiento de poblaciones.

En relación con la causalidad entre la interrupción del medio ambiente y el desplazamiento, hay que acoger con satisfacción la referencia que se hace en el considerando quinto al desplazamiento forzoso de la población como consecuencia de la aplicación de "políticas medioambientales". Estas políticas pueden ser medioambientalmente destructivas, como la deforestación y el desbroce para despejar terrenos de cultivo –práctica reiteradamente denunciada en la literatura "maximalista". Sin embargo, también es posible que sean políticas a priori positivas para la protección del medioambiente, como la creación de reservas y parques naturales. No obstante, la consecuencia en ambos casos puede ser la misma: el desplazamiento forzoso de las comunidades indígenas o locales que habitan esos territorios<sup>46</sup>.

### **2.2.3. Razones fácticas y jurídicas que justifican la necesidad del Convenio relativo al Estatuto Internacional de los Desplazados Ambientales**

#### **A) Razones fácticas: la estabilidad de las sociedades humanas, la supervivencia de las culturas y para la paz mundial**

Por su parte, el considerando sexto pone el acento en la "amenaza" que "el crecimiento exponencial de los desplazamientos actualmente previsibles" supone "para la estabilidad de las sociedades humanas, para la supervivencia de las culturas y para la paz mundial". La justificación de la necesidad de regular los desplazamientos climáticos apelando a consideraciones de seguridad es común a los Principios de Península, que

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<sup>46</sup> Los desplazamientos forzosos en el marco de la creación de parques naturales fue abordado en 1992 por el autor "maximalista" OTUNNU, O., "Environmental refugees in Sub-Saharan Africa: causes and effects", *Refuge*, Vol. 12, No. 1, June 1992, p. 13, recogiendo el caso de los Maasai en Kenia, donde la industria del turismo representa la segunda mayor fuente de ingresos extranjeros en el país. La población Maasai se vio obligada a desplazarse en busca de pasto para su ganado después de que las tierras a las que tradicionalmente conducían a sus rebaños fueran convertidas en un parque natural.



también aducen "las tensiones e inestabilidad" que los desplazamientos pueden generar "dentro de los Estados" "si no se planifican y gestionan adecuadamente"<sup>47</sup>.

Este vínculo entre medioambiente, desplazamiento y seguridad no es, sin embargo, una novedad. Los autores "maximalistas" también recurrieron al discurso de la seguridad para persuadir a los Estados de la imperiosa necesidad de implementar políticas ecologistas que abordasen los problemas medioambientales subyacentes a las hordas de desplazados ambientales que se esperaba llegasen al Primer Mundo. Sin embargo, si el objetivo es abrir un proceso de negociación que culmine con un tratado internacional sobre desplazamiento, adoptar este mismo enfoque de la doctrina "maximalista" puede resultar incluso contraproducente. Así, en lugar de alentados, los Estados podrían verse disuadidos de participar en una convención que no busca neutralizar la hipotética amenaza de intensos flujos de desplazamiento sur-norte mediante el endurecimiento de las normas sobre migración, sino justamente el objetivo opuesto –i.e. facilitar el desplazamiento de forma ordenada, legal y segura de quienes viven en unas condiciones medioambientalmente adversas.

A la luz de esta más que probable reticencia de los Estados, puede ser oportuno revisar el planteamiento que se hace del desplazamiento ambiental en términos exclusivamente de seguridad, introduciendo asimismo referencias a su consideración de estrategia de adaptación. La postura "minimalista", en su crítica a la calificación de estos movimientos poblacionales como preeminentemente ambientales, ya evidenció el papel de la migración como una forma tradicional que tienen las poblaciones de lidiar con condiciones socioeconómicas adversas ante situaciones de estrés ambiental. El recurso a ella no sólo podría ayudar al inmigrante, sino también a los demás miembros de la unidad familiar que permanecieran en el lugar de origen.

Enfocar los desplazamientos por razones medioambientales desde la óptica de la adaptación no sólo es más positivo. También resulta más acorde con los recientes avances político-normativos de la comunidad internacional en materia de cambio climático, desastres naturales y desarrollo sostenible. Tal y como se ha visto en el Capítulo VII, el Marco de Cancún para la Adaptación invita a los Estados Partes a adoptar "medidas para mejorar el entendimiento, la coordinación y la cooperación en lo

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<sup>47</sup> DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, décimo considerando, p. 12.

que respecta al desplazamiento, la migración y el traslado planificado como consecuencia del cambio climático, cuando corresponda, a nivel nacional, regional e internacional"<sup>48</sup>. Por su parte, el MSRRD y la Agenda 2030 se refieren expresamente a la movilidad humana como un elemento positivo a integrar en la consecución de sus respectivos objetivos<sup>49</sup>.

Además de un riesgo "para la estabilidad de las sociedades humanas (...) y para la paz mundial", el párrafo sexto del preámbulo considera el desplazamiento como "una amenaza (...) para la supervivencia de las culturas"; una inquietud que también comparte el preámbulo de los Principios de Península, que alude a la "mayor pérdida de la identidad cultural, tradicional y/o espiritual"<sup>50</sup> como una de las consecuencias del desplazamiento. Esta preocupación por la preservación de la cultura de las comunidades desplazadas es oportuna y legítima, ya que la diáspora de una comunidad impone, por añadidura al desarraigo, la pérdida de los vínculos sociales, valores y tradiciones que le son propios, lo que se traduce en un empobrecimiento tanto del acervo cultural de la propia comunidad y de sus miembros como del patrimonio inmaterial colectivo del conjunto de la humanidad.

Nótese que mientras el preámbulo de Limoges adopta un enfoque primordialmente colectivo sobre las consecuencias del desplazamiento para todo el género humano –vid. la estabilidad de las sociedades humanas, la supervivencia de las culturas y la paz mundial–, el preámbulo de los Principios de la Península mantiene una perspectiva principalmente individualista, centrada en las repercusiones del desplazamiento sobre los derechos individuales de los desplazados. Así, junto a la pérdida de identidad cultural o espiritual, el primer considerando de los Principios de Península hace también alusión a "la erosión de los derechos de los afectados" que

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<sup>48</sup> UNFCCC, "Decision 1/CP.16. The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention", in: *Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010. Addendum Part Two: Action taken by the Conference of the Parties at its sixteenth session (FCCC/CP/2010/7/Add.1)*, 15 March 2011, párr. 14(f). También mencionado en: DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, decimosexto considerando, p. 13, que igualmente hace referencia al Mecanismo internacional de Varsovia para las pérdidas y daños asociados con los impactos del cambio climático (considerando decimoséptimo).

<sup>49</sup> Vid. UNGA, *Resolution 69/283 Sendai Framework for Disaster Risk Reduction 2015–2030, adopted by the General Assembly at its Sixty-ninth session (A/RES/69/283)*, 23 June 2015, párr. 36(a)(vi), p. 19. UNGA, *Resolution 70/1 Transforming our world: the 2030 Agenda for Sustainable Development, adopted by the General Assembly at its Seventieth session (A/RES/70/1)*, 21 October 2015, párr. 29 y sub-objetivo 10.7.

<sup>50</sup> DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, primer considerando, p. 12.

generalmente resulta del desplazamiento, especialmente en el caso de los grupos vulnerables y marginados, así como a "la pérdida de bienes, viviendas, tierras, propiedades y medios de subsistencia"<sup>51</sup>.

Sería, por tanto, interesante, en una futura revisión del texto del proyecto, reformular el sexto considerando de forma que se enfatizan por igual los *riesgos y las oportunidades de adaptación* que plantea el desplazamiento medioambiental y, además, hacerlo de forma que se conjuguen ambas perspectivas. En este sentido, el término *riesgo* que se propone emplear es lo suficientemente amplio como para englobar en él las cuestiones de seguridad que ciertamente comporta cualquier movimiento de personas, al tiempo que permite integrar consideraciones sobre los derechos individuales de los desplazados –siempre en riesgo durante el desplazamiento. La inclusión de las *oportunidades de adaptación* podría aparecer en combinación con los intereses humanitarios, sociales, culturales y financieros comunes a los que alude el considerando decimotercero de los Principios de Península y que la comunidad internacional en su conjunto compartiría como motivación para abordar el desplazamiento medioambiental "de forma oportuna, coordinada y específica"<sup>52</sup>.

### **B) Razones jurídicas: ausencia de un marco jurídico apropiado**

Basándose en este vínculo causal entre la degradación del medio ambiente y el desplazamiento resultante, y en la amenaza que una deficiente gestión de estos flujos supondría para la preservación de la paz y la seguridad internacionales, el preámbulo legitima la necesidad de la convención, dado que "en el estado actual del derecho internacional aplicable a los refugiados no existe ningún instrumento específico relativo a la situación de los desplazados medioambientales, que les resulte aplicable y que pueda ser invocado en su favor" (considerando octavo). La constatación de que los desplazamientos ambientales, entre ellos los climáticos, no se ajustan a la definición de refugiado de la Convención de Ginebra de 1951 es una interpretación unívoca de todos los autores examinados<sup>53</sup>. Este planteamiento, sin ser erróneo, obvia el derecho

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<sup>51</sup> *Íd.*

<sup>52</sup> *Ibíd.*, decimotercer considerando, p. 13.

<sup>53</sup> WILLIAMS, A., "Turning the tide: Recognizing climate change refugees in International Law", *op. cit.*, pp. 507 *in fine* a 510. BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, pp. 72 *in fine* a 74. DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, pp. 357 *in fine* y 358. HODGKINSON, D. ET AL., "The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, pp. 76-77.

internacional de los refugiados de ámbito regional, en cuyo seno conviven algunos instrumentos que podrían resultar aplicables a los desplazados ambientales y que fueron objeto de análisis en el Capítulo III<sup>54</sup>.

Por ejemplo, la Convención Árabe de 1994 sobre la Regulación del Estatuto de los Refugiados en los Países Árabes ha incluido expresamente en su ámbito de aplicación a las personas que huyen de las catástrofes naturales (Art. 1)<sup>55</sup>. Igualmente, la definición de refugiado que recoge la Convención de la OUA por la que se regulan los aspectos específicos de problemas de los refugiados en África<sup>56</sup> podría admitir una interpretación extensiva que incluyese, como causa para solicitar y obtener refugio, las disrupciones medioambientales que por su gravedad afectasen al orden público. La misma conclusión se predica de los Principios de Bangkok<sup>57</sup>, en Asia; o de la Declaración de Cartagena<sup>58</sup>, en América Latina, cuyas definiciones de refugiado se inspiran en la de la Convención africana. Además, en el contexto del desplazamiento interno en el continente africano, la Convención de Kampala hace también referencia a aquellas personas forzadas a desplazarse debido a catástrofes naturales o de origen humano [art. 1(k)]<sup>59</sup>.

Para evitar herir sensibilidades durante el eventual proceso de negociación de la convención, convendría precisar mejor que *"no existe ningún instrumento específico de ámbito universal..."*. Alternativamente, podría incorporarse al texto un nuevo considerando que reconozca las iniciativas regionales existentes, como hacen los Principios de la Península con respecto a los instrumentos de desplazamiento interno<sup>60</sup>, que podría redactarse como sigue:

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<sup>54</sup> Una excepción serían BIERMANN, F.; BOAS, I., *op. cit. supra*, que sí mencionan la posibilidad de aplicar la Convención de la OUA de 1969 y a la Declaración de Cartagena de 1984 a los "refugiados" climáticos a través de la cláusula de orden público, si bien reconocen que ambos instrumentos no fueron originalmente concebidos para proteger a este tipo de "refugiados".

<sup>55</sup> LAS, *Arab Convention on Regulating Status of Refugees in the Arab Countries*, 1994.

<sup>56</sup> OAU, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September, 1969, UNTS, Vol. 1001, No. 14691, pp. 45-52.

<sup>57</sup> AALCO, *Final text of the AALCO's 1966 Bangkok Principles on status and treatment of Refugees*, adopted by the Committee at its Fortieth session, 24 June 2001.

<sup>58</sup> UNHCR, *Cartagena Declaration on Refugees*, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena de Indias (Colombia), 22 November 1984.

<sup>59</sup> AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa (Kampala Convention)*, 23 October 2009, UNTS, Vol. 3014, No. 52375, 89 pp.

<sup>60</sup> DISPLACEMENT SOLUTIONS, *"The Peninsula Principles of Climate Displacement within States"*, *op. cit.*, considerando vigesimoprimerero, p. 13.

*Reconociendo que, a pesar de la existencia de instrumentos regionales que abordan los desplazamientos internos relacionados con los desastres naturales, como la Convención de la Unión Africana para la Protección y Asistencia de los Desplazados Internos en África, o que pueden considerar a los desplazados ambientales transfronterizos como refugiados en determinadas situaciones, estos instrumentos presentan, sin embargo, un alcance y ámbito de aplicación limitados.*

Por otra parte, el considerando octavo sólo constata parcialmente la laguna en el ordenamiento jurídico internacional que la convención pretende solventar. Como esta tesis ha tratado de evidenciar, esta laguna no sólo se circunscribe al derecho internacional de los refugiados, sino al Derecho Internacional en su conjunto. El mismo considerando también se refiere a "la existencia de numerosos instrumentos internacionales destinados a proteger el medio ambiente" que, sin embargo, tampoco contienen disposición alguna sobre la protección de las personas desplazadas por factores ambientales. Una realidad que también ha sido apuntada en el ámbito de los desplazamientos climáticos por Docherty y Giannini<sup>61</sup>, Hodgkinson et al.<sup>62</sup> y los mismos Principios de Península; estos últimos observando en su preámbulo, aparte de que el desplazamiento climático no figura ni en la CMNUCC ni en el Protocolo de Kioto, que las sucesivas COPs "no han abordado sustancialmente el desplazamiento climático más que en los términos más generales"<sup>63</sup>.

En vista de este reconocimiento generalizado, sería preferible expresar el octavo considerando en términos absolutos, de manera que reflejase la laguna, igualmente absoluta, de la que adolece el ordenamiento internacional en cuanto a la protección de los desplazados medioambientales. Podría quedar formulado del siguiente modo:

*Teniendo en cuenta que, en el estado actual del derecho internacional de ámbito universal, no existe ningún instrumento específico relativo a la situación de los desplazados medioambientales, que les resulte aplicable y que pueda ser invocado en su favor.*

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<sup>61</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, p. 358.

<sup>62</sup> HODGKINSON, D. ET AL., "'The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, p. 77.

<sup>63</sup> DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, considerando decimoquinto, p. 13.

#### **2.2.4. Principios de Derecho Internacional que legitiman la obligación de la comunidad internacional de desarrollar un estatuto de protección internacional para los desplazados ambientales: principio de responsabilidades comunes pero diferenciadas y deber de solidaridad compartida y asistencia mutua en caso de siniestro ecológico**

El considerando noveno invoca "el principio de responsabilidades comunes pero diferenciadas de los Estados, reconocido en el artículo 3 del Convenio Marco de Naciones Unidas sobre el Cambio Climático", al que se hará referencia posteriormente al analizar el artículo 5 del proyecto. Este principio se conjuga con el deber de solidaridad compartida que incumbe a la comunidad internacional, los Estados y demás actores a la hora de afrontar esta laguna del Derecho Internacional, lo que requiere de un esfuerzo común para dotar a los desplazados ambientales de un estatuto de protección (considerando décimo)<sup>64</sup>. Convendría especificar, como hace el considerando decimonoveno de los Principios de Península, que este estatuto internacional comprende tanto "la prestación de asistencia preventiva a los que pueden ser desplazados (...), así como una asistencia correctiva eficaz a los que han sido desplazados, y protección legal para ambos"<sup>65</sup>.

Este principio de solidaridad también aparece implícito en el preámbulo de los Principios de Península, que reconoce que el cambio climático es un "problema global" y que, como tal, exige de la comunidad de Estados que ayude a los países afectados que lo requieran proporcionándoles "un apoyo adecuado y apropiado en la implementación de medidas de mitigación, adaptación, reubicación y protección, así como para ayudar a los desplazados climáticos"<sup>66</sup>. De este modo, el considerando noveno es consciente de que "para muchos Estados abordar y responder al desplazamiento climático presenta desafíos financieros, logísticos, políticos, de recursos y de otro tipo"<sup>67</sup>. Este último inciso debiera incorporarse a reglón seguido del deber de asistencia mutua que el considerando séptimo del proyecto de Limoges impone a toda la comunidad internacional en caso de que un Estado se vea afectado por un siniestro ecológico, y del que el considerando décimo deriva la obligación de elaborar un estatuto internacional

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<sup>64</sup> De manera similar, el preámbulo de los Principios de Península se refiere a este instrumento como el marco normativo para instrumentalizar la colaboración de la comunidad internacional en la asistencia y protección de los desplazados climáticos internos (Ibíd., considerando decimonoveno, p. 13).

<sup>65</sup> Íd.

<sup>66</sup> Ibíd., duodécimo considerando, p. 12 *in fine*.

<sup>67</sup> Ibíd., noveno considerando, p. 12.

para proteger a su población vulnerable en tales circunstancias como manifestación del principio de solidaridad.

El preámbulo de los Principios de Península reconoce, sin embargo, "que los Estados son los principales responsables de sus ciudadanos y de las personas que viven en su territorio"<sup>68</sup>. Esta apreciación debiera incorporarse al texto del preámbulo del proyecto de Limoges, afirmando que, sin perjuicio del deber de asistencia internacional, los Estados están obligados a tomar las medidas necesarias para evitar que se produzcan en su territorio cambios medioambientales que puedan dar lugar a desplazamientos de población, así como a proteger a las personas ya desplazadas internamente por motivos medioambientales para que no tengan que recurrir a desplazamientos transfronterizos.

Finalmente, el considerando duodécimo cierra el Preámbulo señalando que este estatuto de protección internacional ha de ser acorde a "los instrumentos jurídicos internacionales y los principios protectores de los derechos humanos y del medio ambiente, en particular el Pacto internacional de derechos civiles y políticos y el Pacto internacional de derechos económicos sociales y culturales"<sup>69</sup>. A pesar de su carácter no vinculante, el considerando duodécimo podría resaltar también la importancia de los Principios Rectores de las NU en materia de desplazamiento medioambiental interno, por un lado, y de la Agenda Nansen para la protección de los desplazados transfronterizos en el contexto de las catástrofes y el cambio climático, por otro<sup>70</sup>.

### **2.3. Capítulo primero: objeto, definiciones y ámbito de aplicación**

#### **2.3.1. Artículo 1 - Objeto**

Entrando ya en el análisis de la parte dispositiva de la convención, el artículo 1 delimita su objeto. Es decir, define la finalidad a la que la negociación y adopción del tratado sirve. Por tanto, su redacción positiva en el texto del articulado cuanto se ha expresado anteriormente en los considerandos del Preámbulo:

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<sup>68</sup> *Ibíd.*, undécimo considerando, p. 12.

<sup>69</sup> De manera similar, *ibíd.*, segundo considerando, p. 12, que menciona, además del PIDCP y el PIDESC, la Carta de las Naciones Unidas, la Declaración Universal de Derechos Humanos, así como la Declaración y el Programa de Acción de Viena.

<sup>70</sup> A los que también hace referencia el preámbulo de los Principios de Península (vid. *ibíd.*, considerandos tercero y vigesimosegundo, pp. 12-13.

"1. El objeto del presente Convenio es establecer un marco jurídico destinado a garantizar los derechos de los desplazados ambientales y organizar su acogida así como su eventual retorno, en aplicación del principio de solidaridad.

2. Con tal objeto, cada Parte protege a los desplazados ambientales de conformidad con el respeto al Derecho internacional y garantiza el pleno ejercicio de los derechos específicos garantizados por el presente Convenio."

Apuntar, solamente, que la puntualización de que la protección de los desplazados ambientales se haga "de conformidad con el respeto al Derecho internacional" puede resultar un tanto confusa. Si el objetivo del convenio es desarrollar el Derecho Internacional para proteger a los desplazados medioambientales, resulta entonces un tanto contradictorio reclamar que esta protección se lleve a cabo de conformidad con un ordenamiento que precisamente carece de normas al respecto.

Atendiendo al considerando duodécimo, parece que la finalidad de tal remisión sería salvaguardar la integridad del ordenamiento jurídico internacional, garantizando que el estatuto de protección que prevé la convención sea aplicado de manera coherente y respetando lo dispuesto en otros instrumentos internacionales pertinentes, como los tratados sobre derechos humanos o los Principios Rectores del Desplazamiento Interno, cuyo contenido es un reflejo de aquellos. La versión en inglés del proyecto resulta más clara a este respecto, viniendo a confirmar lo dicho:

"2. To this end, *each Party shall protect environmentally displaced persons in accordance with the human rights guaranteed by international law* and shall ensure the full enjoyment of the specific rights guaranteed by this Convention" (la cursiva y el subrayado es propio).

### **2.3.2. Artículo 2 - Definiciones y Artículo 3 - Ámbito de aplicación**

De especial interés resulta el artículo 2, que define lo que se entiende por "parte" y "desplazados ambientales" a efectos de la convención. Por su parte, el artículo 3 delimita el ámbito de aplicación del convenio, que viene determinado por la propia definición de desplazado ambiental, por lo que ambos aspectos se analizan conjuntamente.



## **A) Parte: las organizaciones internacionales regionales de integración económica**

El término "parte" puede designar tanto a un Estado o como a una Organización regional de integración económica que *haya consentido en quedar vinculado* por la convención<sup>71</sup>. Que los Estados puedan ser parte es una consecuencia lógica del *ius ad tractatum* que el Derecho Internacional les reconoce en su condición natural de entes soberanos<sup>72</sup>. Aunque la capacidad jurídica de las organizaciones internacionales para celebrar y ser parte de un tratado internacional tampoco se discute ya en el derecho internacional contemporáneo<sup>73</sup>, la referencia expresa a la posibilidad de que puedan ser parte del convenio no es en absoluto superflua. Reconoce la realidad de que los esfuerzos de los Estados individualmente considerados no serán suficientes para gestionar los flujos de personas asociados con la degradación ambiental y los efectos del cambio climático. La cooperación intergubernamental se hace necesaria y las organizaciones internacionales proporcionan el foro adecuado para ello.

De acuerdo con el apartado 2 del artículo del proyecto,

"2. Por "Organización regional de integración económica" se entiende una Organización formada por Estados soberanos de una determinada región a la que los Estados miembros han transferido competencias reguladas por el presente Convenio,"

Por lo tanto, son tres los criterios que debe cumplir una organización internacional para poder ser parte de la convención sobre desplazamiento ambiental, a saber: debe ser de ámbito regional; tener por objeto la integración económica en esa región; y sus Estados miembros deben haberle atribuido competencias en las materias reguladas por el convenio.

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<sup>71</sup> La versión literal del proyecto dice: "un Estado o una Organización regional de integración económica que se haya vinculado por el presente Convenio una Parte contratante del presente Convenio". Se prefiere, sin embargo, la redacción arriba propuesta, pues resalta el consentimiento del Estado como creador de obligaciones jurídicas internacionales. Es, además, más acorde con la versión en inglés del proyecto, reduciéndose así divergencias entre versiones del tratado igualmente auténticas. El último inciso de la versión en castellano, "una Parte contratante del presente Convenio", no aparece ni en la versión en inglés ni en francés del proyecto. Se trataría de una definición alternativa que enfatiza igualmente el carácter contractual del tratado y la voluntad de los sujetos internacionales intervinientes como elemento esencial que lo vivifica.

<sup>72</sup> Vid. UN, *Vienna Convention on the Law of Treaties*, 23 May 1969, UNTS, Vol. 1155, No. 18232, pp. 331-513, Article 6.

<sup>73</sup> PASTOR RIDRUEJO, J.A., *Curso de Derecho Internacional Público y Organizaciones Internacionales*, 23ª ed., Madrid (Spain), Tecnos, 2019, pp. 730-731.

## 1. Ámbito regional

Como se ha señalado anteriormente, el que una misma región comparta similares desafíos climáticos y medioambientales, el que los flujos de desplazamiento se orienten hacia países vecinos con entornos medioambientales, sociales y culturales semejantes a los del lugar de origen, y las trabas económicas al desplazamiento transcontinental, hacen que sea muy probable que un alto porcentaje de los desplazamientos sean de carácter intrarregional. De ahí que autores como Williams o Hodgkinson et al. hayan subrayado la importancia de incorporar el componente regional en el nuevo instrumento sobre desplazamiento climático.

Para ello, Williams propone una estructura de acuerdos regionales que permita el intercambio de buenas prácticas entre los distintos bloques regionales, así como flexibilidad en el desarrollo de cada marco regional y en los compromisos asumidos por los Estados miembros, en función de sus capacidades individuales y de la gravedad con que perciban los riesgos climáticos en cada región<sup>74</sup>. Hodgkinson et al. mencionan que el planteamiento regional tiene el mérito de que "cualquier organización de desplazamiento por el cambio climático puede estar plenamente informada y tener en cuenta la evolución regional" de este fenómeno, así como un enfoque más personalizado y sensible a las especificidades de las poblaciones afectadas o en riesgo, incluidas aquellas de tipo cultural<sup>75</sup>. Sin embargo, los autores prefieren integrar esta perspectiva regional en su instrumento mediante la creación de comités regionales dentro de la propia estructura de la organización internacional de desplazamiento climático que proponen<sup>76</sup>.

Al permitir que las organizaciones internacionales regionales se conviertan en partes de la convención, el proyecto de Limoges introduce el aspecto regional sin sacrificar la unidad y la uniformidad del régimen internacional en materia de desplazamientos medioambientales y climáticos. A su vez, aprovechando los marcos regionales ya existentes, se evita el tener que crear nuevas estructuras institucionales. Por otro lado, la plasticidad a la que alude Williams se mantendría hasta cierto punto a través de las competencias que cada organización internacional tenga transferidas en

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<sup>74</sup> WILLIAMS, A., "Turning the tide: Recognizing climate change refugees in International Law", *op. cit.*, p. 521.

<sup>75</sup> HODGKINSON, D. ET AL., "'The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, p. 95.

<sup>76</sup> *Íd.*

materia de migración, refugio, derechos humanos y asistencia internacional, lo que refleja tanto las prioridades como la realidad del desplazamiento ambiental en cada bloque regional.

Además de estas ventajas comparativas, el ámbito regional que exige el proyecto garantiza que, en muchos casos, los Estados de origen, destino y tránsito sean miembros de la organización internacional en cuestión. Esta circunstancia facilita una gestión más eficaz de los flujos de desplazamiento por parte de la propia organización que por los Estados actuando por separado. Así, la posibilidad de que las organizaciones internacionales regionales se conviertan en partes de la convención contribuye a garantizar la eficacia misma del tratado.

## 2. La integración económica como objetivo y la transferencia de competencias en materias reguladas por el convenio

La referencia a que se trate de organizaciones regionales de integración económica tiene su ejemplo más claro en la UE. La ASEAN, la ALADI, la AP, la UA, el CARICOM o el FIP son otros ejemplos destacables en el sudeste asiático, América latina, África, el Caribe o el Pacífico y Oceanía, respectivamente, cuya participación en el convenio podría resultar valiosa, ya que representan regiones con un alto índice de impacto de disrupciones medioambientales de lenta y rápida aparición.

Aunque, además de la integración puramente económica, estas organizaciones suelen incluir entre sus objetivos la cooperación en otros ámbitos políticos, sociales y culturales, la restricción de la participación sólo a aquellas que tengan competencia en las materias gobernadas por el convenio puede resultar más problemática. El nivel de integración alcanzado por la UE en cuestiones de política migratoria, refugio y protección internacional o derechos humanos no es comparable a los resultados asimétricos obtenidos en el resto de organizaciones de integración en las demás regiones.

Sin embargo, incluso careciendo de competencias en las materias cubiertas por el tratado, estas organizaciones internacionales pueden seguir siendo un foro pertinente desde el que instar a los Estados miembros a cooperar en el manejo de los desplazamientos ambientales, incluso fomentando que ratifiquen y apliquen el convenio a título individual. Por ello, sería conveniente que la presencia de estas organizaciones

en el marco de la convención estuviera igualmente garantizada –si no como Partes, al menos como observadores.

3. Alcance de la participación de las organizaciones internacionales partes en el convenio

Como se ha indicado anteriormente, el alcance de las competencias transferidas a las organizaciones regionales de integración económica que se conviertan en partes del convenio incidirá directamente en su capacidad para cumplir sus disposiciones. De ahí que el apartado 3 del artículo 41 del proyecto estipule que estas organizaciones deben especificar en sus respectivos instrumentos de ratificación, aceptación, aprobación o adhesión las competencias que les han sido atribuidas en las materias reguladas por la convención o sus protocolos. Además, deberán informar al Secretario General de las NU, en su calidad de depositario de tales instrumentos (art. 41.1), de cualquier modificación que afecte al alcance de dichas competencias (art. 41.3 *in fine*).

Una última cuestión relativa a la adhesión de las organizaciones internacionales al convenio se plantea con respecto a sus relaciones con sus Estados miembros que también sean partes en él. En este caso, el apartado 2 del artículo 41 establece que la organización y sus Estados miembros decidirán sobre sus respectivas responsabilidades en el cumplimiento de sus obligaciones convencionales, pero "no podrán ejercer simultáneamente los derechos derivados del Convenio". Este último párrafo está particularmente relacionado con el derecho de voto, al que se hará referencia al analizar las instituciones del convenio, en particular la Conferencia de las Partes.

**B) Concepto de "desplazado ambiental"**

El artículo 2.3 del proyecto de convención define al desplazado ambiental del siguiente modo:

"3. Se denomina "desplazados ambientales" a las personas, las familias, los grupos y las poblaciones que se enfrentan a un cambio radical o insidioso de su medio ambiente que afecta inevitablemente a sus condiciones de vida obligándoles a dejar sus lugares de residencia habitual urgentemente o en el transcurso del tiempo.

3.1 Se entiende por "cambio radical" una catástrofe súbita de origen natural y/o humano.

3.2 Se entiende por “cambio insidioso” una degradación lenta, progresiva o programada de origen natural y/o humano.

3.3 Se entiende por “desplazamiento forzoso” cualquier desplazamiento temporal o definitivo de personas físicas, familias, grupos o poblaciones que resulta inevitable por un desastre ambiental, tanto si dicho desplazamiento se produce en el interior de un mismo Estado como desde el Estado de residencia hacia otro u otros Estados de acogida."

Cinco elementos componen la definición de Limoges: a) el elemento subjetivo, relativo a los sujetos beneficiarios; b) el elemento material, referido a las características de la disrupción medioambiental relevante a efectos del convenio; c) el elemento causal, que habla del vínculo que ha de existir entre el elemento objetivo y el desplazamiento resultante que da lugar a la protección internacional; d) el elemento temporal, relacionado con el lapso de tiempo durante el que se produjo el desplazamiento y la duración del mismo, y e) el elemento espacial, alusivo al carácter interno o transfronterizo del movimiento.

#### 1. Elemento subjetivo

Respecto al elemento subjetivo, lo primero que llama la atención es el carácter eminentemente *colectivista* que la definición adopta. Este enfoque contrasta con el concepto universal y las definiciones regionales de refugiado, que giran en torno al individuo como sujeto por antonomasia del derecho a buscar refugio. La definición de Limoges se refiere a las personas –i.e. al individuo-, pero también a las familias, los grupos y las poblaciones, reconociendo el carácter grupal que suelen revestir los desplazamientos relacionados con disrupciones medioambientales.

A efectos de obtener protección, la referencia a estos colectivos nada cambia. Desde el momento en que la protección se concede en atención a una situación de peligro externa, y no a las circunstancias individuales de quien la solicita, es indiferente que el solicitante pertenezca a una determinada familia, grupo o población. Cualquier miembro de estas unidades podría obtener el estatuto de desplazado ambiental como individuo, acreditando que se encuentra en una situación de peligro medioambiental.

Sin embargo, desde un punto de vista simbólico, esta referencia tiene un valor importante, pues es fiel reflejo de una incipiente tendencia en el Derecho Internacional a reconocer a determinados sujetos colectivos, como los pueblos, las comunidades indígenas o la familia, como titulares de derechos que los Estados y la comunidad

internacional han de tutelar<sup>77</sup>. Dado que los pueblos y las comunidades son los depositarios de la cultura cuya supervivencia la convención pretende salvaguardar, de acuerdo con su considerando sexto, se sugiere sustituir la referencia a las poblaciones por esta otra: "Se denomina "desplazados ambientales" a las personas, las familias, los grupos, *las comunidades locales o indígenas y los pueblos...*".

## 2. Elemento material

En cuanto al elemento material, la definición de Limoges sigue el precedente del concepto de refugiado de la Convención africana, donde la protección se otorga en base a una situación de peligro externa de carácter indiscriminado –i.e. que pone en riesgo a todos los expuestos a ella. En el caso del estatuto del desplazado ambiental, este peligro colectivo está representado por la aparición de "un cambio radical o insidioso" en el medioambiente.

Los cambios radicales equivaldrían a lo que esta tesis ha denominado como disrupciones medioambientales de aparición rápida o repentina –*rapid- or sudden-environmental disruptions*-, que obligan a los afectados a huir "urgentemente" de sus lugares de residencia habitual. Por su parte, los cambios insidiosos se corresponderían con las llamadas disrupciones medioambientales de lenta aparición o progresión –*slow-onset environmntal disruptions*-, que se caracterizan porque población se va desplazando "en el transcurso del tiempo", a medida que avanza la degradación ambiental.

En ambos casos, la convención señala que estos cambios pueden tener un origen natural o humano. En consecuencia, los cambios radicales incluirían, además de los desastres naturales (origen natural), los accidentes industriales (origen antrópico). Igualmente, la referencia a la "degradación programada", como forma de cambio insidioso, daría pie a considerar los proyectos de desarrollo como causa para obtener la

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<sup>77</sup> Vid. PASTOR RIDRUEJO, J.A., "Capítulo IV. El individuo en el Derecho Internacional" y "Capítulo V. Los pueblos ante el Derecho Internacional", en: *Curso de Derecho Internacional Público y Organizaciones Internacionales, op. cit.*, pp. 191-298. Tanto la protección de la familia como de los pueblos indígenas en el Derecho Internacional se ha enmarcado dentro del sistema de derechos humanos. Vid., ERRÁZURIZ, C., "Sobre la protección internacional de la familia", *Revista Chilena de Derecho*, Vol. 21, No. 2, pp. 365-370. SANZ CABALLERO, S., "La protección internacional de la familia y las personas dependientes", en Fernández Liesa, C.R., *La protección internacional de las personas con discapacidad*, Madrid (Spain), BOE, 2007, pp. 239-300. PONTE IGLESIAS, M.T., "Los pueblos indígenas ante el Derecho Internacional", *Agenda Internacional*, Año X, No. 20, 2004, pp. 149-172. STAVENHAGEN, R., "Los derechos indígenas en el sistema internacional: un sujeto en construcción", *Revista IIDH*, Vol. 26, 1998, pp. 81-103.

condición de desplazado ambiental, ya que su ejecución e impacto medioambiental ha sido planificado por la mano del hombre –aunque el alcance de sus repercusiones finales sobre el ecosistema afectado no se conozcan realmente hasta tiempo después.

La terminología escogida por los redactores del proyecto para referirse a cada tipo de disrupción medioambiental merece, sin embargo, ciertas consideraciones aparte que podrían ayudar a mejorar la claridad del texto. Además, las traducciones introducen algunas divergencias de significado que conviene también tener presente para futuras revisiones del texto y sus traducciones.

De entrada, la elección del adjetivo 'insidioso' para calificar los procesos de lenta degradación ambiental resulta un tanto peculiar. De acuerdo con el diccionario de la RAE, algo insidioso es algo "malicioso o dañino con apariencias inofensivas"; "que se hace con asechanzas"<sup>78</sup> –i.e. de manera oculta o disimulada. Dicho de un padecimiento o enfermedad, significa que ésta, "bajo una apariencia benigna, oculta gravedad suma"<sup>79</sup>. El Cambridge Dictionary y el Dictionnaire Larousse definen de un modo similar los vocablos 'insidious'<sup>80</sup> e 'insidieux'<sup>81</sup>, que emplean las respectivas versiones del proyecto en inglés y francés –la acepción médica del adjetivo aparece también recogida en el Larousse.

De las anteriores definiciones se desprende que con el adjetivo insidioso los redactores del proyecto pretendían enfatizar el hecho de que los procesos de degradación medioambiental que avanzan lentamente suelen pasar inadvertidos, pareciendo incluso inofensivos en sus primeros estadios, pese a ocultar una gravedad extrema que solo se percibe cuando sus consecuencias se hacen patentes. Sin embargo, esta explicación casa mal con la degradación programada que se entiende como resultado de un proyecto de desarrollo. El potencial impacto negativo que tiene la construcción de una presa o una carretera en el entorno natural no es desconocido o permanece escondido bajo una apariencia inofensiva. Por el contrario, se conoce y asume como una consecuencia necesaria que se justifica por la utilidad o el interés público al que sirve el proyecto.

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<sup>78</sup> RAE, [insidioso, insidiosa](#) | Definición | Diccionario de la lengua española (último acceso: 10/02/2020).

<sup>79</sup> Íd.

<sup>80</sup> CAMBRIDGE DICTIONARY, [Significado de Insidious](#) (último acceso: 10/02/2020).

<sup>81</sup> DICTIONNAIRE LAROUSSE, [Définitions : insidieux](#) (último acceso: 10/02/2020).

El intrínquilis lingüístico se acusa todavía más en la elección del adjetivo 'radical' para describir los cambios medioambientales de rápida aparición, ya que puede inducir a confusión. Según la RAE, 'radical' en castellano significa "extremoso, tajante, total o completo"<sup>82</sup>. Desde luego, que una isla sea engullida por las aguas del océano o que zonas otrora verdes se conviertan en desiertos pueden considerarse cambios radicales, en el sentido de "extremoso, tajante, total o completo". Sin embargo, la subida del nivel del mar o la desertificación son cambios graduales o paulatinos, no repentinos.

Esta confusión no se da en la versión en francés del convenio, que emplea en su lugar el adjetivo 'brutal' para referirse a los cambios súbitos en el medioambiente. Consultado nuevamente el Diccionario Larousse, este adjetivo, además de evocar una actuación violenta o de gran brusquedad, puede denotar algo "repentino y violento"<sup>83</sup>, como puede ser un desastre natural o un accidente industrial. La versión en inglés también se decanta por este adjetivo. Sin embargo, el significado de 'brutal' en francés no se corresponde plenamente con el que tiene en inglés: "cruel, violent, and completely without feelings"<sup>84</sup> –más propio, por tanto, de una actuación humana que de un proceso inanimado como pueda ser la degradación medioambiental.

Por todo lo expuesto, y para evitar confusiones terminológicas entre las distintas versiones auténticas del convenio, sería aconsejable reemplazar los términos actuales por los siguientes estándar: *cambio rápido o lento de su medio ambiente/ rapid or slow upheaval in their environment/ bouleversement rapide ou lente insidieux de leur environnement*.

Finalmente, el apartado 2º del artículo 3 amplía el alcance material de la definición de desplazado ambiental contenida en el artículo 2, al señalar: "El presente Convenio se aplica igualmente a los desplazamientos ambientales causados por conflictos". Así, junto a las interrupciones medioambientales propiamente dichas, el artículo 3.2 añade una tercera causa de desplazamiento que, a diferencia de aquéllas, sólo está relacionada tangencialmente con el medioambiente. Se trata de la destrucción

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<sup>82</sup> RAE, [radical](#) | Definición | Diccionario de la lengua española (último acceso: 10/02/2020).

<sup>83</sup> DICTIONNAIRE LAROUSSE, [Définitions : brutal](#) (último acceso: 10/02/2020).

<sup>84</sup> CAMBRIDGE DICTIONARY, [Significado de Brutal](#) (último acceso: 10/02/2020).



del entorno natural, bien como efecto colateral de un conflicto, bien como acto de violencia en sí mismo<sup>85</sup>.

Respecto a calificar a estos desplazados forzosos como ambientales, debe insistirse en que si la destrucción del medioambiente es aprovechada o intencionalmente provocada para perseguir a parte de la población por alguno de los motivos recogidos en la Convención de Ginebra, no estaremos ante desplazados medioambientales sino ante refugiados *de iure*. Igualmente, las personas que huyen de un conflicto o una situación de violencia generalizada en sus países de origen pueden acceder a la protección internacional subsidiaria dentro de la UE (Art. 2 (f) QD (recast)). Teniendo esto en cuenta, el artículo 30.2 del proyecto de Limoges establece que "[l]as disposiciones del presente Convenio no prejuzgan el derecho a buscar asilo o cualquier otra forma de protección nacional o internacional".

### 3. Elemento causal

Entre el movimiento de personas y la degradación medioambiental debe mediar una relación de causalidad, que se expresa en la necesidad de desplazarse para salvaguardar la propia existencia. La catástrofe súbita o la degradación lenta, progresiva o programada deben obligar a las personas, familias, grupos o poblaciones "a dejar sus lugares de residencia habitual". Por tanto, los cambios en el entorno han de ser, si no la causa directa en el sentido "maximalista", al menos la causa próxima –que dirían los "minimalistas"- de ese desplazamiento. El nexo clave sobre el que la definición de Limoges construye esta relación de causalidad es la *afectación inevitable* que la disrupción medioambiental tiene sobre las condiciones de vida –o la propia vida debiera añadirse-, forzando al desplazamiento.

El elemento de la afectación introduciría así un componente subjetivo a la hora de determinar que las condiciones de vida en el lugar de procedencia se habían vuelto

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<sup>85</sup> Autores "maximalistas" como El-Hinnawi también describieron como refugiados ambientales a la población desplazada por *ecocidios* como el de la guerra del Vietnam, o que no podían regresar a sus hogares una vez finalizada la contienda debido a los daños infligidos al entorno, incluida la contaminación causada por los restos peligrosos de municiones y explosivos (vid. EL-HINNAWI, E., *Environmental refugees*, Nairobi, United Nations Environment Programme (UNEP), 1985, pp. 38-40. Tb. OTUNNU, O., "Environmental refugees in Sub-Saharan Africa: causes and effects", *Refuge*, Vol. 12, No. 1, June 1992, p. 12. Richmond, A., *Global Apartheid: Refugees, Racism and the New World Order*, Toronto (Canada), Oxford University Press, 1994, as cited by O'LEAR, S., "Migration and the Environment: A Review of Recent Literature", *Social Science Quarterly*, Vol. 78, No. 2, June 1997, p. 614).

intolerables para el desplazado. Esta subjetivación plantea, sin embargo, varios interrogantes. En primer, qué condiciones de vida deben tomarse como referencia al evaluar el grado de afectación. ¿Las del ciudadano medio? ¿De qué país? ¿Habría que atender, en cambio, a las necesidades fundamentales, más básicas e imprescindibles de cualquier ser humano? En segundo lugar, el umbral de tolerancia a los cambios en esas condiciones de vida también variará de un individuo a otro. Esto supondría tener que considerar las circunstancias individuales del solicitante, especialmente las que puedan redundar en una mayor vulnerabilidad, al valorar el grado de compulsión que el deterioro de las condiciones de vida tuvo en la decisión de desplazarse.

Mayores dudas suscita la referencia a la inevitabilidad de dicha afectación, ya que ello obligaría a valorar también la actuación del Estado de origen a la hora de abordar, impedir o minimizar la disrupción del medioambiente que ha provocado el desplazamiento, lo que lleva a plantear la siguiente pregunta: si el Estado de origen hace cuánto puede para proteger a sus ciudadanos de los efectos adversos de los cambios medioambientales, ¿deja de aplicarse la protección internacional que dispensa la convención? No parece que sea éste el objetivo del proyecto.

Sin embargo, conviene señalar que la cuestión del papel del Estado en evitar que las disrupciones medioambientales afecten a la vida y el bienestar de las personas sujetas a su jurisdicción ya se ha planteado en el caso *Ioane Teitiota v. New Zealand*, concluyendo el HRC que la decisión de Nueva Zelanda de deportar al Sr. Teitioa y a su familia a Kiribati no violaba su derecho a la vida. Uno de los argumentos aducidos fue que este PEID de escasa elevación estaba actuando con diligencia, adoptando medidas de adaptación para reducir las vulnerabilidades existentes y aumentar así la resistencia de su población a los peligros relacionados con el cambio climático, como la subida del nivel del mar, la falta de agua potable o la pérdida de tierras de cultivo<sup>86</sup>. En última instancia, la inclusión de la *inevitabilidad* termina por cuestionar el origen mismo de la afectación de las condiciones de vida ¿De qué se hace depender ésta? ¿De la intensidad de la disrupción medioambiental y de sus repercusiones sobre los derechos humanos de las personas que la sufren, o de la respuesta del Estado?

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<sup>86</sup> HRC, *Ioane Teitiota v. New Zealand (advance unedited version)* [CCPR/C/127/D/2728/2016], 7 January 2020, párrs. 9.6 y 9.12.

Una vez expuesta la problemática que, en mi opinión, genera el inciso de que la alteración del medioambiente "afecte inevitablemente a las condiciones de vida", propondría la siguiente redacción alternativa: "*que lo haga inadecuado para la vida humana*". Esta formulación objetiva por completo el elemento causal, obligando sólo a constatar que el territorio del que procede el solicitante ha sufrido cambios medioambientales, de rápida o lenta actuación, que hacen peligrar la vida de quienes lo habitan.

#### 4. Elemento temporal y espacial

Desde un punto de vista temporal, carece de relevancia que el desplazamiento se haya producido de forma urgente o a lo largo del tiempo, siendo el tipo de interrupción y sus efectos –rápida/lenta- lo que determinará el ritmo de la partida. En cuanto a la duración del desplazamiento, el apartado 3.3 del artículo 2 señala que resulta indiferente que tenga carácter temporal o definitivo. Las implicaciones que ello tiene en cuanto a la duración de la protección internacional se analizan en el comentario al artículo 19 del proyecto, relativo al cese del estatuto.

Finalmente, la definición abarca tanto los desplazamientos que se produzcan "en el interior de un mismo Estado", como los transfronterizos –i.e. "desde el Estado de residencia hacia otro u otros Estados de acogida". Esta definición espacial del desplazamiento resulta coherente con el ámbito "universal" que el apartado 1º del artículo 3 predica de la convención, que se extiende tanto a los desplazados internos como a los internacionales.

Atendiendo a este alcance universal, habrá de concluirse que la convención resulta igualmente aplicable a los desplazados medioambientales *sur place*. El término 'sur place', que está tomado del ámbito del derecho de los refugiados<sup>87</sup>, haría referencia a aquellos desplazados que no tenían tal condición al abandonar sus lugares de residencia habitual, sino que la adquieren con posterioridad y de manera sobrevenida al no poder regresar a ellos por haber ocurrido una interrupción medioambiental.

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<sup>87</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (HCR/1P/4/ENG/REV.4), Reissued, Geneva (Switzerland), UNHCR, February 2019, párrs. 94-96.

## **2.4. Capítulo segundo: principios**

El capítulo 2 recoge una serie de principios, tomados del derecho del medio ambiente y de los derechos humanos, que han de guiar la actuación de los Estados a la hora de implementar el convenio. Su carácter de principios no significa, sin embargo, que carezcan de obligatoriedad, ya que los mismos se encuentran insertos en el propio texto del articulado y están expresados en lenguaje taxativo.

Este capítulo comprende los numerales 4 a 8, si bien es posible distinguir dos grupos de principios. Así, los artículos 4, 5 y 6 establecen los principios por los que las Partes deben regirse en la observancia de sus obligaciones convencionales. Por su parte, los artículos 7 y 8 recogen los principios que gobiernan el trato dispensado por las Partes a los desplazados medioambientales.

### **2.4.1. Principios que presiden el cumplimiento de las obligaciones del convenio**

#### **A) Artículo 4 - Principio de solidaridad**

La inspiración de este principio parece encontrarse en el Derecho de la UE. En concreto, el artículo 80 del TFUE<sup>88</sup> consagra el principio de solidaridad de los Estados miembros en las políticas sobre controles en las fronteras, asilo e inmigración. Este principio trata de equilibrar la presión asimétrica que soportan los Estados en cuanto a la recepción de flujos de refugiados, desplazados e inmigrantes. El artículo 4 de la convención cumpliría, pues, una función similar a la del artículo 80 TFUE, tratando de aliviar la carga adicional que la llegada de los desplazados medioambientales supone para las estructuras socio-económicas de las comunidades de acogida.

Así, si bien el principio de solidaridad ha de guiar el cumplimiento de todas las obligaciones derivadas de la convención, el artículo 4 se refiere expresa y específicamente al espíritu de solidaridad con el que las Partes "*acogen* a los desplazados medioambientales y contribuyen a los esfuerzos financieros necesarios" (la cursiva es propia). De la literalidad del precepto se desprende que su finalidad es, ante todo, asegurar que las Partes se apoyen mutuamente en la asistencia a los desplazados medioambientales, en particular cuando las capacidades de cualquiera de ellas se vean desbordadas. Por ello, este deber de solidaridad recíproca adquirirá especial

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<sup>88</sup> EU, *Consolidated version of the Treaty on the Functioning of the European Union*, OJEU (C 326), 26 October 2012, pp. 47-390.

preeminencia en el caso de desplazamientos multitudinarios o cuando se trate de Estados Partes que carezcan de los recursos necesarios para asistir a la población desplazada, por pequeña que sea.

Sobre la formulación de este principio, conviene hacer una precisión de carácter nuevamente terminológico: durante la exposición de este principio se ha preferido utilizar el término *asistencia* en lugar del de "acogida", que es el que aparece en el texto del artículo comentado<sup>89</sup>. Esta preferencia responde al alcance universal que el artículo 3.1 predica de la convención, que se aplica tanto al desplazamiento transfronterizo como interno.

En atención a su ámbito de aplicación, no parece adecuado, sin embargo, hablar de acogimiento en el caso del desplazamiento interno. Ciertamente, las personas internamente desplazadas son también "acogidas" en las comunidades que las reciben. Ahora bien, los sujetos destinatarios de la convención –a los que se dirige el deber de solidaridad– son, de acuerdo con la definición de "Parte" del artículo 2.1, los Estados y las organizaciones internacionales regionales de integración económica con competencias en materias de la convención, y no las entidades sub-nacionales. Además, como señalan los Principios Rectores de los Desplazamientos Internos, el hecho mismo del desplazamiento no implica cambio alguno en el estatus legal de los desplazados<sup>90</sup>.

¿Puede decirse, entonces, que las Partes "acogen" a quienes no sólo se encuentran ya dentro de sus fronteras sino que, además, están legalmente sujetos a su jurisdicción? Parece más acertado afirmar que los Estados Partes, en virtud del principio de solidaridad, *asisten* a las personas desplazadas, dentro o fuera de sus fronteras, en vista de la mayor vulnerabilidad a la que se enfrentan como consecuencia del desplazamiento. Por tanto, se propone sustituir el verbo "acoger" por "asistir" en el texto del artículo 4 del proyecto.

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<sup>89</sup> Términos equivalentes a 'acoger' han sido también empleados en la versión en inglés ('host') y francés ('accueillir').

<sup>90</sup> KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations*, Studies in Transnational Legal Policy, No. 38, 2<sup>nd</sup> ed., Washington, DC (USA), The American Society of International Law, 2008, pp. 4 *in fine* and 5. (último acceso: 28/08/2020).

## **B) Artículo 5 - Principio de responsabilidades comunes pero diferenciadas**

El principio de responsabilidades comunes pero diferenciadas (CBDR, por sus siglas en inglés) apareció formulado en el Principio 7 de la Declaración de Río sobre Medioambiente y Desarrollo de 1992<sup>91</sup>, y se ha convertido en un principio general vertebrador del Derecho Internacional del medio ambiente<sup>92</sup>, incluido el régimen sobre cambio climático<sup>93</sup>. Varios de los autores examinados han considerado el principio de responsabilidades comunes pero diferenciadas como un principio clave de cualquier marco de protección de las personas medioambientalmente desplazadas. Los autores recurren a él para determinar de forma proporcional las contribuciones que deben hacer los países desarrollados para financiar los costes de protección y asistencia a los desplazados, teniendo en cuenta su mayor responsabilidad en la degradación del medio ambiente y el cambio climático<sup>94</sup>.

Fiel a su contenido, este principio reconoce en el ámbito de la convención de Limoges que todos los Estados comparten la responsabilidad de abordar los desafíos del desplazamiento medioambiental, pero que no todos ellos han contribuido por igual a la degradación ambiental que lo ha causado, ni se verán igualmente afectados por él. Las poblaciones de los países en desarrollo, y especialmente las de los países menos adelantados y los PEID, serán las mayoritariamente desplazadas a pesar de ser las que menos que han intervenido en la degradación del medioambiente global. Los redactores de la propuesta de Limoges proyectan el principio de CBDR tanto en la propia convención como en el futuro protocolo que ha de negociarse sobre la responsabilidad de los actores públicos y privados-

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<sup>91</sup> UNGA, “Annex I Rio Declaration on Environment and Development”, in: *Report of the United Nations Conference on Environment and Development. Rio de Janeiro, 3-14 June 1992* [A/CONF.151/26 (Vol. I)], 12 August 1992, 5 pp.

<sup>92</sup> Vid. PENTINAT, S.B., “Análisis jurídico del principio de responsabilidades comunes, pero diferenciadas”, *Seqüência: estudos jurídicos e políticos*, Vol. 25, N. 49, 2004, pp. 153-198. Vid. tb. STONE, C.D., “Common but Differentiated Responsibilities in International Law”, *The American Journal of International Law*, Vol. 98, No. 2, Apr. 2004, pp. 276-301.

<sup>93</sup> En el marco sobre cambio climático, el principio CBDR ha sido recogido en los artículos 3.1 y 4.1 de la CMNUCC.

<sup>94</sup> BIERMANN, F.; BOAS, I., “Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees”, *op. cit.*, p. 76. DOCHERTY, B.; GIANNINI, T., “Confronting a rising tide: a proposal for a convention on climate refugees”, *op. cit.*, pp. 386-387; and HODGKINSON, D. ET AL., “‘The Hour when the ship comes in’: a convention for persons displaced by climate change”, *op. cit.*, pp. 98 *in fine* a 100, utilizan este principio para fijar las contribuciones de los Estados Partes (en el caso de Hodgkinson et al., solo de los países desarrollados) al fondo global que proponen.

1. El principio de responsabilidades comunes pero diferenciadas en el ámbito de la convención

El apartado 1 del artículo 5 de la convención establece que, "sobre la base de la equidad, las obligaciones reconocidas por el presente Convenio se ejercerán respetando el principio de responsabilidades comunes pero diferenciadas." El principio de CBDR pretende, por tanto, garantizar la igualdad sustantiva o material entre las Partes introduciendo el criterio de la "equidad", que ha de guiar el reparto de las cargas financieras y de acogimiento entre los Estados Partes en función de sus respectivas capacidades. Señalar, respecto a la redacción, la conveniencia de sustituir el verbo 'ejercer' por 'cumplir', más apropiado en el ámbito de las obligaciones.

En cuanto a la distribución equitativa de la carga del acogimiento, el principio de CBDR podría materializarse en la creación de un sistema de cupos, similar al que puso en marcha la UE en 2015 para hacer frente a la crisis de desplazados sirios procedentes de Turquía<sup>95</sup>. Así, cada Estado Parte comunicaría, en función de sus capacidades, el número de plazas de acogida que puede ofrecer. En su conjunto, estas contribuciones individuales obligatorias al sistema de cupos conformarían la reserva de plazas de acogida de la convención. El excedente de desplazados que soportase una Parte se redistribuiría entre los Estados cuyos cupos de acogida todavía no estuviesen cubiertos. Las necesidades adicionales de acogida que pudieran darse en momentos puntuales, especialmente desencadenadas por disrupciones medioambientales de rápida aparición, se atenderían a través de acuerdos voluntarios de acogida.

Debe precisarse que la redistribución de desplazados ambientales entre las Partes en función de la oferta y las necesidades de acogimiento estaría pensada, esencialmente, para la acogida de desplazados transfronterizos. No parece admisible que, tratándose de flujos de desplazados internos, se proceda a su reasentamiento en el territorio de otras Partes, salvo acuerdo con el Estado afectado y siempre mediando el consentimiento de los desplazados internos que van a ser reasentados internacionalmente. El principio de CBDR, en el caso del desplazamiento interno, debiera preferentemente materializarse en forma de apoyo financiero y logístico al Estado afectado, incluido el envío de asistencia humanitaria, con el fin de fortalecer sus capacidades de acogida y asistenciales. No

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<sup>95</sup> Vid. COUNCIL OF THE EUROPEAN UNION, *Conclusiones de los representantes de los Gobiernos de los Estados miembros, reunidos en el seno del Consejo, sobre el reasentamiento mediante programas multilaterales y nacionales de 20 000 personas claramente necesitadas de protección internacional* (Doc. 11130/15 ASIM 62 RELEX 633), Bruselas, 22 de julio de 2015, 6 pp.

obstante, de procederse al acogimiento internacional de desplazados internos, convendría igualmente que éste se llevase a cabo siguiendo un criterio de proximidad geográfica –i.e., prefiriéndose para el acogimiento a aquellos Estados Partes más cercanos al Estado de origen.

En todo caso, será necesario que las Partes acuerden los criterios objetivos en los que se concreta el principio de CBDR, y que han de servir para determinar su capacidad tanto contributiva como de acogimiento. En cuanto a las aportaciones financieras, estos criterios deberían ser puramente económicos –e.g. el PIB o el nivel de endeudamiento. Tratándose de las aportaciones a un eventual sistema de cupos, el número de plazas que un Estado pueda ofertar debiera fijarse atendiendo, además de a factores económicos, a otros criterios técnico-logísticos como número de centros de acogida que posee en su territorio y capacidad de los mismos, nivel de congestión de los sistemas asistenciales y de seguridad social del Estado, o grado de saturación de los servicios escolares y sanitarios.

2. El principio de responsabilidades comunes pero diferenciadas aplicado al Protocolo adicional a la convención sobre la responsabilidad de los actores públicos y privados

El apartado 2º del artículo 5 de la convención de Limoges declara que este principio de trato diferenciado habrá de informar un futuro protocolo adicional a la convención en el que se establezcan las acciones de hacer y de no hacer –"obligaciones positivas y negativas"- que las Partes se obligan a llevar a cabo para prevenir y reparar la degradación ambiental que subyace al desplazamiento. En vista de la desigual forma en que los países en desarrollo han contribuido a crear los problemas ecológicos actuales, estas obligaciones deberán tener en cuenta su situación de mayor vulnerabilidad y sus necesidades particulares de desarrollo, respetando en todo caso el principio de soberanía sobre los recursos naturales<sup>96</sup>.

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<sup>96</sup> El principio sobre la soberanía de los recursos naturales ha sido recogido en multitud de textos internacionales. Vid. UN, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, UNTS, Vol. 993, No.14531, pp. 3-106, Article 1.2. UNGA, *Resolution 2158 (XXI) Permanent Sovereignty over natural resources, adopted by the General Assembly at its Twenty-first session*, [A/RES/2158(XXI)], 1967, pp. 29-30. UNGA, *Resolution 3281(XXIX) Charter of Economic Rights and Duties of States, adopted by the General Assembly at its Twenty-ninth session* [A/RES/3281(XXIX)], 1975, Article 1 and Article 2.1. UNGA, *Resolution 61/295 United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly at its Sixty-first session* (A/RES/61/295), 2 October 2007, Artículo 26. ILO, *Indigenous and Tribal Peoples Convention C169*, 27 June 1989, Article



Tal y como desde un principio señaló la doctrina "maximalista" al abordar el origen de los desplazamientos medioambientales, el deterioro del medioambiente que sufren estos países está fuertemente relacionado con sus altas tasas de natalidad y con un modelo económico que perpetúa su situación de pobreza. Por consiguiente, el éxito de un protocolo a la convención que impulse políticas proteccionistas del medioambiente sólo será efectivo si el desarrollo del llamado Tercer Mundo está debidamente garantizado en base a este principio de CBDR.

Señalar, por último, que el artículo 5.2 incluye en el ámbito de regulación del futuro protocolo, además de la responsabilidad de los actores públicos, la de los actores privados. Cabe pensar, pues, que este protocolo aspira a colmar otra notable laguna del ordenamiento jurídico internacional, a saber: la responsabilidad de las empresas multinacionales por la destrucción del medioambiente<sup>97</sup> y su papel en la sobreexplotación y agotamiento de los recursos naturales, especialmente en los países pobres, que actualmente es objeto de debate<sup>98</sup>.

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15. A nivel regional, hay que destacar: OAU, *African Charter on Human and Peoples' Rights (the Banjul Charter)*, 27 June 1981, UNTS, Vol. 1520, No. 26363, pp. 217-292, Article 21.

<sup>97</sup> La responsabilidad que otros actores no estatales tienen en la degradación del medioambiente que causa el desplazamiento ha sido reconocida en el artículo 3.1 (i) de la Convención de Kampala sobre la protección de los desplazados internos en África: "States shall ensure the accountability of non-State actors involved in the exploration and exploitation of economic and natural resources leading to displacement" (in: AU, *African Union Convention for the protection and assistance of internally displaced persons in Africa (Kampala Convention)*, 23 October 2009, UNTS, Vol. 3014, No. 52375, p. 36).

<sup>98</sup> Vid., *inter alia*, OSABUOHEN, E.S.; EFOBI, U.R.; GITAU, C.M.W., "External Intrusion, Internal Tragedy: Environmental Pollution and Multinational Corporations in Sub-Saharan Africa", in: Leonard, L. and Alejandra Gonzalez-Perez, M. (ed.), *Principles and Strategies to Balance Ethical, Social and Environmental Concerns with Corporate Requirements (Advances in Sustainability and Environmental Justice, Vol. 12)*, Bingley (UK), Emerald Group Publishing Limited, 2013, pp. 93-118. LEONARD, H.J., *Pollution and the Struggle for the World Product Multinational Corporations, Environment, and International Comparative Advantage*, Cambridge (UK), Cambridge University Press, only publication: January 2012, 254 pp. KALU, K.; OTT, K., "Ethical Issues in Environmental Pollution: Multinational Corporations (MNCs) and Oil Industries in Tropical Regions—The Nigerian Niger-Delta Case", in: Chemhuru M. (ed.), *African Environmental Ethics (The International Library of Environmental, Agricultural and Food Ethics, Vol 29)*, New York (USA), Springer, Cham., online publication: May 2019, pp. 271-289. SIMON, D.R., "Corporate Environmental Crimes and Social Inequality: New Directions for Environmental Justice Research", *American Behavioral Scientist*, Vol. 43, Issue 4, 2000, pp. 633-645. WIJESINGHE, P., "Environmental Pollution and Human Rights Violations by Multinational Corporations", *SSRN*, April 2018, 17 pp.

### **C) Artículo 6 - Principio de protección**

El artículo 6 impone a los Estados Partes una obligación de desarrollo, exigiéndoles que adopten las políticas que sean necesarias para permitir a los desplazados ambientales el pleno ejercicio de los derechos garantizados en la convención. Así pues, este precepto consagra el clásico *principio de efectividad*, renombrado como "principio de protección efectiva" –si bien la versión en español se refiere a él simplemente como "principio de protección", al contrario que las versiones en inglés y francés. El cambio de nomenclatura enfatiza, con buen criterio, que los derechos que recoge la convención, y que los Estados Partes tienen la obligación de hacer efectivos, son imprescindibles para que los desplazados gocen de una protección integral. Este principio es, además, una manifestación del principio *pacta sunt servanda*, conforme al cual "[t]odo tratado en vigor obliga a las partes y debe ser cumplido por ellas de buena fe"<sup>99</sup>.

Este principio de efectividad se ve reforzado, *ad extra*, por lo dispuesto en el artículo 31.2 de la convención. Conforme al citado precepto: "Las Partes se comprometen a adoptar las medidas apropiadas, de conformidad con el derecho internacional, para asegurar que nadie participe en actividades contrarias al propósito, al objeto y a los principios del presente Convenio".

#### **2.4.2. Principios sobre el trato de los desplazados ambientales**

##### **A) Artículo 7 - Principio de no discriminación**

El artículo 7 garantiza que los Estados Partes dispensen el mismo estándar de trato a todas las personas que caen bajo el ámbito de protección de la convención. De ese modo, prohíbe a los Estados Partes hacer discriminaciones en cuanto al disfrute de los derechos garantizados en ella "por razón de sexo, género, orientación sexual, raza, color, lengua, religión, opinión política u otra, origen nacional o social, pertenencia a una minoría nacional, fortuna, nacimiento, discapacidad física o cualquier otra situación".

Este principio de no discriminación en la prestación de protección y asistencia a los desplazados también ha sido incluido en las propuestas de Docherty y Giannini y de

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<sup>99</sup> Vid. UN, *Vienna Convention on the Law of Treaties*, 23 May 1969, UNTS, Vol. 1155, No. 18232, p. 450, Article 26.

Hodgkinson et al<sup>100</sup>. En contraste con estas propuestas, que se limitan a enunciar este principio, la cláusula de no discriminación del proyecto de Limoges es extremadamente amplia y algunos de los motivos que los redactores han incluido merecen cierta consideración.

Comenzando por la distinción entre sexo y género, la Organización Mundial de la Salud ha definido el 'sexo' como "las características biológicas y fisiológicas que definen a hombres y mujeres". "«Macho» y «hembra» son categorías sexuales"<sup>101</sup>. Por el contrario, el 'género' se refiere "a los roles, comportamientos, actividades y atributos construidos socialmente que una sociedad determinada considera apropiados para hombres y mujeres". "«Masculino» y «femenino» son categorías de género"<sup>102</sup>. En tanto que la discriminación es una manifestación de la construcción social del género, la referencia al sexo es irrelevante. Además, el género, como causa de discriminación, permite englobar a las personas que adoptan la apariencia, atributos, comportamientos y roles sociales del género opuesto al que les corresponde biológicamente (*transgénero*). Sin embargo, no ocurre así con el sexo, dada la inalterabilidad de los cromosomas sexuales (XX/XY).

Otro tanto podría decirse de la "raza" y el "color", siendo este último una característica racial. Sin embargo, no se prevé la *etnia* como causa de discriminación. Ocurre igual con la procedencia "nacional o social", que viene determinada respectivamente por el "nacimiento" y la "fortuna" –también previstas como causas separadas de discriminación. Del mismo modo, la "pertenencia a una minoría nacional" queda diluida en los atributos que definen a esa minoría, como pueda ser la raza, la lengua o la religión –todas ellas ya incluidas como causas de discriminación. Por su parte, la referencia a la "opinión política u otra" quedaría mejor formulada con la

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<sup>100</sup> Vid. DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, pp. 377 *in fine* y 378, proponiendo como modelos para la cláusula de no discriminación del nuevo instrumento el artículo 3 de la Convención sobre el Estatuto de los Refugiados o el artículo 2(2) del PIDESC, incluyendo en ambos casos una mención adicional a la discapacidad y la orientación sexual. HODGKINSON, D. ET AL., "The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, p.103 respecto a la asistencia internacional.

También el marco de Península acoge este principio de no discriminación (principio 3), pero centrado en evitar discriminaciones entre los desplazados internos y las demás personas en su país en el disfrute de los derechos y libertades reconocidos por el derecho internacional y nacional a causa de su desplazamiento potencial o actual (en línea con lo dispuesto por el Principio Rector No. 1 de los Desplazamientos Internos).

<sup>101</sup> WHO, *Gender, women and health. What do we mean by "sex" and "gender"?*, 28 May 2014, 1 p. (último acceso: 25/10/2020).

<sup>102</sup> *Íd.*

terminología tradicional de "ideología". Finalmente, debiera incluirse la discapacidad mental junto a la física.

Teniendo en cuenta las duplicidades y ausencias mencionadas, el artículo 7 podría reformularse de la siguiente manera:

*Los derechos reconocidos en el presente Convenio deben garantizarse sin discriminación por razón de género, orientación sexual, raza, etnia, lengua, religión, ideología, origen nacional o social, discapacidad física o psíquica o por cualquier otra situación.*

Otra redacción alternativa, más escueta pero igualmente efectiva, sería: *Los derechos reconocidos en el presente Convenio deben garantizarse sin discriminación de ningún tipo.*

#### **B) Artículo 8 - Prohibición de la expulsión y devolución (non-refoulement)**

Por último, el artículo 8 de la convención consagra el principio de no retorno (*non-refoulement*) en el ámbito del desplazamiento ambiental, conforme al cual: "Las Partes se abstendrán de expulsar o devolver a cualquier solicitante del estatuto de desplazado ambiental". La relevancia de este principio también se ha reconocido en algunos de los marcos propuestos sobre desplazamiento climático<sup>103</sup>.

El principio de *non-refoulement* tiene su sede natural en la Convención de Ginebra sobre el Estatuto de los Refugiados (art. 33.1). Sin embargo, como se expuso en el Capítulo V, esta prohibición ha alcanzado hoy en día el estatus de principio consuetudinario en el ámbito de la protección de los derechos humanos<sup>104</sup>. Su finalidad es impedir el retorno forzoso de un refugiado a un país en el que sea objeto de persecución por motivos de raza, religión, nacionalidad, pertenencia a un determinado grupo social u opiniones políticas, así como evitar que un no nacional pueda ser retornado a un Estado en el que su vida o su dignidad se vean seria y gravemente amenazadas.

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<sup>103</sup> DOCHERTY, B; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, p. 377. HODGKINSON, D. ET AL., "'The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, p. 110.

<sup>104</sup> Como se ha explicado en el citado Capítulo, en el marco de los derechos humanos, el principio de *non-refoulement* se ha derivado implícitamente de la protección del derecho a la vida y de la prohibición de ser sometido a tortura o a penas o tratos crueles, inhumanos o degradantes.

De lo anterior se desprende que los beneficiarios de esta prohibición de retorno son, por regla general, los extranjeros. Esta afirmación no significa, sin embargo, que este principio sea irrelevante en el caso de los desplazamientos internos y que, por lo tanto, el artículo 8 deba suprimirse por superfluo en favor del artículo 13 del proyecto – que establece la prohibición de expulsión de los desplazados transfronterizos. En el contexto del desplazamiento interno, el *non-refoulement* impediría retornar al desplazado a su lugar de residencia habitual o su traslado a cualquier otra parte del país en la que exista una amenaza ambiental como la descrita en el artículo 2.3 del proyecto. De hecho, la letra d) del Principio Rector No. 15 prohíbe que los desplazados internos puedan ser forzados a regresar o a reasentarse "en cualquier lugar donde su vida, seguridad, libertad y salud se encuentren en peligro"<sup>105</sup>.

Aclarado el ámbito de aplicación universal que el proyecto de Limoges atribuye al principio de no retorno, que protege tanto a los desplazados transfronterizos como a los internos, hay que referirse al momento en el que esta prohibición comienza a operar. A este respecto, los redactores de Limoges han sido más precisos que los de Ginebra, ya que se impide expresamente el retorno desde que se interpone la solicitud de protección. La Convención de 1951, en cambio, sólo se refiere a los refugiados, lo que había dado pie a argumentar que la prohibición de retorno únicamente rige respecto a quien ya ha sido formalmente reconocido como tal, dejando fuera a los solicitantes de refugio<sup>106</sup>. En el caso de los Principios Rectores, esta cuestión no se plantearía, ya que el desplazamiento interno es una situación fáctica, y no un estatuto jurídico cuyo reconocimiento deba solicitarse. Por lo tanto, el principio de *non-refoulement* es plenamente funcional desde el momento en el que una persona se encuentra en una situación de desplazamiento interno.

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<sup>105</sup> COMMISSION ON HUMAN RIGHTS, *Report of the Representative of the Secretary-General, Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39. Annex Guiding Principles on Internal Displacement* (E/CN.4/1998/53/Add.2), 11 February 1998, p. 10 [traducción del autor del original en inglés].

<sup>106</sup> Esta cuestión fue resuelta por el UNHCR'S EXECUTIVE COMMITTEE, *Conclusion on Non-Refoulement No. 6 (XXVIII) – 1977*, October 1977, reafirmando "la importancia fundamental de observar el principio de no devolución, tanto en la frontera como en el territorio de un Estado, respecto de las personas que pueden ser objeto de persecución si son devueltas a su país de origen, *independientemente de que hayan sido reconocidas formalmente como refugiados*". [énfasis añadido y traducción del autor del original en inglés]. Para un comentario sobre el ámbito subjetivo del principio de *non-refoulement* en el marco de la Convención de 1951, vid. LAUTERPACHT, E.; BETHLEHEM, D., "The Scope and Content of the Principle of Non-Refoulement (Opinion)", *Global Consultations on International Protection/Second Track*, UNHCR, June 2001, párrs. 89-99 (último acceso: 13/05/2020).

Ahora bien, tan importante es impedir el retorno forzoso durante la sustanciación del procedimiento de concesión, como una vez se ha obtenido el estatuto de desplazado ambiental. A pesar de ello, el artículo 8 sólo se refiere a los solicitantes de protección, por lo que sería deseable que se extendiese el ámbito subjetivo de este precepto para cubrir por igual a solicitantes y beneficiarios<sup>107</sup>.

En cuanto al alcance espacial de los actos prohibidos, el principio de no retorno ha adoptado generalmente la forma de una prohibición relativa. O lo que es lo mismo, no se permite la expulsión o la devolución de una persona a un territorio en el que exista un peligro real para su vida, su dignidad, su libertad o su seguridad. A este respecto, debe señalarse que el principio de no retorno prohíbe tanto el retorno directo como el retorno indirecto o en cadena. El retorno directo implica el traslado del retornado a cualquier lugar en el que se enfrente a un riesgo fundado de persecución o de sufrir un daño grave a esos bienes jurídicos protegidos. Por su parte, el retorno indirecto o en cadena impide los reenvíos sucesivos a terceros lugares en los que el retornado esté expuesto a las mismas amenazas que en el caso del retorno directo<sup>108</sup>. Fuera de estos supuestos, el traslado, siempre y cuando no sea arbitrario, es admisible.

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<sup>107</sup> En la versión en inglés del proyecto, el principio de *non-refoulement* ha sido redactado de una manera un tanto peculiar. Dice el citado precepto: "The Parties may not turn a refugee or asylum candidate into an environmentally displaced person". Su tenor literal cambia por completo el significado de este principio, que así formulado lo que viene a prohibir es que se reconozca a un solicitante de asilo o a un refugiado el estatus de desplazado medioambiental hasta que se rechace la solicitud de asilo o cese el estatus de refugiado. Sin embargo, este eventual conflicto de estatutos que pudiera surgir porque un individuo reúna al mismo tiempo las condiciones para ser reconocido como refugiado y como desplazado ambiental ya es resuelto por el artículo 30 del proyecto. Conforme a su apartado 2º, ni solicitar el reconocimiento del estatuto de desplazado ambiental ni ser beneficiario del mismo "prejuzga el derecho a buscar asilo o cualquier otra forma de protección nacional o internacional". Igualmente, nada impediría que la persona en cuestión disfrutase de ambos estatutos simultáneamente, aplicándose cada uno de ellos en aquellos extremos que resultasen más ventajosos al interesado. Esta posibilidad contaría con el respaldo del artículo 30 del proyecto, cuyo apartado 1º enuncia que las disposiciones del convenio se entienden sin perjuicio de los derechos y garantías más favorables que pudieran corresponder a los desplazados ambientales y climáticos en virtud de otros instrumentos, tanto nacionales como internacionales. Tampoco la Convención de Ginebra pondría impedimento alguno a ello. El apartado C del artículo 1 prevé, entre los motivos para el cese de la condición de refugiado, el haber obtenido la protección del país de la nacionalidad o la nacionalidad de otro país que lo proteja, pero no se dice nada sobre el disfrute de cualquier otro estatuto de protección en el Estado de acogida. Una vez aclarada la posibilidad de que un desplazado medioambiental pueda ser, a su vez, solicitante o beneficiario de la condición de refugiado, convendría modificar la redacción del artículo 8 del proyecto en inglés a fin de que refleje el verdadero contenido del principio de *non-refoulement*.

<sup>108</sup> Vid. LAUTERPACHT, E.; BETHLEHEM, D., "The Scope and Content of the Principle of Non-Refoulement (Opinion)", *op. cit.*, párrs. 112-121 and 242-243. UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, párr. 20. EUROPEAN AGENCY FOR FUNDAMENTAL RIGHTS, *Scope of the principle of non-refoulement in contemporary border management:*

En cambio, el artículo 8 del proyecto parece establecer esta prohibición de retorno en términos absolutos –i.e. ni solicitante ni el beneficiario del estatuto de desplazado ambiental pueden ser trasladados a ninguna parte, exista o no un peligro para su vida o su dignidad. Puesto que el objeto de la convención es proteger a las personas frente a aquellos cambios en su medioambiente que afectan gravemente a sus condiciones de vida, convendría limitar el alcance del principio de no retorno en este mismo sentido.

Finalmente, desde una perspectiva formal, la prohibición se extiende a cualquier procedimiento de retorno, independientemente del nombre que reciba en el derecho interno –expulsión, devolución, regreso, etc.<sup>109</sup>. En este sentido, resulta mucha más clara la denominación de este principio en el derecho anglosajón o francés –*le principe de non-refoulement* o *the principle of non-refoulement*. La traducción que habitualmente se hace de él en el derecho español –*no devolución*– podría inducir a error en aquellos ordenamientos jurídicos, como el de España, en los que la legislación de extranjería distingue entre expulsión y devolución<sup>110</sup>, llevando a pensar que la devolución está prohibida pero no así la expulsión.

Tal vez por ello, la versión en español del proyecto de Limoges evita esta traducción, habiendo preferido los traductores seguir el ejemplo del texto en castellano de la Convención de Ginebra de 1951, que se refiere al principio de no retorno como "prohibición de la expulsión y devolución", dejando entre paréntesis su nomenclatura original "(non-refoulement)". Nada hay que objetar a esta opción, que desde luego favorece la seguridad jurídica y goza de cierto arraigo, al ser la fórmula que emplea la Convención sobre los refugiados. Otra alternativa sería traducirlo como principio de no retorno, que es por la que se ha optado en esta exégesis.

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*evolving areas of law*, Luxembourg, Publications Office of the European Union, 2016, p. 14 (último acceso: 05/03/2021).

<sup>109</sup> LAUTERPACHT, E.; BETHLEHEM, D., *op. cit. supra*, párr. 241.

<sup>110</sup> SPAIN, *Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social* (Entrada en vigor: 01/02/2000), «BOE» Núm. 10, de 12 de enero de 2000 (BOE-A-2000-544), artículos 57 y 58.

## 2.5. Capítulo sexto: instituciones y órganos

### 2.5.1. Comparativa de la organización institucional prevista por los distintos proyectos normativos

Todas las propuestas examinadas que abordan el déficit de protección de los desplazados ambientales y climáticos contienen estipulaciones de carácter institucional. No obstante, la estructura orgánica diseñada en cada caso varía en función de los objetivos, el alcance y el ámbito en el que se enfoca la propuesta en cuestión.

Por ejemplo, los Principios de Península, por su naturaleza de directrices orientadas al ámbito interno, se limitan a afirmar que corresponde a los gobiernos nacionales establecer "los ministerios, departamentos, oficinas y/o agencias a nivel local (en particular), regional y nacional" necesarios para aplicar el contenido de los Principios, así como dotarlos de las competencias y la financiación adecuadas para ello<sup>111</sup>. De este modo, se deja a los Estados la libertad de elegir el marco institucional que consideren adecuado, sin más requisitos que el de que sea eficaz para prestar asistencia y protección a los desplazados internos víctimas del cambio climático.

Esta libertad institucional contrasta con la necesaria homogeneidad que los proyectos de tratado internacional imponen a los Estados Partes en cuanto a los organismos que han de sustentar el marco normativo propuesto. La complejidad del armazón institucional y el grado de detalle con el que es descrito difiere, sin embargo, según el autor. Hay propuestas organizativas sencillas, como la de Williams, que se reduce a un único órgano subsidiario dentro de la CMNUCC. Este organismo se encargaría de coordinar y facilitar el intercambio de información y el contacto entre las diversas iniciativas y marcos que cada región o subregión decida emprender para la protección y asistencia de los desplazados climáticos dentro de sus respectivas áreas geográficas<sup>112</sup>.

Propuestas como las de Docherty y Giannini, Biermann y Boas, Hodgkinson et al. o la propia de Limoges, al optar por un único tratado internacional de alcance universal, requieren, en cambio, de un cuerpo institucional más robusto. Aunque cada una de las

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<sup>111</sup> DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, principio 13 [traducción del autor del original en inglés].

<sup>112</sup> WILLIAMS, A., "Turning the tide: Recognizing climate change refugees in International Law", *op. cit.*, p. 521.



propuestas mencionadas diseña su propia arquitectura institucional, hay tres organismos que se repiten en todas ellas: un órgano de dirección y ejecución, a veces desdoblado en un órgano específico de asistencia y protección de los desplazados; un órgano científico, y un fondo de financiación.

Biermann y Boas proponen la creación de un comité ejecutivo sobre el reconocimiento, la protección y el reasentamiento de los refugiados climáticos, bajo la autoridad de la COP de la CMNUCC, que actuaría también como Reunión de las Partes del Protocolo sobre Refugiados Climáticos que proponen<sup>113</sup>. En apoyo del comité, en lugar de un único organismo creado *ex profeso* para la asistencia y protección de los desplazados, los autores sugieren establecer una "red de agencias". Esta red reuniría a una serie de agencias ya existentes, como el PNUD, el Banco Mundial, el PNUMA o el ACNUR, cuya participación en la aplicación del Protocolo los autores consideran pertinente, actuando cada una de ellas en sus respectivos ámbitos competenciales e interviniendo en función del tipo, las circunstancias y las necesidades de las poblaciones desplazadas<sup>114</sup>. Una nueva subdivisión dentro de la secretaría de la CMNUCC serviría de pequeña unidad de coordinación entre las diferentes agencias<sup>115</sup>. Finalmente, Biermann y Boas proponen constituir un órgano científico, bien como subgrupo dentro del Órgano Subsidiario de Asesoramiento Científico y Tecnológico de la CMNUCC, bien como órgano creado *ex novo* y exclusivo del Protocolo<sup>116</sup>.

Por su parte, Docherty y Giannini prevén, además de la creación de un fondo global<sup>117</sup> y de un cuerpo de expertos científicos<sup>118</sup>, el establecimiento de una agencia de coordinación al estilo del ACNUR. Esta agencia se encargaría de asistir a las partes en la aplicación del convenio, colaborando tanto con los Estados de origen en la prevención de situaciones desplazamiento como con los Estados de acogida en la asistencia y protección de los desplazados; ayudando al retorno o al reasentamiento

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<sup>113</sup> BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, p. 77.

<sup>114</sup> *Ibíd.*, p. 79.

<sup>115</sup> *Íd.*

<sup>116</sup> *Ibíd.*, p. 77 *in fine*.

<sup>117</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, pp. 385-388.

<sup>118</sup> *Ibíd.*, pp. 389-391.

permanente de los desplazados, y recogiendo y distribuyendo las aportaciones de asistencia en especie de los Estados<sup>119</sup>.

Frente a la relativa sobriedad de las propuestas anteriores, Hodgkinson et al. plantean la creación de toda una organización internacional dedicada en exclusiva a la asistencia y protección de los desplazados –the "Climate Change Displacement Organisation"–, dotada de un complejo entramado institucional que comprende: a) una asamblea de Estados Partes, que actúa como órgano de gobierno del convenio y ante la que cada Parte debe acreditar un embajador o representante; b) un consejo como órgano de dirección; c) comités regionales, en calidad de órganos de representación territorial que informan la actuación del consejo en clave regionalista; d) un órgano científico; e) un fondo de asistencia financiera; f) un comité de apelación; g) grupos de implementación, concebidos como un marco multilateral de encuentro y participación de los distintos actores implicados en los procesos de reasentamiento que se lleven a cabo; h) una secretaría permanente para asistir a tan basto organigrama, y i) comités nacionales de desplazados climático como cauce para permitir su participación en la implementación del instrumento<sup>120</sup>.

Por último, los redactores del proyecto de Limoges han diseñado un entramado institucional suficiente para atender las funciones de dirección, financiación, investigación, asistencia y protección que requiere cualquier marco convencional sobre desplazamiento ambiental o climático, sin caer en la excesiva complejidad orgánica de la propuesta de Hodgkinson et al. La definición de los órganos convencionales, así como su composición y funciones, son objeto del capítulo 6 del proyecto, que prevé la creación de los siguientes organismos: a) la Conferencia de las Partes (CP); b) la Agencia Mundial para los Desplazados Ambientales (AMDA); c) la Alta Autoridad (AA), y d) el Fondo Mundial para los Desplazados Ambientales (FMDA). Junto a estas instituciones de nuevo cuño, el proyecto también atribuye importantes funciones a la OIM.

Los siguientes sub-epígrafes se dedican a comentar cada una de estas cinco instituciones. En el caso de la AMDA, el FMDA y la AA, el proyecto de convenio remite los pormenores de su organización y funcionamiento a sendos protocolos

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<sup>119</sup> *Ibíd.*, pp. 388-389.

<sup>120</sup> HODGKINSON, D. ET AL., “‘The Hour when the ship comes in’: a convention for persons displaced by climate change”, *op. cit.*, pp. 93-97.

adicionales que, en la medida de lo posible, la CP debería adoptar en su primera sesión (art. 24). Asimismo, el artículo 26 establece tres principios que han de guiar la actuación de las instituciones del tratado en el ejercicio de sus competencias, a saber: "el acceso a la información, la participación del público en el proceso de adopción de decisiones y el acceso a la justicia en el ámbito del medio ambiente".

### **2.5.2. Artículo 20 - Conferencia de las Partes (CP)**

El artículo 20 instituye a la CP como el órgano rector de la convención<sup>121</sup>, siendo equivalente a la Asamblea de Partes que proponen Hodgkinson et al<sup>122</sup>. En tal calidad, a la CP corresponde "examinar y adoptar cualquier medida necesaria para alcanzar los objetivos previstos" en el tratado (apartado 7.d). Igualmente, es competencia de la CP elegir a los miembros del resto de instituciones –i.e. del Consejo de administración de la AMDA, del FMDA y de la AA (apartado 5).

También se le atribuye una función de control (art. 20.6), ya que debe examinar los informes de aplicación que deben presentar las Partes (art. 20.7.c). De acuerdo con el artículo 32.1, parece incluso que la propia CP podría decidir a iniciativa propia y por consenso investigar el cumplimiento tanto de la convención como de sus protocolos<sup>123</sup>. En tanto que el propio precepto aclara que este examen tiene carácter consultivo, y por tanto carece de naturaleza conflictiva o judicial, se plantea la cuestión de si la CP podría reaccionar en caso de detectar un incumplimiento –e.g., formulando recomendaciones.

Una última manifestación de esta facultad fiscalizadora se encontraría en el apartado 2 del artículo 32, que parece referirse a la posibilidad de presentar comunicaciones individuales ante la CP –i.e. denuncias de particulares frente a la

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<sup>121</sup> El proyecto de convención de Limoges se suma, así, a la tendencia seguida por otros tratados en materia de medioambiente como la CMNUCC, la Convención de las Naciones Unidas de Lucha contra la Desertificación o el Convenio sobre la Diversidad Biológica.

<sup>122</sup> Vid. HODGKINSON, D. ET AL., "The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, pp. 93 *in fine* y 94. En la propuesta de Biermann y Boas, la propia COP de la CMNUCC serviría como Reunión de las Partes del protocolo sobre refugiados climáticos (vid. BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, p. 77).

<sup>123</sup> Este mecanismo de investigación aparece recogido en varios tratados de derechos humanos, que prevén que sus comités de expertos puedan llevar a cabo investigaciones cuando reciben "información fidedigna que revele violaciones graves o sistemáticas" de los derechos recogidos en estos tratados por un Estado Parte –e.g. artículo 20 del CAT; artículo 8 del Protocolo Facultativo del CEDAW; artículo 6 del Protocolo Facultativo del CRPD; artículo 33 del CED; artículo 11 del Protocolo Facultativo del PIDESC; y artículo 13 del Protocolo Facultativo sobre el procedimiento de comunicaciones del CRC. Vid. OHCHR, Denuncias relativas a violaciones de derechos humanos (último acceso 21/12/2021).

presunta violación por un Estado Parte de alguno de los derechos recogidos en la convención<sup>124</sup>. El artículo 32.2 se refiere a ellas con el nombre de "comunicaciones de miembros del público". En tanto que no se precisa nada más, y dada la amplitud de la terminología empleada, parece que cualquier persona podría hacer uso de esta facultad, aunque no tenga reconocida la condición de desplazado medioambiental o haya sido afectada por la actuación del Estado. El examen de estas comunicaciones públicas requerirá el acuerdo previo de la CP adoptado por consenso, de conformidad con el apartado 1 del artículo 32.

Como su mismo nombre indica, la CP estará compuesta por todas las Partes del tratado, cada una de las cuales tendrá un voto (art. 37.1). En el caso de que una organización internacional en el sentido del artículo 2.2 de la convención y sus Estados miembros sean simultáneamente Partes en la convención, el artículo 37.3 establece una delegación del derecho de voto. Así, los Estados miembros se abstendrán de votar cuando lo haga la organización internacional a la que pertenece, que tendrá tantos votos como número de Estados miembros sean Parte en la convención. La misma regla opera en sentido inverso, de manera que la organización internacional no podrá votar por aquellos Estados Partes que hayan decidido ejercer individualmente su derecho de voto.

Además de las Partes, el artículo 20.4 prevé que se pueda reconocer el estatuto de observador a las ONGs. Como se señaló al comentar la definición de organización regional de integración económica del artículo 2.2 del proyecto, convendría que dicho estatuto de observador se reconociera igualmente a aquellas organizaciones que no puedan adquirir la condición de Parte porque carecen de competencias en las materias reguladas por la convención.

El artículo 20.1 prevé que la primera sesión de la CP sea convocada por el Secretario General de las NU, en su condición de depositario de la convención (art. 43), "durante el año siguiente a la fecha de entrada en vigor del presente Convenio". En esta primera reunión, la CP "adoptará su reglamento interior y las reglas de gestión financiera" (art. 20.3). "Posteriormente, las Partes celebrarán una reunión ordinaria al

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<sup>124</sup> La posibilidad de que los particulares denuncien a un Estado Parte ante los comités de expertos de los tratados de derechos humanos por presuntas violaciones de los derechos garantizados por ellos está prevista en: el Primer Protocolo Facultativo del CCPR; el Protocolo Facultativo de la CEDAW; el Artículo 22 CAT; el Artículo 14 ICERD; el Protocolo Facultativo de la CRPD; el Artículo 31 CED; el Protocolo Facultativo del PIDESC, el Tercer Protocolo Facultativo del CRC; y el Artículo 77 ICRMW – todavía no en vigor. Vid. OHCHR, Denuncias relativas a violaciones de derechos humanos (último acceso 21/12/2021).

menos una vez cada dos años" (art. 20.1), si bien el apartado 2 contempla la posibilidad de celebrar sesiones extraordinarias cuando "la Conferencia lo estima necesario o a petición escrita de una Parte, a condición de que tal petición sea apoyadas al menos por una cuarta parte de las Partes". En tal caso, la reunión tendrá lugar "en el plazo de seis meses siguientes a la notificación a las Partes por la Secretaría" (art. 20.2).

### **2.5.3. Artículo 21 - Agencia Mundial para los Desplazados Ambientales (AMDA)**

La AMDA es un híbrido funcional entre el ACNUR y el IPCC, compuesto por un Consejo de Administración y un Consejo Científico (art. 21.3), que tiene por objeto "promover y colaborar en la aplicación del presente Convenio y sus Protocolos". Sus funciones aparecen enumeradas en el apartado 4 del artículo 21, aunque no se diferencia entre las que corresponden a uno y otro Consejo.

#### **A) El Consejo Científico**

##### **1. Propuestas existentes**

Las cuatro iniciativas de tratado examinadas coinciden en la conveniencia de crear un órgano consultivo-científico que recabe, amplíe y difunda los conocimientos y evidencias científicas sobre la relación entre las alteraciones medioambientales y climáticas y los desplazamientos de población.

En las propuestas de Docherty y Giannini y de Hodgkinson et al. este organismo adquiere mayor relevancia, ya que debe asesorar sobre la responsabilidad de cada Estado Parte en las diferentes fuentes de emisiones causantes del cambio climático, en función de lo cual se determinará la cuantía de su contribución al fondo de financiación de acuerdo con el principio CBDR<sup>125</sup>. En la propuesta de Docherty y Giannini, el cuerpo de expertos científicos asume además un papel vital en la aplicación misma del mecanismo de protección, pues le corresponde determinar qué tipos de perturbaciones ambientales están relacionadas con el cambio climático y es más probable que la acción humana haya contribuido a ellas, quedando así cubiertas por la definición de "refugiado

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<sup>125</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, p. 390. HODGKINSON, D. ET AL., "The Hour when the ship comes in": a convention for persons displaced by climate change", *op. cit.*, p. 96. Hodgkinson et al. también le atribuyen la función de asesorar al Fondo sobre la extensión de la asistencia financiera a los Estados Partes en desarrollo y a los grupos de implementación de los procesos de reasentamiento relacionados con el cambio climático (Íd.).

climático". Por lo tanto, de la decisión de este organismo científico depende que un desplazado ambiental sea calificado como "refugiado" y, en consecuencia, reciba asistencia y protección internacional<sup>126</sup>.

En el caso de Biermann y Boas, el comité científico también desempeña un cometido destacado en el funcionamiento del nuevo protocolo a la CMNUCC, puesto que debe ayudar a los gobiernos de los Estados Partes y a los órganos de gobierno del instrumento a decidir sobre la inclusión de una determinada zona administrativa en la lista de poblaciones necesitadas o en peligro de reubicación debido al cambio climático<sup>127</sup>. No obstante, el empleo del verbo "support" sugeriría que la función del comité científico sería consultiva, pero no decisoria, a diferencia del modelo de Docherty y Giannini.

