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„Refugees, displaced persons, migrants sui generis?
— Human rights protection of environmental migrants“

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ABSTRACT

Human migration has been a coping strategy for populations facing environmental changes throughout human history. Nevertheless, international law has so far been focused on migration caused by persecution, conflict and war and, consequently, lacks a protection regime covering environmental migration. This thesis, therefore, aims to explore how existing instruments of international law can guarantee the human rights of environmental migrants.

The thesis discusses four instruments of international human rights and environmental law, namely the Convention relating to the Status of Refugees, Complementary Protection, the Guiding Principles on Internal Displacement and the United Nations Framework Convention on Climate Change. Analysing these instruments' potential for expansion to include environmental migration reveals considerable limits and showcases the need for a tailored international instrument, combining measures for enhanced resilience and planned relocation.

In the light of the continued securitisation of the migration debate since 2015, however, it seems unlikely that states would agree to open their borders for extensive resettlement or labour migration programmes. Although environmental migration is a very pressing issue, political will to negotiate an urgently needed international agreement on the topic seems to be rather limited.

Keywords: environmental migration; political will; disaster displacement; human rights

ABSTRACT (GERMAN)

In der Geschichte der Menschheit diente Migration schon immer als eine Anpassungsstrategie für Menschen, die sich mit Umweltveränderungen konfrontiert sahen. Trotzdem konzentrierte sich das internationale Recht bisher auf Migration, die durch Verfolgung, Konflikte und Kriege ausgelöst wurde, und besitzt in Folge dessen auch kein Schutzsystem für Umweltmigranten. Diese Arbeit behandelt daher die Fragestellung, wie vorhandene Instrumente des Völkerrechts die Menschenrechte von Umweltmigranten gewährleisten können.

Die Arbeit diskutiert vier internationale Menschenrechts- und Umweltrechtsnormen, nämlich das Abkommen über die Rechtsstellung der Flüchtlinge, komplementäre Schutzmechanismen, die Leitgrundsätze betreffend Binnenvertreibungen und das Rahmenübereinkommen der Vereinten Nationen über Klimaänderungen. Bei der Betrachtung dieser Instrumente zeigen sich deutliche Einschränkungen hinsichtlich ihres Potentials auf Umweltmigranten erweitert zu werden. Dies macht die Notwendigkeit für ein auf Umweltmigration zugeschnittenes Instrument deutlich, welches Maßnahmen zur Erhöhung der Widerstandsfähigkeit mit Umsiedlungsprogrammen verknüpfen müsste.

Angesichts der fortschreitenden Versicherheitlichung der Migrationsdebatte seit Beginn des Jahres 2015 erscheint es jedoch eher unwahrscheinlich, dass Staaten der Öffnung ihrer Grenzen sowie umfangreichen Programmen in den Bereichen Umsiedlung und Arbeitsmigration zustimmen würden. Obwohl Umweltmigration ein äußerst dringliches Problem darstellt, scheint der politische Wille ein notwendiges internationales Übereinkommen zum Thema Umweltmigration auszuhandeln eher begrenzt.

Keywords: Umweltmigration; politischer Wille; Flucht vor Naturkatastrophen; Menschenrechte

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LIST OF ABBREVIATIONS

ACHR	American Convention on Human Rights
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCPI	Climate Change Performance Index
COP	Conference of the Parties
CSWD	Commission Staff Working Document
ECHR	European Convention on Human Rights
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDMC	Internal Displacement Monitoring Centre
IDPs	Internally Displaced Persons
IOM	International Organization for Migration
IPCC	Intergovernmental Panel on Climate Change
Refugee Convention	Convention relating to the Status of Refugees
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNEP	United Nations Environmental Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNHCR	United Nations High Commissioner for Refugees
USA	United States of America

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1 INTRODUCTION

In 2008, the magnitude-8-earthquake in the Chinese Sichuan region displaced around 15 million people.¹ Three years later, in 2011, so-called ‘superstorm’ Hurricane Sandy forced 1.2 million people across six countries, including the USA, to leave their homes.² Fast-forward another seven years to 2018, typhoon Mangkhut accounted for 1.6 million people displaced in the Philippines.³

The roughly 18 million people in these examples, however, constitute only a small portion of the more than 260 million victims of disaster-related displacements which occurred over the last decade.⁴

1.1 THEMATIC RELEVANCE

Human migration has been a coping strategy for populations facing environmental changes throughout human history and has been recognised by the Intergovernmental Panel on Climate Change (IPCC) as a major outcome of climate change, already in its First Assessment Report in 1990.⁵ Nevertheless, “the scientific community has focused on establishing the extent and nature of anthropogenic climate change and its impact on our weather systems and coastlines”⁶ rather than on its impact on human mobility. The same is true for international law, which has so far been focused on migration caused by persecution, conflict and war and, as a consequence, lacks a protection regime for environmental migrants. Similarly, international politics is so far negligent to the threats that environmental migration poses to the enjoyment of human rights by populations affected, as well as to the burdens it creates for certain, often already fragile, states and the international community in general. Such negligence could prove dangerous, as international cooperation in the migration realm is often selective and based on *ad hoc* solutions, even where clear international laws and guidelines exist.