## 2. El Consejo Científico en el marco de Limoges

En la propuesta de Limoges, la propia definición del "desplazamiento ambiental", que no exige que se demuestre que la disrupción que lo ha provocado está relacionada con el cambio climático o que es "más probable que no" que la acción humana haya contribuido a ella, y su modelo de financiación vinculado a un impuesto, en lugar de a las responsabilidades particulares de cada Estado Parte al cambio climático, hace innecesaria la atribución de poderes exorbitantes al organismo científico como hacen Docherty y Giannini o Hodgkinson et al. Esta afirmación se entiende sin perjuicio de la función de asesoramiento y evaluación científico-técnica que se propone que este organismo pueda asumir en la definición del hecho imponible del futuro impuesto sobre la degradación ambiental a que se refiere el artículo 23. Esta propuesta será tratada con mayor detalle al comentar el citado precepto.

Tal y como lo describe el artículo 21 del proyecto de Limoges, el consejo científico desempeña en el seno de la AMDA una función equivalente a la del IPCC<sup>128</sup>; a saber, proporcionar al eventual marco sobre desplazamiento ambiental y a sus Partes evaluaciones científicas periódicas de los cambios ambientales, tanto naturales como

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<sup>126</sup> DOCHERTY, B; GIANNINI, T., *op. cit. supra*, pp. 370, 371, 389 *in fine* y 390.

<sup>127</sup> BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, p. 77.

<sup>128</sup> Vid. UNGA, *Resolution 43/53 Protection of global climate for present and future generations of mankind, adopted by the General Assembly at its Forty-third session, (A/RES/43/53), 27 January 1989*, párr. 10, encargando al IPCC la preparación de revisiones exhaustivas del estado de la ciencia sobre el clima y el cambio climático y sus repercusiones socioeconómicas, y la formulación de recomendaciones sobre posibles estrategias de respuesta.

antropogénicos, de aparición rápida y lenta; sus impactos sobre la movilidad humana, incluyendo alertas sobre potenciales desplazamientos, y las posibles estrategias de prevención y adaptación a estos cambios con el fin de evitar o minimizar sus efectos adversos sobre las poblaciones<sup>129</sup>. Con este fin, las letras a), b) y e) del artículo 21.4 enumeran respectivamente una serie de funciones que, por su temática, debieran ser atribuidas al consejo científico.

Así, a este sub-organismo de la AMDA correspondería "realizar trabajos prospectivos sobre la evolución de los desplazamientos ambientales y climáticos", "evaluar las políticas que pueden originar desplazamientos ambientales y climáticos" o "valorar los programas aplicados para prevenir los desplazamientos ambientales y para ayudar a los desplazados". En particular, sería conveniente que esos trabajos prospectivos a los que se refiere la letra a) incluyeran la identificación de aquellas poblaciones o comunidades –no limitadas a las de los Estados Partes- que corren el riesgo de ser forzosamente desplazadas por causas ambientales o climáticas. Para ello, el consejo científico podría, por ejemplo, elaborar y mantener actualizada una lista de áreas cuyos habitantes necesitan o están en peligro de ser reubicados, como la que proponen Biermann y Boas<sup>130</sup>.

Igualmente, sería deseable que este consejo científico coordinase su labor investigadora con la de otras organizaciones con campos de investigación afines o relacionados. Hodgkinson et al. mencionan el IPCC o el Órgano Subsidiario de Asesoramiento Científico y Tecnológico de la CMNUCC<sup>131</sup>, a los que debiera añadirse también la OIM o el PNUMA.

En cuanto a la composición y el funcionamiento de este consejo científico, el proyecto de Limoges los deja para un futuro protocolo adicional sobre la AMDA (art. 24.1). No obstante, parece que debiera tratarse de un organismo de expertos

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<sup>129</sup> El resto de autores también atribuyen al órgano científico la tarea de investigar los desplazamientos relacionados con el cambio climático. Vid. BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, p. 77 *in fine*. DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, pp. 390 *in fine* y 391. HODGKINSON, D. ET AL., "The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, p. 96.

<sup>130</sup> Vid. BIERMANN, F.; BOAS, I., *op. cit. supra*, p. 77

<sup>131</sup> HODGKINSON, D. ET AL., "The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, p. 96.

independientes, como sugieren Docherty y Giannini<sup>132</sup>, en lugar de estar formado "por representantes de los gobiernos con competencia en la esfera de especialización pertinente" como en el caso del Órgano Subsidiario de Asesoramiento Científico y Tecnológico de la CMNUCC<sup>133</sup>, que podría ser otro posible modelo –como también hacen notar estos autores<sup>134</sup>.

## **B) El Consejo de Administración**

El resto de competencias enumeradas en el apartado 4 del artículo 21 del proyecto de Limoges se corresponden con la función de asistencia y protección propia del ACNUR, en su cometido "de proporcionar protección internacional (...) a los refugiados (...) y de buscar soluciones permanentes al problema de los refugiados, ayudando (...) a facilitar la repatriación voluntaria de tales refugiados o su asimilación en nuevas comunidades nacionales"<sup>135</sup>.

En el caso de los desplazados medioambientales, esta tarea sería asumida por la AMDA –en concreto, se entiende, por el consejo de administración. En este sentido, existe un marcado paralelismo entre la AMDA diseñada por los redactores de Limoges y la agencia de coordinación del modelo institucional que proponen Docherty y Giannini<sup>136</sup>. Es más, estos autores se refieren expresamente al ACNUR como prototipo para la creación de esta nueva agencia de coordinación de la asistencia a los "refugiados climáticos"<sup>137</sup>. Otros autores, como Biermann y Boas, también mencionan al ACNUR como parte de la red de agencias de implementación del nuevo protocolo la CMNUCC que proponen, si bien reconocen que es poco probable que asuma un papel de liderazgo en la protección de los "refugiados climáticos", dadas las características particulares que

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<sup>132</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, pp. 389. En el caso de HODGKINSON, D. ET AL., "The Hour when the ship comes in": a convention for persons displaced by climate change", *op. cit.*, p. 96, es el Consejo el que nombra a los miembros del órgano científico.

<sup>133</sup> UN, *Framework Convention on Climate Change*, 09 May 1992, UNTS, Vol. 1771, No. 30822, Artículo 9(1), p. 257.

<sup>134</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, pp. 389.

<sup>135</sup> UNGA, *Resolution 428 (V) Statute of the Office of the United Nations High Commissioner for Refugees, adopted by the General Assembly at its Fifth session [A/RES/428(V)]*, 1951, párr. 1 (versión en castellano).

<sup>136</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, pp. 388-389.

<sup>137</sup> *Id.* Además de la función asistencial, en la propuesta de Docherty y Giannini, esta agencia de coordinación asumiría también la misión de aplicar las disposiciones del nuevo convenio sobre "refugiados" climáticos (*Ibíd.*, p. 388).



esta crisis reviste<sup>138</sup> –se entiende que los autores se refieren principalmente al hecho de que estos desplazados no sufren la persecución de sus Estados de origen.

De acuerdo con las letras c), d) y f) del artículo 21.4 del proyecto de Limoges, la AMDA tendría la capacidad, se entiende que canalizada a través de su consejo de administración, de "movilizar recursos para reducir los factores de vulnerabilidad que provocan desplazamientos ambientales y climáticos"; "contribuir a la organización general de la asistencia para prevenir y limitar los desplazamientos y promover el retorno de los desplazados"; y "apoyar activamente [a los Estados afectados] en la organización de la acogida [e.g. estableciendo y gestionando campamentos temporales de desplazados como hace el ACNUR respecto de los refugiados] y, cuando sea posible, el regreso de los desplazados ambientales" [el texto entre corchetes es propio]<sup>139</sup>.

Sería conveniente que, por un lado, la AMDA participase también en el reasentamiento y la integración permanente de los desplazados, cuando el retorno no fuese posible<sup>140</sup>. Por otro lado, resultaría más coherente con las funciones de la AMDA señaladas arriba que el consejo de administración asumiera también la organización de la ayuda material para la acogida y el regreso de los desplazados ambientales, en lugar del Fondo Mundial para los Desplazados Ambientales, que por su propina naturaleza debería centrarse exclusivamente en organizar la asistencia financiera<sup>141</sup>.

Por último, Docherty y Giannini prevén que la agencia coordinadora coopere con otras organizaciones internacionales y no gubernamentales en la prestación de asistencia humanitaria a los desplazados, así como el derecho de éstos a participar en la toma de decisiones, considerando sus opiniones e inquietudes<sup>142</sup>. Este derecho de participación quedaría salvaguardado por el artículo 26 del proyecto de Limoges, que establece con

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<sup>138</sup> BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, p. 79.

<sup>139</sup> Cf. DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, p. 388, cuya agencia de coordinación también se ocupa de colaborar con los países de origen para prevenir las crisis de "refugiados" y con los Estados de acogida en la protección de los derechos humanos de los "refugiados" climáticos y la provisión de ayuda humanitaria.

<sup>140</sup> A este respecto, DOCHERTY, B; GIANNINI, T., *op. cit. supra*, prevén que su agencia coordinadora cumpla esta doble misión, ayudando a los "refugiados" climáticos tanto a regresar a sus países de origen como a nacionalizarse en otro distinto (recuérdese que la propuesta de convenio de estos autores sólo se aplica a los desplazados transfronterizos, no a los internos. De ahí que no contemplan la posibilidad de que el reasentamiento y la reintegración tengan lugar dentro del mismo Estado de la nacionalidad o residencia habitual).

<sup>141</sup> También DOCHERTY, B; GIANNINI, T., *op. cit. supra*, encomiendan a la agencia de coordinación que recoja y distribuya las contribuciones de ayuda en especie.

<sup>142</sup> *Íd.*

carácter general que "[c]ada Parte, las instituciones y los órganos del Convenio ejercen sus funciones respetando el acceso a la información, [y] la participación del público en el proceso de adopción de decisiones". En cuanto a la obligación de cooperar, estaría parcialmente recogida en el artículo 27 del proyecto, que prevé que las instituciones de la Convención cooperen activamente en su aplicación con "las Organizaciones internacionales universales y regionales y de las secretarías de los Convenios internacionales relativos a la protección del medio ambiente o la defensa de los derechos humanos". Faltaría una referencia al papel que pueden desempeñar las ONGs dedicadas a la migración, la asistencia humanitaria y los derechos humanos en la protección de las personas desplazadas por motivos medioambientales.

#### **2.5.4. Artículo 22 - Alta Autoridad (AA)**

Quizás su correlato más cercano sería el comité de apelación propuesto por Hodgkinson et al., dado que comparte su carácter cuasi-jurisdiccional, aunque con un alcance muy diferente, ya que en la propuesta de estos autores este comité sólo dirime cuestiones relacionadas con la financiación<sup>143</sup>. En cambio, en la arquitectura institucional de Limoges, la Alta Autoridad asume unas funciones mucho más amplias que hacen de ella la guardiana del convenio.

##### **A) Funciones**

En primer lugar, para preservar la homogeneidad en la aplicación del convenio, la AA es competente para resolver las cuestiones relativas a su interpretación y aplicación planteadas tanto por las comisiones nacionales encargadas del reconocimiento del estatuto de desplazado ambiental como por "cualquier otra persona física o jurídica interesada", como podría ser el caso de las ONGs [art. 22.6.d)]. En cambio, si la controversia sobre la interpretación o aplicación del convenio surge entre las Partes, el artículo 33 del proyecto prevé que se resuelva por aquellos medios pacíficos de elección de las partes –como los buenos oficios, la mediación, la conciliación o el arbitraje- o, en su defecto, que la controversia se someta al Tribunal Internacional de Justicia. La aludida unidad interpretativa del convenio aconseja, sin embargo, que las cuestiones

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<sup>143</sup> HODGKINSON, D. ET AL., “‘The Hour when the ship comes in’: a convention for persons displaced by climate change”, *op. cit.*, p. 94.

relacionadas con su interpretación y aplicación sean conocidas por una única instancia, es decir, la AA.

Un segundo grupo de competencias tiene que ver con el papel de las AA en los procesos de reconocimiento del estatus de desplazado ambiental. Así, corresponde a la AA establecer directrices sobre los criterios y procedimientos que deben aplicar los Estados Partes para su concesión [art. 22.6.a)], siendo también competente para decidir sobre los recursos contra las decisiones de las comisiones nacionales concediendo o denegando el estatuto de desplazado medioambiental [art. 22.6.b)]. Aunque la letra b de la versión española –no así la inglesa ni la francesa- también menciona que las ONGs están legitimadas para recurrir estas decisiones, debe entenderse que lo que estarían haciendo es ejercer este derecho en nombre de la persona, familia, grupo o población desplazada afectada.

Por su parte, la letra c) prevé dos casos en los que la AA sustituye a las comisiones nacionales en la tramitación y resolución de los expedientes de reconocimiento. Por un lado, incluye un supuesto de responsabilidad por mal funcionamiento de las administraciones públicas, en el que la AA resuelve en primera y última instancia las solicitudes de amparo "en caso de inacción del Estado Parte". Esta garantía pretende evitar que las dilaciones injustificadas en la tramitación del procedimiento perjudiquen a los interesados.

Por otro lado, la letra c) prevé que la AA actúe también en lugar de las comisiones nacionales cuando la solicitud de protección sea presentada por nacionales de Estados no Partes. Así formulado, parece que los redactores del proyecto habrían decidido diferenciar entre las solicitudes presentadas por nacionales de Estados Partes y las interpuestas por nacionales de terceros Estados. De las primeras conocerían las comisiones nacionales, mientras que las segundas serían examinadas por la AA. La distinción resulta, sin embargo, artificial e innecesaria, debiendo ser las comisiones nacionales las que sustancien en todo caso las solicitudes de reconocimiento en primera instancia, con independencia de que el solicitante tenga o no la nacionalidad de un Estado Parte. Esta opción también resulta menos gravosa para el solicitante, que de otro modo tendría que viajar al Estado donde la AA ha establecido su sede para asistir a la audiencia.

Cabe, sin embargo, una segunda interpretación de este inciso, que abre la puerta a que los desplazados internamente dentro de un Estado que no sea Parte soliciten a la AA su reconocimiento como desplazados ambientales. Una decisión estimatoria de tal pretensión no podría suponer la aplicación del convenio en el territorio del Estado no Parte, puesto que no ha manifestado su consentimiento en quedar vinculado. Sin embargo, permitiría a la persona desplazada entrar y ser reconocida como tal en el territorio de cualquiera de los países Partes en el convenio. Si ésta era, como se cree, la intención de los redactores de Limoges cuando enunciaron la letra c), su tenor literal debería clarificarse matizando que la AA tendrá competencia para "[r]esolver en primera y última instancia las solicitudes de concesión del estatuto presentadas por nacionales *que se encuentren en el territorio* de Estados no Partes" [el texto en cursiva es propio].

En tercer lugar, la letra e) del artículo 22.6 articula una especie de recurso *sui generis* de incompatibilidad, que permite a las personas físicas y jurídicas, así como a los grupos de individuos afectados<sup>144</sup>, solicitar a la AA que se pronuncie sobre la conformidad de una disposición nacional con el convenio.

Cabe señalar que las decisiones adoptadas por la AA en el ejercicio de cualquiera de las competencias mencionadas son, según el artículo 22.7, "definitivas" y vinculantes para los Estados Partes, que por tanto están obligados a cumplirlas. El mismo apartado establece que, en caso de incumplimiento reiterado de sus decisiones por parte de un Estado Parte, la AA puede solicitar a la CP que sancione al Estado incumplidor suspendiendo su derecho de voto.

Finalmente, la AA puede hacer recomendaciones a las Partes sobre cualquier materia relacionada con la aplicación de la convención, así como proponer enmiendas o modificaciones al mismo [art. 22.6.f) y g)]<sup>145</sup>. En este caso, se entiende que se trata de sugerencias que, a diferencia de las decisiones, no son obligatorias.

Hasta aquí la regulación del proyecto de Limoges de las atribuciones de la AA. Sin embargo, sería interesante considerar la posibilidad de incluir dos competencias adicionales. La primera tiene que ver con el examen de aplicación de las disposiciones a

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<sup>144</sup> Esta referencia a los grupos de individuos afectados aparece en las versiones inglesa y francesa de la convención, pero no en la castellana.

<sup>145</sup> De acuerdo a como figuran redactadas estas letras en la versión en inglés in francés del artículo 22.

que se refiere el artículo 32 y que se comentó al abordar la CP. Aunque la competencia para iniciarlo, así como la posibilidad de formular recomendaciones u observaciones al final del procedimiento consultivo, siga estando reservada a la CP, la tramitación del incidente debiera atribuirse a la AA. Por otro lado, además de resolver los recursos sobre la concesión del estatus de desplazado, la AA también debería conocer los recursos contra las decisiones de financiación y asistencia del Fondo, de forma análoga a como lo hace el comité de recursos de Hodgkinson et al<sup>146</sup>.

## **B) Composición**

A nivel orgánico, la AA está integrada "por 21 personalidades reconocidas en el ámbito de los derechos humanos, del medio ambiente y de la paz" (art. 22.1) –debiera mencionarse también las migraciones-, que elegirán de entre ellos a su presidente (art. 22.3). Cada Estado Parte podrá proponer a dos candidatos y las ONGs a un total de cinco. Aunque no se precisa el ámbito de actuación de las ONGs, debe entenderse que se tratará de organizaciones relacionadas las migraciones, los derechos humanos o el medio ambiente.

La CP es la encargada de elegir a los miembros de la AA "mediante votación secreta por mayoría de los presentes y votantes" (art. 22.2). Las plazas deberán asignarse "sobre la base de la representación geográfica amplia y equitativa" (art. 22.1). Una vez elegidos, los miembros de la AA "ejercerán sus funciones a título personal" (art. 22.3) y no en representación del Estado o la ONG que los propuso. Su mandato tendrá una duración máxima de seis años, siendo renovable por una sola vez (art. 22.4).

### **2.5.5. Artículo 23 - El Fondo Mundial para los Desplazados Ambientales (FMDA)**

El proyecto de Limoges prevé la creación de un Fondo Mundial para los Desplazados Ambientales (FMDA). Como se puso de manifiesto en la comparativa entre los distintos marcos institucionales propuestos, los autores coinciden en la necesidad de crear un mecanismo de financiación específico para atender las necesidades de estos desplazados, que sea autónomo e independiente de los fondos ya

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<sup>146</sup> Vid. HODGKINSON, D. ET AL., "The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, p. 94.

existentes<sup>147</sup>. Como señalan Biermann y Boas con respecto a los "refugiados" climáticos, incluir a los desplazados ambientales en otros esquemas generales de financiación relacionados con el cambio climático, el desarrollo o el medio ambiente los pondría a competir con estos otros retos por unos recursos que son insuficientes incluso para financiar los objetivos que estos mecanismos persiguen actualmente<sup>148</sup>.

Este consenso, sin embargo, decae cuando se trata de las acciones a financiar, los beneficiarios, las vías de financiación y la organización de este nuevo fondo mundial para los desplazados medioambientales o climáticos, que varían de un modelo a otro.

### **A) Acciones financiadas**

La propuesta de Limoges asigna al FMDA la función de "organizar la ayuda financiera y material para la acogida y el regreso de los desplazados ambientales" (art. 23.1). Ya se ha señalado la conveniencia de que la AMDA asuma la organización y distribución de la ayuda material, en vez del FMDA. En cambio, dado que la propia definición de "desplazamiento forzado" del artículo 2 (3.3) del proyecto incluye tanto el desplazamiento temporal como el permanente, sería conveniente incorporar, junto a la acogida y el retorno, el apoyo financiero a los programas de reasentamiento que se pongan en marcha tanto a nivel interno como internacional –e.g. en el caso de los PEID de baja altitud. Así lo hacen, por ejemplo, los mecanismos de financiación diseñados por Hodgkinson et al. o Biermann y Boas<sup>149</sup>.

En cuanto a la posibilidad de financiar medidas de adaptación a los riesgos medioambientales y climáticos que provocan los desplazamientos, el fondo diseñado por Docherty y Giannini sí contempla esta opción al permitir sufragar tanto medidas de asistencia como de prevención<sup>150</sup>. Hodgkinson et al., en una propuesta previa de

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<sup>147</sup> BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, pp. 79 *in fine* a 82. DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, pp. 385-388. HODGKINSON, D. ET AL., "The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, pp. 97-100.

<sup>148</sup> BIERMANN, F.; BOAS, I., *op. cit. supra*, pp. 80-81.

<sup>149</sup> HODGKINSON, D. ET AL., "The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, p. 95, en relación con los grupos de implementación del reasentamiento asociado al cambio climático. BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, p. 82.

<sup>150</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, pp. 384 y 387 *in fine*.

convención a la formulada en 2010, también incluían expresamente la adaptación y la mitigación como objetivos del fondo que proponían<sup>151</sup>.

Docherty y Giannini están en lo cierto cuando señalan que tan importante es financiar la reparación como la prevención<sup>152</sup>. Sin embargo, el que existan otros mecanismos internacionales de financiación a los que se podría recurrir para fines de mitigación y adaptación, como el Fondo para el Medio Ambiente Mundial, el Fondo de Adaptación, el Fondo Especial para el Cambio Climático y el Fondo para los Países Menos Adelantados –estos tres últimos bajo el régimen de la CMNUCC para ayudar a los países en desarrollo a adaptarse a los efectos adversos del cambio climático-, aconseja reservar los fondos del FMDA exclusivamente para financiar la acogida, el retorno y el reasentamiento de los desplazados ambientales –como proponen Biermann y Boas<sup>153</sup> o la propuesta de Limoges (art. 23.1).

## **B) Beneficiarios de la financiación**

En cuanto a los sujetos beneficiarios de la asistencia financiera, existen ciertas divergencias entre las distintas versiones del apartado 1 del artículo 23 del proyecto de Limoges. Las versiones en francés e inglés se refieren a las organizaciones internacionales universales y regionales, las ONGs y los Estados en general junto a las autoridades regionales y locales. Respecto a estos últimos tres destinatarios de financiación, la versión en castellano precisa que se trata de los Estados de acogida y residencia, omite a las autoridades regionales y se refiere a las "colectividades locales". Dado que se han excluido del fondo las medidas de prevención, parece que esta discrepancia debiera resolverse a favor de mantener la referencia de la versión en castellano a los Estados de acogida y residencia, que son los involucrados en la recepción, protección y eventual regreso o reasentamiento de los desplazados.

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<sup>151</sup> HODGKINSON, D. ET AL., "Towards a Convention for Persons Displaced by Climate Change: Key Issues and Preliminary Responses", *The New Critic*, Issue 8, September 2008, p. 2. El proyecto de tratado de 2010 de estos autores se limita a mencionar la financiación de la asistencia a los Estados Partes que son países en desarrollo, por lo que podría entenderse que las medidas de adaptación y mitigación son parte de esta asistencia genérica (en HODGKINSON, D. ET AL., "The Hour when the ship comes in": a convention for persons displaced by climate change", *op. cit.*, p. 95).

<sup>152</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, p. 387 *in fine*.

<sup>153</sup> BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, p. 82, refiriéndose al reembolso de los costos en los que hubieran incurrido los países en desarrollo en la protección y reubicación de los desplazados climáticos.

Por otra parte, el catálogo de sujetos beneficiarios del proyecto de Limoges es el más amplio, ya que el resto de propuestas sólo mencionan a los Estados –a excepción de Docherty y Giannini, que también se refieren a las organizaciones que presten ayuda a los "refugiados" climáticos<sup>154</sup>. Ninguna de las versiones del proyecto de Limoges especifica, sin embargo, que los Estado destinatarios de la asistencia financiera deban ser países en desarrollo, basta con que tengan la condición de Parte. La misma opción adoptan Docherty y Giannini, quienes señalan que tanto los Estados de origen como los de acogida debieran ser elegibles para recibir ayudas del fondo, en tanto que ambos se ven directamente afectados por la crisis de "refugiados" climáticos, sin aludir a su condición de países desarrollados o en desarrollo<sup>155</sup>.

En cambio, Hodgkinson et al. restringen el ámbito de los beneficiarios exclusivamente a los Estados de origen o de acogida partes en la convención que sean países en desarrollo<sup>156</sup>. Biermann y Boas, aunque no tan categóricos, también se muestran partidarios de que el acceso a los mecanismos de apoyo financiero se limite a los países que no figuran en el anexo I de la CMNUCC –i.e., los países en desarrollo<sup>157</sup>.

De entrada, la alternativa de Docherty y Giannini o Limoges parece la más acertada. En primer lugar, porque un tratado cuyo objetivo principal es proteger a las personas que son víctimas de desplazamientos relacionados con procesos globales como el cambio climático o la degradación del medio ambiente no debería discriminar entre las poblaciones de los países desarrollados y las de los países en desarrollo, que están igualmente expuestas aunque no sean igualmente vulnerables. En segundo lugar, aunque se prevea que los flujos de desplazamiento se produzcan dentro de los países en desarrollo o desde ellos, una convención de alcance universal –i.e. que se aplica tanto a los desplazamientos internos como a los transfronterizos- no puede desconocer que la llegada de personas desplazadas siempre supone una carga adicional para las estructuras socioeconómicas y asistenciales de la comunidad de acogida, aunque se trate de un país

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<sup>154</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, p. 385.

<sup>155</sup> *Ibíd.*, p. 387.

<sup>156</sup> HODGKINSON, D. ET AL., "'The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, p. 93.

<sup>157</sup> BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, p. 78, señalando, además, que si bien su definición de "refugiado climático" abarca tanto a los desplazados de los países desarrollados como a los de los países en desarrollo, "en la práctica, sólo los refugiados climáticos de los países en desarrollo más pobres serán objeto de preocupación, cooperación y asistencia internacionales" (p. 67).



desarrollado. Recuérdese a este respecto el fondo de emergencia que la Comisión europea tuvo que crear en 2016 para hacer frente a la crisis humanitaria desencadenada dentro de su propio territorio debido al elevado número de potenciales beneficiarios de protección internacional a los Estado miembros del sur, especialmente a Grecia<sup>158</sup>.

Negar de plano la posibilidad de que un país pueda solicitar asistencia en caso de una afluencia masiva de desplazados que desborde sus capacidades de acogida por el simple hecho de ser un Estado desarrollado es frustrar el objeto mismo del tratado, ya que la falta de apoyo financiero internacional irá en detrimento de las condiciones de vida de los propios desplazados que se pretende proteger, además de crear tensiones con las sociedades de los países de acogida que se quiere evitar. Por lo tanto, el convenio que en su caso se negocie debería abstenerse de este tipo de discriminaciones. Cuestión distinta será que el propio fondo, cuando evalúe la idoneidad de una solicitud de ayuda o determine el alcance de la asistencia financiera, tenga en cuenta, entre otros criterios, las capacidades actuales del Estado en cuestión, su vulnerabilidad y la situación concreta de desplazamiento a la que se enfrenta.

### **C) Mecanismos de recaudación**

#### **1. Comparativa de los diferentes modelos de financiación**

En cuanto a la dotación de estos fondos, es posible clasificar los modelos propuestos en dos grandes grupos, en atención a la naturaleza facultativa o mandatoria de las aportaciones que lo nutren. Biermann y Boas, aunque no abordan expresamente este aspecto al describir el mecanismo de financiación que proponen, se refieren a que las contribuciones al nuevo fondo sean "nuevas y adicionales" a las ya comprometidas por los Estados a otros fondos existentes, con el fin de evitar la concurrencia a unos mismos recursos, máxime cuando la mayoría de estos fondos se basan en el principio de contribuciones voluntarias de los gobiernos<sup>159</sup>. Este enfoque hace pensar que tampoco

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<sup>158</sup> ABELLÁN, L., “Bruselas prepara un plan de ayuda urgente para los migrantes bloqueados”, *El País*, 1 de marzo de 2016 (último acceso: 23/03/2016). PÉREZ, C., “La UE destina 700 millones de euros en tres años a su primera crisis humana”, *El País*, 1 de marzo de 2016 (último acceso: 01/03/2016).

<sup>159</sup> BIERMANN, F.; BOAS, I., “Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees”, *op. cit.*, p. 81.

en el modelo de fondo planteado por Biermann y Boas los Estados Partes estarían obligados a realizar aportaciones periódicas<sup>160</sup>.

Por el contrario, Docherty y Giannini y Hodgkinson et al. adoptan el punto de vista opuesto, ya que los ingresos de sus fondos proceden de las contribuciones obligatorias de los Estados Partes –en el caso de la propuesta de Hodgkinson et al., limitados a las aportaciones de los países desarrollados<sup>161</sup>. Como se ha señalado anteriormente, ambas propuestas recurren al principio de las responsabilidades comunes pero diferenciadas, combinado con la capacidad de pago de cada Estado, para determinar la cuantía de las respectivas contribuciones<sup>162</sup>. En este sentido, estas cuotas adquieren un cierto carácter reparador, ya que reflejan la responsabilidad de los Estados, que con su pago están contribuyendo a reparar los daños que la contaminación que han emitido ha causado a la población desplazada por el cambio climático<sup>163</sup>.

Sus proponentes son, sin embargo, conscientes de la dificultad de establecer en qué medida cada Estado ha contribuido al cambio climático para así fijar su correspondiente aportación al fondo. Ni Docherty y Giannini ni Hodgkinson et al. resuelven esta complicación, prefiriendo "dejar estas decisiones técnicas en manos de expertos científicos y económicos, en lugar de incluir políticas de aplicación específicas" en el propio instrumento jurídico<sup>164</sup>. De ese modo, remiten la determinación de esta responsabilidad individual de los Estados al órgano de expertos científicos del tratado, que deberá asesorar al fondo sobre cuál debiera ser la cuantía de su respectivas

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<sup>160</sup> HODGKINSON, D. ET AL., “‘The Hour when the ship comes in’: a convention for persons displaced by climate change”, *op. cit.*, pp. 97 *in fine* y 98, llegan a la misma conclusión al atribuir a Biermann y Boas la propuesta de una tasa internacional sobre los viajes aéreos como mecanismo para alimentar el fondo, lo que es erróneo, ya que esta propuesta corresponde a Müller y Hepburn (2006). Bierman y Boas citan este trabajo al referirse a distintas propuesta para solucionar la escasez de recursos en los fondos vinculados al marco de la CMNUCC (cf. BIERMANN, F.; BOAS, I., *op. cit. supra*, nota a pie de página no. 77, p. 80, así como el texto al que se refiere).

<sup>161</sup> HODGKINSON, D. ET AL., *op. cit. supra*, p. 98. DOCHERTY, B.; GIANNINI, T., “Confronting a rising tide: a proposal for a convention on climate refugees”, *op. cit.*, p. 385. Estos últimos autores sostienen que el principio de las contribuciones voluntarias de los gobiernos puede ser apropiado en el caso de ACNUR, ya que "el Estado de origen perseguidor, y no la comunidad internacional, causó la migración, y por lo tanto la comunidad internacional no debería estar legalmente obligada a proporcionar asistencia financiera o en especie" [traducción del autor del original en inglés]. El cambio climático, en cambio, sí ha sido causado por la comunidad internacional, que debe, por tanto, asumir la responsabilidad compartida de sus efectos adversos, incluido los desplazamientos de población.

<sup>162</sup> HODGKINSON, D. ET AL., *op. cit. supra*. DOCHERTY, B; GIANNINI, T., *op. cit. supra*, pp. 386-387.

<sup>163</sup> Vid., por ejemplo, el razonamiento que hacen a este respecto DOCHERTY, B; GIANNINI, T., *op. cit. supra*, p. 387, argumentando "la comunidad internacional contribuyó al problema y debería estar obligada a contribuir a la solución" [traducción del autor del original en inglés].

<sup>164</sup> *Ibíd.*, p. 390 y nota a pie de página No. 211.

contribuciones<sup>165</sup>. Hodgkinson et al. profundizan un poco más en los criterios que el organismo científico podría utilizar a la hora de fijar la contribución de cada estado al cambio climático, refiriéndose a sus niveles de emisiones, ya sean históricas, actuales o per cápita<sup>166</sup>.

La propuesta de Limoges opta por un sistema mixto, que combina el modelo del ACNUR<sup>167</sup> de "contribuciones voluntarias de los Estados y los agentes privados" con aportaciones obligatorias (art. 23.3). Sin embargo, estas contribuciones obligatorias no provienen directamente de los Estados, sino de "un impuesto que gravará principalmente los factores causales de trastornos repentinos o paulatinos susceptibles de provocar desplazamientos ambientales" (art. 23.3.b). Esta es una de las novedades más notables del proyecto de Limoges, ya que supondría la creación de un impuesto internacional que grava la degradación ambiental. De este modo, se consigue que el fondo sea independiente de las donaciones benéficas de los Estados, como pretenden Docherty y Giannini o Hodgkinson et al., pero sin caer en complejas determinaciones de responsabilidad individual por la degradación del medioambiente.

## 2. El impuesto a la degradación del medioambiente

El apartado 2 del artículo 24 del proyecto de Limoges remite la regulación de la base imponible del impuesto, su recaudación y distribución al futuro protocolo adicional que regule la organización y el funcionamiento del FMDA. Asimismo, y aunque no se especifique, este protocolo también deberá establecer los tipos de gravamen que se aplicarán a la base. Si bien el proyecto de Limoges no ofrece más detalles sobre la posible apariencia de este impuesto, hay algunos elementos de los mecanismos financieros de Docherty y Giannini o de Hodgkinson et al. que podrían incorporarse al eventual protocolo que lo regule.

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<sup>165</sup> HODGKINSON, D. ET AL., "'The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, p. 98. DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, pp. 387 y 390.

<sup>166</sup> HODGKINSON, D. ET AL., *op. cit. supra*.

<sup>167</sup> El 85% de la financiación del ACNUR proviene de las contribuciones voluntarias de los gobiernos y la UE. Las donaciones del sector privado, incluyendo fundaciones, empresas y la ciudadanía, representan un 11% de los fondos. Un 3% procede de organizaciones intergubernamentales y mecanismos de financiamiento común, mientras que tan solo un 1% procede del presupuesto de la ONU en forma de un subsidio limitado para cubrir costos administrativos. (vid. ACNUR, Datos básicos (último acceso: 23/05/2021).

En primer lugar, la configuración del hecho imponible debería dejarse en manos de un organismo científico-técnico, tal y como sugieren estos autores respecto al cálculo de las contribuciones individuales que cada Estado debe abonar al fondo. En este sentido, el consejo científico de la AMDA podría actuar también como órgano científico del protocolo. De este modo, asumiría la función de asesorar a la CP, basándose en la evidencia científica actual, sobre qué actividades humanas contribuyen a las disrupciones medioambientales de rápida y lenta aparición, incluido el cambio climático, que provocan desplazamientos y que, por tanto, deberían ser gravadas por el protocolo. A medida que avance el estado de la ciencia, el consejo científico podría proponer enmiendas al protocolo para incluir en el hecho imponible nuevas actividades que hayan demostrado estar relacionadas con los cambios medioambientales que provocan desplazamientos de población.

Para identificar los factores causales de las perturbaciones repentinas o graduales asociadas a los desplazamientos, el consejo científico debería adoptar la escala de grados de probabilidad del IPCC<sup>168</sup>. El empleo de esta metodología ha sido sugerido tanto por Docherty y Giannini como por Hodgkinson et al. en sus respectivas definiciones de "refugiado climático". Atendiendo al principio de precaución, se sugiere adoptar el criterio de "más probable que improbable (> 50% de probabilidad)", como recomiendan Docherty y Giannini<sup>169</sup>; en lugar del criterio de "muy probable (> 90% de probabilidad)" propuesto por Hodgkinson et al.<sup>170</sup>

Al igual que las contribuciones obligatorias propuestas por Docherty y Giannini, así como por Hodgkinson et al., este impuesto refleja el principio de responsabilidades comunes pero diferenciadas, en tanto que grava más a los países que más contribuyen a la degradación del medioambiente relacionada con los desplazamientos, lo que hace que

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<sup>168</sup> Vid. SOLOMON, S. ET AL. (eds.), *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the IPCC*, Canada, Cambridge University Press, 2007, "Box TS.1: Treatment of Uncertainties in the Working Group I Assessment", pp. 22-23, en el que se distingue, por primera vez, entre niveles de confianza del conocimiento científico y la probabilidad de un resultado particular. El IPCC diferencia entre diez grados de probabilidad: Prácticamente cierto (> 99% de probabilidad); sumamente probable (> 95% de probabilidad); muy probable (> 90% de probabilidad); probable (> 66% de probabilidad); más probable que improbable (> 50% de probabilidad); tan probable como improbable (de 33 a 66% de probabilidad); improbable (< 33% de probabilidad); muy improbable (< 10% de probabilidad); sumamente improbable (< 5% de probabilidad); excepcionalmente improbable (< 1% de probabilidad).

<sup>169</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, p. 371.

<sup>170</sup> HODGKINSON, D. ET AL., "'The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, p. 85.

también sea un incentivo para la sostenibilidad ambiental. Para tener en cuenta no sólo la capacidad económica diferenciada de cada país, a la que se refieren tanto Docherty y Giannini como Hodgkinson et al., sino también las necesidades particulares de determinados países, podrían introducirse ciertas correcciones a la base imponible en forma de exenciones para aquellas actividades humanas asociadas a la degradación del medio ambiente y el desplazamiento pero de las que todavía depende en gran medida el desarrollo de estos países, así como tipos impositivos diferenciados o progresivos en función de magnitudes macroeconómicas como el PIB.

#### **D) Organización y funcionamiento del FMDA**

El apartado 2 del artículo 24 del proyecto de Limoges también deja la organización y el funcionamiento del FMDA al futuro protocolo adicional. De nuevo, las propuestas de los demás autores examinados aportan valiosas ideas sobre la posible apariencia del fondo. El FMDA debería tener un órgano de gobierno independiente, subordinado únicamente a la CP, como proponen Biermann y Boas<sup>171</sup>. Por su parte, este órgano de gobierno podría seguir el modelo de Hodgkinson et al. en cuanto a su composición, con una representación paritaria de Estados Parte desarrollados y en desarrollo<sup>172</sup>.

Biermann y Boas enuncian algunos principios que debieran regir el funcionamiento del fondo. Así, todas las ayudas financieras se concederían a fondo perdido. En cuanto a la extensión de la asistencia, los autores proponen que se determine sobre la base del principio de reembolso pleno de los costos incrementales y del principio de financiación adicional. De este modo, cuando sea posible establecer una relación causal predominantemente directa entre la alteración del medio ambiente y el desplazamiento, como en el caso de la subida del nivel del mar, el fondo compensaría a los países afectados por la totalidad de los costes de acogida, retorno o reasentamiento de los desplazados. En cambio, cuando los desplazamientos tengan un origen mayoritariamente multi-causal, siendo la variable medioambiental sólo un factor

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<sup>171</sup> BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, p. 81.

<sup>172</sup> HODGKINSON, D. ET AL., "'The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, p. 95.

agravante más, como podría ser el caso de las sequías, el fondo sólo compensaría una parte a determinar de los gastos incurridos<sup>173</sup>.

A este respecto, el importe a desembolsar en cada caso se determinaría en el marco de los "acuerdos bilaterales, regionales e internacionales" a los que se refiere el apartado 4 del artículo 23, cuya celebración debe facilitar el FMDA<sup>174</sup>. La movilización de la ayuda financiera debería tener lugar a petición del Estado Parte interesado o de cualquier otro de los sujetos beneficiarios enumerados en el apartado 1 del artículo 23 del proyecto. También parece que la AMDA, como institución encargada de la asistencia y protección de las personas desplazadas por motivos medioambientales, tendría que poder ofrecer ayuda financiera o material cuando lo considere necesario<sup>175</sup>. En cuanto a la autorización del apoyo financiero, parece que debería ser competencia del órgano de gobierno del fondo, si bien sería deseable que se tuviera en cuenta la opinión de la AMDA<sup>176</sup>.

#### **2.5.6. Artículo 25-Funciones de la Organización Internacional para las Migraciones**

En lugar de crear una secretaría permanente, como proponen Hodgkinson et al.<sup>177</sup>, el proyecto de Limoges, en su artículo 25, atribuye a la OIM las funciones de secretaría de la CP (art. 20.8), la AMDA (art. 21.2), la AA (art. 22.5) y el FMDA (art. 23.2). El alcance de las competencias de la OIM en el marco de la nueva convención sobre desplazamiento ambiental va, sin embargo, más allá de lo puramente administrativo. Así, el artículo 25 también atribuye a la OIM una serie de funciones organizativas (letras b, c y d) y de coordinación con las secretarías de otras organizaciones internacionales pertinentes (letra f).

Como competencias sustantivas, la OIM debe presentar a la CP resúmenes de los informes nacionales sobre aplicación de la convención, con expresión tanto de "las

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<sup>173</sup> Vid. BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, pp. 81-82.

<sup>174</sup> HODGKINSON, D. ET AL., "'The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, p. 95, también prevén que el fondo desembolse y distribuya los fondos asignados sobre la base de un acuerdo previo entre el Estado beneficiario y la Organización para el Desplazamiento relacionado con el Cambio Climático.

<sup>175</sup> Vid. *ibíd.*, p. 93, contemplando igualmente la posibilidad de que sea la propia Organización para el Desplazamiento relacionado con el Cambio Climático la que ofrezca asistencia a los Estados Parte en desarrollo a iniciativa propia, a través del Consejo.

<sup>176</sup> Vid. *ibíd.*, p. 95, donde esta decisión corresponde al Consejo.

<sup>177</sup> *Ibíd.*, p. 97.

deficiencias" como de "las buenas prácticas" observadas (letra a). Asimismo, debe asistir a las Partes que lo soliciten en la aplicación del convenio (letra e) y facilitar el intercambio de información entre ellas (letra g). Por último, se prevé que tanto los protocolos adicionales al convenio (letra j) como el consejo de administración de la AMDA o la CP (letra k) puedan atribuir a la OIM funciones adicionales.

Por razón de su objeto, parece más adecuada la opción de vincular la secretaría de las instituciones sobre desplazamiento medioambiental a la OIM y no a la CMNUCC, como proponen, por ejemplo, Biermann y Boas o Williams<sup>178</sup>, dado su liderazgo y trayectoria en el ámbito de la movilidad humana, sea cual sea su causa. Queda por ver, sin embargo, si la OIM estaría eventualmente dispuesta o podría asumir la carga de trabajo adicional que supondrían estos nuevos mandatos en materia de desplazamiento medioambiental.

## **2.6. Capítulos tercero y cuarto: derechos garantizados a las personas amenazadas por el desplazamiento o desplazadas**

### **2.6.1. Protección y asistencia de los desplazados en los diferentes marcos normativos propuestos**

Las distintas propuestas examinadas sobre desplazamiento medioambiental y climático tienen como pilar común la protección y asistencia de los afectados por el desplazamiento. Con todo, hasta la fecha, el proyecto de convención de la Universidad de Limoges sobre el estatuto internacional de los desplazados medioambientales y los Principios de Península sobre el Desplazamiento Climático dentro de los Estados constituyen los dos intentos más exhaustivos de codificar los derechos que asistirían a las personas desplazadas interna e internacionalmente por causas ambientales y climáticas.

Por su parte, los trabajos de Williams, Biermann y Boas, Hodgkinson et al., y Docherty y Giannini se limitan a describir, según el alcance de la propuesta –

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<sup>178</sup> BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, p. 79, que prevén la creación de "una pequeña secretaría de coordinación del protocolo sobre refugiados climáticos, posiblemente como una subdivisión de la secretaría de la CMNUCC en Bonn" [traducción del autor del original en inglés]. WILLIAMS, A., "Turning the tide: Recognizing climate change refugees in International Law", *op. cit.*, p. 521, sugiere crear un órgano subsidiario dentro de la CMNUCC que preste "apoyo institucional internacional" al entramado de acuerdos regionales.

desplazamiento transfronterizo o interno-, cómo podría transponerse al ámbito del desplazamiento climático el catálogo de derechos contenidos en los dos principales textos de referencia sobre la protección de los refugiados y los desplazados internos, a saber: la Convención de Ginebra de 1951 sobre el Estatuto de los Refugiados y los Principios Rectores de las Naciones Unidas sobre los Desplazamientos Internos.

Williams fomenta la incorporación de los Principios Rectores en el enfoque regional del desplazamiento climático que propugna, lo que a su vez, argumenta, reforzaría la cristalización de estas directrices no vinculantes en principios consuetudinarios<sup>179</sup>. El régimen internacional *sui generis* de Biermann y Boas, en consonancia con su planteamiento de que la gestión de los desplazamientos climáticos debe girar en torno a programas de reubicación y reasentamiento planificados y voluntarios, adopta un enfoque menos centrado en proteger a las personas que cruzan una frontera internacional y más enfocado, en cambio, a apoyar a los gobiernos, las comunidades locales y las agencias de ayuda para que protejan a las personas desplazadas dentro sus propios Estados –lo que sugiere que los Principios Rectores de los Desplazamientos Internos serían también el marco de referencia para estos autores<sup>180</sup>.

Por el contrario, para Docherty y Giannini, cuya propuesta de tratado sólo cubre los desplazamientos transfronterizos, la Convención de los Refugiados de 1951 es el espejo en el que debe mirarse el nuevo instrumento jurídico de protección. De ese modo, debería garantizarse legalmente que los "refugiados climáticos" disfruten por igual en el Estado de acogida de un catálogo análogo de derechos civiles, políticos, económicos, sociales y culturales, incluidos los derechos específicos de los refugiados, como los relacionados con la circulación y el principio de *non-refoulement*. En el ejercicio de estos derechos, los "refugiados climáticos" deberían recibir el mismo trato que los refugiados tradicionales y, en todo caso, no menos favorable que el reconocido a otros extranjeros en el país de acogida<sup>181</sup>.

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<sup>179</sup> WILLIAMS, A., "Turning the tide: Recognizing climate change refugees in International Law", *op. cit.*, p. 521.

<sup>180</sup> Vid. el principio de reubicación y reasentamiento planificados y el principio de asistencia internacional para las medidas internas que proponen BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, pp. 75-76.

<sup>181</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, pp. 376-377.



Aunque los autores toman la Convención de Ginebra como referente principal, sostienen que la convención sobre "refugiados climáticos" debería rebasar el ámbito de protección de aquélla, garantizando no sólo la protección de los derechos humanos de los "refugiados climáticos" en abstracto, sino también que éstos reciban ayuda humanitaria adecuada tras su desplazamiento forzoso. A tal efecto, toman como ejemplo la Convención sobre Municiones en Racimo, cuyo artículo 5 prevé la prestación de asistencia material de emergencia sensible a las circunstancias individuales de las víctimas<sup>182</sup>.

Basándose en la propuesta de Docherty y Giannini, Hodgkinson et al. también se refieren a la Convención de los Refugiados como marco de referencia para la protección de los desplazados transfronterizos<sup>183</sup>, y a la Convención sobre Municiones en Racimo como modelo para la prestación de asistencia humanitaria<sup>184</sup>. Ahora bien, la convención sobre desplazamiento climático que plantean estos autores incluye asimismo a los desplazados internos. A este respecto, los autores optan por mantener la clásica distinción entre desplazados transfronterizos e internos, en lugar de establecer un régimen común para ambas modalidades de desplazamiento, si bien reconocen que ciertas disposiciones, como las relativas a la asistencia internacional o a la no discriminación, se aplicarían a ambas<sup>185</sup>. Al abordar la protección de los desplazados internos, Docherty y Giannini toman como referencia los Principios Rectores de los Desplazamientos Internos como "la matriz de derechos humanos y protecciones humanitarias que son aplicables a los desplazados internos"<sup>186</sup>.

Reconociendo la importancia de los Principios Rectores de los Desplazamientos Internos en la protección de los desplazados por causas ambientales, los Principios de Península los contextualizan y adaptan al ámbito de los desplazamientos climáticos dentro de los Estados<sup>187</sup>. Los derechos recogidos por los Principios de Península son coherentes con el conjunto de derechos que el proyecto de Limoges codifica en favor de

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<sup>182</sup> *Ibíd.*, pp. 378-379.

<sup>183</sup> HODGKINSON, D. ET AL., "'The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, pp. 109-111.

<sup>184</sup> *Ibíd.*, pp. 108 *in fine*, 109 y 111.

<sup>185</sup> *Ibíd.*, p. 103.

<sup>186</sup> *Ibíd.*, p. 102 *in fine*. Vid. tb. pp. 106-109 sobre la protección y asistencia a los desplazados internos en su instrumento.

<sup>187</sup> DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, tercer considerando, p. 12.

los desplazados ambientales, por lo que se hará referencia a ellos al hilo de los comentarios a esta parte del proyecto.

Además de garantizar los derechos de las personas que van a ser reubicadas en el marco de un programa de reasentamiento (principios 9 a 13), así como la protección de las que se ven obligadas a desplazarse de forma inesperada (principios 14 a 16), los Principios de Península también contemplan medidas de asistencia antes y después del desplazamiento, lo que hace de ellos un marco normativo integral para la protección de los desplazados climáticos que no han abandonado sus países de residencia habitual. Antes de que se produzca el desplazamiento, estas medidas se dirigen a la prevención, protegiendo a las poblaciones expuestas a condiciones climáticas adversas que puedan desencadenar el desplazamiento con el fin de reforzar su capacidad de adaptación (principios 5 a 8). Después del desplazamiento, el marco se orienta a proteger y ayudar a las poblaciones desplazadas durante su retorno, cuando éste sea posible (principio 17).

Por otra parte, a diferencia de Hodgkinson et al., los redactores de Limoges han preferido no diferenciar entre desplazados transfronterizos e internos, manteniendo un estándar de trato uniforme. Esta opción supone una mejora sustancial del modelo de la Convención de Ginebra en el que se inspiran tanto Docherty y Giannini como Hodgkinson et al. Así, en el texto de la Convención sobre el Estatuto de los Refugiados de 1951 se contemplan hasta tres estándares de trato diferentes: un primer conjunto de derechos se concede a los refugiados al menos en igualdad de condiciones con los extranjeros en general –estándar mínimo de trato-; un segundo grupo se reconoce con un trato equivalente al más favorable otorgado a los nacionales de un tercer Estado –estándar de trato de la nación más favorecida-; finalmente, hay ciertos derechos en cuyo disfrute la Convención equipara a los refugiados con los nacionales del Estado de acogida –estándar de trato nacional.

Al no distinguir entre desplazados internos y transfronterizos, el modelo de Limoges homogeneiza estos diferentes estándares equiparándolos al más beneficioso de ellos –i.e. el de trato nacional. Esto se debe a que los desplazados internos ya disfrutaban de toda la gama de derechos políticos, económicos, sociales y culturales garantizados por el ordenamiento jurídico del Estado en el que viven, por lo que su condición de desplazados ambientales no puede suponer un empeoramiento de su trato conforme al convenio en comparación con el que disfrutaban anteriormente con arreglo a la

legislación nacional. Al mismo tiempo, el artículo 7 prohíbe cualquier tipo de discriminación entre los desplazados –entre otros motivos, por su origen nacional-, por lo que no cabría una diferencia de trato en el disfrute de los derechos garantizados por el convenio en función de la condición de nacional o extranjero de los desplazados.

Por último, los derechos garantizados por el proyecto de Limoges reflejan, además del contenido de la Convención de Ginebra sobre el Estatuto de los Refugiados y los Principios Rectores del Desplazamiento Interno, la normativa internacional de derechos humanos, como el PIDCP o el PIDESC, a los que el proyecto hace referencia en su preámbulo. En este sentido, el proyecto de Limoges establece los derechos mínimos que todo Estado Parte debe reconocer a los desplazados ambientales que se encuentren en su territorio, independientemente de que el derecho interno reconozca estos mismos derechos a los extranjeros o a sus propios nacionales.

En los siguientes apartados se analizan los artículos comprendidos en los capítulos 3 y 4 del proyecto de Limoges, que regulan los derechos garantizados tanto a las personas en riesgo de ser desplazadas como a las que lo han sido. Se incluyen asimismo una serie de derechos específicos de los desplazados interestatales en razón de la mayor vulnerabilidad que experimentan al encontrarse fuera del abrigo del Estado de su nacionalidad.

### **2.6.2. Capítulo tercero: derechos garantizados a las personas amenazadas por el desplazamiento**

El capítulo 3 recoge una serie de derechos que asisten a las personas, familias, grupos o poblaciones en riesgo de ser desplazadas. El proyecto de Limoges adopta un enfoque centrado estrictamente en proteger a las personas que se enfrentan potencialmente a la realidad del desplazamiento. A tal fin, los preceptos de este capítulo se focalizan en asegurar que los interesados estén debidamente informados (art. 9.1), que puedan participar en la planificación del desplazamiento y sus consecuencias (art. 9.2), y que puedan decidir libremente si permanecen en sus lugares de residencia habitual mientras la amenaza ambiental no sea grave e inminente (art. 11) o se desplazan en el momento en que así lo consideren (art. 10).

Estas medidas de protección no se acompañan de medidas preventivas de los desplazamientos. Por lo tanto, en este tercer capítulo no se encontrarán obligaciones

específicas para que los Estados Partes se adapten a los cambios en el medioambiente o gestionen adecuadamente el riesgo de desastres, más allá de la obligación de hacer partícipes a los afectados a la hora de desarrollar políticas al respecto. Esta ausencia contrasta con el marco de Península, donde los principios que regulan las obligaciones generales de los Estados hacen especial hincapié en su deber de "prevenir y evitar las condiciones que puedan conducir al desplazamiento climático" (principio 5)<sup>188</sup>. Una obligación que también subrayan Docherty y Giannini en el ámbito del desplazamiento transfronterizo, incluyendo en su instrumento la responsabilidad de los Estados de origen de prevenir, en la medida de lo posible, las crisis de "refugiados climáticos"<sup>189</sup>.

Así, junto a las medidas de protección, ambas propuestas prevén que los Estados ayuden a sus nacionales a adaptarse a la variabilidad climática sin necesidad de desplazarse<sup>190</sup> y, en el caso de Docherty y Giannini, que garanticen que los desplazamientos, cuando sean inevitables, se realicen de forma organizada antes de que desemboquen en una crisis<sup>191</sup>. Ambos marcos contemplan también la cooperación y la asistencia internacional para la prevención de los desplazamientos, ayudando a los Estados que lo soliciten a aplicar medidas de adaptación<sup>192</sup>.

La conveniencia de introducir una disposición adicional en el capítulo 3 en la línea sugerida por estas otras propuestas normativas podría debatirse en sucesivas revisiones del texto de Limoges.

## **A) Artículo 9 - Derechos de información y participación**

### **1. Derecho de información (apartado 1)**

La huida en situaciones de peligro es siempre una experiencia traumática que, sin embargo, puede resultar la vía más rápida y eficaz de escapar de una amenaza. Reconociendo esta cruda realidad, el artículo 9 de la convención garantiza, en su apartado 1, el derecho a la información. Este derecho persigue que las personas

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<sup>188</sup> DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, principio 5, p. 17.

<sup>189</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, p. 381. En consonancia con la posición de estos autores están HODGKINSON, D. ET AL., "The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, p. 106.

<sup>190</sup> DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, principio 6.a y principio 7.a, pp. 17-18. DOCHERTY, B.; GIANNINI, T., *op. cit. supra*, p. 381 *in fine*.

<sup>191</sup> DOCHERTY, B.; GIANNINI, T., *op. cit. supra*.

<sup>192</sup> *Ibíd.*, p. 384. DISPLACEMENT SOLUTIONS, *op. cit. supra*, principio 8, p. 18.

potencialmente en riesgo conozcan "lo más pronto que sea posible" "las informaciones relativas a las amenazas climáticas y ambientales", así como a las "situaciones críticas" relacionadas con ellas, a las que estén expuestas<sup>193</sup>.

De acuerdo con las versiones del convenio en inglés y francés, la información proporcionada debe ser *fiable, entendible y accesible a todos*<sup>194</sup>. Particularmente relevante es garantizar la accesibilidad de la información, en vista de que las personas más vulnerables suelen habitar en zonas rurales o en los barrios marginales de las grandes urbes, por lo que es probable que no tengan acceso a los medios de comunicación de uso habitual en las sociedades urbanas contemporáneas, entre ellos Internet<sup>195</sup>.

## 2. Derecho de participación (apartado 2)

Este derecho de información se complementa con el derecho que tienen las personas en riesgo de desplazamiento "a participar en la elaboración de las políticas de prevención de desastres climáticos y ambientales y de atención a sus consecuencias inmediatas o futuras". Este derecho de participación encuentra apoyo en otras propuestas de tratado como la de Hodgkinson et al<sup>196</sup>. Aparece también garantizado en los Principios de Península, cuyo numeral 7.d. establece que los Estados deben involucrar a la población, y en particular a ciertos colectivos considerados vulnerables, en el desarrollo de las políticas y leyes nacionales de aplicación de estos Principios<sup>197</sup>.

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<sup>193</sup> Cf. HODGKINSON, D. ET AL., "The Hour when the ship comes in": a convention for persons displaced by climate change", *op. cit.*, p. 109, quienes también prevén que los Estados Partes difundan información sobre los probables desplazamientos relacionados con el cambio climático y sus políticas de protección y asistencia a los desplazados potenciales y reales. Sin embargo, parece tratarse más de un deber para con las demás Partes del instrumento que para con los propios ciudadanos del Estado, como es el caso del proyecto de Limoges.

<sup>194</sup> La versión francesa establece: "Ces informations doivent être fiables, compréhensibles et accessibles à tous."; y la versión en inglés: "This information must be reliable, understandable and accessible to all." Este inciso ha sido omitido en la versión del proyecto en castellano, siendo conveniente su reintroducción.

<sup>195</sup> Téngase en cuenta que, por ejemplo, los problemas de conectividad fue un obstáculo para el desarrollo del plan de trabajo del TFD cuando sus actividades incluían la participación virtual de personas pertenecientes a grupos marginalizados o en riesgo de exclusión (vid. UNFCCC, *Fifth Meeting of the Task Force on Displacement (TFD5). Summary of proceedings*, p. 2 *in fine*).

<sup>196</sup> HODGKINSON, D. ET AL., "The Hour when the ship comes in": a convention for persons displaced by climate change", *op. cit.*, p. 109.

<sup>197</sup> DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, tercer considerando, p. 18, reconociendo este derecho de participación especialmente en favor de los pueblos indígenas, las mujeres, los ancianos, las minorías, las personas con discapacidad, los niños, los que viven en la pobreza y los grupos y personas marginados.

Tal y como aparece formulado en las distintas propuestas, este derecho permitiría a los potenciales afectados por el desplazamiento intervenir en la elaboración e implementación de políticas orientadas tanto a la prevención de disrupciones ambientales como a la mitigación de sus efectos, incluida la búsqueda de soluciones duraderas. A este respecto, el MSRRD contiene importantes previsiones en la materia que sería conveniente integrar<sup>198</sup>.

La participación de la población en la gestión de potenciales riesgos pretende asegurar una correcta y adecuada respuesta por parte de los poderes públicos, los servicios competentes y la propia ciudadanía en caso de que dicho riesgo se materialice, minimizando las posibilidades de que devenga en una catástrofe que obligue al desplazamiento. Igualmente, la participación permite conocer las vulnerabilidades de la población en riesgo, lo que posibilita adaptar los planes y estrategias de control y respuesta al riesgo a ellas –incluyendo sus necesidades sociales, culturales y asistenciales<sup>199</sup>. Por otra parte, con la participación de la población en la preparación de la fase de recuperación, rehabilitación y reconstrucción –utilizando la terminología del MSRRD- se da cumplimiento al principio de "reconstruir mejor", consagrado en el Marco de Sendai<sup>200</sup>, facilitando la incorporación de cuestiones de desarrollo y de fortalecimiento de la capacidad de resistencia frente a futuras amenazas climáticas o medioambientales.

Finalmente, en la búsqueda de soluciones duraderas al riesgo de desplazamiento, el reasentamiento puede aparecer como la única opción, o la más viable, para asegurar a largo plazo la seguridad y el bienestar de las personas expuestas permanentemente a una amenaza ambiental o climática. Sin embargo, el reasentamiento es una solución no exenta de riesgos y retos. Las iniciativas de reasentamiento de los habitantes de las Islas Carteret, en Papúa Nueva Guinea, afectadas por la subida del nivel del mar y el deterioro medioambiental asociado, ha servido para ilustrar las enormes complejidades políticas, económicas, sociales y culturales que este tipo de procesos entraña. Se remite a cuanto a este respecto se expuso en el comentario del Principio Rector No. 28, señalando únicamente que todos estos intentos han demostrado que la participación de

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<sup>198</sup> Vid. la prioridad 4 sobre la mejora de la preparación ante las catástrofes para una respuesta eficaz y para "reconstruir mejor" en la recuperación, rehabilitación y reconstrucción (UNGA, "Annex II Sendai Framework for Disaster Risk Reduction 2015–2030", in: *Resolution 69/283... (A/RES/69/283)*, *op. cit.*, párrs. 32-34.

<sup>199</sup> Vid., *ibíd.* párr. 36.

<sup>200</sup> Vid., *ibíd.*, párr. 32.

las comunidades afectadas y de acogida es clave para garantizar el éxito del reasentamiento, su estabilidad en el tiempo y la integración y convivencia pacífica de las familias reasentadas en su nuevo entorno sociocultural<sup>201</sup>.

### 3. Efectividad de los derechos de información y participación (apartado 3)

Tanto el derecho de información como el de participación se predicen respecto a "las amenazas climáticas y ambientales y las situaciones críticas" relacionadas con ellas. Esta redacción podría plantear problemas interpretativos respecto a la inclusión de otros peligros que no sean en propiedad una amenaza que tenga su origen en el clima o en el medioambiente, como sería el caso de las amenazas de origen geofísico o antrópico. Dado que el objetivo del artículo 9 es conocer y abordar aquellos cambios en el medio natural que supongan un riesgo para las condiciones de vida de quienes lo habitan, con independencia de su origen o tipología, sería preferible adoptar la terminología del Marco de Sendai y aludir al derecho de información y participación ante el *riesgo de desastres*. Así se evita dejar fuera otro tipo de interrupciones en el entorno que no entren en las categorías de amenazas climáticas o ambientales.

El apartado 3 pretende garantizar que los derechos de información y participación ejerzan "una influencia real sobre las decisiones relativas a las amenazas ambientales"; es decir, pretende asegurar la efectividad de ambos. Sin embargo, a diferencia del derecho de participación, el derecho a la información no es de naturaleza política, es decir, no pretende influir en las decisiones de los gobernantes sobre las amenazas medioambientales. Su finalidad es garantizar que las personas en riesgo puedan tomar la decisión de ponerse a salvo lo antes posible, para lo que necesitan poder acceder de forma efectiva a la información sobre las amenazas que los acechan. Dado que las condiciones para su eficacia difieren entre uno y otro derecho, sería preferible su tratamiento por separado.

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<sup>201</sup> Vid. Chapter VI, sub-section 1.3.6. (A) "Participation of affected communities in the planning and management of their return or relocation: the case of the Carteret Islands (Papua New Guinea)".

a. *Eficacia del derecho de información*

Para que el derecho de información sea eficaz, la información que se proporciona ha de ser *completa*. O lo que es lo mismo, su alcance y contenido deben permitir a la ciudadanía formarse una representación fidedigna del riesgo para poder actuar en consecuencia. Esta información debería incluir, entre otros extremos, avisos sobre la franja geográfica y temporal en la que se estima que tendrá aproximadamente lugar el impacto, recomendaciones de actuación, servicios de emergencia o puntos de evacuación y asistencia. Si bien a primera vista este tipo de informaciones pueden evocar a las disrupciones medioambientales de rápida aparición, no son exclusivas de ellas. Las sequías, por ejemplo, son una disrupción de actuación lenta que entraña un riesgo no menor al de una inundación – y otro tanto cabría decir de las amenazas epidemiológicas.

Del mismo modo, la efectividad del derecho de información dependerá de que la Parte afectada tenga la capacidad suficiente para recabar y procesar los datos necesarios para anticipar el riesgo de catástrofe. De ahí la importancia de fomentar la implantación de sistemas de alerta temprana, en línea con lo dispuesto en el MSRRD<sup>202</sup>, las recomendaciones del TFD sobre desplazamiento asociado al cambio climático<sup>203</sup> o la meta de la Agenda 2030 de construir asentamientos humanos más resistentes al impacto del cambio climático y los desastres naturales<sup>204</sup>. A este respecto, no resultaría superfluo incluir también en la convención de Limoges la obligación de los Estados Partes de implementar sistemas de alerta temprana en sus territorios, haciendo igualmente referencia a la obligación de cooperar entre sí a tal efecto como manifestación del principio de solidaridad<sup>205</sup>.

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<sup>202</sup> UNGA, “Annex II Sendai Framework for Disaster Risk Reduction 2015–2030”, in: *Resolution 69/283... (A/RES/69/283)*, *op. cit.*, párr. 18.

<sup>203</sup> UNFCCC, “Recommendations from the report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts on integrated approaches to averting, minimizing and addressing displacement related to the adverse impacts of climate change”, in: *Report of the Conference of the Parties on its twenty fourth session, held in Katowice from 2 to 15 December 2018. Addendum Part two: Action taken by the Conference of the Parties at its twenty fourth session (FCCC/CP/2018/10/Add.1)*, 19 March 2019, (FCCC/CP/2018/10/Add.1), *op. cit.*, párr. 1(g)(iii), p. 43.

<sup>204</sup> UNGA, *Resolution 70/1... (A/RES/70/1)*, *op. cit.*, targets 11.b y 13.3.

<sup>205</sup> Así lo hizo el Acuerdo de París, cuyo artículo 8.4 enumera varias áreas de actuación y cooperación para evitar o reducir las pérdidas y daños relacionados con el cambio climático (vid. UNFCCC, “Annex Paris Agreement”, in: *Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015. Addendum. Part two: Action taken by the Conference of the Parties at its twenty-first session (FCCC/CP/2015/10/Add.1)*, 29 January 2016, pp. 27-28). También la



### b. Eficacia del derecho de participación

Por su parte, la efectividad del derecho de participación de la población expuesta al riesgo de desplazamiento requerirá, en primer lugar, de la habilitación de los cauces adecuados para que sus contribuciones alcancen los centros decisorios. Si bien es deseable, e incluso necesaria, cierta institucionalización de la participación ciudadana, conviene ser flexible en cuanto a las formas que pueda adoptar. Así, podría asumir la forma tradicional de una ONG, pero también tratarse de una plataforma vecinal o de una asociación. El criterio determinante no debe ser formal sino sustantivo –i.e. que quienes la integren compartan el riesgo de estar expuestos a riesgo ambiental.

Sin embargo, tan importante es que las aportaciones de la sociedad civil lleguen a quienes detentan el poder como asegurarse de que éstos las tengan debidamente en consideración y las integren en las respuestas sobre los desastres medioambientales<sup>206</sup>. A este respecto, conviene recordar las declaraciones de la ONG *Tulele Peisa*, que actúa como interlocutora de los habitantes de las Islas Carteret que van a ser reasentados, en las que calificaba sus relaciones con el gobierno autónomo de Bougainville de "conflictivas" en el mejor de los casos, y en las que "cada avance político ha sido ganado a pulso"<sup>207</sup>.

En vista de casos como el de *Tulele Peisa*, y con el objeto de evitar que el derecho de participación resulte frustrado en la práctica, las normas internas sobre elaboración de políticas de prevención y gestión del riesgo de desastres deben regular, por un lado, una fase de participación pública dentro del procedimiento. Por otro lado, deben introducirse mecanismos de transparencia y motivación que permitan conocer qué elementos de las aportaciones ciudadanas realizadas en el trámite de participación han sido incorporados y cuáles no y por qué. Sólo así podrá darse cumplimiento al mandato

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Convención de Kampala para la protección y asistencia de las personas desplazadas en África ha positivado en su artículo 4 la obligación de sus Estados Partes de desarrollar sistemas de alerta temprana a escala nacional y la cooperación entre todas ellas a estos efectos. A este respecto, el apartado 2 del citado precepto, se refiere a la futura implantación de un sistema común de alerta temprana de ámbito continental.

<sup>206</sup> El anterior Representante de las NU, Sr. Walter Kälin ya criticó esta actitud de las autoridades públicas, contraria al Principio Rector No. 28, que garantiza el derecho de participación de los desplazados internos en la planificación y gestión de su regreso o de su reasentamiento y reintegración (vid. UNGA, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, Walter Kälin. *Addendum: protection of internally displaced persons in situations of natural disasters* (A/HRC/10/13/Add.1), 5 March 2009, párr. 37).

<sup>207</sup> CORCORAN, J.; VIRNIG, A. (eds.), "*Tulele Peisa. Papua New Guinea*", *Equator Initiative Case Studies: Local sustainable development solutions for people, nature, and resilient communities*, UNDP, 2016, p. 12 [traducción del autor del original en inglés] (último acceso: 03/09/2020).

del artículo 5.3 de la convención de que la participación de los afectados tenga una influencia real en las políticas y normas legales<sup>208</sup>.

#### 4. Deber de publicidad (apartado 4)

El último apartado del artículo 9, el número 4, establece un deber de difusión a cargo de las Partes, que deben informar a la población en riesgo de ser desplazada de la existencia y condiciones para el reconocimiento del estatus de desplazado medioambiental, así como de las consecuencias del de dicho reconocimiento<sup>209</sup>. Se trata, por tanto, de que los posibles afectados por una disrupción medioambiental conozcan de antemano la posibilidad de recibir asistencia y protección en caso de resultar finalmente desplazados y los procedimientos que deben seguir para acceder a ella, lo que redundaría en una mayor seguridad jurídica y reduce el riesgo de que los afectados queden desprotegidos por desconocimiento.

Por su proximidad a los interesados, es el Estado de origen el que está en mejores condiciones de cumplir con este deber de publicidad, debiendo priorizarse las administraciones autonómicas y, sobre todo, las locales, como canales inmediatos de difusión por su mayor cercanía a la población expuesta al desplazamiento.

### **B) Artículo 10 - Derecho al desplazamiento**

El apartado 1 del artículo 10 de la convención dispone que:

"Toda persona, familia, grupo o población que se enfrente a un cambio radical o gradual de su medioambiente, incluidos los de origen climático, que afecte inevitablemente a sus condiciones de vida, tiene derecho a desplazarse en o fuera de su Estado de residencia."

Este derecho a desplazarse es una manifestación de la libertad fundamental de movimiento que ha sido reconocida en instrumentos internacionales de alcance universal como la DUDH (art. 13)<sup>210</sup> o el PIDCP (art. 12)<sup>211</sup>. Esta libertad se garantiza

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<sup>208</sup> La referencia a las "normas legales" aparece en las versiones en inglés y francés del convenio; no así en la castellana.

<sup>209</sup> Existe cierta discrepancia en la redacción de este apartado de una versión a otra del proyecto. Así, el texto en inglés y francés se refiere al deber de informar a la población "de la existencia y *condiciones de reconocimiento del estatus de desplazado medioambiental*". En cambio, el original en castellano habla de "la existencia y de *las consecuencias del reconocimiento del estatuto de desplazado ambiental*". Convendría que los tres elementos formaran parte de este deber de publicidad.

<sup>210</sup> UNGA, *Resolution 217 (III) [A] Universal Declaration of Human Rights adopted by the General Assembly at its Third session (A/RES/217(III)[A])*, 1948, pp. 71-79.

en su dimensión interna y externa. *Ad intra*, supone el derecho a circular libremente por el territorio de un Estado en el que una persona se encuentra legalmente. *Ad extra*, significa el derecho a salir de cualquier país, incluido el propio.

Ahora bien, esta libertad de movimiento, pese a su carácter fundamental, no es absoluta. Como reconoce el artículo 12.3 del PIDCP, puede ser objeto de restricciones siempre y cuando estén legalmente establecidas, justificadas y sean compatibles con los demás derechos y libertades fundamentales<sup>212</sup>. Sin embargo, el apartado 2 del artículo 10 del proyecto de Limoges sobre desplazamiento ambiental establece que "las Partes se abstendrán de obstaculizar o intentar obstaculizar o permitir que se obstaculicen tales desplazamientos." Por tanto, se plantea la cuestión de si esta prohibición es también una prohibición relativa, que admite excepciones, o si es una prohibición absoluta.

Debe partirse de la base de que el reconocimiento del derecho a desplazarse se fundamenta en la salvaguarda de la propia vida frente a un peligro ambiental. Si se tiene en cuenta que el derecho a la vida es un derecho que no admite suspensión en ningún caso (art. 4.2 PIDCP), debe concluirse que el artículo 10.2 de la convención está configurando la prohibición de no obstaculizar el desplazamiento en términos absolutos. En este sentido, el derecho de desplazamiento que consagra la convención de Limoges se aproxima al artículo 14.1 DUDH, que señala que: "En caso de persecución, toda persona tiene derecho a buscar asilo, y a disfrutar de él, en cualquier país."<sup>213</sup>

Al igual que el artículo 14 DUDH, el artículo 10 de la convención está reconociendo el derecho *a buscar* protección, ya sea dentro o fuera del propio Estado. Ahora bien, este derecho de búsqueda no comporta el *derecho a obtener* la protección solicitada. Para ello el solicitante debe huir de un peligro medioambiental que reúna las características de la definición del artículo 2.3 de la convención y que el artículo 10.1 reitera. A este respecto, se remite a las observaciones realizadas al analizar el artículo

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<sup>211</sup> UN, *International Covenant on Civil and Political Rights*, 16 December 1966, UNTS, Vol. 999, No. 14668, pp. 241-255 (versión en español).

<sup>212</sup> *Ibíd.*, p. 244, Article 12.3:

"Los derechos antes mencionados no podrán ser objeto de restricciones salvo cuando estas se hallen previstas en la ley, sean necesarias para proteger la seguridad nacional, el orden público, la salud o la moral públicas o los derechos y libertades de terceros, y sean compatibles con los demás derechos reconocidos en el presente Pacto."

<sup>213</sup> UNGA, *Resolution 217 (III) [A] Universal Declaration of Human Rights...*, *op. cit.*, p. 35 (version en castellano).

2.3, en particular en lo que se refiere a la inevitable afectación de las condiciones de vida que ello debe suponer.

Igualmente, en el caso del desplazamiento transfronterizo, hay que precisar que el derecho a salir del país de residencia habitual no implica el derecho de entrada en otro para lo que habrá que estar a las condiciones de acceso que el Estado en cuestión haya establecido en su legislación de extranjería. En caso contrario, la entrada y permanencia irregular en el territorio de un tercer Estado puede comportar sanciones para el desplazado de acuerdo con el ordenamiento jurídico de dicho Estado. Sin embargo, dado que esta situación de ilegalidad fue forzada por una amenaza para la propia vida, no parece que la conducta del desplazado debiera ser punible. Por ello, el artículo 15 del proyecto prevé una exención de responsabilidad por la entrada o la permanencia irregular en el territorio de otro Estado Parte. Se trata de una exención tomada del derecho de los refugiados, en concreto del artículo 31.1 de la Convención de Ginebra, que en base a esta misma motivación dispone:

"1. Los Estados Contratantes no impondrán sanciones penales, por causa de su entrada o presencia ilegales, a los refugiados que, llegando directamente del territorio donde su vida o su libertad estuviera amenazada en el sentido previsto por el artículo 1, hayan entrado o se encuentren en el territorio de tales Estados sin autorización, a condición de que se presenten sin demora a las autoridades y aleguen causa justificada de su entrada o presencia ilegales."<sup>214</sup>

Para que esta exención sea operativa en el ámbito del desplazamiento ambiental transfronterizo, el artículo 15 del proyecto de Limoges requiere: a) que el desplazado proceda de su lugar de residencia habitual; b) y que se haya presentado ante la policía del país en un plazo de un mes desde la fecha de entrada. Así pues, en términos comparativos, la convención sobre desplazamiento medioambiental ha configurado esta exención de responsabilidad de forma más flexible que el artículo 31.1 de la Convención sobre los Refugiados. De entrada, no requiere que el desplazado venga "directamente" de su lugar de residencia habitual ni que demuestre una causa justificada para su presencia o entrada irregular. Además, la fijación de un plazo para su

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<sup>214</sup> SPAIN, *Instrumento de Adhesión de España a la Convención sobre el Estatuto de los Refugiados, hecha en Ginebra el 28 de julio de 1951, y al Protocolo sobre el Estatuto de los Refugiados, hecho en Nueva York el 31 de enero de 1967*, «BOE» Núm. 252, de 21 de octubre de 1978, (BOE-A-1978-26331), pp. 24310-24328.

presentación ante las autoridades del país favorece la seguridad jurídica, frente a la imprecisión de la expresión "sin demora" que emplea la Convención de Ginebra.

Convendría mencionar, sin embargo, que el desplazado irregular debe formalizar su solicitud de protección al personarse ante la policía. Asimismo, aunque tanto el artículo 15 del proyecto como el artículo 31.1 de la Convención de 1951 se refieren únicamente a la ausencia de sanción penal, la exención debiera extenderse también a las eventuales sanciones administrativas.

### **C) Artículo 11 - Derecho a oponerse al desplazamiento**

El desplazamiento puede ser autónomo –i.e. a iniciativa propia de los desplazados-, o dirigido, cuando es llevado a cabo por las autoridades públicas. Sin embargo, en este último supuesto, pueden surgir tensiones entre la voluntad de quienes van a ser desplazados y la decisión de los poderes públicos, que deben resolverse mediante la oportuna ponderación de los derechos e intereses legítimos en juego. De acuerdo con lo expuesto, el artículo 11 del proyecto declara:

"1. Cuando el desplazamiento sea necesario y haya sido organizado por la autoridad pública sólo podrá efectuarse con el consentimiento de los afectados, excepto en caso de peligro grave e inminente.

2. Toda persona debidamente informada que se oponga al desplazamiento lo hará a su a su propio riesgo."<sup>215</sup>

Así, ante el riesgo de una catástrofe, puede ocurrir que las poblaciones afectadas se nieguen a ser evacuadas, por ejemplo porque temen perder sus bienes o rechazan la existencia del peligro<sup>216</sup>. En este caso, estamos ante un conflicto entre, por un lado, el derecho fundamental a circular y residir libremente en cualquier parte del territorio de un Estado –al que se ha hecho referencia en el epígrafe anterior- y, por otro, la obligación jurisprudencialmente reconocida de los poderes públicos de proteger a las personas sujetas a la soberanía estatal frente a las amenazas a la vida, incluidos los peligros ambientales<sup>217</sup>.

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<sup>215</sup> Cf. DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, Principio 10 (letras a, b y c), pp. 19 *in fine* y 22.

<sup>216</sup> Vid. UNGA, *Report of the Representative... Addendum: protection of internally displaced persons in situations of natural disasters*, *op. cit.*, párr. 43.

<sup>217</sup> Vid. *inter alia*, ECtHR, *Budayeva and Others v. Russia* (Applications Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02), 29 September 2008, párr. 128; and ECtHR, *Öneryıldız v. Turkey* (Application No. 48939/99), 30 November 2004, párrs. 89-90, en relación con las actividades peligrosas.

Las tensiones entre ambos se abordaron al analizar las relaciones entre los Principios Rectores de los desplazamientos internos No. 3 –deber de las autoridades de salvaguardar la vida y la seguridad- y el No. 14 –libertad de circulación y de elección del lugar de residencia-, junto con la prohibición de desplazamientos arbitrarios (Principio Rector No. 6). Entonces se señalaba que la obligación que pesa sobre los poderes públicos justifica que procedan a la evacuación o traslado de las personas en riesgo, incluso en contra de su voluntad, o que les prohíban regresar a las áreas peligrosas mientras subsista el riesgo para la vida o la salud<sup>218</sup>. El apartado 1 del artículo 11 recoge esta tesis, haciendo prevalecer en caso de "peligro grave e inminente" la vida y la obligación de protegerla sobre el derecho a no irse. La seriedad y proximidad de la amenaza justifican la evacuación forzosa y excluyen la arbitrariedad del desplazamiento.

En caso contrario, el desplazamiento requerirá del previo consentimiento de los afectados. Tal será el caso de los programas de reasentamiento de comunidades afectadas por la subida del nivel del mar o la degradación de la tierra. En ambos supuestos, la reubicación es *necesaria* para garantizar a largo plazo unas condiciones de vida dignas a la población, pero no es imprescindible. Es este contexto donde cobra todo su sentido el descargo de responsabilidad que el apartado 2 del artículo 11 establece a favor de las administraciones públicas. Así, una vez que los interesados hayan sido debidamente informados de los riesgos que conlleva la permanencia en zonas degradadas, la decisión de no desplazarse hará recaer sobre ellos la responsabilidad de su propia supervivencia.

La ubicación sistemática de esta exoneración de responsabilidad de las autoridades públicas puede, sin embargo, inducir a error respecto a su alcance. Tal como está organizado el artículo 11, se da a entender que el apartado 2 puede invalidar la excepción al requisito del consentimiento previo que el apartado 1 establece en caso de "peligro grave e inminente". Es decir, incluso en estas situaciones, el interesado podría oponerse a ser evacuado "a su propio riesgo", conforme al apartado 2. De ahí que se proponga alterar el orden del artículo 11 del modo siguiente:

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Vid. tb., UNGA, *Protection of and assistance to internally displaced persons. Note by the Secretary-General: Report of the Representative of the Secretary-General on the human rights of internally displaced persons (A/64/214)*, 3 August 2009, párr. 25; y el comentario a este respecto de KÄLIN, W., *Guiding Principles on Internal Displacement. Annotations, op. cit.*, p. 34.

<sup>218</sup> Vid. Capítulo VI, sub-epígrafe 1.3.3.B) "Freedom of movement and forced evacuation or relocation of populations at risk: Guiding Principles No. 6 in conjunction with No. 14".

"1. Cuando el desplazamiento sea necesario y haya sido organizado por la autoridad pública sólo podrá efectuarse con el consentimiento de los afectados. Toda persona debidamente informada que se oponga al desplazamiento lo hará a su a su propio riesgo.

2. Quedan exceptuadas de lo dispuesto en el apartado anterior aquellas situaciones en las que exista un peligro grave e inminente."

Para terminar, mencionar el acierto con el que los redactores de la convención han subrayado que el desplazamiento, incluso en situaciones en las que no existe un peligro grave e inminente, debe ser necesario. De otro modo, la invocación de las amenazas ambientales podría acabar convirtiéndose en un peligroso pretexto, que puede servir para encubrir intereses distintos de la estricta protección de los desplazados —e.g., la explotación de recursos naturales o la ejecución de proyectos de desarrollo. A la luz de esto, no sería superfluo que el artículo 11 mencionara también el interés público que en estos casos debe sopesarse con el derecho a no ser desplazado, incluyendo consideraciones relativas al impacto medioambiental o sobre los derechos de las comunidades indígenas<sup>219</sup>.

### **2.6.3. Capítulo cuarto: derechos reconocidos a las personas desplazadas**

#### **A) Asistencia humanitaria (artículo 12, apartados 1 a 5)**

Como se ha apuntado en el análisis comparativo de las distintas propuestas, hay consenso en que el nuevo instrumento no sólo debe proteger los derechos de los desplazados, sino también garantizar que reciban una asistencia humanitaria adaptada a sus necesidades particulares<sup>220</sup>. El apartado 1 del artículo 12 de la convención de Limoges reconoce así a los afectados el derecho a ser asistidos una vez que la amenaza ambiental o climática se ha materializado —i.e. ha dejado de ser un riesgo potencial y se ha tornado en un desastre.

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<sup>219</sup> La Convención de Kampala podría servir de inspiración en el caso de los desplazamientos inducidos por proyectos de desarrollo o que involucren a comunidades indígenas. Su artículo 10 obliga a los Estados a realizar una evaluación previa del impacto ambiental del proyecto (apartado 3), así como a explorar otras alternativas viables que no impliquen el desplazamiento de la población (apartado 1) en consulta con las comunidades afectadas (apartado 2). Tratándose de comunidades con un "especial apego y dependencia de la tierra debido a su particular cultura y valores espirituales", el desplazamiento sólo es admisible "por razones imperiosas de interés público" (Art. 4.5). Respecto a esto último, téngase en cuenta también el artículo 16 del Convenio No. 169 de la OIT sobre pueblos indígenas y tribales de 1989, y el artículo 10 de la Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas de 2007.

<sup>220</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, pp. 378-379. HODGKINSON, D. ET AL., "The Hour when the ship comes in: a convention for persons displaced by climate change", *op. cit.*, pp. 108 in fine, 109 y 111.

Este deber de asistencia humanitaria recae principalmente y en primera instancia en el Estado afectado por un flujo de desplazamiento, interno o internacional, en tanto que, como señalan Docherty y Giannini, los desplazados se encuentran en su territorio, por lo que son estos Estados los más indicados para asistirlos<sup>221</sup>. No obstante, las propuestas coinciden asimismo en reconocer que los desplazamientos relacionados con el cambio climático son un problema global y que, por tanto, la comunidad internacional también comparte la responsabilidad de proteger y asistir a estos desplazados<sup>222</sup>. Docherty y Giannini, así como Hodgkinson et al. que se suman a estos autores, se refieren a este respecto al principio jurídico de la cooperación y la asistencia internacionales<sup>223</sup>.

Sin embargo, en el ámbito de la asistencia humanitaria internacional, los partidarios de negociar un nuevo tratado internacional están más preocupados por garantizar la obligación de la comunidad internacional de prestar ayuda en estas situaciones de emergencia que por asegurarse de que los Estados afectados no puedan rehusar dicha asistencia<sup>224</sup> –probablemente debido a la creencia de que en estos casos no

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<sup>221</sup> DOCHERTY, B.; GIANNINI, T., *op. cit. supra*, p. 379 *in fine*. En el mismo sentido, HODGKINSON, D. ET AL., *op. cit. supra*, p. 106. DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, principio 14.a, p. 25. Esta obligación primaria de los Estados de proporcionar protección y asistencia humanitaria a las personas que se encuentran desplazadas dentro de su jurisdicción ha sido también recogida por los Principios Rectores Nos. 3 y 25.1 de los Desplazamientos Internos (vid. COMMISSION ON HUMAN RIGHTS, *Report of the Representative... Annex Guiding Principles on Internal Displacement*, *op. cit.*, pp. 6 y 13).

<sup>222</sup> HODGKINSON, D. ET AL., *op. cit. supra*, p. 106. DOCHERTY, B.; GIANNINI, T., *op. cit. supra*, p. 382. DISPLACEMENT SOLUTIONS, *op. cit. supra*, p. 18, cuyo principio 8 reconoce el derecho de los Estados "a solicitar la cooperación y la asistencia de otros Estados y de los organismos internacionales pertinentes" "[e]n el cumplimiento de sus obligaciones de prevenir y responder al desplazamiento climático dentro de su territorio" (letra b), así como el deber correlativo de la comunidad internacional, "ya sea por separado o conjuntamente", de "proporcionar dicha cooperación y asistencia a los Estados solicitantes, en particular cuando el Estado solicitante no pueda prevenir y responder adecuadamente al desplazamiento climático" (letra c) [traducción del autor del original en inglés].

<sup>223</sup> DOCHERTY, B.; GIANNINI, T., *op. cit. supra*, pp. 382 *in fine* y 383. HODGKINSON, D. ET AL., *op. cit. supra*, p. 106.

<sup>224</sup> DOCHERTY, B.; GIANNINI, T., *op. cit. supra*, pp. 382-383, al abordar la cooperación y asistencia internacional se centran únicamente en justificar por qué la comunidad internacional debe asumir esta responsabilidad. En consecuencia, no se plantean si los Estados estarían obligados a aceptar la ayuda internacional ante una emergencia humanitaria cuando sus capacidades son insuficientes –quizá porque su proyecto de convenio sólo contempla los desplazamientos transfronterizos, siendo así que esta controvertida cuestión únicamente se ha suscitado en el contexto de los desplazamientos internos. En la propuesta de HODGKINSON, D. ET AL., *op. cit. supra*, p. 83, la asistencia puede ser solicitada por cualquier Estado Parte de la convención, ya sea "de origen" o "de acogida", así como ofrecida por la organización para los desplazamientos relacionados con el cambio climático, pero queda a discreción de los Estados afectados aceptar o rechazar dicho ofrecimiento. En el caso del protocolo a la CMNUCC de BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, p. 77, el tipo de apoyo internacional sólo se determina a propuesta formal del gobierno del país afectado. Se puede concluir, por tanto, que en todas las propuestas la intervención internacional sigue estando vinculada al principio de soberanía estatal.



hay motivos para que los Estados teman una injerencia en sus asuntos internos que les haga rechazar la cooperación internacional. Alegan Hodgkinson et al. que "las autoridades gubernamentales suelen solicitar habitualmente ayuda internacional para las víctimas de las catástrofes naturales, en lugar de intentar de obstaculizar el suministro no discriminatorio de ayuda, como es más probable que ocurra en casos de guerra civil y luchas internas"<sup>225</sup>.

La realidad demuestra que esto no siempre es así, como quedó patente durante la emergencia humanitaria que siguió al ciclón Nargis que asoló Birmania en mayo de 2008, cuando el gobierno bloqueó el flujo de ayuda internacional humanitaria a su población afectada<sup>226</sup>. Hodgkinson et al., aunque no desconocen este ejemplo, se limitan a zanjar la cuestión señalando que "la propuesta aquí presentada no constituye el foro adecuado para instituir o ampliar las innovaciones generales del derecho internacional para facilitar las intervenciones forzosas de la comunidad internacional por motivos humanitarios"<sup>227</sup>.

Más cautelosos han sido los Principios de Península. Sin negar la soberanía estatal y el principio de no intervención, el marco de península sigue el precedente de los Principios Rectores de los Desplazamientos Internos a este respecto<sup>228</sup>. Así, el principio de Península No. 8 establece: "Los Estados que no puedan prevenir y responder adecuadamente a los desplazamientos climáticos deberían aceptar la asistencia y el apoyo apropiados de otros Estados y organismos internacionales pertinentes, ya sea de forma individual o colectiva" (letra d)<sup>229</sup>.

En el marco del proyecto de Limoges, esta cuestión no se aborda directamente. Conviene recordar de entrada que la ayuda a la acogida y el retorno de los desplazados se ha institucionalizado en la AMDA. Sin embargo, el artículo 21 sólo se refiere a la competencia de esta agencia para organizar dicha asistencia. No se prevé que a

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<sup>225</sup> HODGKINSON, D. ET AL., "'The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, p. 108 [traducción del autor del original en inglés]. En el mismo sentido, BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, p. 74.

<sup>226</sup> Vid. Capítulo III, apartado 3.2.4., letra D); y Capítulo VI, apartado 1.3.5, letra A),

<sup>227</sup> HODGKINSON, D. ET AL., "'The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, nota a pie de página 215, p. 108 [traducción del autor del original en inglés].

<sup>228</sup> Vid. COMMISSION ON HUMAN RIGHTS, *Report of the Representative... Annex Guiding Principles on Internal Displacement*, *op. cit.*, Principio Rector No. 25, p. 13.

<sup>229</sup> DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, p. 18.

iniciativa propia pueda ofrecer ayuda a los Estados Partes, que, sin embargo, deberían solicitarla cuando sus capacidades sean insuficientes para cumplir la obligación que les impone el artículo 12.1 del proyecto de asistir a las personas desplazadas dentro de su jurisdicción. Fuera del marco institucional de la convención, esta asistencia podría provenir igualmente de otros Estados u organismos internacionales.

El rechazo injustificado de la asistencia internacional, se entiende, dejaría expedita la posibilidad de que la CP realizara, de oficio o a petición de parte, el correspondiente examen de aplicación previsto en el artículo 32 del proyecto, por considerar que dicha denegación vulneraría el derecho de los desplazados a recibir la asistencia humanitaria que les reconoce el artículo 12. Dada la urgencia de la situación, dicho examen debiera ser sumarísimo, limitándose a constatar que, debido a la gravedad del desastre, la magnitud de la población desplazada, las capacidades del Estado afectado o a una combinación de todo ello, no se está garantizando adecuadamente el derecho a la asistencia humanitaria.

Ahora bien, la convención no contempla la posibilidad de que la CP pueda autorizar una intervención forzosa en el territorio del Estado Parte en rebeldía –para lo que tampoco cuenta con medios. Continúa prevaleciendo, por tanto, el principio central de la soberanía de los Estados y la no intervención en sus asuntos internos sobre el discutido principio de una hipotética responsabilidad de proteger a cargo de la comunidad internacional. A lo sumo, la CP podría sancionar al Estado incumplidor suspendiendo su derecho de voto en las sesiones.

No obstante lo anterior, no estaría de más, por un lado, incluir en el artículo 21 del proyecto una referencia a la capacidad de la AMDA de ofrecer asistencia de motu proprio. Por otro lado, el apartado e1 del artículo 12 podría incluir un segundo párrafo al estilo del Principio Rector No. 25 o del principio de Península No. 8:

*Ningún Estado Parte podrá rechazar injustificadamente el ofrecimiento de asistencia y el apoyo de otros Estados y organismos internacionales, incluyendo la AMDA, que se considerará hecho de buena fe. En particular, dicho ofrecimiento se aceptará cuando las autoridades nacionales no puedan prestar la asistencia y protección necesaria a los desplazados.*

## Contenido del derecho de asistencia

Los apartados 2 a 5 del artículo 12 del proyecto concretan el contenido de esa asistencia, dirigida a cubrir las necesidades más básicas que enfrenta cualquier ser humano ante una catástrofe: a) el "derecho a recibir agua potable y una alimentación de subsistencia"; b) el "derecho a que se le entreguen productos de higiene, mantas y prendas de vestir apropiadas"; c) el "derecho de recibir la atención sanitaria que su condición requiera"; d) y el derecho al alojamiento<sup>230</sup>.

Deteniéndonos algo más en el derecho al alojamiento, como parte del contenido esencial del derecho a la asistencia, el proyecto adopta ciertas cautelas respecto al alojamiento de los desplazados en instalaciones de acogida temporal, que deberá realizarse en el más estricto respeto de la dignidad humana y no deberá durar más de lo que exijan las circunstancias (apartado 5.2). Con este propósito, los Estados Partes pondrán en marcha políticas que permitan a los desplazados acceder lo más rápidamente posible a un alojamiento seguro y adaptado a su situación familiar (apartados 5.1 y 5.4)<sup>231</sup>.

### **B) Derechos humanos protegidos**

El artículo 12 del proyecto enumera y desarrolla una serie de derechos que son comunes a los desplazados internos y transfronterizos. Asimismo, el apartado 16 de este precepto establece una obligación de protección reforzada en favor de ciertos grupos de personas que siempre son especialmente vulnerables en el curso de cualquier desplazamiento humano. Ha de valorarse positivamente que los redactores del proyecto hayan definido estos grupos vulnerables de forma abierta, refiriéndose simplemente a los que tienen necesidades especiales y enunciando a continuación una lista ejemplificativa que mencionan a los niños no acompañados, las mujeres embarazadas, las madres con niños pequeños, las personas mayores, y las personas con discapacidad o enfermas.

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<sup>230</sup> Cf. DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, principio 14.c, p. 25, que establece la obligación de los Estados de proporcionar "un nivel practicable de asistencia humanitaria que tenga en cuenta la edad y el género" de los desplazados climáticos internos que no hayan sido reubicados, enumerando sin carácter exhaustivo algunos de los componentes de esta ayuda humanitaria, cuyo contenido debe adaptarse a lo que cada contexto requiera [traducción del autor del original en inglés].

<sup>231</sup> Debe señalarse que los sub-apartados 2 a 5 han sido omitidos en el texto en castellano del proyecto, por lo que su comentario se ha hecho a partir de la versión en inglés.

Por su parte, el artículo 13 establece varios derechos que son específicos de los desplazados internacionales, por encontrarse fuera de las fronteras y de la protección de sus Estados de nacionalidad o residencia habitual.

1. Libertad de circulación y de elección del domicilio (artículo 12, apartado 5)

La libertad de movimiento de los desplazados, incluyendo la elección del lugar de residencia una vez hayan abandonado los centros de acogida temporal, queda garantizada en todo momento (apartados 5.3 y 5.4). Esta libertad fundamental no aparece, sin embargo, reconocida en un apartado independiente del artículo 12 del proyecto, sino dentro del apartado 5, que regula el derecho a la vivienda arriba mencionado<sup>232</sup>. La razón que subyace a esta sistemática reside en que los redactores de Limoges pretenden evitar que se restrinja la circulación de los desplazados mientras permanezcan en un centro de acogida temporal.

No obstante, en el caso de los desplazados no residentes, esta libertad de circulación y de elección del domicilio debería limitarse a la circunscripción territorial en la que se encuentre el centro de acogida temporal o en la que se haya presentado la solicitud de protección, al menos hasta que ésta se haya resuelto favorablemente. Para el caso de que los solicitantes decidan vivir fuera del centro de acogida, debe establecerse la obligación de informar a las autoridades de su dirección de residencia dentro de esa demarcación. Ambas cautelas están motivadas por la necesidad de salvaguardar la eficacia de una eventual decisión de expulsión del territorio del Estado, en caso de que la AA confirme que el recurrente no tiene la condición de desplazado ambiental, ya que no podría hacerse efectiva si se desconoce su paradero.

Una vez obtenida la condición de desplazado ambiental, el no residente tendrá derecho a que las autoridades del Estado Parte en cuestión le expidan los documentos de viaje necesarios para poder desplazarse fuera de su territorio si así lo desea, en el ejercicio de su libertad de circulación. Se trata de un derecho expresamente reconocido a los refugiados en el ámbito de la Convención de Ginebra (art. 28). Aunque en el proyecto de Limoges no se menciona expresamente, la expedición de pasaportes debe

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<sup>232</sup> Cf. DISPLACEMENT SOLUTIONS, “The Peninsula Principles of Climate Displacement within States”, *op. cit.*, principio 15, p. 27, que prevé el derecho de las personas desplazadas al margen de un programa de reasentamiento a ser provistas con una vivienda adecuada. Asimismo, este principio garantiza que se procure a los desplazados climáticos nuevos medios de vida cuando no puedan regresar a sus anteriores fuentes de sustento.

entenderse incluida entre la documentación necesaria que se ha de permitir recuperar a los desplazados para el ejercicio de los derechos inherentes a su personalidad jurídica, de acuerdo con el artículo 12.6 al que nos referimos a continuación.

## 2. Derecho al reconocimiento de la personalidad jurídica (artículo 12, apartado 6)

El apartado 6 del artículo 12 recoge el derecho fundamental de toda persona a que su existencia jurídica sea reconocida. La consecuencia formal de este reconocimiento es el derecho del desplazado a que se le expidan los documentos necesarios para el ejercicio efectivo de los derechos personales, especialmente en lo que respecta a la obtención de documentos de identidad. En el ámbito del derecho de los refugiados y de los desplazados internos, el derecho al reconocimiento de la personalidad jurídica y a la obtención de la documentación personal aparece recogido en los artículos 12, 25 y 27 de la Convención de Ginebra, el Principio Rector No. 20 y el artículo 13 de la Convención de Kampala.

En el caso de los desplazamientos transfronterizos, convendría completar el derecho al reconocimiento de la personalidad jurídica con una norma de conflicto que permitiese determinar la ley por la que se regirá el estatuto personal del desplazado. El artículo 12 de la Convención de Ginebra podría servir de ejemplo a este respecto. Este precepto remite a la ley del país del domicilio o la residencia habitual del refugiado. En el caso de derechos que el refugiado hubiese adquirido con anterioridad a la situación de refugio, en particular en lo que se refiere a los derechos matrimoniales, la disposición mencionada introduce un estándar de trato nacional en cuanto a su reconocimiento –i.e., que se trate de derechos previstos en la legislación del Estado en cuestión.

Por último, el apartado 6 del artículo 12 del proyecto codifica, en el ámbito de los desplazamientos medioambientales, la obligación que los textos internacionales sobre desplazamiento interno imponen a las autoridades de facilitar la expedición de nuevos documentos o la sustitución de los perdidos sin imponer condiciones irrazonables para ello, como el regreso a los lugares de residencia habitual –dado que ello supondría regresar al peligro del que precisamente se huyó<sup>233</sup>. En el ámbito del desplazamiento transfronterizo, este deber de facilitación debería completarse con la obligación de asistencia administrativa que prevé el artículo 25 de la Convención de Ginebra. Así

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<sup>233</sup> Vid. Principio Rector de los Desplazamientos Internos No. 20.2, así como el apartado 3 del artículo 13 de la Convención de Kampala para la protección y asistencia de los desplazados internos en África.

pues, el Estado de acogida debería proporcionar a los desplazados aquellos documentos o certificados que normalmente expedirían las autoridades del Estado afectado por una disrupción medioambiental, cuando no sea posible recurrir a ellas.

### 3. Derecho al respeto de la unidad familiar (artículo 12, apartado 7)

El apartado 7 del artículo 12 enuncia el derecho a la unidad familiar bajo una doble obligación. Por un lado, el deber de las autoridades de acogida de no separar a los miembros de una familia desplazada – lo que debe tenerse en cuenta, en particular, a la hora de proporcionarles un alojamiento adecuado, ya sea en centros de estancia temporal u otras soluciones habitacionales más duraderas. Por otro lado, la obligación de facilitar la reunificación de aquellas familias cuyos miembros se hayan dispersado como consecuencia del desastre ambiental o climático. Este derecho al respeto de la unidad familiar ha sido reconocido en el contexto del desplazamiento interno, tanto en el texto de los Principios Rectores Nos. 7.2 y 17, como en el artículo 7.5.c) –relativo a la separación de las familias por parte de grupos armados- y en el artículo 9.2.h) de la Convención de Kampala.

Sin embargo, en ninguno de estos instrumentos se define el concepto de familia. El Principio Rector No. 17 menciona, como supuesto de especial atención, el de las familias con niños. La Mesa redonda de expertos organizada por el ACNUR y el Instituto de Posgrado en Estudios Internacionales de Ginebra en 2001 recomendó "adoptar un enfoque flexible que tome en cuenta las variantes culturales y los factores de dependencia económica y emocional"<sup>234</sup>, concluyendo que "[p]ara los fines de la reunificación familiar «familia» incluye, como mínimo, a los miembros de la familia nuclear (cónyuges y niños y niñas menores de edad)"<sup>235</sup>. No obstante, parece que este concepto de familiar nuclear debiera tener en cuenta también las relaciones afectivas análogas a las conyugales –parejas de hecho-, así como incluir a los miembros dependientes –ya sean ascendentes, descendientes o colaterales.

Sería conveniente incorporar esta definición flexible de la familia al artículo 12 del proyecto de convención, así como recoger el derecho de los desplazados a conocer el paradero de sus familiares desaparecidos o separados. Este derecho, que aparece

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<sup>234</sup> FELLER, E.; TÜRK, V.; NICHOLSON, F. (EDS.), "Summary Conclusions: family unity", in: *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, Cambridge (UK), Cambridge University Press, 2003, párr. 8, p. 606.

<sup>235</sup> *Íd.*

enunciado en el Principio Rector No. 16, resulta fundamental a los fines de hacer efectivo el derecho a la reunificación. De ahí que tanto el Principio Rector No. 17 como el artículo 9.2.h) de la Convención de Kampala prevean que las autoridades colaboren en el rastreo y localización de las familias separadas. En el caso del desplazamiento transfronterizo, las investigaciones correrían a cargo del Estado afectado, mientras que el Estado de acogida facilitaría el suministro de información a medida que avancen las pesquisas.

4. Derecho al respeto de los bienes y de los animales domésticos (artículo 12, apartado 8)

El apartado 8 del artículo 12 garantiza el derecho del desplazado medioambiental a no ser privado de los bienes muebles o inmuebles que hubiese dejado atrás con ocasión del desplazamiento, en la línea de lo dispuesto por el Principio Rector No. 21 y el artículo 9.2.i) de la Convención de Kampala para los desplazados internos. Sin embargo, el proyecto de Limoges presenta dos novedades al respecto. La primera de ellas es que no sólo se impone a los Estados de origen la obligación de proteger los bienes que los desplazados no hayan podido llevarse consigo durante el desplazamiento. También se les obliga a ayudar a los desplazados a transportar "los bienes muebles necesarios para su vida, así como la de sus animales domésticos al lugar de acogida".

La segunda novedad tiene que ver con la referencia expresa a los animales domésticos. Considerados tradicionalmente como bienes muebles semovientes por los civilistas, el proyecto de Limoges avanza en su des-cosificación y reconocimiento como seres sensibles al separarlos del resto de bienes muebles y atribuirles sustantividad propia<sup>236</sup>. La única crítica sería que el precepto mantiene su consideración de posesión, ya que continua basando la atención y protección que dispensa a los animales domésticos en el hecho de que son una pertenencia especial del desplazado que desea

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<sup>236</sup> Esta situación ha cambiado recientemente en España con la entrada en vigor de la *Ley 17/2021, de 15 de diciembre, de modificación del Código Civil, la Ley Hipotecaria y la Ley de Enjuiciamiento Civil, sobre el régimen jurídico de los animales* (entrada en vigor: 05/01/2022), «BOE» núm. 300, de 16 de diciembre de 2021 (BOE-A-2021-20727), pp. 154134 a 154143, que deja de considerar a los animales como "cosas" para reconocerlos como "seres vivos dotados de sensibilidad" (Artículo 1.7). El de España no es, sin embargo, un caso aislado, sino que, como reconoce el Preámbulo de la norma, más bien sigue la senda ya transitada por otros países de su entorno como Austria, Alemania, Suiza, Francia o Portugal. En el ámbito de la UE, debe citarse: EU, *Consolidated version of the Treaty on the Functioning of the European Union*, OJEU (C 326), 26 October 2012, pp. 47-390, cuyo artículo 13 señala que tanto la UE como los Estados miembros deben tener en cuenta el bienestar animal, como seres sensibles que son, al formular sus políticas en materia de agricultura, pesca, transporte, mercado interior, investigación y desarrollo tecnológico y espacio.

llevar consigo o recuperar a su retorno. Sería preferible y deseable que este deber de protección se basase, en cambio, en la consideración de los animales domésticos como seres igualmente vulnerable a los efectos de la disrupción medioambiental a los que se atribuye un derecho autónomo –independiente del de sus poseedores- a ser protegidos, incluso por medio de su traslado a un lugar seguro.

Ambas referencias, "bienes muebles necesarios para su vida" y "animales domésticos", tienen sin embargo la naturaleza de conceptos jurídicos indeterminados. Parece que por los primeros hay que entender los bienes muebles que se consideran de primera necesidad, como los productos de higiene, las mantas y las prendas de vestir adecuadas al clima y a la situación –i.e., los bienes muebles con los que el apartado 3 del artículo 12 del convenio establece que debe proveerse a toda persona desplazada por motivos medioambientales, habida cuenta de que pueden haber perecido en el curso de la catástrofe o del desplazamiento.

Por lo que respecta a los animales domésticos, la RAE define como tales a aquellos "que pertenece a especies acostumbradas a la convivencia con el hombre"<sup>237</sup>. El Cambridge Dictionary los define como "an animal that is not wild and is kept as a pet or to produce food"<sup>238</sup>, y el Larousse Dictionnaire se refiere a ellos del siguiente modo: "Se dit, par opposition à sauvage, d'un animal qui vit dans l'entourage de l'homme et qui a été dressé à des degrés divers d'obéissance selon les espèces, en vue d'obtenir une production, un service ou un agrément"<sup>239</sup>. Atendiendo a estas definiciones, el concepto de animal doméstico excedería de los llamados animales de compañía o mascotas, como perros o gatos, e incluiría también a los animales destinados a otras utilidades humanas como la ganadería, la agricultura o el deporte<sup>240</sup>.

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<sup>237</sup> RAE, [animal | Definición | Diccionario de la lengua española](#) (último acceso: 15/02/2020).

<sup>238</sup> CAMBRIDGE DICTIONARY, [Significado de Domestic animal](#) (último acceso: 15/02/2020).

<sup>239</sup> DICTIONNAIRE LAROUSSE, [Définitions : domestique](#) (último acceso: 15/02/2020).

<sup>240</sup> La cuestión de la protección y devolución de los animales domésticos a sus propietarios se planteó con ocasión de los desplazados medioambientales del volcán de Cumbre Vieja, en la isla canaria de La Palma (España). Como consecuencia de la erupción, seis perros quedaron atrapados en dos estanques rodeados por la colada de lava. El Comité Director del Plan de Emergencias Volcánicas de Canarias autorizó su rescate mediante drones, que también se utilizaron para llevar comida y agua a los animales durante la semana y media que tomó planificar la operación. Lo más curioso es que los perros no fueron finalmente rescatados por las autoridades públicas, sino por un misterioso *A Team*, que los dejó en una localización que luego revelaron a un veterinario. Gracias al microchip, la mayoría de los animales pudieron ser identificados y devuelto a sus dueños. Vid. VEGA, G., ["El comité de crisis del volcán de La Palma autoriza el rescate con drones de los cuatro perros atrapados"](#), *El País*, 19 de octubre de 2021 (último acceso: 19/10/2021). EL PAÍS, ["El misterioso Equipo A que rescató a los perros amenazados por la lava en La Palma entrega a los animales"](#), 26 de octubre de 2021 (último acceso: 26/10/2021).



En cuanto al alcance del deber de asistencia en el transporte, éste desplegará toda su eficacia en el contexto de un desplazamiento planificado ante una amenaza ambiental o climática que aún no se ha materializado en un desastre –e.g., en el marco de un programa de reasentamiento. En el caso de las evacuaciones o los desplazamientos espontáneos en situaciones de emergencia, la ayuda al transporte de los bienes mencionados deberá tener lugar en la fase posterior al desastre, una vez el peligro haya pasado.

La cuestión se torna más compleja tratándose de un desplazamiento transfronterizo, ya que no se especifica a quién corresponde tal obligación de asistencia: ¿Al Estado de origen? ¿Al de acogida? ¿A los dos? Se entiende que si ambos son Partes en el convenio, ambos deben cooperar para facilitar el traslado, en virtud del principio de solidaridad consagrado en el artículo 4 de la convención. En el caso de que uno de los Estados afectados no sea Parte, la realización de este derecho dependerá de los acuerdos de cooperación bilateral o multilateral a los que se refiere el artículo 28 de la convención, si existen. En caso contrario, habría que confiar en la buena fe del Estado no Parte para cooperar en la aplicación de la convención a instancias de la invitación a hacerlo que menciona el artículo 31.1 del proyecto. Por otra parte, no parece que en este tipo de desplazamientos pueda sostenerse una obligación de asistencia en el traslado de animales domésticos –sobre todo tratándose de animales de cierta envergadura-, viniendo el Estado de origen Parte únicamente obligado a garantizar su protección.

Por último, llama la atención que no se haya incluido en este precepto ninguna referencia a la obligación del Estado Parte de origen de asistir a los desplazados internos que hayan regresado o se hayan reasentado en otro lugar en la recuperación de sus bienes, estableciendo mecanismos de indemnización por los daños sufridos y de compensación cuando la restitución no sea posible. Esta obligación aparece estipulada en el Principio Rector nº 29 y en el artículo 12 de la Convención de Kampala. También ha sido incluida en el marco de los Principios de Península sobre Desplazamientos Climáticos dentro de los Estados, que prevén el resarcimiento de las pérdidas y los daños sufridos tanto por los reasentados (Principio 12) como por los desplazados al margen de un programa de reasentamiento (Principio 16).

## 5. Derecho a ganarse la vida mediante el trabajo (artículo 12, apartado 9)

El apartado 9 del artículo 12 del proyecto formula el derecho de todo desplazado medioambiental "a ganarse la vida mediante el trabajo en las mismas condiciones que las demás personas activas". Tomando como referencia el marco para los refugiados que establece la Convención de Ginebra, la referencia al "trabajo" debe interpretarse en un sentido amplio, comprendiendo la realización de actividades remuneradas por cuenta propia y ajena, incluyendo el ejercicio de profesiones liberales –vid. arts. 17 a 19 de la Convención de Ginebra.

En cuanto al trato que el Estado de acogida deberá dispensar a los desplazados ambientales en lo que respecta a su acceso al mercado laboral nacional, la expresión "en las mismas condiciones que las demás personas activas" da a entender que se equipara a los desplazados con los nacionales del propio Estado. Este estándar de *trato nacional* es más favorable que el estándar mínimo de trato que se reconoce a los refugiados, ya que la Convención de 1951 señala que el refugiado recibirá al menos el mismo trato que los extranjeros en cuanto al desarrollo de actividades laborales.

Ciertamente, la expresión "personas activas" que utiliza el proyecto de Limoges puede hacer referencia tanto a extranjero como nacionales. Sin embargo, una interpretación teleológica, que atienda tanto al enfoque pro derechos de los desplazados que impregna todo el capítulo 3 como al objeto de la convención, aplicable tanto a desplazados internos como internacionales, sugiere que es el estándar de trato nacional el que ha de prevalecer –de otro modo, los nacionales internamente desplazados por una disrupción medioambiental saldrían desfavorecidos.

Respecto a esto último, cabría alegar que el desplazado interno nacional no resultaría realmente perjudicado, ya que el artículo 30 del proyecto estipula que sus disposiciones no perjudicarán otros derechos más favorables que pudieran corresponder al desplazado en virtud de otras normas nacionales o internacionales. Sin embargo, aceptar esta interpretación supondría introducir una distinción entre los desplazados internos nacionales, que como tales gozarían del estándar de trato nacional, y los desplazados internos y transfronterizos no nacionales, a los que se aplicaría el estándar de trato mínimo de los extranjeros. Como ya se tuvo ocasión de señalar en la introducción de este apartado, el proyecto de convenio establece como principio la uniformidad de trato de todas las personas medioambientalmente desplazadas,

prohibiendo toda discriminación entre ellas por cualquier motivo (art. 7), razón por lo que esta interpretación debe rechazarse.

#### 6. Derecho a la educación y a la formación (artículo 12, apartado 10)

El derecho a la educación y a la formación está previsto en el apartado 10 del artículo 12, que establece que "[t]odo desplazado ambiental tiene derecho a recibir una educación y una formación respetuosa con su identidad cultural". Así formulado, parece que este apartado únicamente se ocupa de garantizar que el Estado de acogida no se aproveche del desplazamiento para forzar la asimilación cultural

Nada se indica, sin embargo, sobre las condiciones en las que los desplazados ambientales no residentes tendrán acceso a la educación en el Estado de acogida. A este respecto, el Principio Rector No. 23, además de preservar la identidad cultural de los desplazados internos, garantiza que al menos la educación primaria sea obligatoria y gratuita. Igual lo hace el artículo 22 de la Convención de Ginebra, que se asegura de que los refugiados reciban el mismo trato que los nacionales en lo que respecta a la enseñanza elemental, y un trato no menos favorable que el concedido a los extranjeros en general en cuanto al acceso a todos los demás niveles de enseñanza, el reconocimiento de certificados de estudios en el extranjero, la exención de derechos y cargas y la concesión de becas.

Sobre la base de los mismos argumentos expuestos para el derecho al empleo, hay que concluir que los desplazados medioambientales extranjeros están en plena igualdad con los nacionales en el ámbito de la educación y la formación, con la consiguiente mejora que ello supone respecto a los refugiados y los desplazados internos no ambientales.

#### 7. Derecho al mantenimiento de la especificidad cultural (artículo 12, apartado 11)

El apartado 11 del artículo 12 del proyecto significa la positivización del riesgo que el preámbulo de la convención reconoce que entrañan los retos climáticos y ambientales para la supervivencia de la cultura de las comunidades dispersadas, en tanto que el desarraigo del territorio conlleva la pérdida del soporte físico donde las distintas manifestaciones culturales se expresan y confluyen. De acuerdo con la Declaración Universal de la UNESCO sobre la Diversidad Cultural,

"la cultura debe ser considerada el conjunto de los rasgos distintivos espirituales y materiales, intelectuales y afectivos que caracterizan a una sociedad o a un grupo social y que abarca, además de las artes y las letras, los modos de vida, las maneras de vivir juntos, los sistemas de valores, las tradiciones y las creencias"<sup>241</sup>.

Por consiguiente, el derecho a preservar la especificidad cultural es pertinente no sólo en el caso de los desplazamientos transfronterizos o en situaciones de reasentamiento permanente, como el de las comunidades insulares amenazadas por la subida del nivel del mar<sup>242</sup>. También será relevante en el contexto de los desplazamientos internos, cuando coexista un crisol de culturas dentro del propio Estado, como por ejemplo suele ocurrir en el continente africano. Con ello en mente, el apartado 11 pretenda garantizar que, pese al desplazamiento, el grupo pueda seguir exteriorizando libremente sus expresiones culturales en el lugar de acogida. Así, declara que todos sus miembros tienen derecho "a tener en común (...) la vida cultural, la religión y la lengua propias". Este derecho se completa y complementa con la reserva que hace el apartado 10 del artículo 12 de que la educación y formación que reciban los desplazados respete su identidad cultural, a la que se ha hecho antes referencia.

La realización de este derecho podrá adoptar múltiples formas, si bien todas ellas deben partir del respeto y la convivencia pacífica de los grupos de desplazados en las comunidades de acogidas. Una buena manera de evitar el choque cultural y facilitar la integración es dar prioridad, en la medida en que las circunstancias lo permitan, a territorios poblados por comunidades culturalmente similares o afines como lugares de acogida<sup>243</sup>. Para evitar que ciertos Estados, por proximidad geográfica y cultural con zonas de desplazamiento, acaben soportando una mayor carga, el principio de solidaridad exigiría al resto de Partes contribuir con aportaciones económicas al sostenimiento de las comunidades desplazadas.

La realización de esta solución, factible en el marco de programas de reasentamiento, se complica cuando el desplazamiento tiene lugar de manera

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<sup>241</sup> UNESCO, "Declaración Universal de la UNESCO sobre la Diversidad Cultural", en: *Actas de la Conferencia General. 31a reunión, París, 15 de octubre-3 de noviembre de 2001*, Vol. 1: Resoluciones, París (Francia), UNESCO, 2002, quinto considerando, p. 67.

<sup>242</sup> Vid. HODGKINSON, D. ET AL., "'The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, pp. 113-115, cuyo instrumento garantiza expresamente el derecho de las comunidades insulares reasentadas a preservar su patrimonio cultural inmaterial.

<sup>243</sup> HODGKINSON, D. ET AL., *op. cit. supra*, p. 112, también apoyan este criterio de la proximidad geográfica en el reasentamiento de las comunidades insulares amenazadas por la subida del nivel del mar como un forma de preservar su especificidad cultural.

espontánea y ante una situación de emergencia, donde lo que prima es la supervivencia con independencia del lugar hacia el que se dirija la huida. En tales situaciones, lo apropiado es que el factor cultural sea tenido en cuenta a la hora de implementar soluciones de alojamiento duraderas para los desplazados –a las que se refiere el artículo 5.4 de la convención. De esa manera, el Estado de acogida debería buscar restablecer las relaciones comunitarias dentro del grupo, favoreciendo en la reubicación la proximidad entre familias que compartan vínculos culturales –en el bien entendido de que estas políticas de reubicación colectiva deben evitar la formación de guetos dentro de las comunidades de acogida que puedan convertirse en fuente de tensiones y conflictos.

#### 8. Derecho al retorno (artículo 12, apartado 12)

El apartado 12 reconoce el derecho de los desplazados a regresar a sus anteriores lugares de residencia, en la línea de lo dispuesto por el Principio Rector No. 28 y el artículo 11 de la Convención de Kampala sobre desplazamiento interno<sup>244</sup>. De manera coherente con el principio de no retorno del artículo 8, este regreso sólo podrá tener lugar cuando dicho lugar "sea habitable de nuevo". En este sentido, no estaría de más incluir una obligación positiva de los Estados Partes de promover y crear las condiciones necesarias para que el retorno sea posible, como hacen los textos de referencia citados. Esta obligación positiva implicaría un deber de cooperación en la rehabilitación y recuperación de los ecosistemas degradados o contaminados o en la reconstrucción de las zonas arrasadas por un desastre natural.

Como contrapartida al derecho de retorno, el segundo inciso del apartado 12 establece el deber de los Estados de origen "de organizar –y posibilitar, debería añadirse- el retorno" de las personas desplazadas dentro o fuera de sus fronteras "a sus lugares de residencia habitual, en condiciones seguras y dignas"<sup>245</sup>. En el caso de

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<sup>244</sup> Cf. DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, Principio 17, p. 28, que también garantiza el derecho de los desplazados a regresar a sus hogares cuando el retorno no suponga un riesgo grave para la vida o los medios de subsistencia (letras a y b).

<sup>245</sup> Cf. DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, p. 380, quienes también prevén este deber de los Estados de acogida de colaborar en el regreso de sus nacionales. No obstante, estos autores apuntan a que esta "cooperación relacionada con el retorno puede ser menos relevante en el caso de los refugiados del cambio climático porque la destrucción del medio ambiente o la desaparición de un Estado obligará a muchos a reubicarse permanentemente" (Íd.). Una asunción que también hacen BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, p. 75, lo que los lleva a concluir que

Estados no Partes, la realización de este deber se instrumentalizará a través de los acuerdos de cooperación a los que alude el artículo 28 o por medio de la cooperación informal a la que se refiere el artículo 31 sobre las relaciones con terceros países, con arreglo al principio de buena fe. Además, teniendo en cuenta el papel preeminente que se atribuye a la AMDA en el retorno de los desplazados medioambientales (art. 21.4, letras d y f), convendría prever la obligación de los Estados de origen de cooperar con esta institución, junto con los Estados de acogida en el caso de los desplazamientos transfronterizos, en aras de una correcta coordinación entre todas las autoridades implicadas en la operación de retorno.

Una vez que el retorno ha tenido lugar, la responsabilidad del Estado de origen y de la AMDA hacia los desplazados ambientales regresados no debiera todavía decaer. Por el contrario, su apoyo debería prolongarse para garantizar que no sufran discriminación en sus antiguas comunidades o lugares de residencia por razón de su desplazamiento, asegurando su participación en los asuntos públicos y su acceso a los servicios públicos de manera plena e igualitaria (Principio Rector No. 29.1).

#### 9. Derecho a la información y a la participación (artículo 12, apartado 14)

El apartado 14 del artículo 12 viene a completar el derecho de información y participación previsto en el artículo 9. Si este último lo atribuía a las personas en riesgo de ser desplazadas, el apartado 14 se lo reconoce a aquéllos que ya lo han sido. En esta fase en la que el desplazamiento ya se ha producido, el derecho a la información y a la participación comprende tres aspectos básicos: ser informado de la existencia del estatuto de desplazado ambiental y de su contenido; ser informado de los mecanismos de compensación establecidos por los daños materiales sufridos; y ser informado y a participar en la búsqueda de soluciones duraderas al desplazamiento.

##### *a. Derecho a ser informado de la existencia y condiciones de reconocimiento del estatuto de desplazado ambiental, así como de las consecuencias del de dicho reconocimiento*

Mientras que antes del desplazamiento es importante permitir que la población amenazada participe en la formulación de políticas de prevención de riesgos y de gestión de sus consecuencias, el derecho más expeditivo de quienes ya han sido

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lo que debe estar en el centro del nuevo régimen internacional sobre los refugiados climáticos es el reasentamiento planificado y voluntario implementado durante periodos prolongados de tiempo.

desplazados es el de ser informados, a su llegada al lugar de acogida, "de las condiciones de reconocimiento del estatuto de desplazado ambiental". Con buen criterio, los redactores del proyecto presumen la ignorancia de las personas desplazadas por causas ambientales, que no tienen por qué reconocerse como desplazados ambientales, ni saberse poseedores de un estatuto jurídico de protección internacional. Es más, tratándose de procesos de degradación de lenta actuación, es muy probable que los desplazados ni siquiera identifiquen las causas medioambientales como las responsables de su desplazamiento, que achacan en cambio al conjunto de efectos socioeconómicos adversos que este tipo de disrupciones ocasiona.

En el contexto del desplazamiento interno, la carga de este deber de difusión debiera recaer en la administración local, por ser la más próxima al ciudadano. En el caso del desplazamiento internacional, deberán ser las autoridades encargadas del control de las fronteras y las oficinas de extranjería las responsables de informar a los inmigrantes de la existencia del estatuto de desplazado ambiental, del procedimiento para solicitar su reconocimiento y de los derechos que trae consigo. En ambos casos, especialmente si el desplazamiento se ha producido en el contexto de una emergencia, las estructuras oficiales de acogimiento temporal son también un canal idóneo para informar a los desplazados sobre estas cuestiones.

Aunque el primer párrafo del apartado 14 se limita a indicar que las autoridades deben informar a los desplazados de las condiciones de reconocimiento, es importante que los interesados dispongan también de toda la información necesaria para el ejercicio de los demás derechos que les confiere el convenio. En este sentido, resulta preferible la redacción del artículo 9 del proyecto por ser más completa, ya que establece que los posibles solicitantes deben ser informados también de las consecuencias jurídicas de dicho reconocimiento.

Así, en primer lugar, se debería informar a la población desplazada, incluyendo a aquéllos que se hubiesen podido quedar atrás en las zonas afectadas, de las instalaciones temporales dispuestas para su acogida y, posteriormente, sobre la posibilidad de acceder a un alojamiento adecuado. También debería informarse periódicamente a la población desplazada sobre el curso de la disrupción medioambiental en las zonas afectadas, la posibilidad de regresar a sus hogares, así como de los resultados de las labores destinadas a localizar a sus familiares desaparecidos o separados. se les informe también

En esta fase en la que ya se ha producido el desplazamiento, este derecho debería garantizar igualmente que las personas desplazadas

Además, y como ya se indicó al abordar el proceso de reconocimiento, las comisiones nacionales que deciden sobre las solicitudes de protección están obligadas, tal y como se prevé en el primer párrafo del apartado 14, a indicar en la resolución denegatoria del estatus de desplazamiento ambiental la posibilidad de que esta decisión sea recurrida ante la AA.

*b. Derecho a ser informado de los motivos y formas de su desplazamiento*

Este primer párrafo del apartado 14 señala también que "[t]odo desplazado ambiental tiene derecho a ser informado de los motivos y formas de su desplazamiento". Su redacción sigue la del Principio Rector No. 7, cuyo párrafo 3(b) establece para los desplazamientos no urgentes –i.e., que no se trate de evacuaciones- el deber de los Estados de informar a los futuros desplazados de las razones de su desplazamiento y de los procedimientos mediante los que se llevará a cabo.

Puesto que el desplazamiento forzoso sólo es admisible cuando resulta insoslayable para proteger la vida de las personas expuestas a un peligro serio e inminente, tiene sentido que sea fuera de estos supuestos cuando el derecho de información despliega toda su eficacia y que, además, se ejerza con carácter previo al desplazamiento, tal y como recoge el Principio Rector citado. De poco servirá que una persona ya desplazada conozca *a posteriori* "los motivos y formas de su desplazamiento". Por ello, se propone la reubicación de este inciso en el artículo 9 del proyecto de convención, que regula el derecho de información de las personas en riesgo de ser desplazadas.

*c. Derecho a ser informado de los mecanismos de compensación establecidos por los daños materiales sufridos*

El párrafo segundo del artículo 12.14 garantiza que los desplazados estén debidamente informados sobre los mecanismos de indemnización o reasentamiento que se establezcan. Los redactores del proyecto han optado por seguir también en este punto el modelo del Principio Rector No. 7.3.b. La Convención de Kampala ofrece, sin embargo, un enfoque alternativo sobre el derecho a la información y la búsqueda de



soluciones duraderas a la situación de los desplazados que puede ser más interesante desde la perspectiva del desplazamiento medioambiental.

Centrándonos en esta sección en los mecanismos de compensación, ya se ha sugerido en el comentario al artículo 12.8 del proyecto que se incluya una referencia a un derecho de compensación a favor de las personas desplazadas, en línea con el artículo 12 de la Convención de Kampala y el Principio Rector sobre Desplazamiento Interno nº 29. Por consiguiente, la información proporcionada a este respecto debería abarcar tanto los mecanismos de indemnización para cuando la restitución no sea posible, como la indemnización por los daños resultantes del incumplimiento por parte de los Estados de origen de las obligaciones de asistencia al transporte y protección de los bienes dejados atrás a que se refieren los apartados 8.1 y 8.2 del artículo 12.

*d. Derecho a ser informado y a participar en la búsqueda de soluciones duraderas al desplazamiento*

Por último, el párrafo segundo del artículo 12.14 garantiza que los desplazados sean informados sobre los mecanismos de reasentamiento, al tiempo que el párrafo tercero se refiere a su derecho a participar "en la elaboración y ejecución de políticas de acogida y alojamiento".

No obstante, el ejercicio de este derecho de información debiera permitir a los desplazados medioambientales conocer todas las opciones de que disponen, no sólo en lo que a su reasentamiento en otro lugar se refiere -que es la única solución que se menciona-, sino también a su regreso al lugar de origen o a su integración en el país de acogida. A este respecto, se propone que el segundo párrafo del artículo 12.14 del proyecto adopte el enfoque del artículo 11.2 de la Convención de Kampala, que garantiza, en esencia, que los desplazados internos puedan tomar una decisión libre y plenamente informada sobre su destino final, sea cual sea éste<sup>246</sup>.

Por otra parte, la participación de los afectados en la búsqueda de soluciones de acogida y alojamiento duraderas a la que se refiere el párrafo tercero es importante para

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<sup>246</sup> En el mismo sentido, DISPLACEMENT SOLUTIONS, "The Peninsula Principles of Climate Displacement within States", *op. cit.*, cuyo principio 17 establece la obligación de los Estados de proporcionar a los desplazados "información completa, objetiva, actualizada y precisa (incluso sobre cuestiones de seguridad física, material y jurídica)" para que puedan ejercer su derecho al regreso cuando ello sea posible (letra c [traducción del autor del original en inglés]). Además, los Estados vienen obligado a prestar "asistencia de transición" a los desplazados durante el proceso de retorno "hasta que se restablezcan los medios de subsistencia y el acceso a los servicios" (letra d [traducción del autor del original en inglés]).

preservar la especificidad cultural garantizada por el artículo 12.11 del convenio. Igual de importante es, sin embargo, que los desplazados participen en la planificación de su reasentamiento permanente. Así, si el artículo 9 garantiza este derecho cuando el reasentamiento se produce de forma preventiva al desplazamiento, el artículo 12.14 debiera garantizarlo en situaciones en las que el desplazamiento se ha producido al margen de estos procesos y el retorno a los lugares de origen se considera imposible o demasiado peligroso para la vida humana. Como ya se señaló entonces, la participación de las comunidades afectadas resulta en cualquier caso esencial para garantizar el éxito del reasentamiento, independientemente del momento en que se produzca.

#### 10. Derechos colectivos (artículo 12, apartado 15)

Estrechamente relacionados con el derecho al mantenimiento de la especificidad cultural están los derechos colectivos que el apartado 15 del artículo 12 del proyecto reconoce a las poblaciones desplazadas, equiparándolas a estos efectos con los derechos "reconocidos a las minorías en los convenios internacionales, en particular del derecho a constituirse en grupo representativo y de actuar colectivamente ante los tribunales". Debe citarse a este respecto la Declaración de la Naciones Unidas sobre los derechos de las personas pertenecientes a minorías nacionales o étnicas, religiosas y lingüísticas<sup>247</sup>.

Hay que precisar que si bien estos derechos colectivos son instrumentales a los fines de preservar la cultura de los grupos de desplazados, su ejercicio no requiere que los desplazados compartan unos mismos rasgos nacionales, étnicos, religiosos o lingüísticos. El elemento común a todos ellos que el apartado 15 toma en consideración al realiza esta equiparación con las minorías es el hecho del desplazamiento en sí. Éste es el criterio que define a los desplazados como colectivo minoritario con unos intereses compartidos que pueden diferir de los del resto de la población no desplazada, siendo para la defensa de estos intereses que el apartado 15 les reconoce los mismos derechos que a cualquier otra minoría.

Así, los desplazados podrán crear una asociación para velar, por ejemplo, por la efectividad de los derechos que les reconoce la convención de Limoges; visibilizar su situación y la degradación ambiental que sufrían en sus lugares de origen; denunciar

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<sup>247</sup> UNGA, *Resolución 47/135 Declaración sobre los derechos de las personas pertenecientes a minorías nacionales o étnicas, religiosas y lingüísticas, adoptada por la Asamblea General en su cuadragésimo séptimo período de sesiones (A/RES/47/135)*, 3 de febrero de 1993, 7 pp.

públicamente las violaciones de sus derechos como desplazados o reclamar su cumplimiento en sede judicial, ejerciendo la legitimación procesal activa de carácter colectivo que a tal efecto les reconoce el apartado 15. Cuestión distinta será que, entre esos intereses comunes derivados de su condición de desplazados, haya también cuestiones relacionadas con la protección de su propia cultura.

Son, sin embargo, estas cuestiones culturales las que pueden generar más tensiones entre los desplazados y el Estado de acogida, sobre todo en aquellos casos en los que los flujos de desplazados han alterado el delicado equilibrio étnico, religioso o lingüístico de una región o en los que los reasentados permanentes tratan de utilizar la preservación cultural como una forma de obtener cierto control y autonomía sobre el territorio donde han sido reubicados. En este sentido, es necesario aclarar que los derechos que la Declaración reconoce a las minorías, y que el proyecto de Limoges extiende a los desplazados medioambientales, no pueden servir de base para el ejercicio de un futuro derecho a la autodeterminación que suponga una secesión territorial del Estado de acogida –cuya integridad garantiza la propia Declaración en su artículo 8.4<sup>248</sup>.

Igualmente, la condición de no nacional del desplazado medioambiental debiera excluir el ejercicio de los derechos de participación política que la Declaración reconoce a las minorías (art. 2.3 y 4) en el país de acogida, en tanto que estos derechos desbordan la finalidad y contenido de la protección internacional –no estando siquiera contemplados en el estatuto de refugiado. Distinto es que el Estado de acogida facilite que los desplazados puedan ejercitar su derecho de voto en los procesos electorales de sus países de origen. Igualmente, esta exclusión no precluye que el desplazado se naturalice nacional del Estado de acogida y, en consecuencia, adquiera los correspondientes derechos políticos como cualquier otro ciudadano. Convendría, por tanto, introducir estas matizaciones en el artículo 12 del proyecto de convención.

Por último, cabe destacar el derecho de las minorías a relacionarse libre y pacíficamente con otros miembros de su grupo, así como con otros individuos o grupos de terceros Estados con los que compartan vínculos nacionales, étnicos, religiosos o lingüísticos, recogido en el apartado 5 del artículo 2 de la Declaración. Junto con el derecho de asociación (reconocido en el art. 2.4 de la Declaración), este último derecho

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<sup>248</sup> Vid. COMMISSION ON HUMAN RIGHTS, *Comentario del Grupo de Trabajo sobre las Minorías acerca de la Declaración sobre los derechos de las Personas pertenecientes a minorías nacionales o étnicas, religiosas y lingüísticas* (E/CN.4/Sub.2/AC.5/2005/2), 4 de abril de 2005, párrs.15, 19, 20 y 84.

de las minorías resulta de lo más pertinente en el caso de los desplazamientos medioambientales. Indudablemente su implementación ayudaría a paliar los efectos negativos que inevitablemente se derivan del desarraigo y la diáspora de las comunidades desplazadas, favoreciendo la preservación de los contactos y las relaciones sociales que son la base de la cultura compartida. Se sugiere, por tanto, su mención expresa en el apartado 15 del artículo 12 del proyecto.

#### 11. Derechos específicos de los desplazados interestatales (artículo 13)

Por último, el artículo 13 del proyecto enumera varios derechos que sólo se predicarían respecto de los desplazados transfronterizos y no de los desplazados internos, pues traen su causa de la mayor vulnerabilidad a la que se ven expuestos los primeros, por encontrarse en un Estado del que no son nacionales. De ahí que muchos de ellos estén tomados del ámbito del derecho de los refugiados, donde tienen su sede natural.

##### *a. Derecho a la nacionalidad (apartado 1)*

El apartado 1 del artículo 13 comienza enunciando que "[t]odo desplazado ambiental tiene derecho a conservar la nacionalidad de su Estado de origen afectado por el desastre ambiental o climático". Este derecho tiene como contrapartida la prohibición de que el Estado de acogida pueda privar de su nacionalidad a los desplazados ambientales que se encuentren en su territorio. Antecedentes normativos de este precepto pueden rastrearse en la DUDH (art. 15) o en la CADH (art. 20), que reconocen el derecho de toda persona a una nacionalidad y a no ser privada arbitrariamente de la misma<sup>249</sup>.

A continuación, y en similares términos a como lo hace el artículo 34 de la Convención de 1951 sobre el Estatuto de los Refugiados, el artículo 13.1 del proyecto de Limoges añade: "El estado de acogida facilitará su naturalización a petición del interesado". O lo que es lo mismo, se prevé que se facilite el proceso mediante el cual el desplazado medioambiental puede adquirir la nacionalidad del Estado de acogida, lo

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<sup>249</sup> Otros textos internacionales y regionales de derechos humanos que han recogido este derecho a la nacionalidad –no así la prohibición a no ser privado arbitrariamente de ella– son: la Declaración Americana de los Derechos y Deberes del Hombre de 1948 (art. 19), o el PIDCP (art. 24.3) y la Convención sobre los Derechos del Niño (art. 7) respecto al derecho de los niños de adquirir una nacionalidad.

que resulta de particular importancia en el caso de los nacionales de los PEID amenazados por la subida del nivel del mar.

Esta facilitación puede tener lugar, por ejemplo, acortando los tiempos ordinarios de residencia en el Estado o eximiendo a los desplazados de realizar ciertas pruebas de conocimientos socioculturales y del idioma del país. En particular, el artículo 34 de la Convención de Ginebra se refiere a que los Estados Contratantes "[s]e esforzarán, en especial, por acelerar los trámites de naturalización y por reducir en todo lo posible los derechos y gastos de tales trámites"<sup>250</sup>.

Señalar, finalmente, que una lectura completa del artículo 13.1 del proyecto da a entender que se estaría autorizando un supuesto de doble nacionalidad, ya que el Estado de acogida no podría exigir al desplazado ambiental que renunciase a su nacionalidad como requisito para obtener la suya.

*b. Derechos civiles y políticos (apartado 2)*

El apartado segundo del artículo 13 declara que el desplazamiento internacional no afectará a los derechos civiles y políticos de que disfrutara el desplazado en su país de origen, cuya titularidad conserva. Ahora bien, su ejercicio puede verse dificultado, cuando no impedido, por razón de la distancia que lo separa de su país de origen. De ahí que el artículo 13.2 prevea la obligación de las Partes de facilitar dicho ejercicio, en especial en lo que al derecho de voto se refiere.

Señalar únicamente la conveniencia de implicar también a la AMDA en esta tarea, habida cuenta del papel clave que ha desempeñado el ACNUR posibilitando que los refugiados puedan participar en los procesos electorales en sus países de origen<sup>251</sup>.

*c. Prohibición de las expulsiones (apartado 3)*

El último apartado del artículo 13 prohíbe la expulsión, individual o colectiva, de los desplazados transfronterizos (apartado 1), salvo cuando medien "razones de orden o seguridad nacional reconocidas judicialmente" (apartado 2). Varios apuntes pueden hacerse a esta prohibición de expulsión.

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<sup>250</sup> SPAIN, *Instrumento de Adhesión de España a la Convención sobre el Estatuto de los Refugiados...*, *op. cit.*

<sup>251</sup> AL ACHI, D., "Entrevista: El papel vital de ACNUR para permitir el voto de los refugiados centroafricanos", *ACNUR Noticias*, 12 de febrero de 2016 (último acceso: 15/02/2020).

De entrada, el ámbito subjetivo de la prohibición es contradictorio. Por un lado, el apartado 1º, al formular la prohibición de expulsión, se refiere únicamente al extranjero que tiene ya reconocida el estatuto jurídico de desplazado ambiental. Sin embargo, el apartado 2º, al establecer los casos en los que cabe la expulsión, habla tanto del "beneficiario del estatuto de desplazado ambiental " como del "candidato a su obtención". Sería deseable, por tanto, que se unificase el ámbito subjetivo de ambos apartados, extendiendo la prohibición de expulsión a ambos, solicitantes y beneficiarios.

En segundo lugar, la expulsión sólo cabe de manera excepcional, "por razones de orden público o seguridad nacional". Los redactores de Limoges siguen así el modelo de la Convención de Ginebra, que tampoco admite la expulsión de un refugiado salvo en esos dos supuestos (art. 32.1). Se plantea, sin embargo, la cuestión de si sería posible expulsar a una persona desplazada a un lugar en el que las condiciones ambientales estén tan degradadas que constituyan una amenaza para la vida o un trato inhumano o degradante, aunque el desplazado sea un peligro para el orden público o la seguridad nacional. En el caso de los refugiados, el apartado 2º del artículo 33 de la Convención de 1951 establece que el refugiado no puede acogerse al beneficio de la prohibición de no expulsión cuando

"2. (...) sea considerado, por razones fundadas, como un peligro para la seguridad del país donde se encuentra o que, habiendo sido objeto de una condena definitiva por delito particularmente grave, constituya una amenaza para la comunidad de tal país."<sup>252</sup>

Atendiendo al tenor literal del artículo 13.3 del proyecto, debiera llegarse a la misma conclusión de que el desplazado medioambiental no puede invocar el principio de *non-refoulement* cuando medien "razones de orden público o seguridad nacional reconocidas judicialmente". Ahora bien, debe recordarse la naturaleza de principio consuetudinario que la prohibición de retorno ha alcanzado en el ámbito de los derechos humanos. Por lo tanto, si se acepta el carácter de *ius cogens* de este principio, la excepción a la prohibición de expulsión prevista en el apartado 3.2 del artículo 13 debe aceptarse *a fortiori* como inoperante cuando la vida o la integridad de la persona desplazada pueda peligrar como consecuencia del retorno forzoso<sup>253</sup>.

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<sup>252</sup> SPAIN, *Instrumento de Adhesión de España a la Convención sobre el Estatuto de los Refugiados...*, *op. cit.*

<sup>253</sup> En el mismo sentido se pronuncian LAUTERPACHT, E.; BETHLEHEM, D., "The Scope and Content of the Principle of Non-Refoulement (Opinion)", *op. cit.*, respecto a las excepciones al principio de *non-*

La admisibilidad en el ordenamiento regional europeo de dicha excepción en estos casos podría incluso cuestionarse en relación con el artículo 4 de la Carta de Derechos Fundamentales de la UE y el artículo 3 del CEDH. Tanto el Tribunal de Luxemburgo como el de Estrasburgo han señalado reiteradamente que la prohibición de no ser sometido a penas ni a tratos inhumanos o degradantes "tiene carácter absoluto", por lo que "no se autoriza ninguna derogación". "Por ello, en cualquier circunstancia, incluso en la lucha contra el terrorismo y la delincuencia organizada, el CEDH prohíbe en términos absolutos la tortura y las penas o los tratos inhumanos o degradantes, sea cual sea el comportamiento de la persona de que se trate"<sup>254</sup>.

En cualquier caso, las razones de orden público o seguridad nacional sobre las que sustenta la decisión de expulsión deben haber sido "reconocidas judicialmente", lo que excluye su valoración por una autoridad gubernativa en el marco de un proceso administrativo de carácter sancionatorio.

Señalar, por último, la conveniencia de introducir un sub- apartado adicional al artículo 13.3 del proyecto que reproduzca el contenido del apartado 3º del artículo 32 de la Convención de 1951,

"3. Los Estados Contratantes concederán, en tal caso, al refugiado un plazo razonable dentro del cual pueda gestionar su admisión legal en otro país. Los Estados Contratantes se reservan el derecho a aplicar durante ese plazo las medidas de orden interior que estimen necesarias."<sup>255</sup>

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*refoulement* a las que se refiere el apartado 2º del artículo 33 de la Convención de Ginebra. Así, los autores señalan que las excepciones de "seguridad nacional" y de "peligro para la comunidad" no podrían aplicarse cuando impliquen exponer al individuo expulsado "a un peligro de tortura, tratos o penas crueles, inhumanos o degradantes o a un riesgo que entre en el ámbito de otros principios no derogables de los derechos humanos" (párr. 179 y, *mutatis mutandis*, párr. 181 con respecto a la excepción de "peligro para la comunidad") [traducción del autor del original en inglés].

<sup>254</sup> Vid. CJEU, *Asuntos acumulados C-404/15 y C-659/15 Pál Aranyosi y Robert Căldăraru* (ECLI:EU:C:2016:198), 5 de abril de 2016, párr. 85-88 y la jurisprudencia del ECtHR citada.

<sup>255</sup> SPAIN, *Instrumento de Adhesión de España a la Convención sobre el Estatuto de los Refugiados...*, *op. cit.*

## **2.7. Capítulo quinto: reconocimiento del estatuto de desplazado ambiental**

El capítulo 5 del proyecto regula el procedimiento para reconocer el estatuto de desplazado ambiental (arts. 14, 16, 17 y 18), así como su cese (art. 19).

### **2.7.1. Procedimiento de reconocimiento de la condición de desplazado ambiental**

Los redactores del proyecto han preferido, con buen criterio, establecer un procedimiento común para el reconocimiento del estatuto de desplazado ambiental. Con ello se evita la falta de homogeneidad entre los Estados Partes, o entre las diferentes administraciones territoriales de cada Estado, de haberse dejado a la legislación interna de cada Estado la regulación del procedimiento de reconocimiento. Esta uniformidad procesal desalienta la búsqueda de foros de conveniencia –i.e. de aquellos Estados u oficinas territoriales en los que se piensa que la solicitud tendrá más posibilidades de éxito.

Así, el artículo 16.1 establece que, "[e]n el plazo de dos años desde la entrada en vigor del presente Convenio, las Partes deberán adoptar un procedimiento para el reconocimiento del estatuto de desplazado ambiental, de conformidad con las indicaciones establecidas por la Alta Autoridad". Los artículos que componen este capítulo se dedican, por tanto, a sentar las líneas maestras de este procedimiento común en cuanto a quién puede iniciarlo (art. 14), qué autoridad es competente para decidirlo (art. 17) y las diferentes fases y garantías del procedimiento (art. 16), incluido el derecho de recurso. Por último, el artículo 19 regula la cesación del estatuto de desplazado ambiental.

#### **A) Artículo 14 - Reconocimiento del estatuto**

"1. El estatuto de desplazado ambiental se reconoce a petición de cualquier persona, familia, grupo o población que responda a la definición de desplazado ambiental del artículo 2.3 del presente Convenio y de conformidad con las directrices establecidas por la alta autoridad de conformidad con los términos del artículo 22.

2. El reconocimiento del estatuto de desplazado ambiental implica la atribución de los derechos garantizados por el presente Convenio."

A pesar del título genérico dado a este artículo por sus redactores, el contenido del mismo se refiere en puridad a la legitimación para solicitar el reconocimiento como



desplazado ambiental. Al igual que la Convención de Ginebra de 1951 sobre el Estatuto de los Refugiados, los redactores del proyecto de Limoges han optado por que el reconocimiento de la condición de desplazado ambiental sea declarativo y no constitutivo. Esto significa que una persona es un desplazado medioambiental desde el momento en que huye de su lugar de residencia habitual debido a un peligro medioambiental que reúne las características del artículo 2.3 del convenio. Por tanto, el nacimiento de dicho estatuto no está condicionado a su concesión por parte de la autoridad competente, que se limita a reconocer esta situación fáctica y a atribuir determinados derechos y garantías de protección al interesado en razón de su mayor vulnerabilidad<sup>256</sup>.

En consonancia con la definición del artículo 2.3 del sujeto titular del derecho a ser protegido en situaciones de disrupción medioambiental, que se atribuye tanto a los individuos como a determinados colectivos –familia, grupo o población-, el apartado 1 del artículo 14 permite, igualmente, que la solicitud que inicia el procedimiento de reconocimiento sea presentada por individuos o grupos. En este último caso, cualquier persona perteneciente al grupo debe considerarse legitimada para incoar el procedimiento, siendo importante garantizar, en el caso de las familias, la igualdad entre hombres y mujeres como cabezas de familia, en aplicación del principio de no discriminación (art. 7).

La modalidad de solicitud colectiva tiene en cuenta el carácter grupal que a menudo reviste este tipo de desplazamientos, ya que previsiblemente las personas expuestas a un mismo riesgo medioambiental reaccionarán de forma similar huyendo a un lugar seguro. Razones de economía y celeridad procesal aconsejan también este planteamiento, reconociéndose el estatuto de desplazado ambiental a cuantas personas acrediten proceder de una misma zona afectada, en lugar de hacerlo de forma

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<sup>256</sup> Vid. UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status...*, *op. cit.*, párr. 28, señalando al estatuto de refugiado: "Una persona es un refugiado en el sentido de la Convención de 1951 desde el momento en que cumple los criterios contenidos en la definición. Esto ocurre necesariamente antes del momento en que se determina formalmente su estatuto de refugiado. Por lo tanto, el reconocimiento de su estatuto de refugiado no lo convierte en refugiado, sino que lo declara como tal. No se convierte en refugiado por el reconocimiento, sino que se le reconoce porque es un refugiado" [traducción del autor del original en inglés].

individual, lo que permite a los afectados acceder a la protección garantizada lo antes posible<sup>257</sup>.

Autores como Docherty y Giannini, Hodgkinson et al., así como Biermann y Boas también son partidarios de este tipo de designaciones en grupo o "en masa"<sup>258</sup>. La diferencia entre estos autores y el proyecto de Limoges estriba en que aquéllos prevén que la designación grupal tenga lugar a instancias del Estado Parte interesado<sup>259</sup>. En cambio, el artículo 14 del proyecto establece que lo sea a petición de los propios desplazados actuando colectivamente. Sería conveniente y eficaz combinar ambas legitimaciones, permitiendo también que los Estados insten de oficio el reconocimiento grupal de sus poblaciones desplazadas o amenazadas por el desplazamiento, sustanciándose en tal caso el procedimiento ante la AA.

El apartado 6 del artículo 16 aclara que la existencia de una solicitud colectiva no impide que otros afectados por la misma disrupción presenten posteriormente una solicitud individual. Docherty y Giannini señalan, sin embargo, que lo más probable es que las personas que soliciten el estatus de "refugiado climático" a título individual lo hagan antes que el resto de su comunidad en previsión de los daños medioambientales<sup>260</sup>. De ser así, habrá que determinar durante el proceso de

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<sup>257</sup> Aunque la Convención de Ginebra no prevé expresamente la "determinación en grupo" del estatuto de refugiado, en la práctica se recurre también a ella cuando grupos de personas han huido en circunstancias que sugieren que quienes pertenecen a él podrían calificarse refugiados a título individual (vid. UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status...*, *op. cit.*, párr. 44).

<sup>258</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, pp. 374-375, quienes, aunque siguen contemplando el reconocimiento individual, consideran que el nuevo instrumento deber hacer de la determinación grupal la norma. HODGKINSON, D. ET AL., "The Hour when the ship comes in': a convention for persons displaced by climate change", *op. cit.*, pp. 90-91. BIERMANN, F.; BOAS, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *op. cit.*, pp. 77-78, que no se refieren expresamente a estas designaciones colectivas, pero prevén un mecanismo de designación que tiene las mismas consecuencias en la práctica. Así, la inclusión de un área determinada en la lista de "zonas cuya población necesita ser reubicada debido al cambio climático" o "zonas cuya población está amenazada por la necesidad de reubicarse debido al cambio climático" otorga automáticamente al conjunto de la población que vive en ellas una serie de derechos, así como acceso a mecanismos de apoyo.

<sup>259</sup> En la propuesta de DOCHERTY, B; GIANNINI, T., *op. cit. supra*, p. 375, corresponde al organismo científico determinar a escala regional o estatal si la perturbación ambiental que ha provocado un desplazamiento cae dentro de la definición de "refugiado" climático y, por tanto, si las comunidades afectadas son reconocidas colectivamente como tales. En el instrumento de HODGKINSON, D. ET AL., *op. cit. supra*, los Estados Parte en desarrollo, en el momento de solicitar asistencia internacional, también pedirán la designación de su población afectada como "refugiados climáticos" (p. 93), correspondiendo dicha designación al Consejo (p. 94). En el protocolo a la CMNUCC de BIERMANN, F.; BOAS, I., *op. cit. supra*, corresponde a los Estados parte afectados proponer al comité ejecutivo para el reconocimiento, la protección y el reasentamiento de los "refugiados climáticos" zonas bajo su jurisdicción para su inclusión en una de las dos listas mencionadas (p. 77).

<sup>260</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, nota a pie de página 130, p. 374.

reconocimiento si el desplazamiento anticipado fue efectivamente forzado; es decir, si en el momento en que se produjo, los cambios ambientales que ya se habían producido, o eran previsibles, en su lugar de residencia habitual lo hacían inadecuado para la vida humana en condiciones dignas.

#### **B) Artículo 17 - Comisiones de desplazados ambientales**

La autoridad competente para decidir sobre el reconocimiento son las llamadas "comisiones de desplazados ambientales". Estas comisiones tienen carácter nacional, debiendo ser creadas por cada Estado Parte "[a] la entrada en vigor del presente Convenio" (art. 17.1). Aunque nada se dice sobre aquellos Estados que se adhieran al convenio después de su entrada en vigor, se entiende que en estos casos las comisiones nacionales se constituirán tras el depósito del correspondiente instrumento de ratificación del tratado.

De acuerdo con el artículo 17.1, cada comisión estará compuesta "por nueve personalidades independientes reconocidas en las áreas de los derechos humanos, el medio ambiente y la paz". La designación de estos expertos de reconocido prestigio corresponderá a "las más altas autoridades judiciales del Estado" (art. 17.1). La redacción suscita dudas en cuanto a si esta previsión se refiere al Ministerio de Justicia, al tribunal de mayor rango dentro del sistema judicial de cada Estado Parte o al órgano de gobierno interno del poder judicial.

Salvo en la primera opción, las otras dos alternativas supondrían una peligrosa quiebra del equilibrio entre los tres poderes del Estado, creando un ámbito de decisión que, a pesar de afectar a la soberanía, se reserva exclusivamente a los jueces. Si esta disposición obedece a un cierto temor o recelo por parte de los redactores sobre la verdadera independencia de los miembros de la comisión de ser designados por el gobierno, la solución no debiera ser arrogar esta competencia al poder judicial, sino fortalecer la capacidad de control que el parlamento, como verdadero depositario de la soberanía nacional, tiene sobre el ejecutivo. Asumiendo esta posición, podría disponerse que la propuesta de nombramiento del gobierno deba ser refrendada por una mayoría parlamentaria reforzada.

Por su parte, el apartado segundo del artículo 17 prevé la posibilidad de que sean las organizaciones regionales de integración económica que sean Parte en la convención

las que creen una comisión de desplazados ambientales. Se entiende que, en tal caso, esta comisión común centralizaría las solicitudes presentadas en cada uno de los Estados miembros. Como reconoce el mismo precepto, esta posibilidad dependerá del alcance de las competencias que los Estados miembros hayan transferido a la organización en cuestión. Además, sería necesario desarrollar este apartado, señalando cómo se designaría en este supuesto a los nueve miembros que han de conformar la comisión. Una opción sería dejar que cada organización establezca libremente el mecanismo de nombramiento de los miembros de la comisión, lo que tendría que comunicar a la AA, que podrá hacer indicaciones.

### **C) Artículo 16 - Procedimiento**

El artículo 16 regula las distintas fases del procedimiento de reconocimiento en primera instancia. Su inicio lo es siempre a instancia de parte, si bien la autoridad encargada de su tramitación puede decidir reagrupar las solicitudes que traen su causa "de un mismo desastre medioambiental o climático" (apartado 5). La sola presentación de la solicitud comporta ya la expedición de un título provisional de residencia, cuya validez se extenderá hasta que se dicte una resolución firme que ponga fin al proceso. Durante este tiempo, el solicitante disfrutará de los derechos garantizados en la convención (apartado 2). Este beneficio responde a un enfoque garantista y precavido de los redactores del proyecto, que presumen, *prima facie*, la condición del desplazado medioambiental del peticionario.

El centro del proceso viene constituido por la celebración de una audiencia oral y pública, en la que el interesado y el representante de la Parte han de presentar sus respectivas observaciones, a partir de las cuales la comisión nacional decidirá el resultado del proceso (apartado 4). El proceso tiene, por tanto, un carácter eminentemente contradictorio, por lo que el derecho de información del interesado, que el apartado 3 garantiza en su sentido más amplio –"máxima información"-, debe estar asegurado durante toda la instrucción del procedimiento.

Para lograr la eficacia de ambos principios –contradicción e información-, se reconoce el derecho del interesado a ser asistido gratuitamente por un traductor-intérprete en las distintas fases del procedimiento, incluida la audiencia (apartados 3 y 4). Dado que no se establece nada al efecto, se entiende que dicho experto será designado de oficio por las dependencias encargadas de la tramitación del expediente.

Por la misma razón de evitar la indefensión del interesado durante la vista, de manera que el interesado pueda alegar cuanto mejor convenga a su derecho, se prevé la asistencia "por un asesor de su elección o designado de oficio" (apartado 4). Nada se dice acerca de los requisitos de titulación o formación de este "asesor", por lo que, en principio, no tendría que tener necesariamente la condición de letrado. Tampoco se contempla la gratuidad de este servicio en caso de que el interesado no pueda costárselo. Convendría subsanar esta omisión en futuras revisiones del texto del proyecto, dada la relevancia que tiene el trámite de audiencia en el curso del procedimiento y en atención a la situación de vulnerabilidad de las personas desplazadas, que pueden haber dejado o perdido todo en el transcurso de la disrupción medioambiental y la consiguiente huida.

La asistencia por un traductor-intérprete y por un asesor se prevé tanto para las solicitudes individuales como para las colectivas o reagrupadas. En este último caso, el grupo de solicitantes podrá elegir estar representado por uno o varios asesores que, sin embargo, serán comunes para todo el grupo. Su elección podrá tener lugar, igualmente, a instancia del interesado o de oficio (apartado 5). Asimismo, aunque no se diga, la resolución sobre una solicitud grupal debe referirse expresamente a cada uno de los peticionarios, indicando si su pretensión ha sido estimada o rechazada, para permitirles el ejercicio del derecho de recurso. Este requisito formal se deriva del propio artículo 12 del convenio, cuyo apartado 14 garantiza, como parte del derecho a la información de las personas desplazadas, que éstas sean informadas de los recursos de que disponen en caso de que se les deniegue la condición de desplazados por motivos medioambientales.

#### **D) Artículo 18 - Recurso ante la Alta Autoridad**

Las decisiones recaídas en primera instancia –i.e. las dictadas por las comisiones sobre desplazados ambientales- "pueden ser recurridas ante la Alta Autoridad a la que se refiere el artículo 22, en el plazo de un mes contado desde su notificación al solicitante" (art. 18.1). El apartado segundo del artículo 18 se refiere a los efectos suspensivos del recurso, en relación con el artículo 16.2 del proyecto. Dado que la decisión de la comisión no es firme, la validez del permiso de residencia provisional que se expidió al presentar la solicitud quedará prorrogada automática hasta que se resuelva el recurso.

El apartado cuarto del artículo 18 señala que el procedimiento de recurso se sustanciará con las mismas garantías que los apartados 3 a 6 del artículo 16 contemplan

para el proceso ante las comisiones de desplazados ambientales –i.e. el derecho de información, el derecho a la asistencia gratuita de traductor e intérprete y el derecho a ser asistido por un asesor.

Por último, el apartado 3 del artículo 18 reconoce a "[l]as Partes en el Convenio, los Estados que no sean parte, las ONGs y cualquier institución académica interesada puede presentar observaciones escritas e intervenir en las audiencias de la Alta Autoridad" con ocasión del recurso. Se trata de un derecho de participación sumamente amplio que plantea varios interrogantes procesales con respecto a: la protección de la privacidad de los recurrentes; la legitimación activa de estos sujetos para personarse en un proceso sin tener la condición de parte interesada; el alcance de sus observaciones e intervenciones; la articulación del trámite de audiencia –¿Se admitiría la comparecencia de estos sujetos por medios electrónicos o se requeriría de su comparecencia presencial?–; o los plazos para la formulación de observaciones, que habrían de ser breves para evitar que el proceso se alargue sustancialmente en el tiempo.

### **2.7.2. Artículo 19 - Cesación del estatuto**

En todo caso, la protección conferida cesará cuando lo hagan las condiciones que motivaron su concesión (art. 19.1). Docherty y Giannini, fijándose en las cláusulas de cese del estatuto de refugiado<sup>261</sup>, señalan que la protección debiera perderse, además de cuando el retorno es seguro, cuando el "refugiado climático" adquiriera una nueva nacionalidad, pudiendo por tanto acogerse a la protección del Estado del que ahora es nacional; o cuando regrese voluntariamente a su país de origen<sup>262</sup>.

Ahora bien, el cese de la condición de desplazado ambiental no conlleva necesariamente el retorno del desplazado a su anterior lugar de residencia habitual. El artículo 12, en su apartado 13, prohíbe el retorno forzoso, de manera que el Estado de acogida "no puede obligar a los desplazados ambientales que no lo deseen a volver a su lugar habitual de vida". Esta prohibición de retorno tiene su contrapartida en el apartado 2 del artículo 19, el cual dispone que "el desplazado ambiental puede prorrogar su

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<sup>261</sup> Vid. UN, *Convention Relating to the Status of Refugees*, 28 July 1951, UNTS, Vol. 189, No. 2545, pp. 137-220, Artículo 1.C.

<sup>262</sup> DOCHERTY, B.; GIANNINI, T., "Confronting a rising tide: a proposal for a convention on climate refugees", *op. cit.*, pp. 369 y 375.

permanencia en el territorio cuando su estatuto haya terminado. En ese caso, el Estado facilitará la permanencia del interesado en su territorio."

En el caso de nacionales o residentes legales, la permanencia en el territorio del Estado una vez han perdido el estatus de desplazado ambiental es una consecuencia natural de la nacionalidad o del permiso de residencia –en el caso de extranjeros residentes. Sin embargo, tratándose de extranjeros no residentes, el apartado 2 del artículo 19 supone una significativa restricción a la discrecionalidad de los Estados para fijar las condiciones de admisión y permanencia de los extranjeros en su territorio.

A este respecto, debe señalarse que la protección internacional de los no nacionales supone un ejercicio gracioso de la soberanía territorial que responde a la preocupación de la comunidad internacional de proteger los derechos humanos. Por lo tanto, tiene un carácter excepcional que se deriva de las circunstancias igualmente excepcionales de anormalidad que prevalecen en el Estado de origen, que no puede o no quiere proteger a sus nacionales. En cuanto que excepción, el estatuto de protección internacional es perecedero por definición. Una vez que el retorno es seguro, el estatuto decae y el extranjero, que ya no necesita de protección, debe regresar a su país de procedencia –y, en consecuencia, el Estado de acogida debe poder expulsarlo si no accede voluntariamente a ello<sup>263</sup>.

Cuestión distinta es que, una vez finalizada la situación extraordinaria que motivó la concesión del estatuto de protección, el extranjero pueda prolongar su estancia en el Estado de acogida con arreglo al régimen interno de extranjería –e.g., nacionalizándose u obteniendo un nuevo permiso de residencia, incluso por otras razones humanitarias que así lo justifiquen. Sin embargo, se trata de posibilidades que deben depender de la legislación propia de cada Estado en materia de extranjería y nacionalidad, y no de una prohibición general de retorno establecida convencionalmente.

La conversión automática de una situación extraordinaria en una forma ordinaria de residir en el territorio de un tercer país podría suscitar las reticencias de los Estados, que podrían ver en el estatuto de desplazado ambiental una vía para la inmigración económica. Por ello, además de suprimirse la prohibición de retorno del artículo 12,

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<sup>263</sup> En el mismo sentido se pronuncian DOCHERTY, B.; GIANNINI, T., *op. cit. supra*, pp. 380, señalando que "el instrumento propuesto debería exigir a los refugiados del cambio climático que no se hayan integrado en un nuevo país que regresen a su país cuando su supervivencia ya no esté amenazada" [traducción del autor del original en inglés].

también convendría reformular el apartado 2 del artículo 19. Una redacción alternativa debería respetar la soberanía de los Estados sobre la política migratoria, sin dejar por ello de reconocer las circunstancias de la persona desplazada, la duración de la estancia en el territorio o las circunstancias en el país de origen. Se propone la siguiente:

*El cese del estatus de desplazado ambiental no impedirá la prolongación de su estancia en el territorio del Estado Parte que lo haya reconocido de acuerdo con su legislación de extranjería. Al decidir sobre la solicitud de estancia, los Estados Parte se comprometen a tener en cuenta las circunstancias personales del solicitante, su arraigo en el país de acogida, así como razones humanitarias relacionadas con la situación general del país de retorno.*

## **2.8. Capítulo séptimo: mecanismos de aplicación**

El capítulo 7 establece dos tipos de mecanismos. Dos de ellos son propiamente mecanismos de aplicación que garantizan que el alcance universal de la convención sea realmente efectivo. El tercero se trata en puridad de un mecanismo de supervisión de la aplicación del convenio por sus Partes.

### **2.8.1. Artículo 27 - Cooperación**

El desplazamiento medioambiental es un reto transversal, que implica cuestiones de diversa índole relacionadas con el desarrollo y la protección del medio ambiente – cuyo deterioro es la causa del desplazamiento-; la gestión de la movilidad humana de forma ordenada, legal y segura –no sólo en caso de desplazamiento forzoso, sino también de la migración medioambiental como estrategia de adaptación-; y la protección de los derechos humanos de los desplazados antes, durante y después del desplazamiento.

Estos sectores de actuación constituyen ya el campo de trabajo de otros organismos, agencias y organizaciones internacionales, como la OIM, el PNUMA, la CMNUCC, el PNUD y los organismos de derechos humanos. De ahí que el artículo 27 se refiera a la "cooperación activa" de las instituciones previstas en el convenio, que son las principales responsables de su aplicación, con las organizaciones internacionales universales y regionales y las secretarías de los convenios internacionales relativos a la protección del medio ambiente y la defensa de los derechos humanos. Como ya se señaló al analizar la AMDA, este deber de cooperación debería extenderse también a las



ONGs dedicadas a la migración, la asistencia humanitaria y la protección de los derechos humanos.

### **2.8.2. Artículo 28 - Acuerdos bilaterales y regionales**

En el caso de los desplazamientos transfronterizos, resulta igualmente necesaria la cooperación entre los Estados de origen, tránsito y recepción tanto para organizar la acogida de los desplazados, especialmente si se trata de desplazamientos planificados, como para su posterior retorno, cuando sea posible. Por ello, el artículo 28, en su párrafo 1, prevé que las Partes celebren acuerdos bilaterales o multilaterales de ámbito regional para "atender al cumplimiento de las obligaciones que le impone el presente Convenio". Esta disposición debe completarse con lo previsto en el artículo 31.1, que se refiere a la cooperación con otros Estados no Partes en la aplicación de la convención.

Como cautela para garantizar la integridad de la convención, el apartado 2 contempla un deber de información recíproco entre las Partes, que "intercambiarán la información derivada de la conclusión de acuerdos bilaterales o multilaterales o de otros acuerdos relacionados con la aplicación del presente Convenio, en los que sean parte". Con vistas a asegurar un intercambio de información completo y real, este deber podría haberse formulado como una obligación de comunicar a la OIM, en su calidad de secretaría, los acuerdos que afecten a la aplicación de la convención.

### **2.8.3. Artículo 29 - Informes de aplicación**

Por su parte, el artículo 29 regula un mecanismo de seguimiento de la aplicación de la convención por las Partes consistente en la obligación de informar periódicamente a la CP sobre "las medidas jurídicas y prácticas adoptadas para aplicar el Convenio, sobre la eficacia de tales medidas, así como sobre las dificultades encontradas para lograr los objetivos del Convenio"<sup>264</sup>.

Para poder evaluar con exactitud los progresos realizados en la aplicación del tratado, así como facilitar la labor de las Partes en la presentación de sus informes, el apartado 1 prevé la elaboración de una serie de indicadores jurídicos. Sin embargo, no

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<sup>264</sup> La presentación de informes periódicos por las Partes para su evaluación por un comité de expertos es un mecanismo de supervisión habitual en los tratados de derechos humanos. Vid., por ejemplo, Artículo 40 PIDCP, Artículos 16-17 PIDESC; Artículo 9 ICERD; Artículo 18 CEDAW; Artículo 19 CAT; Artículo 44 CRC; Artículo 73 ICRMW; Artículo 35 CRPD; y Artículo 29 CED.

se especifica cuándo ni quién elaborará estos indicadores. A este respecto, podría considerarse la oportunidad que brinda la primera reunión de la CP, aprovechando que este órgano debe decidir también sobre "la periodicidad y la metodología que se debe respetar en la presentación de los informes de aplicación" (apartado 2).

Sobre el proceso de elaboración de estos informes, el apartado 3 señala que las Partes deberán habilitar los cauces oportunos para permitir la participación de la sociedad civil. Como se señaló en la exégesis del artículo 25, la OIM es responsable de presentar a la CP un resumen de los informes de aplicación de las Partes. Sin embargo, podría valorarse el atribuir esta función a la AA en su condición de comité de expertos, al igual que hacen los tratados de derechos humanos. La experiencia de sus veintiún miembros expertos, junto a su composición transversal –que reúne a personalidades reconocidas en el campo de las migraciones, los derechos humanos, el medioambiente y la paz-, podría servir mejor al propósito de "subrayar" en este resumen "las deficiencias" y "las buenas prácticas" detectadas en la aplicación de la convención.

## **2.9. Entrada en vigor del convenio relativo al estatuto internacional de los desplazados ambientales (artículo 42)**

El precepto objeto de análisis pertenece al capítulo noveno del proyecto de convención, que establece una serie de disposiciones finales. En concreto, el artículo que nos ocupa se refiere a la entrada en vigor del convenio que, según el numeral 42, tendrá lugar "a los 30 días de la fecha de depósito de al menos 10 instrumentos de ratificación, aceptación, aprobación o adhesión". El interés en comentar esta disposición en particular obedece a la realidad de nuestro ordenamiento jurídico, que demuestra que la celebración de un tratado no garantiza, en absoluto, que llegue a entrar en vigor – sobre todo si regula materias que despiertan la reticencia de los Estados, como es el caso de la convención que nos ocupa<sup>265</sup>. Así, el tiempo que puede llegar a transcurrir entre la firma del instrumento y la obtención del número mínimo de ratificaciones necesarias puede acabar frustrando la eficacia del tratado incluso ante de su nacimiento.

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<sup>265</sup> Ejemplos no faltan en la práctica internacional. Puede citarse la Convención de Viena sobre el Derecho de los Tratados celebrados entre Estados y Organizaciones Internacionales o entre Organizaciones Internacionales, que todavía no ha conseguido las treinta y cinco ratificaciones que necesita (art. 85); la Convención de Viena sobre la sucesión de Estados en materia de bienes, archivos y deudas de Estado, que 39 años después de que fuera aprobada en 1983 aún no ha logrado las quince ratificaciones que precisa (art. 50); o el Protocolo procedimental No. 10 al Convenio Europeo de Derechos Humanos, que nunca llegó a entrar en vigor y que el posterior Protocolo No. 11 dejó sin objeto.

Una amenaza que juega en contra de los desplazados por causas medioambientales, sobre todo en el caso de poblaciones especialmente vulnerables, como las que habitan los PEID de escasa altitud, cuya asistencia y protección impone cierta premura en la entrada en vigor de un tratado que todavía está por negociarse. Consciente de este peligro, el artículo 42 del proyecto podría prever la aplicación provisional del convenio a las personas que llegasen al territorio de los Estados firmantes huyendo de una amenaza medioambiental o climática, al menos en lo que respecta al reconocimiento de los derechos previstos en los capítulos tercero y cuarto.

Así, el artículo 42 podría disponer la aplicación provisional del convenio de Limoges 30 días después de que el Estado haya manifestado su conformidad en quedar vinculado por él. En estos casos de aplicación anticipada, la competencia para reconocer el estatus de desplazado medioambiental se atribuiría a comisiones *ad hoc*, que podrían ser las mismas que son competentes para conocer de las demandas de asilo y refugio. Hasta la entrada en vigor de la convención y la creación de la AA, los recursos contra las decisiones denegatorias serían resueltos en la jurisdicción interna de lo contencioso-administrativo.

En el mismo sentido, cabe recordar la obligación que el artículo 18 CVDT impone a los Estados signatarios, o a los que hayan manifestado su consentimiento en obligarse, de no realizar actos que puedan frustrar el objeto y fin del tratado antes de su entrada en vigor. Ya se mencionó, al abordar del principio de protección efectiva del artículo 6 del proyecto, que el apartado 2 del artículo 31 contiene una disposición similar, que establece: "Las Partes se comprometen a adoptar las medidas apropiadas, de conformidad con el derecho internacional, para asegurar que nadie participe en actividades contrarias al propósito, al objeto y a los principios del presente Convenio".

Este precepto podría modificarse para incluir una referencia en la línea del artículo 18 CVDT. Como mínimo, con ello se lograría el compromiso de los Estados de avanzar en el desarrollo sostenible para detener el rápido avance de la degradación medioambiental que causa el desplazamiento, tal y como se reconoce en el preámbulo de la Convención de Limoges. Al mismo tiempo, serviría para que la comunidad internacional prestara mayor atención al fortalecimiento de la capacidad de resistencia de las comunidades más vulnerables al cambio climático y al riesgo de desastres para que no tuvieran que desplazarse.

## **SUMMARY OF THE UNIVERSITY OF LIMOGES' DRAFT INTERNATIONAL TREATY ON THE INTERNATIONAL STATUS OF ENVIRONMENTALLY DISPLACED PERSONS**

This academic proposal seeks to fill the legal gaps and limitations that the previous Chapters have revealed in the universal and regional international legal order to protect environmentally displaced persons, both within and outside their States. It is, to date, the most comprehensive and credible proposal for a legal regime for the protection of these forcibly displaced persons.

In addition to Prof. Dr Michel Prieur's draft treaty, other authors have also proposed other legal instruments for this purpose, albeit limited to the field of climate displacement. These include Williams' system of regional agreements, the proposed protocol to the UNFCCC by Biermann and Boas, the draft treaties by Hodgkinson et al. and Docherty and Giannini, and the Peninsula Principles on Climate Displacement within States developed by the non-profit organisation *Displacement Solutions*. All of these frameworks have been taken into account in developing this Chapter.

The reason for preferring the Limoges proposal over the others is that it is a stand-alone universal treaty with a comprehensive and global scope. Consequently, it applies to any displacement caused by environmental disruption, not just the subset of climate displacement, and covers both internal and cross-border displacement.

The draft consists of forty-four articles, grouped into nine chapters and preceded by a preamble, which sets out the reasons for negotiating and adopting an international treaty on environmental displacement.

1. Chapter one delimits the treaty's object (art. 1) and scope (art. 2). In addition, Article 2 defines who can be a party to the treaty and an environmentally displaced person.
2. The second Chapter contains five principles from environmental and human rights law that should guide the convention's implementation and inspire its interpretation. On the one hand, the parties must comply with their treaty obligations following the principle of solidarity (art. 4), the principle of common but differentiated responsibilities (art. 5) and the principle of effectiveness (art. 6). On the other hand, the parties must guarantee the rights recognised by the treaty to displaced persons without

any discrimination (art. 7) and refrain from expelling or returning them to a territory affected by an environmental disruption that jeopardises their lives (art. 8).

3. Chapter three guarantees persons at risk of displacement the right to information and participation in the management of environmental and climate hazards and their consequences (art. 9), the right to displace (art. 10) and the right to oppose displacement (art. 11).

4. Chapter four sets out the rights to which environmentally displaced persons are entitled.

4.1. On the one hand, Article 12 lists a number of rights that are common to internally and inter-state displaced persons, including: the right to assistance (paragraph 1); the right to water and subsistence food aid (paragraph 2); the right to basic necessities (paragraph 3); the right to health care (paragraph 4); the right to shelter (paragraph 5); the right to recognition as a person before the law (paragraph 6); the right to respect for family unity (paragraph 7); the right to respect for property and domestic animals (paragraph 8); the right to earn a living by work (paragraph 9); the right to education and training (paragraph 10); the right to maintain cultural specificity (paragraph 11); the right to return (paragraph 12); the prohibition of forced return (paragraph 13); the right to information and participation (paragraph 14); several collective rights (paragraph 15); and an obligation of enhanced protection and assistance tailored to the needs of a number of groups considered vulnerable (paragraph 16).

4.2. On the other hand, Article 13 is devoted to the specific rights of cross-border displaced persons, namely: the right to a nationality (paragraph 1); civil and political rights (paragraph 2); and prohibition of expulsions (paragraph 3).

5. The fifth Chapter regulates the recognition of environmentally displaced person status (art. 14); criminal immunity for irregular entry or presence in the territory of a State Party (art. 15); the procedure for granting the status (art. 16); the national commissions of environmentally displaced persons, in charge of the procedure (art. 17); the appeal to the High Authority in case of denial of the status (art. 18); and the cessation of the status (art. 19).

6. Chapter Six sets out the institutional architecture of the treaty, consisting of the Conference of the Parties (art. 20); the Global Agency for Environmentally Displaced

Persons (art. 21); the High Authority (art. 22); and the Global Fund for Environmentally Displaced Persons (art. 23). Article 24 refers to two additional protocols to the treaty. One protocol will establish in detail the organisation and functioning of the Global Agency for Environmentally Displaced Persons and the High Authority, and the other will regulate, in addition to the organisation and functioning of the Global Fund for Environmentally Displaced Persons, a future levy on environmental degradation to provide resources for the fund. Article 25 regulates the functions of the International Organisation for Migration. Finally, Article 26 sets out the principles of information, public participation and access to justice governing the institutions' functions.

7. Chapter Seven provides several mechanisms for the proper and effective implementation of the treaty, including a duty for institutions to cooperate with other relevant international bodies (Art. 27); the conclusion of bilateral and regional agreements (Art. 28); and the submission of implementation reports by the Parties (Art. 29).

8. Chapter Eight contains several miscellaneous provisions concerning the relations of the convention with other instruments (Art. 30), as well as with third parties (Art. 31); the review of compliance with the provisions of the Convention (Art. 32); the settlement of disputes between the Parties (Art. 33); the adoption of additional protocols to the treaty (Art. 35) and the relationship between the convention and its protocols (Art. 36); the Parties' right to vote (Art. 37); the exclusion of reservations (Art. 38); and the mechanisms for amendment and denunciation of the convention and its protocols (Arts. 34 and 39).

9. Finally, the ninth Chapter contains the final clauses of the treaty, which refer to the signature, ratification, acceptance, approval or accession to the convention (Articles 40 and 41); its entry into force (Article 42); the appointment of the depositary (Article 43); and the authentic texts of the treaty (Article 44), which correspond to the six official languages of the UN.

## **SINTESI DEL PROGETTO DI TRATTATO INTERNAZIONALE DELL'UNIVERSITÀ DI LIMOGES SULLO STATUS INTERNAZIONALE DEGLI SFOLLATI AMBIENTALI**

Questa proposta accademica mira a colmare le lacune e le limitazioni giuridiche che i capitoli precedenti hanno rivelato nell'ordine giuridico internazionale, sia universale che regionale, per quanto riguarda la protezione degli sfollati ambientali, sia all'interno che all'esterno dei loro Stati. È, fino ad oggi, la proposta più completa e credibile di un regime giuridico per la protezione di questi sfollati.

Oltre al progetto di trattato del Prof. Dr. Michel Prieur, altri autori hanno proposto altri strumenti giuridici a questo scopo, anche se limitati al campo dello spostamento climatico. Questi includono il sistema di accordi regionali di Williams, il protocollo UNFCCC proposto da Biermann e Boas, i progetti di trattati di Hodgkinson et al. e Docherty e Giannini, e i Principi di Penisola sullo spostamento climatico all'interno degli Stati sviluppati dall'organizzazione non-profit *Displacement Solutions*. Tutti questi framework sono stati presi in considerazione nello sviluppo di questo capitolo.

La ragione per preferire la proposta di Limoges alle altre è che si tratta di un trattato universale indipendente con una portata globale e completa. Di conseguenza, si applica a tutti gli spostamenti causati da disturbi ambientali, non solo al sottoinsieme degli spostamenti climatici, e copre sia gli spostamenti interni che quelli transfrontalieri.

Il progetto consiste di quarantaquattro articoli, raggruppati in nove capitoli e preceduti da un preambolo, che espone la motivazione per negoziare e adottare un trattato internazionale sullo spostamento ambientale.

1. Il primo capitolo delimita l'oggetto (art. 1) e lo scopo del trattato (art. 2). Inoltre, l'articolo 2 definisce chi può essere parte del trattato e chi è uno sfollato ambientale.
2. Il secondo capitolo contiene cinque principi del diritto ambientale e dei diritti umani che dovrebbero guidare l'implementazione della convenzione e ispirarne la sua interpretazione. Da un lato, le parti devono rispettare gli obblighi del trattato attenendosi al principio di solidarietà (art. 4), al principio delle responsabilità comuni ma differenziate (art. 5) e al principio di efficacia (art. 6). Dall'altro, le parti devono garantire i diritti riconosciuti dal trattato agli sfollati senza nessuna discriminazione (art.

7) e astenersi dall'espellerli o dal rimpatriarli in un territorio colpito da una perturbazione ambientale che metta in pericolo la loro vita (art. 8).

3. Il terzo capitolo garantisce alle persone a rischio di sfollamento il diritto all'informazione e alla partecipazione nella gestione dei rischi ambientali e climatici e delle loro conseguenze (art. 9), il diritto di spostarsi (art. 10) e il diritto di opporsi allo sfollamento (art. 11).

4. Il capitolo quattro stabilisce i diritti che sono riconosciuti agli sfollati ambientali.

4.1. Da un lato, l'articolo 12 elenca una serie di diritti che sono comuni agli sfollati interni e interstatali, tra cui: il diritto all'assistenza (paragrafo 1); il diritto all'acqua e agli aiuti alimentari di sussistenza (paragrafo 2); il diritto ai beni di prima necessità (paragrafo 3); il diritto alle cure sanitarie (paragrafo 4); il diritto all'alloggio (paragrafo 5); il diritto al riconoscimento come persona di fronte alla legge (paragrafo 6); il diritto al rispetto dell'unità familiare (paragrafo 7); il diritto al rispetto della proprietà e degli animali domestici (paragrafo 8); il diritto a guadagnarsi da vivere con il lavoro (paragrafo 9); il diritto all'istruzione e alla formazione (paragrafo 10); il diritto a mantenere la specificità culturale (paragrafo 11); il diritto al ritorno (paragrafo 12); il divieto di ritorno forzato (paragrafo 13); il diritto all'informazione e alla partecipazione (paragrafo 14); diversi diritti collettivi (paragrafo 15); e un obbligo di maggiore protezione e assistenza adattato ai bisogni di alcuni gruppi considerati vulnerabili (paragrafo 16).

4.2. D'altra parte, l'articolo 13 è dedicato ai diritti specifici degli sfollati transfrontalieri, cioè: il diritto alla nazionalità (paragrafo 1); i diritti civili e politici (paragrafo 2); e il divieto di espulsioni (paragrafo 3).

5. Il quinto capitolo regola il riconoscimento dello status di sfollato ambientale (art. 14), l'immunità penale degli sfollati per ingresso o soggiorno irregolare sul territorio di uno Stato parte (art. 15), la procedura di concessione dello status (art. 16), le commissioni nazionali degli sfollati ambientali incaricate della procedura (art. 17), il ricorso all'Alta Autorità in caso di diniego dello status di sfollato ambientale (art. 18), e la cessazione dello status di sfollato (art. 19).

6. Il capitolo sei stabilisce l'architettura istituzionale del trattato, che consiste in: la Conferenza delle Parti firmatarie (art. 20); l'Agenzia Mondiale per i Rifugiati



Ambientali (art. 21); l'Alta Autorità (art. 22); e il Fondo mondiale per i rifugiati ambientali (art. 24). L'articolo 25 si riferisce a due protocolli addizionali al trattato. Un protocollo stabilirà in dettaglio l'organizzazione e il funzionamento dell'Agenzia Mondiale per i Rifugiati Ambientali e dell'Alta Autorità, e l'altro regolerà, oltre all'organizzazione e al funzionamento del Fondo mondiale per i rifugiati ambientali, un futuro tributo sul degrado ambientale per fornire risorse al fondo. L'articolo 25 regola le funzioni dell'Organizzazione Internazionale per le Migrazioni. Infine, l'articolo 26 stabilisce i principi di informazione, partecipazione pubblica e accesso alla giustizia che disciplinano l'esercizio delle funzioni delle istituzioni.

7. Il capitolo sette stabilisce una serie di meccanismi per la corretta ed efficace applicazione del trattato, compreso il dovere delle istituzioni di cooperare con altri organismi internazionali pertinenti (art. 27); la conclusione di accordi bilaterali e regionali (art. 28); e la presentazione di rapporti di attuazione da parte delle parti (art. 29).

8. Il capitolo otto contiene una serie di disposizioni varie riguardanti i rapporti con altre misure di protezione (art. 30); relazioni con i terzi (art. 31); il monitoraggio sull'applicazione delle disposizioni (art. 32); la risoluzione delle controversie tra le parti (art. 33); l'adozione di protocolli aggiuntivi al trattato (art. 35) e la relazione tra la convenzione e i suoi protocolli (art. 36); il diritto di voto delle parti (art. 37); l'esclusione delle riserve (art. 38); e i meccanismi di emendamento e denuncia della convenzione e dei suoi protocolli (artt. 34 e 39).

9. Infine, il nono capitolo contiene le clausole finali del trattato, che riguardano la firma, la ratifica, l'accettazione, l'approvazione o l'adesione alla convenzione (articoli 40 e 41); la sua entrata in vigore (articolo 42); la nomina del depositario (articolo 43); e le lingue dei testi del trattato considerate autentiche (articolo 44), che corrispondono alle sei lingue ufficiali delle Nazioni Unite.

## **QUOD ERAT DEMONSTRANDUM**

This section presents the conclusions reached at the end of the doctoral research. These conclusions have been organised into several sections, each of which answers one of the questions initially posed in the introduction to the thesis. A summary table on the protection of environmentally displaced persons in the international legal system at the universal and regional level is included at the end of the conclusions.

### **A.**

#### **WHAT IS THE RELATIONSHIP BETWEEN ENVIRONMENTAL DISRUPTION AND HUMAN MOBILITY?**

1. The relationship between environmental degradation and human mobility began to receive intense attention in the 1980s, with the emergence of two doctrinal positions also reflecting a disciplinary divide on the subject. Suhrke called them the "maximalist" and "minimalist" vision:

1.1. On the one hand, the "maximalist" approach, adopted mainly by experts in environmental science and security studies, holds that humans have degraded the natural environment that sustains them to the point of making it uninhabitable. This tipping point is known as an environmental disruption; that is, a profound change in environmental conditions or utilities that renders them unable to continue to meet human needs. At this stage, the communities that inhabit the degraded environment have to move in search of a new natural habitat.

The effects of these environmental disruptions can manifest themselves quickly, as in the case of a natural or human catastrophe, the environmental consequences of war or the implementation of a development project. In other cases, the effects appear gradually, worsening over time, as in the case of pollution, soil degradation, whose most severe form is desertification, and rising sea levels. The "maximalists" emphasize the role that human activity plays in these processes, aggravated by economic, political and demographic factors that intensify environmental deterioration or make the environment more vulnerable to the impacts of both human action and natural phenomena such as climatological or meteorological disturbances.

1.2. On the other hand, the "minimalist" approach, whose advocates come from the field of migration, later emerged as a doctrinal reaction to the "maximalist" postulates.

1.2.1. The "minimalist" authors stress that the decision to emigrate is a complex decision influenced by multiple factors, both external and inherent to the circumstances and characteristics of each individual, which act to favour or discourage migration. Since the vulnerability of each subject to an environmental stress situation varies, the response cannot always be the same either, leading inevitably to its displacement.