¹ Internal Displacement Monitoring Centre, *Global Estimates 2012*, 2013, p. 15.

² Internal Displacement Monitoring Centre, 2013, p. 17.

³ Internal Displacement Monitoring Centre, *Global Report on internal displacement 2019*, 2019, p. 28.

⁴ Internal Displacement Monitoring Centre, 2019, p. 1.

⁵ O. Brown, ‘The numbers game’, *Forced Migration Review*, no. 31, 2008b, p. 8.

⁶ Brown, 2008b, p. 8.

This has been exemplified in the recent refugee ‘crisis’ following the Syrian civil war, which is not a crisis in numbers, but rather a crisis in international cooperation. As states in the Middle East struggled – and still struggle – under the burden of new arrivals adding to their already fragile population structures, the states of the Global North, in particularly the Member States of the European Union (EU), attempted to close off migratory routes towards their territory for the small share of refugees who managed to come this far. European governments shoved responsibilities for arriving refugees back and forth, arguing about which of the 28 states should take them in and lengthily negotiating suboptimal *ad hoc* allocations, so that many people were stuck in limbo on rescue ships offshore or in closed off reception centres. This seesaw occurred despite the fact that the right to asylum for persons fleeing persecution is bindingly codified in the 1951 Geneva Convention relating to the Status of Refugees (Refugee Convention), which has been ratified by all EU Member States.

In the context of environmental migration, an even larger number of people is predicted to move, as the issue is reinforced through the adverse effects of climate change, and, thus, such *ad hoc* approaches will not prove to be sustainable. Consequently, an international and legally binding protection regime for environmental migrants urgently needs to be adopted in order to avoid violations of their human rights and to ensure the international community is collectively responsible for their guarantee.

This thesis, therefore, aims to explore the research question of how existing instruments of international law can guarantee the rights of environmental migrants.

1.2 METHODOLOGY

The findings of this Master’s thesis were collected through a systematic literature review concerning the progress of research in the field of international human rights protection for environmental migrants.

In order to gain definitional clarity on the phenomenon of environmental migration, publications of international organisations, such as the International Organization for Migration (IOM) or the United Nations Environment Programme (UNEP), were complemented with journal articles interpreting various elements of the definition.

Additionally, quantitative data from the Internal Displacement Monitoring Centre's (IDMC) yearly Global Report were used to assess the numerical scope of the issue, while international human rights treaties and their authoritative interpretation in the respective General Comments were examined for the human rights perspective.

By means of Google Scholar and the University of Vienna's library resources, peer-reviewed journal articles and books, which covered a comparison of existing instruments of international law with regard to their suitability for and applicability to environmental migrants, were searched and also included in the analysis.

Based on socio-scientific scenarios, adaptation and resilience strategies, as well as current political actions and discussions in the field of migration and asylum, future utopias were projected for the purpose of illustrating the urgency of international action with regard to the protection of environmental migrants.

Furthermore, publications from selected governments and governmental organisations and state policies concerning environmental migration, as well as newspaper articles on natural disasters and states' responses were analysed in order to derive the positions of selected countries with regard to environmental migration and to immigration and asylum in general. Where available, United Nations resolutions, regional policy documents and documents of international law as well as national laws were incorporated and discussed.

Lastly, an interview with Dr Margit Ammer, E.MA was conducted to complement the results from the literature review with an expert insight and assessment of the topic. Dr Ammer works as a Senior Researcher at the Ludwig Boltzmann Institute for Human Rights in Vienna, Austria, and is an expert in the area of environment and human rights, in particular on migration/flight and the environment. A semi-structured interview approach was chosen, in order to be able to obtain detailed responses and in-depth information. The interview lasted about one hour and was recorded with the consent of the expert.

No obstacles were encountered in the search for secondary literature on the topic, so that all relevant literature was found. However, initially two more expert interviews were

planned, which had to be dropped due to the unavailability of the experts during the timeframe of the thesis.

1.3 STRUCTURE AND OBJECTIVES

Managing migratory movements caused by conflicts and violence has been a prevalent theme of international politics in the last decade. However, focusing on conflict-induced migration only, neglects migratory patterns caused by environmental factors, such as slow- or sudden-onset disasters. Environmental migration is a phenomenon which is occurring already today, and which will become an ever more pressing issue, if not the most pressing one, in the not so distant future.