1.2.2. The "minimalist" authors develop further their argument by emphasizing the capacity of human beings to adapt to the changes or rigours of the environment in which they live.

a. These adaptation strategies may consist of measures at the source that correct environmental degradation or risks to continued habitability by eliminating the need to migrate. For example, building engineering works to regulate flooding or contain sea-level rise, as countries like the Netherlands have done.

The "maximalists" would argue in this regard that such adaptation measures are entirely beyond the reach of developing countries, where the bulk of the population movements that these authors describe as environmental are taking place. However, the "minimalists" counter-argue that these displacements are not so much the result of environmental degradation as the result of inequalities between developed and developing countries. Consequently, it would be inappropriate to label them as environmental because this name masks the differences in development as the real cause of displacement.

b. "Minimalists" note that adaptation to situations of chronic environmental stress can also take place through migration, cyclical or temporary, of all or part of the family unit as a way of diversifying livelihoods and risks. For example, in the dry season, some members of rural households move to work in urban centres; or nomadic tribes, whose migration patterns follow the cycles of rainfall and pasture growth. However, displacement in these cases does not reflect the "maximalist" approach of responding to human-induced worsening environmental conditions. Instead, it represents an adaptive response of human communities that have adjusted their lifestyles to the climatic variability of the regions in which they have settled.

2. In our view, however, the distinction between the two approaches is somewhat artificial. It is not that the "maximalists" affirm the relationship between environmental factors and human mobility, and the "minimalists" deny it, but rather how each position represents this relationship.

2.1. "Maximalist" authors conceive of it as a linear cause/effect relationship (vid. figure 1), where changes that humans make to their environment "cause" the environmental disruption that generates displacement ("effect"). Although the environmental factor is the primary cause of displacement in the "maximalist" representation, and hence the "minimalist" authors dismiss this approach as mono-causal, the "maximalist" authors are not unaware of the presence of other non-environmental forces –mainly in the form of rapid population growth, poverty and ill-conceived development policies. These associated factors would act along the cause-effect line, precipitating the disruption of normal ecosystem functioning or thwarting any attempt to adapt.

2.2. In contrast, the "minimalist" authors conceive the relationship between environmental factors and human mobility as a circle (vid. figure 1). Thus, the environmental stress situation would act as a context in which non-environmental variables –political, economic, social, cultural and personal- operate. Therefore, the decision to move would result from the interaction of these different forces, being a multi-causal decision.

In cases where it is possible to identify an environmental disturbance as a direct cause of displacement –e.g. a flood- it would simply act as a proximate cause, revealing pre-existing vulnerabilities underlying the affected population, such as poverty, weak institutions or lack of insurance mechanisms, among others. These vulnerabilities will condition the duration of displacement and the possibility of return. Even in such cases of an apparent direct relationship between environmental disruption and displacement, the "minimalist" authors deny "maximalist" determinism. They point out once again that it will be the play of forces that will condition who leaves and who stays –e.g. in the case of floods, there will be those who, despite the danger, decide to stay because they fear that if they leave, their goods will be looted.

2.3. Today, this polarised doctrinal divide has to some extent been overcome, especially since migration scholars have moved beyond their initial scepticism towards

"maximalist" theories. Without falling into the alarmism of the "maximalist" authors, some of whom continue to predict mass exoduses threatening the borders of the rich countries of the North as they flee from environmental cataclysms in the Global South, some migration experts have begun to develop models to study environmental migration. Although still based on classical theories of migration, these emerging theoretical frameworks are a good starting point for bridging the two approaches, as they attempt to explain how environmental variables interact with traditional drivers of migration and influence migration patterns.

## **B.**

### **WHAT IS THE MAGNITUDE OF ENVIRONMENTAL DISPLACEMENT?**

1. The empirical data analysed in Chapter II show that, while the "maximalists" were not exaggerating in their warnings about the impact that environmental factors can have on human mobility, they were wrong in their scope and direction. Thus, the vast majority of these movements will be internal, i.e. the displaced will not leave the borders of their States. Moreover, the percentage of those who do so will not undertake transcontinental movements, mainly because of the costs involved, but will remain within their regions. Therefore, the wealthy northern countries will only be threatened as far as they are neighbours of developing countries such as Spain with the Sahel countries or the US with Mexico.

Data extracted from the International Disaster Database and the Global IDP Database provide a reasonably comprehensive picture of the magnitude of these IDP flows and the countries most prone to them, as they are developing countries with a significant prevalence of disasters and associated loss and damage. Apart from the lack of data on cross-border displacement, the main limitation is that only displacement related to rapid-onset environmental disruptions of natural origin is recorded (except for drought, although data in this regard are still scarce). As a result, displacement resulting from gradual environmental degradation processes remains invisible.

1.1. In the five-year period 2016-2020, more than 115 million new displacements occurred worldwide as a result of rapid-onset natural disasters –such as floods, hurricanes, storms or earthquakes- and drought. However, this high figure does not reflect how many of these people were evacuated or fled spontaneously; how many

could return home once the hazard was over; and how many remained displaced, for how long and how far from the disaster site. By continent, this figure is broken down as follows: in Europe, there were around 313,000 displacements; in Africa, the figure was just over 14 million; in Asia, more than 85.5 million people were displaced; in the Americas, the figure was relatively low at just over 15 million across the continent; and finally, in Oceania, there were around half a million displacements.

1.2. Hydrological events were the most frequent natural disaster worldwide (51%). The only exceptions to this prevalence were in Europe and Oceania, where there was a higher incidence of meteorological events. However, in monetary terms, meteorological events caused 61% of the damage recorded in the five-year period, while climatic and hydrological disasters accounted for almost the other half.

1.3. Meteorological disasters also accounted for 50% of internal displacement, with hydrological hazards causing the remaining 42%. The incidence of climatological and geological disruptions on the percentage of IDPs was residual (4% each). In the case of climatic events, this is due to the lower incidence that the primary type of climatological event recorded (wildfires) has on human settlements and the lack of comprehensive data on drought or desertification, which are environmental degradation processes with a more significant impact on population displacement. Moreover, this lower recorded incidence does not deny the significant influence of climate change on displacement, as it exacerbates the intensity and frequency of meteorological and hydrological disruptions.

1.4. The ten countries with the largest number of forced displacements related to natural disasters were, from highest to lowest, China, the Philippines, India, Bangladesh, the United States, Indonesia, Cuba, Somalia, Ethiopia and Vietnam. With the exception of four states, the rest are on the Asian continent, which stands as the hotspot of environmental displacement. In all ten countries, displacement occurred mainly as a result of hydrological disasters or meteorological phenomena.

## C.

### **CAN ENVIRONMENTAL DISRUPTION AMOUNT TO PERSECUTION, TURNING THE DISPLACED PERSON INTO A REFUGEE?**

1. At the universal level, the relevant refugee-definition is embodied in Article 1 (A) (2) of the *1951 Geneva Convention relating to the Status of Refugees*, as amended by its *1967 Protocol*.

1.1. According to it, the Geneva Convention allows the granting of refugee status to environmental displaced persons only in an exceptional case: that in which a State or non-state actor uses environmental disruption as a form of persecution of a particular section of its population on the grounds of race, religion, nationality, membership of a particular social group or political opinion. If the persecuting agent is a non-state actor, it would also be necessary that the State is unable or unwilling to protect its nationals from such acts of environmental persecution.

1.2. Apart from the above, the adverse environmental conditions that generally prevail in one country do not make it possible to obtain refuge in another. On the one hand, because the environmental disruption will not be the result of the malicious conduct of a particular State or non-state actor, but rather due to natural or exogenous factors beyond its control, and therefore there is no persecuting agent. On the other hand, let us suppose that the State has acted negligently, having been able to prevent such disruption on the environment or minimise its consequences – for example, by reducing its greenhouse gas emissions. Even so, the necessary motivational element that must underlie its behaviour would still be missing. That is to say, its action or omission was not intentionally directed at causing harm to the population for one of the five reasons set out in the Geneva Convention.

1.3. About the motivational element, the assertion that the environmental disturbance, from which displaced persons flee, would be the defining element of their membership of a particular persecuted social group, to obtain protection under the 1951 Convention, does not seem to be acceptable. Due to its indiscriminate nature, this would be a risk or threat to which the entire population of the State would be exposed, without distinguishing a group from the rest of society.

1.3.1. Of particular interest in this regard is the claim made by several asylum seekers from Kiribati and Tuvalu. They argued that their respective governments would be focusing public investment on developing adaptation and protection strategies against the sea-level rise in the wealthy areas of the islands. According to them, these policy decisions would be to the detriment of the most impoverished areas where the asylum-seekers lived, who would find themselves in a situation of absolute vulnerability to recurrent high tides and flooding.

Although the veracity of those accusations was not established from the information gathered by the court and the application for refugee status was therefore rejected, the appellants' argument raises a question of great interest: whether membership of a particular socio-economic stratum is equivalent to membership of a particular social group within the meaning of the Convention and, if so, whether serious forms of discrimination between social classes can be considered acts of persecution when they entail substantially detrimental consequences for members of the discriminated social class –e.g., increased exposure or vulnerability to a real and serious climatic/environmental threat to their life or physical integrity.

It should be clarified, however, that in this hypothesis the existence of a particular social group would be defined by socio-economic factors, and not by the environmental factors themselves, which would actually act as a catalyst or coadjutant of the discriminatory measures, qualifying them to the degree of persecution by the severity of their effects.

1.4. The legal limitations of the Geneva refugee definition to include environmentally displaced persons have prompted several voices in the literature in favour of amending the 1951 Convention to at least include climate change as a ground for claiming refugee status.

1.4.1. However, we do not believe this option to be the most appropriate. From a technical legal point of view, including environmentally displaced persons within the scope of the 1951 Convention is not as straightforward as expanding the catalogue of grounds for refuge set out in Article 1(A)(2). On the contrary, any proposal to incorporate environmental displacement within it would also require a convoluted reinterpretation of the other elements of the definition, in particular as regards the persecuting actor and the element of motivation.



1.4.2. In the unlikely event that the necessary and difficult international political consensus for a revision of the universal refugee concept emerges, it would be preferable to follow the example of regional instruments, leaving the traditional definition unchanged and adding a second paragraph below that also qualifies as refugees those fleeing an external situation of generalised risk, such as an environmental disruption.

2. At the regional level, there are several international refugee instruments in Africa, Latin America, the Middle East and Asia whose refugee definitions are broader than that contained in the 1951 Geneva Convention, making it easier to advocate for the inclusion of environmentally displaced persons within its scope.

2.1. The *1994 Arab League Convention on Regulating Status of Refugees in the Arab Countries* is currently the only international legal text that provides for natural disasters as a cause for obtaining refuge. However, the Convention is not in force and does not look likely to be at any time. In the twenty-six years since its adoption in 1994, none of the twenty-two States that are currently members of the Arab League have ratified it.

2.2. The *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*, while not expressly including environmental disruptions in the expanded definition of refugee, refers to other "events seriously disturbing public order" in all or part of the applicant's country of origin or nationality. Although an *ejusdem generis* interpretation of this public order clause suggests that only human-made situations would be covered, its wording seems sufficiently broad to accommodate also persons fleeing a natural disruption. In this connection, it would be sufficient for the disruption to have reached a threshold of severity sufficiently high to exceed the response capacity of the State concerned.

Compared to the Geneva Convention's concept of a refugee, the African definition has the advantage of not requiring the presence of a persecuting agent or that the victim be persecuted because of their inherent characteristics. Two differences which facilitate a lot the inclusion of persons displaced by environmental factors. On the one hand, because natural events are indiscriminate in their effects. On the other hand, because it is not relatively easy to establish a causal link between State action and the intentional production of an environmental disturbance, especially in the case of natural disasters. For the African Convention, it is sufficient to be exposed in the country of origin or

nationality to one of the situations of risk provided for in the definition and, in consequence, to have had to leave the place of residence.

2.3. Both the *1984 Cartagena Declaration on Refugees* in Latin America and the *AALCO's 1966 Bangkok Principles on status and treatment of Refugees* in Asia and Africa copy the expanded definition of refugees from the 1969 African Convention. However, they are soft-law instruments which, in their respective regional contexts, are intended to guide or orientate States as to the status or treatment they should give to refugees. They are therefore not legally binding, unlike the African Convention. Consequently, their actual effectiveness in protecting environmentally displaced persons will depend on two variables: firstly, the degree of penetration that the extended definition of refugee achieves in national legal systems; secondly, the more or less flexible interpretation that each State makes of the public order clause.

3. Finally, at the EU level, the protection of persons displaced for environmental reasons has been considered both from the perspective of the *Qualification Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection (recast)*, as well as under the *Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons*. The term international protection encompasses, in addition to traditional refugee status, a new protection institute, complementary to the first and genuine in the EU, known as *subsidiary protection*.

3.1. Directive 2011/95/EU, which governs the recognition of refugee status in any of the 27 Member States, has confirmed at European level the conclusion that persons displaced for environmental reasons do not generally fall within the definition of refugee in the 1951 Convention. Moreover, the Directive reproduces this definition verbatim. In particular, some aspects of the Geneva refugee definition that, because they were obscure, had given rise to doctrinal interpretations favourable to the legal existence of *environmental refugees* under the universal refugee regime, have been clarified and legally developed.

Firstly, it establishes the necessary concurrence of a human actor to whom the act of persecution can be attributed, which excludes the possibility of considering the environmental disruption itself as an inanimate agent of persecution. Secondly, the existence of a particular social group is legally defined based on two cumulative criteria.

On the one hand, members must share a common background that cannot be changed or a characteristic that is innate or so fundamental to their identity or conscience that they cannot be required to renounce it. On the other hand, as a consequence of the former, the rest of the society of the country where they live has to perceive them as a group with a distinct identity. The legal definition of a social group precludes, in turn, the interpretation of environmental disruption as the defining element of the existence of such a group.

3.2. *Subsidiary protection* is granted when there are substantial grounds for believing that the applicant if returned to the country of origin or habitual residence, would face a real risk of suffering any of the serious harm defined in Article 15 of the Directive.

3.2.1. The reference in this provision to "torture or inhuman or degrading treatment or punishment of an applicant in the country of origin" has led some authors to argue that the forced return of the applicant to a country affected by severe environmental disruption should be regarded as such. Recital 35 of the Qualification Directive, however, excludes from the definition of serious harm risks to which the population of a country or a section of the population is generally exposed because they do not in themselves pose an individual threat.

The CJEU has confirmed this exclusion in its 2014 judgment in the case of *M'Bodj v Belgian State*. The European Court concluded that the risk that the health of third-country national suffering from a grave illness would deteriorate as a result of the absence of appropriate treatment in the country of origin would not be sufficient to justify the granting of subsidiary protection. Exception made for cases where such absence was the result of intentional deprivation of health care in the country of origin.

3.2.2. The requirement of intentionality links, once again, to the need for the serious damage alleged to be the result of conduct attributable to a third party. This necessity also excludes from the scope of subsidiary protection cases of serious harm resulting from environmentally adverse conditions in the country of origin where it is not possible to identify any human actor as being responsible for the damage. In connection with it, there is the question of whether mismanagement by a State of a natural disaster situation would make it impossible for its nationals to obtain subsidiary international protection within EU borders.

This latter hypothesis stems from the actions of the Myanmar government in the context of Cyclone Nargis that hit the country in 2008. Despite its lack of capacity to assist the cyclone victims, the government systematically refused and blocked offers of help from the international community. It did so because it feared that these offers might conceal an attempt by the Western powers, particularly the US, to invade or destabilise the country. The result of such behaviour was most shocking, as the natural disaster turned into a genuine humanitarian crisis. Due to the seriousness of the suffering the Burmese military junta's decisions caused its population, significantly reducing the possibilities of survival in the areas most affected by the cyclone, such decisions may qualify as inhuman or degrading treatment within the meaning of Article 15 of the Directive. However, this is an exceptional case, where the environmental factor was greatly aggravated and amplified by the human factor.

3.2.3. Finally, Article 8, which is common to refugee and subsidiary protection, has legally endorsed through the known as the *internal protection exception*, the complementary nature traditionally attributed to the institution of refuge in relation to national protection. This exception allows the refusal of international protection where the applicant can be safely and durably relocated to another part of the country of origin where there is no well-founded fear of being persecuted or no real risk of suffering serious harm, or where protection against such threats can be obtained.

This exception would also exclude subsidiary protection when victims of environmental disruption can be evacuated to other safe areas within the country; or receive on-site humanitarian assistance from their national authorities or international actors such as International Organisations or NGOs.

3.3. For its part, *Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons* sets up a mechanism that is flexible enough to provide immediate protection against any situation in the country of origin, including those of environmental origin, which causes a significant number of displaced persons to arrive at Europe's borders. Thus, paradoxically, persons who arrive in the EU fleeing environmental disruption would be entitled to temporary protection if arriving in the context of a large-scale movement of persons. However, they would not be if the arrival took place individually or in small groups, even though the cause of the flight was the same in both situations.

3.3.1. The main limitation of the Temporary Protection Directive is the process for activating the mechanism itself, which requires a political decision, taken within the Council by an enhanced majority, establishing the existence of such a mass influx of displaced persons. In practice, this has meant that the temporary protection mechanism has not been activated since its adoption until recently, as a result of the displacement crisis caused by the current armed conflict in Ukraine.

3.3.2. Furthermore, the duration of protection is, by definition, limited, extending exceptionally to a maximum of three years. However, this period may not be long enough to restore and rehabilitate for human life large areas affected by environmental degradation, which sometimes may not be possible either – e.g. in the case of loss of land as a result of sea-level rise. However, the Directive does not clarify what happens to people enjoying temporary protection when the return to the country of origin is impossible or unrealistic. Consequently, their remaining on the territory of the Member States, beyond the duration of the protection granted, will lie at the discretion of each Member State and under the conditions established in their respective aliens' laws.

4. Finally, some EU Member States have expressly included provisions for the protection of persons displaced by environmental factors in their domestic legislation, namely Finland, Sweden, Italy and Cyprus.

4.1. Section 109 (1) of *Finland's Aliens Act 301/2004* allows for the granting of temporary protection to those aliens who cannot safely return to their country of origin or habitual residence because there has been a mass displacement of persons as a result of, inter alia, an environmental disaster. Although temporary protection is also granted for a maximum period of three years, Finnish legislation does provide for the conversion of temporary protection into a continuous residence permit when the reasons for which temporary protection was initially granted continue to apply.

4.2. As far as *Sweden* is concerned, Section 2 (a), Chapter 4 of the *Aliens Act 2005:716* allows for the granting of a residence permit to an alien who, despite not qualifying for refugee status or benefiting from subsidiary protection, is outside the country of nationality or habitual residence and cannot return to it because of an environmental disaster. The term "environmental disaster" refers, however, only to rapid-onset natural events and not to cases of gradual or continuous deterioration of the environment, so that victims of desertification, drought or rising sea levels would not be

covered. The residence permit can be issued for an undefined period or temporarily; in the latter case with a validity of between one and three years. Finally, it should be noted that this Article 2 (a) was recently deleted by Law 2021:765 amending the Aliens Act.

4.3. In *Italy*, *Legislative Decree 286/1998* provides for the possibility of granting temporary protection to victims of environmental disruption both on a collective and individual basis.

4.3.1. On the one hand, Article 20 (1) thereof allows the President of the Italian Council of Ministers to adopt, by decree, extraordinary measures for the reception of foreigners in the event of a conflict, natural disasters or other particularly serious events in countries not belonging to the EU. The relevant presidential decree declaring the state of humanitarian emergency will determine the geographical area from which displaced persons eligible for collective protection come, the duration of the protection and the conditions of reception. It is, therefore, an extraordinary mechanism reserved for equally exceptional cases, in which a large number of displaced persons arrive on Italian territory beyond the country's capacity to receive them.

4.3.2. On the other hand, Article 20 bis of the same legal text stipulates that the competent administrative authority – *il Questore* - may issue a temporary residence permit, after an individual examination, when the foreigner's country of origin is in a "situation of grave calamity", which does not allow the applicant to return and stay there safely. It remains to be seen how the term "calamity" is interpreted, although *a priori* the term seems broad enough to accommodate both rapid and slow-acting environmental disruptions. The reform recently implemented by the *Decree-Law on urgent provisions on immigration, and international and complementary protection* seems to support such an interpretation, as it now allows the permit to be renewed indefinitely as long as the conditions that led to its granting remain in the country of origin.

4.4. Finally, Article 29(4) of the *2000 Refugee Law of Cyprus* prohibits the expulsion of refugees or persons with subsidiary protection status to a country where there is a risk that they will be subject to inhuman or degrading treatment as a result, *inter alia*, of the destruction of the environment. The scope of this legal provision in the field of environmental movements is, however, somewhat limited, as it would only act *a posteriori*. That is to say, the environmental disruption in the foreigner's country of

origin would have to have occurred following the arrival in the Cypriot Republic and the granting of refugee status or subsidiary protection.

5. In sum, this overview of the different regional frameworks shows a markedly disparate map. Thus, while in theory it would be possible to protect environmentally displaced persons as beneficiaries of temporary protection in the EU or as refugees in other continents, in practice there is a significant degree of legal uncertainty.

5.1. The lack of explicit reference to environmental problems as a ground for protection means that its granting depends on how indeterminate legal concepts such as the public order clause, on the one hand, or mass influx of people, on the other, are interpreted in each region and country.

5.2. As a result, significant differences may arise from one region to another, and even between States within the same region (vid. the case of Finland, Italy, Cyprus and until recently Sweden vis-à-vis the other European partners), which may result in unjustified discrimination between environmentally displaced persons depending on the continent of displacement. Ultimately, such differences in treatment may even redirect displacement flows to those regions or countries where protection claims are more likely to be successful.

## **D.**

### **CAN ENVIRONMENTAL DISRUPTION COMPROMISE THE SURVIVAL OF A STATE AND LEAVE ITS NATIONALS STATELESS?**

1. Rising sea-levels resulting from climate change present International Law with an unusual scenario for the future: the physical disappearance of a country.

1.1. Although the gradual submergence of the coastline is a phenomenon that will be experienced to a greater or lesser extent globally, in the case of SIDS it may pose a threat to their very continuity as a State. Their small size, combined with their low average elevation above sea level, threatens the survival of their territory, which is the vital physical support on which the population is based and over which sovereignty is exercised. The purchase of land in other neighbouring States does not solve the problem, as it does not imply the acquisition of sovereignty over the acquired territory unless a corresponding international cession treaty is signed. On the other hand, the

construction of artificial islands to house the population not only is an extremely costly alternative with a high environmental impact, but also cannot legally replace the natural territory as necessary support for the presumption of statehood.

1.2. The loss of territory is compounded by the gradual depopulation of the islands, as the degree of habitability worsens, and their inhabitants migrate to other countries, such as New Zealand or Australia, in search of living conditions that meet their most basic needs. The affected SIDS governments may find themselves in exile as they try to govern what is left of a territory swallowed by ocean waters and a population scattered across the continent.

1.3. Clearly, this would be an unprecedented situation on the international scene, whose legal system is limited to regulating cases of succession. In other words, situations in which one State replaces another, taking control of territory and population and subrogating its position in international relations. This is not the case when a State physically disappears.

1.4. Even if the rest of the international community were to accept that SIDS could continue with their international legal personality, embodied in an entity devoid of territory and population but endowed with certain sovereign powers as in the case of the Order of Malta, the problem of protecting their nationals would remain. The disappearance of the territory and the government's exile will mean losing an effective link with its former nationals, who will find themselves residing in the foreign countries to which they have emigrated or resettled.

1.5. In such a situation, SIDS inhabitants must be considered *de jure* and not *de facto* stateless persons, since the SIDS concerned no longer meet the criteria generally considered necessary for a State's existence under international law. Therefore, *the 1954 UN Convention relating to the Status of Stateless Persons* is fully applicable. Thus, former SIDS populations can benefit from the protection status provided for in the Convention, which contains a catalogue of rights and freedoms similar to those granted to refugees under the 1951 Geneva Convention. The main limitation of the 1954 Convention is its limited scope. Unlike its refugee counterpart, which enjoys almost universal application, the CSSP has only been ratified by ninety-six countries.



1.6. If threatened SIDS were to merge with another country to avoid their complete disappearance, *the 1961 UN Convention on the Reduction of Statelessness* would come into play. This international treaty provides for nationals of the pre-existing States to acquire the nationality of the successor State that results from the union. However, like the 1954 Convention, the CRS has the disadvantage of the limited number of countries that have ratified it to date: seventy-eight countries.

1.7. Finally, international organisations at the regional level have focused their efforts on promoting more significant ratification of the UN Statelessness Conventions in their respective geographic areas of influence.

1.7.1. The only regional instrument of note is the *European Convention on Nationality*. This instrument provides for facilitating the naturalisation of stateless persons residing on the territory of European States Parties, with a particular focus on children already born in Europe, who could acquire nationality by law at birth if the legislation of the country concerned so provides.

1.7.2. In Africa, there is currently a *draft Protocol to the African Charter on Human and Peoples' Rights on the specific aspects of the Right to a Nationality and the Eradication of Statelessness in Africa*. This draft, inspired by the European Convention in its provisions on the acquisition of nationality by stateless persons, aims to adapt the United Nations framework to the specific challenges that phenomena such as nomadism raise on the African continent.

2. In any case, the possibility of protecting environmentally displaced persons as stateless is an exceptional case, limited to a very specific situation: that of the inhabitants of low-lying SIDS, whose combined population does not exceed one million people - taking into account only the nine countries identified by the IPCC as threatened by sea-level rise, namely Antigua and Barbuda, Cook Islands, Kiribati, Maldives, Marshall Islands, Federated States of Micronesia, St Kitts and Nevis, Tonga and Tuvalu. Compared to the more than 115 million new environmentally displaced persons worldwide between 2016 and 2020, those displaced potentially covered by the statelessness regime represent a tiny fraction and, as mentioned above, this status has limitations that do not make it the most appropriate instrument for a permanent situation such as that of SIDS inhabitants.

**E.**  
**CAN UNHCR INTERVENE IN THE PROTECTION  
OF ENVIRONMENTALLY DISPLACED PERSONS?**

1. Concerning UNHCR's role in protecting environmentally displaced persons, the data presented in the second part of Chapter IV show that the Organization is already involved in assisting them at least at the operational level.

1.1. In this regard, it should not be forgotten that environmentally displaced persons are IDPs if they have not crossed the borders of their countries and that, if they do, they may even have refugee status in some instances. Moreover, as noted above, the disappearance of a State as a result of environmental disruption would render its nationals stateless.

Assistance to both refugees and non-refugee stateless persons is at the core of the protection mandate that UNHCR has received since its inception. As for IDPs, although a general authorisation does not cover its intervention, the UNHCR has also participated in their protection at the request of the State concerned, following authorisation by the Secretary-General or another competent UN principal body and provided there was budgetary availability. Therefore, environmental displaced persons already fall within the UNHCR's sphere of action, even if there is no formal extension of its mandate that expressly and specifically includes them.

1.2. Legal certainty would, of course, be enhanced if the Agency were given an explicit and clear mandate to assist victims of environmental disruption, whether or not they have crossed an international border. The former High Commissioner for Refugees, Mr António Guterres, tried to obtain it on at least two occasions during his long term of office.

One was on the occasion of the pilot arrangement that the UN Inter-Agency Standing Committee proposed to UNHCR's Executive Committee in January 2011. This initiative called for UNHCR to take the lead in assistance operations in countries affected by a natural disaster by default, instead of sharing the mandate with UNICEF and OHCHR as has been the practice to date. The second occasion came in June of the same year during the Nansen Conference, hosted by the Norwegian government to commemorate the 100th anniversary of Mr Fridtjof Nansen's death, the first High

Commissioner for Refugees. UNHCR used the event to persuade States to negotiate a new international instrument to protect environmentally displaced persons, in which UNHCR would take a leading role as the agency responsible for their assistance. However, none of these attempts was successful.

1.3. UNHCR's intervention in assisting environmentally displaced persons could certainly pose some challenges. Not so much from a legal perspective, as it should be remembered that General Assembly Resolution 428 (V) contains a general authorisation in the form of a closing clause. This provision allows the General Assembly to authorise UNHCR involvement in other operations not expressly mentioned in the Agency's Statute.

In this context, it is worth mentioning UNHCR's extensive experience in assisting persons fleeing armed conflict or situations of generalised violence in their countries of origin, even if they do not qualify as refugees because they are not subject to individualised persecution on one of the five conventional grounds. The protection concerns of environmentally displaced persons are certainly comparable to the needs of those displaced by conflict. In this regard, it bears repeating the importance of approaching the challenge of involuntary displacement –environmental or otherwise– from a protection perspective, rather than from the causes or factors that led to it.

However, the general authorisation referred to in paragraph 9 of the above-mentioned Resolution is subject to "the limits of the resources made available to it". Herein lies the most substantial challenge we believe UNHCR will face in taking on new responsibilities regarding environmentally displaced persons: the availability of funds within an already tight budget. There is no doubt that UNHCR's practical experience in assisting displaced persons and refugees in the field makes it well suited to lead the international response to an environment-related humanitarian emergency. However, it is equally clear that the organisation's structure and budget would have to be expanded accordingly.

1.4. At the political level, the possibility of UNHCR becoming the main agency for the protection of environmentally displaced persons in the future does not seem to have bad prospects.

1.4.1. Although the High Commissioner's proposal to expand UNHCR's mandate to assist victims of natural disasters was not accepted in the past, it was not rejected

outright by States either. At that time, while recognising UNHCR's expertise and potential, States seemed, however, more comfortable with the current formula of an *ad hoc* mandate shared with other UN agencies. It was questions of sovereignty, competence and funding that led them to call for restraint and further deliberation before making a long-term decision on an explicit general empowerment of UNHCR to assist victims of natural disasters, including displaced persons. However, increased political awareness in Northern countries of the impact that the environmental and climate change crisis could have on the resource-rich countries of the South on which they depend, and civil pressure from voters, could eventually bring the international community to make up its mind.

1.4.2. Paradoxically, the proposal to expand UNHCR's mandate to include new vulnerable groups of displaced persons may meet the most significant resistance within the organisation's own staff. Over these decades, the Agency has developed an internal culture based on the very notion of refugee, to which UNHCR's original international protection mandate has responded since its inception. Any attempt to alter that mandate could arouse the misgivings of an entire human structure afraid of seeing UNHCR's identity diluted and with it the effectiveness of the protection it provides.

Indeed, on those occasions when UNHCR has intervened in displacements that might have an environmental background, the staff themselves did not even seem to be aware of it. Instead, they argued that UNHCR's presence was justified by the existence of one of the conventionally envisaged causes of persecution. An example would be the massive influx of Somalis into the Dadaab refugee camp in Kenya during 2011 and 2012. UNHCR staff in Kenya did not perceive these displacements as a result of climate change, drought or subsequent famine, but as a consequence of the fear of persecution that the civil war in Somalia had engendered.

1.5. At the conceptual level, the expansion of UNHCR's mandate may generate more remarkable reticence among States when it comes to population movements triggered by a slow-progressing environmental disruption. Such could be the case if populations are displaced due to a lack of livelihoods in the context of a heatwave, prolonged drought or the gradual desertification of pastures and farmland. The tendency is to label these cases more as migration than forced displacement, even if the decision to migrate is not entirely voluntary.

The way these movements are classified not only will have technical and legal implications, but also practical ones at the level of UNHCR's operations. As a matter of fact, of the operations UNHCR carried out between 1999 and 2016 assisting IDPs displaced by environmental disruption, only 2% of these interventions were motivated by slow-onset environmental disruption – i.e. droughts. The rest of the interventions were deployed in the context of rapid-onset natural disasters such as floods, storms, avalanches, earthquakes or tsunamis.

1.6. Ultimately, UNHCR's formal assumption of responsibility for the protection of environmentally displaced persons does not preclude inter-agency cooperation. On the contrary, in a field as cross-cutting as environmental migration, where so many factors and actors are involved, inter-agency cooperation and coordination within the UN system becomes even more essential. Leadership should not mean acting alone.

At the operational level, UNHCR should lead the humanitarian response by including other key UN entities such as OCHA, UNDP, UNICEF or WFP. At the technical-legislative level, UNHCR has taken the lead in promoting, at both the political and academic levels, the development of international standards, whether normative or programmatic, to guide States' response to environmentally-related displacement flows. This research, promotion and dissemination work undertaken by UNHCR should seek to involve other organisations with sectoral expertise and competence in this field. For example, IOM, OCHA, IPCC or ILO.

## **F.**

### **CAN ENVIRONMENTAL DEGRADATION OR THE RISK OF DISASTERS AFFECT THE RIGHT TO LIFE IN DIGNITY, SUCH THAT A STATE IS PROHIBITED FROM RETURNING DISPLACED PERSONS TO THEIR PLACE OF ORIGIN?**

1. The question at issue here is whether rapid-onset natural disasters or the effects that progressive environmental degradation has on living conditions could give rise to an obligation on States not to return irregular cross-border displaced persons to their countries of origin. That is, whether exposing a person to environmental disruption may amount to a violation of the right to life or the prohibition of cruel, inhuman or degrading treatment and, if so, how the principle of non-refoulement would operate.

2. This issue has arisen following the January 2020 decision of the HRC in the *case of Teitiota v. New Zealand*. This decision marked a turning point in two ways. On the one hand, until then, human rights courts and quasi-judicial bodies had only ruled on State responsibility for environmental harm suffered by persons subject to their jurisdiction within their territories, whether due to a foreseeable natural hazard or a polluting human activity. On the other hand, the decision is also important because it considers climate change and its adverse effects on living conditions as a source of risk for the first time. Moreover, the applicant is a citizen of a low-lying SIDS (Kiribati) threatened by rising sea levels, making this case a vivid example of how climate change will affect the human rights of those most vulnerable and exposed to its impact.

2.1. Despite the landmark nature of the HRC's decision, its practical significance must be judged cautiously. Its value lies less in what the Committee argues *ratio decidendi*, as it concludes that New Zealand has not breached international human rights obligations by returning the applicant and his family to Kiribati, than in what it states *obiter dicta*. Thus, the Committee does not exclude that the adverse effects of climate change on living conditions in the countries of destination may expose returnees to a violation of the rights protected by Articles 6 and 7 of the ICCPR. Accordingly, the HRC affirms the obligation of the deporting State to assess on a case-by-case basis the current situation of climate change and its effects, including sea-level rise, in the States to which the persons concerned are to be returned.

Therefore, it would only be a matter of time before the non-refoulement obligation would operate in the future. According to the jurisprudence reviewed, the minimum threshold of actual risk that the Committee has required in environmental stress situations to apply the principle of non-refoulement has been exceptionally high. However, the HRC considers that the threat that an entire State may vanish beneath the waters is so extreme that it is highly likely that living conditions there would become irreconcilable with the right to a life in dignity before such a risk materialises.

2.2. In any case, the real possibility that cross-border displaced persons may at some point avoid returning to their countries of origin by appealing to the principle of non-refoulement cannot lead to ignoring the very nature of this principle and its limitations. The obligation of non-refoulement has an exceptional character, as an exception to the sovereign competence of States to regulate the admission and stay of non-nationals on

their territory. This exceptional character means that, as the Committee makes clear in its decision in the *Teitiota case*, it only applies in cases of extreme gravity. In the context of environmental and climate displacement, this means:

2.2.1. Firstly, that those affected who, like the applicant, leave their home countries preemptively before the environmental hazard becomes a real and serious threat to a dignified life would not be covered.

2.2.2. Secondly, it should also involve large-scale phenomena that affect a country's entire territory, such as SIDS and sea-level rise. However, in most cases, environmental disturbances will have a localised impact or will not affect the whole territory, allowing those affected to relocate safely elsewhere in the country of origin. In such cases, the principle of non-refoulement would only prevent return where the country of destination does not provide adequate guarantees that the returnees will not be forced to return to the affected areas.

2.2.3. Thirdly, in cases of sudden environmental disruption where victims cross borders into neighbouring countries fleeing the consequences of, for example, a flood or an earthquake, the obligation of non-refoulement would only come into play if the State of origin is unable or unwilling to assist the affected populations, so that the victims' return would expose their lives to serious risk.

3. At the regional level, the successful application of the principle of non-refoulement in a case such as Mr. Teitiota's will depend on how the regional human rights body has interpreted environmental threats in relation to the right to life and the prohibition of cruel, inhuman or degrading treatment.

3.1. In the context of the ECHR, the Strasbourg Court has upheld different thresholds of risk when considering that the refoulement of a person could entail a violation of the right to life (Art. 2 ECHR) or the prohibition of cruel, inhuman or degrading treatment (Art. 3 ECHR).

3.1.1. In the case of the right to life, it would be limited to those foreseeable environmental threats against which the receiving State has not acted diligently to prevent them from materialising in harm to the population, despite being aware of them. In such cases, ECtHR jurisprudence appears to support the obligation not to return

displaced persons to places where their lives would be endangered by the negligent or culpable act or omission of the receiving State.

3.1.2. On the other hand, claims based on the adverse effects of environmental disruption on living conditions would require an exceptionally high deterioration, similar to the risk threshold required by the HRC, to trigger the obligation of non-refoulement, especially where the receiving State cannot be held responsible for the environmental crisis or for failing to act adequately to protect the population from it.

3.2. In the Inter-American human rights system, the prohibition of non-refoulement is enshrined in Article 22 (8) of the ACHR. This provision prohibits forced returning when the life or personal liberty of the returnee is at risk of being violated in the country of destination for reasons of race, nationality, religion, social status or political opinion. However, the Inter-American Court's interpretation of Article 4 (right to life) and Article 5 (right to integrity) of the ACHR, based on Article 29 (b) ACHR and the *erga omnes* nature of the prohibition of torture and cruel, inhuman or degrading treatment or punishment, have shaped a principle of non-refoulement whose scope transcends the limits of Article 22 (8), preventing refoulement in any case where life or personal integrity are threatened, regardless of the source of risk.

3.2.1. When applying the prohibition of refoulement, the Inter-American Court has followed the case law of the HRC and the ECtHR, requiring that the harm alleged by the applicant be a necessary and foreseeable consequence of refoulement. The reality of the alleged risk must be determined by taking into account the general situation prevailing in the destination country as well as the personal circumstances of the applicant. However, the risk threshold that the environmental threat would have to reach to be considered a real danger to life or personal integrity would be lower than those required by the HRC or the ECtHR, given the status the environment has attained under the ACHR as an autonomous and fully realisable right, in contrast to the ICCPR or the ECHR.

Thus, the Inter-American Court has recognised the direct impact that environmental degradation and climate change may have on several human rights, such as the right to life, to personal integrity, to privacy, to health, to water, to food, to housing, to participation in cultural life, to property and the right not to be forcibly displaced. These rights are further compromised when it comes to groups or population



segments that already experience particular vulnerability, such as indigenous peoples, children, people living in extreme poverty, minorities and people with disabilities.

3.2.2. Had the return of a family to a SIDS affected by climate change and sea-level rise been decided before the Inter-American Court, the outcome would probably have been different. The preponderance the Court has accorded to the right to a healthy environment as a necessary condition for the realisation of other rights would probably have played in the applicant's favour, especially given that he was to be returned with his wife and young children. Therefore, it is likely that these considerations would have led the Court to side with the HRC dissenting members, concluding that refoulement in such circumstances would amount to a violation of the right to a life in dignity protected by Article 4 of the ACHR.

3.3. Similar conclusions can be drawn in Africa's human rights system, as the ACHPR has also recognised the right of all "peoples" to an environment that is "satisfactory" and "favourable" to their development (art. 24). Furthermore, the AchPR, the follow-up body to the Banjul Charter, has issued several resolutions recognising the impact of climate change on the enjoyment of human rights.

3.3.1. The most relevant decision handed down by the AchPR on the relationship between the right to a healthy environment and the enjoyment of other fundamental rights concerns Nigeria's exploitation of oil reserves on the ancestral lands of the Ogoni people. The Commission held the Nigerian government responsible for the degradation of the Ogoni's natural habitat and the health problems they suffered due to the widespread and continuing pollution of the air, soil and water on which their agriculture and fisheries depended.

3.3.2. From the point of view of environmental displacement and the principle of non-refoulement, the *case of Ogoni People v Nigeria* sets a more favourable precedent than the jurisprudence of the HRC or the ECtHR for holding that the return of cross-border displaced persons to an environmentally degraded habitat would violate the rights recognised by the ACHPR. Several reasons support this conclusion:

a. On the one hand, entitlement to Banjul Charter rights is attributed to both individuals and the community, which would allow for the protection of entire populations endangered by environmental change, such as SIDS populations threatened

by rising sea levels. Moreover, this collective ownership relieves the person claiming non-return from having to prove that return would expose them to a personal risk to their life or integrity. This interpretation is responsible for the very high-risk thresholds that the HRC and the ECtHR have been demanding when the risk does not derive from the particular characteristics of the person concerned, but from the general conditions prevailing in the country of destination.

b. On the other hand, in the Ogoni case, in addition to the positive obligation of States to protect people's lives from real and immediate environmental threats, the AcHPR has based the violation of the right to life on the impact that environmental degradation has on the so-called second and third generation rights, which it recognises as essential for a full, dignified and safe life. Consequently, it would be easier to justify the obligation of non-refoulement in scenarios of environmental disruption and climate change by arguing for a cumulative set of environmental, economic, social and cultural factors that would affect the returnees' quality of life and security if they were refouled.

4. A final case of non-refoulement concerns the *ad hoc* practice of States not returning foreigners to countries affected by a natural disaster for as long as the emergency persists, usually granting them a visa on humanitarian grounds. However, this is a discretionary State practice with an asymmetric degree of adherence. Moreover, these measures are temporary and typically only adopted when a natural catastrophe has caused a humanitarian emergency.

5. Finally, it should be borne in mind that, in addition to these reservations on the applicability of the principle of non-refoulement in situations of environmental displacement, the prohibition itself has a restricted content due to its exceptional nature. Thus, the principle of non-refoulement only prevents aliens from being returned to a country where their life or integrity would be at risk. However, it does not oblige the host State to grant them any special protection status on its territory. In cases where the host State is a party to the core human rights instruments, displaced persons can benefit from the catalogue of civil, political, economic, social and cultural rights that these international treaties recognise for all persons. Otherwise, the treatment guaranteed to non-returnees is reduced to the minimum international standard of respect for their most basic human rights.

In conclusion, given its exceptional nature and the limitations of its content, the principle of non-refoulement is not the most appropriate instrument for the usual protection of persons crossing an international border driven by the environment.

## **G.**

### **CAN ENVIRONMENTAL DISRUPTIONS THAT FORCE THEIR VICTIMS TO MOVE WITHIN THEIR STATES TURN THEM INTO IDPs?**

1. The legal scenario that arises here is quite different from that discussed when considering the protection of environmentally displaced persons as refugees. In examining the legal regime applicable to refuge, the difficulties in defining environmentally displaced persons as such became apparent. In contrast, the existing normative framework on internal displacement, at both the universal and regional levels, includes environmental disruption as one of the causes that may force a person to flee or leave their place of habitual residence without crossing an international border.

Therefore, in the case of internal displacement, the protection gaps highlighted in Chapter VI are not due to the existence of a legal vacuum in the protection regime but to a lack of political will or capacity to implement existing instruments.

2. In this regard, the *UN Guiding Principles on Internal Displacement* provide a sufficient legal framework to protect people before, during and after being displaced by "natural or man-made disasters".

2.1. The main limitation of the Guiding Principles is their non-binding legal character. Consequently, the protection they can offer to environmentally displaced persons is conditional on the prior reception of these Principles in national legal systems. Another possibility for making the Principles binding is to enshrine them in an international treaty or crystallise them in customary law. This has been done, for example, by the International Conference of the Great Lakes Region, which has annexed the Guiding Principles to its Protocol on Internal Displacement. In any event, it should be borne in mind that many of these Principles only adapt international humanitarian and human rights norms, which are binding on States, to the field of internal displacement.

2.2. Likewise, the States' generic obligation to prevent and minimise risk situations that may lead to population displacement, which the Guiding Principles recall as a

manifestation of state sovereignty, should be complemented in the field of environmental displacement by the respective UN frameworks for climate change and natural disaster risk reduction. In terms of finding durable solutions to displacement, the Deng Principles should be accompanied by their counterparts on the recovery of displaced persons' property: the *Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons*.

3. In Africa, both the *Protocol on the Protection and Assistance to Internally Displaced Persons* in the Great Lakes region and the *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* include natural disasters among the causes of internal displacement, with the latter even referring to climate change.

3.1. Unlike the UN Principles, these international instruments have binding legal force and are thus compulsory for States Parties that have ratified or acceded to them. While the Deng Principles are a source of inspiration for both treaties, their content complements and adapts the UN framework to the particular idiosyncrasies of internal displacement on the African continent and in the Great Lakes region.

3.2. However, the existence of an international treaty does not necessarily imply effective protection for IDPs, whatever the cause of displacement. The obligations and rights in both the Kampala Convention and the Great Lakes Protocol require subsequent action by States Parties to give effect to them through national laws or policies. As for the UN Guiding Principles on Internal Displacement, the challenge, once again, is to ensure adequate implementation of the instrument itself, the absence of which can frustrate the object and purpose of even a formally binding and enforceable international treaty. In the case of the Kampala Convention, it is symptomatic that only eight countries out of the thirty-one States Parties have developed national frameworks on internal displacement. Only in one case, Niger, has this framework assumed legal form.

4- The situation in the other continents does not differ much from that in Africa. There, in the absence of legal instruments at the regional level, the UN Guiding Principles remain the normative framework of reference. Thus, the COE and the EU in Europe, the OAS in the Americas, ASEAN and SAARC in South and Southeast Asia, and the LAS in North Africa and the Middle East have all directed their efforts towards promoting and disseminating the Deng Principles among their Member States, urging

them to adopt and implement them in all their national policies and legislation on internal displacement. In the case of the EU, it is also worth highlighting the meaningful humanitarian action that this international organisation has been carrying out to assist victims of natural and man-made disasters, being currently one of the leading donors to global emergency relief funds.

At the domestic level, these institutional calls for adherence to the Guiding Principles on Internal Displacement have been more or less successful depending on the continent involved. It is undeniable that States that have heeded them have shown a clear preference for implementing the Guiding Principles through national policies rather than enacting them by law. However, the national frameworks developed to date vary widely in terms of their form and scope – e.g. not all include explicit reference to climate change or slow-onset environmental disruptions-, the phases of displacement they cover or the protection and assistance guarantees they provide to IDPs.

5- Finally, it should be noted that most of the provisions contained in these international instruments, both binding and non-binding, are fully valid for those who have crossed an international border fleeing environmental disruption. Therefore, their content can also guide the development of international normative standards to protect transboundary environmental displaced persons.

## **H.**

### **CAN ENVIRONMENTAL DISPLACEMENT BE AVOIDED?**

1. Avoiding environmental displacement requires tackling the environmental problems that are at the root of the ecosystem disruptions that force people to leave their habitats. Therefore, preventing people from becoming environmentally displaced implies making progress in the fight against climate change, effective disaster risk management and the achievement of truly sustainable development.

2. There is currently no legal provision in the UNFCCC or the Paris Agreement that provides protection for people displaced by the adverse effects of climate change or that could serve as a legal basis from which to infer a legal duty of protection on the part of States Parties. To date, the Conference of the Parties governing the UN climate change regime has only recognised the impact of climate change on human mobility patterns,

which is already a step forward, but this recognition has not yet materialised at the normative level.

2.1. However, the UNFCCC, the Cancun Adaptation Framework and the Paris Agreement provide for different planning mechanisms through which States Parties are to report to the COP on their national emission reduction and climate change adaptation efforts, namely National Communications, National Adaptation Plans and National Determined Contributions (NDCs). States Parties can use them as vehicles for incorporating human mobility considerations into climate change adaptation to help prevent displacement. However, their use for this purpose is very uneven, with only 34 States Parties having included climate mobility issues in their NDCs in 2018. As a positive note, a high percentage of them were developing countries in regions with high exposure and vulnerability to environmental degradation and natural disasters.

2.2. Climate change-related human mobility has been addressed under the UNFCCC through the *Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts* (WIM), which has established a Task Force on Displacement (TFD) on Displacement.

2.2.1. The fact that this working group has been integrated into the WIM structure and not elsewhere reveals how Parties to the UNFCCC and the Paris Agreement currently conceive of climate change-related migration, displacement and relocation, understanding the phenomenon of climate mobility in terms of "loss or damage".

2.2.2. Broadly speaking, the TFD's line of work revolves around two thematic axes: on the one hand, a preventive approach that seeks to avoid or minimise the risk of displacement; on the other hand, a reactive approach capable of dealing with displacement should it occur. This is what the WIM Executive Committee has termed "integrated approaches".

a. The first area of action focuses on combating the cause –climate change- rather than the symptoms –human mobility. Its keyword is adaptation, focusing on building and strengthening the capacities of developing countries, which are the most vulnerable to the impacts of climate change. The aim is to enable affected populations to cope with adverse climate effects by adapting to them *in situ* instead of being forced to move. The backbone of this approach is national adaptation plans, complemented by disaster risk

reduction strategies, which are particularly relevant in the case of displacement associated with extreme climate and atmospheric events –the frequency and duration of which are expected to worsen due to climate change. For adaptation to succeed, the TFD considers it essential to increase the transfer of technology and resources, especially financial means, from developed to non-developed countries.

b. The second thematic axis aims to limit forced displacement to situations where planned evacuation or relocation of populations at risk is essential –i.e. displacement directed or programmed by the relevant public authorities, again with adaptation plans or risk reduction strategies being the appropriate vehicles for their implementation.

In theory, autonomous or spontaneous forced displacements, i.e. those that occur as a necessary reaction of the population to adverse climatic circumstances that it can no longer cope with on its own, should be avoided as far as possible. To this end, besides adaptation at origin, the TFD promotes the vision of migration as an additional climate change adaptation strategy. In this sense, the TFD's action focuses on promoting the creation of channels for legal, safe and orderly migration among States.

For situations where forced displacement occurs spontaneously and irregularly, the TFD adopts a human rights-based approach regarding those displaced, whether they remain within their countries or cross an internationally recognised border. In this vein, the TFD's work does not seem to point at this stage in the direction of an eventual modification of the UN climate change regime to protect them, either through the negotiation of a separate international treaty for the protection of climate displaced persons or through the addition of a new protocol to the UNFCCC, as some scholars have suggested. Instead, the TFD seems more inclined to favour an objective extension of the existing human rights legal acquis to consider the deterioration of living conditions caused by climate change as a threat to the human rights of affected communities.

c. Apart from these two thematic lines –prevention and response to climate displacement- a third area of action aims to deepen the understanding of climate mobility, mainly by improving the methodology for the systematic collection and processing of displacement data. At the same time, the goal is to increase the visibility of this phenomenon among States Parties and the international community. As part of this awareness-raising work, TFD's efforts in international fora such as the Sendai

Framework for Disaster Risk Reduction, the Global Compact for Safe, Orderly and Regular Migration and its associated Forum, the Global Compact on Refugees or the 2030 Agenda for Sustainable Development are noteworthy.

3. Chapter II noted that the most significant environmental displacement will occur in the Global South and will be primarily intra-regional in scope. Consequently, it is imperative to rapidly progress in achieving the Sendai Framework targets on disaster-risk resilience, in synergy with sustainable development and climate change goals. Disaster resilience is the only way to minimise the exacerbation of displacement associated with environmental disruption and climate change. In turn, displacement caused by rapid- or slow-onset environmental disruptions is already a reality that requires enhanced and more ambitious implementation of the Sendai Framework's provisions on disaster-related human mobility.

3.1. In this context, further land degradation, rising sea levels and increased intensity and frequency of extreme weather and climate events are likely to make migration a more attractive way of adapting to changes in the human environment. Encouraging voluntary migration while there is still room for choice avoids future forced displacement, which is always more traumatic. In this regard, strengthening the resilience of both migrants and destination communities, as required by paragraph 30(1) SFDRR, requires improving channels for orderly, safe and legal migration from countries with high exposure to environmental shocks.

3.1.1. One option would be the creation of work visa quotas for those labour sectors in the destination country that require a workforce that the national supply cannot cover. Doing so would avoid labour competition between the immigrant community and the national population and, therefore, the emergence of tensions between the two.

3.1.2. Another alternative would be the creation of study grants in professional sectors that are strategic for both the awarding country and the beneficiaries' countries of origin. Such targeted scholarships would strengthen the resilience of the young scholarship recipients, who would increase their employability in the global labour market, and the communities of origin, which would benefit from the intellectual capital of those who choose to return.



3.2. In anticipation of an upsurge in intra-regional forced displacement, especially between areas bordering several countries, regional cooperation as referred to in paragraph 28(d) SFDRR becomes a necessary tool both to address the environmental factors underlying displacement and the cross-border flows themselves. Migration policies negotiated in this regard should adopt a human rights-based approach, taking particular care to respect the principle of non-refoulement of displaced persons to areas where prevailing environmental conditions may endanger their life or integrity.

3.3. Additionally, the increased recurrence of extreme atmospheric events will multiply emergency evacuations. Ensuring an adequate response by public authorities and emergency and civil protection services, especially at the local level, will be crucial to minimise loss of life as much as possible and to provide evacuees with safe and dignified living conditions for the duration of displacement, following paragraph 30(h) and (m) SFDRR.

3.4. Preparedness is fundamental to successful evacuation, as is the "Build Back Better" principle during the post-disaster phase. This principle, embodied in paragraph 33(j) SFDRR, should guide the subsequent recovery, rehabilitation and reconstruction of disaster-affected areas so as to avoid further displacement in the future.

Post-disaster intervention must proceed rapidly, as the likelihood of displaced persons' fundamental rights and freedoms being undermined or violated increases as the duration of displacement is prolonged over time. However, speedy rehabilitation and recovery work should not be at the expense of the principle of building back better. Failure to do so would expose affected communities to further displacement in the face of the next disaster, aggravating their suffering and making them more vulnerable with each new onslaught of nature. In this regard, the reconstruction phase offers an opportunity to improve the implementation of safety codes in the rehabilitation of housing, services and infrastructure, including the exclusion of areas deemed too dangerous to re-inhabit (par. 33(l) SFDRR).

3.5. Finally, relocation processes for entire populations, referred to in paragraph 27(k) SFDRR, are also likely to gain prominence in the future as slow-acting environmental degradation processes, such as desertification or sea-level rise, become more acute. Indeed, relocation of at-risk populations will probably emerge as the only viable option when it is impossible to restore the degraded area or when the costs of protection

measures or their environmental impact are insurmountable –as may be the case in low-lying coastal areas.

3.5.1. However, given the complexity and difficulties of relocation processes, and the traumatic effect they have on affected populations due to the loss of emotional and cultural ties to land and community, relocation should remain a strategy of last resort. Avoiding future relocations through land-use policies that presently veto human settlements in disaster-sensitive or environmentally vulnerable areas will, over time, prove to be the wisest strategy (pars. 27(k) and 30(f) SFDRR).

3.5.2. Although the Sendai Framework makes no specific provision in this regard, relocation, when judged as the best or only option, must respect human rights to not amount to arbitrary displacement. In this regard, the participation and consent of both affected and host communities, due consideration of the particular needs of the most vulnerable, and reduction of the risk of secondary movements by securing livelihoods in the new settlements are essential. Only with the collaboration of all parties involved can settlements in the destination areas be made viable and thus ensure the success of the relocation in the medium and long term.

4. Finally, involuntary displacement due to environmental change, including climate change, is a cross-cutting issue that can be integrated into the SDGs of the *2030 Agenda for Sustainable Development* from a dual perspective.

4.1. Firstly, by facilitating orderly, safe and legal migration to reduce unequal vulnerability to environmental disruptions in developed and developing countries, in line with SDG 10.7. Reference has already been made to various labour and non-labour migration strategies in the framework of disaster risk adaptation, which the Sendai Framework foresees as one of its goals. The implementation of such strategies could also help to achieve other SDGs. On the one hand, scholarship curricula would serve the purpose of target 4.b, which by 2020 aimed to have significantly increased the number of scholarships available globally to developing countries, in particular the least developed countries, SIDS and African countries, under SDG 4 (quality education). On the other hand, labour migration policies would be aligned with SDG 8 (decent work and economic growth for all).

4.2. Second, since the presence of environmentally displaced people reflects unsustainable development or lack of development, achieving the 2030 Agenda as a whole would serve the purpose of preventing or minimising their occurrence. In doing so, the realisation of the SDGs will eliminate or reduce the impact of environmental disruptions on people, while strengthening the communities' resilience to cope with environmental stress without displacement. Equally, their implementation will help address the associated poverty and overpopulation factors that underlie displacement.

The following are some of the goals and targets that could contribute most to preventing future environmental displacement of populations: SDG 1 (end poverty); SDG 2 (zero hunger); SDG 3.7 (family planning strategies under the Good Health and Well-Being Goal); SDG 6 (clean water and sanitation); SDG 11.1, 11.6 and 11. b (creating sustainable, non-polluting and disaster-resilient cities); SDG 12 (responsible production and consumption to minimise/avoid waste generation and misuse of natural resources); SDG 13 (climate change) together with SDG 7.2 and 7.3 (energy efficiency and use of clean, renewable energy); SDG 14 (preservation of marine ecosystems) and SDG 15 (preservation of terrestrial ecosystems).

4.3. However, the UN Secretary General's last two annual monitoring reports show that the international community is still far from achieving sustainable development in its economic, social and environmental dimensions. Moreover, the reports underline that development aid to developing countries remains insufficient. The onset of the Covid-19 pandemic has only worsened global prospects for sustainable development. Against this backdrop, it is not foreseeable that the SDGs identified above will be fully realised by 2030. On the contrary, the Secretary-General's reports point instead to partial and modest progress, which means that displacement related to environmental degradation, climate change and rapid-onset natural disasters will continue to occur in the future.

## **I.**

### **HOW COULD THE LEGAL GAPS IDENTIFIED IN THE INTERNATIONAL PROTECTION OF ENVIRONMENTALLY DISPLACED PERSONS BE FILLED?**

1. The answer to this question is provided by the commentary on the draft international treaty prepared by the University of Limoges regarding the international status of environmentally displaced persons. It should be noted, however, that the

conclusion of an international treaty on environmental displacement will not solve the root problem of unsustainable development that underlies movements of people related to environmental change.

1.1. Socially, economically and environmentally sustainable development is particularly important in the case of displacement related to land degradation. In this sense, it is quite striking that the primordial environmental disruption that gave birth in 1948 to ecologically displaced persons in William Vogt's *Road to Survival* and which later the "maximalist" authors blamed for the so-called "environmental refugees" in their neo-Malthusian writings, in which they warned of the rapid depletion and destruction of fertile land, gradually lost prominence to fast-emerging natural catastrophes, before finally being relegated to the background once climate change and rising sea levels came into the picture. It is therefore important that academics once again vindicate the role that the preservation and protection of marine and terrestrial ecosystems, on whose services humanity depends, will play in preventing future displacement.

1.2. There also remains a whole grey area of population movements, a prelude to forced displacement, where environmental factors intermingle with other political and socio-economic determinants, giving rise to migratory movements that emerge as an adaptive strategy in the face of environmental stress. The predominantly voluntary nature of these movements does not mean, however, that those who migrate for environmental reasons do not need the attention of International Law, as migration also engenders risks to migrants' rights, making them an equally vulnerable group. In this sense, the *Global compact for Safe, Orderly and Regular Migration* should be the roadmap for governments.

1.3. Similarly, the inhabitants of low-lying PIDS constitute a special group in the context of environmental displacement, due to the particular vulnerability they face in terms of the risk of future climate statelessness and the need for resettlement in a third State. Even if an international treaty on environmental displacement were to be concluded that included provisions in this regard, modelled on, for example, the Peninsula Principles, such provisions could not go beyond a general framework to be adapted to the particularities of each case. Further development and specification on the basis of bilateral or multilateral agreements between the States concerned will therefore

be necessary, especially when resettlement involves the transfer of sovereignty over part of the territory of the receiving State or the granting of its nationality to the relocated island communities.

1.4. In view of the above, it must be concluded that the development of positive law on the protection of environmentally displaced persons must go hand in hand with the implementation of policy or soft law instruments.

2. On the other hand, authors such as Williams are sceptical about the actual chances of concluding a global international treaty on climate displacement that also achieves a sufficiently satisfactory number of ratifications to make such a complex and not obstacle-free negotiation process worthwhile. In her view, States' reluctance to accept international intervention in protecting and assisting IDPs, the admission of responsibility in triggering the climate crisis that ratification of such a treaty would entail for developed countries, and the lack of consensus on the definition of "climate refugee" would derail the negotiations before they had even begun<sup>1</sup>.

Williams' reluctance cannot be considered unfounded. Indeed, *the Platform on Disaster Displacement's* refusal to move forward with any process of creating new legally binding international norms to protect cross-border displaced people in the context of disasters and climate change<sup>2</sup> is a telling indication that Williams' arguments are not so far off the mark. This reaction is in itself symptomatic of the international community's appetite for the idea of concluding an international treaty on the subject, as this *Platform on Disaster Displacement* brings together seventeen States plus the EU.

The challenge is even greater in the case of the Limoges convention, as this proposal aims to protect not only cross-border displaced persons but also IDPs, whose international assistance is always more thorny from the point of view of state sovereignty and the principle of non-interference in internal affairs. Moreover, it aims to do so in the face of any environmental disruption, natural or anthropogenic, and not only in the face of climate change-related risks.

3. Against this admittedly bleak backdrop, the *Peninsula Principles* may prove to be a valuable guide for States. Precisely because of their status as non-binding guidelines,

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<sup>1</sup> WILLIAMS, A., "Turning the tide: Recognizing climate change refugees in International Law", *Law & Policy*, Vol. 30, No. 4, October 2008, p. 517.

<sup>2</sup> PDD, *Platform on Disaster Displacement (PDD) Strategy 2019-2022*, p. 5.

these principles constitute a useful middle ground between the current situation of not having a specific instrument to protect those environmentally displaced and the legal certainty that, at the other extreme, a universal international treaty on the subject would provide.

Although limited in scope only to climate change-related displacement, the data in the first part of the thesis show that the environmental disruptions responsible for most displacement are hydrological and meteorological, i.e. related to climate change. This makes it all the more regrettable that the drafters were content to emulate the scope of the UN Guiding Principles, rather than attempt to create a catalogue of principles common to both internal and inter-state climate displacement.

4. The pragmatic solution offered by the Peninsula Principles should not, however, make us forget that all the obstacles identified by Williams for negotiating an international treaty on environmental displacement are political, not legal. Therefore, their acknowledgement and acceptance should not dampen the Academy's efforts to formulate legal proposals that are axiologically ambitious, even if politically unrealistic when they were conceived. Admittedly, the Limoges project is both: legally audacious and politically risky. In due course, however, there will be time to accommodate academic ideals to the political expectations of a more favourable scenario.

5. This propitious moment may have arrived. In 2007, the International Law Commission introduced the issue of protecting disaster victims into its work programme<sup>3</sup>. On 9 December 2021, fourteen years later and barely a month before depositing this thesis, the United Nations Assembly decided, by its Resolution 76/119<sup>4</sup>, "to include in the provisional agenda of its seventy-eighth session the item entitled "Protection of persons in the event of disasters"<sup>5</sup>, as well as to consider the Commission's draft articles and its recommendation "for the elaboration of a convention by the General Assembly or by an international conference of plenipotentiaries on the basis of the draft articles"<sup>6</sup>. The Assembly justifies its decision by the international community's concern about "the increasing number of disasters in the world, as well as

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<sup>3</sup> UNGA, *Report of the International Law Commission. Sixty-eighth session (2 May-10 June and 4 July-12 August 2016)*, Supplement No. 10 (A/71/10), 2016, p. 12, par. 38.

<sup>4</sup> UNGA, *Resolution 76/119 Protection of persons in the event of disasters, adopted by the General Assembly at its Seventy-sixth session (A/RES/76/119)*, 17 December 2021, 2 pp.

<sup>5</sup> *Ibid.*, par. 7.

<sup>6</sup> *Ibid.*, par. 4.

their intensity and impact on affected populations"<sup>7</sup>, with "the subject of the protection of persons in the event of disasters [being] of major importance in the relations of States"<sup>8</sup>.

Should negotiations start, they could provide an opportunity to introduce aspects of displacement, return and possible resettlement of those affected by environmental disruption into the course of the talks. Such an initiative could even gain the support of the hitherto reluctant *Platform on Disaster Displacement*, which has, on the contrary, shown its willingness to push for normative projects that are already underway<sup>9</sup>.

5.1. The Commission's draft articles provide a fertile starting point for addressing environmental displacement<sup>10</sup>. First, the draft articles' definition of "disaster" does not discriminate according to the natural or anthropogenic origin or the slow or rapid evolution of the calamitous event or series of events. In this sense, the International Law Commission clarifies that "the draft articles apply equally to sudden-onset events (such as an earthquake or tsunami) and to slow-onset events (*such as drought or sea-level rise*), as well as frequent small-scale events (floods or landslides)"<sup>11</sup>.

Instead, what is decisive for triggering international protection and assistance under the draft treaty is that these events "*seriously [disrupt] the functioning of society*"<sup>12</sup>. Note the similarity with the definition of environmental disruption used in this thesis, understood as any physical, chemical or biological change in the conditions or utilities of an ecosystem that renders it temporarily or permanently unable to continue to meet the needs of the human community that depends on it. In addition, among the adverse effects that qualify these disruptive events as disasters, draft article 3 expressly mention mass displacement<sup>13</sup>.

5.2. *Ratione loci*, the draft treaty assumes a composite definition of disaster, encompassing both the event and its effects, which would allow both IDPs and transboundary displaced persons to be included within its scope of protection.

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<sup>7</sup> Ibid., third recital.

<sup>8</sup> Ibid., fifth recital [verb form changed].

<sup>9</sup> PDD, (...) *Strategy 2019-2022*, *op. cit.*, p. 5.

<sup>10</sup> The annotated draft articles can be found in: UNGA, *Report of the International Law Commission...*(A/71/10), *op. cit.*, pp. 13-73, par. 48.

<sup>11</sup> Ibid., p. 23, par. 4 [italics added].

<sup>12</sup> Vid. the definition of "disaster" in draft article 3(a) [verb form changed and italics added].

<sup>13</sup> Id.

5.2.1. Thus, "affected State" means not only the State on whose territory the disaster has occurred, strictly speaking, but also any other country that may experience its effects collaterally, as could be the case of the State whose borders are reached by the flows of displaced persons resulting from the disaster. However, for the treaty to be applicable, such cross-border displacement would have to be of sufficient magnitude to "seriously disrupt the functioning of the society" of the receiving State, according to the draft's definition of "disaster"<sup>14</sup>.

5.2.2. While a neighbouring State faced with a massive influx of displaced persons may acquire the status of "affected State" under the treaty and request international assistance, the situation of irregularity and legal insecurity in which victims of the natural disaster find themselves outside the borders of their own State, and which the draft articles do not address, should not be forgotten.

a. Thus, the modalities of cooperation in response to disasters referred to in draft article 8 could include inter-state cooperation for joint evacuations and the opening of humanitarian corridors to allow the entry of those fleeing environmental disruption, whether spontaneous or guided by the authorities.

b. Likewise, the principle of human dignity enshrined in draft article 4 and the human rights approach incorporated in draft article 5 in the context of disaster response provide the basis for developing a complementary protection status for persons displaced by natural disasters across borders under the treaty. The main legal consequences of this status would be non-refoulement to the site of the disaster, as well as the issuance of a humanitarian visa that would allow its holders to reside in the neighbouring country until their safe return is possible.

5.3. *Ratione temporis*, the protection of human rights and the provision of humanitarian aid to those affected, including through international cooperation and assistance, predominantly focuses on the immediate post-disaster response and early recovery phase<sup>15</sup>.

5.3.1. The pre-displacement phase, which aims to minimise the likelihood of displacement, could be channelled through draft Article 9, which deals with disaster risk

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<sup>14</sup> Vid. *ibid.*, draft article 3(b) and its commentary at p. 25, par. 16.

<sup>15</sup> *Ibid.*, commentary to draft article 1, p. 19, par. 4.



reduction, prevention and mitigation activities, including the implementation of early warning systems. The phrase in draft article 9 "by taking appropriate measures" to reduce the risk of damage caused by a hazard would also allow for including as a disaster risk reduction measure the evacuation and relocation of exposed and vulnerable populations before a disaster occurs and the consequent risk of displacement materialises<sup>16</sup>.

Similarly, the reference in draft article 6 that "[r]esponse to disasters shall take place (...) taking into account the needs of the particularly vulnerable" would call for a right of information and participation of communities exposed to the risk of disasters and possible displacement<sup>17</sup>, as contained in the Limoges draft with the comments made in Chapter VIII of this thesis.

5.3.2. However, there is no provision for more durable support from the international community in situations where the effects of the disaster, including displacement, are long-lasting or even permanent, such as when displaced persons are unable to return to their homes.

5.4. From the point of view of displacement associated with environmental disruption, that would be the most significant limitation of the draft treaty for the protection of persons in the event of disasters. Beyond the "equipment and goods" that may be provided as part of "external assistance" to the affected State during the reconstruction phase (Art. 3(e) of the draft), there is no provision for durable solutions to displacement as an essential part of protection and assistance to disaster victims, either by facilitating their return to their place of origin, their integration into host communities or their relocation to another, including resettlement in third countries.

Therefore, for a future treaty on the protection of disaster victims to offer truly comprehensive and effective protection to environmentally displaced persons, it would be necessary to expand its content *ratione materiae* regarding the rights of those displaced by disasters. This need is all the more evident since, as noted above, among disaster victims the International Law Commission has included persons affected by

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<sup>16</sup> Vid. *ibid.*, commentary to draft article 9, p. 48, par. 11.

<sup>17</sup> *Ibid.*, commentary to draft article 6, p. 35, par. 8. In this regard, the International Law Commission has understood the phrase "taking into account" in a broad sense, encompassing, *inter alia*, accessibility of information and community participation.

sea-level rise who, at least in the case of low-lying SIDS, are likely to have to be relocated and resettled in foreign states.

Thus, the sovereignty-based approach adopted in the draft treaty, which focuses primarily on disciplining the rights and obligations of the affected State and of States and other assisting actors in their mutual relationships, should be balanced with a people-centred approach. This perspective would entail a deeper focus on the obligations of States regarding the protection needs of disaster victims, which in this version of the draft are only addressed in a generic way (vid. Arts. 4, 5 and 6 of the draft). It is in this area that normative proposals such as the Limoges draft or the Peninsula Principles can provide a meaningful contribution to the International Law Commission's draft treaty.

6. Ultimately, this draft treaty, in the version that has been submitted for consideration by the UN General Assembly, may not be the self-standing treaty that scholars in favour of a new international law instrument had in mind when they developed their proposals for a treaty with a comprehensive approach to environmental displacement. However, because of its thematic affinity, the draft treaty on the protection of persons in the event of disasters is a more than adequate vehicle to move towards the normative materialisation of proposals such as those of Limoges or Peninsula for the protection of environmentally displaced persons. Should it be opened for negotiation, only the determination of civil society, including academia, to influence political will will decide how much of the content of existing academic proposals will eventually be incorporated into this treaty for the protection of persons in the event of disasters. The opportunity is there.

## **QUOD ERAT DEMONSTRANDUM**

La presente sección expone las conclusiones a las que se ha llegado al término de la investigación doctoral. Estas conclusiones se han organizado en varios apartados, cada uno de los cuales da respuesta a una de las preguntas inicialmente planteada en la introducción de la tesis. Al final de las conclusiones se incluye un cuadro sinóptico sobre la protección de las personas desplazadas por motivos medioambientales en el ordenamiento jurídico internacional a nivel universal y regional.

### **A.**

#### **¿CUÁL ES LA RELACIÓN ENTRE LAS DISRUPCIONES MEDIOAMBIENTALES Y LA MOVILIDAD HUMANA?**

1. La relación entre la degradación del medio ambiente y la movilidad humana comenzó a recibir una intensa atención en la década de 1980, con la aparición de dos posiciones doctrinales que también reflejan una división disciplinaria al respecto. Suhrke las bautizó como la visión "maximalista" y "minimalista".

1.1. Por un lado, el enfoque "maximalista", adoptado principalmente por expertos en ciencias ambientales y estudios de seguridad, sostiene que el ser humano ha degradado el entorno natural que lo sustenta hasta el punto de hacerlo inhabitable. Este punto de inflexión se conoce como disrupción ambiental, es decir, un cambio profundo en las condiciones o utilidades del medio ambiente que lo hace incapaz de seguir satisfaciendo las necesidades humanas. En esta fase, las comunidades que habitan el entorno degradado se ven obligadas a desplazarse en busca de un nuevo hábitat natural.

Los efectos de estas perturbaciones medioambientales pueden manifestarse rápidamente, como en el caso de una catástrofe natural o humana, las consecuencias medioambientales de una guerra o la ejecución de un proyecto de desarrollo. En otros casos, los efectos aparecen gradualmente, agravándose con el tiempo, como en el caso de la contaminación; la degradación del suelo, cuya forma más grave es la desertificación, o la subida del nivel del mar. Los "maximalistas" hacen hincapié en el papel que la actividad humana desempeña en estos procesos, agravados por factores económicos, políticos y demográficos que intensifican el deterioro del medio ambiente

o lo vuelven más vulnerable a los impactos de la acción humana y de fenómenos naturales, como las alteraciones climatológicas o meteorológicas.

1.2. Por otro lado, el planteamiento "minimalista", cuyos defensores proceden del ámbito de las migraciones, surgió posteriormente como una reacción doctrinal a los postulados "maximalistas".

1.2.1. Los autores "minimalistas" subrayan que la decisión de emigrar es una decisión compleja en la que influyen múltiples factores, tanto externos como inherentes a las circunstancias y características propias de cada individuo, que actúan favoreciendo o desincentivando la migración. En tanto que la vulnerabilidad de cada sujeto a una situación de estrés ambiental varía, la respuesta tampoco puede ser siempre la misma, resultando ineludiblemente en su desplazamiento.

1.2.2. Los autores "minimalistas" desarrollan su argumentación haciendo asimismo hincapié en la capacidad del ser humano para adaptarse a los cambios o rigores del entorno en el que habita.

a. Estas estrategias de adaptación pueden consistir en medidas en origen que corrijan la degradación ambiental o los riesgos que representa para la continuidad de la habitabilidad, eliminando la necesidad de emigrar. Por ejemplo, la construcción de obras de ingeniería para regular las inundaciones o contener la subida del nivel del mar, como han hecho Estados como los Países Bajos.

Los "maximalistas" alegarían a este respecto que esas medidas de adaptación están completamente fuera del alcance de los países en desarrollo, donde se registra el grueso de los movimientos de población que estos autores califican de medioambientales. Sin embargo, los "minimalistas" contra argumentan señalando que en tal caso estos desplazamientos no serían tanto consecuencia de la degradación del medio ambiente como de las desigualdades entre países desarrollados y en desarrollo. En consecuencia, sería inadecuado calificarlos de medioambientales, pues esta denominación enmascara las diferencias de desarrollo como verdadera causa de los desplazamientos.

b. Los "minimalistas" explican que la adaptación a situaciones de estrés ambiental crónico también puede producirse mediante la migración, cíclica o temporal, de toda o parte de la unidad familiar como forma de diversificar los medios de vida y los riesgos.

Por ejemplo, en la estación seca, algunos miembros de los hogares rurales se trasladan a trabajar a los centros urbanos; o las tribus nómadas, cuyos patrones de migración siguen los ciclos de lluvias y crecimiento de los pastos. Sin embargo, el desplazamiento en estos casos no refleja el enfoque "maximalista" de ser una respuesta al empeoramiento de las condiciones ambientales inducido por el hombre, sino que representa una respuesta adaptativa de las comunidades humanas que han ajustado sus estilos de vida a la variabilidad climática de las regiones en las que se han asentado.

2. A nuestro juicio, sin embargo, la distinción entre ambos enfoques resulta un tanto artificial. No se trata de que los "maximalistas" afirmen la relación entre los factores ambientales y la movilidad humana, y los "minimalistas" la nieguen, sino de la forma en la que cada postura representa esta relación.

2.1. Los autores "maximalistas" la conciben como una relación lineal causa/efecto (vid. figura 1), donde los cambios que el ser humano provoca en su medio ambiente "causan" la disrupción medioambiental que genera el desplazamiento ("efecto"). Aunque el factor medioambiental es la causa principal del desplazamiento en la representación "maximalista", y de ahí que los autores "minimalistas" desestimen este enfoque por considerarlo mono-causal, los autores "maximalistas" no ignoran la presencia de otras fuerzas no medioambientales –principalmente en forma de rápido crecimiento demográfico, pobreza y políticas de desarrollo mal concebidas. Estos factores asociados actuarían a lo largo de la línea causa-efecto, ya sea precipitando la alteración del normal funcionamiento del ecosistema o frustrando cualquier intento de adaptación.

2.2. En cambio, los autores "minimalistas" conciben la relación entre los factores ambientales y la movilidad humana como un círculo (vid. figura 1). Así, la situación de estrés ambiental actuaría de contexto en el que operan las variables no ambientales – políticas, económicas, sociales, culturales y personales. La decisión de desplazarse resultaría, por tanto, de la interacción entre estas distintas fuerzas, siendo una decisión multi-causal.

En los casos en los que es posible identificar una disrupción medioambiental como causa directa del desplazamiento –por ejemplo, una inundación-, ésta actuaría simplemente como causa próxima, revelando vulnerabilidades preexistentes subyacentes a la población afectada, como la pobreza, la debilidad de las instituciones o

la falta de mecanismos de aseguramiento, entre otras. Estas vulnerabilidades condicionarán la duración del desplazamiento y la posibilidad de retorno. Incluso en estos casos de aparente relación directa entre perturbación ambiental y desplazamiento, los autores "minimalistas" niegan el determinismo "maximalista", señalando una vez más que será el juego de fuerzas el que condicionará quiénes se van y quiénes se quedan –por ejemplo, siguiendo con las inundaciones, habrá quienes a pesar del peligro decidan quedarse porque temen que si se van, los bienes que dejan sean saqueados.

2.3. Actualmente, esta polarizada división doctrinal se ha superado en cierta medida, especialmente desde que los estudiosos de las migraciones han dejado atrás su escepticismo inicial hacia las teorías "maximalistas". Sin caer en el alarmismo de los autores "maximalistas", algunos de los cuales siguen pronosticando éxodos masivos amenazando las fronteras de los países ricos del Norte en su huida de los cataclismos medioambientales del Sur Global, algunos expertos en migraciones han empezado a desarrollar modelos para estudiar las migraciones medioambientales. Aunque todavía basados en las teorías migratorias clásicas, estos marcos teóricos emergentes constituyen un buen punto de partida para aunar ambos enfoques, ya que intentan explicar cómo las variables medioambientales interactúan con los impulsores tradicionales de la migración e influyen en los patrones migratorios.

## **B.**

### **¿CUÁL ES LA MAGNITUD DEL DESPLAZAMIENTO MEDIOAMBIENTAL?**

1. Los datos empíricos analizados en el Capítulo II demuestran que, si bien los "maximalistas" no exageraban en sus advertencias sobre el impacto que los factores medioambientales pueden tener en la movilidad humana, se equivocaban en su alcance y dirección. Así, la gran mayoría de estos movimientos serán internos, es decir, los desplazados no saldrán de las fronteras de sus Estados. Además, el porcentaje de los que lo hagan no emprenderá movimientos transcontinentales, principalmente por los costes que conllevan, sino que permanecerá dentro de sus regiones. Por tanto, los países ricos del Norte sólo se verán amenazados en la medida en que sean vecinos de países en desarrollo, como España con los países del Sahel o Estados Unidos con México.

Los datos extraídos de la International Disaster Database y de la Global Internal Displacement Database ofrecen una imagen bastante completa de la magnitud de estos

flujos de desplazados internos y de los países más propensos a ellos, por tratarse de países en desarrollo con una prevalencia significativa de desastres y de pérdidas y daños asociados. La principal limitación, además de la falta de datos sobre los desplazamientos transfronterizos, tiene que ver con el hecho de que sólo se registran los desplazamientos relacionados con las interrupciones medioambientales de origen natural y de rápida aparición (a excepción de la sequía, aunque los datos a este respecto son todavía limitados). En consecuencia, los desplazamientos derivados de procesos graduales de degradación medioambiental permanecen invisibles.

1.1. En el quinquenio 2016-2020, se produjeron más de 115 millones de nuevos desplazamientos en todo el mundo como consecuencia de desastres naturales de rápida aparición –como inundaciones, huracanes, tormentas o terremotos- y de la sequía. Sin embargo, esta elevada cifra no refleja cuántas de estas personas fueron evacuadas o huyeron espontáneamente; cuántas pudieron regresar a sus hogares una vez pasado el peligro; y cuántas permanecieron desplazadas, durante cuánto tiempo y a qué distancia del lugar de la catástrofe. Por continentes, esta cifra queda desagregada de la siguiente forma: en Europa, se produjeron cerca de 313 mil desplazamientos; en África, la cifra ascendió a algo más de 14 millones; en Asia, sobrepasó los 85 millones y medio de personas desplazadas; en América, se registró una cifra relativamente baja con algo más de 15 millones en todo el continente; por último, en Oceanía, se produjeron alrededor de medio millón de desplazamientos.

1.2. Los fenómenos hidrológicos fueron la catástrofe natural más frecuente en todo el mundo (51%). Las únicas excepciones a esta prevalencia se dieron en Europa y Oceanía, donde hubo una mayor incidencia de eventos meteorológicos. Sin embargo, en términos monetarios, los fenómenos meteorológicos causaron el 61% de los daños registrados en el quinquenio, mientras que las catástrofes climáticas e hidrológicas supusieron prácticamente la otra mitad.

1.3. Los desastres de origen meteorológico también fueron responsables del 50% de los desplazamientos internos, causando las catástrofes hidrológicas el 42% restante. La incidencia de las interrupciones climatológicas y geológicas en el porcentaje de desplazados fue residual (4% cada grupo). En el caso de los eventos climáticos, esto se debe a la menor incidencia que tiene sobre los asentamientos humanos el principal tipo de evento climatológico registrado (los incendios forestales), y a la falta de datos

exhaustivos sobre la sequía o la desertificación, que son procesos de degradación ambiental con un mayor impacto en los movimientos de la población. Además, esta menor incidencia registrada no niega la influencia significativa que el cambio climático tendrá sobre el desplazamiento, exacerbando la intensidad y la frecuencia de las disrupciones meteorológicas e hidrológicas.

1.4. Los diez países con un número más alto de desplazamientos forzados relacionados con catástrofes naturales fueron, de mayor a menor, los siguientes: China, Filipinas, India, Bangladesh, Estados Unidos, Indonesia, Cuba, Somalia, Etiopía y Vietnam. A excepción de cuatro estados, el resto se encuentran en el continente asiático, que se sitúa como el punto caliente de los desplazamientos medioambientales. En los diez países, los desplazamientos se produjeron principalmente como consecuencia de desastres hidrológicos o fenómenos meteorológicos.

### C.

#### **¿PUEDEN LAS DISRUPCIONES MEDIOAMBIENTALES EQUIVALER A UNA PERSECUCIÓN QUE CONVIERTA AL DESPLAZADO EN UN REFUGIADO?**

1. En el ámbito universal, la definición de refugiado de referencia viene dada por el Artículo 1 (A) (2) de la *Convención de Ginebra de 1951 sobre el Estatuto de los Refugiados*, modificada por su *Protocolo de 1967*.

1.1. De acuerdo con ella, la Convención de Ginebra sólo permite otorgar la condición de refugiado a un desplazado medioambiental en un caso muy concreto: aquél en el que un Estado o un actor no estatal se sirve de una disrupción medioambiental como forma de persecución de un particular sector de su población por motivos de raza, religión, nacionalidad, pertenencia un determinado grupo social u opiniones políticas. En el caso de que el agente persecutor fuera un actor no estatal, sería necesario además que el Estado fuese incapaz o no estuviera dispuesto a proteger sus nacionales frente a tales actos de persecución ambiental.

1.2. Fuera del supuesto anterior, las condiciones medioambientalmente adversas que con carácter general imperen en un país no habilitan para obtener refugio en otro. Bien porque la disrupción medioambiental no será consecuencia de la conducta dolosa de un concreto actor estatal o no estatal, sino debida a factores naturales o exógenos que



escapan a su control, por lo que no existe agente persecutor. Bien porque aunque el Estado hubiese actuado de manera negligente, pudiendo haber evitado dicha disrupción en el medioambiente o minimizado sus consecuencias –por ejemplo, reduciendo sus emisiones de gases de efecto invernadero-, seguiría faltando el necesario elemento motivacional que ha de subyacer a su conducta. Es decir, su acción u omisión no estaba intencionalmente dirigida a causar un daño a la población por uno de los cinco motivos que recoge la Convención de Ginebra.

1.3. Respecto del elemento motivacional, no parece que pueda aceptarse la afirmación de que la disrupción medioambiental de la que huyen los desplazados sea el elemento que defina su pertenencia a un particular grupo social perseguido, a efectos de obtener protección bajo la Convención de 1951. Dada su naturaleza indiscriminada, se trataría de un riesgo o amenaza a la que estaría expuesta todo el conjunto de la población del Estado, sin distinguir a un grupo del resto de la sociedad.

1.3.1. En este sentido, resulta de particular interés el alegato hecho por varios solicitantes de asilo procedentes de Kiribati y Tuvalu. Argumentaban que sus respectivos gobiernos estarían centrando la inversión pública en desarrollar estrategias de adaptación y protección frente a la subida del nivel del mar en las zonas ricas de las islas, en detrimento de las áreas más empobrecidas, donde vivían los solicitantes, que se encontrarían en una situación de absoluta vulnerabilidad frente a las recurrentes mareas altas e inundaciones.

Aunque de la información que se recabó en sede judicial no quedó demostrada la veracidad de tales acusaciones, negándose en consecuencia la concesión del refugio solicitado, el argumento de los recurrentes plantea una cuestión de sumo interés: si la pertenencia a un determinado estrato socioeconómico equivale a pertenencia a un particular grupo social en el sentido de la Convención y si, por tanto, formas graves de discriminación entre clases sociales pueden ser considerados como actos de persecución cuando conlleven consecuencias sustancialmente perjudiciales para los miembros de la clase social discriminada –por ejemplo, una mayor exposición o vulnerabilidad ante una amenaza climática/medioambiental real y seria para sus vidas o integridad física.

Hay que aclarar, sin embargo, que en esta hipótesis la existencia del particular grupo social vendría definida por factores socioeconómicos, y no por los propios factores ambientales, que en realidad actuarían como catalizador o coadyuvante de las

medidas discriminatorias, cualificándolas al grado de persecución por la gravedad de sus efectos.

1.4. Las limitaciones legales de la definición ginebrina de refugiado para incluir en ella a los desplazados medioambientales han suscitado varias voces en la literatura a favor de modificar la Convención de 1951 para incluir al menos el cambio climático como causa para solicitar el estatuto de refugiado.

1.4.1. Sin embargo, no creemos que esta opción sea la más acertada. Desde un punto de vista técnico-jurídico, englobar a los desplazados medioambientales en el ámbito de aplicación de la Convención de 1951 no resulta tan sencillo como ampliar el catálogo de causas de refugio que figura en el artículo 1 (A) (2). Por el contrario, cualquier propuesta de incorporar en él las disrupciones medioambientales obligaría también a una retorcida reinterpretación de los demás elementos de la definición, en particular en lo que se refiere al agente persecutor y al elemento motivacional.

1.4.2. En el improbable caso de que se produzca el necesario y difícil consenso político internacional para una revisión del concepto universal de refugiado, sería preferible seguir el ejemplo de los instrumentos regionales, dejando inalterada la definición tradicional y añadiendo un segundo párrafo a continuación que califique también como refugiados a quienes huyen de una situación externa de riesgo generalizado, como puede ser una disrupción ambiental.

2. En el ámbito regional, encontramos distintos instrumentos internacionales en materia de refugio en África, América Latina, Oriente Medio y Asia, cuyas definiciones de refugiado son más amplias que la contenida en la Convención de Ginebra de 1951, lo que hace más fácil argumentar a favor de la inclusión de los desplazados medioambientales en su ámbito de aplicación.

2.1. La *Convención de la Liga Árabe sobre el Estatuto de los Refugiados en los Países Árabes de 1994* constituye, hoy por hoy, el único texto legal internacional que prevé los desastres naturales como causa para obtener refugio. No obstante, la Convención no está en vigor, ni tiene visos de que vaya a estarlo en algún momento, pues en 26 años que han transcurrido desde que fue adoptada en 1994 no ha sido ratificada por ninguno de los 22 Estados que en la actualidad conforman la Liga de Estados Árabes.

2.2. La *Convención de la OAU de 1969, gobernando los aspectos específicos de los refugiados en África*, si bien no incluye expresamente las disrupciones medioambientales en la definición ampliada de refugiado, se refiere a otros "eventos que perturben seriamente el orden público" en todo o parte del país de origen o nacionalidad del solicitante. Aunque una interpretación *ejusdem generis* de esta cláusula de orden público sugiere que sólo quedarían incluidas situaciones provocadas por el hombre, su redacción parece lo suficientemente amplia como para dar cabida también a personas que huyen de una disrupción natural. A este respecto, sería suficiente con que la disrupción en cuestión hubiese alcanzado un umbral de gravedad lo suficientemente elevado como para sobrepasar la capacidad de respuesta del Estado afectado.

Frente al concepto de refugiado de la Convención de Ginebra, la definición africana presenta la ventaja de no requerir la presencia de un agente persecutor o que la víctima sea perseguida en atención a sus características individuales. Algo que facilita con mucho la inclusión de las personas desplazadas por factores medioambientales. Por un lado, porque estos últimos tienen una naturaleza indiscriminada en sus efectos. Mientras que, por otro, resulta muy difícil trazar un vínculo de causalidad entre la actuación del Estado y la producción intencionada de una disrupción medioambiental, sobre todo cuando se trata de desastres naturales. A efectos de la Convención africana, sería suficiente con que el solicitante esté expuesto en su país de origen o nacionalidad a una de las situaciones de riesgo previstas en la definición y que, como consecuencia de ello, se haya visto obligada a abandonar su lugar de residencia.

2.3. Por su parte, tanto la *Declaración de Cartagena sobre Refugiados de 1984*, en Latinoamérica, como los *Principios de Bangkok sobre el Estatuto y Trato de los Refugiados de 1966*, en Asia y África, copian la definición ampliada de refugiado de la Convención Africana de 1969. Sin embargo, se trata de instrumentos programáticos que, en sus respectivos contextos regionales, pretenden orientar o guiar a los Estados en cuanto al estatuto o tratamiento que éstos debieran dispensar a los refugiados. Carecen, por tanto, de valor jurídico vinculante, al contrario que la Convención Africana. En consecuencia, su eficacia real en cuanto a la protección de los desplazados medioambientales vendrá determinada por dos variables: en primer lugar, el grado de penetración que la definición ampliada de refugiado consiga en los ordenamientos jurídicos nacionales; en segundo lugar, por la interpretación más o menos flexible que cada Estado realice de la cláusula de orden público.

3. Por último, en el ámbito de la UE, la protección de las personas desplazada por causas medioambientales se ha planteado tanto desde la perspectiva de la *Directiva 2011/95/UE por la que se establecen normas relativas a los requisitos para el reconocimiento de nacionales de terceros países o apátridas como beneficiarios de protección internacional (refundición)*, como bajo la óptica de la *Directiva 2001/55/CE relativa a las normas mínimas para la concesión de protección temporal en caso de afluencia masiva de personas desplazadas*. La denominación *protección internacional* engloba, junto al tradicional estatuto de refugiado, un nuevo instituto de protección, complementario del primero y genuino de la UE, conocido como *protección subsidiaria*.

3.1. La Directiva 2011/95/UE, que disciplina el *reconocimiento de la condición de refugiado* en cualquiera de los 27 Estados miembros, ha venido a confirmar en el ámbito europeo la conclusión de que las personas desplazadas por causas medioambientales no encajan, con carácter general, en la definición de refugiado de la Convención de 1951. Definición que, por otra parte, la *Directiva de Reconocimiento* reproduce literalmente. En particular, se han aclarado y desarrollado legalmente ciertos elementos de la definición de refugiado de Ginebra que, por resultar oscuros, habían dado lugar a interpretaciones doctrinales favorables a defender la existencia jurídica de los *refugiados medioambientales*.

En concreto, se establece la necesaria concurrencia de un actor humano al que poder atribuir el acto de persecución, lo que excluye la posibilidad de considerar la propia disrupción medioambiental como un agente persecutor inanimado. Al mismo tiempo, se define legalmente la existencia de un particular grupo social en función de dos criterios cumulativos: que sus miembros compartan unos antecedentes comunes que no puedan cambiarse o una característica innata o que resulte tan fundamental para su identidad o conciencia que no se les pueda exigir que renuncien a ella; y que, como consecuencia de ello, sean percibidos por el resto de la sociedad del país en el que habitan como un grupo con una identidad diferenciada. La definición jurídica de la noción de "grupo social" excluye, a su vez, la interpretación de las disrupciones medioambientales como el elemento definitorio de la existencia de un particular grupo social.

3.2. En cuanto a la *protección subsidiaria*, ésta se otorga cuando existen fundados motivos para creer que el solicitante, de regresar a su país de origen o residencia habitual, se enfrentaría a un riesgo real de sufrir alguno de los daños graves definidos en el Artículo 15 de la Directiva.

3.2.1. La referencia que este precepto hace a "los tratos inhumanos o degradantes de un solicitante en su país de origen" ha llevado a algunos autores a argumentar que el retorno forzoso del solicitante a un país afectado por una grave perturbación medioambiental podría considerarse como tal. El considerando 35 de la Directiva de Reconocimiento excluye, sin embargo, de la definición de daño grave los riesgos a los que con carácter general se vea expuesta la población de un país o un sector de la población, por no suponer en sí mismos una amenaza individual.

Esta exclusión ha sido confirmada por el TJUE en su sentencia de 2014 sobre el caso *M'Bodj v. Belgian State*. El Tribunal Europeo concluyó que el riesgo de deterioro de la salud de un nacional de un tercer país, aquejado de una enfermedad grave, como consecuencia de la ausencia de tratamiento adecuado en su país de origen no sería suficiente para justificar la concesión de protección subsidiaria, a menos que dicha ausencia fuese el resultado de la privación intencionada de asistencia sanitaria en el país de procedencia.

3.2.2. Este requisito de la intencionalidad conecta, una vez más, con la necesidad de que los daños graves que se alegan sean el resultado de una conducta imputable a un tercero. Esta necesidad excluiría igualmente del ámbito de la protección subsidiaria los casos de daños graves resultantes de condiciones medioambientalmente adversas en el país de origen, cuando no fuera posible identificar a ningún agente humano como responsable del daño. Al hilo de esto último, se ha planteado la cuestión de si la mala gestión por parte de un Estado de una situación de desastre natural dejaría expedita la posibilidad de que sus nacionales obtuvieran protección internacional subsidiaria dentro de las fronteras de la UE.

La hipótesis surge a raíz de la actuación del gobierno de Birmania en el contexto del ciclón Nargis que golpeó al país en 2008. A pesar de su falta de capacidad para socorrer a las víctimas del ciclón, el gobierno rechazó y obstaculizó sistemáticamente los ofrecimientos de ayuda de la comunidad internacional. Su postura obedecía al temor de que tras ellos se ocultase un intento de las potencias occidentales, en particular de los

Estados Unidos, de invadir o desestabilizar el país. Una actitud que acabó convirtiendo la catástrofe natural en una verdadera situación de crisis humanitaria. La gravedad del sufrimiento que las decisiones de la Junta militar birmana acarrearán para su población, reduciendo con mucho las posibilidades de supervivencia en las zonas más afectadas por el ciclón, hace que aquéllas puedan calificarse de tratos inhumanos o degradantes en el sentido del Artículo 15 de la Directiva. En todo caso, se trata de un supuesto excepcional, donde el factor ambiental se vio sumamente agravado y amplificado por el factor humano.

3.2.3. Finalmente, el Artículo 8, que es común al refugio y a la protección subsidiaria, ha positivado en la denominada *excepción de protección interna* la naturaleza complementaria que tradicionalmente se ha atribuido al refugio respecto de la protección nacional. Esta excepción permite denegar la protección internacional solicitada en aquellos casos en los que el solicitante pueda ser reubicado en condiciones seguras y duraderas en otra parte del país de origen en la que no tenga temores fundados de persecución ni exista un riesgo real de sufrir daños graves, o en la que pueda obtener protección frente a tales amenazas.

Esta excepción excluiría igualmente la protección subsidiaria cuando las víctimas de una disrupción medioambiental pueden ser evacuadas a otras zonas seguras dentro del país, o reciban asistencia humanitaria *in situ* por parte de sus autoridades nacionales o de agentes internacionales como Organizaciones Internacionales u ONGs.

3.3. Por su parte, la *Directiva 2001/55/CE relativa a las normas mínimas para la concesión de protección temporal en caso de afluencia masiva de personas desplazadas* establece un mecanismo lo suficientemente flexible como para otorgar protección de forma inmediata frente a todo tipo de situaciones en el país de procedencia, incluido aquéllas de origen medioambiental, que causen la llegada a las fronteras europeas de un número importante de personas desplazadas. Así pues, paradójicamente, una persona que llegase a la UE huyendo de una disrupción en el medioambiente tendría derecho a protección temporal si su llegada se produce en el contexto de un movimiento de personas en gran escala. En cambio, no ocurriría así si llegase de forma individual o en pequeños grupos, aunque la causa de la huida fuera la misma en ambas situaciones.

3.3.1. La principal limitación de la Directiva de protección temporal es el propio proceso de activación del mecanismo, que requiere de una decisión política, adoptada en

el seno del Consejo por mayoría reforzada, donde éste constatare la existencia de dicha afluencia masiva de persona desplazadas. En la práctica, esto ha supuesto que el mecanismo de protección temporal no se haya activado desde su adopción hasta hace poco, como consecuencia de la crisis de desplazamientos provocada por el actual conflicto armado en Ucrania.

3.3.2. A ello se añade la duración por definición limitada de la protección, que puede extenderse excepcionalmente hasta un máximo de tres años. Ahora bien, este plazo puede resultar insuficiente cuando se trata de recuperar y convertir de nuevo en aptas para la vida humana amplias zonas afectadas por una disrupción medioambiental, lo que por otra parte no siempre será posible – piénsese, por ejemplo, en la pérdida de territorio como consecuencia de la subida del nivel del mar. La Directiva no aclara, sin embargo, qué ocurre con los beneficiarios de protección temporal cuando el regreso a sus países de origen resulte imposible o poco realista. En consecuencia, su permanencia en el territorio de los Estados miembros, más allá de la duración por la que se concedió la protección, queda en última instancia a la discrecionalidad de cada Estado miembro y en las condiciones que se establezcan en sus respectivas legislaciones de extranjería.

4. Por último, algunos Estados Miembros de la UE han incluido expresamente en sus ordenamientos jurídicos internos disposiciones para la protección de las personas desplazadas por factores ambientales, a saber: Finlandia, Suecia, Italia y Chipre.

4.1. El párrafo 1 del Artículo 109 de la *Ley de extranjería 301/2004 de Finlandia* permite conceder protección temporal a aquellos extranjeros que no pueden regresar en condiciones seguras a su país de origen o de residencia habitual porque se ha producido un desplazamiento masivo de personas como consecuencia, entre otras causas, de un desastre medioambiental. Aunque la protección temporal se concede también por un período máximo de tres años, la legislación finlandesa, a diferencia de la Directiva europea, prevé la conversión de la protección temporal en un permiso de residencia continuado cuando se mantengan las razones que motivaron inicialmente su concesión.

4.2. En lo que respecta a *Suecia*, el Artículo 2 (a), Sección 2), del Capítulo 4 de la *Ley de extranjería 2005:716* permite otorgar un permiso de residencia a un extranjero que, a pesar de no reunir los requisitos para obtener la condición de refugiado o de beneficiario de protección subsidiaria, se encuentre fuera de su país de nacionalidad o de residencia habitual y no pueda regresar a él a causa de un desastre ambiental. La expresión

"desastre ambiental" se refiere, no obstante, únicamente a eventos naturales de rápida aparición, y no a casos de deterioro paulatino o continuado del medioambiente, por lo que aquellos que huyen de la desertificación, la sequía o el aumento del nivel del mar no estarían cubiertos. El permiso de residencia puede expedirse por tiempo indefinido o con carácter temporal, teniendo en este último caso una validez de entre uno y tres años. Señalar, finalmente, que este Artículo 2 (a) fue suprimido recientemente mediante la Ley 2021:765 por la que se modifica la Ley de Extranjería.

4.3. En *Italia*, el *Decreto Legislativo 286/1998* prevé la posibilidad de otorgar protección temporal a las víctimas de una disrupción medioambiental tanto de forma colectiva como a título individual.

4.3.1. Por un lado, el párrafo 1 del Artículo 20 del citado Decreto Legislativo permite al Presidente del Consejo de Ministros de Italia adoptar, mediante decreto, medidas extraordinarias para la acogida de extranjeros en caso de conflicto, catástrofes naturales u otros acontecimientos de especial gravedad en países no pertenecientes a la Unión Europea. El área geográfica de procedencia de los desplazados susceptibles de recibir protección de manera colectiva, la duración de la misma, así como las condiciones de acogida se determinarán en el correspondiente decreto presidencial declarando el estado de emergencia humanitaria. Se trata, por tanto, de un mecanismo excepcional reservado para supuestos igualmente excepcionales, en los que un número importante de personas desplazadas llegan a territorio italiano desbordando las capacidades de acogida del país.

4.3.2. Por otro lado, el Artículo 20 bis del mismo texto prevé la posibilidad de que la autoridad administrativa competente – *il Questore* - expida, tras el correspondiente examen individualizado, un permiso de residencia temporal cuando el país de procedencia del extranjero se encuentre en una "situación de grave calamidad" que no le permita regresar y permanecer allí en condiciones de seguridad. Queda por ver cómo se interpreta el término "calamidad", si bien *a priori* el término parece lo suficientemente amplio como para dar cabida a disrupciones medioambientales tanto de rápida como de lenta actuación. La reforma recientemente operada por el *Decreto-Ley sobre disposiciones urgentes en materia de inmigración y protección internacional y complementaria* parece respaldar esa interpretación, ya que ahora se permite renovar el permiso de forma indefinida mientras subsistan en el país de origen las condiciones que motivaron su concesión.



4.4. Finalmente, el párrafo 4 del Artículo 29 de la *Ley de refugiados de 2000 de Chipre* prohíbe la expulsión de un refugiado o de una persona con estatuto de protección subsidiaria a un país en el que corra el riesgo de ser sometido a tratos inhumanos o degradantes como consecuencia, entre otros, de la destrucción del medioambiente. El alcance de esta disposición legal en el ámbito de los desplazamientos medioambientales es, sin embargo, bastante limitado, puesto que sólo actuaría *a posteriori*. Es decir, la disrupción medioambiental en el país de origen del extranjero tendría que haber ocurrido con posterioridad a que éste llegara a la República chipriota y obtuviera la condición de refugiado o de beneficiario de protección subsidiaria.

5. En resumen, esta visión general de los diferentes marcos regionales muestra un mapa sumamente dispar. Así, aunque en teoría sería posible proteger a los desplazados medioambientales como beneficiarios de protección temporal en la UE o como refugiados en otros continentes, en la práctica existe un alto grado de inseguridad jurídica.

5.1. La falta de referencia explícita a los trastornos medioambientales como causa de protección hace que la concesión de ésta dependa de cómo se interpreten en cada región y país conceptos jurídicos indeterminados como la cláusula de orden público, por un lado, o la afluencia masiva de personas, por otro.

5.2. Como resultado, se pueden generar diferencias significativas de una región a otra, e incluso entre Estados de una misma región (véase el caso de Finlandia, Italia, Chipre y hasta hace poco Suecia con respecto a los demás socios europeos), lo que puede dar lugar a una discriminación injustificada entre personas medioambientalmente desplazadas en función del continente donde se produzca el desplazamiento. En última instancia, estas diferencias de trato pueden incluso reorientar los flujos de desplazamiento hacia aquellas regiones o países en los que haya más posibilidades de que la solicitud de protección tenga éxito.

**D.**  
**¿PUEDEN LAS DISRUPCIONES MEDIOAMBIENTALES  
COMPROMETER LA SUPERVIVENCIA DE UN ESTADO  
Y HACER A SUS NACIONALES APÁTRIDAS?**

1. La subida del nivel del mar, resultante del cambio climático, plantea ante el Derecho Internacional un escenario insólito para el futuro: la desaparición física de un país.

1.1. Aunque la paulatina sumersión de la línea costera es un fenómeno que en mayor o menor medida se experimentará a nivel global, en el caso de los PEID puede suponer una amenaza a su propia continuidad como Estado. Su escasa extensión, unida a su baja elevación media sobre el nivel del mar, hacen peligrar la pervivencia de su territorio, soporte físico indispensable sobre el que se asienta la población y se ejerce la soberanía estatal. La compra de terrenos en otros Estados vecinos no resuelve el problema, pues no supone la adquisición de soberanía sobre el territorio adquirido, salvo que se suscriba el correspondiente tratado internacional de cesión. Por otra parte, la construcción de islas artificiales para albergar a la población no sólo es una alternativa sumamente costosa y con un gran impacto ambiental. Desde un punto de vista jurídico, tampoco puede sustituir al territorio natural como soporte necesario para la presunción de la existencia de un Estado.

1.2. A la pérdida de territorio se une la paulatina despoblación de las islas, a medida que el grado de habitabilidad empeora y sus habitantes emigran a otros países, como Nueva Zelanda o Australia, en busca de unas condiciones de vida que satisfagan sus necesidades más básicas. El propio gobierno de los PEID afectados puede terminar encontrándose en el exilio mientras trata de gobernar lo que quede de un territorio tragado por las aguas del océano y una población dispersada a lo largo y ancho del continente.

1.3. Desde luego, se trataría de una situación sin precedentes en el panorama internacional, cuyo ordenamiento se limita a regular los supuestos de sucesión. Es decir, aquellas situaciones en las que un Estado sustituye a otro, asumiendo el control del territorio y la población y subrogándose en su posición en las relaciones internacionales. No así los casos en los que un Estado desaparece físicamente.

1.4. Incluso si el resto de la comunidad internacional aceptara que los PEID en cuestión continuaran existiendo jurídicamente encarnados en una entidad desprovista de territorio y población pero dotada de ciertas competencias soberanas, como es el caso de la Orden de Malta, persistiría el problema de la protección de sus nacionales. La desaparición del territorio y el exilio del gobierno supondrán la pérdida de un vínculo efectivo con sus antiguos nacionales, que se encontrarán residiendo en el país extranjero al que hayan emigrado o a donde hayan sido reasentados.

1.5. Ante tal situación, los habitantes de los PEID han de ser considerados como apátridas *de iure* y no *de facto*, puesto que los PEID afectados ya no cumplen los criterios generalmente aceptados en el Derecho Internacional Público para que exista un Estado. Por tanto, resulta plenamente aplicable la *Convención de 1954 de las Naciones Unidas sobre el Estatuto de las Personas Apátridas*. De ese modo, los antiguos habitantes de los PEID podrán beneficiarse del estatuto de protección previsto en la Convención, que contempla un catálogo de derechos y libertades similares a los concedidos a los refugiados por la Convención de Ginebra de 1951. La principal limitación que presenta la Convención de 1954 es su limitado alcance. A diferencia de su homóloga en materia de refugio, que goza de una aplicación casi universal, la Convención sobre el Estatuto de los Apátridas sólo ha sido ratificada por noventa y seis Estados.

1.6. En el caso de que los PEID amenazados se unieran con otro Estado para evitar su completa desaparición, entraría en juego la *Convención de Naciones Unidas de 1961 para Reducir los Casos de Apatridia*, que prevé que los nacionales de los Estados preexistentes adquieran la nacionalidad del Estado sucesor resultante de la unión. No obstante, al igual que la Convención de 1954, la Convención de 1961 tiene el inconveniente del limitado número de países que la han ratificado hasta ahora: setenta y ocho países.

1.7. Finalmente, las organizaciones internacionales de ámbito regional han centrado sus esfuerzos en promover una mayor ratificación de las Convenciones de Naciones Unidas sobre apatridia en sus respectivas áreas geográficas de influencia.

1.7.1. El único instrumento regional reseñable es el *Convenio Europeo sobre Nacionalidad*. Este instrumento prevé que se facilite la naturalización de las personas apátridas que residan en el territorio de los Estados europeos parte. Especial atención se

presta a los niños nacidos ya en Europa, que podrían adquirir la nacionalidad por ley en el momento del nacimiento si la legislación del país en cuestión así lo prevé.

1.7.2. En África, existe actualmente un *proyecto de Protocolo a la Carta Africana de Derechos Humanos y de los Pueblos relativo a los aspectos específicos del Derecho a la Nacionalidad y a la Erradicación de la Apatridia en África*. Este proyecto, inspirado en el Convenio europeo en sus disposiciones sobre la adquisición de la nacionalidad por parte de los apátridas, pretende adaptar el marco de las Naciones Unidas a los desafíos específicos que plantean fenómenos como el nomadismo en el continente africano.

2. En cualquier caso, la posibilidad de proteger a los desplazados medioambientales como apátridas es un supuesto excepcional, limitado a un caso sumamente concreto: el de las gentes de los PEID de baja altitud, cuya población combinada no supera el millón de personas -teniendo en cuenta únicamente los nueve países identificados por el IPCC bajo amenaza por la elevación del nivel del mar, a saber, Antigua y Barbuda, las Islas Cook, Kiribati, las Maldivas, las Islas Marshall, los Estados Federados de Micronesia, San Cristóbal y Nieves, Tonga y Tuvalu. En comparación con los más de 115 millones de nuevos desplazados ambientales en todo el mundo entre 2016 y 2020, los desplazados potencialmente amparados por el régimen de apátrida representan una pequeñísima fracción, además de que, como ya se ha mencionado, este estatuto tiene limitaciones que no lo convierten en el instrumento más adecuado para una situación permanente como la de los habitantes de los PEID.

## **E.**

### **¿PUEDE EL ACNUR INTERVENIR EN LA PROTECCIÓN DE LOS DESPLAZADOS MEDIOAMBIENTALES?**

1. En cuanto al papel del ACNUR en la protección de las personas desplazadas por causas ambientales, los datos expuestos en la segunda parte del Capítulo IV reflejan que, al menos en el ámbito operacional, la Organización está ya involucrada en su asistencia.

1.1. En este sentido, no hay que olvidar que los desplazados medioambientales son PDI si no han cruzado las fronteras de sus países y que, de llegar a hacerlo, pueden incluso ostentar la condición de refugiado en ciertos supuestos. Además, como se ha

señalado al hilo de la cuestión anterior, la desaparición de un Estado como consecuencia de una disrupción medioambiental convertiría a sus nacionales en apátridas.

La asistencia tanto a los refugiados como a los apátridas no refugiados se encuentra en el núcleo duro del mandato de protección que ha recibido el ACNUR desde su creación. En cuanto a las PDI, aunque su intervención no está cubierta por una habilitación general, el ACNUR ha participado también en su protección a requerimiento del Estado afectado, previa autorización del Secretario General o de otro Órgano principal competente de las NU y siempre que exista disponibilidad presupuestaria. Por tanto, los desplazados medioambientales caen ya dentro de la esfera de actuación del ACNUR, incluso aunque no exista una extensión formal de su mandato que los incluya expresa y específicamente.

1.2. Por supuesto, se ganaría en seguridad jurídica si la Agencia recibiera un mandato expreso y claro para asistir a las víctimas de una disrupción medioambiental, hayan o no cruzado una frontera internacional. El Alto Comisionado para los Refugiados, Sr. António Guterres, lo intentó al menos hasta en dos ocasiones durante su dilatado mandato.

Una de ellas fue durante la propuesta piloto que Comité Permanente entre Organismos de las UN hizo al Comité Ejecutivo del ACNUR en enero de 2011. En ella se proponía que el ACNUR asumiese por defecto el liderazgo en las operaciones de asistencia en países afectados por un desastre natural, en lugar de compartir el mandato con UNICEF y la ACNUDH como hasta ahora. La segunda ocasión llegó en junio del mismo año durante la Conferencia Nansen, que auspició el gobierno noruego para conmemorar el centenario de la muerte del Sr. Fridtjof Nansen, primer Alto Comisionado para los Refugiados. El evento fue aprovechado por el ACNUR para persuadir a los Estados de negociar un nuevo instrumento internacional para proteger a los desplazados medioambientales, en cuyo marco el ACNUR adoptaría una posición preeminente como agencia encargada de su asistencia. Sin embargo, ninguno de estos intentos fructificó.

1.3. En cualquier caso, la intervención del ACNUR asistiendo a desplazados medioambientales podría ciertamente plantear algunos retos. No tanto desde una perspectiva jurídica, pues recuérdese que la Resolución 428 (V) de la Asamblea General contiene una habilitación general, a modo de cláusula de cierre, que permite a la

Asamblea General autorizar la intervención del ACNUR en otro tipo de operaciones no expresamente mencionadas en el Estatuto de la Agencia.

A este respecto, hay que mencionar la amplia experiencia del ACNUR asistiendo a personas que huyen de conflictos armados o de situaciones de violencia generalizada en sus países de origen, pese a no ser calificadas como refugiadas por no ser objeto de una persecución individualizada debido a uno de los cinco motivos convencionales. Las necesidades de protección presentes en los desplazamientos relacionados con disruptores medioambientales son, sin lugar a dudas, comparables a las de los desplazados a causa de los conflictos. Por ello, conviene reiterar la importancia de abordar el reto del desplazamiento involuntario –ambiental o de otro tipo- desde la óptica de la protección, más que desde las causas o los factores que lo provocaron.

Ahora bien, la habilitación general a que se refiere el párrafo 9 de la Resolución arriba citada está supeditada a los "límites de los recursos puestos a su disposición". Aquí radica el mayor reto que, a nuestro parecer, enfrentará el ACNUR a la hora de asumir nuevas responsabilidades respecto a los desplazados ambientales: la existencia de fondos dentro de un presupuesto ya de por sí muy ajustado. No cabe duda de que la experiencia práctica del ACNUR en la asistencia a los desplazados y refugiados sobre el terreno lo hace idóneo para liderar la respuesta internacional ante una emergencia humanitaria relacionada con el medioambiente. Sin embargo, resulta igualmente evidente que la estructura y el presupuesto de la Organización tendrían que ampliarse en consecuencia.

1.4. A nivel político, la posibilidad de que el ACNUR se convierta en el futuro en la principal agencia de protección de los desplazados por motivos medioambientales no parece tener malas perspectivas.

1.4.1. Aunque la propuesta del Alto Comisionado de ampliar el mandato del ACNUR para asistir a las víctimas de catástrofes naturales no fue aceptada en su momento, tampoco fue rechazada de plano por los Estados. Entonces, y aun reconociendo la experiencia y el potencial de ACNUR, los Estados parecían, sin embargo, más cómodos con la actual fórmula de un mandato *ad hoc* compartido con otras agencias de la ONU. Fueron cuestiones en materia de soberanía, competencia y financiación las que llevaron a los Estados a pedir sosiego y mayores deliberaciones antes de tomar una decisión a largo plazo sobre una habilitación general explícita del ACNUR para asistir a las

víctimas de catástrofes naturales, incluidas las personas desplazadas. Sin embargo, una mayor conciencia política en los países del Norte sobre el impacto que la crisis medioambiental y del cambio climático podría tener en los países del Sur, ricos en recursos de los que dependen, junto con la presión civil de los votantes, podría hacer que la comunidad internacional acabara por decidirse.

1.4.2. Paradójicamente, quizás donde la propuesta de ampliar el mandato de ACNUR para incluir nuevos grupos vulnerables de desplazados podría encontrar más resistencia es dentro del propio personal del ACNUR. A lo largo de estas décadas, la Agencia ha desarrollado una cultura propia que descansa sobre la noción misma de refugiado, a la que responde el mandato primigenio de protección internacional que recibió el ACNUR. Cualquier intento de alterar ese mandato podría despertar los recelos de toda una estructura humana temerosa de ver cómo la identidad del ACNUR se diluye y, con ella, la eficacia de la protección que dispensa.

De hecho, en aquellas ocasiones en las que el ACNUR ha intervenido en desplazamientos que podrían tener un trasfondo ambiental, el propio personal no parecía siquiera ser consciente de ello. Antes bien, argumentaban que la presencia de la Organización se justificaba en la concurrencia de alguna de las causas de persecución convencionalmente previstas. Un ejemplo sería la llegada masiva de somalíes al campamento de refugiados de Dadaab (Kenia) durante 2011 y 2012. El personal del ACNUR en Kenia no percibió estos desplazamientos como resultado del cambio climático, la sequía o la subsiguiente hambruna, sino como consecuencia del temor a ser perseguidos que la guerra civil en Somalia había engendrado.

1.5. A nivel conceptual, la extensión del mandato del ACNUR podría generar mayores reticencias entre los Estados cuando se trata de movimientos de población desencadenados por una disrupción medioambiental de lenta progresión. Por ejemplo, si la población se desplaza debido a la falta de medios de subsistencia en el contexto de una ola de calor, de una sequía prolongada o de la desertificación paulatina de los pastos y las tierras de cultivo. La tendencia es tildar estos casos más bien de migración que de desplazamiento forzoso, aun si la decisión de emigrar no es del todo voluntaria.

La forma en que se califique estos movimientos no sólo tendrá repercusiones técnico-jurídicas, sino también prácticas a nivel de operatividad del ACNUR. De hecho, de las operaciones que el ACNUR realizó entre 1999 y 2016 asistiendo a PIDs

desplazados por una disrupción medioambiental, sólo el 2% de las intervenciones estuvo motivado por una disrupción medioambiental de lenta aparición – i.e. sequías. El resto de actuaciones se desplegaron en el contexto de desastres naturales de rápida aparición como inundaciones, tormentas, avalanchas, terremotos o tsunamis.

1.6. En última instancia, que el ACNUR asuma formalmente la protección de los desplazados medioambientales no excluya la cooperación entre agencias. Por el contrario, en un terreno tan transversal como el de las migraciones medioambientales, donde hay tantos factores y actores implicados, la cooperación y la coordinación interinstitucional dentro del sistema de las Naciones Unidas devienen aún más esenciales. Liderazgo no debiera equivaler a actuación en solitario.

Así, a nivel operacional, el ACNUR debería liderar la respuesta humanitaria incluyendo a otras entidades clave de las UN como la OCAH, el PNUD, UNICEF o el PMA. En el plano técnico-legislativo, el ACNUR ha tomado la iniciativa impulsando, tanto a nivel político como académico, la elaboración de estándares internacionales, ya tengan carácter normativo o programático, que guíen la respuesta de los Estados a los flujos migratorios relacionados con el medioambiente. Esta labor de investigación, promoción y divulgación emprendida por el ACNUR debería tratar de involucrar a otras organizaciones con experiencia y competencias sectoriales en este campo. Por ejemplo, la OIM, la OCAH, el IPCC o la OIT.

## **F.**

### **¿PUEDE LA DEGRADACIÓN AMBIENTAL O EL RIESGO DE DESASTRE AFECTAR AL DERECHO A LA VIDA EN CONDICIONES DIGNAS, DE MODO QUE SE PROHÍBA A UN ESTADO DEVOLVER A LOS DESPLAZADOS A SU LUGAR DE PROCEDENCIA?**

1. La cuestión que se plantea aquí es si los desastres naturales de rápida aparición o los efectos que la degradación progresiva del medioambiente tiene sobre las condiciones de vida podrían dar lugar a una obligación de los Estados de no devolver a sus países de origen a los desplazados transfronterizos que se encuentren irregularmente en su territorio. En suma, se ha tratado de dilucidar si exponer a una persona a una disrupción medioambiental puede equivaler a una violación del derecho a la vida o de la



prohibición de tratos crueles, inhumanos o degradantes y, en caso afirmativo, cómo operaría el principio de no devolución.

2. Esta cuestión se ha planteado a raíz de la decisión de enero de 2020 del Comité de Derechos Humanos (HRC, por sus siglas en inglés) en el *caso Teitiota v. Nueva Zelanda*. Esta decisión ha supuesto un punto de inflexión en un doble sentido. Por un lado, hasta ese momento, los tribunales y órganos cuasi-jurisdiccionales de derechos humanos sólo se habían pronunciado sobre la responsabilidad del Estado por los daños de origen ambiental sufridos por las personas sujetas a su jurisdicción dentro de sus territorios, ya sea debido a un peligro natural previsible o a una actividad humana contaminante. Por otro lado, la decisión es importante porque por primera vez se considera como fuente de riesgo al cambio climático y sus efectos adversos sobre las condiciones de vida. Además, el demandante es ciudadano de un PEID de baja altitud amenazado por la subida del nivel del mar (Kiribati), lo que convierte este caso en un vívido ejemplo de cómo el cambio climático afectará a los derechos humanos de los más vulnerables y expuestos a su impacto.

2.1. A pesar del carácter histórico de la decisión del HRC, su importancia en el plano práctico debe juzgarse con la debida cautela. Su valor radica menos en lo que el Comité argumenta *ratio decidendi*, ya que concluye que Nueva Zelanda no ha incumplido las obligaciones internacionales en materia de derechos humanos al devolver al solicitante y a su familia a Kiribati, que en lo que declara *obiter dicta*. Así, el Comité no excluye que los efectos adversos del cambio climático sobre las condiciones de vida en los países de destino puedan exponer a los repatriados a una violación de los derechos protegidos por los artículos 6 y 7 del PIDCP. En consecuencia, el HRC afirma la obligación del Estado deportante de evaluar caso por caso la situación actual del cambio climático y sus efectos, incluida la subida del nivel del mar, en los Estados a los que se va a devolver a las personas afectadas.

Por lo tanto, sólo sería cuestión de tiempo que la obligación de no devolución operara en el futuro. Según la jurisprudencia revisada, el umbral mínimo de riesgo real que el Comité ha venido exigiendo en situaciones de estrés medioambiental para aplicar el principio de no devolución ha sido excepcionalmente alto. Sin embargo, el HRC considera que la amenaza de que todo un Estado pueda desaparecer bajo las aguas es tan extrema que es muy probable que las condiciones de vida allí se vuelvan

irreconciliables con el derecho a una vida digna antes de que dicho riesgo se materialice.

2.2. En cualquier caso, la posibilidad real de que los desplazados transfronterizos puedan evitar en algún momento ser devueltos a sus países de origen apelando al principio de *non-refoulement* no puede llevar a ignorar la propia naturaleza de este principio y sus limitaciones. La obligación de no devolución tiene un carácter excepcional, en tanto que excepción a la competencia soberana de los Estados para regular la admisión y estancia de los no nacionales en su territorio. Este carácter excepcional significa que, como deja claro el Comité en su decisión en el *caso de Teitiota*, sólo se aplica en casos de extrema gravedad. En el contexto del desplazamiento medioambiental y climático, ello significa:

2.2.1. En primer lugar, que no estarían amparados los afectados que, al igual que el demandante, abandonarían sus países de origen de forma preventiva antes de que el peligro ambiental se convierta en una amenaza real y grave para una vida digna.

2.2.2. En segundo lugar, habría de tratarse de fenómenos de gran alcance que afecten a todo el territorio de un país, como en el caso de los PEID y la subida del nivel del mar. Sin embargo, en la mayoría de los casos, las perturbaciones medioambientales tendrán un impacto localizado o no afectarán a todo el territorio, lo que permitirá reubicar a los afectados en condiciones de seguridad en otro lugar del país de procedencia. En estos casos, el principio de no devolución sólo impediría el retorno cuando el país de destino no ofrezca garantías adecuadas de que los repatriados no serán obligados a volver a las zonas afectadas.

2.2.3. En tercer lugar, en los casos de interrupciones ambientales repentinas en los que las víctimas cruzan la frontera hacia un país vecino huyendo de las consecuencias de, por ejemplo, una inundación o un terremoto, la obligación de no devolución sólo entraría en juego si el Estado de origen no puede o no quiere ayudar a las poblaciones afectadas, de modo que el regreso de las víctimas las expondría a un riesgo serio y grave para sus vidas.

3. A nivel regional, el éxito de la aplicación del principio de no devolución en un caso como el del Sr. Teitiota dependerá de cómo el organismo regional de derechos

humanos haya interpretado las amenazas medioambientales en relación con el derecho a la vida y la prohibición de tratos crueles, inhumanos o degradantes.

3.1. En el ámbito del CEDH, el Tribunal de Estrasburgo ha sostenido diferentes umbrales de riesgo a la hora de estimar que la devolución de una persona pudiera suponer una violación del derecho a la vida (art. 2 CEDH) o de la prohibición de tratos crueles, inhumanos o degradantes (art. 3 CEDH).

3.1.1. En el caso del derecho a la vida, se limitaría a aquellas amenazas ambientales previsibles frente a las que el Estado receptor no ha actuado con diligencia para evitar que se materialicen en un daño para la población, a pesar de haberlas conocido. En estos casos, la jurisprudencia del TEDH parece respaldar la obligación de no devolver a las personas desplazadas a lugares en los que su vida estaría en peligro por la acción u omisión negligente o culposa del Estado receptor.

3.1.2. Por otro lado, las reclamaciones basadas en los efectos adversos de las disrupciones medioambientales sobre las condiciones de vida requerirían un deterioro excepcionalmente elevado, similar al umbral de riesgo exigido por el HRC, para desencadenar la obligación de no devolución, especialmente cuando el Estado receptor no pueda considerarse responsable de la crisis medioambiental o de no haber actuado adecuadamente para proteger a la población frente a ella.

3.2. En el sistema interamericano de derechos humanos, la prohibición de no devolución está consagrada en el artículo 22 (8) de la CADH, que prohíbe el retorno forzoso cuando la vida o la libertad personal del retornado corran el riesgo de ser violadas en el país de destino por motivos de raza, nacionalidad, religión, condición social u opiniones políticas. Sin embargo, la interpretación de la Corte IDH de los artículos 4 (derecho a la vida) y 5 (derecho a la integridad) de la CADH, con fundamento en el artículo 29 (b) de la CADH y el carácter *erga omnes* de la prohibición de tortura y tratos o penas crueles, inhumanos o degradantes, han configurado un principio de no devolución con un alcance que trasciende los límites del artículo 22 (8), impidiendo la devolución en cualquier caso en que la vida o la integridad personal estén amenazadas, independientemente de la fuente de riesgo.

3.2.1. A la hora de aplicar la prohibición de devolución, la Corte IDH ha seguido la línea jurisprudencial marcada por el HRC y el TEDH, exigiendo que el daño alegado

por el solicitante sea una consecuencia necesaria y previsible de la devolución. La realidad del riesgo alegado debe determinarse teniendo en cuenta la situación general imperante en el país de destino, así como las circunstancias personales del solicitante. Sin embargo, el umbral de riesgo que tendría que alcanzar la amenaza medioambiental para ser considerada un peligro real para la vida o la integridad personal sería inferior a los exigidos por el HRC o el TEDH, dado el estatus que ha alcanzado el medio ambiente en el marco de la CADH como derecho autónomo y plenamente realizable, en contraste con el PIDCP o el CEDH.

Así, la Corte Interamericana ha reconocido el impacto directo que la degradación ambiental y el cambio climático pueden tener sobre varios derechos humanos, como el derecho a la vida, a la integridad personal, a la privacidad, a la salud, al agua, a la alimentación, a la vivienda, a la participación en la vida cultural, a la propiedad y el derecho a no ser desplazado por la fuerza. Estos derechos se ven comprometidos en mayor medida cuando se trata de grupos o segmentos de la población que ya parten de una situación de especial vulnerabilidad, como los pueblos indígenas, los niños, las personas que viven en la extrema pobreza, las minorías y las personas con discapacidad.

3.2.2. De haberse decidido ante la Corte IDH la devolución de una familia a un pequeño Estado insular afectado por el cambio climático y la subida del nivel del mar, el resultado probablemente habría sido otro. La preponderancia que la Corte ha concedido al derecho a un medio ambiente sano como condición necesaria para la realización de otros derechos habría jugado probablemente a favor del demandante, más aún teniendo en cuenta que iba a ser devuelto con su mujer y sus hijos pequeños. Por lo tanto, es probable que estas consideraciones hubieran llevado al Tribunal a ponerse del lado de los miembros disidentes del HRC, concluyendo que la devolución en tales circunstancias equivaldría a una violación del derecho a una vida digna protegido por el artículo 4 de la CADH.

3.3. Similares conclusiones pueden extraerse en el sistema de derechos humanos de África, ya que la CADHP también ha reconocido el derecho de todos los "pueblos" a un medio ambiente "satisfactorio" y "favorable" para su desarrollo (art. 24). Además, la CoADHP, que es el órgano de seguimiento de la Carta de Banjul, ha emitido varias resoluciones que reconocen el impacto del cambio climático en el disfrute de los derechos humanos.

3.3.1. La decisión más relevante dictada por la CoADHP sobre la relación entre el derecho a un medio ambiente sano y el disfrute de otros derechos fundamentales se refiere a la explotación por parte de Nigeria de las reservas de petróleo en las tierras ancestrales del pueblo ogoni. La Comisión responsabilizó al gobierno nigeriano de la degradación del hábitat natural de los ogoni y de los problemas de salud que sufrían como consecuencia de la contaminación generalizada y continua del aire, el suelo y el agua de los que dependían su agricultura y su pesca.

3.3.2. Desde el punto de vista del desplazamiento medioambiental y del principio de no devolución, el *caso del Pueblo Ogoni v. Nigeria* sienta un precedente más favorable que la jurisprudencia del HRC o del TEDH para sostener que el retorno de un desplazado transfronterizo a un entorno medioambientalmente degradado constituiría una violación de los derechos reconocidos por la CADHP. Varias razones apoyarían esta conclusión:

a. De un lado, la titularidad de los derechos de la Carta de Banjul se atribuye tanto a los individuos como a la comunidad, lo que permitiría proteger a poblaciones enteras en peligro por la alteración del medio ambiente, como sería el caso de las poblaciones de los PEID amenazadas por la subida del nivel del mar. Además, esta titularidad colectiva evita que la persona que reclama la no devolución tenga que demostrar que el retorno la expondría a un riesgo personal para su vida o su integridad. Esta interpretación es la responsable de los altísimos umbrales de riesgo que el HRC y el TEDH vienen exigiendo cuando el riesgo no se deriva de las características particulares de la persona en cuestión, sino de las condiciones generales imperantes en el país de destino.

b. De otro, en el caso Ogoni, junto a la obligación positiva de los Estados de proteger la vida de las personas frente a amenazas medioambientales reales e inmediatas, la CoADHP da entrada a fundamentar una violación del derecho a la vida basada en el impacto que la degradación medioambiental tiene sobre los llamados derechos de segunda y tercera generación, que reconoce como esenciales para una vida plena, digna y segura. En consecuencia, sería más fácil fundamentar la obligación de no devolución en los casos de deterioro ambiental y cambio climático alegando una acumulación de factores ambientales, económicos, sociales y culturales que afectarían a la calidad de vida y seguridad de los retornados en caso de ser devueltos.

4. Un último supuesto de *non-refoulement* tiene que ver con la práctica *ad hoc* de los Estados de no devolver a los extranjeros a los países afectados por un desastre natural mientras persista la emergencia, concediéndoles normalmente un visado por motivos humanitarios. Sin embargo, se trata de una práctica discrecional de los Estados que muestra un grado de adhesión asimétrico. Además, estas medidas son de carácter temporal y por lo general sólo se han adoptado en situaciones en las que la catástrofe natural ha provocado una emergencia humanitaria.

5. Por último, hay que tener en cuenta que, además de estas reservas a la aplicabilidad del principio de no devolución en situaciones de desplazamiento medioambiental, la propia prohibición presenta un contenido restringido por su naturaleza excepcional. Así, el principio de no devolución sólo impide que los extranjeros sean devueltos a un país en el que su vida o su integridad corran peligro, pero no obliga al Estado de acogida a concederles ningún estatuto de protección especial dentro de sus territorios. En los casos en los que el Estado de acogida sea parte de los instrumentos básicos de derechos humanos, los desplazados podrán beneficiarse del catálogo de derechos civiles, políticos, económicos, sociales y culturales que estos tratados internacionales reconocen a todas las personas. En caso contrario, el trato garantizado a los no retornados se reduce al estándar mínimo internacional de respeto a sus derechos humanos más básicos.

En conclusión, dado su carácter excepcional y las limitaciones de su contenido, el principio de no devolución no resulta el instrumento más adecuado para proteger de ordinario a las personas que cruzan una frontera internacional empujadas por el medio ambiente.

## **G.**

### **¿LA DISRUPCIÓN MEDIOAMBIENTAL QUE OBLIGA A SUS VÍCTIMAS A DESPLAZARSE DENTRO DE SUS ESTADOS HACE DE ELLOS DESPLAZADOS INTERNOS?**

1. El escenario jurídico que aquí se plantea es bien distinto del que se analizó al considerar la protección de los desplazados medioambientales como refugiados. Al examinar el régimen jurídico aplicable al refugio, se pusieron de manifiesto las dificultades para definir al desplazado medioambiental como tal. Por el contrario, el

marco normativo existente sobre el desplazamiento interno, tanto a nivel universal como regional, contempla las disrupciones medioambientales como una de las causas que pueden obligar a una persona a huir o abandonar su lugar de residencia habitual sin cruzar una frontera internacional.

Por lo tanto, en el caso de los desplazamientos internos, las carencias de protección destacadas en el Capítulo VI no se deben a la existencia de un vacío legal en el régimen de protección, sino a la falta de voluntad política o de capacidad para aplicar los instrumentos existentes.

2. En este sentido, los *Principios Rectores de las Naciones Unidas de los Desplazamientos Internos* proporcionan un marco jurídico suficiente para proteger a las personas antes, durante y después de ser desplazadas por "desastres naturales o provocados por el hombre".

2.1. La principal limitación de los Principios Rectores es su naturaleza jurídica no-vinculante. En consecuencia, la protección que pueden dispensar a los desplazados medioambientales está supeditada a la previa recepción de estos Principios en los ordenamientos jurídicos nacionales. Otra posibilidad para dotar a estos Principios de obligatoriedad es que sean recogidos en un tratado internacional o que cristalicen en normas consuetudinarias. Así lo ha hecho, por ejemplo, la Conferencia Internacional de la Región de los Grandes Lagos, que ha anexado los Principios Rectores a su Protocolo sobre Desplazamiento Interno. En cualquier caso, no debe perderse de vista que muchos de estos Principios no hacen sino adaptar las normas del derecho internacional humanitario y de los derechos humanos, que son vinculantes para los Estados, al ámbito de los desplazamientos internos.

2.2. Asimismo, la genérica obligación de los Estados de prevenir y minimizar las situaciones de riesgo que puedan provocar desplazamientos de población, que los Principios Rectores recuerdan como una manifestación de la soberanía estatal, debe complementarse en el ámbito de los desplazamientos medioambientales con los respectivos marcos de la ONU para combatir el cambio climático y reducir el riesgo de desastres naturales. En cuanto a la búsqueda de soluciones duraderas al desplazamiento, los Principios Deng se han de combinar con sus homólogos en materia de recuperación de los bienes de los desplazados: los *Principios Pinheiro sobre la Restitución de las Viviendas y el Patrimonio de los Refugiados y las Personas Desplazadas*.

3. En África, tanto el *Protocolo sobre Protección y Asistencia de los Desplazados Internos* en la región de los Grandes Lagos como la *Convención de la Unión Africana para la Protección y la Asistencia de los Desplazados Internos en África* prevén los desastres naturales entre las causas de desplazamiento interno, y esta última se refiere incluso al cambio climático.

3.1. A diferencia de los Principios Rectores, estos instrumentos internacionales poseen fuerza jurídica vinculante y obligan, por tanto, a los Estados Parte que los han ratificado o se han adherido a ellos. Aunque los Principios Deng son fuente de inspiración para ambos tratados, su contenido complementa y adapta y el marco de la ONU a la idiosincrasia particular del desplazamiento interno en el continente africano y en la región de los Grandes Lagos.

3.2. La existencia de un tratado internacional no equivale, sin embargo, a una protección realmente efectiva de las personas internamente desplazadas, cualesquiera sea la causa del desplazamiento. Las obligaciones y derechos contenidos tanto en la Convención de Kampala como en el Protocolo de los Grandes Lagos necesitan de la actuación posterior de los Estados Partes, que han de hacerlos efectivos a través de las correspondientes leyes o políticas nacionales. Al igual que en el caso de los Principios Rectores de los Desplazamientos internos, el reto, una vez más, es conseguir una adecuada implementación del instrumento en cuestión, pues la ausencia de ella puede frustrar el objeto y fin incluso de un tratado internacional formalmente vinculante y obligatorio. En el caso de la Convención de Kampala, resulta sintomático que únicamente ocho países, de los treinta y un Estados que son Parte en ella, hayan elaborado marcos internos sobre desplazamiento interno y que sólo en un caso, Níger, éste revista forma de Ley.

4. La situación en el resto de continentes no dista mucho de la de África. En este caso, a falta de instrumentos jurídicos de ámbito regional, los Principios Rectores continúan siendo el marco normativo de referencia. De ese modo, el Consejo de Europa y la UE en Europa, la OEA en América, la ASEAN y la ASACR en el Sur y Sudeste asiático, y la Liga de Estados Árabes en el Norte de África y Oriente Medio han dirigido sus esfuerzos a promover y difundir los Principios Deng entre sus Estados Miembros, instándolos a su adopción e implementación en todas sus políticas y legislaciones nacionales sobre desplazamiento interno. En el caso de la UE, es también reseñable la



importante acción humanitaria que esta organización internacional ha venido desempeñando asistiendo a las víctimas de catástrofes naturales o provocadas por el hombre, siendo actualmente uno de los principales donantes a los fondos mundiales de ayuda para casos de emergencia.

A nivel doméstico, estos llamamientos institucionales a adherirse a los Principios Rectores de los Desplazamientos Internos han fructificado en mayor o menor medida según el continente de que se trate. Sin lugar a dudas, los Estados que lo han atendido han mostrado una clara preferencia por implementar los Principios Rectores a través de políticas nacionales, más que a positivarlos a través de leyes. No obstante, los marcos nacionales desarrollados hasta la fecha son de lo más dispares, variando en cuanto a su forma y alcance –pues no todos ellos incluyen una referencia explícita al cambio climático o a las disrupciones medioambientales de inicio lento–, las etapas del desplazamiento que cubren o las garantías de protección y asistencia que dispensan a los desplazados internos.

5- Finalmente, cabe señalar que la mayoría de las disposiciones contenidas en estos instrumentos internacionales, tanto vinculantes como no vinculantes, son plenamente válidas para aquellos que han cruzado una frontera internacional huyendo de una disrupción medioambiental. Por lo tanto, su contenido también puede servir de guía para el desarrollo de estándares normativos internacionales para la protección de los desplazados ambientales transfronterizos.

## **H.**

### **¿PUEDE EVITARSE EL DESPLAZAMIENTO MEDIOAMBIENTAL?**

1. Evitar el desplazamiento ambiental supone atajar los problemas medioambientales que están en el origen de las disrupciones en los ecosistemas que obligan a sus habitantes a abandonarlos. Prevenir la aparición de desplazados ambientales significa, por tanto, avanzar en la lucha contra el cambio climático, una gestión eficaz del riesgo de catástrofes y la consecución de un desarrollo verdaderamente sostenible.

2. Ni la CMNUCC ni el Acuerdo de París contienen actualmente ninguna disposición legal que proporcione protección a las personas desplazadas por los efectos adversos del cambio climático o que pueda servir como base legal de la que inferir un deber jurídico de protección a cargo de los Estados Partes. Hasta la fecha, la COP, que

gobierna el régimen de la ONU sobre de cambio climático, se ha limitado a reconocer el impacto que este fenómeno global tiene sobre los patrones de movilidad humana, lo que ya es un avance, sin que dicho reconocimiento se haya materializado por ahora en el plano normativo.

2.1. No obstante, tanto la CMNUCC como el Marco de Cancún para la Adaptación y el Acuerdo de París prevén distintos instrumentos de planificación a través de los cuales los Estados Partes deben comunicar a la COP sus esfuerzos en materia de reducción de emisiones nacionales y de adaptación al cambio climático, a saber: las comunicaciones nacionales, los planes de adaptación nacional y las Contribuciones Determinadas a Nivel Nacional (CDN). Los Estados Parte pueden utilizarlos como vehículos para incorporar consideraciones de movilidad humana relacionadas con la adaptación al cambio climático que ayuden a prevenir los desplazamientos. Sin embargo, su uso para este fin ha sido muy desigual, ya que solo treinta y cuatro Estados Parte habían incluido cuestiones de movilidad climática en sus CDN en 2018. Como nota positiva, cabe destacar que un alto porcentaje eran países en desarrollo de regiones con alta exposición y vulnerabilidad a la degradación ambiental y a los desastres naturales.

2.2. El abordaje de la movilidad humana relacionada con el cambio climático en el marco de la CMNUCC se ha llevado a cabo a través del *Mecanismo Internacional de Varsovia para las Pérdidas y los Daños relacionados con las Repercusiones del Cambio Climático* (WIM, por sus siglas en inglés), en cuyo marco se ha creado un Grupo de Trabajo sobre Desplazamientos (TFD, por sus siglas en inglés).

2.2.1. El hecho de que este grupo de trabajo se haya integrado en la estructura del WIM y no en otra parte revela la forma en que las Partes de la CMNUCC y del Acuerdo de París conciben actualmente la migración, el desplazamiento y la reubicación relacionados con el cambio climático, entendiendo el fenómeno de la movilidad climática en términos de "pérdida o daño".

2.2.2. A grandes rasgos, la línea de trabajo del TFD se articula en torno a dos ejes temáticos: por un lado, un enfoque preventivo que persigue evitar o minimizar el riesgo de desplazamiento; por otro, un enfoque reactivo capaz de abordar el desplazamiento de llegar a producirse. Es lo que el Comité Ejecutivo del WIM ha denominado "enfoques integrados".

a. La primera área de acción se centra en combatir la causa –el cambio climático–, en lugar de los síntomas –la movilidad humana. Su palabra clave es la adaptación, enfocándose en crear y fortalecer las capacidades de los países en desarrollo, que son los más vulnerables a los impactos del cambio climático. El objetivo es que las poblaciones afectadas dispongan de las herramientas necesarias para afrontar los efectos adversos del cambio climático, de manera que puedan adaptarse a ellos *in situ* en lugar de verse forzadas a desplazarse. El instrumento vertebrador de esta enfoque son los planes nacionales de adaptación, complementados por las estrategias de reducción del riesgo de desastres, que son especialmente relevantes en el caso de los desplazamientos asociados a fenómenos climáticos y atmosféricos extremos – cuya frecuencia y duración se espera que sean agravadas por el cambio climático. Para que la adaptación tenga éxito, el TFD considera esencial aumentar la transferencia de tecnología y recursos, sobre todo financieros, de los países desarrollados a los no desarrollados.

b. El segundo eje temático pretende limitar los desplazamientos forzados a aquellas situaciones en las que deviene imprescindible proceder a la evacuación o reubicación planificada de las poblaciones en riesgo. Es decir, situaciones de desplazamiento dirigidas o programadas por las autoridades públicas competentes, donde los planes de adaptación o las estrategias de reducción de riesgos vuelven a aparecer como los vehículos ideales para su puesta en marcha.

En teoría, deberían evitarse, en la medida de lo posible, los desplazamientos forzados autónomos o espontáneos; es decir, aquellos que se producen como reacción necesaria de la población ante unas circunstancias climáticas adversas a las que ya no puede hacer frente por sí misma. Para ello, además de la adaptación en origen, el TFD promueve la visión de la migración como una estrategia adicional de adaptación al cambio climático. En este sentido, la acción del TFD se centra en promover entre los Estados la creación de canales para una migración legal, segura y ordenada.

Para los casos en los que el desplazamiento forzoso se produce de forma espontánea e irregular, el TFD adopta un enfoque basado en los derechos humanos de los desplazados, tanto si permanecen dentro de sus países como si cruzan una frontera reconocida internacionalmente. En este sentido, la actuación del TFD no parece apuntar por el momento en dirección a una eventual modificación del régimen de cambio climático de la ONU para incluir su protección, ya sea mediante la negociación de un

tratado internacional independiente para la protección de los desplazados climáticos o mediante la adición de un nuevo protocolo a la CMNUCC, como algunas voces han sugerido desde la doctrina. En cambio, el TFD parece más inclinado a favorecer una ampliación objetiva del acervo jurídico ya existente en materia de derechos humanos, de manera que el deterioro de las condiciones de vida causado por el cambio climático sea considerado como una amenaza para los derechos humanos de las comunidades afectadas.

c. Además de estas dos áreas temáticas –prevención y respuesta al desplazamiento climático-, un tercer ámbito de actuación tiene como objetivo profundizar en la comprensión de la movilidad climática, principalmente a través de la mejora de la metodología para la recopilación y el procesamiento sistemático de datos sobre el desplazamientos. Se trata, al mismo tiempo, de aumentar la visibilidad de este fenómeno entre los Estados Parte y la comunidad internacional. Como parte de esta labor de sensibilización, cabe destacar los esfuerzos que el TFD está realizando en foros internacionales como el Marco de Sendai para la Reducción del Riesgo de Desastres, el Pacto Mundial para la Migración Segura, Ordenada y Regular y su Foro asociado, el Pacto Mundial sobre los Refugiados o la Agenda 2030 para el Desarrollo Sostenible.

3. En el Capítulo II se señalaba que los desplazamientos medioambientales más importantes se producirán en el Sur Global y tendrán un alcance principalmente intrarregional. Por consiguiente, es imperativo avanzar rápidamente en la consecución de los objetivos del Marco de Sendai en cuanto a las capacidades de respuesta frente al riesgo de desastres, en sinergia con los objetivos de desarrollo sostenible y cambio climático. La resistencia frente a los desastres es la única manera de minimizar el agravamiento de los desplazamientos asociado a las alteraciones medioambientales y al cambio climático. A su vez, los desplazamientos causados por interrupciones ambientales de rápida o lenta aparición son ya una realidad que requiere una mejor y más ambiciosa aplicación de las disposiciones del Marco de Sendai sobre la movilidad humana en situaciones de catástrofe.

3.1. En este contexto, es probable que la mayor degradación de la tierra, la subida del nivel del mar y el aumento de la intensidad y frecuencia de los fenómenos meteorológicos y climáticos extremos hagan de la migración una forma cada vez más atractiva de adaptarse a los cambios en el medio humano. Potenciar la migración

voluntaria cuando todavía existe margen de decisión evita futuros desplazamientos forzados, siempre más traumático. En este sentido, el fortalecimiento de la resiliencia tanto de los migrantes como de las comunidades de destino, tal y como exige el párrafo 30(1) del MSRRD, requiere mejorar los canales para una migración ordenada, segura y legal desde los países con alta exposición a las perturbaciones medioambientales.

3.1.1. Una opción sería la creación de cuotas de visados de trabajo para aquellos sectores laborales del país de destino que requieran una mano de obra que la oferta nacional no pueda cubrir. De esta forma se evitaría la competencia laboral entre la comunidad inmigrante y la población nacional y, por tanto, el surgimiento de tensiones entre ambas.

3.1.2. Otra alternativa sería la creación de becas de estudio en sectores profesionales estratégicos tanto para el país otorgante como para los países de origen de los beneficiarios. Estas becas de estudios focalizadas reforzarían la capacidad de resistencia de los jóvenes becarios, que aumentarían su empleabilidad en el mercado laboral mundial, y de las comunidades de origen, que se beneficiarían del capital intelectual de los que decidan regresar.

3.2. En previsión de un recrudecimiento de los desplazamientos forzados intrarregionales, especialmente entre zonas fronterizas con varios países, la cooperación regional a la que se refiere el apartado 28(d) del MSRRD deviene una herramienta necesaria tanto para abordar los factores ambientales que subyacen al desplazamiento como los propios flujos transfronterizos. Las políticas migratorias que se negocien en este sentido deben adoptar un enfoque basado en los derechos humanos, cuidando especialmente de respetar el principio de no devolución de los desplazados a zonas donde imperen condiciones medioambientales que puedan poner en peligro su vida o su integridad.

3.3. Además, la mayor recurrencia de fenómenos atmosféricos extremos multiplicará las evacuaciones de emergencia. Garantizar una respuesta adecuada por parte de las autoridades públicas y los servicios de emergencia y protección civil, especialmente a nivel local, será crucial para minimizar al máximo la pérdida de vidas en la mayor medida posible y para proporcionar a los evacuados unas condiciones de habitabilidad seguras y dignas mientras dure el desplazamiento, de acuerdo con los párrafos 30(h) y (m) del MSRRD.

3.4. La preparación es fundamental para el éxito de la evacuación, al igual que el principio de "reconstruir mejor" durante la fase posterior a la catástrofe. Este principio, plasmado en el párrafo 33(j) del MSRRD, debe guiar la posterior recuperación, rehabilitación y reconstrucción de las zonas afectadas por el desastre, de manera que se eviten nuevos desplazamientos en el futuro.

La intervención tras la catástrofe debe desarrollarse con rapidez, ya que la probabilidad de que los desplazados vean debilitados o vulnerados sus derechos y libertades fundamentales aumenta a medida que la duración del desplazamiento se prolonga en el tiempo. Sin embargo, la celeridad en los trabajos de rehabilitación y recuperación no debe ir en detrimento del principio de "reconstruir mejor". No hacerlo expondría a las comunidades afectadas a nuevos desplazamientos ante la próxima catástrofe, agravando su sufrimiento y haciéndolas más vulnerables con cada nuevo embate de la naturaleza. En este sentido, la fase de reconstrucción ofrece la oportunidad de mejorar la puesta en práctica de códigos de seguridad en la rehabilitación de viviendas, servicios e infraestructuras, incluyendo la exclusión de aquellas zonas consideradas demasiado peligrosas para ser habitadas de nuevo (par. 33(l) MSRRD).

3.5. Por último, es probable que los procesos de reubicación de poblaciones enteras, a los que se hace referencia en el párrafo 27 (k) del MSRRD, también cobren prominencia en el futuro a medida que se agudicen los procesos de degradación ambiental de acción lenta, como la desertificación o la subida del nivel del mar. De hecho, es probable que la reubicación de las poblaciones en riesgo emerja como la única opción viable cuando sea imposible recuperar el área degradada o cuando los costos de las medidas de protección o su impacto ambiental sean insalvables –como podría ocurrir con las zonas costeras de baja elevación.

3.5.1. No obstante, dada la complejidad y las dificultades que entrañan los procesos de reubicación, y el efecto traumático que tienen en las poblaciones afectadas debido a la pérdida de los lazos afectivos y culturales con la tierra y la comunidad, la reubicación debe seguir considerándose una estrategia de último recurso. Por ello, evitar en el presente los asentamientos humanos en zonas sensibles a los desastres o medioambientalmente vulnerables mediante la adecuada implementación de políticas de uso del suelo resultará, con el tiempo, la estrategia más inteligente para evitar reubicaciones futuras (párrs. 27 (k) y 30 (f) MSRRD).

3.5.2. Aunque el Marco de Sendai no contiene ninguna disposición específica al respecto, la reubicación, cuando sea considerada la mejor o la única opción, debe respetar los derechos humanos de los reubicados para no constituir un desplazamiento arbitrario. En este sentido, es fundamental buscar, en la medida de lo posible, la participación y el consentimiento tanto de las comunidades afectadas como de las de acogida, prestar la debida atención a las necesidades particulares de los más vulnerables y reducir el riesgo de movimientos secundarios asegurando suficientes medios de vida en los nuevos emplazamientos. Sólo con la cooperación de todas las partes involucradas se podrá asegurar la viabilidad de los asentamientos en las zonas de destino y, con ello, el éxito de la reubicación a medio y largo plazo.

4. Finalmente, el desplazamiento involuntario a causa de cambios en el medioambiente, incluido el cambio climático, es una cuestión transversal que puede integrarse en los ODS de la *Agenda 2030 para el Desarrollo Sostenible* desde una doble perspectiva.

4.1. En primer lugar, facilitando una migración ordenada, segura y legal como forma de reducir la desigual vulnerabilidad a las disrupciones medioambientales de los países desarrollados y en desarrollo, en línea con el ODS 10.7. Se ha hecho ya referencia a distintas estrategias de migración laboral y no laboral en el marco de la adaptación al riesgo de desastres que el Marco de Sendai prevé como uno de sus objetivos. La implementación de dichas estrategias podría ayudar, igualmente, a la consecución de otros ODS. Por un lado, los programas de estudios becados servirían al propósito de la meta 4.b, que para 2020 pretendía haber aumentado significativamente a nivel mundial el número de becas disponibles para los países en desarrollo, en particular para los países menos adelantados, los PEID y los países africanos, en el marco del ODS 4 (educación de calidad). Por otro lado, las políticas de migración laboral estarían alineadas con el ODS 8 (trabajo decente y crecimiento económico para todos).

4.2. En segundo lugar, dado que la presencia de personas desplazadas por motivos medioambientales refleja un desarrollo insostenible o una falta de desarrollo, la consecución de la Agenda 2030 en su conjunto serviría al propósito de evitar o minimizar su aparición. De ese modo, la realización de los ODS eliminará o reducirá el impacto de las disrupciones medioambientales sobre la población, al tiempo que fortalecerá la capacidad de resistencia de las comunidades para hacer frente al estrés

medioambiental sin desplazarse. Igualmente, su implementación será útil para abordar los factores de pobreza y superpoblación asociados que subyacen al desplazamiento.

Los siguientes son algunos de los objetivos y metas que más podrían contribuir a evitar futuros desplazamientos medioambientales: ODS 1 (fin de la pobreza); ODS 2 (hambre cero); ODS 3.7 (estrategias de planificación familiar en el marco del Objetivo de salud y bienestar); ODS 6 (agua limpia y saneamiento); ODS 11.1, 11.6 y 11.b (creación de ciudades sostenibles, no contaminantes y resistentes a los desastres); ODS 12 (producción y consumo responsables para minimizar/evitar la generación de residuos y el mal aprovechamiento de los recursos naturales); ODS 13 (cambio climático) junto con el ODS 7.2 y 7.3 (eficiencia energética y uso de energías renovables no contaminantes); ODS 14 (preservación de los ecosistemas marinos) y ODS 15 (preservación de los ecosistemas terrestres).

4.3. Sin embargo, los dos últimos informes anuales de seguimiento del Secretario General de la ONU muestran que la comunidad internacional sigue estando lejos de alcanzar un desarrollo sostenible en sus vertientes económica, social y medioambiental. Además, los informes subrayan que la ayuda al desarrollo destinada a los países en desarrollo sigue siendo insuficiente. La entrada en escena de la pandemia del Covid-19 no ha hecho sino empeorar las perspectivas mundiales de desarrollo sostenible. Con este panorama en mente, no es previsible que los ODS señalados se hayan realizado en su totalidad para 2030. Por el contrario, los informes del Secretario General apuntan más bien a un progreso parcial y modesto, por lo que los desplazamientos relacionados con la degradación ambiental, el cambio climático y los desastres naturales de inicio rápido continuarán produciéndose en el futuro.

## I.

### **¿CÓMO SE PODRÍAN SUPLIR LAS LAGUNAS LEGALES IDENTIFICADAS EN LA PROTECCIÓN INTERNACIONAL DE LOS DESPLAZADOS MEDIOAMBIENTALES?**

1. La respuesta a esta última pregunta viene dada por el comentario realizado al proyecto de tratado internacional elaborado por la Universidad de Limoges sobre el estatuto internacional del desplazado ambiental. Hay que señalar, sin embargo, que la conclusión de un tratado internacional sobre desplazamiento medioambiental no



resolverá el problema de fondo del desarrollo insostenible que subyace a los movimientos de personas relacionados con cambios en el medio ambiente.

1.1. El desarrollo sostenible desde el punto de vista social, económico y medioambiental cobra especial importancia en el caso de los desplazamientos relacionados con la degradación de la tierra. En este sentido, resulta realmente llamativo que la disrupción ambiental primigenia que dio origen en 1948 a los desplazados ecológicos en *Road to Survival*, de William Vogt, y a la que más tarde los autores "maximalistas" culparon de los llamados "refugiados ambientales" en sus escritos en clave neo-maltusiana, en los que advertían del rápido agotamiento y destrucción de las tierras fértiles, fuera perdiendo protagonismo en favor de las catástrofes naturales de rápida aparición, para quedar definitivamente relegada a un segundo plano una vez que el cambio climático y la subida del nivel del mar entraron en escena. Por ello, es importante que los estudiosos reivindicquen de nuevo el papel que la preservación y protección de los ecosistemas marinos y terrestres, de cuyos servicios depende la humanidad, desempeñará en la prevención de futuros desplazamientos.

1.2. Queda también toda una zona gris de movimientos de población, prelude de los desplazamientos forzados, en la que los factores medioambientales se entremezclan con otros condicionantes políticos y socioeconómicos, dando lugar a movimientos migratorios que surgen como estrategia de adaptación frente al estrés medioambiental. El carácter predominantemente voluntario de estos movimientos no significa, sin embargo, que quienes migran por motivos medioambientales no necesiten la atención del Derecho Internacional, ya que la migración también engendra riesgos para los derechos de los migrantes, lo que los convierte en un grupo igualmente vulnerable. En este sentido, el *Pacto Mundial para una Migración Segura, Ordenada y Regular* debería ser la hoja de ruta para los gobiernos.

1.3. Igualmente, los habitantes de los PEID de baja altitud constituyen un grupo particular dentro de los desplazamientos medioambientales por la situación de especial vulnerabilidad en que les sitúa la apatridia climática que pueden enfrentar en un futuro y la necesidad de ser reasentados en un tercer Estado. Incluso aun cuando se llegase a celebrar un tratado internacional sobre desplazamiento medioambiental que incluyera disposiciones a este respecto, en la línea, por ejemplo, de los Principios de Península, estas disposiciones no podrían pasar de un marco general que habrá de ser adaptado a

las particularidades de cada caso. Será necesario, por tanto, un desarrollo y concreción posterior en base a acuerdos bilaterales o multilaterales entre los Estados involucrados, especialmente cuando el reasentamiento implique la transferencia de soberanía sobre una parte del territorio del Estado receptor o la concesión de su nacionalidad a las comunidades insulares reubicadas.

1.5. Por todo lo anterior, debe concluirse que el desarrollo del derecho positivo en cuanto a la protección de los desplazados medioambientales deberá ir a la par de la implementación de instrumentos políticos o de derecho indicativo.

2. Por otra parte, autores como Williams se muestran escépticos sobre las posibilidades reales de que un tratado internacional global sobre desplazamiento medioambiental o climático llegue no ya a concluirse, sino a alcanzar un número de ratificaciones lo suficientemente satisfactorio como para que tan complejo proceso de negociación, no exento de obstáculos, haya valido la pena. En su opinión, la renuencia de los Estados a aceptar la intervención internacional en la protección y asistencia de los desplazados internos, el reconocimiento de responsabilidad en el desencadenamiento de la crisis climática que la ratificación de un tratado de este tipo significaría para los Estados desarrollados y la falta de consenso sobre la definición de "refugiado climático" harían descarrilar las negociaciones antes incluso de que hubieran comenzado<sup>1</sup>.

La reticencia de Williams no puede considerarse infundada. De hecho, la negativa de *The Platform on Disaster Displacement* a avanzar en cualquier proceso de creación de nuevas normas internacionales jurídicamente vinculantes para la protección de los desplazados transfronterizos en el contexto de las catástrofes y el cambio climático<sup>2</sup> es un claro indicio de que sus argumentos no van tan desencaminados. Esta reacción es en sí misma sintomática del palpito de la comunidad internacional ante la idea de concluir un tratado internacional en la materia, ya que esta plataforma reúne a diecisiete Estados y a la UE.

El reto es todavía mayor en el caso de la convención de Limoges, ya que esta propuesta aspira no sólo a proteger a los desplazados transfronterizos, sino también a los internos, cuya asistencia internacional resulta siempre más peliaguda desde el punto

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<sup>1</sup> WILLIAMS, A., "Turning the tide: Recognizing climate change refugees in International Law", *Law & Policy*, Vol. 30, No. 4, October 2008, p. 517.

<sup>2</sup> PDD, *Platform on Disaster Displacement (PDD) Strategy 2019-2022*, p. 5.

de vista de la soberanía de los Estados y el principio de no injerencia en sus asuntos internos. Además, pretende hacerlo frente a cualquier disrupción ambiental, natural o antrópica, y no sólo frente a los riesgos relacionados con el cambio climático.

3. Ante este panorama, ciertamente poco alentador, los *Principios de Península* pueden llegar a erigirse como una valiosa guía para los Estados. Precisamente por su condición de directrices carentes de obligatoriedad, estos principios constituyen un útil término medio entre la situación actual de no disponer de un instrumento específico para proteger a los desplazados medioambientales y la seguridad jurídica que, en el extremo opuesto, proporcionaría el contar con un tratado internacional universal en la materia.

Aunque su alcance se limita únicamente a los desplazamientos relacionados con el cambio climático, los datos de la primera parte de la tesis demuestran que las disrupciones medioambientales responsables de la mayoría de desplazamientos son de tipo hidrológico y meteorológico –esto es, relacionadas con el cambio climático. Precisamente por ello, resulta aún más entristecedor que sus creadores se hayan conformado con emular el alcance de los Principios Rectores de las NU, en lugar de haber aspirado a crear un catálogo de principios comunes al desplazamiento climático tanto interno como interestatal.

4. Ahora bien, el pragmatismo de la solución que ofrecen los Principios de Península no debiera hacernos olvidar que todos los obstáculos señalados por Williams para la negociación de un tratado internacional sobre desplazamiento ambiental son de índole política, no jurídica. Su reconocimiento y aceptación no debería, por tanto, hacer desfallecer los esfuerzos de la Academia por formular propuestas jurídicas axiológicamente ambiciosas, aun si políticamente irrealizables cuando se concibieron. Ciertamente, el proyecto de Limoges es ambas cosas: audaz en lo jurídico y arriesgado en lo político. Sin embargo, llegado el caso, tiempo habrá para acomodar los ideales académicos a las expectativas políticas de un escenario que se juzgue más favorable.

5. Este momento propicio podría haber llegado. En 2007, la Comisión de Derecho Internacional introdujo en su programa de trabajo la cuestión de la protección de las víctimas de los desastres<sup>3</sup>. El 9 de diciembre de 2021, catorce años más tarde y apenas

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<sup>3</sup> UNGA, *Report of the International Law Commission. Sixty-eighth session (2 May-10 June and 4 July-12 August 2016)*, Supplement No. 10 (A/71/10), 2016, p. 12, párr. 38.

un mes antes de depositar esta tesis, la Asamblea de las Naciones Unidas decidió, mediante su Resolución 76/119<sup>4</sup>, "incluir en el programa provisional de su septuagésimo octavo período de sesiones el tema titulado "Protección de las personas en caso de desastre"<sup>5</sup>, así como examinar el proyecto de artículos de la Comisión y su recomendación "de que la Asamblea General o una conferencia internacional de plenipotenciarios elabore una convención basada en el proyecto de artículos"<sup>6</sup>. La Asamblea justifica su decisión en la preocupación que despierta en la comunidad internacional "el creciente número de desastres en el mundo, así como su intensidad y sus repercusiones en las poblaciones afectadas"<sup>7</sup>, revistiendo "el tema de la protección de las personas en caso de desastre (...) gran importancia en las relaciones entre los Estados"<sup>8</sup>.

De iniciarse las negociaciones sobre un convenio para la protección de las personas en caso de desastre, se podría aprovechar para introducir aspectos relacionados con el desplazamiento, el retorno y la eventual reubicación de los afectados por disrupciones ambientales durante el curso de las conversaciones. Incluso podría conseguirse el apoyo de la hasta ahora reacia *Platform on Disaster Displacement*, que en cambio se ha mostrado dispuesta a impulsar iniciativas normativas ya en marcha<sup>9</sup>.

5.1. El proyecto de artículos provee un fértil punto de partida para abordar los desplazamientos ambientales<sup>10</sup>. De entrada, la definición de "desastre" contenida en el proyecto de artículos de la Comisión no discrimina según el origen natural o antrópico, ni la evolución lenta o rápida, del suceso o serie de sucesos calamitosos. Antes bien, la Comisión de Derecho Internacional aclara que "el proyecto de artículos se aplica por igual a los sucesos repentinos (como un terremoto o un tsunami) y a los sucesos de evolución lenta (*como la sequía o la subida del nivel del mar*), así como a los sucesos frecuentes a pequeña escala (inundaciones o corrimientos de tierra)"<sup>11</sup>.

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<sup>4</sup> UNGA, *Resolution 76/119 Protection of persons in the event of disasters, adopted by the General Assembly at its Seventy-sixth session (A/RES/76/119)*, 17 December 2021, 2 pp.

<sup>5</sup> *Ibíd.*, párr. 7 (versión en castellano).

<sup>6</sup> *Ibíd.*, párr. 4 (versión en castellano).

<sup>7</sup> *Ibíd.*, tercer considerando (versión en castellano).

<sup>8</sup> *Ibíd.*, quinto considerando (versión en castellano).

<sup>9</sup> PDD, (...) *Strategy 2019-2022, op. cit.*, p. 5.

<sup>10</sup> El texto del proyecto de artículos comentado puede encontrarse en: UNGA, *Report of the International Law Commission... (A/71/10)*, *op. cit.*, pp. 13-73, par. 48.

<sup>11</sup> *Ibíd.*, p. 23, párr. 4 [traducción del autor del original en inglés y cursiva añadida].

Lo determinante para que se active la protección y asistencia internacional que dispensa el proyecto de tratado es que estos eventos "*perturben gravemente el funcionamiento de la sociedad*"<sup>12</sup>. Nótese la similitud con la definición de disrupción ambiental manejada en esta tesis, entendida como cualquier cambio físico, químico o biológico las condiciones o utilidades de un ecosistema que lo hace temporal o permanentemente incapaz de seguir satisfaciendo las necesidades de la comunidad humana que depende de él. Además, entre los efectos adversos que cualifican estos sucesos disruptivos como desastres, el proyecto de artículos menciona expresamente los desplazamientos masivos<sup>13</sup>.

5.2. *Ratione loci*, el proyecto de tratado prevé una definición compuesta de desastre, que abarca tanto el suceso como sus efectos, lo que permitiría incluir dentro de su ámbito de protección tanto a los desplazados internos como a los transfronterizos.

5.2.1. De ese modo, por "Estado afectado" se entiende no sólo aquél en cuyo territorio ha tenido lugar el desastre, en sentido estricto, sino también cualquier otro país que experimente sus efectos de forma colateral, como podría ser el caso del Estado a cuyas fronteras llegan los flujos de desplazados resultantes de la catástrofe. Ahora bien, para que el tratado fuese aplicable, este desplazamiento transfronterizo tendría que revestir una entidad suficiente como para "*perturbar gravemente el funcionamiento de la sociedad*" del Estado receptor, de acuerdo con la definición de "desastre" del proyecto<sup>14</sup>.

5.2.2. Aunque un Estado limítrofe que se enfrente a una afluencia masiva de desplazados puede adquirir la condición de "Estado afectado" en virtud del tratado y solicitar asistencia internacional, no hay que olvidar la situación de irregularidad e inseguridad jurídica en la que se encuentran las víctimas de la catástrofe natural fuera de las fronteras de su propio Estado, y que el proyecto de artículos no aborda.

a. Así, las formas de cooperación en respuesta a las catástrofes a las que se refiere el proyecto de artículo 8 podrían incluir la cooperación interestatal para efectuar evacuaciones conjuntas y la apertura de corredores humanitarios para permitir la entrada de quienes huyen de los trastornos ambientales, ya sea de forma espontánea o guiada por las autoridades.

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<sup>12</sup> Vid. la definición de "desastre" en el proyecto de artículo 3(a) [cursiva añadida].

<sup>13</sup> Íd.

<sup>14</sup> Vid. *ibíd.*, proyecto de artículo 3(b) y su comentario en p. 25, párr. 16.

b. Del mismo modo, el principio de la dignidad humana consagrado en el proyecto de artículo 4 y el enfoque de los derechos humanos incorporado al proyecto de artículo 5 en el contexto de la respuesta a las catástrofes proporcionan la base para el desarrollo en el marco del tratado de un estatuto de protección complementario para las personas desplazadas por catástrofes naturales a través de las fronteras. Este estatuto tendría como principales consecuencias jurídicas la no devolución al lugar de la catástrofe, así como la expedición de un visado por razones humanitarias que permitiría a sus titulares residir en el país vecino hasta que sea posible su retorno en condiciones de seguridad.

5.3. *Ratione temporis*, la protección de los derechos humanos y la prestación de ayuda humanitaria a los afectados, incluso a través de la cooperación y la asistencia internacional, se concentra mayormente en la fase de respuesta inmediata tras el desastre y la fase de recuperación temprana<sup>15</sup>.

5.3.1. La fase previa al desplazamiento, que tiene por objeto minimizar las posibilidades de que se produzca, podría reconducirse a través del proyecto de artículo 9, que versa sobre la reducción del riesgo de desastres y de las actividades de prevención y mitigación de los mismos, entre los que se incluye la implementación de sistemas de alerta temprana. La frase del proyecto de artículo 9 "adoptando las medidas adecuadas" para reducir el riesgo de daños causados por un peligro también permitiría incluir como medida de reducción del riesgo la evacuación y reubicación de las poblaciones expuestas y vulnerables antes de que se produzca el desastre y se materialice el consiguiente riesgo de desplazamiento<sup>16</sup>.

Igualmente, la referencia del proyecto de artículo 6 a que "la respuesta a los desastres debe llevarse a cabo (...) teniendo en cuenta las necesidades de las personas especialmente vulnerables" abogaría por un derecho de información y participación de las comunidades expuestas al riesgo de desastre y a posibles desplazamientos<sup>17</sup>, tal y como figura en el proyecto de Limoges con los comentarios realizados en el Capítulo VIII de esta tesis.

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<sup>15</sup> *Ibíd.*, comentario al proyecto de artículo 1, p. 19, párr. 4.

<sup>16</sup> *Vid. ibíd.*, comentario al proyecto de artículo 9, p. 48, párr. 11.

<sup>17</sup> *Ibíd.*, comentario al proyecto de artículo 6, p. 35, párr. 8. En este sentido, la Comisión de Derecho Internacional ha entendido la frase "teniendo en cuenta" en un sentido amplio, que comprende, entre otras cosas, la accesibilidad a la información y la participación de la comunidad.

5.3.2. Sin embargo, se echa en falta la previsión de un apoyo más duradero por parte de la comunidad internacional en aquellas situaciones en las que los efectos del desastre, incluido el desplazamiento, se prolongan en el tiempo o incluso devienen permanentes, como sucede cuando los desplazados no pueden regresar a sus hogares.

5.4. He ahí la principal limitación que el proyecto de artículos para la protección de las personas en caso de desastre presenta desde el punto de vista del desplazamiento asociado a disrupciones medioambientales. Más allá de los "equipos y bienes" que pueden proporcionarse como parte de la "asistencia externa" al Estado afectado durante la fase de reconstrucción (art. 3(e) del proyecto), no se prevén soluciones duraderas al desplazamiento como parte esencial de la protección y la asistencia a las víctimas de la catástrofe, ya sea facilitando su regreso al lugar de origen, su integración en las comunidades de acogida o su reubicación en otra diferente, incluido el reasentamiento en terceros Estados.

Por lo tanto, para que un futuro tratado sobre la protección de las personas en caso de desastre ofrezca una protección realmente completa y eficaz a los desplazados medioambientales, sería necesario ampliar su contenido *ratione materiae* en cuanto a los derechos de las personas desplazadas por los desastres. Esta necesidad es tanto más evidente cuanto que, como se ha señalado anteriormente, entre las víctimas de los desastres se han incluido las personas afectadas por la subida del nivel del mar que, al menos en el caso de los PEID de baja altitud, es probable que deban ser reubicadas y reasentadas en el territorio de terceros Estados.

Así, el enfoque basado en la soberanía que el proyecto de tratado adopta, centrado principalmente en disciplinar los derechos y las obligaciones del Estado afectado y de los Estados y otros actores que presten asistencia en sus respectivas relaciones mutuas, debiera equilibrarse con otro centrado en las personas. Esta nueva perspectiva supondría una aproximación más profunda a las obligaciones de los Estados en relación con las necesidades de protección de las víctimas de los desastres, que esta versión del proyecto sólo aborda de forma genérica (vid. los arts. 4, 5 y 6 del proyecto). Es en este ámbito donde propuestas normativas como el proyecto de Limoges o los Principios de Península pueden suponer una valiosa contribución al proyecto de artículos de la Comisión de Derecho Internacional.

6. En definitiva, este proyecto de artículos, en la versión que se ha sometido a la consideración de la Asamblea General de la ONU, puede que no sea el tratado autónomo que los académicos a favor de un nuevo instrumento de derecho internacional tenían en mente cuando desarrollaron sus propuestas para un tratado con un enfoque integral del desplazamiento medioambiental. Sin embargo, por su afinidad temática, el proyecto de tratado sobre la protección de las personas en caso de desastre resulta ser un vehículo más que adecuado para avanzar hacia la materialización normativa de propuestas como las de Limoges o Península para la protección de los desplazados ambientales. De iniciarse las negociaciones, sólo la determinación de la sociedad civil, también de la Academia, para influir en la voluntad política decidirá cuánto del contenido de las propuestas académicas existentes se incorporará finalmente a este tratado para la protección de las personas en caso de desastre. La oportunidad está ahí.



## QUOD ERAT DEMONSTRANDUM

Questa sezione presenta le conclusioni raggiunte alla fine della ricerca di dottorato. Queste conclusioni sono state organizzate in diverse sezioni, ognuna delle quali risponde a una delle domande poste inizialmente nell'introduzione della tesi. Una tavola riassuntiva sulla protezione degli sfollati ambientali nel sistema giuridico internazionale a livello universale e regionale è inclusa alla fine delle conclusioni.

### A.

#### QUAL È LA RELAZIONE TRA PERTURBAZIONE AMBIENTALE E MOBILITÀ UMANA?

1. La relazione tra degrado ambientale e mobilità umana ha iniziato a ricevere un'intensa attenzione negli anni '80, con l'emergere di due posizioni dottrinali che riflettono anche una divisione disciplinare sulla questione. Suhrke li ha chiamati la visione "massimalista" e la visione "minimalista".

1.1. Da un lato, l'approccio "massimalista", adottato principalmente da esperti in scienze ambientali e studi sulla sicurezza, sostiene che gli esseri umani hanno degradato l'ambiente naturale che li supporta al punto da renderlo inabitabile. Questo punto di rottura è noto come disturbo ambientale, cioè un profondo cambiamento nelle condizioni o utilità dell'ambiente che lo rende incapace di continuare a soddisfare i bisogni umani. In questa fase, le comunità che abitano l'ambiente degradato sono costrette a spostarsi alla ricerca di un nuovo habitat naturale.

Gli effetti di questi disturbi ambientali possono manifestarsi rapidamente, come nel caso di una catastrofe naturale o umana, le conseguenze ambientali di una guerra o la implementazione di un progetto di sviluppo. In altri casi, gli effetti appaiono gradualmente, peggiorando nel tempo, come nel caso della polluzione, del degrado della terra, la cui forma più grave è la desertificazione, o dell'aumento del livello del mare. I "massimalisti" sottolineano il ruolo che l'attività umana gioca in questi processi, aggravati da fattori economici, politici e demografici che intensificano il deterioramento dell'ambiente o lo rendono più vulnerabile agli impatti dell'azione umana e dei fenomeni naturali, come i disturbi climatici o meteorologici.

1.2. D'altra parte, l'approccio "minimalista", i cui sostenitori provengono dal campo della migrazione, emerse successivamente come una reazione dottrinale ai postulati "massimalisti".

1.2.1. Gli autori "minimalisti" sottolineano che la decisione di emigrare è una decisione complessa influenzata da molteplici fattori, sia esterni che inerenti alle circostanze e alle caratteristiche di ogni individuo, che favoriscono o disincentivano la migrazione. Poiché la vulnerabilità di ogni individuo allo stress ambientale varia, la risposta non può essere sempre la stessa, provocando inevitabilmente uno spostamento.

1.2.2. Gli autori "minimalisti" sviluppano il loro argomento sottolineando anche la capacità degli esseri umani di adattarsi ai cambiamenti o ai rigori dell'ambiente in cui vivono.

a. Queste strategie di adattamento possono consistere in misure all'origine che correggono il degrado ambientale o i rischi che questo comporta per la continua abitabilità, eliminando la necessità di migrare. Per esempio, la costruzione di opere ingegneristiche per regolare le inondazioni o contenere l'aumento del livello del mare, come hanno fatto paesi come i Paesi Bassi.

I "massimalisti" sosterranno a questo proposito che tali misure di adattamento sono completamente fuori dalla capacità dei paesi in via di sviluppo, dove avviene la maggior parte dei movimenti di popolazione che questi autori descrivono come ambientali. Tuttavia, i "minimalisti" controbattono sottolineando che in tal caso questi movimenti non sarebbero tanto una conseguenza del degrado ambientale quanto delle disuguaglianze tra paesi sviluppati e in via di sviluppo. Sarebbe quindi inappropriato descriverli come ambientali, poiché questa etichetta maschera le differenze di sviluppo come vera causa dello spostamento.

b. I "minimalisti" spiegano che l'adattamento allo stress ambientale cronico può avvenire anche attraverso la migrazione, ciclica o temporanea, di tutta o parte dell'unità familiare come un modo per diversificare i mezzi di sussistenza e i rischi. Per esempio, nella stagione secca, alcuni membri delle famiglie rurali si spostano per lavorare nei centri urbani; o le tribù nomadi, i cui modelli di migrazione seguono i cicli delle piogge e la crescita dei pascoli. Tuttavia, lo spostamento in questi casi non riflette l'approccio "massimalista" di essere una risposta al peggioramento delle condizioni ambientali

indotto dall'uomo, ma rappresenta una risposta adattativa delle comunità umane che hanno adattato i loro stili di vita alla variabilità climatica delle regioni in cui si sono stabilite.

2. Tuttavia, a nostro parere, la distinzione tra i due approcci è alquanto artificiosa. Non è che i "massimalisti" affermino la relazione tra fattori ambientali e mobilità umana, e i "minimalisti" la neghino, ma il modo in cui ogni posizione rappresenta questa relazione.

2.1. Gli autori "massimalisti" la concepiscono come una relazione lineare di causa/effetto (vid. Figura 1), dove i cambiamenti che gli umani effettuano al loro ambiente "causano" il disturbo ambientale che genera lo spostamento ("effetto"). Sebbene il fattore ambientale sia la causa primaria dello spostamento nella rappresentazione "massimalista", e quindi gli autori "minimalisti" liquidano questo approccio come mono-causale, gli autori "massimalisti" non ignorano la presenza di altre forze non ambientali –principalmente sotto forma di rapida crescita della popolazione, povertà e politiche di sviluppo mal concepite. Questi fattori associati agirebbero sulla linea di causa ed effetto, precipitando l'interruzione del normale funzionamento dell'ecosistema o vanificando qualsiasi tentativo di adattamento..

2.2. Al contrario, gli autori "minimalisti" concepiscono la relazione tra fattori ambientali e mobilità umana come un cerchio (vid. Figura 1). Così, la situazione di stress ambientale agirebbe come un contesto in cui le variabili non ambientali –politiche, economiche, sociali, culturali e personali- operano. La decisione di spostarsi risulterebbe quindi dall'interazione tra queste diverse forze, essendo una decisione multi-causale.

Nei casi in cui è possibile identificare una perturbazione ambientale come causa diretta dello spostamento –per esempio, un'inondazione- questa agirebbe semplicemente come una causa prossima, rivelando le vulnerabilità preesistenti alla base della popolazione colpita, come la povertà, le istituzioni deboli o la mancanza di meccanismi assicurativi, tra gli altri. Queste vulnerabilità condizioneranno la durata dello spostamento e la possibilità di ritorno. Anche in questi casi di apparente relazione diretta tra disturbo ambientale e spostamento, gli autori "minimalisti" negano il determinismo "massimalista", sottolineando ancora una volta che sarà il gioco delle forze a condizionare chi parte e chi resta –per esempio, in seguito alle inondazioni, ci

sarà chi, nonostante il pericolo, deciderà di restare perché teme che se se ne va, i beni che lascia saranno saccheggianti.

2.3. Oggi, questa polarizzazione dottrinale è stata in qualche modo superata, soprattutto da quando gli studiosi di migrazione hanno abbandonato lo scetticismo iniziale verso le teorie "massimaliste". Senza cadere nell'allarmismo degli autori "massimalisti", alcuni dei quali continuano a prevedere esodi in massa minacciando i confini dei Paesi ricchi del Nord mentre fuggono dai cataclismi ambientali del Sud globale, alcuni studiosi delle migrazioni hanno iniziato a sviluppare modelli per studiare le migrazioni ambientali. Sebbene si basino ancora sulle teorie classiche della migrazione, questi quadri teorici emergenti sono un buon punto di partenza per creare un ponte tra i due approcci, in quanto cercano di spiegare come le variabili ambientali interagiscano con i fattori migratori tradizionali e influenzino il comportamento migratorio.

## **B.**

### **QUAL È LA DIMENSIONE DELLO SPOSTAMENTO AMBIENTALE?**

1. I dati empirici analizzati nel Capitolo II mostrano che, mentre i "massimalisti" non esageravano nei loro avvertimenti sull'impatto che i fattori ambientali possono avere sulla mobilità umana, si sbagliavano nella loro portata e direzione. Così, la grande maggioranza di questi movimenti sarà interna, cioè gli sfollati non lasceranno i confini dei loro Stati. Inoltre, la proporzione di coloro che lo fanno non intraprenderà movimenti transcontinentali, principalmente a causa dei costi coinvolti, ma rimarrà all'interno delle loro regioni. I paesi ricchi del Nord saranno quindi minacciati solo nella misura in cui sono vicini ai paesi in via di sviluppo, come la Spagna con i paesi del Sahel o gli Stati Uniti con il Messico.

I dati tratti dall'International Disaster Database e dal Global Internal Displacement Database forniscono un quadro abbastanza completo delle dimensioni di questi flussi di sfollati interni e dei paesi più esposti, essendo paesi in via di sviluppo con una significativa prevalenza di disastri e perdite e danni associati. La principale limitazione, oltre alla mancanza di dati sugli spostamenti transfrontalieri, riguarda il fatto che vengono registrati solo gli spostamenti legati a perturbazioni naturali e ambientali di rapida manifestazione (ad eccezione della siccità, sebbene i dati a questo

riguardo siano ancora limitati). Di conseguenza, lo spostamento derivante da processi graduali di degrado ambientale rimane invisibile.

1.1. Nel quinquennio 2016-2020, più di 115 milioni di nuovi sfollati si sono verificati in tutto il mondo a causa di disastri naturali di rapida insorgenza –come inondazioni, uragani, tempeste o terremoti- e siccità. Tuttavia, questa cifra elevata non riflette quante di queste persone siano state evacuate o fuggite spontaneamente; quante siano state in grado di tornare alle loro casa una volta passato il pericolo; e quante siano rimaste sfollate, per quanto tempo e quanto lontano dal luogo del disastro. Per continente, la cifra è così suddivisa: in Europa, gli sfollati sono stati circa 313.000; in Africa, poco più di 14 milioni; in Asia, più di 85,5 milioni di persone sono state sfollate; nelle Americhe, la cifra è stata relativamente bassa, poco più di 15 milioni in tutto il continente; infine, in Oceania, gli sfollati sono stati circa mezzo milione.

1.2. Gli eventi idrologici sono stati il disastro naturale più frequente a livello mondiale (51%). Le uniche eccezioni a questa prevalenza sono state l'Europa e l'Oceania, dove si è registrata una maggiore incidenza di eventi meteorologici. Tuttavia, in termini monetari, gli eventi meteorologici hanno causato il 61% dei danni registrati nel quinquennio, mentre i disastri climatici e idrologici hanno rappresentato quasi l'altra metà.

1.3. Anche i disastri meteorologici hanno causato il 50% degli spostamenti interni, mentre i disastri idrologici hanno causato il restante 42%. L'impatto degli eventi climatici e geologici sulla percentuale di sfollati è stato residuale (4% ciascuno). Nel caso degli eventi climatici, ciò è dovuto alla minore incidenza sugli insediamenti umani del principale tipo di evento climatico registrato (incendi forestali) e alla mancanza di dati completi sulla siccità o sulla desertificazione, che sono processi di degrado ambientale con un maggiore impatto sullo spostamento della popolazione. Inoltre, questa minore incidenza registrata non nega la significativa influenza che il cambiamento climatico avrà sullo spostamento, esacerbando l'intensità e la frequenza delle perturbazioni meteorologiche e idrologiche.

1.4. I dieci paesi con il maggior numero di spostamenti forzati a causa di disastri naturali sono, dal più alto al più basso, i seguenti: Cina, Filippine, India, Bangladesh, Stati Uniti, Indonesia, Cuba, Somalia, Etiopia e Vietnam. Ad eccezione di quattro Stati, gli altri si trovano nel continente asiatico, che si classifica come il punto più caldo dello

spostamento ambientale. In tutti e dieci i paesi, gli spostamenti sono stati causati principalmente da disastri idrologici o fenomeni meteorologici.

## C.

### **LE PERTURBAZIONI AMBIENTALI POSSONO EQUIVALERE A UNA PERSECUZIONE CHE RENDE LO SFOLLATO UN RIFUGIATO?**

1. A livello universale, la pertinente definizione di rifugiato è contenuta nell'articolo 1 (A) (2) della *Convenzione di Ginevra del 1951 sullo statuto dei rifugiati*, modificata dal *Protocollo del 1967*.

1.1. Secondo la Convenzione di Ginevra, la concessione dello status di rifugiato a uno sfollato ambientale è consentita solo in un caso molto specifico: quello in cui uno Stato o un attore non statale si approfitta di una perturbazione ambientale come forma di persecuzione di una particolare parte della sua popolazione per motivi di razza, religione, nazionalità, appartenenza a un particolare gruppo sociale o opinione politica. Se l'agente persecutore è un attore non statale, sarebbe anche necessario che lo Stato non sia in grado o non voglia proteggere i suoi cittadini da tali atti di persecuzione ambientale.

1.2. Oltre a quanto sopra, le condizioni ambientali avverse che generalmente prevalgono in un paese non consentono di trovare rifugio in un altro. Sia perché la perturbazione ambientale non sarà il risultato del comportamento doloso di un particolare Stato o di un attore non statale, ma piuttosto a causa di fattori naturali o esogeni fuori dal suo controllo, e quindi non esiste nessun agente persecutore. Oppure perché, anche se lo Stato avesse operato con negligenza, essendo stato in grado di prevenire tale danno all'ambiente o di minimizzarne le conseguenze – ad esempio, riducendo le emissioni di gas a effetto serra -, mancherebbe l'elemento motivazionale necessario alla base della sua condotta. Cioè, la sua azione o omissione non è stata intenzionalmente diretta a causare danni alla popolazione per una delle cinque ragioni indicate nella Convenzione di Ginevra.

1.3. Per quanto riguarda l'elemento motivazionale, non sembra accettabile l'affermazione secondo cui il disturbo ambientale, da cui gli sfollati fuggono, sarebbe l'elemento caratterizzante della loro appartenenza ad un particolare gruppo sociale perseguitato, al fine di ottenere protezione ai sensi della Convenzione del 1951. Data la

sua natura indiscriminata, si tratterebbe di un rischio o di una minaccia a cui sarebbe esposta l'intera popolazione dello Stato, senza distinguere un gruppo dal resto della società.

1.3.1. Di particolare interesse a questo punto è l'affermazione di diversi richiedente asilo di Kiribati e Tuvalu. Secondo loro, i rispettivi governi avrebbero concentrato gli investimenti pubblici sullo sviluppo di strategie di adattamento e di protezione contro l'innalzamento del livello del mare nelle zone più ricche delle isole, a detrimento delle zone più povere in cui vivevano i richiedenti asilo, che erano assolutamente vulnerabili alle ricorrenti alte maree e alle inondazioni.

Sebbene le informazioni ottenute dai tribunali non abbiano dimostrato la veridicità di tali denunce e, di conseguenza, sia stata negata la concessione del rifugio richiesto, l'argomentazione degli appellanti solleva una questione di grande interesse: se l'appartenenza a un determinato strato socio-economico equivalga all'appartenenza a un determinato gruppo sociale ai sensi della Convenzione del 1951 e se, pertanto, gravi forme di discriminazione tra classi sociali possano essere considerate atti di persecuzione quando comportano conseguenze sostanzialmente dannose per i membri della classe sociale discriminata, come una maggiore esposizione o vulnerabilità a una minaccia climatica/ambientale reale e grave per la loro vita o integrità fisica.

Bisogna però chiarire che in questa ipotesi l'esistenza del particolare gruppo sociale sarebbe definita da fattori socioeconomici, e non dagli stessi fattori ambientali, che in realtà farebbero da catalizzatore o coadiuvanti delle misure discriminatorie, qualificandole al grado di persecuzione per la gravità dei loro effetti.

1.4. Le limitazioni legali della definizione di rifugiato di Ginevra per includere gli sfollati ambientali hanno spinto diverse voci in dottrina a favore di una modifica della Convenzione del 1951 per includere almeno il cambiamento climatico come motivo per richiedere lo status di rifugiato.

1.4.1. Tuttavia, non riteniamo che questa opzione sia la più appropriata. Da un punto di vista tecnico-giuridico, includere gli sfollati ambientali nel campo di applicazione della Convenzione del 1951 non è così semplice come ampliare il catalogo dei motivi di rifugio di cui all'articolo 1(A)(2). Al contrario, qualsiasi proposta di incorporare nella definizione i disturbi ambientali richiederebbe anche una contorta reinterpretazione

degli altri elementi del concetto di rifugiato, in particolare l'agente persecutore e l'elemento motivazionale.

1.4.2. Nell'improbabile eventualità che emerga il necessario e difficile consenso politico internazionale per una revisione del concetto universale di rifugiato, sarebbe preferibile seguire l'esempio degli strumenti regionali, lasciando inalterata la definizione tradizionale e aggiungendo un secondo paragrafo successivo che qualifichi come rifugiati anche coloro che fuggono da una situazione esterna di rischio generalizzato, come un collasso ambientale.

2. A livello regionale, esistono diversi strumenti internazionali per i rifugiati in Africa, America Latina, Medio Oriente e Asia, le cui definizioni di rifugiato sono più ampie di quella contenuta nella Convenzione di Ginevra del 1951, rendendo più facile sostenere l'inclusione degli sfollati ambientali nel suo ambito di applicazione.

2.1. *La Convenzione della Lega Araba del 1994 relativa allo Status dei Rifugiati nei Paesi Arabi* è, al momento, l'unico testo giuridico internazionale che prevede i disastri naturali come causa per ottenere rifugio. Tuttavia, la Convenzione non è in vigore, né è probabile che lo sia in alcun momento, poiché nei 26 anni successivi alla sua adozione nel 1994, non è stata ratificata da nessuno dei 22 Stati che attualmente compongono la Lega degli Stati arabi.

2.2. *La Convenzione dell' OUA del 1969, che disciplina gli aspetti specifici dei rifugiati in Africa*, sebbene non comprenda espressamente le perturbazioni ambientali nella definizione estesa di rifugiato, fa riferimento ad altri "eventi che turbano gravemente l'ordine pubblico" in tutto o in parte del paese di origine o della nazionalità del richiedente. Nonostante un'interpretazione *ejusdem generis* di questa clausola di ordine pubblico suggerisca che sarebbero coperte solo le situazioni create dall'uomo, la sua formulazione sembra essere sufficientemente ampia per accogliere anche le persone che fuggono da una perturbazione naturale. A questo riguardo, sarebbe sufficiente che la perturbazione in questione avesse raggiunto un livello di gravità sufficientemente elevato da superare la capacità di risposta dello Stato coinvolto.

Rispetto al concetto di rifugiato della Convenzione di Ginevra, la definizione africana offre il vantaggio di non richiedere la presenza di un agente persecutore o che la vittima sia perseguitata a causa delle sue caratteristiche individuali. Questo rende



molto più facile includere le persone sfollate a causa di fattori ambientali. Da un lato, perché gli eventi naturali sono indiscriminati nei loro effetti. D'altra parte, è molto difficile stabilire un nesso causale tra l'azione dello Stato e la produzione intenzionale di un disturbo ambientale, soprattutto nel caso di catastrofi naturali. Ai fini della Convenzione africana, sarebbe sufficiente che il richiedente sia esposto nel suo Paese di origine o di nazionalità ad una delle situazioni di rischio previste dalla definizione e, perciò, sia stato costretto a lasciare il luogo di residenza.

2.3. Sia la *Dichiarazione di Cartagena del 1984 sui rifugiati in America Latina*, sia i *Principi di Bangkok del 1966 sullo status e il trattamento dei rifugiati in Asia e Africa*, copiano la definizione estesa di rifugiato della Convenzione africana del 1969. Tuttavia, si tratta di strumenti di natura programmatica che, nei rispettivi contesti regionali, hanno lo scopo di guidare o orientare gli Stati in merito allo status o al trattamento da riservare ai rifugiati. Non sono quindi giuridicamente vincolanti, a differenza della Convenzione africana. Di conseguenza, la loro effettiva efficacia nella protezione degli sfollati ambientali sarà determinata da due variabili: in primo luogo, il grado di penetrazione che la definizione estesa di rifugiato raggiunge nei sistemi giuridici nazionali; in secondo luogo, l'interpretazione più o meno flessibile che ogni Stato fa della clausola di ordine pubblico.

3. A livello UE, la protezione delle persone sfollate per motivi ambientali è stata considerata sia dal punto di vista della *Direttiva 2011/95/UE sull'attribuzione, a cittadini di paesi terzi o apolidi, della qualifica di beneficiario di protezione internazionale (rifusione)*, sia dal punto di vista della *Direttiva 2001/55/CE sulle norme minime per la concessione della protezione temporanea in caso di afflusso massiccio di sfollati*. Il termine *protezione internazionale* comprende, accanto al tradizionale status di rifugiato, un nuovo istituto di protezione, che è un complemento al primo ed esclusivo istituto dell'UE, denominato *protezione sussidiaria*.

3.1. La Direttiva 2011/95/UE, che disciplina il *riconoscimento dello status di rifugiato* in qualsiasi dei 27 Stati membri, ha confermato a livello europeo la conclusione che le persone sfollate per motivi ambientali non rientrano generalmente nella definizione di rifugiato della Convenzione del 1951. Una definizione che la Direttiva sul riconoscimento riproduce alla lettera. In particolare, sono stati chiariti e sviluppati giuridicamente alcuni elementi della definizione ginevrina di rifugiato che, essendo

oscuri, avevano dato luogo a interpretazioni dottrinali favorevoli a sostenere l'esistenza legale dei *rifugiati ambientali* sotto il regime universale dei rifugiati.

In particolare, stabilisce la necessaria concomitanza di un attore umano al quale si può attribuire l'atto di persecuzione; ciò esclude la possibilità di considerare la perturbazione ambientale stessa come un agente persecutore inanimato. Allo stesso tempo, l'esistenza di un determinato gruppo sociale è giuridicamente definita sulla base di due criteri cumulativi: che i suoi membri condividano un background comune che non può essere modificato o una caratteristica innata o talmente fondamentale per la loro identità o coscienza da non potervi rinunciare; e che, di conseguenza, siano percepiti dal resto della società del paese in cui vivono come un gruppo con un'identità differenziata. Ciò esclude l'interpretazione delle perturbazioni ambientali come elemento caratterizzante dell'esistenza di un particolare gruppo sociale.

3.2. Per quanto riguarda la *protezione sussidiaria*, viene concessa quando sussistono seri motivi per ritenere che il richiedente, se ritornasse nel suo paese d'origine o di residenza abituale, correrebbe un rischio reale di subire una delle forme gravi di danno definite all'articolo 15 della Direttiva.

3.2.1. Il riferimento in questa disposizione al "trattamento inumano o degradante ai danni del richiedente nel suo paese di origine" ha portato alcuni autori a sostenere che il ritorno forzato del richiedente in un paese colpito da gravi perturbazioni ambientali dovrebbe essere considerato come tale. Il considerando 35 della Direttiva Qualifiche, tuttavia, esclude dalla definizione di danno grave i rischi ai quali la popolazione o una parte della popolazione di un paese è generalmente esposta, in quanto non costituiscono di per sé una minaccia individuale.

Questa esclusione è stata confermata dalla Corte di giustizia dell'UE nella sentenza del 2014 riguardante la causa *M'Bodj contro lo Stato belga*. La Corte europea ha concluso che il rischio di deterioramento della salute di un cittadino di un paese terzo, affetto da una grave malattia, a causa dell'assenza di un trattamento adeguato nel suo paese d'origine, non sarebbe sufficiente a giustificare la concessione della protezione sussidiaria, a meno che tale assenza sia il risultato di una privazione intenzionale dell'assistenza sanitaria nel paese d'origine.

3.2.2. Il requisito dell'intenzionalità è nuovamente legato alla necessità che il presunto grave danno sia il risultato di una condotta imputabile a terzi. Questa esigenza escluderebbe anche dall'ambito di applicazione della protezione sussidiaria i casi di danni gravi derivanti da condizioni ambientali avverse nel paese d'origine, quando nessun attore umano può essere identificato come responsabile del danno. Quest'ultimo solleva la questione se la gestione inadeguata da parte di uno Stato di una situazione di calamità naturale permetterebbe ai suoi cittadini di ottenere una protezione internazionale sussidiaria all'interno dei confini dell'UE.

Tale ipotesi deriva dall'azione del governo del Myanmar nel contesto del ciclone Nargis che ha colpito il Paese nel 2008. Nonostante la sua mancanza di capacità di aiutare le vittime del ciclone, il governo sistematicamente ha rifiutato e ostacolato le offerte di assistenza da parte della comunità internazionale. Il loro comportamento era motivato dal timore che dietro queste offerte si celasse un tentativo di invasione o destabilizzazione del paese da parte delle potenze occidentali, in particolare degli Stati Uniti. Questo atteggiamento ha finito per trasformare il disastro naturale in una vera e propria crisi umanitaria. La gravità delle sofferenze che le decisioni della giunta militare birmana hanno causato alla sua popolazione, riducendo notevolmente le sue possibilità di sopravvivenza nelle zone più colpite dal ciclone, fa pensare che tali decisioni possano essere descritte come trattamenti inumani o degradanti ai sensi dell'articolo 15 della Direttiva. In ogni caso, si tratta di una situazione eccezionale, in cui il fattore ambientale è stato notevolmente aggravato e amplificato dal fattore umano.

3.2.3. Da ultimo, l'articolo 8, che è comune al rifugio e alla protezione sussidiaria, ha giuridicamente confermato, attraverso la denominata *eccezione di protezione interna*, la natura complementare che è stata tradizionalmente attribuita al rifugio rispetto alla protezione nazionale. Questa eccezione consente di rifiutare la protezione internazionale nei casi in cui il richiedente possa essere trasferito in modo sicuro e duraturo in un'altra parte del paese d'origine, in cui non abbia fondati motivi di temere di essere perseguitato o non corra rischi effettivi di subire danni gravi, oppure in cui possa ottenere protezione da tali minacce.

L'eccezione di protezione interna escluderebbe anche la protezione sussidiaria quando le vittime di perturbazioni ambientali possono essere evacuate in altre aree sicure all'interno del paese, oppure ricevere assistenza umanitaria *in situ* dalle loro

autorità nazionali o da attori internazionali come le Organizzazioni Internazionali o le ONG.

3.3. Da parte sua, la *Direttiva 2001/55/CE sulle norme minime per la concessione della protezione temporanea in caso di afflusso massiccio di sfollati* fornisce un meccanismo sufficientemente flessibile per garantire una protezione immediata contro ogni tipo di situazione nel paese d'origine, comprese quelle di origine ambientale, che causano l'arrivo di un gran numero di sfollati alle frontiere europee. Così, paradossalmente, una persona che arriva nell'UE in fuga da una perturbazione dell'ambiente avrebbe diritto alla protezione temporale se il suo arrivo avviene nel contesto di un movimento di persone su larga scala. Tuttavia, questo non sarebbe il caso se arrivasse individualmente o in piccoli gruppi, anche se la causa del suo arrivo è la stessa in entrambe le situazioni.

3.3.1. Il principale limite della Direttiva sulla protezione temporanea è il processo di attivazione del meccanismo stesso, che richiede una decisione politica, presa in seno al Consiglio a maggioranza rafforzata, che stabilisca l'esistenza di un tale afflusso massiccio di sfollati. In pratica, ciò ha significato che il meccanismo di protezione temporanea non è stato attivato dalla sua adozione fino a poco tempo fa, a causa della crisi di sfollati causata dal conflitto armato in corso in Ucraina.

3.3.2. Inoltre, la durata della protezione è per definizione limitata, estendendosi eccezionalmente ad un massimo di tre anni. Tuttavia, questo periodo può non essere abbastanza lungo per ripristinare e riabilitare per la vita umana vaste aree colpite dal degrado ambientale, cosa che a volte può non essere possibile – ad esempio in caso di perdita di terreno a causa dell'innalzamento del livello del mare. Tuttavia, la Direttiva non chiarisce cosa succede alle persone che godono di protezione temporanea quando il ritorno nel paese d'origine è impossibile o poco realistico. Di conseguenza, la loro permanenza sul territorio degli Stati membri, oltre la durata della protezione concessa, è a discrezione di ciascuno Stato membro e alle condizioni stabilite dalle rispettive leggi sugli stranieri.

4. Per ultimo, alcuni Stati membri dell'UE hanno espressamente inserito nella loro legislazione nazionale disposizioni per la protezione delle persone sfollate a causa di fattori ambientali, in particolare Finlandia, Svezia, Italia e Cipro.

4.1. L'articolo 109, paragrafo 1, della *legge finlandese sugli stranieri 301/2004* consente di concedere una protezione temporanea agli stranieri che non possono ritornare in condizioni di sicurezza nel loro paese d'origine o di residenza abituale a causa di uno spostamento in massa di persone in seguito, inter alia, a un disastro ambientale. Sebbene anche la protezione temporanea sia concessa per un periodo massimo di tre anni, la legislazione finlandese prevede la conversione della protezione temporanea in un permesso di soggiorno permanente quando continuano a sussistere i motivi per cui la protezione era stata inizialmente concessa.

4.2. Nel caso della *Svezia*, il paragrafo 2 dell'articolo 2(a), Capitolo 4, della *Legge sugli Stranieri del 2005:716* consente di concedere un permesso di soggiorno a uno straniero che, nonostante non abbia i requisiti per ottenere lo status di rifugiato o la protezione sussidiaria, si trova fuori dal suo paese di nazionalità o di residenza abituale e non può ritornarvi a causa di un disastro ambientale. L'espressione "disastro ambientale" si riferisce, tuttavia, solo ad eventi naturali di rapido accadimento, e non a casi di degrado graduale o continuo dell'ambiente, per cui le persone che scappano dalla desertificazione, dalla siccità o dall'innalzamento del livello del mare non sarebbero coperte. Il permesso di soggiorno può essere rilasciato per una durata indeterminata o temporanea, in quest'ultimo caso con validità da uno a tre anni. Si segnala infine che questo articolo 2 (a) è stato recentemente eliminato dalla legge 2021:765 che modifica la legge sugli stranieri.

4.3. In *Italia*, il *Decreto Legislativo 286/1998* prevede la possibilità di concedere una protezione temporanea alle vittime di disagi ambientali sia collettivamente che individualmente.

4.3.1. Da un lato, l'articolo 20, comma 1, consente al presidente del Consiglio dei Ministri italiano di adottare, per decreto, misure straordinarie per l'accoglienza degli stranieri in caso di conflitto, calamità naturali o altri eventi particolarmente gravi in Paesi non appartenenti all'Unione Europea. L'area geografica di provenienza degli sfollati ammessi alla protezione collettiva, la durata della protezione e le condizioni di accoglienza saranno determinate nel decreto che dichiara lo stato di emergenza umanitaria. Si tratta quindi di un meccanismo eccezionale, riservato a casi altrettanto eccezionali, in cui un numero elevato di sfollati arriva sul territorio italiano al di là delle capacità del Paese di accoglierli.

4.3.2. D'altra parte, l'articolo 20 bis della stessa norma prevede la possibilità per l'autorità amministrativa competente – *il Questore* - di rilasciare, dopo un esame individuale, un permesso di soggiorno temporaneo quando il Paese di origine dello straniero si trova in una "situazione di grave calamità che non consente il rientro e la permanenza in condizioni di sicurezza". Resta da vedere come viene interpretato il termine "calamità", anche se *a priori* il termine sembra abbastanza ampio da accogliere sia le perturbazioni ambientali repentine che quelle di lenta evoluzione. La recente riforma operata dal *Decreto-Legge sulle disposizioni urgenti in materia di immigrazione e di protezione internazionale e complementare* sembra sostenere questa interpretazione, in quanto è ora consentito rinnovare indefinitamente il permesso di soggiorno finché le condizioni che ne hanno motivato la concessione rimangono nel paese d'origine.

4.4. In ultimo, l'articolo 29 (4) della *Legge sui rifugiati del 2000 di Cipro* vieta l'espulsione di un rifugiato o di una persona con status di protezione sussidiaria verso un paese in cui rischia di essere sottoposto a trattamenti inumani o degradanti a causa, inter alia, della distruzione dell'ambiente. L'ambito di applicazione di questa disposizione legale in materia di spostamento ambientale è, tuttavia, piuttosto limitato, poiché agirà solo *a posteriori*. In altre parole, la perturbazione ambientale nel paese di origine dello straniero avrebbe dovuto verificarsi dopo che lo straniero era arrivato nella Repubblica cipriota e aveva ottenuto lo status di rifugiato o di beneficiario di protezione sussidiaria.

5. In sintesi, questa panoramica dei diversi quadri regionali mostra una mappa molto eterogenea. Così, mentre in teoria sarebbe possibile proteggere gli sfollati ambientali come beneficiari di protezione temporanea nell'UE o come rifugiati in altri continenti, in pratica c'è un alto grado di incertezza giuridica.

5.1. La mancanza di un riferimento esplicito alla perturbazione ambientale come motivo di protezione fa sì che la concessione della protezione dipenda dall'interpretazione di concetti giuridici indeterminati come la clausola dell'ordine pubblico, da un lato, o l'afflusso massiccio di persone, dall'altro, in ogni regione e paese.

5.2. Di conseguenza, possono emergere differenze significative da una regione all'altra, e persino tra Stati all'interno della stessa regione (si veda il caso della Finlandia, dell'Italia, di Cipro e, fino a poco tempo fa, della Svezia nei confronti degli altri partner europei), che possono portare a discriminazioni ingiustificate tra gli sfollati

ambientali a seconda del continente in cui lo sfollamento ha avuto luogo. In ultima analisi, tali differenze di trattamento possono addirittura riorientare i flussi di sfollamento verso quelle regioni o quei paesi in cui le probabilità di successo di una richiesta di protezione sono maggiori.

## **D.**

### **PUÒ LO SCONVOLGIMENTO AMBIENTALE MINACCIARE LA SOPRAVVIVENZA DI UNO STATO E LASCIARE I SUOI CITTADINI APOLIDI?**

1. L'aumento del livello del mare dovuto al cambiamento climatico presenta al Diritto Internazionale uno scenario insolito per il futuro: la scomparsa fisica di un paese.

1.1. Sebbene la progressiva sommersione delle coste è un fenomeno che sarà sperimentato in misura maggiore o minore a livello globale, nel caso dei SIDS può rappresentare una minaccia alla loro stessa continuità come Stati. Le loro piccole dimensioni, combinate con la loro bassa elevazione media sul livello del mare, minacciano la sopravvivenza del loro territorio, che è il supporto fisico vitale su cui si basa la popolazione e su cui si esercita la sovranità. L'acquisto di terre in altri Stati vicini non risolve il problema, poiché non implica l'acquisizione della sovranità sul territorio acquisito, a meno che non venga firmato un corrispondente trattato internazionale di cessione. D'altra parte, la costruzione di isole artificiali per ospitare la popolazione non solo è un'alternativa estremamente costosa e ad alto impatto ambientale, ma non può nemmeno sostituire legalmente il territorio naturale come supporto necessario per la presunzione di statualità.

1.2. La perdita di territorio è aggravata dal graduale spopolamento delle isole, poiché il grado di abitabilità peggiora e i loro abitanti migrano verso altri paesi, come la Nuova Zelanda o l'Australia, alla ricerca di condizioni di vita che soddisfino i loro bisogni più elementari. I governi dei SIDS colpiti rischiano di trovarsi in esilio mentre cercano di governare ciò che resta di un territorio inghiottito dalle acque dell'oceano e di una popolazione dispersa nel continente.

1.3. Chiaramente, questa sarebbe una situazione senza precedenti sulla scena internazionale, il cui sistema giuridico si limita a regolare i casi di successione. In altre parole, situazioni in cui uno Stato si sostituisce ad un altro, prendendo il controllo del

territorio e della popolazione e surrogando la sua posizione nelle relazioni internazionali. Questo non è il caso in cui uno Stato scompare fisicamente.

1.4. Anche se il resto della comunità internazionale accettasse che i SIDS possano continuare a mantenere la loro personalità giuridica internazionale, incarnata in un'entità priva di territorio e di popolazione ma dotata di alcuni poteri sovrani come nel caso dell'Ordine di Malta, resta ancora il problema della protezione dei loro cittadini. La scomparsa del territorio e l'esilio del governo comporterà la perdita di un legame effettivo con i suoi ex cittadini, che si troveranno a risiedere nei paesi stranieri in cui sono emigrati o reinsediati.

1.5. In tale situazione, gli abitanti dei SIDS devono essere considerati apolidi de jure e non de facto, poiché i SIDS in questione non soddisfano più i criteri generalmente considerati necessari per l'esistenza di uno Stato secondo il diritto internazionale. Pertanto, la *Convenzione delle Nazioni Unite del 1954 sullo Statuto degli Apolidi* è pienamente applicabile. Così, le popolazioni degli antichi SIDS potranno beneficiare dello status di protezione previsto dalla Convenzione, che contiene un catalogo di diritti e libertà simili a quelli concessi ai rifugiati dalla Convenzione di Ginevra del 1951. Il principale limite della Convenzione del 1954 è la sua applicazione limitata. A differenza della sua controparte in materia di rifugiati, che è quasi universalmente applicabile, la Convenzione sullo Status degli Apolide è stata ratificata solo da novantasei Paesi.

1.6. Nel caso in cui i SIDS minacciati si uniscano con un altro Stato per evitare la loro completa scomparsa, entrerebbe in gioco la *Convenzione delle Nazioni Unite del 1961 sulla Riduzione dell'Apolidia*. Questo trattato internazionale prevede che i cittadini degli Stati preesistenti acquisiscano la nazionalità dello Stato successore che risulta dall'unione. Tuttavia, come la Convenzione del 1954, la Convenzione del 1961 sulla Riduzione dell'Apolidia ha lo svantaggio del numero limitato di paesi che l'hanno ratificata fino ad oggi: settantotto Paesi.

1.7. In ultimo, le organizzazioni internazionali a livello regionale hanno concentrato i loro sforzi nel promuovere una più significativa ratifica delle convenzioni ONU sull'apolidia nelle rispettive aree geografiche di influenza.

1.7.1. L'unico strumento regionale degno di nota è la *Convenzione europea sulla nazionalità*. Questo strumento prevede di facilitare la naturalizzazione degli apolidi



residenti nel territorio degli Stati europei aderenti. Un'attenzione particolare è riservata ai bambini già nati in Europa, che potrebbero acquisire la cittadinanza per legge alla nascita se la legislazione del paese interessato lo prevede.

1.7.2. In Africa, esiste attualmente un *progetto di protocollo alla Carta Africana dei Diritti dell'Uomo e dei Popoli sugli aspetti specifici del Diritto alla Nazionalità e l'Eliminazione dell'Apolidia in Africa*. Questo progetto, ispirato alla Convenzione europea nelle sue disposizioni sull'acquisizione della nazionalità da parte degli apolidi, mira ad adattare il quadro delle Nazioni Unite alle sfide specifiche che fenomeni come il nomadismo sollevano nel continente africano.

2. In qualsiasi caso, la possibilità di proteggere gli sfollati ambientali come apolidi è un caso eccezionale, limitato a una situazione molto specifica: quella delle persone dei SIDS a bassa quota, la cui popolazione totale non supera il milione di persone - prendendo in considerazione solo i nove paesi identificati dall'IPCC a rischio per l'innalzamento del livello del mare, ovvero Antigua e Barbuda, le Isole Cook, Kiribati, le Maldive, le Isole Marshall, gli Stati Federati di Micronesia, Saint Kitts e Nevis, Tonga e Tuvalu. Rispetto agli oltre 115 milioni di nuovi sfollati ambientali in tutto il mondo tra il 2016 e il 2020, gli sfollati potenzialmente tutelabili dal regime di apolidia rappresentano una minima parte e, come già detto, questo status ha dei limiti che non lo rendono lo strumento più appropriato per una situazione permanente come quella degli abitanti dei SIDS.

## **E.**

### **L'ACNUR PUÒ INTERVENIRE NELLA PROTEZIONE DEGLI SFOLLATI AMBIENTALI?**

1. Per quanto riguarda il ruolo dell'ACNUR nella protezione degli sfollati ambientali, i dati presentati nella seconda parte del Capitolo IV mostrano che, almeno a livello operativo, l'Organizzazione è già coinvolta nella loro assistenza.

1.1. A questo riguardo, non si deve dimenticare che gli sfollati ambientali sono sfollati interni se non hanno attraversato i confini dei loro paesi e che, se lo fanno, in alcuni casi possono anche avere lo status di rifugiati. Inoltre, come già osservato, a scomparsa di uno Stato a seguito di una perturbazione ambientale renderebbe i suoi cittadini apolidi.

L'assistenza ai rifugiati e agli apolidi non rifugiati è al centro del mandato di protezione che l'ACNUR ha ricevuto fin dall'inizio. Per quanto riguarda gli sfollati interni, anche se non esiste un'autorizzazione generale per il suo intervento, l'ACNUR ha partecipato alla loro protezione su richiesta dello Stato interessato, previa autorizzazione del Segretario generale o di un altro organo principale dell'ONU competente e a condizione che ci fosse disponibilità di bilancio. Pertanto, gli sfollati ambientali rientrano già nella sfera d'azione dell'ACNUR, anche se non esiste un'estensione formale del suo mandato che li includa in maniera esplicita e specifica.

1.2. La sicurezza giuridica sarebbe naturalmente rafforzata se l'Agenzia ricevesse un mandato esplicito e chiaro per assistere le vittime di perturbazioni ambientali, indipendentemente dal fatto che abbiano o meno attraversato un confine internazionale. Il precedente Alto Commissario per i Rifugiati, Sig. António Guterres, ha tentato di conseguire questo obiettivo in almeno due occasioni durante il suo lungo mandato.

Una di queste occasioni è stato l'accordo pilota che il Comitato Permanente Inter-Agenzie dell'ONU ha proposto al Comitato Esecutivo dell'ACNU nel gennaio 2011. Questa iniziativa chiedeva all'ACNUR di assumere la responsabilità delle operazioni di assistenza nei paesi colpiti da una catastrofe naturale per default, invece di condividere il mandato con l'UNICEF e l'OHCHR come è stato fatto finora. La seconda occasione è arrivata nel giugno dello stesso anno durante la Conferenza di Nansen, ospitata dal governo norvegese per commemorare il centenario della morte di Fridtjof Nansen, il primo Alto Commissario per i rifugiati. L'evento è stato utilizzato dall'ACNUR per persuadere gli Stati a negoziare un nuovo strumento internazionale per la protezione degli sfollati ambientali, in cui l'ACNUR avrebbe assunto una posizione preminente come agenzia responsabile della loro assistenza. Tuttavia, nessuno di questi tentativi ha avuto successo.

1.3. Comunque sia, l'intervento dell'ACNUR nell'assistenza agli sfollati ambientali potrebbe certamente porre alcune sfide. Non tanto dal punto di vista giuridico, poiché va ricordato che la risoluzione 428 (V) dell'Assemblea generale contiene un'autorizzazione generale sotto forma di clausola di chiusura. Questa disposizione consente all'Assemblea Generale di autorizzare l'intervento dell'ACNUR in altre operazioni non espressamente menzionate nello Statuto dell'Agenzia.

In questo contesto, si dovrebbe menzionare la vasta esperienza dell'ACNUR nell'assistere le persone che fuggono da conflitti armati o da situazioni di violenza generalizzata nei loro paesi d'origine, nonostante non siano qualificate come rifugiati perché non sono soggette a persecuzioni individualizzate per uno dei cinque motivi convenzionali. Le esigenze di protezione presenti negli spostamenti legati al degrado ambientale sono certamente paragonabili a quelle richieste da chi è sfollato a causa di un conflitto. A questo proposito, si deve insistere sull'importanza di affrontare la sfida dello sfollamento involontario –ambientale o di altro tipo- da una prospettiva di protezione, piuttosto che dalle cause o dai fattori che lo generano.

Tuttavia, l'autorizzazione generale menzionata al paragrafo 9 della citata risoluzione è soggetta "ai limiti delle risorse messe a sua disposizione". Qui sta la sfida più significativa che riteniamo l'ACNUR dovrà affrontare nell'assumere nuove responsabilità per gli sfollati ambientali: l'esistenza di fondi entro un budget già ristretto. Non c'è dubbio che l'esperienza pratica dell'ACNUR nell'assistere sfollati e rifugiati sul campo lo renda particolarmente idoneo a guidare la risposta internazionale a un'emergenza umanitaria legata all'ambiente. È però altrettanto chiaro che la struttura e il bilancio dell'Organizzazione dovranno essere ampliati di conseguenza.

1.4. A livello politico, la possibilità che l'ACNUR diventi in futuro la principale agenzia per la protezione degli sfollati ambientali non sembra avere prospettive pessimistiche.

1.4.1. Sebbene la proposta dell'Alto Commissario di ampliare il mandato dell'ACNUR per assistere le vittime di disastri naturali non è stata accettata in quel momento, gli Stati non l'hanno categoricamente respinta. A quel tempo, nonostante il riconoscimento dell'esperienza e del potenziale dell'ACNUR, gli Stati sembravano più soddisfatti dell'attuale formula di un mandato *ad hoc* condiviso con altre agenzie dell' ONU. Sono state le questioni di sovranità, competenza e finanziamento per cui gli Stati hanno chiesto moderazione e ulteriori riflessioni prima di prendere una decisione a lungo termine su un esplicito conferimento di poteri generali all'ACNUR per assistere le vittime di disastri naturali, compresi gli sfollati. Tuttavia, una maggiore consapevolezza politica nei Paesi del Nord dell'impatto che la crisi ambientale e del cambiamento climatico potrebbe avere sui Paesi del Sud ricchi di risorse da cui dipendono, insieme

alla pressione civile degli elettori, potrebbero alla fine portare la comunità internazionale a decidersi.

1.4.2. Sorprendentemente, la proposta di ampliare il mandato dell'ACNUR per includere nuovi gruppi vulnerabili di sfollati può incontrare le resistenze più significative all'interno della stessa organizzazione. Nel corso di questi decenni, l'Agenzia ha sviluppato una propria cultura basata sulla nozione stessa di rifugiato, a cui risponde il mandato originario di protezione internazionale dell'ACNUR fin dalla sua nascita. Qualsiasi tentativo di modificare tale mandato potrebbe suscitare la preoccupazione di un'intera struttura umana che teme la diluizione dell'identità dell'ACNUR e, con essa, l'efficacia della protezione che fornisce.

Infatti, nelle occasioni in cui l'ACNUR è intervenuto in sfollamenti che potevano avere una matrice ambientale, il personale stesso non sembrava nemmeno esserne consapevole. Piuttosto, hanno sostenuto che la presenza dell'ACNUR era giustificata dal verificarsi di una delle cause di persecuzione convenzionalmente previste. Un esempio sarebbe il massiccio afflusso di somali nel campo di rifugiati di Dadaab, in Kenya, nel corso del 2011 e del 2012. Il personale dell'ACNUR in Kenya non ha percepito questi spostamenti come il risultato del cambiamento climatico, della siccità o della conseguente carestia, ma come una conseguenza della paura di persecuzione che la guerra civile in Somalia aveva generato.

1.5. A livello concettuale, l'ampliamento del mandato dell'ACNUR potrebbe portare a una maggiore riluttanza da parte degli Stati quando si tratta di movimenti di popolazione causati da disturbi ambientali di lenta insorgenza. Ciò potrebbe verificarsi se le popolazioni vengono sfollate a causa della mancanza di mezzi di sussistenza nel contesto di un'ondata di caldo, di una prolungata siccità o della graduale desertificazione dei pascoli e dei terreni agricoli. La tendenza è di definire questi fenomeni più come una migrazione che come uno sfollamento forzato, anche se la decisione di migrare non è del tutto volontaria.

Il modo in cui questi movimenti sono classificati avrà implicazioni non solo tecniche e legali, ma anche pratiche a livello di operazioni dell'ACNUR. Infatti, delle operazioni condotte dall'ACNUR tra il 1999 e il 2016 per assistere gli sfollati interni dislocati a causa di disordini ambientali, solo il 2% di questi interventi è stato motivato da disordini ambientali di lenta attuazione –cioè dalla siccità. Il resto degli interventi è

stato realizzato nel contesto di disastri naturali di rapida insorgenza come inondazioni, tempeste, valanghe, terremoti o tsunami.

1.6. Da ultimo, l'assunzione formale da parte dell'ACNUR della protezione degli sfollati ambientali non preclude la cooperazione tra agenzie. Al contrario, in un campo così trasversale come quello della migrazione ambientale, in cui sono coinvolti così tanti fattori e attori, la cooperazione e il coordinamento tra agenzie all'interno del sistema delle Nazioni Unite diventano ancora più essenziali. La leadership non dovrebbe significare operare da solo.

Pertanto, a livello operativo, l'ACNUR dovrebbe guidare la risposta umanitaria collaborando con altri enti chiave delle Nazioni Unite come l'OCHA, il PNUS, l'UNICEF e il PAM. A livello tecnico-legislativo, l'ACNUR ha assunto un ruolo guida nel promuovere, sia a livello politico che accademico, lo sviluppo di standard internazionali, sia normativi che programmatici, per guidare la risposta degli Stati ai flussi migratori legati all'ambiente. Questo lavoro di ricerca, promozione e sensibilizzazione intrapreso dall'ACNUR dovrebbe cercare di coinvolgere altre organizzazioni con esperienza e competenza settoriale in questo campo. Ad esempio, l'OIM, l'OCHA, l'IPCC o l'OIL.

## **F.**

### **IL DEGRADO AMBIENTALE O IL RISCHIO DI DISASTRI POSSONO INCIDERE SUL DIRITTO A UNA VITA DIGNITOSA, AL PUNTO CHE A UNO STATO È PROIBITO FAR TORNARE GLI SFOLLATI NEL LORO LUOGO D'ORIGINE?**

1. La questione dibattuta qui è se i disastri naturali di rapida insorgenza o gli effetti che il progressivo degrado ambientale ha sulle condizioni di vita possano far sorgere un obbligo per gli Stati di non rimpatriare gli sfollati transfrontalieri irregolari nei loro paesi d'origine. In altre parole, si discute se esporre una persona a una perturbazione ambientale possa equivalere a una violazione del diritto alla vita o alla proibizione di trattamenti crudeli, inumani o degradanti e, in caso affermativo, come opererebbe il principio di non-refoulement.

2. La questione è sorta in seguito alla decisione del HRC nel caso *Teitiota v. la Nuova Zelanda*. Questa decisione ha rappresentato un punto di svolta in due sensi. Da un lato, fino ad allora, i tribunali e gli organismi quasi-giurisdizionali dei diritti umani si

erano pronunciati solo sulla responsabilità degli Stati per i danni ambientali sofferti da persone soggette alla loro giurisdizione all'interno dei loro territori, sia a causa di un pericolo naturale prevedibile che di un'attività umana contaminante. D'altra parte, la decisione è importante perché per la prima volta i cambiamenti climatici e i loro effetti negativi sulle condizioni di vita sono considerati una fonte di rischio. Inoltre, il richiedente è un cittadino di un SIDS a bassa quota (Kiribati) minacciato dall'innalzamento del livello del mare, rendendo questo caso un vivido esempio di come il cambiamento climatico influenzerà i diritti umani di quelli più vulnerabili ed esposti al suo impatto.

2.1. Nonostante la natura storica della decisione del HRC, il suo significato pratico deve essere giudicato con la dovuta cautela. Il suo valore risiede meno in ciò che il Comitato sostiene come *ratio decidendi*, in quanto conclude che la Nuova Zelanda non ha violato gli obblighi internazionali in materia di diritti umani restituendo il ricorrente e la sua famiglia a Kiribati, che in ciò che afferma *obiter dicta*. Così, il Comitato non esclude che gli effetti negativi del cambiamento climatico sulle condizioni di vita nei paesi di destinazione possano esporre i rimpatriati a una violazione dei diritti protetti dagli articoli 6 e 7 del PIDCP. Di conseguenza, il HRC afferma l'obbligo dello Stato di espulsione di valutare caso per caso la situazione attuale del cambiamento climatico e dei suoi effetti, compreso l'innalzamento del livello del mare, negli Stati in cui le persone interessate devono essere rimpatriate.

Pertanto, la possibilità che l'obbligo di non respingimento operi in futuro sarebbe solo una questione di tempo. Secondo la giurisprudenza rivista, il livello minimo di rischio effettivo che il Comitato ha richiesto in situazioni di stress ambientale per applicare il principio di non-refoulement è stato eccezionalmente alto. Tuttavia, il HRC ritiene che la minaccia che un intero Stato possa scomparire sott'acqua è così estrema che è altamente probabile che le condizioni di vita lì diventino inconciliabili con il diritto a una vita dignitosa prima che tale rischio si concretizzi.

2.2. In ogni caso, la possibilità reale che gli sfollati transfrontalieri possano a un certo punto evitare di essere rimpatriati nei loro paesi d'origine appellandosi al principio di non-refoulement non può portare a ignorare la natura stessa di questo principio e i suoi limiti. L'obbligo di non respingimento ha un carattere eccezionale, in quanto eccezione alla competenza sovrana degli Stati di regolare l'ammissione e il soggiorno degli

stranieri sul loro territorio. Questo carattere eccezionale significa che, come il Comitato chiarisce nella sua decisione nel *caso Teitiota*, si applica solo in casi di estrema gravità. Nel contesto dello spostamento ambientale e climatico, ciò significa:

2.2.1. In primo luogo, le persone colpite non sarebbero coperte se, come il richiedente, avessero lasciato preventivamente i loro paesi d'origine prima che il pericolo ambientale diventasse una minaccia reale e grave a una vita dignitosa.

2.2.2. In secondo luogo, si deve trattare di eventi su larga scala che interessano l'intero territorio di un Paese, come i SIDS e l'innalzamento del livello del mare. Tuttavia, nella maggior parte dei casi, le perturbazioni ambientali avranno un impatto localizzato o non interesseranno l'intero territorio, consentendo alle persone colpite di essere trasferite in sicurezza in altre aree del Paese di origine. In questi casi, il principio di non respingimento impedirebbe il rimpatrio solo quando il Paese di destinazione non fornisce garanzie adeguate che i rimpatriati non saranno costretti a tornare nelle aree colpite.

2.2.3. In terzo luogo, nei casi di repentina perturbazione ambientale in cui le vittime attraversano la frontiera di un Paese vicino per sfuggire alle ripercussioni, ad esempio, di una inondazione o di un terremoto, l'obbligo di non respingimento entrerebbe in gioco solo se lo Stato di origine non fosse in grado o non volesse assistere le popolazioni colpite, cosicché il ritorno delle vittime le esporrebbe a un rischio grave e serio per la loro vita.

3. A livello regionale, il successo dell'applicazione del principio di non-refoulement in un caso come quello del signor Teitiota dipenderà da come l'organismo regionale per i diritti umani ha interpretato le minacce ambientali in relazione al diritto alla vita e al divieto di trattamenti crudeli, inumani o degradanti.

3.1. Nel contesto della CEDU, la Corte di Strasburgo ha sostenuto diversi livelli di rischio nel considerare che il respingimento di una persona potrebbe comportare una violazione del diritto alla vita (art. 2 CEDU) o del divieto di trattamenti crudeli, inumani o degradanti (art. 3 CEDU).

3.1.1. Nel caso del diritto alla vita, sarebbe limitato a quelle minacce ambientali prevedibili contro le quali lo Stato ricevente non ha agito diligentemente per evitare che si concretizzassero in un danno alla popolazione, nonostante ne fosse a conoscenza. In

questi casi, la giurisprudenza della Corte EDU sembra sostenere l'obbligo di non rimpatriare gli sfollati in luoghi in cui la loro vita sarebbe a rischio a causa dell'azione o dell'omissione negligente o colpevole dello Stato ricevente.

3.1.2. D'altra parte, le richieste basate sugli effetti negativi del degrado ambientale sulle condizioni di vita richiederebbero un deterioramento eccezionalmente elevato, simile alla soglia di rischio richiesta dal HRC, per attivare l'obbligo di non-refoulement, soprattutto quando lo Stato ricevente non può essere ritenuto responsabile della crisi ambientale o di non aver agito adeguatamente per proteggere la popolazione dalla suddetta crisi.

3.2. Nel sistema interamericano dei diritti umani, il divieto di non-refoulement è sancito dall'articolo 22 (8) della CADU, che vieta il rimpatrio forzato quando la vita o la libertà personale del rimpatriato rischia di essere violata nel paese di destinazione per motivi di razza, nazionalità, religione, stato sociale o opinioni politiche. Tuttavia, l'interpretazione fatta dalla Corte IDU degli articoli 4 (diritto alla vita) e 5 (diritto all'integrità) della CADU, basata sull'articolo 29 (b) CADU e la natura *erga omnes* della proibizione della tortura e delle pene o trattamenti crudeli, inumani o degradanti, hanno formato un principio di non-refoulement con un ambito che trascende i limiti dell'articolo 22 (8), impedendo il refoulement in qualsiasi caso in cui la vita o l'integrità personale siano minacciate, indipendentemente dalla fonte del rischio.

3.2.1. Nell'applicare il divieto di refoulement, la Corte IDU ha seguito la linea giurisprudenziale stabilita dal HRC e dalla Corte EDU, richiedendo che il danno sostenuto dal richiedente sia una conseguenza necessaria e prevedibile del refoulement. La realtà del presunto rischio deve essere determinata tenendo conto della situazione generale prevalente nel paese di destinazione e delle circostanze personali del richiedente. Tuttavia, la soglia di rischio che la minaccia ambientale dovrebbe raggiungere per essere considerata un reale pericolo per la vita o l'integrità personale sarebbe inferiore a quelle richieste dal HRC o dalla Corte EDU, dato lo status che l'ambiente ha raggiunto sotto la CADU come un diritto autonomo e pienamente realizzabile, in contrasto con il PIDCP o la CEDU.

Così, la Corte Interamericana ha riconosciuto l'impatto diretto che il degrado ambientale e il cambiamento climatico possono avere su diversi diritti umani, come il diritto alla vita, all'integrità personale, alla privacy, alla salute, all'acqua, al nutrimento,



all'alloggio, alla partecipazione alla vita culturale, alla proprietà e il diritto a non essere trasferiti forzatamente. L'incidenza su questi diritti si fa sentire con maggiore intensità quando si tratta di gruppi o segmenti della popolazione che già sperimentano una maggiore vulnerabilità, come le popolazioni indigene, i bambini, le persone che vivono in estrema povertà, le minoranze e le persone con disabilità.

3.2.2. Se il ritorno di una famiglia in un piccolo Stato insulare colpito dal cambiamento climatico e dall'innalzamento del livello del mare fosse stato deciso davanti alla Corte IDU, l'esito sarebbe stato probabilmente diverso. La preponderanza che la Corte ha dato al diritto a un ambiente salubre come condizione necessaria per la realizzazione di altri diritti avrebbe probabilmente giocato a favore del ricorrente, soprattutto se si considera che doveva essere rimpatriato con la moglie e i figli piccoli. È quindi probabile che queste considerazioni avrebbero portato la Corte a schierarsi con i membri dissenzienti del HRC, concludendo che il respingimento in tali circostanze costituirebbe una violazione del diritto a una vita dignitosa protetto dall'articolo 4 della CADU

3.3. Conclusioni simili si possono estrarre nel sistema africano dei diritti umani, poiché la CADUP ha anche riconosciuto il diritto di tutti i "popoli" a un ambiente "soddisfacente" e "favorevole" per il loro sviluppo (art. 24). Inoltre, la CoADUP, che è l'organo di controllo della Carta di Banjul, ha emesso diverse risoluzioni che riconoscono l'impatto del cambiamento climatico sul godimento dei diritti umani.

3.3.1. La decisione più rilevante emessa dalla CoADUP sulla relazione tra il diritto a un ambiente sano e il godimento di altri diritti fondamentali riguarda lo sfruttamento da parte della Nigeria delle riserve di petrolio nelle terre ancestrali del popolo Ogoni. La Commissione ha ritenuto il governo nigeriano responsabile del degrado dell'habitat naturale degli Ogoni e dei problemi di salute che soffrivano a causa dell'inquinamento generalizzato e continuo dell'aria, del suolo e dell'acqua da cui dipendevano l'agricoltura e la pesca.

3.3.2. Dal punto di vista dello sfollamento ambientale e del principio di non respingimento, il *caso del popolo Ogoni v Nigeria* costituisce un precedente più favorevole rispetto alla giurisprudenza del HRC o della Corte EDU per ritenere che il ritorno di uno sfollato transfrontaliero in un ambiente degradato sarebbe una violazione dei diritti riconosciuti dalla CADUP. Diverse ragioni sostengono questa conclusione:

a. Da un lato, la titolarità dei diritti della Carta di Banjul è attribuita sia agli individui che alla comunità, cosa che permetterebbe di proteggere intere popolazioni minacciate dai cambiamenti ambientali, come le popolazioni dei SIDS in pericolo per l'innalzamento del livello del mare. Inoltre, questa titolarità collettiva esime la persona che chiede il non respingimento di dimostrare che il rimpatrio la esporrebbe a un rischio personale per la sua vita o la sua integrità. Questa interpretazione è responsabile delle soglie di rischio particolarmente elevate che sono state richieste dal HRC e dalla Corte EDU quando il rischio non deriva dalle caratteristiche particolari della persona interessata ma dalle condizioni generali prevalenti nel Paese di destinazione.

b. D'altra parte, nel caso Ogoni, oltre all'obbligo positivo degli Stati di proteggere la vita delle persone di fronte a minacce ambientali reali e immediate, la CoADUP avanza la tesi di una violazione del diritto alla vita basata sull'impatto che il degrado ambientale ha sui cosiddetti diritti di seconda e terza generazione, che riconosce come essenziali per una vita piena, dignitosa e sicura. Di conseguenza, sarebbe più facile giustificare l'obbligo di non respingimento nei casi di degrado ambientale e di cambiamento climatico sulla base di un accumulo di fattori ambientali, economici, sociali e culturali che inciderebbero sulla qualità della vita e sulla sicurezza dei rimpatriati in caso di rimpatrio.

4. Un ultimo caso di non-refoulement riguarda la pratica *ad hoc* degli Stati di non rimpatriare gli stranieri nei paesi colpiti da un disastro naturale finché l'emergenza persiste, di solito concedendo loro un permesso per motivi umanitari. Tuttavia, si tratta di una pratica discrezionale degli Stati con un grado di aderenza asimmetrico. Inoltre, queste misure sono di natura temporanea e sono state normalmente adottate solo in situazioni in cui la catastrofe naturale ha causato un'emergenza umanitaria.

5. Infine, va ricordato che, oltre a queste riserve sull'applicabilità del principio di non respingimento in situazioni di dislocazione ambientale, il divieto stesso ha un contenuto limitato a causa della sua natura eccezionale. Così, il principio di non respingimento impedisce solo che gli stranieri siano rimandati in un paese dove la loro vita o la loro integrità sarebbero in pericolo, ma non obbliga lo Stato ospitante a concedere loro uno status di protezione speciale sul suo territorio. Nei casi in cui lo Stato ospitante è parte degli strumenti fondamentali dei diritti umani, gli sfollati possono beneficiare del catalogo dei diritti civili, politici, economici, sociali e culturali che questi trattati

internazionali riconoscono a tutte le persone. Altrimenti, il trattamento garantito ai non rimpatriati è comunque ridotto allo standard internazionale minimo di rispetto dei loro diritti umani più elementari.

In conclusione, data la sua natura eccezionale e i limiti del suo contenuto, il principio di non respingimento non è lo strumento più appropriato per la protezione ordinaria delle persone che attraversano una frontiera internazionale costrette dall'ambiente.

## G.

### **LE PERTURBAZIONI AMBIENTALI CHE COSTRINGONO LE LORO VITTIME A SPOSTARSI ALL'INTERNO DEI LORO STATI LI RENDONO SFOLLATI INTERNI?**

1. Lo scenario legale in questo caso è molto diverso da quello discusso quando si è considerata la protezione degli sfollati ambientali come rifugiati. Nell'esaminare il regime giuridico applicabile allo status di rifugiato, sono emerse difficoltà nel definire gli sfollati ambientali come tali. Al contrario, il quadro normativo esistente in materia di sfollamento interno, sia a livello universale che regionale, contempla i disturbi ambientali come una delle cause che possono costringere una persona a fuggire o a lasciare il proprio luogo di residenza abituale senza attraversare un confine internazionale.

Nel caso dello sfollamento interno, quindi, le carenze di protezione evidenziate nel Capitolo VI non sono dovute all'esistenza di una lacuna giuridica nel regime di protezione, ma alla mancanza di volontà politica o di capacità nell'implementare gli strumenti esistenti.

2. A questo proposito, i *Principi guida delle Nazioni Unite sugli sfollati interni* forniscono un quadro giuridico sufficiente per proteggere le persone prima, durante e dopo lo sfollamento a causa di "disastri naturali o provocati dall'uomo".

2.1. La principale limitazione dei Principi Guida è la loro natura non giuridicamente vincolante. Di conseguenza, la protezione che possono offrire agli sfollati ambientali dipende dal fatto che questi principi siano stati precedentemente incorporati nei sistemi legali nazionali. In alternativa, i Principi possono essere resi vincolanti attraverso il loro inserimento in un trattato internazionale o la loro cristallizzazione in norme

consuetudinarie. Ciò è stato fatto, ad esempio, dalla Conferenza internazionale della Regione dei Grandi Laghi, che ha allegato i Principi guida al suo Protocollo sugli spostamenti interni. In ogni caso, non bisogna perdere di vista il fatto che molti di questi Principi si limitano ad adattare le norme del diritto internazionale umanitario e dei diritti umani, che sono vincolanti per gli Stati, al campo dello sfollamento interno.

2.2. Inoltre, l'obbligo generico degli Stati di prevenire e ridurre al minimo le situazioni di rischio che possono portare allo spostamento di popolazioni, che i Principi Guida ricordano come una manifestazione di sovranità statale, dovrebbe essere integrato nel campo dello spostamento ambientale dai rispettivi quadri delle Nazioni Unite sulla lotta al cambiamento climatico e sulla riduzione del rischio di disastri. Per quanto riguarda la ricerca di soluzioni durature allo sfollamento, i Principi Deng dovrebbero essere combinati con i loro omologhi sul recupero dei beni degli sfollati: i *Principi Pinheiro sulla restituzione degli alloggi e delle proprietà per i rifugiati e gli sfollati*.

3. In Africa, sia il *Protocollo per la protezione e l'assistenza degli sfollati interni* nella regione dei Grandi Laghi che la *Convenzione dell'Unione Africana per la protezione e l'assistenza degli sfollati interni in Africa* includono i disastri naturali tra le cause di sfollamento interno, e quest'ultima fa addirittura riferimento al cambiamento climatico.

3.1. A differenza dei Principi guida delle NU, questi strumenti internazionali hanno forza giuridica vincolante e sono quindi obbligatori per gli Stati parte che li hanno ratificati o vi hanno aderito. Sebbene i Principi di Deng sono una fonte di ispirazione per entrambi i trattati, il loro contenuto integra e adatta il quadro delle Nazioni Unite alle particolari idiosincrasie dello sfollamento interno nel continente africano e nella regione dei Grandi Laghi.

3.2. Tuttavia, l'esistenza di un trattato internazionale non implica necessariamente una protezione efficace per gli sfollati interni, indipendentemente dalla causa dello spostamento. Gli obblighi e i diritti della Convenzione di Kampala e del Protocollo dei Grandi Laghi richiedono un'azione successiva da parte degli Stati parte per renderli effettivi attraverso leggi o politiche nazionali. Come nel caso dei Principi Guida sullo sfollamento interno, la sfida, ancora una volta, è quella di assicurare un'adeguata implementazione dello strumento in questione, poiché la sua assenza può vanificare l'oggetto e lo scopo anche di un trattato internazionale formalmente vincolante e

applicabile. Nel caso della Convenzione di Kampala, è sintomatico che solo otto Paesi sui trentuno che ne fanno parte abbiano sviluppato quadri nazionali sullo sfollamento interno, e solo in un caso, il Niger, ciò ha assunto la forma di una legge.

4- La situazione negli altri continenti non è molto diversa da quella dell'Africa. In assenza di strumenti giuridici a livello regionale, i Principi Guida delle NU rimangono il quadro di riferimento. Così, il Consiglio d'Europa e l'UE in Europa, l'OSA nelle Americhe, l'ASEAN e l'ASACR nell'Asia meridionale e sudorientale e la Lega degli Stati Arabi nel Nord Africa e nel Medio Oriente hanno tutti cercato di promuovere e diffondere i Principi di Deng tra i loro Stati Membri, esortando la loro adozione e implementazione in tutte le loro politiche e legislazioni nazionali sullo spostamento interno. Inoltre, all'interno dell'UE, vale la pena sottolineare la significativa azione umanitaria che questa organizzazione internazionale ha svolto per assistere le vittime di disastri naturali e causati dall'uomo, essendo attualmente uno dei principali donatori ai fondi globali di emergenza.

A livello interno, questi appelli istituzionali per l'adesione ai Principi Guida sullo sfollamento interno hanno avuto più o meno successo a seconda del continente. È innegabile che gli Stati che li hanno ascoltati hanno mostrato una chiara preferenza per implementare i Principi Guida attraverso politiche nazionali piuttosto che renderli esecutivi attraverso norme legali. Tuttavia, i quadri nazionali sviluppati fino ad oggi variano ampiamente in termini di forma e portata –ad esempio, non tutti includono un riferimento esplicito al cambiamento climatico o alle perturbazioni ambientali di lenta insorgenza-, le fasi di sfollamento che coprono o le garanzie di protezione e assistenza che forniscono agli sfollati interni.

5- Infine, va notato che la maggior parte delle disposizioni contenute in questi strumenti internazionali, sia vincolanti che non, sono pienamente valide per coloro che hanno attraversato un confine internazionale in fuga da un disastro ambientale. Il loro contenuto può quindi servire anche da guida per lo sviluppo di standard normativi internazionali per la protezione degli sfollati ambientali transfrontalieri.

## H.

### SI PUÒ EVITARE LO SPOSTAMENTO AMBIENTALE?

1. Prevenire lo sfollamento ambientale significa affrontare i problemi ambientali che sono alla base degli sconvolgimenti degli ecosistemi che costringono i loro abitanti ad abbandonarli. Prevenire lo sfollamento ambientale significa quindi fare progressi nella lotta al cambiamento climatico, nella gestione efficace del rischio di catastrofi e nel raggiungimento di uno sviluppo realmente sostenibile.

2. Attualmente non c'è nessuna disposizione legale nell'UNFCCC o nell'Accordo di Parigi che fornisca protezione alle persone sfollate a causa degli effetti negativi del cambiamento climatico o che possa servire come base giuridica da cui dedurre un dovere legale di protezione da parte degli Stati parte. Fino ad oggi, la Conferenza delle Parti che governa il regime del cambiamento climatico delle Nazioni Unite si è limitata a riconoscere l'impatto che questo fenomeno globale ha sulla mobilità umana, il che è già un passo avanti, ma questo riconoscimento non si è ancora concretizzato a livello normativo.

2.1. Tuttavia, l'UNFCCC, il Quadro di adattamento di Cancun e l'Accordo di Parigi prevedono diversi meccanismi di pianificazione attraverso i quali gli Stati Parte devono riferire alla COP sui loro sforzi nazionali di riduzione delle emissioni e di adattamento ai cambiamenti climatici: comunicazioni nazionali, piani nazionali di adattamento e contributi nazionali determinati (NDC). Gli Stati parte possono usarli come veicoli per incorporare considerazioni sulla mobilità umana legate al cambiamento climatico per aiutare a prevenirla. Comunque, il loro uso a questo scopo è molto disomogeneo, con solo 34 Stati Parte che hanno incluso questioni di mobilità climatica nei loro NDC nel 2018. Come nota positiva, un'alta percentuale di loro erano paesi in via di sviluppo in regioni con un'elevata esposizione e vulnerabilità al degrado ambientale e ai disastri naturali.

2.2. La mobilità umana legata ai cambiamenti climatici è stata affrontata nell'ambito dell'UNFCCC attraverso il *Meccanismo internazionale di Varsavia per le perdite e i danni associati agli effetti negativi del cambiamento climatico* (WIM), sotto il quale è stata creata una task force sullo spostamento (TFD).

2.2.1. Il fatto che questo gruppo di lavoro sia stato integrato nella struttura del WIM e non altrove rivela come le Parti dell'UNFCCC e dell'Accordo di Parigi concepiscano attualmente le migrazioni, gli spostamenti e le delocalizzazioni legate ai cambiamenti climatici, intendendo il fenomeno della mobilità climatica in termini di "perdita o danno".

2.2.2. A grandi linee, la linea di lavoro della TFD è organizzata intorno a due assi tematici: da un lato, un approccio preventivo che cerca di evitare o ridurre al minimo il rischio di sfollamento; dall'altro, un approccio reattivo per affrontare lo sfollamento nel caso in cui si verifichi. Questo è ciò che il Comitato esecutivo del WIM ha definito come "approcci integrati".

a. La prima area di intervento si concentra sul combattere la causa –il cambiamento climatico– piuttosto che i sintomi –la mobilità umana. La sua parola chiave è adattamento, concentrandosi sulla costruzione e sul rafforzamento delle capacità dei Paesi in via di sviluppo, che sono i più vulnerabili agli impatti dei cambiamenti climatici. L'obiettivo è quello di dotare le popolazioni colpite degli strumenti necessari per far fronte agli effetti negativi dei cambiamenti climatici, in modo che possano adattarsi *in situ* invece di essere costrette a spostarsi. La spina dorsale di questo approccio è costituita dai piani di adattamento nazionali, integrati da strategie di riduzione del rischio di catastrofi, che sono particolarmente importanti nel caso di sfollamenti associati a eventi climatici e atmosferici estremi –la cui frequenza e durata dovrebbero essere esacerbate dai cambiamenti climatici. Affinché l'adattamento abbia successo, la TFD ritiene essenziale aumentare il trasferimento di tecnologie e risorse, soprattutto finanziarie, dai Paesi sviluppati a quelli non sviluppati.

b. Il secondo asse tematico mira a limitare lo sfollamento forzato alle situazioni in cui è essenziale procedere all'evacuazione o al trasferimento pianificato delle popolazioni a rischio. In altre parole, situazioni di spostamento dirette o programmate dalle autorità pubbliche competenti, dove i piani di adattamento o le strategie di riduzione del rischio sono nuovamente i veicoli ideali per la loro implementazione.

In teoria, lo spostamento forzato autonomo o spontaneo, cioè lo spostamento che si verifica come reazione necessaria della popolazione a circostanze climatiche avverse che non può più affrontare da sola, dovrebbe essere evitato il più possibile. A tal fine, oltre all'adattamento all'origine, il TFD promuove la visione della migrazione come

ulteriore strategia di adattamento al cambiamento climatico. In questo senso, l'azione del TFD si concentra sulla promozione della creazione di canali per una migrazione legale, sicura e ordinata tra gli Stati.

Per le situazioni in cui lo sfollamento forzato avviene in modo spontaneo e irregolare, il TFD adotta un approccio basato sui diritti umani degli sfollati, sia che restino all'interno dei loro paesi sia che attraversino una frontiera internazionalmente riconosciuta. In questo senso, l'azione del TFD non sembra finora suggerire alcun tentativo di modificare il regime delle Nazioni Unite sui cambiamenti climatici per includere la loro protezione, né attraverso la negoziazione di un trattato internazionale separato per la protezione degli sfollati climatici né attraverso l'aggiunta di un nuovo protocollo all'UNFCCC, come alcune voci hanno suggerito in letteratura. Invece, il TFD sembra più favorevole a un'estensione oggettiva della legislazione sui diritti umani già esistente in modo da considerare il deterioramento delle condizioni di vita causato dal cambiamento climatico come una minaccia ai diritti umani delle comunità colpite.

c. Oltre a queste due linee tematiche –prevenzione e risposta allo spostamento climatico- una terza area di lavoro mira ad approfondire la comprensione della mobilità climatica, soprattutto attraverso il miglioramento della metodologia per la raccolta e l'elaborazione sistematica dei dati sullo sfollamento. Allo stesso tempo, l'obiettivo è quello di aumentare la visibilità di questo fenomeno tra gli Stati parte e la comunità internazionale. Nell'ambito di questo lavoro di sensibilizzazione, vanno evidenziati gli sforzi della TFD in forum internazionali come il Quadro di Sendai per la riduzione del rischio di disastri, il Patto globale per una migrazione sicura, ordinata e regolare e il relativo Forum, il Patto globale sui rifugiati o l'Agenda 2030 per lo sviluppo sostenibile.

3. Il Capitolo II ha osservato che i cambiamenti ambientali più significativi si verificheranno nel Sud globale e saranno principalmente di portata intraregionale. È quindi indispensabile compiere rapidi progressi nel raggiungimento degli obiettivi del Quadro di Sendai per quanto riguarda la resilienza al rischio di catastrofi, in sinergia con gli obiettivi dello sviluppo sostenibile e del cambiamento climatico. La resilienza ai disastri è l'unico modo per ridurre al minimo l'esacerbazione degli spostamenti associati ai disagi ambientali e ai cambiamenti climatici. A sua volta, lo sfollamento causato da disastri ambientali a rapida o lenta insorgenza è già una realtà che richiede un'attuazione



migliore e più ambiziosa delle disposizioni previste dal Quadro di Sendai sulla mobilità umana nelle situazioni di catastrofe.

3.1. In questo contesto, l'ulteriore degrado della terra, l'innalzamento del livello del mare e l'aumento dell'intensità e della frequenza di eventi meteorologici e climatici estremi renderanno probabilmente la migrazione un modo sempre più attraente per adattarsi ai cambiamenti dell'ambiente umano. Favorire la migrazione volontaria quando c'è ancora spazio per decidere evita futuri spostamenti forzati, che sono sempre più traumatici. A questo proposito, il rafforzamento della resilienza sia dei migranti che delle comunità di destinazione, come richiesto dal paragrafo 30(1) del SFDRR, presuppone il miglioramento dei canali per una migrazione ordinata, sicura e legale dai Paesi ad alta esposizione e ai disastri ambientali.

3.1.1. Un'opzione potrebbe essere la creazione di quote di permessi di lavoro per quei settori lavorativi nel paese di destinazione che richiedono una forza lavorativa che l'offerta nazionale non può coprire. In questo modo si eviterebbe la competizione tra la comunità immigrata e la popolazione nazionale e, quindi, la creazione di tensioni tra le due.

3.1.2. Un'altra alternativa sarebbe la creazione di borse di studio in settori professionali strategici sia per il Paese di assegnazione che per i Paesi d'origine dei beneficiari. Queste borse di studio indirizzate rafforzerebbero la capacità di resistenza sia dei giovani borsisti, che aumenterebbero la loro occupabilità nel mercato del lavoro globale, sia delle comunità di origine, che beneficerebbero del capitale intellettuale di coloro che scelgono di tornare.

3.2. In previsione di una recrudescenza degli spostamenti forzati intraregionali, soprattutto tra aree confinanti con diversi Paesi, la cooperazione regionale di cui al paragrafo 28 (d) del SFDRR diventa uno strumento necessario sia per affrontare i fattori ambientali alla base degli spostamenti che gli stessi flussi transfrontalieri. Le politiche migratorie negoziate a questo proposito dovrebbero adottare un approccio basato sui diritti umani, prestando particolare attenzione al rispetto del principio di non respingimento degli sfollati in aree in cui le condizioni ambientali possono mettere in pericolo la loro vita o integrità.

3.3. Inoltre, la maggiore ricorrenza di eventi atmosferici estremi moltiplicherà le evacuazioni di emergenza. Garantire una risposta adeguata da parte delle autorità pubbliche e dei servizi di emergenza e di protezione civile, soprattutto a livello locale, sarà fondamentale per ridurre al minimo la perdita di vite umane e per fornire agli sfollati condizioni di vita sicure e dignitose per tutta la durata dello spostamento, in linea con il paragrafo 30(h) e (m) del SFDRR.

3.4. La preparazione è fondamentale per il successo dell'evacuazione, così come il principio di "ricostruire meglio" durante la fase post-disastro. Questo principio, sancito dal paragrafo 33(j) del SFDRR, dovrebbe guidare il successivo recupero, la riabilitazione e la ricostruzione delle aree colpite dal disastro, in modo da evitare ulteriori spostamenti in futuro.

L'intervento post-catastrofe deve procedere speditamente, poiché la probabilità che i diritti e le libertà fondamentali degli sfollati vengano minati o violati aumenta con il prolungarsi della durata dello sfollamento. Tuttavia, la rapidità del lavoro di riabilitazione e recupero non può verificarsi a detrimento del principio di "ricostruire meglio". Fare altrimenti esporrebbe le comunità colpite a ulteriori spostamenti a seguito dei prossimi disastri, esacerbando le loro sofferenze e rendendole più vulnerabili a ogni nuovo assalto della natura. A questo proposito, la fase di ricostruzione offre l'opportunità di migliorare l'applicazione dei codici di sicurezza contro i rischi di disastri nella riabilitazione di edifici, servizi e infrastrutture, compresa l'esclusione delle aree ritenute troppo pericolose per essere riabitate (par. 33(l) SFDRR).

3.5. Da ultimo, è probabile che i processi di rilocalizzazione di intere popolazioni, a cui si fa riferimento nel paragrafo 27 (k) del SFDRR, acquistino importanza in futuro, quando i processi di lento degrado ambientale, come la desertificazione o l'innalzamento del livello del mare, diventeranno più acuti. In effetti, è probabile che il trasferimento delle popolazioni a rischio emerga come l'unica opzione praticabile quando è impossibile il recupero dell'area degradata o quando i costi delle misure di protezione o il loro impatto ambientale sono insormontabili, come può accadere nelle aree costiere a bassa quota.

3.5.1. Tuttavia, data la complessità e le difficoltà coinvolte nei processi di rilocalizzazione, e l'effetto traumatico che hanno sulle popolazioni colpite attraverso la perdita dei legami affettivi e culturali con la terra e la comunità, la rilocalizzazione

dovrebbe rimanere una strategia di ultima istanza. Pertanto, evitare la necessità di future delocalizzazioni attraverso politiche di uso del suolo che impediscano la creazione di insediamenti umani in aree vulnerabili dal punto di vista ambientale o sensibili ai disastri si rivelerà, nel tempo, la strategia più intelligente (parr. 27 (k) e 30 (f) SFDRR).

3.5.2. Anche se il Sendai Framework non contiene disposizioni specifiche a questo proposito, la rilocalizzazione, quando è considerata la migliore o unica opzione, deve rispettare i diritti umani delle persone trasferite per non costituire uno spostamento arbitrario. A questo proposito, è essenziale cercare, per quanto possibile, la partecipazione e il consenso sia delle comunità trasferite che di quelle ospitanti, prestare la dovuta attenzione ai bisogni speciali dei più vulnerabili e ridurre il rischio di movimenti secondari assicurando i mezzi di sussistenza nei nuovi insediamenti. Solo con la collaborazione di tutte le parti coinvolte è possibile garantire la sostenibilità degli insediamenti nelle aree di destinazione e quindi il successo della ricollocazione a medio e lungo termine.

4. Finalmente, lo spostamento forzato causato dal cambiamento ambientale, incluso il cambiamento climatico, è una questione trasversale che può essere integrata negli OSS dell'*Agenda 2030 Agenda 2030 per lo sviluppo sostenibile* da una doppia prospettiva.

4.1. In primo luogo, facilitando una migrazione ordinata, sicura e legale come mezzo per ridurre la diseguale vulnerabilità alle perturbazioni ambientali nei paesi sviluppati e in via di sviluppo, in linea con l'OSS 10.7. Si è già fatto riferimento a varie strategie di migrazione lavorativa e non lavorativa come adattamento al rischio di disastri, che il Quadro di Sendai prevede come uno dei suoi obiettivi. L'attuazione di tali strategie potrebbe anche contribuire al raggiungimento di altri OSS. Da un lato, le borse di studio servirebbero all'obiettivo 4.b, che entro il 2020 mirava ad aumentare significativamente il numero di borse di studio disponibili a livello globale per i Paesi in via di sviluppo, in particolare i Paesi meno sviluppati, i SIDS e i Paesi africani, nell'ambito dell'OSS 4 (istruzione di qualità). Inoltre, le politiche di migrazione lavorativa sarebbero allineate con l'OSS 8 (lavoro dignitoso e crescita economica per tutti).

4.2. In secondo luogo, poiché la presenza di sfollati ambientali riflette uno sviluppo insostenibile o una mancanza di sviluppo, l'intera Agenda 2030 serve a prevenire o minimizzare questo fenomeno. Così, il raggiungimento degli OSS eliminerà o ridurrà

l'impatto delle perturbazioni ambientali sulle persone, rafforzando la resilienza delle comunità per far fronte allo stress ambientale senza sfollare. Allo stesso modo, la loro attuazione sarà utile per affrontare i fattori di povertà e sovrappopolazione che sono alla base dello sfollamento.

Quelli che seguono sono alcuni degli OSS che potrebbero contribuire maggiormente a prevenire futuri spostamenti ambientali delle popolazioni: OSS 1 (povertà zero); OSS 2 (fame zero); OSS 3.7 (strategie di pianificazione familiare sotto l'obiettivo salute e benessere); OSS 6 (acqua pulita e igiene); OSS 11.1, 11.6 e 11.b (creare città sostenibili, pulite e resistenti ai disastri); OSS 12 (produzione e consumo responsabile per minimizzare/evitare la produzione di rifiuti e l'uso improprio delle risorse naturali); OSS 13 (cambiamento climatico) insieme all'OSS 7.2 e 7.3 (efficienza energetica e uso di energia rinnovabile pulita); OSS 14 (conservazione degli ecosistemi marini) e OSS 15 (conservazione degli ecosistemi terrestri).

4.3. Tuttavia, gli ultimi due rapporti annuali di monitoraggio del Segretario Generale delle Nazioni Unite mostrano che la comunità internazionale è ancora lontana dal raggiungere uno sviluppo sostenibile nelle sue dimensioni economiche, sociali e ambientali. Inoltre, i rapporti sottolineano che l'aiuto allo sviluppo ai paesi in via di sviluppo rimane insufficiente. L'inizio della pandemia di Covid-19 ha solo peggiorato le prospettive globali di sviluppo sostenibile. Con questo scenario in mente, non è prevedibile che gli OSS delineati sopra saranno pienamente realizzati entro il 2030. Al contrario, i rapporti del Segretario Generale indicano piuttosto un progresso parziale e modesto, per cui gli spostamenti legati al degrado ambientale, al cambiamento climatico e ai disastri naturali di rapida insorgenza continueranno a verificarsi in futuro.

## **I.**

### **COME SI POSSONO COLMARE LE LACUNE GIURIDICHE INDIVIDUATE NELLA PROTEZIONE INTERNAZIONALE DEGLI SFOLLATI AMBIENTALI?**

1. La risposta a questa domanda è fornita dal commento al progetto di trattato internazionale preparato dall'Università di Limoges sullo statuto internazionale degli sfollati ambientali. Va notato, tuttavia, che la conclusione di un trattato internazionale sullo sfollamento ambientale non risolverà il problema di fondo dello sviluppo insostenibile che è alla base dei movimenti di persone legati ai cambiamenti ambientali.

1.1. Uno sviluppo sostenibile dal punto di vista sociale, economico e ambientale è particolarmente importante nel caso di sfollamenti legati al degrado terrestre. In questo senso, è veramente sorprendente che lo sconvolgimento ambientale primordiale che ha dato origine nel 1948 agli sfollati ecologici in *Road to Survival* di William Vogt e che gli autori "massimalisti" successivi hanno incolpato dei cosiddetti "rifugiati ambientali" nei loro scritti neomalthusiani, in cui mettevano in guardia dal rapido esaurimento e dalla distruzione delle terre fertili, ha gradualmente perso importanza a favore di catastrofi naturali di rapida insorgenza, per poi essere relegato in secondo piano una volta che il cambiamento climatico e l'innalzamento del livello del mare sono entrati in scena. È quindi importante che gli accademici rivendichino ancora una volta il ruolo che la conservazione e la protezione degli ecosistemi marini e terrestri, dai cui servizi dipende l'umanità, avranno nella prevenzione di futuri spostamenti.

1.2. Rimane anche una vasta area grigia di movimenti di popolazione, preludio allo sfollamento forzato, in cui i fattori ambientali si intersecano con altri condizionamenti politici e socio-economici, dando origine a movimenti migratori che emergono come strategia di adattamento davanti allo stress ambientale. La natura prevalentemente volontaria di questi movimenti non significa, tuttavia, che coloro che migrano per motivi ambientali non necessitino dell'attenzione del diritto internazionale, poiché la migrazione comporta anche rischi per i diritti dei migranti, rendendoli un gruppo altrettanto vulnerabile. In questo senso, il *Global Compact per una migrazione sicura, ordinata e regolare* dovrebbe essere la tabella di marcia per i governi.

1.3. Allo stesso modo, gli abitanti dei SIDS a bassa quota costituiscono un gruppo speciale nel contesto dello sfollamento ambientale, a causa della particolare vulnerabilità che affrontano in termini di rischio di futura apolidia climatica e della necessità di reinsediamento in uno Stato terzo. Anche se si concludesse un trattato internazionale sullo sfollamento ambientale che includesse disposizioni al riguardo, sul modello, ad esempio, dei Principi di Penisola, tali disposizioni non potrebbero andare oltre un quadro generale da adattare alle particolarità di ciascun caso. Saranno quindi necessari ulteriori sviluppi e specificazioni sulla base di accordi bilaterali o multilaterali tra gli Stati coinvolti, soprattutto quando il reinsediamento comporta il trasferimento della sovranità su parte del territorio dello Stato ricevente o la concessione della sua nazionalità alle comunità insulari trasferite.

1.4. Alla luce di quanto sopra, si deve concludere che lo sviluppo del diritto positivo sulla protezione degli sfollati ambientali deve andare di pari passo con l'attuazione di strumenti politici o di soft law.

2. D'altra parte, autori come Williams sono scettici sulle possibilità reali di concludere un trattato internazionale globale sullo spostamento del clima che raggiunga anche un numero di ratifiche sufficientemente soddisfacente da rendere utile un processo negoziale così complesso e non privo di ostacoli. A suo avviso, la riluttanza degli Stati ad accettare l'intervento internazionale per la protezione e l'assistenza degli sfollati interni, l'ammissione di responsabilità nello scatenare la crisi climatica che la ratifica di tale trattato comporterebbe per i Paesi sviluppati e la mancanza di consenso sulla definizione di "rifugiato climatico" farebbero naufragare le negoziazioni prima ancora che siano iniziate<sup>1</sup>.

La riluttanza di Williams non può essere considerata infondata. In effetti, il rifiuto della *Platform on Disaster Displacement* di andare avanti con qualsiasi processo di creazione di nuove norme internazionali legalmente vincolanti per la protezione dello spostamento transfrontaliero nel contesto dei disastri e del cambiamento climatico<sup>2</sup> è una netta indicazione che i suoi argomenti non sono così sbagliati. Questa reazione è di per sé sintomatica dell'appetito della comunità internazionale per l'idea di concludere un trattato internazionale in merito, dato che questa piattaforma riunisce diciassette Stati più l'UE.

La sfida è ancora più grande nel caso della convenzione di Limoges, poiché questa proposta mira a proteggere non solo gli sfollati transfrontalieri ma anche gli sfollati interni, la cui assistenza internazionale è sempre più difficile dal punto di vista della sovranità statale e del principio di non interferenza negli affari interni. Inoltre, mira a farlo di fronte a qualsiasi perturbazione ambientale, naturale o antropogenica, e non solo di fronte ai rischi legati al cambiamento climatico.

3. In questo scenario, certamente sconcertante, i *Principi di Penisola* possono rivelarsi una guida utile per gli Stati. Proprio per il loro status di linee guida non vincolanti, questi principi costituiscono una valida via di mezzo tra l'attuale situazione

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<sup>1</sup> WILLIAMS, A., "Turning the tide: Recognizing climate change refugees in International Law", *Law & Policy*, Vol. 30, No. 4, October 2008, p. 517.

<sup>2</sup> PDD, *Platform on Disaster Displacement (PDD) Strategy 2019-2022*, p. 5.

di assenza di uno strumento specifico per la protezione degli sfollati ambientali e la certezza giuridica che, all'estremo opposto, fornirebbe un trattato internazionale universale in materia.

Sebbene il campo di applicazione sia limitato solo agli spostamenti legati al cambiamento climatico, i dati della prima parte della tesi mostrano che lo sconvolgimento ambientale responsabile della maggior parte degli spostamenti è di tipo idrologico e meteorologico, cioè legato al cambiamento climatico. Ciò rende ancora più triste il fatto che i loro creatori si siano accontentati di emulare la portata dei Principi Guida delle Nazioni Unite piuttosto che tentare di creare un catalogo di principi comuni allo spostamento climatico sia interno che interstatale.

4. Tuttavia, il pragmatismo della soluzione che offrono i *Principi di Penisola* non deve farci dimenticare che tutti gli ostacoli identificati da Williams alla negoziazione di un trattato internazionale sullo spostamento ambientale sono politici, non giuridici. Il loro riconoscimento e la loro accettazione non dovrebbero, quindi, frenare gli sforzi dell'Accademia per formulare proposte giuridiche assiologicamente ambiziose, anche se politicamente irrealistiche quando furono concepite. Certamente, il progetto di Limoges è entrambi: giuridicamente audace e politicamente rischioso. Tuttavia, al momento opportuno, ci sarà tempo per adattare gli ideali accademici alle aspettative politiche di uno scenario più favorevole.

5. Questo momento propizio potrebbe essere arrivato. Nel 2007, la Commissione di diritto internazionale ha introdotto la questione della protezione delle vittime di disastri nel suo programma di lavoro<sup>3</sup>. Il 9 dicembre 2021, quattordici anni dopo e appena un mese prima di depositare questa tesi, l'Assemblea delle Nazioni Unite ha deciso, con la sua risoluzione 76/119<sup>4</sup>, "di includere nell'ordine del giorno provvisorio della sua settantottesima sessione il punto intitolato "Protezione delle persone in caso di catastrofi"<sup>5</sup>, così come di considerare il progetto di articoli della Commissione e la sua raccomandazione "che l'Assemblea Generale o una conferenza internazionale di plenipotenziari elaborino una convenzione sulla base del progetto di articoli"<sup>6</sup>.

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<sup>3</sup> UNGA, *Report of the International Law Commission. Sixty-eighth session (2 May-10 June and 4 July-12 August 2016)*, Supplement No. 10 (A/71/10), 2016, p. 12, par. 38.

<sup>4</sup> UNGA, *Resolution 76/119 Protection of persons in the event of disasters, adopted by the General Assembly at its Seventy-sixth session (A/RES/76/119)*, 17 December 2021, 2 pp.

<sup>5</sup> *Ibid.*, par. 7 [traduzione dell'autore dell'originale in inglese].

<sup>6</sup> *Ibid.*, par. 4 [traduzione dell'autore dell'originale in inglese].

L'Assemblea giustifica la sua decisione con la preoccupazione della comunità internazionale per "il numero crescente di catastrofi nel mondo, la loro intensità e il loro impatto sulle popolazioni colpite"<sup>7</sup>, con "il tema della protezione delle persone in caso di catastrofi (...) essendo di grande importanza nelle relazioni tra gli Stati"<sup>8</sup>.

In caso di apertura delle negoziazioni su una convenzione per la protezione delle persone in caso di disastri, si potrebbe cogliere l'occasione per introdurre aspetti legati allo spostamento, al ritorno e all'eventuale ricollocazione di coloro che sono stati colpiti da disastri ambientali nel corso delle discussioni. Potrebbe anche essere possibile arruolare l'appoggio della *Platform on Disaster Displacement*, finora riluttante, che invece ha espresso la sua volontà di spingere progetti normativi in corso<sup>9</sup>.

5.1. Il progetto di articoli della Commissione fornisce un fertile punto di partenza per affrontare lo spostamento ambientale<sup>10</sup>. In primo luogo, la definizione di "disastro" nel progetto di articoli non discrimina secondo l'origine naturale o antropogenica, o la lenta o rapida evoluzione, dell'evento o della serie di eventi calamitosi. In questo senso, la Commissione di diritto internazionale chiarisce che "il progetto di articoli si applica ugualmente a eventi improvvisi (come un terremoto o uno tsunami) e a eventi di lenta insorgenza (*come la siccità o l'innalzamento del livello del mare*), nonché a eventi frequenti su piccola scala (inondazioni o frane)"<sup>11</sup>.

Ciò che è decisivo per far scattare la protezione e l'assistenza internazionale prevista dalla bozza di trattato è che questi eventi "*turbino gravemente il funzionamento della società*"<sup>12</sup>. Si noti la somiglianza con la definizione di perturbazione ambientale utilizzata in questa tesi, intesa come qualsiasi cambiamento fisico, chimico o biologico delle condizioni o delle utilità di un ecosistema che lo rende temporaneamente o permanentemente incapace di continuare a soddisfare i bisogni della comunità umana che dipende da esso. Inoltre, tra gli effetti negativi che qualificano questi eventi

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<sup>7</sup> Ibid., terzo recital [traduzione dell'autore dell'originale in inglese].

<sup>8</sup> Ibid., quinto recital [traduzione dell'autore dell'originale in inglese].

<sup>9</sup> PDD, (...) *Strategy 2019-2022*, op. cit., p. 5.

<sup>10</sup> Il testo del progetto di articoli annotati può essere trovato su: UNGA, *Report of the International Law Commission...*(A/71/10), op. cit., pp. 13-73, par. 48.

<sup>11</sup> Ibid., p. 23, par. 4 [traduzione dell'autore dell'originale in inglese e corsivo inserito].

<sup>12</sup> Vid. la definizione di "disastro" nella bozza dell'articolo 3(a) [corsivo inserito].



dirompenti come disastri, la bozza di articoli cita espressamente lo spostamento di massa<sup>13</sup>.

5.2. *Ratione loci*, la bozza di trattato prevede una definizione composta di catastrofe, che comprende sia l'evento che i suoi effetti, che permetterebbe di includere nel suo ambito di protezione sia gli sfollati interni che quelli transfrontalieri.

5.2.1. Di conseguenza, per "Stato colpito" non si intende solo lo Stato sul cui territorio si è verificata la catastrofe, in senso stretto, ma anche qualsiasi altro Paese colpito collateralmente, come ad esempio lo Stato i cui confini sono raggiunti dai flussi di sfollati derivanti dalla catastrofe. Tuttavia, affinché il trattato sia applicabile, tale spostamento transfrontaliero dovrebbe essere di entità tale da "sconvolgere seriamente il funzionamento della società" dello Stato ricevente, secondo la definizione di "disastro" contenuta nella bozza<sup>14</sup>.

5.2.2. Se da un lato uno Stato confinante che si trova ad affrontare un afflusso massiccio di sfollati può acquisire lo status di "Stato colpito" ai sensi del trattato e richiedere assistenza internazionale, dall'altro non bisogna dimenticare la situazione di irregolarità e di insicurezza giuridica in cui versano le vittime di disastri naturali al di fuori dei confini del proprio Stato, che la bozza di articoli non affronta.

a. A questo punto, le modalità di cooperazione in risposta ai disastri previste nella bozza dell'articolo 8 potrebbero includere la cooperazione interstatale per le evacuazioni congiunte e l'apertura di corridoi umanitari per consentire l'ingresso di coloro che fuggono da disastri ambientali, sia spontanei che guidati dalle autorità.

b. Allo stesso modo, il principio della dignità umana sancito nella bozza dell'articolo 4 e l'approccio ai diritti umani incorporato nella bozza dell'articolo 5 nel contesto della risposta alle catastrofi forniscono la base per lo sviluppo, nell'ambito del trattato, di uno status di protezione complementare per le persone sfollate a causa di disastri naturali attraverso le frontiere. Le principali conseguenze giuridiche di questo status sarebbero il non respingimento verso il luogo del disastro e il rilascio di un visto umanitario che consentirebbe ai titolari di risiedere nel Paese vicino fino al loro rientro in sicurezza.

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<sup>13</sup> Id.

<sup>14</sup> Vid. *ibid.*, bozza dell'articolo 3(b) e il suo commento a p. 25, par. 16.

5.3. *Ratione temporis*, la protezione dei diritti umani e la fornitura di aiuti umanitari alle persone colpite, anche attraverso la cooperazione e l'assistenza internazionale, si concentra principalmente sulla risposta immediata dopo la catastrofe e sulla fase di recupero iniziale<sup>15</sup>.

5.3.1. La fase di pre-spostamento, che mira a ridurre al minimo la probabilità di sfollamento, potrebbe essere incanalata attraverso la bozza dell'articolo 9, che riguarda le attività di riduzione del rischio di catastrofi, di prevenzione e di mitigazione, compresa l'attuazione di sistemi di allerta precoce. L'espressione contenuta nella bozza dell'articolo 9 "adottando misure appropriate" per ridurre il rischio di danni causati da un pericolo consentirebbe di includere tra le misure di riduzione del rischio di catastrofi anche l'evacuazione e il trasferimento delle popolazioni esposte e vulnerabili prima che si verifichi un disastro e si concretizzi il conseguente rischio di sfollamento<sup>16</sup>.

Allo stesso modo, il riferimento nella bozza dell'articolo 6 secondo cui "la risposta alle catastrofi deve avvenire (...) tenendo conto dei bisogni delle persone particolarmente vulnerabili" richiederebbe un diritto di informazione e partecipazione delle comunità esposte al rischio di catastrofi e di possibili spostamenti<sup>17</sup>, come contenuto nella bozza di Limoges con le osservazioni fatte nel capitolo VIII di questa tesi.

5.3.2. Tuttavia, non è previsto un sostegno più duraturo da parte della comunità internazionale nelle situazioni in cui gli effetti del disastro, compreso lo sfollamento, sono duraturi o addirittura permanenti, come nel caso in cui gli sfollati non possano tornare alle loro case.

5.4. Dal punto di vista dello sfollamento associato alle perturbazioni ambientali, questa sarebbe la limitazione più significativa della bozza di trattato per la protezione delle persone in caso di disastri. Al di là delle "attrezzature e dei beni" che possono essere forniti come parte dell'"assistenza esterna" allo Stato colpito durante la fase di ricostruzione (art. 3(e) della bozza di trattato), non sono previste soluzioni durevoli allo sfollamento come parte essenziale della protezione e dell'assistenza alle vittime dei

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<sup>15</sup> Ibid., commento alla bozza dell'articolo 1, p. 19, par. 4.

<sup>16</sup> Vid. ibid., commento alla bozza dell'articolo 9, p. 48, par. 11.

<sup>17</sup> Ibid., commento alla bozza dell'articolo 6, p. 35, par. 8. A questo proposito, la Commissione di diritto internazionale ha inteso l'espressione "tenere conto" in senso ampio, comprendendo, tra l'altro, l'accessibilità delle informazioni e la partecipazione della comunità.

disastri, sia facilitando il loro ritorno al luogo di origine, sia la loro integrazione nelle comunità ospitanti o il loro trasferimento in un altro luogo, compreso il reinsediamento in Paesi terzi.

Pertanto, affinché un futuro trattato sulla protezione delle vittime di disastri possa offrire una protezione veramente completa ed efficace agli sfollati ambientali, sarebbe necessario ampliare il suo contenuto *ratione materiae* per quanto riguarda i diritti degli sfollati a causa di disastri. Questa necessità è tanto più evidente in quanto, come già detto, tra le vittime di disastri la Commissione di diritto internazionale ha incluso le persone colpite dall'innalzamento del livello del mare che, almeno nel caso dei SIDS a bassa quota, probabilmente dovranno essere trasferite e reinsediate in Stati stranieri.

Di conseguenza, l'approccio basato sulla sovranità che la bozza di trattato adotta, incentrato principalmente sulla disciplina dei diritti e degli obblighi dello Stato colpito e degli Stati e altri attori che prestano assistenza nelle loro relazioni reciproche, dovrebbe essere bilanciato con un approccio incentrato sulle persone. Questa nuova prospettiva comporterebbe un approccio più approfondito agli obblighi degli Stati in relazione alle esigenze di protezione delle vittime di disastri, che questa versione della bozza affronta solo in modo generico (vid. artt. 4, 5 e 6 della bozza). È in questo ambito che proposte normative come il progetto di Limoges o i Principi di Penisola possono offrire un valido contributo al progetto di trattato della Commissione di diritto internazionale.

6. In definitiva, questo progetto di trattato, nella versione sottoposta all'esame dell'Assemblea generale delle Nazioni Unite, potrebbe non essere il trattato autonomo che gli studiosi favorevoli a un nuovo strumento di diritto internazionale avevano in mente quando hanno elaborato le loro proposte per un trattato con un approccio globale allo sfollamento ambientale. Tuttavia, data la sua affinità tematica, il progetto di trattato sulla protezione delle persone in caso di disastri è un veicolo più che adeguato per muoversi verso la concretizzazione normativa di proposte come quelle di Limoges o Penisola per la protezione degli sfollati ambientali. Se venissero avviati i negoziati, solo la determinazione della società civile, compreso il mondo accademico, a influenzare la volontà politica deciderà quanto del contenuto delle proposte accademiche esistenti verrà alla fine incorporato in questo trattato per la protezione delle persone in caso di disastri. L'opportunità c'è.

**Table 19 - Legal gaps in the protection of environmentally displaced persons in International and Regional Law**

<b>Type of movement related to changes in the environment</b>		<b>Hard Law Instruments</b>	<b>Soft Law Instruments</b>	<b>Proposals and progress on the protection of environmentally displaced people</b>	
<p align="center"><b>Migration</b></p> <p>Predominantly voluntary. Often used as a temporary or seasonal risk reduction strategy by rural households in less developed regions under environmental stress. Migration may become permanent when the environmental situation worsens and with it the socio-economic opportunities at home.</p>		<p align="center"><b>International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families</b></p>	<p align="center"><b>Global compact for Safe, Oderly and Regular Migration</b></p>	<p align="center"><b>Labour or educational migration policies</b> (e.g. from Australia/New Zealand to Kiribati/Tuvalu)</p>	
			<p align="center"><b>2030 Agenda for Sustainable Development</b> (SDG 10)</p>		
<p align="center"><b>International displacement</b></p> <p>Predominantly forced in the face of environmental disruption.</p>	<p><u><b>Refugees</b></u></p>	<p align="center"><b>The 1951 Convention Relating to the Status of Refugees</b></p> <p>Only in cases where the disturbance of the environment is intentionally used or provoked to persecute a part of the population for one of the reasons set out in Article 1.A.2.</p>	<p align="center"><b>The 1984 Cartagena Declaration on Refugees in Latin America</b></p> <p>Same scenario as the 1969 OAU Convention.</p>	<p align="center"><b>Nansen Initiative Protection Agenda</b></p> <p>Promotes the protection of people displaced across borders in the context of disasters and climate change.</p>	<p align="center"><b>Draft Protocol to the UNFCCC by Biermann and Boas</b></p> <p>Only climate displacement, predominantly focused on cross-border displacement.</p>

<p><b>International displacement</b> is infrequent, with documented examples being intra-regional movements between countries with shared borders.</p>	<p><b>The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa</b></p> <p>It would only protect those fleeing an environmental disruption that has seriously disturbed public order.</p>	<p><b>The AALCO 1966 Bangkok Principles on status and treatment of Refugees</b></p> <p>Same scenario as the 1969 OAU Convention.</p>	<p><b>Draft international treaty by Docherty and Giannini</b></p> <p>Only cross-border climate displacement</p>	<p><b>Draft international treaty by Hodgkinson et. al.</b></p> <p>Only climate displacement, both internal and cross-border</p> <p><b>Draft international treaty of the University of Limoges</b></p> <p>It includes both rapid- and slow-onset environmental disruptions of natural or anthropogenic origin, including those related to climate change. Protects both internally and cross-border displaced person</p>
	<p><b>The 1994 Arab League Convention on Regulating Status of Refugees in the Arab Countries</b></p> <p><b>(Not in force)</b></p> <p>Article 1 includes natural disasters as a cause for obtaining refuge.</p>			
	<p><b>Council Directive 2001/55/EC</b></p> <p>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.</p>			
	<p><b><u>Temporary protection</u></b></p> <p>Only within the geographical scope of the EU.</p>			

					<p><b>Draft international treaty of the International Law Commission for the Protection of Persons in the Event of Disasters</b> It includes both rapid- and slow-onset environmental disruptions of natural or anthropogenic origin, including those related to climate change. It would cover assistance to IDPs and a case could be made for cross-border displacement.</p>
	<p><b><u>Statelessness</u></b> Only applicable to inhabitants of low-lying SIDS whose statehood is threatened by sea-level rise.</p>	<p><b>The 1954 Convention Relating to the Status of Stateless Persons</b> In case of loss of nationality as a result of the disappearance of the island State.</p>	<p><b>Inter-American Juridical Committee Guide on the Protection of Stateless Persons</b> Calls for the development of national legislation to effectively implement UN Conventions on the matter.</p>		
		<p><b>The 1961 Convention on the Reduction of Statelessness</b> For cases of State succession, where the SIDS concerned merge with other States</p>	<p><b>Joint Conclusions of the 2nd Regional Conference of Central Asian Government Representatives on the Right to a Legal Identity and the Prevention of</b></p>		

		<p align="center"><b>European Convention on Nationality</b></p> <p>Acquisition of a European country's nationality by stateless inhabitants of sinking SIDS</p>	<p align="center"><b>Statelessness</b></p> <p>Achieve more meaningful ratification of the UN Conventions on statelessness and ensure that national legislation is brought into line with these international instruments to ensure their effective implementation.</p>		
		<p align="center"><b>Draft Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to Nationality and the Eradication of Statelessness in Africa (Not in force)</b></p>			

<p><b><u>Non-refoulement principle</u></b></p> <p>Only in cases of extreme gravity, where return to the place affected by an environmental disruption would pose a real risk of irreparable harm to life or be equivalent in its consequences to inhuman or degrading treatment.</p>	<p><b>Articles 6 and 7 ICCPR</b></p> <p>Vid. CDH, <i>Ioane Teitiota v. New Zealand</i> (CCPR/C/127/D/2728/2016)</p>			
	<p><b>Articles 2(1) and 3 ECHR</b></p>			
	<p><b>Articles 2, 4, 16, 18, 21 and 24 ACHPR</b></p> <p>Vid. African Commission on Human and Peoples' Rights, <i>case Ogoni v. Nigeria</i> (Communication No. 155/96)</p>			
	<p><b>Articles 4, 5 and 22(8) ACHR</b></p>			



<p style="text-align: center;"><b>Internal displacement</b></p> <p>Predominantly forced in the face of environmental disruption, the most common type of displacement</p>	<p><b>The 2006 Protocol on Protection and Assistance to Internally Displaced Persons in the Great Lakes Region (Africa)</b></p> <p>Gives binding force to the UN Guiding Principles on Internal Displacement of 1998.</p> <p><b>African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (in force since 2012).</b></p> <p>Includes both those internally displaced by natural or man-made disasters (Art. 1(k)) and by climate change-related processes (Art. 5(4)).</p>	<p><b>The 1998 United Nations Guiding Principles on Internal Displacement</b></p> <p>Includes in the definition of IDPs persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence as a result of or in order to avoid the effects of natural or man-made disasters.</p>	<p><b>The Peninsula Principles</b></p> <p>A set of non-binding principles on climate displacement within States</p>	
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**ANNEX I**  
**TOTAL NUMBER OF NATURAL DISASTERS AND**  
**ASSOCIATED INTERNAL ENVIRONMENTAL**  
**DISPLACEMENT AND DAMAGE**  
**WORLDWIDE AND BY CONTINENT**

**Table 20 - Total natural disasters**

	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	172	98	24	30	<b>324</b>
<b>2017</b>	152	140	27	25	<b>344</b>
<b>2018</b>	140	123	27	30	<b>320</b>
<b>2019</b>	220	112	29	35	<b>396</b>
<b>2020</b>	221	133	18	20	<b>392</b>
<b>2016-2020</b>	<b>905</b>	<b>606</b>	<b>125</b>	<b>140</b>	<b>1,776</b>

**Table 21 - Total natural disasters per continent**

<b>Africa</b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	34	6	6	2	<b>48</b>
<b>2017</b>	25	13	10	0	<b>48</b>
<b>2018</b>	35	8	3	0	<b>46</b>
<b>2019</b>	69	12	8	0	<b>89</b>
<b>2020</b>	68	5	8	1	<b>82</b>
<b>2016-2020</b>	<b>231</b>	<b>44</b>	<b>35</b>	<b>3</b>	<b>313</b>

<b>Americas</b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	37	31	8	5	<b>81</b>
<b>2017</b>	37	54	6	3	<b>100</b>
<b>2018</b>	28	20	13	6	<b>67</b>
<b>2019</b>	43	22	8	8	<b>81</b>
<b>2020</b>	30	51	3	4	<b>88</b>
<b>2016-2020</b>	<b>175</b>	<b>178</b>	<b>38</b>	<b>26</b>	<b>417</b>

<b>Asia</b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	79	51	7	17	<b>154</b>
<b>2017</b>	80	49	2	16	<b>147</b>
<b>2018</b>	62	58	3	17	<b>140</b>
<b>2019</b>	87	42	10	20	<b>159</b>
<b>2020</b>	98	47	4	12	<b>161</b>
<b>2016-2020</b>	<b>406</b>	<b>247</b>	<b>26</b>	<b>82</b>	<b>761</b>

<b>Europe</b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	19	4	1	4	<b>28</b>
<b>2017</b>	8	20	8	5	<b>41</b>
<b>2018</b>	13	29	7	1	<b>50</b>
<b>2019</b>	18	34	1	4	<b>57</b>
<b>2020</b>	17	21	2	3	<b>43</b>
<b>2016-2020</b>	<b>75</b>	<b>108</b>	<b>19</b>	<b>17</b>	<b>219</b>

<b>Oceania</b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	3	6	2	2	<b>13</b>
<b>2017</b>	2	4	1	1	<b>8</b>
<b>2018</b>	2	8	1	6	<b>17</b>
<b>2019</b>	3	2	2	3	<b>10</b>
<b>2020</b>	8	9	1	0	<b>18</b>
<b>2016-2020</b>	<b>18</b>	<b>29</b>	<b>7</b>	<b>12</b>	<b>66</b>

**Table 22 - Total number of persons displaced by natural disasters**

	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	10,197,466	12,993,153	311,408	715,123	<b>24,217,150</b>
<b>2017</b>	8,665,651	7,544,660	1,796,830	771,233	<b>18,778,374</b>
<b>2018</b>	5,541,911	9,327,322	1,185,813	1,126,751	<b>17,181,797</b>
<b>2019</b>	10,054,415	13,046,079	804,372	949,934	<b>24,854,800</b>
<b>2020</b>	14,155,494	14,626,701	1,250,195	655,307	<b>30,687,697</b>
<b>2016-2020</b>	<b>48,614,937</b>	<b>57,537,915</b>	<b>5,348,618</b>	<b>4,218,348</b>	<b>115,719,818</b>

**Table 23 - Total number of persons displaced by natural disasters per continent**

<b>Africa</b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	977,397	75,724	4,363	21,331	<b>1,078,815</b>
<b>2017</b>	807,916	458,509	1,295,166	74	<b>2,561,665</b>
<b>2018</b>	2,004,732	245,407	372,685	640	<b>2,623,464</b>
<b>2019</b>	2,529,400	736,975	199,833	128	<b>3,466,336</b>
<b>2020</b>	4,204,768	66,399	36,936	9,548	<b>4,317,651</b>
<b>2016-2020</b>	<b>10,524,213</b>	<b>1,583,014</b>	<b>1,908,983</b>	<b>31,721</b>	<b>14,047,931</b>

<b>Americas</b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	236,753	2,218,419	218,402	292,082	<b>2,965,656</b>
<b>2017</b>	772,186	3,041,339	468,521	193,291	<b>4,475,337</b>
<b>2018</b>	266,877	954,633	399,379	65,817	<b>1,686,706</b>
<b>2019</b>	518,747	558,986	455,739	11,600	<b>1,545,072</b>
<b>2020</b>	293,834	3,141,610	1,080,505	12,520	<b>4,528,469</b>
<b>2016-2020</b>	<b>2,088,397</b>	<b>9,914,987</b>	<b>2,622,546</b>	<b>575,310</b>	<b>15,201,240</b>

<b>Asia</b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	8,967,103	10,618,166	78,609	368,691	<b>20,032,569</b>
<b>2017</b>	7,067,738	4,000,494	2,669	565,080	<b>11,635,981</b>
<b>2018</b>	3,245,059	8,094,275	392,622	986,307	<b>12,718,263</b>
<b>2019</b>	6,961,395	11,737,838	104,523	879,446	<b>19,683,202</b>
<b>2020</b>	9,625,690	11,291,718	62,599	590,833	<b>21,570,840</b>
<b>2016-2020</b>	<b>35,866,985</b>	<b>45,742,491</b>	<b>641,022</b>	<b>3,390,357</b>	<b>85,640,855</b>

<b>Europe</b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	11,760	1,703	9,334	30,191	<b>52,988</b>
<b>2017</b>	10,196	10,045	28,650	1,002	<b>49,893</b>
<b>2018</b>	12,870	2,650	10,525	658	<b>26,703</b>
<b>2019</b>	36,170	1,387	22,429	35,485	<b>95,471</b>
<b>2020</b>	18,630	6,179	22,608	42,398	<b>89,815</b>
<b>2016-2020</b>	<b>89,626</b>	<b>21,964</b>	<b>93,546</b>	<b>109,734</b>	<b>314,870</b>

<b>Oceania</b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	4,453	79,141	700	2,828	<b>87,122</b>
<b>2017</b>	7,615	34,273	1,824	11,786	<b>55,498</b>
<b>2018</b>	12,373	30,357	10,602	73,329	<b>126,661</b>
<b>2019</b>	8,703	10,893	21,848	23,275	<b>64,719</b>
<b>2020</b>	12,572	120,795	47,547	8	<b>180,922</b>
<b>2016-2020</b>	<b>45,716</b>	<b>275,459</b>	<b>82,521</b>	<b>111,226</b>	<b>514,922</b>

**Table 24 - Total damages caused by natural disasters ('000 US\$)**

	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	65,035,117	53,670,900	11,110,553	37,251,003	<b>167,067,573</b>
<b>2017</b>	22,646,935	301,722,795	25,474,191	10,627,149	<b>360,471,070</b>
<b>2018</b>	22,275,022	78,567,020	34,699,237	8,613,998	<b>144,155,277</b>
<b>2019</b>	39,245,843	61,089,189	4,097,549	2,553,558	<b>106,986,139</b>
<b>2020</b>	54,010,112	92,336,036	19,549,178	15,361,160	<b>181,256,486</b>
<b>2016-2020</b>	<b>203,213,029</b>	<b>587,385,940</b>	<b>94,930,708</b>	<b>74,406,868</b>	<b>959,936,545</b>

**Table 25 - Total damages caused by natural disasters per continent ('000 US\$)**

<b>Africa</b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	319,170	29,919		517,085	<b>866,174</b>
<b>2017</b>	46,430	916,426	1,790,844		<b>2,753,700</b>
<b>2018</b>	882,852				<b>882,852</b>
<b>2019</b>	60,520	2,390,060	143,086		<b>2,593,666</b>
<b>2020</b>	485,799				<b>485,799</b>
<b>2016-2020</b>	<b>1,794,771</b>	<b>3,336,405</b>	<b>1,933,930</b>	<b>517,085</b>	<b>7,582,191</b>

<b>Americas</b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	18,629,173	37,595,916	6,812,426	2,280,593	<b>65,318,108</b>
<b>2017</b>	5,865,565	278,677,318	20,174,622	9,175,308	<b>313,892,813</b>
<b>2018</b>	1,868,681	42,887,609	32,107,235	539,551	<b>77,403,076</b>
<b>2019</b>	11,446,851	16,304,343	1,722,327	211,979	<b>29,685,500</b>
<b>2020</b>	4,365,898	65,274,698	19,369,098	1,073,153	<b>90,082,847</b>
<b>2016-2020</b>	<b>42,176,168</b>	<b>440,739,884</b>	<b>80,185,708</b>	<b>13,280,584</b>	<b>576,382,344</b>

<b>Asia</b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	40,647,222	13,850,277	39,96,682	23,942,276	<b>82,436,457</b>
<b>2017</b>	16,506,220	16,736,732	134,866	1,431,943	<b>34,809,761</b>
<b>2018</b>	18,543,232	33,333,460	1,187,012	7,884,525	<b>60,948,229</b>
<b>2019</b>	22,392,369	41,954,931		1,551,958	<b>65,899,258</b>
<b>2020</b>	47,221,652	22,698,453		652,791	<b>70,572,896</b>
<b>2016-2020</b>	<b>145,310,695</b>	<b>128,573,853</b>	<b>5,318,560</b>	<b>35,463,493</b>	<b>314,666,601</b>

<b>Europe</b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	5,383,102	952,881	177,254	6,107,924	<b>12,621,161</b>
<b>2017</b>	148,021	1,843,796	3,351,750	19,898	<b>5,363,465</b>
<b>2018</b>	940,977	2,281,205	110,068	124,097	<b>3,456,347</b>
<b>2019</b>	3,226,316	439,855	112,349	789,621	<b>4,568,141</b>
<b>2020</b>	575,692	1,405,045	169,610	13,635,216	<b>15,785,563</b>
<b>2016-2020</b>	<b>10,274,108</b>	<b>6,922,782</b>	<b>3,921,031</b>	<b>20,676,756</b>	<b>41,794,677</b>



<b>Oceania</b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total</b>
<b>2016</b>	56,450	1,241,907	124,191	4,403,125	<b>5,825,673</b>
<b>2017</b>	80,699	3,548,523	22,109		<b>3,651,331</b>
<b>2018</b>	39,280	64,746	1,294,922	65,825	<b>1,464,773</b>
<b>2019</b>	2,119,787		2,119,787		<b>4,239,574</b>
<b>2020</b>	1,361,071	2,957,840	10,470		<b>4,329,381</b>
<b>2016-2020</b>	<b>3,657,287</b>	<b>7,813,016</b>	<b>3,571,479</b>	<b>4,468,950</b>	<b>19,510,732</b>

**ANNEX II**  
**NATURAL DISASTERS BY COUNTRY**  
**(INCLUDING SELF-GOVERNING**  
**OR SPECIAL STATUS TERRITORIES)**

**AFRICA**

<b><u>Algeria</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1			1
<b>2018</b>	1				1
<b>2019</b>		1			1
<b>2020</b>				1	1
<b>2016-2020</b>	<b>1</b>	<b>2</b>		<b>1</b>	<b>4</b>

<b><u>Angola</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	4				4
<b>2017</b>	1		1		1
<b>2018</b>	1				1
<b>2019</b>	3				3
<b>2020</b>	2		1		3
<b>2016-2020</b>	<b>11</b>		<b>2</b>		<b>13</b>

<b><u>Benin</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	1				1
<b>2016-2020</b>	<b>1</b>				<b>1</b>

<b><u>Botswana</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>	1				1
<b>2018</b>	1				1
<b>2019</b>			1		1
<b>2020</b>					
<b>2016-2020</b>	<b>2</b>		<b>1</b>		<b>3</b>

<b><u>Burkina Faso</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>	1				1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	3		1		4
<b>2016-2020</b>	<b>5</b>		<b>1</b>		<b>6</b>

<b><u>Burundi</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>	1				1
<b>2018</b>	3				3
<b>2019</b>	3				3
<b>2020</b>	2	1			3
<b>2016-2020</b>	<b>9</b>	<b>1</b>			<b>10</b>

<b><u>Cabo Verde</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>			1		1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	1				1
<b>2016-2020</b>	<b>1</b>		<b>1</b>		<b>2</b>

<b><u>Cameroon</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>	1				1
<b>2018</b>					
<b>2019</b>	1				1
<b>2020</b>	1				1
<b>2016-2020</b>	<b>3</b>				<b>3</b>

<b><u>Central African Rep.</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>	1	1			2
<b>2018</b>					
<b>2019</b>	1				1
<b>2020</b>					
<b>2016-2020</b>	<b>2</b>	<b>1</b>			<b>3</b>

<b><u>Chad</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>			1		1
<b>2018</b>					
<b>2019</b>	2				2
<b>2020</b>	2				2
<b>2016-2020</b>	<b>4</b>		<b>1</b>		<b>5</b>

<b><u>Comoros</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>		2			2
<b>2020</b>					
<b>2016-2020</b>		<b>2</b>			<b>2</b>

<b><u>Congo</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>	2				2
<b>2020</b>	2				2
<b>2016-2020</b>	<b>4</b>				<b>4</b>

<b><u>Côte d'Ivoire</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>	1				1
<b>2018</b>	1				1
<b>2019</b>	1				1
<b>2020</b>	1				1
<b>2016-2020</b>	<b>5</b>				<b>5</b>

<b><u>Dem. Rep. Congo</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2				2
<b>2017</b>	2				2
<b>2018</b>	1				1
<b>2019</b>	3				3
<b>2020</b>	6				6
<b>2016-2020</b>	<b>14</b>				<b>14</b>

<b><u>Djibouti</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>		1			1
<b>2019</b>	1				1
<b>2020</b>	1				1
<b>2016-2020</b>	<b>2</b>	<b>1</b>			<b>3</b>

<b><u>Egypt</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>		1			1
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	1				1
<b>2016-2020</b>	<b>1</b>	<b>1</b>			<b>2</b>

<b><u>Eswatini</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>			1		1
<b>2017</b>					
<b>2018</b>					
<b>2019</b>			1		1
<b>2020</b>					
<b>2016-2020</b>			<b>2</b>		<b>2</b>

<b><u>Ethiopia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2				2
<b>2017</b>					
<b>2018</b>	2				2
<b>2019</b>	2				2
<b>2020</b>	4				4
<b>2016-2020</b>	<b>10</b>				<b>10</b>

<b><u>Gambia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>	1				1
<b>2018</b>					
<b>2019</b>		1			1
<b>2020</b>					
<b>2016-2020</b>	<b>1</b>	<b>1</b>			<b>2</b>

<b><u>Ghana</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>	1	1			2
<b>2018</b>	1				1
<b>2019</b>	2				2
<b>2020</b>	2				2
<b>2016-2020</b>	<b>7</b>	<b>1</b>			<b>8</b>

<b><u>Guinea</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>	1				1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	1				1
<b>2016-2020</b>	<b>2</b>				<b>2</b>

<b><u>Guinea-Bissau</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>		1			1
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<b><u>Kenya</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2		1		3
<b>2017</b>	1				1
<b>2018</b>	3				3
<b>2019</b>	2		1		3
<b>2020</b>	1				1
<b>2016-2020</b>	<b>9</b>		<b>2</b>		<b>11</b>

<b><u>Lesotho</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>			1		1
<b>2017</b>					
<b>2018</b>					
<b>2019</b>			1		1
<b>2020</b>			1		1
<b>2016-2020</b>			3		3

<b><u>Liberia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	1				1

<b><u>Libya</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>	1				1
<b>2020</b>					
<b>2016-2020</b>	1				1

<b><u>Madagas-car</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>			1		1
<b>2017</b>		1	1		2
<b>2018</b>		2			2
<b>2019</b>	1	2			3
<b>2020</b>	1	1	1		3
<b>2016-2020</b>	2	6	3		11



<b><u>Malawi</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>	1				1
<b>2018</b>	3				3
<b>2019</b>	3				3
<b>2020</b>	1				1
<b>2016-2020</b>	<b>9</b>				<b>9</b>

<b><u>Mali</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>					
<b>2018</b>	1				1
<b>2019</b>	2				2
<b>2020</b>			1		1
<b>2016-2020</b>	<b>4</b>		<b>1</b>		<b>5</b>

<b><u>Mauritania</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1	1		2
<b>2018</b>			1		1
<b>2019</b>	1				1
<b>2020</b>	2		1		3
<b>2016-2020</b>	<b>3</b>	<b>1</b>	<b>3</b>		<b>7</b>

<b><u>Mauritius</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>		1			1
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<b><u>Mozambique</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2	1	1		4
<b>2017</b>		1			
<b>2018</b>	2				
<b>2019</b>	3	2			
<b>2020</b>	2		1		
<b>2016-2020</b>	<b>9</b>	<b>4</b>	<b>2</b>		<b>15</b>

<b><u>Morocco</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>		1			1
<b>2017</b>		2			2
<b>2018</b>		1			1
<b>2019</b>	3				3
<b>2020</b>					
<b>2016-2020</b>	<b>3</b>	<b>4</b>			<b>7</b>

<b><u>Namibia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>	1				1
<b>2018</b>			1		1
<b>2019</b>					
<b>2020</b>	1				1
<b>2016-2020</b>	<b>2</b>		<b>1</b>		<b>3</b>

<b><u>Niger</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2				2
<b>2017</b>	2		1		3
<b>2018</b>	1				1
<b>2019</b>	2				2
<b>2020</b>	2		1		3
<b>2016-2020</b>	<b>9</b>		<b>2</b>		<b>11</b>

<b><u>Nigeria</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1	1			2
<b>2017</b>	2				2
<b>2018</b>	2				2
<b>2019</b>	2				2
<b>2020</b>	3				3
<b>2016-2020</b>	<b>10</b>	<b>1</b>			<b>11</b>

<b><u>Reunión</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>		1			1
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<b><u>Rwanda</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2				2
<b>2017</b>		2			2
<b>2018</b>	4				4
<b>2019</b>	2				2
<b>2020</b>	5				5
<b>2016-2020</b>	<b>13</b>	<b>2</b>			<b>15</b>

<b><u>Senegal</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>					
<b>2018</b>			1		1
<b>2019</b>	1				2
<b>2020</b>	1				
<b>2016-2020</b>	<b>3</b>		<b>1</b>		<b>4</b>

<b><u>Sierra Leona</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>	1				1
<b>2018</b>					
<b>2019</b>	2				2
<b>2020</b>					
<b>2016-2020</b>	<b>3</b>				<b>3</b>

<b><u>Somalia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>					
<b>2018</b>	1	1			2
<b>2019</b>	1	1	1		3
<b>2020</b>	2	1			3
<b>2016-2020</b>	<b>5</b>	<b>3</b>	<b>1</b>		<b>9</b>

<b><u>South Africa</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2	1			3
<b>2017</b>	1	2	2		5
<b>2018</b>					
<b>2019</b>	4	1	1		6
<b>2020</b>	1	1			2
<b>2016-2020</b>	<b>8</b>	<b>5</b>	<b>3</b>		<b>16</b>

<b><u>South Sudan</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1		1		2
<b>2017</b>					
<b>2018</b>					
<b>2019</b>	2		1		3
<b>2020</b>	1				1
<b>2016-2020</b>	<b>4</b>		<b>2</b>		<b>6</b>

<b><u>Sudan</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>	1				1
<b>2018</b>	3				3
<b>2019</b>	2				2
<b>2020</b>	1				1
<b>2016-2020</b>	<b>8</b>				<b>8</b>

<b><u>Tanzania</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	3			1	4
<b>2017</b>	1				1
<b>2018</b>	1				1
<b>2019</b>	4	1			5
<b>2020</b>	4				4
<b>2016-2020</b>	<b>13</b>	<b>1</b>		<b>1</b>	<b>15</b>

<b><u>Togo</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>	1				1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	1				1
<b>2016-2020</b>	<b>2</b>				<b>2</b>

<b><u>Tunisia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>			1		1
<b>2018</b>	2				2
<b>2019</b>					
<b>2020</b>	1				1
<b>2016-2020</b>	<b>3</b>		<b>1</b>		<b>4</b>

<b><u>Uganda</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2			1	
<b>2017</b>	1				
<b>2018</b>	1				
<b>2019</b>	8				
<b>2020</b>	5	1			
<b>2016-2020</b>	<b>17</b>	<b>1</b>		<b>1</b>	<b>19</b>

<b><u>Zambia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>	1		1		2
<b>2020</b>	3				3
<b>2016-2020</b>	<b>4</b>		<b>1</b>		<b>5</b>

<b><u>Zimbabwe</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>		1			1
<b>2017</b>		1	1		2
<b>2018</b>					
<b>2019</b>	1	1			2
<b>2020</b>					
<b>2016-2020</b>	<b>1</b>	<b>3</b>	<b>1</b>		<b>5</b>

## **AMERICAS**

<b><u>Anguilla</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1			1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<b><u>Antigua and Barbuda</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1			1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<b><u>Argentina</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2				2
<b>2017</b>	4				4
<b>2018</b>	3	1	1		5
<b>2019</b>	3		1		4
<b>2020</b>	1	1			2
<b>2016-2020</b>	<b>13</b>	<b>2</b>	<b>2</b>		<b>17</b>

<b><u>Bahamas</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>		1			1
<b>2017</b>		1			1
<b>2018</b>					
<b>2019</b>		1			1
<b>2020</b>					
<b>2016-2020</b>		<b>3</b>			<b>3</b>

<b><u>Barbados</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1			1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<b><u>Belize</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>		1			1
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>		1			1
<b>2016-2020</b>		2			2

<b><u>Bolivia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2		1		
<b>2017</b>					
<b>2018</b>	1				
<b>2019</b>	3		1	1	
<b>2020</b>	2				
<b>2016-2020</b>	8		2	1	11

<b><u>Brazil</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2				
<b>2017</b>	1				
<b>2018</b>	3				
<b>2019</b>	7		1		
<b>2020</b>	5	1	1		
<b>2016-2020</b>	18	1	2		21

<b><u>Canada</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1		1		2
<b>2017</b>	2		1		3
<b>2018</b>	1	2	1		4
<b>2019</b>	1	1			2
<b>2020</b>	1	1			2
<b>2016-2020</b>	6	4	3		13



<b><u>Chile</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>	4		1		5
<b>2018</b>					
<b>2019</b>	1		1	1	3
<b>2020</b>					
<b>2016-2020</b>	<b>6</b>		<b>2</b>	<b>1</b>	<b>9</b>

<b><u>Colombia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2				2
<b>2017</b>	6	1			7
<b>2018</b>	2				2
<b>2019</b>	6				6
<b>2020</b>	4	2			6
<b>2016-2020</b>	<b>20</b>	<b>3</b>			<b>23</b>

<b><u>Costa Rica</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>		1			1
<b>2017</b>		1			1
<b>2018</b>	1		1		2
<b>2019</b>					
<b>2020</b>		1			1
<b>2016-2020</b>	<b>1</b>	<b>3</b>	<b>1</b>		<b>5</b>

<b><u>Cuba</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>		1			1
<b>2017</b>		1			1
<b>2018</b>		2			2
<b>2019</b>		1			1
<b>2020</b>		2			2
<b>2016-2020</b>		<b>7</b>			<b>7</b>

<b><u>Dominica</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1			1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<b><u>Dominican Republic</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2	1			3
<b>2017</b>		3			3
<b>2018</b>	1	1			2
<b>2019</b>					
<b>2020</b>		2			2
<b>2016-2020</b>	<b>3</b>	<b>7</b>			<b>10</b>

<b><u>Ecuador</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2			2	4
<b>2017</b>					
<b>2018</b>					
<b>2019</b>	2			2	4
<b>2020</b>	1			1	2
<b>2016-2020</b>	<b>5</b>			<b>5</b>	<b>10</b>

<b><u>El Salvador</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1			1
<b>2018</b>	1		1	1	3
<b>2019</b>				1	1
<b>2020</b>	1	3			4
<b>2016-2020</b>	<b>2</b>	<b>4</b>	<b>1</b>	<b>2</b>	<b>9</b>

<b><u>French Guiana</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	1				1
<b>2016-2020</b>	<b>1</b>				<b>1</b>

<b><u>Guadeloupe</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1			1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<b><u>Guatemala</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1	1			2
<b>2017</b>	5	1		1	7
<b>2018</b>	2		1	1	4
<b>2019</b>		2			2
<b>2020</b>	2	3			5
<b>2016-2020</b>	<b>10</b>	<b>7</b>	<b>1</b>	<b>2</b>	<b>20</b>

<b><u>Guyana</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>	1				1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>1</b>				<b>1</b>

<b><u>Haiti</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	6	1	1		8
<b>2017</b>	2	3			5
<b>2018</b>				1	1
<b>2019</b>	2				2
<b>2020</b>		1			1
<b>2016-2020</b>	<b>10</b>	<b>5</b>	<b>1</b>	<b>1</b>	<b>17</b>

<b><u>Honduras</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1	1			2
<b>2017</b>	3	1			4
<b>2018</b>	1		1		2
<b>2019</b>					
<b>2020</b>	1	3			4
<b>2016-2020</b>	<b>6</b>	<b>5</b>	<b>1</b>		<b>12</b>

<b><u>Jamaica</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>		1			1
<b>2017</b>		1			1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>2</b>			<b>2</b>

<b><u>Martini-que</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1			1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<u>Mexico</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016	5	2			7
2017	1	4		2	7
2018	1	2		1	4
2019	3	3			6
2020	2	5		1	8
2016-2020	12	16		4	32

<u>Nicaragua</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016		1			1
2017	1	1			2
2018	1		1		2
2019					
2020		2			2
2016-2020	2	4	1		7

<u>Panama</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016		1			1
2017		1			1
2018			1		1
2019					
2020	1	2			3
2016-2020	1	4	1		6

<u>Paraguay</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016			1		1
2017					
2018	2				2
2019	3		1		4
2020					
2016-2020	5		2		7

<b><u>Peru</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1			2	3
<b>2017</b>	3				3
<b>2018</b>				1	1
<b>2019</b>	4		1	2	7
<b>2020</b>	4				4
<b>2016-2020</b>	<b>12</b>		<b>1</b>	<b>5</b>	<b>18</b>

<b><u>Puerto Rico</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		3			3
<b>2018</b>	1				1
<b>2019</b>					
<b>2020</b>		1		2	3
<b>2016-2020</b>	<b>1</b>	<b>4</b>		<b>2</b>	<b>7</b>

<b><u>St. Barthélemy</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1			1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<b><u>St. Kitts and Nevis</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1			1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<u>St.Lucia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016		1			1
2017					
2018					
2019					
2020					
2016-2020		1			1

<u>St. Maarten (Dutch part)</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016					
2017		1			1
2018					
2019					
2020					
2016-2020		1			1

<u>St.Martin (French part)</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016					
2017		1			1
2018					
2019					
2020					
2016-2020		1			1

<u>St. Vincent and the Grenadines</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016	1	1			2
2017					
2018					
2019					
2020					
2016-2020	1	1			2

<b><u>Trinidad and Tobago</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>	1				1
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>1</b>				<b>1</b>

<b><u>Turks and Caicos Islands</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1			1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<b><u>Uruguay</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>	1				1
<b>2018</b>			1		1
<b>2019</b>	3				3
<b>2020</b>	1	1			2
<b>2016-2020</b>	<b>6</b>	<b>1</b>	<b>1</b>		<b>8</b>

<b><u>United States of America</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	6	16	4	1	27
<b>2017</b>	3	17	4		24
<b>2018</b>	4	11	4	1	20
<b>2019</b>	4	14	2	1	21
<b>2020</b>	2	19	2		23
<b>2016-2020</b>	<b>19</b>	<b>77</b>	<b>16</b>	<b>3</b>	<b>115</b>



<u>Venezuela</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016	1				1
2017					
2018	2				2
2019	1				1
2020	1				1
2016-2020	5				5

<u>Virgin Islands (British)</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016					
2017		2			2
2018					
2019					
2020					
2016-2020		2			2

<u>Virgin Islands (U.S.)</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016					
2017		2			2
2018					
2019					
2020					
2016-2020		2			2

## ASIA

<u>Afghanistan</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016	4				
2017	3	2			
2018	4		1		
2019	7				
2020	6	1			
2016-2020	24	3	1		28

<b><u>Armenia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>					
<b>2018</b>		1			1
<b>2019</b>		1			1
<b>2020</b>		1			1
<b>2016-2020</b>	<b>1</b>	<b>3</b>			<b>4</b>

<b><u>Bangladesh</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1	2		1	4
<b>2017</b>	3	2			5
<b>2018</b>	2	2			4
<b>2019</b>	2	4			6
<b>2020</b>	1	1			2
<b>2016-2020</b>	<b>9</b>	<b>11</b>		<b>1</b>	<b>21</b>

<b><u>Dem. People's Rep. Korea</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2				
<b>2017</b>			1		
<b>2018</b>	1	2			
<b>2019</b>		1	1		
<b>2020</b>	1				
<b>2016-2020</b>	<b>4</b>	<b>3</b>	<b>2</b>		<b>9</b>

<b><u>Cambodia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>			1		1
<b>2017</b>					
<b>2018</b>	1				1
<b>2019</b>	1				1
<b>2020</b>		2			2
<b>2016-2020</b>	<b>2</b>	<b>2</b>	<b>1</b>		<b>5</b>

<b><u>China</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	15	14	1	3	33
<b>2017</b>	16	9	1	4	30
<b>2018</b>	8	12		2	22
<b>2019</b>	8	4	1	3	16
<b>2020</b>	6	4	1	1	12
<b>2016-2020</b>	<b>53</b>	<b>43</b>	<b>4</b>	<b>13</b>	<b>113</b>

<b><u>Georgia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>	1				1
<b>2019</b>	1				1
<b>2020</b>	1				1
<b>2016-2020</b>	<b>3</b>				<b>3</b>

<b><u>Hong Kong (China)</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		2			2
<b>2018</b>		1			1
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>3</b>			<b>3</b>

<b><u>India</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	10	4	1	1	16
<b>2017</b>	12	6			18
<b>2018</b>	9	12	2		23
<b>2019</b>	5	7			12
<b>2020</b>	7	4			11
<b>2016-2020</b>	<b>43</b>	<b>33</b>	<b>3</b>	<b>1</b>	<b>80</b>

<b><u>Indonesia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	12			3	15
<b>2017</b>	9	1		2	12
<b>2018</b>	8			7	15
<b>2019</b>	13		1	5	19
<b>2020</b>	26			3	29
<b>2016-2020</b>	<b>68</b>	<b>1</b>	<b>1</b>	<b>20</b>	<b>90</b>

<b><u>Iran</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>		1			
<b>2017</b>	2			3	
<b>2018</b>	1			3	
<b>2019</b>	3			2	
<b>2020</b>	7			1	
<b>2016-2020</b>	<b>13</b>	<b>1</b>		<b>9</b>	<b>23</b>

<b><u>Iraq</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>				1	1
<b>2018</b>	1				1
<b>2019</b>	1				1
<b>2020</b>	1				1
<b>2016-2020</b>	<b>3</b>			<b>1</b>	<b>4</b>

<b><u>Israel</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>			1		1
<b>2017</b>					
<b>2018</b>	1				1
<b>2019</b>					
<b>2020</b>	1		1		2
<b>2016-2020</b>	<b>2</b>		<b>2</b>		<b>4</b>

<b><u>Japan</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1	6		3	10
<b>2017</b>	1	3			4
<b>2018</b>	1	4		2	7
<b>2019</b>	3	6		1	10
<b>2020</b>	1	3			4
<b>2016-2020</b>	<b>7</b>	<b>22</b>		<b>6</b>	<b>35</b>

<b><u>Jordan</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>		2			2
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>2</b>			<b>2</b>

<b><u>Kazakhstan</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>	1				1
<b>2018</b>	1				1
<b>2019</b>					
<b>2020</b>	1				1
<b>2016-2020</b>	<b>3</b>				<b>3</b>

<b><u>Korea</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>		2		1	3
<b>2017</b>				1	1
<b>2018</b>		1			1
<b>2019</b>		3	1		4
<b>2020</b>	2	3			5
<b>2016-2020</b>	<b>2</b>	<b>9</b>	<b>1</b>	<b>2</b>	<b>14</b>

<u>Kuwait</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016					
2017					
2018	1				1
2019					
2020					
2016-2020	1				1

<u>Kyrgyzstan</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016					
2017	1			1	2
2018					
2019					
2020					
2016-2020	1			1	2

<u>Lao PDR</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016	1				1
2017		1			1
2018	1	2			3
2019	1		1		2
2020		2			2
2016-2020	3	5	1		9

<u>Lebanon</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016					
2017					
2018		1			1
2019		1			1
2020			1		1
2016-2020		2	1		3

<u>Macao (China)</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016					
2017		2			2
2018					
2019					
2020					
2016-2020		2			2

<u>Malaysia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016	4				4
2017	3	1			4
2018	2				2
2019	4				4
2020	5				5
2016-2020	18	1			19

<u>Maldives</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016					
2017					
2018					
2019	1				1
2020					
2016-2020	1				1

<u>Mongolia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016		1			1
2017	1				1
2018	2	1			3
2019	1	2			3
2020	3	1			4
2016-2020	7	5			12

<b><u>Myanmar</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	3	2		1	6
<b>2017</b>	1	1			2
<b>2018</b>	4			1	5
<b>2019</b>	3				3
<b>2020</b>		2			2
<b>2016-2020</b>	<b>11</b>	<b>5</b>		<b>2</b>	<b>18</b>

<b><u>Nepal</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2		1		3
<b>2017</b>	3				3
<b>2018</b>	1	1			2
<b>2019</b>	1	1			2
<b>2020</b>	1				1
<b>2016-2020</b>	<b>8</b>	<b>2</b>	<b>1</b>		<b>11</b>

<b><u>Oman</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>	1				1
<b>2018</b>		2			2
<b>2019</b>	1				1
<b>2020</b>	1				1
<b>2016-2020</b>	<b>4</b>	<b>2</b>			<b>6</b>

<b><u>Pakistan</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	7	1		1	9
<b>2017</b>	3	2			5
<b>2018</b>	1	1			2
<b>2019</b>	8	1	1	1	11
<b>2020</b>	5	1			6
<b>2016-2020</b>	<b>24</b>	<b>6</b>	<b>1</b>	<b>2</b>	<b>33</b>



<b><u>Palestine</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>		1			1
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<b><u>Philippines</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2	8		1	
<b>2017</b>	3	8		3	
<b>2018</b>	1	7		1	
<b>2019</b>	1	7	1	7	
<b>2020</b>	1	6		2	
<b>2016-2020</b>	<b>8</b>	<b>36</b>	<b>1</b>	<b>14</b>	<b>59</b>

<b><u>Qatar</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>	1				1
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>1</b>				<b>1</b>

<b><u>Saudi Arabia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2	1			3
<b>2017</b>	1				1
<b>2018</b>					
<b>2019</b>	3				3
<b>2020</b>	1				1
<b>2016-2020</b>	<b>7</b>	<b>1</b>			<b>8</b>

<b><u>Sri Lanka</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1		1		2
<b>2017</b>	2	1			3
<b>2018</b>	3				3
<b>2019</b>	5		1		6
<b>2020</b>	2	1			3
<b>2016-2020</b>	<b>13</b>	<b>2</b>	<b>2</b>		<b>17</b>

<b><u>Syria</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>	1				1
<b>2020</b>			1		1
<b>2016-2020</b>	<b>1</b>		<b>1</b>		<b>2</b>

<b><u>Taiwan</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>		4		1	5
<b>2017</b>	1	1			2
<b>2018</b>		1		1	2
<b>2019</b>		1			1
<b>2020</b>		1			1
<b>2016-2020</b>	<b>1</b>	<b>8</b>		<b>2</b>	<b>11</b>

<b><u>Tajikistan</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1			1	2
<b>2017</b>	2				2
<b>2018</b>	1				1
<b>2019</b>	1				1
<b>2020</b>	1				1
<b>2016-2020</b>	<b>6</b>			<b>1</b>	<b>7</b>

<b><u>Thailand</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	3	1			4
<b>2017</b>	4	2			6
<b>2018</b>					
<b>2019</b>	1	1	1		3
<b>2020</b>	3	4			7
<b>2016-2020</b>	<b>11</b>	<b>8</b>	<b>1</b>		<b>20</b>

<b><u>Timor-Leste</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>			1		1
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	1				1
<b>2016-2020</b>	<b>1</b>		<b>1</b>		<b>2</b>

<b><u>Turkey</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1		1	2
<b>2018</b>	1				1
<b>2019</b>	3			1	4
<b>2020</b>	4	1		5	10
<b>2016-2020</b>	<b>8</b>	<b>2</b>		<b>7</b>	<b>17</b>

<b><u>United Arab Emirates</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>	1				1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>1</b>				<b>1</b>

<b><u>Uzbekistan</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	1				1
<b>2016-2020</b>	<b>1</b>				<b>1</b>

<b><u>Viet Nam</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	4	4			8
<b>2017</b>	5	4			9
<b>2018</b>	3	4			7
<b>2019</b>	5	2	1		8
<b>2020</b>	1	10			11
<b>2016-2020</b>	<b>18</b>	<b>24</b>	<b>1</b>		<b>43</b>

<b><u>Yemen</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2				2
<b>2017</b>	1				1
<b>2018</b>		2			2
<b>2019</b>	3				3
<b>2020</b>	5				5
<b>2016-2020</b>	<b>11</b>	<b>2</b>			<b>13</b>

## **EUROPE**

<b><u>Albania</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>	1	1			2
<b>2018</b>	1				1
<b>2019</b>				3	
<b>2020</b>					
<b>2016-2020</b>	<b>3</b>	<b>1</b>		<b>3</b>	<b>7</b>

<b><u>Austria</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>		2			2
<b>2018</b>					
<b>2019</b>		2			2
<b>2020</b>					
<b>2016-2020</b>	<b>1</b>	<b>4</b>			<b>5</b>

<b><u>Belarus</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1			1
<b>2018</b>	1				1
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>1</b>	<b>1</b>			<b>2</b>

<b><u>Belgium</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1	1			2
<b>2017</b>					
<b>2018</b>		2			2
<b>2019</b>		3			3
<b>2020</b>		2			2
<b>2016-2020</b>	<b>1</b>	<b>8</b>			<b>9</b>

<b><u>Bosnia-Herzegovina</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>	2				2
<b>2020</b>	1				1
<b>2016-2020</b>	<b>3</b>				<b>3</b>

<b><u>Bulgary</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>	1				1
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>1</b>				<b>1</b>

<b><u>Croatia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1	1		2
<b>2018</b>	1				1
<b>2019</b>	1				1
<b>2020</b>				2	2
<b>2016-2020</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>6</b>

<b><u>Czech Republic</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1			1
<b>2018</b>		1			1
<b>2019</b>					
<b>2020</b>		1			1
<b>2016-2020</b>		<b>3</b>			<b>3</b>

<b><u>Estonia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>		1			1
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<b><u>France</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				
<b>2017</b>	1	1	1		
<b>2018</b>	2	5			
<b>2019</b>	2	7		1	
<b>2020</b>	3	4			
<b>2016-2020</b>	<b>9</b>	<b>17</b>	<b>1</b>	<b>1</b>	<b>28</b>

<b><u>Germany</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>	1	2			3
<b>2018</b>		2			2
<b>2019</b>		3			3
<b>2020</b>		1			1
<b>2016-2020</b>	<b>2</b>	<b>8</b>			<b>10</b>

<b><u>Greece</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>	1	1		2	4
<b>2018</b>			1		1
<b>2019</b>		1			1
<b>2020</b>	2			1	3
<b>2016-2020</b>	<b>4</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>10</b>

<b><u>Hungary</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>		1			1
<b>2018</b>		1			1
<b>2019</b>		1			1
<b>2020</b>					
<b>2016-2020</b>	<b>1</b>	<b>3</b>			<b>4</b>

<b><u>Ireland</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>	1				1
<b>2018</b>		1			1
<b>2019</b>					
<b>2020</b>		1			1
<b>2016-2020</b>	<b>1</b>	<b>2</b>			<b>3</b>

<b><u>Isle of Man</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>		1			1
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<b><u>Italy</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1			3	4
<b>2017</b>	1	2	1	2	6
<b>2018</b>	1	3		1	5
<b>2019</b>	1	4			5
<b>2020</b>	4	3			7
<b>2016-2020</b>	<b>8</b>	<b>12</b>	<b>1</b>	<b>6</b>	<b>27</b>

<b><u>Latvia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>			1		1
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>			<b>1</b>		<b>1</b>



<b><u>Lithuania</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>		1	1		2
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>	<b>1</b>		<b>2</b>

<b><u>Luxembourg</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>		1			1
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<b><u>Moldova</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>		1			1
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<b><u>Montenegro</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>			1		1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>			<b>1</b>		<b>1</b>

<b><u>Netherlands</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>		1			1
<b>2017</b>					
<b>2018</b>		2			2
<b>2019</b>		1			1
<b>2020</b>		1			1
<b>2016-2020</b>		<b>5</b>			<b>5</b>

<b><u>North Macedonia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1			1	2
<b>2017</b>		1			1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>1</b>	<b>1</b>		<b>1</b>	<b>3</b>

<b><u>Norway</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>	1				1
<b>2020</b>	1				1
<b>2016-2020</b>	<b>2</b>				<b>2</b>

<b><u>Poland</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1	1			2
<b>2017</b>		1			1
<b>2018</b>		1	1		2
<b>2019</b>		1			1
<b>2020</b>	1	1			2
<b>2016-2020</b>	<b>2</b>	<b>5</b>	<b>1</b>		<b>8</b>

<b><u>Portugal</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>			1		1
<b>2017</b>			2		2
<b>2018</b>		2	1		3
<b>2019</b>		1			1
<b>2020</b>					
<b>2016-2020</b>		<b>3</b>	<b>4</b>		<b>7</b>

<b><u>Romania</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2				2
<b>2017</b>		1			1
<b>2018</b>	2	1			3
<b>2019</b>	1				1
<b>2020</b>	1				1
<b>2016-2020</b>	<b>6</b>	<b>2</b>			<b>8</b>

<b><u>Russian Federation</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	3				3
<b>2017</b>	1	1			2
<b>2018</b>	2				2
<b>2019</b>	4		1		5
<b>2020</b>					
<b>2016-2020</b>	<b>10</b>	<b>1</b>	<b>1</b>		<b>12</b>

<b><u>Serbia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	2				2
<b>2017</b>		1			1
<b>2018</b>	1				1
<b>2019</b>	1				1
<b>2020</b>	1				1
<b>2016-2020</b>	<b>5</b>	<b>1</b>			<b>6</b>

<b><u>Slovakia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1			1
<b>2018</b>					
<b>2019</b>		1			1
<b>2020</b>	1				1
<b>2016-2020</b>	<b>1</b>	<b>2</b>			<b>3</b>

<b><u>Slovenia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>		1			1
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<b><u>Spain</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>	1				1
<b>2017</b>			2		2
<b>2018</b>	1	2	1		4
<b>2019</b>	4	4			8
<b>2020</b>		1			1
<b>2016-2020</b>	<b>6</b>	<b>7</b>	<b>3</b>		<b>16</b>

<b><u>Sweden</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>			1		1
<b>2019</b>					
<b>2020</b>		1			1
<b>2016-2020</b>		<b>1</b>	<b>1</b>		<b>2</b>

<u>Switzerland</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016					
2017				1	1
2018		1			1
2019		1			1
2020		1			1
2016-2020		3		1	4

<u>Ukraine</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016	1	1			2
2017		1			1
2018		1			1
2019					
2020	1		2		3
2016-2020	2	3	2		7

<u>United Kingdom</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016					
2017	1				1
2018		2			2
2019	1	2			3
2020	1	2			3
2016-2020	3	6			9

## OCEANIA

<u>Australia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016	1	1	1		3
2017		2	1		3
2018	1	1	1		3
2019	1		2		3
2020	1	2			3
2016-2020	4	6	5		15

<b><u>Fiji</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>		2			2
<b>2017</b>					
<b>2018</b>		2			2
<b>2019</b>		1			1
<b>2020</b>		3			3
<b>2016-2020</b>		<b>8</b>			<b>8</b>

<b><u>French Polynesia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>	1				1
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>1</b>				<b>1</b>

<b><u>Marshall Island</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>		1			1
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>			<b>1</b>

<b><u>Micronesia (Federated States of)</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>			1		1
<b>2017</b>					
<b>2018</b>					
<b>2019</b>		1			1
<b>2020</b>					
<b>2016-2020</b>		<b>1</b>	<b>1</b>		<b>2</b>

<u>New Zealand</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016	1			1	2
2017	1	1			2
2018	1				1
2019				1	1
2020	2		1		3
2016-2020	5	1	1	3	9

<u>Northern Mariana Islands</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016					
2017					
2018		1			1
2019					
2020					
2016-2020		1			1

<u>Papua New Guinea</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016	1				1
2017					
2018				4	4
2019	2			2	4
2020	5				5
2016-2020	8			6	14

<u>Samoa</u>	Hydrological	Meteorological	Climatological	Geophysical	Total natural disasters
2016					
2017					
2018		1			1
2019					
2020					
2016-2020		1			1

<b><u>Solomon Islands</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>				1	1
<b>2017</b>					
<b>2018</b>		1			1
<b>2019</b>					
<b>2020</b>		1			1
<b>2016-2020</b>		<b>2</b>		<b>1</b>	<b>3</b>

<b><u>Tonga</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>		3			3
<b>2017</b>					
<b>2018</b>		1			1
<b>2019</b>					
<b>2020</b>		1			1
<b>2016-2020</b>		<b>5</b>			<b>5</b>

<b><u>Tuvalu</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	1				1
<b>2016-2020</b>	<b>1</b>				<b>1</b>

<b><u>Vanuatu</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total natural disasters</b>
<b>2016</b>					
<b>2017</b>		1		1	2
<b>2018</b>				2	2
<b>2019</b>					
<b>2020</b>		1			1
<b>2016-2020</b>		<b>2</b>		<b>3</b>	<b>5</b>



**ANNEX III**  
**ENVIRONMENTALLY DISPLACED PERSONS**  
**BY COUNTRY (INCLUDING SELF-GOVERNING**  
**OR SPECIAL STATUS TERRITORIES)**

**AFRICA**

<u>Abyei Area</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
<b>2016</b>					
<b>2017</b>					
<b>2018</b>	2				2
<b>2019</b>	40,000				40,000
<b>2020</b>					
<b>2016-2020</b>	<b>40,002</b>				<b>40,002</b>

<u>Algeria</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
<b>2016</b>	2,030				2,030
<b>2017</b>					
<b>2018</b>	19				19
<b>2019</b>	1,780	1,425			3,205
<b>2020</b>	15		31	9,548	9,594
<b>2016-2020</b>	<b>3,844</b>	<b>1,425</b>	<b>31</b>	<b>9,548</b>	<b>14,848</b>

<u>Angola</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
<b>2016</b>	19,103				19,103
<b>2017</b>	13,354	569			13,923
<b>2018</b>	8,044	3,071			11,115
<b>2019</b>	6,675				6,675
<b>2020</b>	14,960				14,960
<b>2016-2020</b>	<b>62,136</b>	<b>3,640</b>			<b>65,776</b>

<b><u>Benin</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	960				960
<b>2017</b>	3,528				3,528
<b>2018</b>	22,562				22,562
<b>2019</b>	5,000				5,000
<b>2020</b>	7,020				7,020
<b>2016-2020</b>	<b>39,070</b>				<b>39,070</b>

<b><u>Botswana</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>		1,950			1,950
<b>2018</b>	1,634				1,634
<b>2019</b>					
<b>2020</b>		780			780
<b>2016-2020</b>	<b>1,634</b>	<b>2,730</b>			<b>4,364</b>

<b><u>Burkina Faso</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	17,868				17,868
<b>2017</b>	8,217				8,217
<b>2018</b>	4,727	385			5,112
<b>2019</b>					
<b>2020</b>	19,747				19,747
<b>2016-2020</b>	<b>50,559</b>	<b>385</b>			<b>50,944</b>

<b><u>Burundi</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	6,556				6,556
<b>2017</b>	2,991	2,698	5,263		10,952
<b>2018</b>	31,316	2,747	844		34,907
<b>2019</b>	20,947	4,401	1,718		27,066
<b>2020</b>	43,761	6,920	422		51,103
<b>2016-2020</b>	<b>61,810</b>	<b>16,766</b>	<b>52,008</b>		<b>130,584</b>

<u>Cabo Verde</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016				300	300
2017					
2018					
2019					
2020	750				750
<b>2016-2020</b>	<b>750</b>			<b>300</b>	<b>1,050</b>

<u>Cameroon</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018					
2019	23,719				23,719
2020	115,982				115,982
<b>2016-2020</b>	<b>139,701</b>				<b>139,701</b>

<u>Central African Rep.</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	3,174	2,050	2,240		7,464
2017	2,868				2,868
2018	8,879	400			9,279
2019	101,700	80	58		101,838
2020	15,025				15,025
<b>2016-2020</b>	<b>131,646</b>	<b>2,530</b>	<b>2,298</b>		<b>136,474</b>

<u>Chad</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016		5,650			5,650
2017					
2018	2,000				2,000
2019	30,386				30,386
2020	70,848	204	379		71,431
<b>2016-2020</b>	<b>103,234</b>	<b>5,854</b>	<b>379</b>		<b>109,467</b>

<u>Comoros</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017	94				94
2018					
2019		19,372			19,372
2020					
<b>2016-2020</b>	<b>94</b>	<b>19,372</b>			<b>19,466</b>

<u>Congo</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018					
2019	166,244				166,244
2020					
<b>2016-2020</b>	<b>166,244</b>				<b>166,244</b>

<u>Côte d'Ivoire</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018	3,171				3,171
2019	622	96			718
2020	1,680	185			1,865
<b>2016-2020</b>	<b>5,473</b>	<b>281</b>			<b>5,754</b>

<u>Dem. Rep. Congo</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	127,471	1,040	1,700		130,211
2017	6,806	18,273	2,300	2	27,381
2018	52,598	28,479	316		81,393
2019	226,007	6,923			232,930
2020	277,909	1,247			279,156
<b>2016-2020</b>	<b>690,791</b>	<b>55,962</b>	<b>4,316</b>	<b>2</b>	<b>751,071</b>

<b><u>Djibouti</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>		9,365			9,365
<b>2019</b>	10,000				10,000
<b>2020</b>	11				11
<b>2016-2020</b>	<b>10,011</b>	<b>9,365</b>			<b>19,376</b>

<b><u>Egypt</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	820				820
<b>2017</b>					
<b>2018</b>			8		8
<b>2019</b>					
<b>2020</b>	8,434				8,434
<b>2016-2020</b>	<b>9,254</b>		<b>8</b>		<b>9,262</b>

<b><u>Eswatini</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>		111			111
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>111</b>			<b>111</b>

<b><u>Ethiopia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	347,156				347,156
<b>2017</b>	53,345		380,830		434,175
<b>2018</b>	171,414	4,050	120,320		295,784
<b>2019</b>	373,410		130,957		504,367
<b>2020</b>	644,131		19,834		663,965
<b>2016-2020</b>	<b>1,589,456</b>	<b>4,050</b>	<b>651,941</b>		<b>2,245,447</b>

<b><u>Gabon</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>	8				8
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	2				2
<b>2016-2020</b>	<b>10</b>				<b>10</b>

<b><u>Gambia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>		4,633			4,633
<b>2017</b>	800	78			878
<b>2018</b>					
<b>2019</b>		3,958			3,958
<b>2020</b>	15,646	1,583			17,229
<b>2016-2020</b>	<b>16,446</b>	<b>10,252</b>			<b>26,698</b>

<b><u>Ghana</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	7,918				7,918
<b>2017</b>	13,463	9,817			23,280
<b>2018</b>	56,500	4,737			61,237
<b>2019</b>	13,432	2,525			15,957
<b>2020</b>	1,991				1,991
<b>2016-2020</b>	<b>93,304</b>	<b>17,079</b>			<b>110,383</b>

<b><u>Guinea</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	63		423		486
<b>2017</b>	695			18	713
<b>2018</b>	1,445	2,416			3,861
<b>2019</b>		18			18
<b>2020</b>	2,154	221			2,375
<b>2016-2020</b>	<b>4,357</b>	<b>2,655</b>	<b>423</b>	<b>18</b>	<b>7,453</b>

<b><u>Guinea-Bissau</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>		3,698			3,698
<b>2019</b>		414			414
<b>2020</b>					
<b>2016-2020</b>		<b>4,112</b>			<b>4,112</b>

<b><u>Kenya</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	40,318				40,318
<b>2017</b>	35,424				35,424
<b>2018</b>	334,318	1,950			336,268
<b>2019</b>	72,507	593	780	62	73,942
<b>2020</b>	333,456	1,560			335,016
<b>2016-2020</b>	<b>816,023</b>	<b>4,103</b>	<b>780</b>	<b>62</b>	<b>820,968</b>

<b><u>Lesotho</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>	1,400				1,400
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>1,400</b>				<b>1,400</b>

<b><u>Liberia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	10,000				10,000
<b>2017</b>	766	200			966
<b>2018</b>	15,101				15,101
<b>2019</b>	330	269			599
<b>2020</b>	3,208	500			3,708
<b>2016-2020</b>	<b>29,405</b>	<b>969</b>			<b>30,374</b>

<u>Libya</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018					
2019	4,625				4,625
2020					
<b>2016-2020</b>	<b>4,625</b>				<b>4,625</b>

<u>Madagascar</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016		51,039			51,039
2017		246,842	1,190		248,032
2018	132	74,266	686	176	75,260
2019		5,155	548	39	5,742
2020	19,241	3,368			22,609
<b>2016-2020</b>	<b>19,373</b>	<b>380,670</b>	<b>2,424</b>	<b>215</b>	<b>402,682</b>

<u>Malawi</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	9,520				9,520
2017	70,164	13,932			84,096
2018	15,957	4,271			20,228
2019	6,707	110,110		8	116,825
2020	28,818				28,818
<b>2016-2020</b>	<b>131,166</b>	<b>128,313</b>		<b>8</b>	<b>259,487</b>

<u>Mali</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	8,025				8,025
2017	6,848				6,848
2018	19,397				19,397
2019	6,632				6,632
2020	7,397				7,397
<b>2016-2020</b>	<b>48,299</b>				<b>48,299</b>



<b><u>Mauritania</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>		2,945			2,945
<b>2018</b>	445				445
<b>2019</b>	6,630				6,630
<b>2020</b>	1,560				1,560
<b>2016-2020</b>	<b>8,635</b>	<b>2,945</b>			<b>11,580</b>

<b><u>Mauritius</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	300				300
<b>2017</b>	100				100
<b>2018</b>		3,600			3,600
<b>2019</b>	82	885	49		1,016
<b>2020</b>	62	51			113
<b>2016-2020</b>	<b>544</b>	<b>4,536</b>	<b>49</b>		<b>5,129</b>

<b><u>Mayotte</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>		10,450			10,450
<b>2020</b>					
<b>2016-2020</b>		<b>10,450</b>			<b>10,450</b>

<b><u>Mozambique</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	7,009				7,009
<b>2017</b>	25,102	144,962			170,064
<b>2018</b>	1,862	28,810		464	201,200
<b>2019</b>	2,146	503,753			505,899
<b>2020</b>	24,997				24,997
<b>2016-2020</b>	<b>61,116</b>	<b>677,525</b>		<b>464</b>	<b>739,105</b>

<u>Morocco</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018					
2019	202				202
2020	336				336
<b>2016-2020</b>	<b>538</b>				<b>538</b>

<u>Namibia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017	3,331	30			3,361
2018	13				13
2019	2				2
2020	200				200
<b>2016-2020</b>	<b>3,546</b>	<b>30</b>			<b>3,576</b>

<u>Niger</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	46,000				46,000
2017	188,500				188,500
2018	40,387				40,387
2019	120,935				120,935
2020	275,906				275,906
<b>2016-2020</b>	<b>671,728</b>				<b>671,728</b>

<u>Nigeria</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	77,733				77,733
2017	120,000	2,006			122,006
2018	604,896	8,412			613,308
2019	155,011	1,992			157,003
2020	271,858	7,299			279,157
<b>2016-2020</b>	<b>1,229,498</b>	<b>19,709</b>			<b>1,249,207</b>

<b><u>Rwanda</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>				9,731	9,731
<b>2017</b>	24	4,964			4,988
<b>2018</b>		47,295			47,295
<b>2019</b>	6,510	5,021			11,531
<b>2020</b>	6,005				6,005
<b>2016-2020</b>	<b>12,539</b>	<b>57,280</b>		<b>9,731</b>	<b>79,550</b>

<b><u>Seychelles</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>		20			20
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>20</b>			<b>20</b>

<b><u>Senegal</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	12,900	11,292			24,192
<b>2017</b>	628				628
<b>2018</b>			2		2
<b>2019</b>	4,300	138			4,438
<b>2020</b>	3,285				3,285
<b>2016-2020</b>	<b>21,113</b>	<b>11,430</b>	<b>2</b>		<b>32,545</b>

<b><u>Sierra Leona</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>	11,816				11,816
<b>2018</b>					
<b>2019</b>	5,318				5,318
<b>2020</b>					
<b>2016-2020</b>	<b>17,134</b>				<b>17,134</b>

<u>Somalia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	70,000				70,000
2017	7,061		892,271		899,332
2018	289,176	9,116	248,509		546,801
2019	415,663	4,175	59,645		479,483
2020	978,531	42,100	16,070		1,036,701
<b>2016-2020</b>	<b>1,760,431</b>	<b>55,391</b>	<b>1,216,495</b>		<b>3,032,317</b>

<u>South Africa</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	12,199				12,199
2017	236	2,178	12,250		14,664
2018	47	11	2,000		2,058
2019	1,507	126	112		1,745
2020	372				372
<b>2016-2020</b>	<b>14,361</b>	<b>2,315</b>	<b>14,362</b>		<b>31,038</b>

<u>South Sudan</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017	74,725				74,725
2018	6,422	200			6,622
2019	288,359		5,966		294,325
2020	442,682		200		442,882
<b>2016-2020</b>	<b>812,188</b>	<b>200</b>	<b>6,166</b>		<b>818,554</b>

<u>Sudan</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	122,738				122,738
2017	54,080				54,080
2018	120,756				120,756
2019	272,443				272,443
2020	453,574				453,574
<b>2016-2020</b>	<b>1,023,591</b>				<b>1,023,591</b>

<b><u>Tanzania</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	25,789			10,153	35,942
<b>2017</b>	493	1,425			1,918
<b>2018</b>	26,643	2,563			29,206
<b>2019</b>	9,295	1,445		19	10,759
<b>2020</b>	56,667	181			56,848
<b>2016-2020</b>	<b>118,887</b>	<b>5,614</b>		<b>10,172</b>	<b>134,673</b>

<b><u>Togo</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>	50				50
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>50</b>				<b>50</b>

<b><u>Tunisia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>			992		992
<b>2018</b>	3,348				3,348
<b>2019</b>	20	12			32
<b>2020</b>	10,000				10,000
<b>2016-2020</b>	<b>13,368</b>	<b>12</b>	<b>992</b>		<b>14,372</b>

<b><u>Uganda</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	1,347			1,147	2,494
<b>2017</b>	91,500	3,500	70		95,070
<b>2018</b>	163,044	1,446			164,490
<b>2019</b>	128,749	1,534			130,283
<b>2020</b>	40,390				40,390
<b>2016-2020</b>	<b>425,030</b>	<b>6,480</b>	<b>70</b>	<b>1,147</b>	<b>432,727</b>

<u>Zambia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017	2,406	363		54	2,823
2018	1	20			21
2019	1,305				1,305
2020	5,974				5,974
<b>2016-2020</b>	<b>9,686</b>	<b>383</b>		<b>54</b>	<b>10,123</b>

<u>Zimbabwe</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	400				400
2017	8,493	1,777			10,270
2018		1064			1,064
2019	200	52105			52,305
2020	183	200			383
<b>2016-2020</b>	<b>9,276</b>	<b>54,946</b>			<b>64,222</b>

## AMERICAS

<u>Anguilla</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017		500			500
2018					
2019					
2020					
<b>2016-2020</b>		<b>500</b>			<b>500</b>

<u>Antigua and Barbuda</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017		1,423			1,423
2018					
2019					
2020					
<b>2016-2020</b>		<b>1,423</b>			<b>1,423</b>

<b><u>Argentina</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	12,220				12,220
<b>2017</b>	26,615		149		26,764
<b>2018</b>	15,732	22	50		15,804
<b>2019</b>	22,535	147	103		22,785
<b>2020</b>	2,951	16	689		3,656
<b>2016-2020</b>	<b>80,053</b>	<b>185</b>	<b>991</b>		<b>81,229</b>

<b><u>Bahamas</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>		3,500			3,500
<b>2017</b>		1,565			1,565
<b>2018</b>			230		230
<b>2019</b>		9,840			9,840
<b>2020</b>					
<b>2016-2020</b>		<b>14,905</b>	<b>230</b>		<b>15,135</b>

<b><u>Barbados</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>		90			90
<b>2017</b>					
<b>2018</b>					
<b>2019</b>		102			102
<b>2020</b>					
<b>2016-2020</b>		<b>192</b>			<b>192</b>

<b><u>Belize</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>		3,500			3,500
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>		6,273			6,273
<b>2016-2020</b>		<b>9,773</b>			<b>9,773</b>

<b><u>Bermuda</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>		50			50
<b>2016-2020</b>		<b>50</b>			<b>50</b>

<b><u>Bolivia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	6,967				6,967
<b>2017</b>	3,063				3,063
<b>2018</b>	2,202	186			2,388
<b>2019</b>	76,033		716		76,749
<b>2020</b>	13,388		93		13,481
<b>2016-2020</b>	<b>101,653</b>	<b>186</b>	<b>809</b>		<b>102,648</b>

<b><u>Brazil</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	13,562				13,562
<b>2017</b>	70,867				70,867
<b>2018</b>	62,516	210,42	2,358		85,916
<b>2019</b>	261,631	270,48	6,211	80	294,970
<b>2020</b>	137,599	219,931	107	206	357,843
<b>2016-2020</b>	<b>546,175</b>	<b>268,021</b>	<b>8,676</b>	<b>286</b>	<b>823,158</b>

<b><u>Canada</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	688	200	91,841		92,729
<b>2017</b>	7,613		77,658	145	85,416
<b>2018</b>	11,666	2,284	4,611	233	18,794
<b>2019</b>	15,145	7,322	18,524	35	41,026
<b>2020</b>	19,158	618	5,845	57	25,678
<b>2016-2020</b>	<b>54,270</b>	<b>10,424</b>	<b>198,479</b>	<b>470</b>	<b>263,643</b>



<b><u>Chile</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	420		624	15,374	16,418
<b>2017</b>	2,972		5,342		8,314
<b>2018</b>	70	2,431	17		2,518
<b>2019</b>	1,842	105	1,912	36	3,895
<b>2020</b>	2,598		823	5	3,426
<b>2016-2020</b>	<b>7,902</b>	<b>2,536</b>	<b>8,718</b>	<b>15,415</b>	<b>34,571</b>

<b><u>Colombia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	30,629	210			30,839
<b>2017</b>	25,050	111			25,161
<b>2018</b>	39,573	11		26,752	66,336
<b>2019</b>	33,275	160	196	1,226	34,857
<b>2020</b>	46,785	16,329	311	140	635,65
<b>2016-2020</b>	<b>175,312</b>	<b>16,821</b>	<b>507</b>	<b>28,118</b>	<b>220,758</b>

<b><u>Costa Rica</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	153	5,500	42	105	5,800
<b>2017</b>	341	10,337			10,678
<b>2018</b>	5,525	111		129	5,765
<b>2019</b>	389				389
<b>2020</b>	943	2,744	532		4,219
<b>2016-2020</b>	<b>7,351</b>	<b>18,692</b>	<b>574</b>	<b>234</b>	<b>26,851</b>

<b><u>Cuba</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>		1,079,214			1,079,214
<b>2017</b>		1,738,000			1,738,000
<b>2018</b>		52,400			52,400
<b>2019</b>		9,916			9,916
<b>2020</b>	638	638,793			639,431
<b>2016-2020</b>	<b>638</b>	<b>3,518,323</b>			<b>3,518,961</b>

<b><u>Dominica</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>		34,798			34,798
<b>2018</b>	6	344			350
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>6</b>	<b>35,142</b>			<b>35,148</b>

<b><u>Dominican Republic</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	10,800	41,524			52,324
<b>2017</b>	21,720	47,069			68,789
<b>2018</b>	15,444	11,740			27,184
<b>2019</b>		4,890			4,890
<b>2020</b>	3,735	27,435			31,170
<b>2016-2020</b>	<b>51,699</b>	<b>132,658</b>			<b>184,357</b>

<b><u>Ecuador</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	16,998			272,371	289,369
<b>2017</b>	2,960				2,960
<b>2018</b>	872		278	3,073	4,223
<b>2019</b>	1,020		60		1,080
<b>2020</b>	1,212				1,212
<b>2016-2020</b>	<b>23,062</b>		<b>338</b>	<b>275,444</b>	<b>298,844</b>

<b><u>El Salvador</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	475				475
<b>2017</b>	389				389
<b>2018</b>	2,081			2,574	4,655
<b>2019</b>	1,873	11			1,884
<b>2020</b>	314	16,461			16,775
<b>2016-2020</b>	<b>5,132</b>	<b>16,472</b>		<b>2,574</b>	<b>24,178</b>

<b><u>French Guiana</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	139				
<b>2016-2020</b>	<b>139</b>				<b>139</b>

<b><u>Greenland</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>	169				169
<b>2018</b>				78	78
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>169</b>			<b>78</b>	<b>247</b>

<b><u>Grenada</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>		146			146
<b>2018</b>	27				27
<b>2019</b>		26			26
<b>2020</b>					
<b>2016-2020</b>	<b>27</b>	<b>172</b>			<b>199</b>

<b><u>Guatemala</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	901	706		95	1702
<b>2017</b>	41,326		3,165	320	44,811
<b>2018</b>	5,659		4,086	17,008	26,753
<b>2019</b>	5,037		15,499	370	20,906
<b>2020</b>	13,948	311,183	13,434		338,565
<b>2016-2020</b>	<b>66,871</b>	<b>311,889</b>	<b>36,184</b>	<b>17,793</b>	<b>432,737</b>

<b><u>Guyana</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>	180	15			195
<b>2018</b>	323	45			368
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>503</b>	<b>60</b>			<b>563</b>

<b><u>Haiti</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	4,411	175,795			180,206
<b>2017</b>	2,022	12,539			14,561
<b>2018</b>	230			8,618	8,848
<b>2019</b>	140	1,012			1,152
<b>2020</b>		13,207			13,207
<b>2016-2020</b>	<b>6,803</b>	<b>202,553</b>		<b>8,618</b>	<b>217,974</b>

<b><u>Honduras</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	724	11		155	890
<b>2017</b>					
<b>2018</b>	17,094			387	17,481
<b>2019</b>	300		86		386
<b>2020</b>	1,137	936,060		86	937,283
<b>2016-2020</b>	<b>19,255</b>	<b>936,071</b>	<b>86</b>	<b>628</b>	<b>956,040</b>

<b><u>Jamaica</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	24	3,500			
<b>2017</b>	29				
<b>2018</b>	7				
<b>2019</b>					
<b>2020</b>	2				
<b>2016-2020</b>	<b>62</b>	<b>3,500</b>			<b>3,562</b>

<b><u>Martini-que</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>	2				2
<b>2020</b>					
<b>2016-2020</b>	<b>2</b>				<b>2</b>

<b><u>Mexico</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	3,037	8,516		400	11,953
<b>2017</b>	334	1,942		192,718	194,994
<b>2018</b>	5,027	15,198		57	202,82
<b>2019</b>	1,872	6,763	3,765	3,796	161,96
<b>2020</b>	25,004	73,184	2,010	690	10,0888
<b>2016-2020</b>	<b>35,274</b>	<b>105,603</b>	<b>5,775</b>	<b>197,661</b>	<b>344,313</b>

<b><u>Nicaragua</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	5,282	11,678		1,400	18,360
<b>2017</b>	2,590	17,390			19,980
<b>2018</b>	6,914				6,914
<b>2019</b>	576				576
<b>2020</b>	706	231,169	19		231,894
<b>2016-2020</b>	<b>16,068</b>	<b>260,237</b>	<b>19</b>	<b>1,400</b>	<b>277,724</b>

<b><u>Panama</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	481	573			1,054
<b>2017</b>		302			302
<b>2018</b>					
<b>2019</b>	32			205	237
<b>2020</b>	106	3,551			3,657
<b>2016-2020</b>	<b>619</b>	<b>4,426</b>		<b>205</b>	<b>5,250</b>

<b><u>Paraguay</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	1,350	2,250			3,600
<b>2017</b>	4,488	761			5,249
<b>2018</b>	30,372				30,372
<b>2019</b>	53,747		315		54,062
<b>2020</b>	5				5
<b>2016-2020</b>	<b>89,962</b>	<b>3,011</b>	<b>315</b>		<b>93,288</b>

<b><u>Peru</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	12,151	531	2,126	2,182	16,990
<b>2017</b>	294,985			30	295,015
<b>2018</b>	4,296	24	431	3,809	8,560
<b>2019</b>	1,548	2,994		5,632	10,174
<b>2020</b>	3,548	4,441	44		8,033
<b>2016-2020</b>	<b>316,528</b>	<b>7,990</b>	<b>2,601</b>	<b>11,653</b>	<b>338,772</b>

<b><u>Puerto Rico</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>		86,406			86,406
<b>2018</b>		400			400
<b>2019</b>		240			240
<b>2020</b>		119		11,149	11,268
<b>2016-2020</b>		<b>87,165</b>		<b>11,149</b>	<b>98,314</b>

<b><u>St. Kitts and Nevis</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>		33			33
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>33</b>			<b>33</b>

<u>St.Lucia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016		130			130
2017					
2018					
2019		25			25
2020					
<b>2016-2020</b>		<b>155</b>			<b>155</b>

<u>St. Maarten (Dutch part)</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017		12,706			12,706
2018					
2019					
2020					
<b>2016-2020</b>		<b>12,706</b>			<b>12,706</b>

<u>St.Martin (French part)</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017		10,582			10,582
2018					
2019					
2020					
<b>2016-2020</b>		<b>10,582</b>			<b>10,582</b>

<u>St. Vincent and the Grenadines</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	50	288			338
2017		20			20
2018					
2019		232			232
2020					
<b>2016-2020</b>	<b>50</b>	<b>540</b>			<b>590</b>

<u>Suriname</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017	6,000				6,000
2018					
2019					
2020					
<b>2016-2020</b>	<b>6,000</b>				<b>6,000</b>

<u>Trinidad and Tobago</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017	200				200
2018	800			60	860
2019	45	3			48
2020	12	21			33
<b>2016-2020</b>	<b>1,057</b>	<b>24</b>		<b>60</b>	<b>1,141</b>

<u>Turks and Caicos Islands</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016		50			50
2017		60			60
2018					
2019					
2020					
<b>2016-2020</b>		<b>110</b>			<b>110</b>

<u>Uruguay</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	12,231	72			12,303
2017	9,077	23			9,100
2018	291	10			301
2019	20,858		900		21,758
2020	365		2		367
<b>2016-2020</b>	<b>42,822</b>	<b>105</b>	<b>902</b>		<b>43,829</b>



<u>United States of America</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	102,971	880,581	123,769		1,107,321
2017	247,289	1,053,135	385,372		1,685,796
2018	8,474	844,299	391,404	3,117	1,247,294
2019	20,527	472,651	422,951	220	916,349
2020	17,181	626,589	1,069,944	273	1,713,987
<b>2016-2020</b>	<b>396,442</b>	<b>3,877,255</b>	<b>2,393,440</b>	<b>3,610</b>	<b>6,670,747</b>

<u>Venezuela</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	228				228
2017	2,076				2,076
2018	31,707				31,707
2019	320				320
2020	2,362				2,362
<b>2016-2020</b>	<b>36,693</b>				<b>36,693</b>

<u>Virgin Islands (British)</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017		6,000			6,000
2018					
2019					
2020					
<b>2016-2020</b>		<b>6,000</b>			<b>6,000</b>

<u>Virgin Islands (U.S.)</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017		2,311			2,311
2018					
2019					
2020					
<b>2016-2020</b>		<b>2,311</b>			<b>2,311</b>

## ASIA

<u>Afghanis- tan</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	4,816	225		2,353	7,394
2017	25,502	1,369			26,871
2018	55,713	52	371,318	8,365	435,448
2019	111,941	463	4,154		116,558
2020	42,406	3,439			45,845
<b>2016-2020</b>	<b>240,378</b>	<b>5,548</b>	<b>375,472</b>	<b>10,718</b>	<b>632,116</b>

<u>Azerbai- jan</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018	390				390
2019				136	136
2020					
<b>2016-2020</b>	<b>390</b>			<b>136</b>	<b>526</b>

<u>Bangla- desh</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	117,450	496,260			613,710
2017	450,333	489,786		6,000	946,119
2018	77,243	546			77,789
2019	308,129	3,778,074			4,086,203
2020	1,931,909	2,511,179			4,443,088
<b>2016-2020</b>	<b>2,885,064</b>	<b>7,275,845</b>		<b>6,000</b>	<b>10,166,909</b>

<u>Bhutan</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	638		56		694
2017					
2018					
2019					
2020	36	84			120
<b>2016-2020</b>	<b>674</b>	<b>84</b>	<b>56</b>		<b>814</b>

<b><u>Brunei Darussalam</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>	94				94
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>94</b>				<b>94</b>

<b><u>Dem. People's Rep. Korea</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	107,000				107,000
<b>2017</b>					
<b>2018</b>		68,826			68,826
<b>2019</b>		6,362			6,362
<b>2020</b>		5,345			5,345
<b>2016-2020</b>	<b>107,000</b>	<b>80,533</b>			<b>187,533</b>

<b><u>Cambodia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	3,071	5,203			8,274
<b>2017</b>	9,280	5,788			15,068
<b>2018</b>	1,817	35,360			37,177
<b>2019</b>	15,566	54,542			70,108
<b>2020</b>	65,775	475			66,250
<b>2016-2020</b>	<b>95,509</b>	<b>101,368</b>			<b>196,877</b>

<b><u>China</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	3,789,184	3,601,106		44,015	7,434,305
<b>2017</b>	3,077,800	1,317,757		77,762	4,473,319
<b>2018</b>	222,660	3,490,295		49,415	3,762,370
<b>2019</b>	1,630,269	2,276,752	25,690	100,842	4,033,553
<b>2020</b>	4,601,042	433,830	24,467	14,700	5,074,039
<b>2016-2020</b>	<b>13,320,955</b>	<b>11,119,740</b>	<b>50,157</b>	<b>286,734</b>	<b>24,777,586</b>

<u>Cyprus</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016			40		40
2017					
2018			8		8
2019					
2020					
<b>2016-2020</b>			<b>48</b>		<b>48</b>

<u>Georgia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018	284				284
2019					
2020	184				184
<b>2016-2020</b>	<b>468</b>				<b>468</b>

<u>Hong Kong (China)</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016		218			218
2017	90	3,202			3,292
2018		1,400			1,400
2019		205			205
2020		163			163
<b>2016-2020</b>	<b>90</b>	<b>5,188</b>			<b>5,278</b>

<u>India</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	2,373,550	16,757		10,000	2,400,307
2017	1,345,759	235			1,345,994
2018	1,990,399	684,926	89		2,675,414
2019	2,647,495	2,306,823	63,404		5,017,722
2020	895,673	2,960,540			3,856,213
<b>2016-2020</b>	<b>9,252,876</b>	<b>5,969,281</b>	<b>63,493</b>	<b>10,000</b>	<b>15,295,650</b>

<b><u>Indonesia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	1,128,884	3,552	2,004	112,034	1,246,474
<b>2017</b>	156,351	42,165		166,455	364,971
<b>2018</b>	74,431	6,495	143	772,236	853,305
<b>2019</b>	141,766	26,106	158	294,616	462,646
<b>2020</b>	690,830	1,436		12,247	704,513
<b>2016-2020</b>	<b>2,192,262</b>	<b>79,754</b>	<b>2,305</b>	<b>1,357,588</b>	<b>3,631,909</b>

<b><u>Iran</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	78				78
<b>2017</b>	10,950	10,300		203,349	224,599
<b>2018</b>	1,437	24,125		48,351	73,913
<b>2019</b>	504,871	305		14,548	519,724
<b>2020</b>	24,503	12,673		14,505	51,681
<b>2016-2020</b>	<b>541,839</b>	<b>47,403</b>		<b>280,753</b>	<b>869,995</b>

<b><u>Iraq</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>				3,933	3,933
<b>2018</b>	45,047		20,443		65,490
<b>2019</b>	37,252				37,252
<b>2020</b>	258	975			1,233
<b>2016-2020</b>	<b>82,557</b>	<b>975</b>	<b>20,443</b>	<b>3,933</b>	<b>107,908</b>

<b><u>Israel</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>			75,210		75,210
<b>2017</b>					
<b>2018</b>	80				80
<b>2019</b>			1,233		1,233
<b>2020</b>	113		10,299		10,412
<b>2016-2020</b>	<b>193</b>		<b>86,742</b>		<b>86,935</b>

<b><u>Japan</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	88,230	576,015		199,338	863,583
<b>2017</b>	615	20,181			20,796
<b>2018</b>	2	131,297		14,698	145,997
<b>2019</b>		263,686		881	264,567
<b>2020</b>	10,963	174,904		1	185,868
<b>2016-2020</b>	<b>99,810</b>	<b>1,166,083</b>		<b>214,918</b>	<b>1,480,811</b>

<b><u>Jordan</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>		155			155
<b>2018</b>	2,000				2,000
<b>2019</b>	46				46
<b>2020</b>	138				138
<b>2016-2020</b>	<b>2,184</b>	<b>155</b>			<b>2,339</b>

<b><u>Kazakhstan</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	1,029				1,029
<b>2017</b>	7,115				7,115
<b>2018</b>	400				400
<b>2019</b>					
<b>2020</b>	31,606				31,606
<b>2016-2020</b>	<b>40,150</b>				<b>40,150</b>

<b><u>Korea</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>		7,471		11	7,482
<b>2017</b>	517		2,500	1,316	4,333
<b>2018</b>		1,035	49		1,084
<b>2019</b>		1,636	4,011		5,647
<b>2020</b>	11,552	5,940	1,529		19,021
<b>2016-2020</b>	<b>12,069</b>	<b>16,082</b>	<b>8,089</b>	<b>1,327</b>	<b>37,567</b>

<b><u>Kyrgyzstan</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>				39	39
<b>2017</b>	224			3,096	3,320
<b>2018</b>	4,690				4,690
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>4,914</b>			<b>3,135</b>	<b>8,049</b>

<b><u>Lao PDR</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>		659			659
<b>2017</b>		188			188
<b>2018</b>	1,021	18,000			19,021
<b>2019</b>		102,416		124	102,540
<b>2020</b>	12,360				12,360
<b>2016-2020</b>	<b>13,381</b>	<b>121,263</b>		<b>124</b>	<b>134,768</b>

<b><u>Lebanon</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>		4,093	200		4,293
<b>2020</b>					
<b>2016-2020</b>		<b>4,093</b>	<b>200</b>		<b>4,293</b>

<b><u>Macao, (China)</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>		5,650			5,650
<b>2019</b>					
<b>2020</b>		2,838			2,838
<b>2016-2020</b>		<b>8,488</b>			<b>8,488</b>

<u>Malaysia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	18,475				18,475
2017	80,640	1,685		68	82,393
2018	37,983				37,983
2019	61,283	1,945			63,228
2020	23,618				23,618
<b>2016-2020</b>	<b>221,999</b>	<b>3,630</b>		<b>68</b>	<b>225,697</b>

<u>Maldives</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017		76			76
2018	20				20
2019	296				296
2020					
<b>2016-2020</b>	<b>316</b>	<b>76</b>			<b>392</b>

<u>Mongolia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018	4,130	1,279	522		5,931
2019	13				13
2020	4,156				4,156
<b>2016-2020</b>	<b>8,299</b>	<b>1,279</b>	<b>522</b>		<b>10,100</b>

<u>Myanmar</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	508,701	537			509,238
2017	330,000	21,436			351,436
2018	273,298	24,725			298,023
2019	231,248	38,764			270,012
2020	45,474	4,027	46		49,547
<b>2016-2020</b>	<b>1,388,721</b>	<b>89,489</b>	<b>46</b>		<b>1,478,256</b>



<b><u>Nepal</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	30,315		1,023		31,338
<b>2017</b>	383,185	697	22		383,904
<b>2018</b>	10,954	1,267		75	12,296
<b>2019</b>	99,286	21,616			120,902
<b>2020</b>	48,141				48,141
<b>2016-2020</b>	<b>571,881</b>	<b>23,580</b>	<b>1,045</b>	<b>75</b>	<b>596,581</b>

<b><u>Oman</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>	320				320
<b>2018</b>		10,000			10,000
<b>2019</b>		1,079			1,079
<b>2020</b>	18	100			118
<b>2016-2020</b>	<b>338</b>	<b>11,179</b>			<b>11,517</b>

<b><u>Pakistan</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	12,673				12,673
<b>2017</b>	1,750				1,750
<b>2018</b>	933	134		1,011	2,078
<b>2019</b>	43,599	1,199	266	55,018	100,082
<b>2020</b>	810,501	16,104		1,919	828,524
<b>2016-2020</b>	<b>869,456</b>	<b>17,437</b>	<b>266</b>	<b>57,948</b>	<b>945,107</b>

<b><u>Palestine</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	510				510
<b>2017</b>			77		77
<b>2018</b>					
<b>2019</b>			2		2
<b>2020</b>	70	10	32		112
<b>2016-2020</b>	<b>580</b>	<b>10</b>	<b>111</b>		<b>701</b>

<b><u>Philippines</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	626,001	5,303,638	94	120	5,929,853
<b>2017</b>	976,305	1,449,839		102,476	2,528,620
<b>2018</b>	280,044	3,430,721		91,206	3,801,971
<b>2019</b>	970,127	2,705,432	5,405	413,264	4,094,228
<b>2020</b>	56,232	3,875,449		507,367	4,439,048
<b>2016-2020</b>	<b>2,908,709</b>	<b>16,765,079</b>	<b>5,499</b>	<b>1,114,433</b>	<b>20,793,720</b>

<b><u>Saudi Arabia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	280				
<b>2017</b>	100				
<b>2018</b>	2,046				
<b>2019</b>	260				
<b>2020</b>	600		6		606
<b>2016-2020</b>	<b>3,286</b>		<b>6</b>		<b>3,292</b>

<b><u>Sri Lanka</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>		500,200			500,200
<b>2017</b>	130,966	3,497	70	625	135,158
<b>2018</b>	96,373	3,188		113	99,674
<b>2019</b>	84,159	2,889		3	87,051
<b>2020</b>	3,391	15,714		262	19,367
<b>2016-2020</b>	<b>314,889</b>	<b>525,488</b>	<b>70</b>	<b>1,003</b>	<b>841,450</b>

<b><u>Syria</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>	2,280				2,280
<b>2018</b>	22,351	4,333			26,684
<b>2019</b>	17,100				17,100
<b>2020</b>			25,000		25,000
<b>2016-2020</b>	<b>41,731</b>	<b>4,333</b>	<b>25,000</b>		<b>71,064</b>

<u>Taiwan</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	2,200	42,224		751	45,175
2017	5,730	14,613			20,343
2018		17,922		830	18,752
2019		13,124			13,124
2020	3,485	55			3,540
<b>2016-2020</b>	<b>11,415</b>	<b>87,938</b>		<b>1,581</b>	<b>100,934</b>

<u>Tajikistan</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	2,350			30	2,380
2017	4,665				
2018	5,429				
2019	4,811				
2020	1,525				
<b>2016-2020</b>	<b>18,780</b>			<b>30</b>	<b>18,810</b>

<u>Thailand</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	82,926	7,052	182		90,160
2017	48,759	1,612			50,371
2018	2,218	2,430			4,648
2019	642	60,710			61,352
2020	4,346	9,145			13,491
<b>2016-2020</b>	<b>138,891</b>	<b>80,949</b>	<b>182</b>		<b>220,022</b>

<u>Timor-Leste</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	34	78			112
2017					
2018					
2019					
2020	1,141				1,141
<b>2016-2020</b>	<b>1,175</b>	<b>78</b>			<b>1,253</b>

<u>Turkey</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	200				200
2017					
2018	578		50	7	635
2019	526			14	540
2020	723		500	39,760	40,983
2016-2020	2,027		550	39,781	42,358

<u>United Arab Emirates</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017	845				845
2018					
2019	100	120			220
2020	605				605
2016-2020	1,550	120			1,670

<u>Uzbekistan</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018					
2019					
2020	70,000				70,000
2016-2020	70,000				70,000

<u>Viet Nam</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	23,566	56,971			80,537
2017	17,550	615,913			633,463
2018	30,754	112,293			143,047
2019	19,254	69,495			88,749
2020	9,392	1,257,293	720	72	1,267,477
2016-2020	100,516	2,111,965	720	72	2,213,273

<u>Yemen</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	44,942				44,942
2017	13				13
2018		18,286			18,286
2019	31,356	2			31,358
2020	222,948				222,948
<b>2016-2020</b>	<b>299,259</b>	<b>18,288</b>			<b>317,547</b>

## EUROPE

<u>Albania</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	3,077				3,077
2017	3,508				3,508
2018	108				108
2019				32,745	32,745
2020					
<b>2016-2020</b>	<b>6,693</b>			<b>32,745</b>	<b>39,438</b>

<u>Austria</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	229	25			254
2017					
2018					
2019	273				273
2020					
<b>2016-2020</b>	<b>502</b>	<b>25</b>			<b>527</b>

<u>Belgium</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018	50				50
2019	10				10
2020					
<b>2016-2020</b>	<b>60</b>				<b>60</b>

<b><u>Bosnia- Herzegovina</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>	274				274
<b>2020</b>	905				905
<b>2016-2020</b>	<b>1,179</b>				<b>1,179</b>

<b><u>Bulgary</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	24				24
<b>2017</b>	22				22
<b>2018</b>	50				50
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>96</b>				<b>96</b>

<b><u>Croatia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>			233		233
<b>2018</b>	99		40		139
<b>2019</b>					
<b>2020</b>				41,630	41,630
<b>2016-2020</b>	<b>99</b>		<b>273</b>	<b>41,630</b>	<b>42,002</b>

<b><u>Czech Republic</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>	12				12
<b>2019</b>					
<b>2020</b>	43				43
<b>2016-2020</b>	<b>55</b>				<b>55</b>

<b><u>France</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>				191	191
<b>2017</b>		3,956	17,300	202	21,458
<b>2018</b>	5,222	426	682	15	6,345
<b>2019</b>	3,371	184	548	2,054	6,157
<b>2020</b>	6,168	1,101	3,010		10,279
<b>2016-2020</b>	<b>14,761</b>	<b>5,667</b>	<b>21,540</b>	<b>2,462</b>	<b>44,430</b>

<b><u>Finland</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>			51		51
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>			<b>51</b>		<b>51</b>

<b><u>Germany</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	2,000				2,000
<b>2017</b>	218				218
<b>2018</b>	9		500		509
<b>2019</b>		30	650		680
<b>2020</b>	2				2
<b>2016-2020</b>	<b>2,229</b>	<b>30</b>	<b>1,150</b>		<b>3,409</b>

<b><u>Greece</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	1		2,932		2,933
<b>2017</b>				800	800
<b>2018</b>	85	1,300	7,827		9,212
<b>2019</b>			2,800		2,800
<b>2020</b>	4,947	600	6,400	720	12,667
<b>2016-2020</b>	<b>5,033</b>	<b>1,900</b>	<b>19,959</b>	<b>1,520</b>	<b>28,412</b>

<b><u>Hungary</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>		96			96
<b>2018</b>					
<b>2019</b>		114			114
<b>2020</b>	14				14
<b>2016-2020</b>	<b>14</b>	<b>210</b>			<b>224</b>

<b><u>Iceland</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>	50				
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	591				
<b>2016-2020</b>	<b>641</b>				<b>641</b>

<b><u>Ireland</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>	62				62
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	51				51
<b>2016-2020</b>	<b>113</b>				<b>113</b>

<b><u>Italy</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	750		200	30,000	30,950
<b>2017</b>	1,053		1,000		2,053
<b>2018</b>	1,827		815	637	3,279
<b>2019</b>	2,651		54	686	3,391
<b>2020</b>	1,895		55		1,950
<b>2016-2020</b>	<b>8,176</b>		<b>2,124</b>	<b>31,323</b>	<b>41,623</b>



<b><u>Kosovo</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	10				10
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>10</b>				<b>10</b>

<b><u>Latvia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>			24		24
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>			<b>24</b>		<b>24</b>

<b><u>Luxembourg</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>		192			192
<b>2020</b>	2				2
<b>2016-2020</b>	<b>2</b>	<b>192</b>			<b>194</b>

<b><u>Montenegro</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	400				400
<b>2017</b>			2		2
<b>2018</b>				6	6
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>400</b>		<b>2</b>	<b>6</b>	<b>408</b>

<u>Netherlands</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018					
2019					
2020			4,003		
2016-2020			<b>4,003</b>		<b>4,003</b>

<u>North Macedonia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018	50				50
2019					
2020					
2016-2020	<b>50</b>				<b>50</b>

<u>Norway</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016		259			259
2017	220				220
2018					
2019	150	144	326		620
2020	1,018				1,018
2016-2020	<b>1,388</b>	<b>403</b>	<b>326</b>		<b>2,117</b>

<u>Poland</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018					
2019	18				18
2020	400	22			422
2016-2020	<b>418</b>	<b>22</b>			<b>440</b>

<u>Portugal</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	22		1,030		1,052
2017			6,791		6,791
2018		61	346		407
2019	25	619			644
2020	20	8			28
<b>2016-2020</b>	<b>67</b>	<b>688</b>	<b>8,167</b>		<b>8,922</b>

<u>Romania</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	1,480				1,480
2017					
2018	1,206				1,206
2019	460				460
2020	282	5			287
<b>2016-2020</b>	<b>3,428</b>	<b>5</b>			<b>3,433</b>

<u>Russian Federation</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	2,204	1,400	27		3,631
2017	4,679		1,220		5,899
2018	3,574				3,574
2019	11,357		340		11,697
2020	118		130		248
<b>2016-2020</b>	<b>21,932</b>	<b>1,400</b>	<b>1,717</b>		<b>25,049</b>

<u>Serbia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	39				39
2017	42				42
2018	127				127
2019	297				297
2020	878				878
<b>2016-2020</b>	<b>1,383</b>				<b>1,383</b>

<u>Slovakia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018	274				274
2019					
2020	60				60
2016-2020	334				334

<u>Slovenia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018	36	300			336
2019					
2020					
2016-2020	36	300			336

<u>Spain</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	250		5,145		5,395
2017	3		2,104		2,107
2018	99	538			637
2019	5,529	104	17,654		23,287
2020	91	177	7,530		7,798
2016-2020	5,972	819	32,433		39,224

<u>Sweden</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018	1		125		126
2019			47		47
2020					
2016-2020	1		172		173

<b><u>Switzer- land</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>	160				160
<b>2018</b>	18				18
<b>2019</b>	10				10
<b>2020</b>		13			13
<b>2016-2020</b>	<b>188</b>	<b>13</b>			<b>201</b>

<b><u>Ukraine</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	126				126
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	800		1,230		2,030
<b>2016-2020</b>	<b>926</b>		<b>1,230</b>		<b>2,156</b>

<b><u>United Kingdom</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	1,148	19			1167
<b>2017</b>	179	5,993			6,172
<b>2018</b>	23	25	115		163
<b>2019</b>	11,745		10		11,755
<b>2020</b>	345	4,253	250	48	4,896
<b>2016-2020</b>	<b>13,440</b>	<b>10,290</b>	<b>375</b>	<b>48</b>	<b>24,153</b>

## OCEANIA

<b><u>American Samoa</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>		4,600			
<b>2019</b>					
<b>2020</b>		394			
<b>2016-2020</b>		<b>4,994</b>			<b>4,994</b>

<u>Australia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	2,534		700		3,234
2017	41	30,154	744		30,939
2018	534	550	10,171		11,255
2019	1,270	2,875	20,696		24,841
2020	4,288	224	46,921		51,433
<b>2016-2020</b>	<b>8,667</b>	<b>33,803</b>	<b>79,232</b>		<b>121,702</b>

<u>Cook Islans</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016		6			6
2017					
2018					
2019					
2020					
<b>2016-2020</b>		<b>6</b>			<b>6</b>

<u>Fiji</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016		76,072			
2017	189	155		30	374
2018	10,000	2,313			12,313
2019	90	4,909			4,999
2020	35	36,528			36,563
<b>2016-2020</b>	<b>10,314</b>	<b>119,977</b>		<b>30</b>	<b>130,321</b>

<u>French Polynesia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017	1,140				1,140
2018					
2019		30			30
2020	27				27
<b>2016-2020</b>	<b>1,167</b>	<b>30</b>			<b>1,197</b>

<u>Guam</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018		2,433			2,433
2019		453			453
2020					
<b>2016-2020</b>		<b>2,886</b>			<b>2,886</b>

<u>Marshall Island</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017					
2018					
2019	200				200
2020					
<b>2016-2020</b>	<b>200</b>				<b>200</b>

<u>New Caledonia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016					
2017		574			574
2018			48		48
2019					
2020		31			31
<b>2016-2020</b>		<b>605</b>	<b>48</b>		<b>653</b>

<u>New Zealand</u>	Hydrological	Meteorological	Climatological	Geophysical	Total displaced persons
2016	289			1,500	1,789
2017	5,170		1,080		6,250
2018	313	293	383		989
2019	135	8	1,152	3	1,298
2020	4,264	47	626		4,937
<b>2016-2020</b>	<b>10,171</b>	<b>348</b>	<b>3,241</b>	<b>1,503</b>	<b>15,263</b>

<b><u>Northern Mariana Islands</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>		13,938			13,938
<b>2019</b>		873			873
<b>2020</b>					
<b>2016-2020</b>		<b>14,811</b>			<b>14,811</b>

<b><u>Papua New Guinea</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>	1,630				1,630
<b>2017</b>	500			887	1,387
<b>2018</b>				61,028	61,028
<b>2019</b>	7,004	718		23,272	30,994
<b>2020</b>	3,894				3,894
<b>2016-2020</b>	<b>13,028</b>	<b>718</b>		<b>85,187</b>	<b>98,933</b>

<b><u>Samoa</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>		63			63
<b>2017</b>					
<b>2018</b>		327			327
<b>2019</b>					
<b>2020</b>		55			55
<b>2016-2020</b>		<b>445</b>			<b>445</b>

<b><u>Solomon Islands</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>				1,328	1,328
<b>2017</b>	575				575
<b>2018</b>	955	103			1,058
<b>2019</b>	4	27			31
<b>2020</b>	11	308			319
<b>2016-2020</b>	<b>1,545</b>	<b>438</b>		<b>1,328</b>	<b>3,311</b>



<b><u>Tonga</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>		3,000			3,000
<b>2017</b>					
<b>2018</b>		5,700			5,700
<b>2019</b>					
<b>2020</b>		2,678			2,678
<b>2016-2020</b>		<b>11,378</b>			<b>11,378</b>

<b><u>Tuvalu</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>		400			400
<b>2016-2020</b>		<b>400</b>			<b>400</b>

<b><u>Vanuatu</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total displaced persons</b>
<b>2016</b>					
<b>2017</b>		3,390		10,869	14,259
<b>2018</b>	571	100		12,301	12,972
<b>2019</b>		1,000			1,000
<b>2020</b>		80,183		8	80,191
<b>2016-2020</b>	<b>571</b>	<b>84,673</b>		<b>23,178</b>	<b>108,422</b>

**ANNEX IV**  
**TOTAL DAMAGES ('000 US\$),**  
**ADJUSTED FOR INFLATION, BY COUNTRY**  
**(INCLUDING SELF-GOVERNING**  
**OR SPECIAL STATUS TERRITORIES)**

**AFRICA**

<b><u>Angola</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>	2,211				2,211
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>2,211</b>				<b>2,211</b>

<b><u>Egypt</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>		28,225			28,225
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	79,570				
<b>2016-2020</b>	<b>79,570</b>	<b>28,225</b>			<b>107,795</b>

<b><u>Ethiopia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>	39				39
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>39</b>				<b>39</b>

<b><u>Kenya</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>	377,686				377,686
<b>2019</b>					
<b>2020</b>	10,470				10,470
<b>2016-2020</b>	<b>388,156</b>				<b>388,156</b>

<b><u>Libya</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>	7,525				7,525
<b>2020</b>					
<b>2016-2020</b>	<b>7,525</b>				<b>7,525</b>

<b><u>Madagas- car</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>		22,109			22,109
<b>2018</b>					
<b>2019</b>		26,497			26,497
<b>2020</b>					
<b>2016-2020</b>		<b>48,606</b>			<b>48,606</b>

<b><u>Mozambi- que</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>		1,694			1,694
<b>2017</b>		18,793			18,793
<b>2018</b>	5,503				5,503
<b>2019</b>		2,363,563			2,363,563
<b>2020</b>					
<b>2016-2020</b>	<b>5,503</b>	<b>2,384,050</b>			<b>2,389,553</b>

<b><u>Niger</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>	11,055				11,055
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	10,470				10,470
<b>2016-2020</b>	<b>21,525</b>				<b>21,525</b>

<b><u>Nigeria</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>	296,753				296,753
<b>2019</b>					
<b>2020</b>	104,698				104,698
<b>2016-2020</b>	<b>401,451</b>				<b>401,451</b>

<b><u>Rwanda</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>	77,695				77,695
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>77,695</b>				<b>77,695</b>

<b><u>Senegal</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	18,846				18,846
<b>2016-2020</b>	<b>18,846</b>				<b>18,846</b>

<b><u>Sierra Leona</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>	33,164				33,164
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>33,164</b>				<b>33,164</b>

<b><u>Somalia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>	86,328				86,328
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>86,328</b>				<b>86,328</b>

<b><u>South Africa</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	316,122				316,122
<b>2017</b>		666,592	1,790,844		2,457,436
<b>2018</b>					
<b>2019</b>	52,995		143,086		196,081
<b>2020</b>					
<b>2016-2020</b>	<b>369,117</b>	<b>666,592</b>	<b>1,933,930</b>		<b>2,969,639</b>

<b><u>Sudan</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	261,745				261,745
<b>2016-2020</b>	<b>261,745</b>				<b>261,745</b>

<b><u>Tanzania</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>				517,085	517,085
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>				<b>517,085</b>	<b>517,085</b>

<b><u>Tunisia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>	38,848				38,848
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>38,848</b>				<b>38,848</b>

<b><u>Uganda</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	3,048				3,048
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>3,048</b>				<b>3,048</b>

<b><u>Zimbabwe</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>		208,932			208,932
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>208,932</b>			<b>208,932</b>

## AMERICAS

<u>Anguilla</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016					
2017		221,092			221,092
2018					
2019					
2020					
2016-2020		221,092			221,092

<u>Antigua and Barbuda</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016					
2017		276,365			276,365
2018					
2019					
2020					
2016-2020		276,365			276,365

<u>Argentina</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016	1,131,264				1,131,264
2017					
2018			3,668,946		3,668,946
2019					
2020	10,470				10,470
2016-2020	1,141,734		3,668,946		4,810,680

<u>Bahamas</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016		677,404			677,404
2017		2,211			2,211
2018					
2019		3,603,638			3,603,638
2020					
2016-2020		4,283,253			4,283,253

<b><u>Bolivia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>			508,053		508,053
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	10,470				10,470
<b>2016-2020</b>	<b>10,470</b>		<b>508,053</b>		<b>518,523</b>

<b><u>Brazil</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	225,802				225,802
<b>2017</b>	110,546				110,546
<b>2018</b>	57,192				57,192
<b>2019</b>					
<b>2020</b>	523,488	104,698	3,140,935		3,769,121
<b>2016-2020</b>	<b>917,028</b>	<b>104,698</b>	<b>3,140,935</b>		<b>4,162,661</b>

<b><u>Canada</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>			4,516,026		4,516,026
<b>2017</b>	221,092				221,092
<b>2018</b>		350,708			350,708
<b>2019</b>	847,915	291,471			1,139,386
<b>2020</b>	1,361,072	1,256,374			2,617,446
<b>2016-2020</b>	<b>2,430,079</b>	<b>1,898,553</b>	<b>4,516,026</b>		<b>8,844,658</b>

<b><u>Chile</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	112,901				112,901
<b>2017</b>	2,211		608,002		610,213
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>115,112</b>		<b>608,002</b>		<b>723,114</b>



<b><u>Colombia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>	114,968				114,968
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	36,644	130,872			167,516
<b>2016-2020</b>	<b>151,612</b>	<b>130,872</b>			<b>282,484</b>

<b><u>Costa Rica</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>		204,510			204,510
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>204,510</b>			<b>204,510</b>

<b><u>Cuba</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>		2,935,417			2,935,417
<b>2017</b>		596,948			596,948
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>3,532,365</b>			<b>3,532,365</b>

<b><u>Dominica</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>		1,609,548			1,609,548
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1,609,548</b>			<b>1,609,548</b>

<b><u>Dominican Republic</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>		69,644			69,644
<b>2018</b>					
<b>2019</b>					
<b>2020</b>		172,751			172,751
<b>2016-2020</b>		<b>242,395</b>			<b>242,395</b>

<b><u>Ecuador</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	11,290			2258013	2,269,303
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>11,290</b>			<b>2,258,013</b>	<b>2,269,303</b>

<b><u>El Salvador</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>			39,927		39,927
<b>2019</b>					
<b>2020</b>		230,335			230,335
<b>2016-2020</b>		<b>230,335</b>	<b>39,927</b>		<b>270,262</b>

<b><u>Guadeloupe</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>		132,655			132,655
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>132,655</b>			<b>132,655</b>

<b><u>Guatemala</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>			48,202		48,202
<b>2019</b>					
<b>2020</b>		404,134			404,134
<b>2016-2020</b>		<b>404,134</b>	<b>48,202</b>		<b>452,336</b>

<b><u>Haiti</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	2,258	2,258,013	94,837		2,355,108
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>2,258</b>	<b>2,258,013</b>	<b>94,837</b>		<b>2,355,108</b>

<b><u>Martini-que</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>		48,640			48,640
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>48,640</b>			<b>48,640</b>

<b><u>Mexico</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	28,225	56,450			84,675
<b>2017</b>		2,211		9,175,308	9,177,519
<b>2018</b>		586,821			586,821
<b>2019</b>		405,939			405,939
<b>2020</b>		350,738		78,523	429,261
<b>2016-2020</b>	<b>28,225</b>	<b>1,402,159</b>		<b>9,253,831</b>	<b>10,684,215</b>

<u>Nicaragua</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016					
2017					
2018					
2019					
2020		962,173			962,173
2016-2020		962,173			962,173

<u>Panama</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016					
2017					
2018			77,695		
2019					
2020		11,517			
2016-2020		11,517	77,695		89,212

<u>Peru</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016	2,258				2,258
2017	3,537,468				3,537,468
2018					
2019					
2020	10,470				10,470
2016-2020	3,550,196				3,550,196

<u>Puerto Rico</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016					
2017		75,171,197			75,171,197
2018					
2019					
2020		62,609		994,630	1,057,239
2016-2020		75,233,806		994,630	76,228,436

<b><u>St. Kitts and Nevis</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>		22,109			22,109
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>22,109</b>			<b>22,109</b>

<b><u>St. Maarten (Dutch part)</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>		2,763,647			2,763,647
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>2,763,647</b>			<b>2,763,647</b>

<b><u>St. Martin (French part)</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>		4,532,381			4,532,381
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>4,532,381</b>			<b>4,532,381</b>

<b><u>St. Vincent and the Grenadines</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	7,339				7,339
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>7,339</b>				<b>7,339</b>

<b><u>Trinidad and Tobago</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>	3,993				3,993
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>3,993</b>				<b>3,993</b>

<b><u>Turks and Caicos Islands</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>		552,729			552,729
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>552,729</b>			<b>552,729</b>

<b><u>Uruguay</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	3,387				3,387
<b>2017</b>					
<b>2018</b>			539,551		539,551
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>3,387</b>		<b>539,551</b>		<b>542,938</b>

<b><u>United States of America</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	17,104,449	31,668,632	1,693,510	22,580	50,489,171
<b>2017</b>	1,879,280	189,155,055	19,566,620		210,600,955
<b>2018</b>	1,807,496	41,950,080	27,732,914	539,551	72,030,041
<b>2019</b>	10,598,936	12,003,295	1,722,327	211,979	24,536,537
<b>2020</b>	2,381,875	61,588,497	16,228,163		80,198,535
<b>2016-2020</b>	<b>33,772,036</b>	<b>336,365,559</b>	<b>66,943,534</b>	<b>774,110</b>	<b>437,855,239</b>

<b><u>Venezuela</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	31,409				31,409
<b>2016-2020</b>	<b>31,409</b>				<b>31,409</b>

<b><u>Virgin Island (British)</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>		3,316,376			3,316,376
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>3,316,376</b>			<b>3,316,376</b>

## ASIA

<b><u>Armenia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>		1,966			1,966
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1,966</b>			<b>1,966</b>

<b><u>Bangladesh</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	169,351	677,404			846,755
<b>2017</b>	694,228				694,228
<b>2018</b>					
<b>2019</b>	79,492	6,131			85,623
<b>2020</b>	523,489	1,570,467			2,093,956
<b>2016-2020</b>	<b>1,466,560</b>	<b>2,254,002</b>			<b>3,720,562</b>

<b><u>Dem. People's Rep. Korea</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	68,869				
<b>2017</b>					
<b>2018</b>	26,978	5,007			
<b>2019</b>		25,437			
<b>2020</b>					
<b>2016-2020</b>	<b>95,847</b>	<b>30,444</b>			<b>126,291</b>

<b><u>Cambodia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>		104,698			104,698
<b>2016-2020</b>		<b>104,698</b>			<b>104,698</b>

<b><u>China</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	36,684,806	10,414,135	3,387,019	226,366	50,712,326
<b>2017</b>	9,339,250	8,160,056	1,34,866	589,209	18,223,381
<b>2018</b>	4,931,464	11,519,625		85,249	16,536,338
<b>2019</b>	7,212,575	11,170,219		1,379,982	19,762,776
<b>2020</b>	22,824,126	1,334,897		17,799	24,176,822
<b>2016-2020</b>	<b>80,992,221</b>	<b>42,598,932</b>	<b>3,521,885</b>	<b>2,298,605</b>	<b>129,411,643</b>

<b><u>Hong Kong (China)</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>		835,174			835,174
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>835,174</b>			<b>835,174</b>



<b><u>India</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	1,692,381	1,129,006		84,675	2,906,062
<b>2017</b>	2,340,257				2,340,257
<b>2018</b>	3,091,605	2,313,594	1,187,012		6,592,211
<b>2019</b>	10,598,936	1,918,407			12,517,343
<b>2020</b>	12,050,720	15,620,915			27,671,635
<b>2016-2020</b>	<b>29,773,899</b>	<b>20,981,922</b>	<b>1,187,012</b>	<b>84,675</b>	<b>52,027,508</b>

<b><u>Indonesia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	150,157			112,901	263,058
<b>2017</b>	37,586				37,586
<b>2018</b>				2,809,980	2,809,980
<b>2019</b>	1,396,939				1,396,939
<b>2020</b>	30,677				30,677
<b>2016-2020</b>	<b>1,615,359</b>			<b>2,922,881</b>	<b>4,538,240</b>

<b><u>Iran</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>	428,918			820,251	1,249,169
<b>2018</b>	179,131			21,582	200,713
<b>2019</b>	2,734,525			95,390	2,829,915
<b>2020</b>	2,468,774				2,468,774
<b>2016-2020</b>	<b>5,811,348</b>			<b>937,223</b>	<b>6,748,571</b>

<b><u>Iraq</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	104,698				104,698
<b>2016-2020</b>	<b>104,698</b>				<b>104,698</b>

<b><u>Israel</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>			587,083		587,083
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	607,247				607,247
<b>2016-2020</b>	<b>607,247</b>		<b>587,083</b>		<b>1,194,330</b>

<b><u>Japan</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>		112,901		22,693,030	22,805,931
<b>2017</b>	773,821	1,660,399			2,434,220
<b>2018</b>	10,251,466	18,344,729		4,855,958	33,452,153
<b>2019</b>	105,989	27,673,822			27,779,811
<b>2020</b>	6,072,474	209,396			6,281,870
<b>2016-2020</b>	<b>17,203,750</b>	<b>48,001,247</b>		<b>27,548,988</b>	<b>92,753,985</b>

<b><u>Korea</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>		285,639		23,709	309,348
<b>2017</b>					
<b>2018</b>					
<b>2019</b>		586,121			586,121
<b>2020</b>	439,731	1,256,374			1,696,105
<b>2016-2020</b>	<b>439,731</b>	<b>2,128,134</b>		<b>23,709</b>	<b>2,591,574</b>

<b><u>Lao PDR</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	56				56
<b>2017</b>					
<b>2018</b>		242,798			242,798
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>56</b>	<b>242,798</b>			<b>242,854</b>

<b><u>Macao (China)</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>		1,569,751			1,569,751
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1,569,751</b>			<b>1,569,751</b>

<b><u>Malaysia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	149,029				149,029
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	7,119				7,119
<b>2016-2020</b>	<b>156,148</b>				<b>156,148</b>

<b><u>Mongolia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	1,780				1,780
<b>2016-2020</b>	<b>1,780</b>				<b>1,780</b>

<b><u>Myanmar</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	2,258	5,193		11,290	18,741
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>2,258</b>	<b>5,193</b>		<b>11,290</b>	<b>18,741</b>

<b><u>Nepal</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	16,935				16,935
<b>2017</b>	657,748				657,748
<b>2018</b>					
<b>2019</b>	216,218				216,218
<b>2020</b>	104,698				104,698
<b>2016-2020</b>	<b>995,599</b>				<b>995,599</b>

<b><u>Pakistan</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	2,258				2,258
<b>2017</b>	121,600				121,600
<b>2018</b>					
<b>2019</b>				18,018	18,018
<b>2020</b>	1,570,467				1,570,467
<b>2016-2020</b>	<b>1,694,325</b>			<b>18,018</b>	<b>1,712,343</b>

<b><u>Philippines</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	10,522	192,782			203,304
<b>2017</b>	8,954	146,779		22,483	178,216
<b>2018</b>		610,931		3,846	614,777
<b>2019</b>		570,554		58,568	629,122
<b>2020</b>		1,094,066		71,718	1,165,784
<b>2016-2020</b>	<b>19,476</b>	<b>2,615,112</b>		<b>156,615</b>	<b>2,791,203</b>

<b><u>Qatar</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>	10,791				10,791
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>10,791</b>				<b>10,791</b>

<u>Saudi Arabia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016		56,450			56,450
2017					
2018					
2019					
2020					
2016-2020		56,450			56,450

<u>Sri Lanka</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016	1,354,808		22,580		1,377,388
2017	430,023	382,489			812,512
2018					
2019					
2020					
2016-2020	1,784,831	382,489	22,580		2,189,900

<u>Taiwan</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016		203,221		790,,305	993,526
2017	31,063	19,014			50,077
2018		36,689		107,910	144,599
2019					
2020					
2016-2020	31,063	258,924		898,215	1,188,202

<u>Thailand</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016	163,706				163,706
2017	1,446,383				1,446,383
2018					
2019					
2020	52,349	10,470			62,819
2016-2020	1,662,438	10,470			1,672,908

<b><u>Timor-Leste</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	20,940				20,940
<b>2016-2020</b>	<b>20,940</b>				<b>20,940</b>

<b><u>Turkey</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>		663,275			663,275
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	298,389			563,274	861,663
<b>2016-2020</b>	<b>298,389</b>	<b>663,275</b>		<b>563,274</b>	<b>1,524,938</b>

<b><u>Viet Nam</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	182,086	773,546			955,632
<b>2017</b>	196,389	3,299,795			3,496,184
<b>2018</b>	51,797	258,121			309,918
<b>2019</b>	47,695	4,240			51,935
<b>2020</b>	23,034	1,497,170			1,520,204
<b>2016-2020</b>	<b>501,001</b>	<b>5,832,872</b>			<b>6,333,873</b>

<b><u>Yemen</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	20,940				20,940
<b>2016-2020</b>	<b>20,940</b>				<b>20,940</b>

## EUROPE

<u>Albania</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016	9,839				
2017					
2018					
2019				789,621	
2020					
<b>2016-2020</b>	<b>9,839</b>			<b>789,621</b>	<b>799,460</b>

<u>Austria</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016					
2017		1,327			1,327
2018					
2019					
2020					
<b>2016-2020</b>		<b>1,327</b>			<b>1,327</b>

<u>Croatia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016					
2017		177,979			177,979
2018					
2019					
2020				13,635,216	13,635,216
<b>2016-2020</b>		<b>177,979</b>		<b>13,635,216</b>	<b>13,813,195</b>

<u>Czech Republic</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016					
2017		3,206			3,206
2018					
2019					
2020					
<b>2016-2020</b>		<b>3,206</b>			<b>3,206</b>

<u>France</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
<b>2016</b>	2,709,615				2,709,615
<b>2017</b>		110,546			110,546
<b>2018</b>	768,321	215,820			984,141
<b>2019</b>		439,855			439,855
<b>2020</b>	55,490	1,012,428			1,067,918
<b>2016-2020</b>	<b>3,533,426</b>	<b>1,778,649</b>			<b>5,312,075</b>

<u>Germany</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
<b>2016</b>	2,258,013				2,258,013
<b>2017</b>		993,808			993,808
<b>2018</b>		635,024			635,024
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>2,258,013</b>	<b>1,628,832</b>			<b>3,886,845</b>

<u>Greece</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
<b>2016</b>	63,224				63,224
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	31,409				31,409
<b>2016-2020</b>	<b>94,633</b>				<b>94,633</b>

<u>Italy</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
<b>2016</b>	112,901			6,096,634	6,209,535
<b>2017</b>	138,182	242,648	2,542,555	19,898	2,943,283
<b>2018</b>		1,187,012		124,097	1,311,109
<b>2019</b>					
<b>2020</b>	73,289	62,819			136,108
<b>2016-2020</b>	<b>324,372</b>	<b>1,492,479</b>	<b>2,542,555</b>	<b>6,240,629</b>	<b>10,600,035</b>



<b><u>Nether-lands</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>		952,881			952,881
<b>2017</b>					
<b>2018</b>		118,713			118,713
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>1,071,594</b>			<b>1,071,594</b>

<b><u>North Macedonia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	56,450			11,290	67,740
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>56,450</b>			<b>11,290</b>	<b>67,740</b>

<b><u>Norway</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	136,107				136,107
<b>2016-2020</b>	<b>136,107</b>				<b>136,107</b>

<b><u>Poland</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>		304,001			304,001
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>304,001</b>			<b>304,001</b>

<b><u>Portugal</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>			177,254		177,254
<b>2017</b>			809,195		809,195
<b>2018</b>		124,636			124,636
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>		<b>124,636</b>	<b>986,449</b>		<b>1,111,085</b>

<b><u>Romania</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>		8,070			8,070
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	88,993				88,993
<b>2016-2020</b>	<b>88,993</b>	<b>8,070</b>			<b>97,063</b>

<b><u>Russian Federation</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	13,548				13,548
<b>2017</b>		2,211			2,211
<b>2018</b>	10,791				10,791
<b>2019</b>	515,108		112,349		627,457
<b>2020</b>					
<b>2016-2020</b>	<b>539,447</b>	<b>2,211</b>	<b>112,349</b>		<b>654,007</b>

<b><u>Serbia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	112,901				112,901
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>	29,315				29,315
<b>2016-2020</b>	<b>142,216</b>				<b>142,216</b>

<u>Spain</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016	56,450				56,450
2017					
2018	161,865				161,865
2019	2,711,208				2,711,208
2020		329,798			329,798
<b>2016-2020</b>	<b>2,929,523</b>	<b>329,798</b>			<b>3,259,321</b>

<u>Sweden</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016					
2017					
2018			110,068		110,068
2019					
2020					
<b>2016-2020</b>			<b>110,068</b>		<b>110,068</b>

<u>Ukraine</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016					
2017					
2018					
2019					
2020	161,089		169,610		330,699
<b>2016-2020</b>	<b>161,089</b>		<b>169,610</b>		<b>330,699</b>

## OCEANIA

<u>Australia</u>	Hydrological	Meteorological	Climatological	Geophysical	Total damages
2016	28,225	564,503	124,191		716,919
2017		3,526,414	22,109		3,548,523
2018	12,302		1,294,922		1,307,224
2019	2,119,787		2,119,787		4,239,574
2020	1,256,374	2,826,841			4,083,215
<b>2016-2020</b>	<b>3,416,688</b>	<b>6,917,758</b>	<b>3,561,009</b>		<b>13,895,455</b>

<b><u>Fiji</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>		677,404			677,404
<b>2017</b>					
<b>2018</b>		64,746			64,746
<b>2019</b>					
<b>2020</b>		14,784			14,784
<b>2016-2020</b>		<b>756,934</b>			<b>756,934</b>

<b><u>French Polynesia</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>	2,211				2,211
<b>2018</b>					
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>	<b>2,211</b>				<b>2,211</b>

<b><u>New Zealand</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>	28,225			4,403,125	4,431,350
<b>2017</b>	78,488	22,109			100,597
<b>2018</b>	26,978				26,978
<b>2019</b>					
<b>2020</b>	104,697		10,470		115,167
<b>2016-2020</b>	<b>238,388</b>	<b>22,109</b>	<b>10,470</b>	<b>4,403,125</b>	<b>4,674,092</b>

<b><u>Papua New Guinea</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>				65,825	65,825
<b>2019</b>					
<b>2020</b>					
<b>2016-2020</b>				<b>65,825</b>	<b>65,825</b>

<b><u>Tonga</u></b>	<b>Hydrological</b>	<b>Meteorological</b>	<b>Climatological</b>	<b>Geophysical</b>	<b>Total damages</b>
<b>2016</b>					
<b>2017</b>					
<b>2018</b>					
<b>2019</b>					
<b>2020</b>		116,215			116,215
<b>2016-2020</b>		<b>116,215</b>			<b>116,215</b>

**ANNEX V**  
**PROYECTO DE CONVENIO RELATIVO AL ESTATUTO**  
**INTERNACIONAL DE LOS DESPLAZADOS**  
**AMBIENTALES**  
**(Cuarta versión-abril 2018)**

Las Partes Contratantes

Considerando que la situación del medio ambiente mundial es alarmante y que sigue deteriorándose a un ritmo cada vez mayor,

Teniendo en cuenta las causas de ese deterioro, tales como el cambio climático y/o la pérdida de la diversidad biológica, la sequía, la desertificación, la deforestación, la erosión del suelo, **la subida del nivel del mar**, la escasez de agua (presión hídrica), las inundaciones, los huracanes, los ciclones y, en general, los riesgos naturales y tecnológicos,

Considerando que las víctimas de estos fenómenos, **siendo las que menos han contribuido a ellos<sup>1</sup>**, se enfrentan a la desaparición de su medio ambiente, lo que conlleva la degradación de su salud y su dignidad, comprometiendo substancialmente su derecho a la vida **y a no ser sometido a tratos inhumanos o degradantes.**

~~Teniendo en cuenta~~ **Reconociendo que, a pesar de la importancia que tiene la correcta aplicación del MSRRD, el sistema de la CMNUCC o la Agenda 2030 sobre los ODS en la prevención de interrupciones medioambientales que obliguen al desplazamiento de poblaciones, el desigual grado de consecución de sus objetivos no evitará que la gravedad de estos impactos obligue a los individuos, a las familias y a las poblaciones a desplazarse,**

Teniendo en cuenta asimismo que determinadas políticas medioambientales pueden inducir a tales desplazamientos,

Teniendo en cuenta **los riesgos** que el crecimiento exponencial de los desplazamientos actualmente previsibles **supone** ~~constituye una amenaza~~ para la estabilidad de las sociedades humanas, para la supervivencia de las culturas y para la paz mundial<sup>2</sup>, **así como para los derechos de los afectados por los desplazamientos, especialmente para los grupos vulnerables y marginados, incluyendo la pérdida de bienes, viviendas, tierras, propiedades y medios de vida<sup>3</sup>,**

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<sup>1</sup> Tal y como se afirma en: DISPLACEMENT SOLUTIONS, *The Peninsula Principles of Climate Displacement within States, op. cit.*, quinto considerando, p. 12

<sup>2</sup> En el mismo sentido, *ibíd.*, primer y décimo considerandos, p. 12.

<sup>3</sup> *Ibíd.*, primer considerando, p. 12.

Teniendo en cuenta, asimismo, las oportunidades que el desplazamiento ofrece para la adaptación de las sociedades afectadas al cambio climático, la disminución del riesgo de desastres y el desarrollo sostenible<sup>4</sup>,

Reconociendo que los Estados son los principales obligados a adoptar las medidas necesarias para evitar que se produzcan en su territorio cambios medioambientales que puedan dar lugar a desplazamientos de población, así como a proteger a las personas ya desplazadas internamente por motivos medioambientales para que no tengan que recurrir a desplazamientos transfronterizos<sup>5</sup>,

Reconociendo, sin embargo, que abordar y responder a los desplazamientos ambientales plantea retos financieros, logísticos, políticos, de recursos y de otro tipo para muchos Estados<sup>6</sup>, y que la asistencia a un Estado en caso de siniestro ecológico constituye un deber de la comunidad internacional,

Consciente de que la comunidad internacional tiene intereses humanitarios, sociales, culturales, financieros y de seguridad comunes para abordar el problema del desplazamiento climático de manera oportuna, coordinada y específica,<sup>7</sup>

Teniendo en cuenta que, ~~pese a la existencia de numerosos instrumentos internacionales destinados a proteger el medio ambiente,~~ en el estado actual del derecho internacional **de ámbito universal aplicable a los refugiados** no existe ningún instrumento específico relativo a la situación de los desplazados medioambientales, que les resulte aplicable y que pueda ser invocado en su favor.

Reconociendo que, a pesar de la existencia de instrumentos regionales que abordan los desplazamientos internos relacionados con los desastres naturales, como la Convención de la Unión Africana para la Protección y Asistencia de los Desplazados Internos en África, o que pueden considerar a los desplazados ambientales transfronterizos como refugiados en determinadas situaciones, estos instrumentos presentan, sin embargo, un alcance y ámbito de aplicación limitados<sup>8</sup>,

Reafirmando el principio de responsabilidades comunes pero diferenciadas de los Estados, reconocido en el artículo 3 del Convenio Marco de Naciones Unidas sobre el Cambio Climático,

Teniendo en cuenta que, en estas condiciones, es responsabilidad de la Comunidad internacional de los Estados demostrar su solidaridad y la de los demás actores mediante la elaboración de un estatuto internacional de los desplazados

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<sup>4</sup> Este reconocimiento es coherente con el párr. 14(f) del Marco de Cancún para la Adaptación al Cambio Climático (Decisión 1/CP.16, en: FCCC/CP/2010/7/Add.1); el párr. 36(a)(vi) del Marco de Sendai para la Reducción del Riesgo de Desastres Naturales (A/RES/69/283), y el párr. 29 y sub-objetivo 10.7 de la Agenda 2030 para el Desarrollo Sostenible (A/RES/70/1).

<sup>5</sup> Parcialmente basado en DISPLACEMENT SOLUTIONS, *The Peninsula Principles of Climate Displacement within States*, *op. cit.*, undécimo considerando, p. 12.

<sup>6</sup> Basado en *ibíd.*, noveno considerando, p. 12.

<sup>7</sup> Tomado de *ibíd.*, decimotercer considerando, p. 13.

<sup>8</sup> Tomando como modelo *ibíd.*, considerando vigesimoprimerero, p. 13.

ambientales, que incluya tanto la asistencia preventiva para los que pueden ser desplazados como la asistencia reparadora efectiva para los que han sido desplazados, y la protección jurídica de ambos<sup>9</sup>,

Considerando que dicho estatuto debe tener en cuenta a los individuos, a las familias y a las poblaciones obligadas a desplazarse, tanto dentro como fuera de su país de residencia,

Teniendo en cuenta que el estatuto de los desplazados ambientales debe incardinarse en el cumplimiento de los instrumentos jurídicos internacionales y los principios protectores de los derechos humanos, incluidos los Principios Rectores del Desplazamiento Interno, y del medio ambiente, en particular el Pacto internacional de derechos civiles y políticos y el Pacto internacional de derechos económicos sociales y culturales de 16 de diciembre de 1996,

Reconociendo la importancia de los Principios Rectores de las NU en materia de desplazamiento medioambiental interno, por un lado, y de la Agenda Nansen para la protección de los desplazados transfronterizos en el contexto de las catástrofes y el cambio climático, por otro,

Han acordado lo siguiente

## **CAPÍTULO PRIMERO - OBJETO, DEFINICIONES, ÁMBITO DE APLICACIÓN**

### **Artículo 1 - Objeto**

1. El objeto del presente Convenio es establecer un marco jurídico destinado a garantizar los derechos de los desplazados ambientales y organizar su acogida así como su eventual retorno, en aplicación del principio de solidaridad.
2. Con tal objeto, cada Parte protege a los desplazados ambientales de conformidad con el respeto a los derechos humanos garantizados por el Derecho internacional y garantiza el pleno ejercicio de los derechos específicos garantizados por el presente Convenio<sup>10</sup>.

### **Artículo 2 - Definiciones**

1. El término “Parte” designa un Estado o una Organización regional de integración económica que se haya vinculado haya consentido en quedar vinculado por el presente Convenio una Parte contratante del presente Convenio.
2. Por “Organización regional de integración económica” se entiende una Organización formada por Estados soberanos de una determinada región a la que los Estados miembros han transferido competencias reguladas por el presente Convenio,

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<sup>9</sup> Tomado de ibíd., considerando decimonoveno, p. 13.

<sup>10</sup> Traducción alternativa a partir de la versión en inglés.



3. Se denomina “desplazados ambientales” a las personas, las familias, los grupos, **las comunidades locales o indígenas y los pueblos y las poblaciones** que se enfrentan a un cambio ~~radical o insidioso~~ **rápido o lento** de su medio ambiente que ~~afecta inevitablemente a sus condiciones de vida~~ **lo haga inadecuado para la vida humana**, obligándoles a dejar sus lugares de residencia habitual urgentemente o en el transcurso del tiempo.

3.1 Se entiende por “cambio **rápido** ~~radical~~” una catástrofe súbita de origen natural y/o humano.

3.2 Se entiende por “cambio **lento** ~~insidioso~~” una degradación ~~lenta~~, progresiva o programada de origen natural y/o humano.

3.3 Se entiende por “desplazamiento forzoso” cualquier desplazamiento temporal o definitivo de personas físicas, familias, grupos o poblaciones que resulta inevitable por un desastre ambiental, tanto si dicho desplazamiento se produce en el interior de un mismo Estado como desde el Estado de residencia hacia otro u otros Estados de acogida.

### **Artículo 3 - Ámbito de aplicación**

1. El presente Convenio tiene una vocación universal. Comprende tanto los desplazamientos ambientales internos como los internacionales.
2. El presente Convenio se aplica igualmente a los desplazamientos ambientales causados por conflictos armados o por actos de terrorismo.

## **CAPÍTULO 2 - PRINCIPIOS**

### **Artículo 4 - Principio de solidaridad**

Los derechos reconocidos por el presente Convenio se ejercen de acuerdo con el principio de solidaridad en cuya virtud las Partes ~~seogen~~ **asisten** a los desplazados medioambientales y contribuyen a los esfuerzos financieros necesarios.

### **Artículo 5 - Principio de responsabilidades comunes pero diferenciadas**

1. En interés de las generaciones presentes y futuras y sobre la base de la equidad, las obligaciones reconocidas por el presente Convenio se ejercerán respetando el principio de responsabilidades comunes pero diferenciadas.
2. Los Estados Partes en el presente Convenio se comprometen a adoptar, en la medida de lo posible, durante la celebración de la primera Conferencia de las Partes, un Protocolo adicional sobre la responsabilidad de los actores públicos y privados, con una finalidad preventiva y reparadora que determine las obligaciones positivas y negativas cuya violación pueda causar directa o indirectamente desplazamientos ambientales.

## **Artículo 6 - Principio de protección efectiva**

Para hacer concretos y efectivos los derechos reconocidos por el presente Convenio, en particular el derecho a ser socorrido reconocido en el artículo 12.1, las Partes se comprometen a adoptar políticas que permitan a los desplazados ambientales ejercer plenamente los derechos garantizados en el Convenio.

## **Artículo 7 - Principio de no discriminación**

~~Los derechos reconocidos en el presente Convenio deben garantizarse sin discriminación por razón de sexo, género, orientación sexual, raza, color, lengua, religión, opinión política u otra, origen nacional o social, pertenencia a una minoría nacional, fortuna, nacimiento, discapacidad física o cualquier otra situación.~~

Los derechos reconocidos en el presente Convenio deben ser garantizados sin discriminación de ningún tipo.

## **Artículo 8 - Prohibición de la expulsión y devolución (principio de non-refoulement)**

Las Partes se abstendrán de expulsar o devolver a cualquier solicitante o beneficiario del estatuto de desplazado ambiental a cualquier lugar cuyas condiciones medioambientales lo hagan inadecuado para la vida humana<sup>11</sup>.

### **CAPÍTULO 3 – DERECHOS GARANTIZADOS A LAS PERSONAS AMENAZADAS DEL POR EL DESPLAZAMIENTO**

## **Artículo 9 - Derechos de a la información y a la participación**

1. Toda persona, familia, grupo o población amenazada en riesgo de desplazamiento tiene derecho a acceder a ser informado lo más pronto que sea posible a las ~~informaciones relativas a las amenazas climáticas y ambientales y a las situaciones críticas correspondientes~~ del riesgo de desastres<sup>12</sup>. Si el desplazamiento no responde a una situación de peligro grave e inminente, los futuros desplazados tendrán derecho a ser informados de los motivos y formas de su desplazamiento. En ambos casos, la información que se facilite debe ser fiable, completa, comprensible y accesible para todos<sup>13</sup>.

2. Toda persona, familia, grupo o población amenazada de desplazamiento tiene derecho a participar en la elaboración de las políticas y normas legales<sup>14</sup> sobre de

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<sup>11</sup> La limitación introducida está en línea con el alcance relativo que habitualmente se ha conferido a esta prohibición. Vid., por ejemplo, el artículo 33.1 de la Convención de Ginebra de 1951 sobre el Estatuto de los Refugiados, que sólo prohíbe la expulsión a territorios donde la vida o la libertad del refugiado pueda peligrar por los mismos motivos que dieron lugar al reconocimiento de la condición de refugiado.

<sup>12</sup> La terminología está tomada del MSRRD. El objetivo es evitar que queden fuera otros tipos de alteraciones del medio ambiente que no entran en las categorías de riesgos climáticos o medioambientales, como las amenazas de origen geofísico o antrópico.

<sup>13</sup> Este último inciso aparece en las versiones del proyecto en francés e inglés.

<sup>14</sup> La referencia a las "normas legales" aparece en las versiones en inglés y francés del convenio; no así en la castellana.

prevención de desastres climáticos y ambientales del riesgo de desastres<sup>15</sup> y de atención a gestión de sus consecuencias<sup>16</sup> inmediatas o futuras, incluyendo la recuperación, rehabilitación y reconstrucción de las zonas afectadas<sup>17</sup> y la búsqueda de soluciones duraderas para los desplazados<sup>18</sup>.

Los derechos internos de las Partes deberán garantizar legalmente la participación efectiva de los interesados en los procedimientos de elaboración de políticas y normas sobre prevención y gestión del riesgo de desastres, incluyendo los oportunos mecanismos de transparencia<sup>19</sup>.

~~3. Los Estados Partes en el presente Convenio se comprometen a aplicar el derecho a la información y a la participación de manera que permita ejercer una influencia real sobre las decisiones relativas a las amenazas ambientales.~~<sup>20</sup>

3. Los derechos de información y participación se implementarán teniendo en cuenta las recomendaciones del Marco de Sendai sobre Reducción del Riesgo de Desastres, en particular en lo que se refiere a la implementación de mecanismos de alerta temprana y el principio de “reconstruir mejor”<sup>21</sup>.

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<sup>15</sup> Este cambio terminológico obedece a la misma razón que se apuntó en el párrafo anterior.

<sup>16</sup> Este derecho de participación también aparece reconocido en el Principio de Península no. 7.d.

<sup>17</sup> En consonancia con la prioridad 4 del MSRRD (vid. UN GENERAL ASSEMBLY, *Resolution 69/283 Sendai Framework for Disaster Risk Reduction 2015–2030, adopted by the General Assembly on 3 June 2015*, (A/RES/69/283), 23 June 2015, párrs. 32-34).

<sup>18</sup> De acuerdo con el Principio Rector No. 28 de los Desplazamientos Internos.

<sup>19</sup> La necesidad de asegurar la efectividad del derecho de los desplazados a participar en la planificación de su retorno, reasentamiento y reintegración ha sido destacada por el anterior Representante de las UN para los Desplazados Internos, Sr. Walter Kälin, en: UN GENERAL ASSEMBLY, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin. Addendum: protection of internally displaced persons in situations of natural disasters (A/HRC/10/13/Add.1)*, 5 March 2009, párr. 37. En la práctica de los desplazamientos relacionados con el cambio climático, puede citarse la negativa experiencia de la ONG *Tulele Peisa*, reconocida como interlocutora de los habitantes por reasentar de las Islas Carteret, cuya participación en el proceso de reasentamiento impulsado oficialmente por el gobierno autónomo de Bougainville se vio frustrada en la práctica (vid. CORCORAN, J.; VIRNIG, A. (eds.), “Tulele Peisa. Papua New Guinea”, *Equator Initiative Case Studies: Local sustainable development solutions for people, nature, and resilient communities*, UNDP, 2016, p. 12).

<sup>20</sup> Su contenido se ha incorporado por separado en los apartados 1 y 2, ya que las condiciones que el derecho de información y el derecho de participación requieren para su efectividad son diferentes entre sí.

<sup>21</sup> Vid. UN GENERAL ASSEMBLY, *Resolution 69/283 Sendai Framework for Disaster Risk Reduction 2015–2030, adopted by the General Assembly on 3 June 2015*, (A/RES/69/283), 23 June 2015, párrs. 18 y 32. Sobre la relación entre la eficacia del derecho a la información y los mecanismos de alerta temprana de riesgos de desastres, vid. tb.: UNFCCC, “Recommendations from the report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts on integrated approaches to averting, minimizing and addressing displacement related to the adverse impacts of climate change”, in: *Report of the Conference of the Parties on its twenty fourth session, held in Katowice from 2 to 15 December 2018. Addendum Part two: Action taken by the Conference of the Parties at its twenty fourth session (FCCC/CP/2018/10/Add.1)*, 19 March 2019, párr. 1(g)(iii), p. 43. UN GENERAL ASSEMBLY, *Resolution 70/1... (A/RES/70/1)*, *op. cit.*, targets 11.b y 13.3. También el Acuerdo de París sobre Cambio Climático (art. 8.4) y la Convención de Kampala sobre la protección y asistencia de los desplazados internos en África (art. 4.2) prevén el establecimiento de sistemas de alerta temprana, así como la cooperación interestatal e internacional a este respecto.

4. las Partes informarán a la población de la existencia y **condiciones de reconocimiento del estatuto de desplazado ambiental<sup>22</sup>**, así como de las consecuencias ~~del de dicho reconocimiento del estatuto de desplazado ambiental~~.

#### **Artículo 10 - Derecho al desplazamiento**

1. Toda persona, familia, grupo o población que se enfrente a un cambio radical o gradual de su medio ambiente, incluidos los de origen climático, que afecte inevitablemente a sus condiciones de vida, tiene derecho a desplazarse en o fuera de su Estado de residencia.

2. Las Partes se abstendrán de obstaculizar o intentar obstaculizar o permitir que se obstaculicen tales desplazamientos.

#### **Artículo 11 - Derecho a oponerse al desplazamiento**

1. Cuando el desplazamiento sea necesario y haya sido organizado por la autoridad pública sólo podrá efectuarse con el consentimiento de los afectados, ~~excepto en caso de peligro grave e inminente~~. **Toda persona debidamente informada que se oponga al desplazamiento lo hará a su a su propio riesgo.**

2. ~~Toda persona debidamente informada que se oponga al desplazamiento lo hará a su a su propio riesgo~~. **Se exceptúan de lo dispuesto en el párrafo anterior las situaciones en las que exista un peligro grave e inminente.**

3. **En el caso de desplazamientos inducidos por proyectos de interés público, las Partes deberán realizar una evaluación previa del impacto ambiental del proyecto, así como explorar, junto con las comunidades afectadas, otras alternativas viables que no impliquen el desplazamiento de la población.**

**Cuando por sus particulares valores culturales y espirituales, las comunidades afectadas tengan un especial apego y dependencia de la tierra, el desplazamiento sólo será admisible por razón de un interés público esencial y primordial<sup>23</sup>.**

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<sup>22</sup> Recuperado de las versiones del proyecto en inglés y francés.

<sup>23</sup> Este nuevo apartado se basa en los artículos 4.5 y 10 de la Convención de Kampala para la protección y asistencia de los desplazados internos en África. Su inclusión encuentra apoyo en otros instrumentos internacionales como el Convenio No. 169 de la OIT sobre pueblos indígenas y tribales de 1989 (art. 16) y la Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas de 2007 (art. 10).

## **CAPÍTULO 4 - DERECHOS RECONOCIDOS A LAS PERSONAS DESPLAZADAS**

### **Artículo 12 - Derechos comunes para los desplazados interestatales e intraestatales**

#### **1. Derecho a la asistencia**

Toda persona, grupo, o climático familia o población víctima de un desastre ambiental o climático tiene derecho a recibir ayuda en cualquier lugar. Este derecho existe desde el momento en que la situación adquiere una dimensión crítica, es decir, tanto en el momento de producirse como después de suceder el desastre ambiental.

Ningún Estado Parte podrá rechazar injustificadamente el ofrecimiento de asistencia y el apoyo de otros Estados y organismos internacionales, incluyendo la AMDA, que se considerará hecho de buena fe. En particular, dicho ofrecimiento se aceptará cuando las autoridades nacionales no puedan prestar la asistencia y protección necesaria a los desplazados<sup>24</sup>.

#### **2. Derecho al agua y a la ayuda alimentaria de subsistencia**

Todo desplazado ambiental tiene derecho a recibir agua potable y una alimentación de subsistencia.

#### **3. Derecho a disponer de productos de primera necesidad**

Todo desplazado ambiental tiene derecho a que se le entreguen productos de higiene, mantas y prendas de vestir apropiadas.

#### **4. Derecho a la atención sanitaria**

Todo desplazado ambiental tiene derecho de recibir la atención sanitaria que su condición requiera.

#### **5. Derecho a un hábitat de alojamiento**

~~Todo desplazado ambiental tiene derecho a un hábitat saludable y seguro adaptado a su situación familiar.~~<sup>25</sup>

5.1 Toda persona desplazada por motivos medioambientales tiene derecho a un alojamiento seguro, adaptado a su familia y en situación de seguridad.

5.2 Si las circunstancias lo exigen, toda persona desplazada por motivos medioambientales será alojada en una instalación de acogida temporal que las Partes organicen en el más estricto respeto de la dignidad humana. Esta estancia no deberá durar más de lo que exijan las circunstancias.

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<sup>24</sup> En línea con el Principio Rector del Desplazamiento Interno No. 25 o el principio de Península No. 8.

<sup>25</sup> Los sub-apartados 2 a 5 aparecen omitidos en la versión en castellano. Traducción a partir de la versión en inglés.

5.3 Toda persona desplazada por motivos medioambientales alojada en un centro de acogida temporal tiene derecho a circular libremente. En el caso de no residentes, esta libertad se limitará al término municipal donde se encuentre el centro de acogida temporal hasta que se resuelva por decisión firme la solicitud de protección<sup>26</sup>.

5.4 Después de una posible estancia en un centro de acogida temporal, todo desplazado medioambiental tiene derecho a un alojamiento adecuado. Para ello, las Partes aplicarán políticas que permitan a los desplazados abandonar estos centros de acogida temporal para establecerse en condiciones de vida normales en un lugar de residencia libremente elegido. En el caso de los no residentes, y mientras se resuelve su solicitud de protección, deberán comunicar a las autoridades el lugar en el que han fijado su domicilio, que no podrá estar fuera del término municipal donde hayan registrado dicha solicitud<sup>27</sup>.

## **6. Derecho al reconocimiento de la personalidad jurídica**

6.1. Toda persona desplazada tiene derecho al reconocimiento de su personalidad jurídica en cualquier lugar,. Las autoridades correspondientes facilitarán a la recuperación de los documentos necesarios para la plena efectividad de los derechos ligados a su cualidad de persona, sin que le sean impuestas exigencias excesivas tales como el retorno al lugar de su residencia habitual. Este deber incluye la obligación de asistir administrativamente a las autoridades de un Estado Parte afectado por una disrupción medioambiental, ayudándolas a expedir los documentos o certificados requeridos por sus nacionales desplazados en el territorio de otro Estado Parte<sup>28</sup>.

6.2. Toda persona desplazada, incluidos los menores no acompañados, tienen derecho a obtener sus documentos de identidad.

6.3. El estatuto personal de cada desplazado se regirá por la ley del país de su domicilio o, a falta de domicilio, por la ley del país de su residencia. Los derechos anteriormente adquiridos por cada desplazado y dependientes del estatuto personal, especialmente los derechos inherentes al matrimonio, serán respetados por todo Estado Parte, siempre que se trate de derechos que habrían sido reconocidos por la legislación del respectivo Estado, si el interesado no hubiera sido un desplazado ambiental<sup>29</sup>.

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<sup>26</sup> Esta medida cautelar pretende salvaguardar la eficacia de una posible decisión de expulsión del desplazado no residente del territorio del Estado, en el caso de que la AA confirme que el recurrente no tiene la condición de desplazado medioambiental.

<sup>27</sup> Esta medida cautelar pretende salvaguardar la eficacia de una posible decisión de expulsión del desplazado no residente del territorio del Estado, en el caso de que la AA confirme que el recurrente no tiene la condición de desplazado medioambiental.

<sup>28</sup> Texto adaptado a partir del artículo 25.2 de la Convención de Ginebra sobre el Estatuto de los Refugiados de 1951.

<sup>29</sup> Texto adaptado a partir del artículo 12 de la Convención de Ginebra sobre el Estatuto de los Refugiados de 1951.

## 7. Derecho al respeto de la unidad familiar

1. Toda persona desplazada tiene derecho:

a) a no ser separada de los miembros de su familia

b) al reagrupamiento de su familia dispersa por el desastre ambiental o climático. **Con el fin de facilitar la reagrupación, las autoridades responsables propiciarán las investigaciones destinadas a localizar e informar a los desplazados sobre el paradero de sus familiares desaparecidos o separados<sup>30</sup>.**

2. **A los fines de este precepto, la familia cuya unidad se garantiza incluye, como mínimo, a los cónyuges o parejas con análoga relación de afectividad, a los descendientes menores de edad y demás miembros dependientes<sup>31</sup>.**

## 8. Derecho al respeto de los bienes y de los animales domésticos

8.1. Todo desplazado ambiental tiene derecho a ser asistido para transportar los bienes muebles necesarios para su vida **al lugar de acogida. Este derecho también se refiere al transporte de animales domésticos a un lugar seguro, en tanto que seres sensibles igualmente expuestos a los efectos de los desastres climáticos o ambientales<sup>32</sup>.** ~~así como la de sus animales domésticos al lugar de acogida provisional y definitiva.~~

8.2. El derecho al respeto de los bienes y animales domésticos incluye la obligación del Estado de adoptar medidas para proteger, en la medida de lo posible, los bienes y animales domésticos dejados por el desplazado ambiental en su territorio, ~~con vistas al retorno.~~

8.3. Todo desplazado ambiental tiene derecho al respeto de sus bienes inmuebles y no puede ser privado de los mismos más que por causa de utilidad pública en las condiciones previstas por la ley y los principios generales del derecho internacional.

**8.4. Los Estados Partes de los que proceden los desplazados tienen la obligación y la responsabilidad de ayudarles a recuperar, en la medida de lo posible, los bienes que hayan dejado o de los que hayan sido desposeídos como consecuencia del desplazamiento. Asimismo, establecerán mecanismos de reparación para garantizar una compensación adecuada cuando no sea posible la restitución o la indemnización por daños a sus bienes derivados de un cumplimiento defectuoso de las obligaciones de**

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<sup>30</sup> Texto adaptado a partir de los Principios Rectores sobre Desplazamiento Interno Nos. 16 y 17, y del artículo 9.2.h) de la Convención de Kampala.

<sup>31</sup> Definición de familia basada parcialmente en: UNHCR; INSTITUTO DE POSGRADO EN ESTUDIOS INTERNACIONALES DE GINEBRA, “Resumen de conclusiones: unidad de la familia”, in: *Mesa redonda de expertos organizada por el Alto Comisionado de las Naciones Unidas para Refugiados (ACNUR) y el Instituto de Posgrado en Estudios Internacionales de Ginebra, Ginebra, 8-9 de noviembre de 2001*, , p. 673, párr.8 que incluyen, como mínimo, a los miembros de la familia nuclear –i.e. cónyuges y niños y niñas menores de edad.

<sup>32</sup> Se prefiere esta redacción porque *descosifica* a los animales, haciéndolos directamente merecedores de protección como seres vivos sintientes, y no sólo como posesiones cuya protección depende del deseo de los desplazados de recuperarlos.



asistencia al transporte y de protección de los bienes dejados a las que se refieren los apartados 8.1 y 8.2<sup>33</sup>.

## **9. Derecho a ganarse la vida mediante el trabajo**

Todo desplazado ambiental tiene derecho a ganarse la vida ~~mediante el trabajo~~ **desempeñando una actividad laboral, por cuenta propia o ajena<sup>34</sup>**, en las mismas condiciones que ~~las demás personas activas~~ **los nacionales del Estado Parte de acogida<sup>35</sup>**.

## **10. Derecho a la educación y a la formación**

Todo desplazado ambiental tiene derecho a recibir una educación y una formación **en las mismas condiciones que los nacionales del Estado Parte de acogida<sup>36</sup>**. Esta educación será **en todo caso** respetuosa con su identidad cultural.

## **11. Derecho al mantenimiento de la especificidad cultural**

Todo desplazado ambiental tiene derecho a tener en común con los demás miembros de su grupo la vida cultural, la religión y la lengua propias.

## **12. Derecho al retorno**

Todo desplazado ambiental ~~acogido temporalmente en un estado de acogida~~ tiene el derecho a regresar a su lugar habitual de vida cuando éste sea habitable de nuevo. **A tal fin, los Estados Partes promoverán positivamente la creación de las condiciones necesarias para posibilitar el retorno, incluyendo la rehabilitación y recuperación de los ecosistemas degradados o contaminados, o la reconstrucción de las zonas afectadas por un desastre climático o medioambiental.**

Correlativamente, el estado de origen tiene la obligación positiva de **posibilitar y organizar el retorno de los desplazados ambientales interestatales o intraestatales a sus lugares de residencia habitual, en condiciones seguras y dignas. En el cumplimiento de este deber, el Estado de origen deberá cooperar tanto con la Agencia Mundial para el Desplazamiento Ambiental como, en su caso, con el Estado de acogida<sup>37</sup>.**

**A su regreso, el Estado de origen debe garantizar que los desplazados que retornan no sean discriminados por razón de su desplazamiento, asegurando su participación en los**

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<sup>33</sup> Texto adaptado a partir del Principio Rector sobre Desplazamiento Interno No. 29 y el artículo 12 de la Convención de Kampala.

<sup>34</sup> Esta redacción, basada en la distinción de la Convención de Ginebra entre actividades por cuenta propia y por cuenta ajena, deja claro que no hay ninguna actividad laboral que el desplazado, especialmente si no es nacional, no pueda ejercer en el Estado de acogida, siempre que cumpla los requisitos de la legislación laboral doméstica tanto de ámbito general como, en su caso, específica de cada sector profesional.

<sup>35</sup> Esta redacción evita eventuales dudas interpretativas acerca del estándar de trato bajo el que se reconoce el derecho al trabajo a los desplazados no nacionales.

<sup>36</sup> Esta redacción garantiza el estándar de trato nacional en el disfrute de este derecho por parte de desplazados ambientales extranjeros.

<sup>37</sup> Este inciso tiene en cuenta el papel activo que el artículo 21.4 (letras d y f) del proyecto atribuye a la AMDA en el retorno de los desplazados medioambientales.



asuntos públicos y su acceso a los servicios públicos de forma plena e igual a la de los demás ciudadanos<sup>38</sup>.

### 13. Prohibición del retorno forzoso

El Estado no puede obligar a los desplazados ambientales que no lo deseen a volver a su lugar habitual de vida.

### 14. Derecho a la información y a la participación

1. Todo desplazado ambiental tiene derecho a ser informado ~~de los motivos y formas de su desplazamiento así como~~<sup>39</sup> de las condiciones de reconocimiento del estatuto de desplazado ambiental, ~~de las consecuencias jurídicas de ese reconocimiento~~<sup>40</sup> y de los recursos contra la denegación del mismo. Asimismo, las autoridades comunicarán a los desplazados toda la información que resulte útil o pertinente para el ejercicio de los derechos que les reconoce el Convenio, en particular en lo que se refiere al acceso a las instalaciones de acogida temporal o a un alojamiento adecuado duradero, la situación en las zonas afectadas por la perturbación climática o medioambiental, así como los avances en la localización de los familiares desaparecidos o separados.

2. Todo desplazado ambiental tiene derecho a ser informado de la existencia ~~que de los~~ mecanismos de indemnización ~~a los que refieren los apartados 1 y 8 del artículo 12 y~~ ~~reinstalación.~~

3. Igualmente, los Estados Partes deberán informar a los desplazados sobre las posibilidades de retornar al lugar de origen, integrarse en el lugar de acogida o reasentarse en otro distinto<sup>41</sup>. Todo desplazado ambiental tiene derecho a participar en la elaboración y ejecución de políticas de acogida, ~~y alojamiento~~ ~~y reasentamiento.~~

### 15. Derechos colectivos

Las poblaciones desplazadas ~~se~~ benefician en los países de acogida de derechos equivalentes a los reconocidos a las minorías en los convenios internacionales, en particular del derecho a constituirse en grupo representativo, ~~y de a~~ actuar colectivamente ante los tribunales ~~y a relacionarse libre y pacíficamente con otros individuos o grupos de terceros Estados con los que compartan vínculos nacionales, étnicos, religiosos o lingüísticos~~<sup>42</sup>.

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<sup>38</sup> Basado en Principio Rector de los Desplazamientos Internos No. 29.1.

<sup>39</sup> Se propone la reubicación de este inciso en el artículo 9 del proyecto de convención, que regula el derecho de información de las personas en riesgo de ser desplazadas.

<sup>40</sup> Tomado del artículo 9.4 del proyecto, cuya formulación de este deber de publicidad se reputa más completa.

<sup>41</sup> Texto adaptado a partir del artículo 11.2 de la Convención de Kampala.

<sup>42</sup> Texto adaptado a partir del artículo 2.5 de la Declaración sobre los derechos de las personas pertenecientes a minorías nacionales o étnicas, religiosas y lingüísticas.

El ejercicio de estos derechos colectivos no autoriza, en ningún caso, actividades contrarias a la soberanía, la integridad territorial y la independencia política de los Estados de acogida<sup>43</sup>.

## **16. Derechos específicos de los desplazados ambientales vulnerables**

Las Partes garantizan una protección reforzada y adaptada a las personas desplazadas más vulnerables con necesidades especiales, en particular, a los niños no acompañados, las mujeres embarazadas, las madres con niños pequeños, las personas mayores, y las personas con discapacidad o enfermas.

### **Artículo 13 - Derechos específicos de los desplazados interestatales**

#### **1. Derecho a la nacionalidad**

Todo desplazado ambiental tiene derecho a conservar la nacionalidad de su Estado de origen afectado por el desastre ambiental o climático. El estado de acogida facilitará su naturalización a petición del interesado, **acelerando los trámites al efecto y reduciendo en todo lo posible los derechos y gastos de los mismos**<sup>44</sup>.

#### **2. Derechos civiles y políticos**

Todo desplazado ambiental conserva sus derechos civiles y políticos. Las Partes, **asistidos por la Agencia Mundial para los Desplazados Ambientales**, procurarán que los desplazados ambientales sigan ejerciendo sus derechos civiles y políticos en sus países de origen, en particular, el derecho de voto.

#### **3. Prohibición de las expulsiones**

3.1. Las expulsiones individuales o colectivas de extranjeros **solicitantes o beneficiarios** que ~~benefician~~ del estatuto de desplazado ambiental están prohibidas.

3.2. El beneficiario del estatuto de desplazado ambiental o el candidato a su obtención sólo puede ser expulsado por razones de orden público o seguridad nacional reconocidas judicialmente. **Los Estados de acogida concederán, en tal caso, al desplazado un plazo razonable dentro del cual pueda gestionar su admisión legal en otro país. Los Estados de acogida se reservan el derecho a aplicar durante ese plazo las medidas de orden interior que estimen necesarias**<sup>45</sup>.

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<sup>43</sup> Texto adaptado a partir del artículo 8.4 de la Declaración sobre los derechos de las personas pertenecientes a minorías nacionales o étnicas, religiosas y lingüísticas.

<sup>44</sup> Inciso tomado del artículo 34 de la Convención de Ginebra sobre el Estatuto de los Refugiados.

<sup>45</sup> Adaptado a partir del artículo 32.3 de la Convención de Ginebra sobre el Estatuto de los Refugiados.

## **CAPÍTULO 5-RECONOCIMIENTO DEL ESTATUTO DE DESPLAZADO AMBIENTAL**

### **Artículo 14 - Reconocimiento del estatuto**

1. El estatuto de desplazado ambiental se reconoce a petición de cualquier persona, familia, grupo o población que responda a la definición de desplazado ambiental del artículo 2.3 del presente Convenio y de conformidad con las directrices establecidas por la alta autoridad de conformidad con los términos del artículo 22.
2. El reconocimiento del estatuto de desplazado ambiental implica la atribución de los derechos garantizados por el presente Convenio.

### **Artículo 15 - ~~Inmunidad penal~~ Exención de responsabilidad**

Las Partes se abstendrán de imponer sanciones penales o administrativas a los desplazados ambientales que, procedentes de su hogar de residencia habitual, entren o se encuentren en sus territorios sin autorización, a condición de que se presenten a la policía en el plazo de un mes contado desde su entrada a dicho territorio y formalicen la correspondiente solicitud de protección.

### **Artículo 16 - Procedimiento**

1. En el plazo de dos años desde la entrada en vigor del presente Convenio, las Partes deberán adoptar un procedimiento para el reconocimiento del estatuto de desplazado ambiental, de conformidad con las indicaciones establecidas por la Alta Autoridad en el artículo 22.
2. La petición del estatuto de desplazado ambiental da lugar a la concesión de un título provisional de residencia válido hasta la decisión definitiva de la Comisión nacional de desplazados ambientales o, en caso de recurso, hasta su resolución por la Alta Autoridad. El beneficiario del estatuto de residente provisional es titular de los derechos garantizados en el presente Convenio.
3. El procedimiento de reconocimiento del estatuto de desplazado ambiental debe garantizar al solicitante la máxima información disponible durante la instrucción del expediente. En caso necesario el solicitante tendrá derecho a la asistencia gratuita de un traductor-intérprete.
4. La decisión de concesión o de rechazo del estatuto de desplazado ambiental se adoptará por una Comisión nacional de desplazados ambientales, que intervendrá una vez que se haya celebrado la audiencia contradictoria y pública a la que el solicitante y el representante de la Parte hayan presentado sus observaciones. Durante dicha audiencia, el solicitante estará asistido por un asesor de su elección o designado de oficio. Esta asistencia será gratuita cuando el solicitante acredite no poder costearla. El solicitante tendrá, igualmente, derecho a la asistencia gratuita de un intérprete durante el trámite de audiencia.

5. Las solicitudes del estatuto de desplazado ambiental derivadas de un mismo desastre medioambiental o climático podrán ser reagrupadas. En tal caso, el grupo de solicitantes estará representado o asistido por uno o varios asesores comunes de su elección o designados de oficio. Asimismo en las diferentes fases del procedimiento, se pondrán traductores e intérpretes a disposición de los solicitantes y sus asesores.

6. La existencia de una solicitud colectiva no es obstáculo para la presentación de eventuales demandas individuales originadas por el mismo desastre, que se presenten con posterioridad.

7. En caso de solicitud colectiva o de solicitudes reagrupadas, la decisión de la Comisión de desplazados ambientales deberá pronunciarse individualmente respecto a cada uno de los peticionarios.

#### **Artículo 17 - Comisiones de desplazados ambientales**

1. A la entrada en vigor del presente Convenio, o tras el depósito del instrumento de ratificación o adhesión al Convenio si éste estuviera ya vigente, cada Estado Parte creará una Comisión nacional de desplazados ambientales encargada del examen de las solicitudes de concesión del estatuto de desplazado ambiental. Cada Comisión nacional estará integrada por nueve personalidades independientes reconocidas en las áreas de los derechos humanos, el medio ambiente y la paz. Los Miembros serán nombrados por las más altas autoridades judiciales del Estado el gobierno de cada Estado Parte sobre la base de una propuesta ratificada por el parlamento nacional mediante una mayoría reforzada.

2. A la entrada en vigor del presente Convenio, en función de las competencias de que disponga, cada Organización regional de integración económica puede crear una comisión encargada de las solicitudes de concesión del estatuto de desplazado ambiental. La Organización deberá comunicar el proceso que haya acordado para el nombramiento de los miembros de la comisión a la Alta Autoridad, que podrá hacer indicaciones.

3. Durante el período de aplicación provisional de la Convención, cada Estado u Organización Parte creará una comisión ad hoc que estará a cargo de decidir sobre el reconocimiento del estatuto de desplazado medioambiental hasta que se establezcan las Comisiones de desplazados ambientales a las que se refieren los párrafos anteriores.

#### **Artículo 18 – Recurso ante la Alta Autoridad**

1. Las decisiones de la Comisión de desplazados a ambientales pueden ser recurridas ante la Alta Autoridad a la que se refiere el artículo 22, en el plazo de un mes contado desde su notificación al solicitante.

2. El recurso del solicitante tiene efectos suspensivos e implica la prórroga forzosa del título de residencia provisional que le hubiera sido concedido.

~~3. Las Partes en el Convenio, los Estados que no sean parte, las ONGs y cualquier institución académica interesada puede presentar observaciones escritas e intervenir en las audiencias de la Alta Autoridad.~~

3.4. Las garantías de procedimiento previstas en los apartados 3 a 6 del artículo 16 son aplicables a las audiencias de la Alta Autoridad.

4. Durante el período de aplicación provisional de la Convención, el recurso a que se refiere el apartado 1 se tramitará ante los tribunales de lo contencioso administrativo de cada Estado Parte.

#### **Artículo 19 - Cesación del estatuto**

1. La protección reconocida en el estatuto de desplazado ambiental terminará cuando desaparezcan las condiciones ~~para~~ **que motivaron** su reconocimiento, **cuando el desplazado adquiera una nueva nacionalidad o cuando regrese voluntariamente a su país de origen.**

~~2. El desplazado ambiental puede prorrogar su permanencia en el territorio cuando su estatuto haya terminado. En ese caso, el Estado facilitará la permanencia del interesado en su territorio.~~ **El cese del estatus de desplazado ambiental no impedirá la prolongación de su estancia en el territorio del Estado Parte que lo haya reconocido de acuerdo con su legislación de extranjería. Al decidir sobre la solicitud de estancia, los Estados Parte se comprometen a tener en cuenta las circunstancias personales del solicitante, su arraigo en el país de acogida, así como razones humanitarias relacionadas con la situación general del país de retorno.**

### **CAPÍTULO 6 – INSTITUCIONES Y ÓRGANOS**

#### **Artículo 20 - Conferencia de las Partes**

1. Se establece una Conferencia de las Partes cuya primera sesión será convocada por el depositario al que se refiere el artículo 43 durante el año siguiente a la fecha de entrada en vigor del presente Convenio. Posteriormente, las Partes celebrarán una reunión ordinaria al menos una vez cada dos años.

2. Si la Conferencia lo estima necesario o a petición escrita de una Parte, a condición de que tal petición sea apoyadas al menos por una cuarta parte de las Partes, podrán celebrarse sesiones extraordinarias de la Conferencia de las Partes en el plazo de seis meses siguientes a la notificación a las Partes por la Secretaría.

3. En la primera reunión, la Conferencia de las Partes adoptará su reglamento interior y las reglas de gestión financiera.

4. Las sesiones de la Conferencia de las Partes estarán abiertas al público, en ellas se puede reconocer a las ONG **o a las organizaciones internacionales regionales de integración económica que no puedan adquirir la condición de Parte** el estatuto de observador.

5. La Conferencia de las Partes elige a los miembros del Consejo de administración de la Agencia Mundial para los Desplazados Ambientales, a los miembros del Fondo Mundial para los Desplazados Ambientales y a los miembros de la Alta Autoridad.

6. La Conferencia de las Partes examinará y evaluará de forma permanente la aplicación del Convenio, inclusive la adopción y la aplicación de las políticas y programas a los que se refiere el artículo 6, el apartado 2 del artículo 9 y los apartados 5.4 y 14.3 del artículo 12, así como las medidas jurídicas y ~~método~~ metodológicas destinadas a garantizar la ayuda y la asistencia a los desplazados ambientales y a la mejora de las condiciones de su acogida.

7. La Conferencia de las Partes desempeñará las funciones que le sean asignadas por el Convenio y con tal fin:

- a) creará los órganos subsidiarios que considere necesarios para la aplicación del presente Convenio,
- b) en caso necesario cooperará con los órganos con las Organizaciones internacionales y los organismos intergubernamentales y no gubernamentales competentes
- c) examinará periódicamente la información que le sea sometida y los informes de aplicación a los que se refiere el artículo 29,
- d) examinará y adoptará cualquier medida necesaria para alcanzar los objetivos previstos en el presente Convenio

8. La Secretaría de la Conferencia se encargará a la Organización Internacional para los Migraciones (OIM)

#### **Artículo 21 - Agencia Mundial para los Desplazados Ambientales (AMDA)**

1. Se crea una Agencia Mundial para los Desplazados Ambientales (AMDA) encargada de promover y colaborar en la aplicación del presente Convenio y sus Protocolos.

2. La Secretaría de la AMDA se encargará a la OIM.

3. La AMDA estará formada por un Consejo de Administración y un Consejo Científico.

4. **Al Consejo de Administración corresponde:** ~~La AMDA tiene por misión:~~

- ~~a) realizar trabajos prospectivos sobre la evolución de los desplazamientos ambientales y climáticos;~~
- ~~b) evaluar las políticas que pueden originar desplazamientos ambientales y climáticos;~~
- e) a) movilizar recursos para reducir los factores de vulnerabilidad que provocan desplazamientos ambientales y climáticos;
- e) b) contribuir a la organización general de la asistencia para prevenir y limitar los desplazamientos y promover el retorno de los desplazados ambientales y climáticos lo más rápidamente posible;

- e) ~~valorar los programas aplicados para prevenir los desplazamientos ambientales y para ayudar a los desplazados;~~
- f) c) apoyar activamente la organización de la acogida, **incluida la prestación de asistencia humanitaria**, y, cuando sea posible, ~~del~~ **regreso de los desplazados ambientales y su reintegración plena e igualitaria en sus lugares de origen, incluida la organización de la asistencia material necesaria**<sup>46</sup>.
- d) **apoyar activamente el reasentamiento y la integración permanente de los desplazados, cuando el retorno no fuese posible**<sup>47</sup>.
5. Al Consejo Científico corresponde:

- a) **realizar trabajos prospectivos sobre la evolución de los desplazamientos ambientales y climáticos, incluida la identificación de poblaciones o comunidades en riesgo de desplazamiento medioambiental o climático. En la preparación de estos trabajos, el Consejo Científico tendrá en cuenta y, en la medida de lo posible, se coordinará con otras organizaciones con campos de investigación afines o relacionados, como el Grupo Intergubernamental de Expertos sobre el Cambio Climático, el Órgano Subsidiario de Asesoramiento Científico y Tecnológico de la CMNUCC, la Organización Internacional para las Migraciones y el Programa de las Naciones Unidas para el Medio Ambiente**<sup>48</sup>.
- b) **evaluar las políticas que pueden originar desplazamientos ambientales y climáticos;**
- c) **valorar los programas aplicados para prevenir los desplazamientos ambientales y para ayudar a los desplazados;**

## **Artículo 22 - Alta Autoridad**

1. La Alta Autoridad estará compuesta por 21 personalidades reconocidas en el ámbito de **las migraciones**, los derechos humanos, ~~del~~ **medio ambiente y de la paz**. La distribución de las plazas se realizará sobre la base de la representación geográfica amplia y equitativa.

2. Los miembros de la Alta Autoridad se elegirán por la Conferencia de las Partes mediante votación secreta por mayoría de los presentes y votantes. Cada Estado Parte podrá designar a dos candidatos. Las Organizaciones no gubernamentales **cuyo ámbito de actuación sean las migraciones, los derechos humanos o el medioambiente** podrán presentar un ~~máximo~~ **total** de 5 candidatos.

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<sup>46</sup> Inicialmente, el proyecto atribuye esta función de organizar la ayuda material para la acogida y el regreso de los desplazados ambientales al FMDA (vid. art. 23.1).

<sup>47</sup> Esta última función está tomada de la agencia de coordinación del modelo institucional de DOCHERTY, B; GIANNINI, T., “Confronting a rising tide: a proposal for a convention on climate refugees”, *op. cit.*, p. 388.

<sup>48</sup> Este último inciso relativo a la cooperación con otras organizaciones o agencias de carácter científico se basa parcialmente en HODGKINSON, D. ET AL., “The Hour when the ship comes in’: a convention for persons displaced by climate change”, *op. cit.*, p. 96.

3. Los miembros de la Alta Autoridad ejercerán sus funciones a título personal. **E**ntre ellos deben elegir un presidente.

4. El mandato de los miembros de la Alta Autoridad durará seis años; es renovable por una sola vez.

5. La OIM se encargará de la Secretaría de la Alta Autoridad.

6. La Alta Autoridad es responsable de:

- a) Adoptar directrices sobre los criterios y procedimientos para la concesión del estatuto de desplazado ambiental;
- b) Resolver los recursos sobre las decisiones de concesión o denegación del estatuto de desplazado ambiental presentados por los individuos, familias, comunidades u Organizaciones no gubernamentales interesadas;
- c) Resolver en primera y última instancia las solicitudes de concesión del estatuto presentadas por nacionales **que se encuentren en el territorio** de Estados no Partes o en caso de inacción del Estado Parte. **También será competente para resolver las solicitudes de los Estados Partes para que sus poblaciones desplazadas o amenazadas por el desplazamiento sea reconocidas como desplazados ambientales;**
- d) Resolver las cuestiones relativas a la interpretación y aplicación del Convenio a petición de las comisiones nacionales o de cualquier otra persona física o jurídica interesada;
- e) Garantizar la conformidad de las disposiciones nacionales con el Convenio, a petición de cualquier persona física o jurídica **o grupo de interesados**<sup>49</sup>. ~~y resumir los informes nacionales de aplicación. Este resumen destacará tanto las deficiencias como las buenas prácticas;~~
- f) Proponer recomendaciones a la Conferencia de las Partes **sobre cualquier asunto relacionado con la aplicación y mejora del presente Convenio y sus Protocolos**<sup>50</sup>;
- g) Proponer enmiendas a la presente Convenio **y sus Protocolos**<sup>51</sup>;
- h) **Resolver los recursos contra las decisiones de financiación y ayuda del Fondo**<sup>52</sup>;
- i) **Resumir y presentar a la Conferencia de las Partes los informes de aplicación del Convenio previstos en el artículo 29. Este resumen subrayará las insuficiencias y las buenas prácticas;**

7. Las decisiones de la Alta Autoridad serán definitivas. Las Partes se comprometen a cumplir las decisiones de la Alta Autoridad que les conciernan. La Alta Autoridad podrá solicitar a la Conferencia de las Partes que decida la suspensión del derecho de voto a los Estados que hagan caso omiso de sus decisiones de forma reiterada.

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<sup>49</sup> Esta referencia a los grupos de individuos afectados aparece en las versiones inglesa y francesa de la convención, pero no en la castellana.

<sup>50</sup> A partir de las versiones del proyecto en inglés y francés.

<sup>51</sup> A partir de las versiones del proyecto en inglés y francés.

<sup>52</sup> Esta función está tomada del comité de apelación descrito por HODGKINSON, D. ET AL., “‘The Hour when the ship comes in’: a convention for persons displaced by climate change”, *op. op. cit.*, p. 94.



### **Artículo 23 - El Fondo Mundial para los Desplazados Ambientales (FMDA)**

1. La misión del FMDE es garantizar el funcionamiento de la AMDA y organizar la ayuda financiera ~~y material~~<sup>53</sup> para la acogida y el regreso de los desplazados ambientales. Estas ayudas pueden concederse ~~tanto a los Estados de acogida como a los Estados~~ ~~y de residencia.~~ ~~También pueden concederse a las Organizaciones no gubernamentales, a las Organizaciones internacionales universales y regionales y a las autoridades regionales y eolectividades locales.~~

2. La OIM se encargará de la Secretaría del FMDA.

3. El FMDA se nutrirá principalmente de

- a) las contribuciones voluntarias de los Estados y de los actores privados;
- b) las contribuciones obligatorias recaudadas a través de un impuesto que gravará principalmente los factores causales de trastornos repentinos o paulatinos susceptibles de provocar desplazamientos ambientales.

4. El FMDA ~~debe~~ facilitar la conclusión de acuerdos bilaterales, regionales e internacionales en materia de asistencia material y financiera para la acogida, ~~y el retorno~~ ~~o el reasentamiento~~ de los desplazados ambientales.

~~Muestra.~~

### **Artículo 24 - Protocolos relativos a la AMDA, a la Alta Autoridad y al FMDA**

1. La organización y el funcionamiento de la AMDA y de la Alta Autoridad serán establecidos en un Protocolo adicional al presente Convenio, que será adoptado, en la medida de lo posible, en la primera Conferencia de las Partes.

2. La organización y el funcionamiento del FMDA, así como las disposiciones relativas a la base ~~imponible y los tipos de gravamen~~, la recaudación y el destino de la tasa a la que se refiere el párrafo 3 b) del artículo 23, se establecerán en un Protocolo adicional al presente Convenio, que será adoptado, en la medida de lo posible, en la primera Conferencia de las Partes.

### **Artículo 25 - Funciones de la Organización Internacional para las Migraciones**

Además de las funciones previstas en los artículos 20, 21, 22 y 23, la OIM deberá:

- ~~a) resumir y presentar a la Conferencia de las Partes los informes de aplicación del Convenio previstos en el artículo 29. Este resumen subrayará las insuficiencias y las buenas prácticas;~~<sup>54</sup>
- b) organizar las reuniones del consejo de administración y del Comité científico de la AMDE y garantizar su funcionamiento;
- c) organizar las reuniones de la Alta Autoridad y garantizar su funcionamiento;

<sup>53</sup> Sería preferible que esta función la asumiera el consejo de administración de la AMDA.

<sup>54</sup> Se sugiere atribuir esta tarea a la AA, en su condición de comité de expertos.

- d) organizar las reuniones del Fondo Mundial para los Desplazados Ambientales y garantizar su funcionamiento;
- e) asistir a las Partes en la aplicación del presente Convenio, a petición de las mismas;
- f) en caso necesario, organizar la coordinación ~~de los organismos internacionales competentes con las secretarías~~ con las secretarías de otras organizaciones internacionales pertinentes;
- g) asistir a las Partes para intercambiar información relativa a la aplicación del presente Convenio;
- h) preparar y presentar a la Conferencia de las Partes, informes sobre el ejercicio de sus funciones así como otras informaciones disponibles relativas a las deficiencias, avances y buenas prácticas;
- i) celebrar los acuerdos administrativos y contractuales necesarios para cumplir eficazmente sus funciones;
- j) cumplir con las funciones que le sean asignadas en los Protocolos adicionales del Convenio;
- k) cumplir con las funciones que le sean confiadas por el consejo de administración de la AMDA y por la Conferencia de las Partes.

#### **Artículo 26 - Información, participación del público u acceso a la justicia**

Cada Parte, las instituciones y los órganos del Convenio ejercen sus funciones respetando el acceso a la información, la participación del público en el proceso de adopción de decisiones y el acceso a la justicia en el ámbito del medio ambiente.

### **CAPÍTULO 7 - MECANISMOS DE APLICACIÓN**

#### **Artículo 27 - Cooperación**

La aplicación de este Convenio es responsabilidad principal de las instituciones que en él se establecen, con la cooperación activa de las Organizaciones internacionales universales y regionales, de las Organizaciones No Gubernamentales relevantes y de las secretarías de los Convenios internacionales relativos a la protección del medio ambiente o la defensa de los derechos humanos.

#### **Artículo 28 - Acuerdos bilaterales y regionales**

1. Con el fin de atender al cumplimiento de las obligaciones que le impone el presente Convenio, las Partes celebrarán acuerdos bilaterales o multilaterales de carácter regional.

2. Las Partes ~~notificarán a la OIM, en su condición de secretaría, intercambiarán la información derivada de~~ la conclusión de acuerdos bilaterales o multilaterales o de otros acuerdos relacionados con la aplicación del presente Convenio, en los que sean parte.

#### **Artículo 29 - Informes de aplicación**

1. Las Partes supervisarán de forma permanente la aplicación del presente Convenio. Con tal fin, presentarán a la Conferencia de las Partes, por medio de la Secretaría, informe sobre las medidas jurídicas y prácticas adoptadas para aplicar el Convenio, sobre la eficacia de tales medidas, así como sobre las dificultades encontradas para lograr los objetivos del Convenio. Con tal propósito, las Partes valorarán jurídicamente la eficacia de la aplicación del Convenio por medio de indicadores jurídicos.
2. La Conferencia de las Partes decidirá en la primera reunión la periodicidad, los indicadores jurídicos a que hace referencia el apartado anterior y la metodología que deberán respetarse en la presentación de los informes de aplicación.
3. Las Partes asociarán a la sociedad civil al proceso de colaboración en la elaboración de los informes de aplicación.

## **CAPÍTULO 8-DISPOSICIONES ~~DIVERSAS~~ ADICIONALES**

### **Artículo 30 - Relación con otros instrumentos**

1. La interpretación de las disposiciones de este Convenio no afectará a los derechos y garantías más favorables a los desplazados ambientales y climáticos contenidos en otros instrumentos obligatorios nacionales e internacionales que estén en vigor o que lleguen a estarlo.
2. Las disposiciones del presente Convenio no prejuzgan el derecho a buscar asilo o cualquier otra forma de protección nacional o internacional.

### **Artículo 31 - Relaciones con terceros**

1. Las Partes invitarán a los Estados no Partes en el presente Convenio a cooperar en su aplicación, cuando lo consideren oportuno.
2. Los Estados negociadores, signatarios y las Partes se comprometen a adoptar las medidas apropiadas, de conformidad con el derecho internacional, para asegurar que nadie participe en actividades contrarias al propósito, al objeto y a los principios del presente Convenio<sup>55</sup>.
3. Las Organizaciones regionales de integración económica que no tengan transferidas competencias reguladas por el presente Convenio podrá ser invitadas a cooperar en su aplicación, en calidad de observadores, cuando las Partes lo consideren oportunos.

### **Artículo 32 - Examen de la aplicación de las disposiciones**

1. Cuando la Conferencia de las Partes reciba información fidedigna que indique violaciones graves o sistemáticas ~~Con el fin de examinar el cumplimiento~~ de las disposiciones del presente Convenio, y de sus Protocolo, ~~la Conferencia de las Partes~~ adoptará por consenso acuerdos facultativos de carácter no conflictual, no judiciales y consultivos para investigar la veracidad de tal información. Al finalizar su examen, la

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<sup>55</sup> Con base en el artículo 18 de la CVDT.

Conferencia de las Partes podrá, si lo estima necesario, formular observaciones y recomendaciones a la Parte interesada.

2. Tales acuerdos preverán la participación apropiada del público e incluso pueden incluir la posibilidad de examinar **denuncias particulares** ~~comunicaciones públicas~~ (“~~de miembros del público~~”) sobre cuestiones relacionadas con el presente Convenio o sus Protocolo.

### **Artículo 33 - Solución de controversias**

1. ~~En caso de~~ **Las** controversias entre dos o más Partes sobre la interpretación o la aplicación del presente Convenio **serán resueltas por la Alta Autoridad.**, ~~las Partes interesadas deberán buscar una solución por vía de negociación u otros medios pacíficos de su elección, en particular los buenos oficios o la mediación de un tercero, así como el recurso a la conciliación o arbitraje.~~

~~2. Si las Partes interesadas no pueden resolver una controversia por los medios mencionados en el párrafo anterior, la controversia se someterá al Tribunal Internacional de Justicia.~~

3. Las disposiciones del presente artículo se aplicarán a las controversias relativas a cualquier Protocolo adicional al presente Convenio, salvo que en aquel se disponga lo contrario.

### **Artículo 34 - Enmienda al Convenio y sus Protocolo**

1. Cualquier Parte podrá proponer enmiendas al presente Convenio. Las enmiendas se adoptarán en una sesión de la Conferencia de las Partes.

2. Cualquier Parte en un Protocolo podrá proponer enmiendas al mismo. Tales enmiendas se adoptarán en una reunión de las Partes en el Protocolo de que se trate.

3. El texto de cualquier enmienda será comunicado por la Secretaría a las Partes seis meses antes de la celebración de la reunión que debe pronunciarse acerca de su adopción.

4. Si todos los esfuerzos para adoptar una enmienda por consensos se han agotado sin alcanzar un acuerdo, la enmienda se adoptará, en última instancia, mediante votación por mayoría de 2/3 de las Partes en el instrumento presentes y votantes.

5. El depositario comunicará a las Partes las enmiendas adoptadas para que sean objeto de ratificación, aceptación o aprobación.

6. La ratificación, la aceptación, la aprobación o la enmienda debe notificarse por escrito al depositario.

Toda enmienda adoptada de conformidad con la apartado cuatro entrará en vigor para la parte que la haya aceptado, el trigésimo día contado desde la fecha del depósito del instrumento de ratificación, aceptación o aprobación por las dos terceras Partes que

fueran Partes en el momento en el que la enmienda fuera adoptada. Posteriormente, la enmienda entrará en vigor para cada parte, el trigésimo día contado desde la fecha del depósito por tal parte de su instrumento de ratificación, aceptación o aprobación de las mismas.

#### **Artículo 35 - Adopción de Protocolos**

1. las Partes cooperarán en la presentación y adopción de los Protocolos adicionales al presente Convenio.
2. Los Protocolos se adoptarán en la Conferencia de las Partes.
3. El texto del proyecto de Protocolo se comunicará por la Secretaría a las Partes por lo menos 6 meses antes de la reunión de la Conferencia de las Partes a la que haya a la que se presente el proyecto para su adopción.

#### **Artículo 36 - Relaciones entre el Convenio y sus Protocolo**

1. Los Estados y las Organizaciones regionales de integración económica no podrán ser parte en un Protocolo a menos que sean también Partes en el Convenio.
2. Las decisiones adoptadas en virtud de un Protocolo serán adoptadas exclusivamente por las Partes en el mismo. Las Partes que no hayan ratificado, aceptado o aprobado un Protocolo pueden participar en calidad de observador, en las reuniones de las Partes del Protocolo.

#### **Artículo 37 - Derecho de voto**

1. Cada Parte en el presente Convenio o en un Protocolo disponen de un voto, a reserva de lo dispuesto en el párrafo siguiente
2. Con el fin de gozar del derecho de voto en el ámbito de sus competencias, las Organizaciones regionales de integración económica disponen de un número de votos igual al número de Estados miembros que sean Partes en el presente Convenio o en el Protocolo de que se trate. Tales Organizaciones se abstendrán de ejercer su derecho de voto en el caso de que lo ejerzan sus Estados miembros o inversamente.

#### **Artículo 38 - Reservas**

El presente Convenio y sus Protocolo no admiten reservas.

#### **Artículo 39 - Denuncia**

1. El presente Convenio podrá ser denunciado por una parte cinco años después (¿) y mediante un preaviso de un año presentado por escrito depositario.
2. La denuncia del presente Convenio por una parte implica asimismo la denuncia de los Protocolos adicionales en los que sea Parte.

3. La denuncia no libera a la Parte interesada de las obligaciones contenidas en el presente Convenio con respecto a cualquier acto que, pudiendo constituir una violación de dichas obligaciones, haya sido realizado antes de la fecha en que la denuncia surta efecto<sup>56</sup>.

## CAPÍTULO 9 - DISPOSICIONES FINALES

### **Artículo 40 - Firma**

El presente Convenio está abierto a la firma de todos los Estados miembros de las Naciones Unidas, así como de las Organizaciones regionales de integración económica en (lugar a determinar) y después en la sede de la Organización de las Naciones Unidas en Nueva York de (fecha a determinar) a (fecha determinar).

### **Artículo 41 - Ratificación, aceptación, aprobación, o adhesión**

1. El presente Convenio y sus Protocolos están abiertos a la ratificación, la adopción, la aprobación o la adhesión de los Estados y de las Organizaciones de integración económica regional. El presente Convenio y los Protocolos están sujetos a ratificación, aceptación, aprobación o adhesión. Los instrumentos de ratificación, aceptación, aprobación o adhesión serán depositados ante el depositario.

2. Las Organizaciones regionales de integración económica que lleguen a ser parte del presente Convenio, sin que en ninguno de sus Estados miembros sea Parte en el mismo, estarán vinculadas por todas las obligaciones enunciadas en el Convenio o el Protocolo. Cuando alguno de los Estados miembros de esas Organizaciones sean Partes del Convenio o de un Protocolo, la Organización y sus Estados miembros determinará cuáles son sus obligaciones respectivas relativas a la ejecución de las obligaciones que les corresponden en virtud del Convenio o del Protocolo. En tal caso, la Organización y sus Estados miembros no podrán ejercer simultáneamente los derechos derivados del Convenio o del Protocolo.

3. En los instrumentos de ratificación, aceptación, aprobación o adhesión, las Organizaciones regionales de integración económica precisarán el alcance de sus competencias respecto de las materias reguladas por el Convenio o el Protocolo de que se trate. Además, deberán informar al depositario, quién a su vez informará a todas las Partes, de toda modificación pertinente relativa al alcance de sus competencias.

4. Los Estados y las Organizaciones regionales de integración económica procurarán informar a la Secretaría, en el momento de la ratificación, la aceptación, la aprobación o la adhesión, de las medidas adoptadas para ejecutar el Convenio y sus Protocolos.

### **Artículo 42 - Entrada en vigor**

1. El presente Convenio entrará en vigor a los 30 días de la fecha de depósito de al menos 10 instrumentos de ratificación, aceptación, aprobación o adhesión.

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<sup>56</sup> Omitido en la versión en castellano.

2. El presente Convenio se aplicará con carácter provisional a los 30 días de la fecha de depósito del instrumento de ratificación, aceptación, aprobación o adhesión.

**Artículo 43 - Depositario**

El secretario general de la Organización de las Naciones Unidas es el depositario del presente Convenio.

**Artículo 44 - Textos auténticos**

El original del presente Convenio, cuyos textos en árabe chino, español, francés, inglés y ruso son igualmente auténticos se depositará en poder del depositario.

En fe de lo cual, los abajo firmantes, debidamente autorizados, firman el presente Convenio.

Hecho en (a precisar) el fecha en letra de

– A.M.D.G. –