Data from the last decade shows that the number of environmental migrants is yet exceeding the number of persons moving due to conflict or violence, which raises the question of where environmental migrants will be able to migrate to and how this affects the enjoyment of their human rights.

As political struggles to allocate refugees to host countries in the context of the Syrian civil war have shown, the international community is struggling to determine the responsibility of states even for a comparably smaller number of refugees, although binding international law exists with regard to the protection of refugee rights. Ultimately, *ad hoc* responses were agreed on among the Member States of the EU for every new boat of refugees arriving at European shores via the Mediterranean, but such an approach will not prove to be sustainable for a larger number of people, like that of environmental migrants.

Therefore, the objective of this thesis is to discuss ways in which instruments of international law can guarantee the rights of environmental migrants.

For this purpose, Chapter 2, firstly, assesses the scope of the phenomenon of environmental migration by examining the nexus between migration and the environment and defining the phenomenon in line with definitions commonly accepted and used by international organisations. This delineation is followed by an analysis of secondary data

on the numbers of environmental migrants and the relevant protection needs and human rights at stake for affected populations.

In Chapter 3, existing legal instruments, i.e. the Guiding Principles on Internal Displacement, the Convention relating to the Status of Refugees, complementary protection provisions, and the United Nations Framework Convention on Climate Change (UNFCCC), are discussed with reference to their current scope, their potential for expansion to include environmental migrants and their limitations regarding such an expansion. The chapter concludes with a conceptual summary establishing elements of an instrument of international law protecting the human rights of environmental migrants.

Chapter 4, subsequently, provides a dystopian and eutopian projection of the future, if no instrument on environmental migration is agreed on, compared to if a comprehensive instrument is negotiated, in order to illustrate the urgent need for and the desirability of an international agreement on this topic.

Lastly, Chapter 5 explores the political feasibility of such an instrument by looking at recent political developments in the EU, the United States of America (USA), small island states, and on the general international level. The chapter also contains an excursus on the topic of international climate action.

2 ENVIRONMENTAL MIGRATION

Environmental migration constitutes a subgroup of the more general phenomenon of migration, which the IOM defines as “a population movement, encompassing any kind of movement of people, whatever its length, composition and causes”.⁷ As such, environmental migration is equally versatile, taking on various forms with regard to its distance or length. Thus, capturing the scope of the issue requires both an understanding of how environmental factors influence an individual’s decision to migrate and an assessment of which populations and rights are particularly affected.

2.1 THE NEXUS BETWEEN MIGRATION AND THE ENVIRONMENT

Environmental changes have been a trigger for human movement throughout history, as migration has long been considered an adaptation strategy in response to unfavourable circumstances.⁸ In the literature on migration, ‘unattractive climate’ as a possible cause for human movement has been mentioned as early as 1885 by the German cartographer Ernst Ravenstein.⁹ While environmental factors vanished from the migration debate of the early 20th century, environmental migration has repeatedly gained attention from the 1980s onwards in the context of discussions about anthropogenic climate change.¹⁰ Especially, the assessment reports by the IPCC have contributed important findings on the relation between changes in the environment and migratory patterns.¹¹ Furthermore, the evidence of climate change has introduced new concerns to the debate on environmental migration, as climate change will render an even larger number of people vulnerable to displacement and is accelerating environmental changes, so that traditional adaptation strategies will no longer be effective.¹²

⁷ International Organization for Migration, *Glossary on Migration*, 2nd edition, Geneva, International Organization for Migration, 2011, pp. 62/63.

⁸ J. McAdam, ‘Swimming against the Tide: Why a climate change displacement treaty is not *the* answer’, *International Journal of Refugee Law*, vol. 23, no. 1, 2011a, p. 2.

⁹ E. Ravenstein, ‘The Laws of Migration’, *Journal of the Statistical Society London*, vol. 48, no. 2, 1885.

¹⁰ Bundesamt für Migration und Flüchtlinge, *Klimamigration – Definitionen, Ausmaß und politische Instrumente in der Diskussion*, Working Paper 45, 2012, p. 12.

¹¹ Bundesamt für Migration und Flüchtlinge, 2012, p. 12.

¹² McAdam, 2011a, pp. 2/3.

Literature on this topic can generally be grouped into two strands: alarmists and sceptics. While alarmists' publications advertise environmental factors as directly causing migration, thereby aiming to gain attention for the phenomenon of environmental migration, sceptics argue that migration is commonly multicausal and, thus, question the alarmists' estimates on affected populations.¹³ The former group often includes ecologists and environmentalists lobbying for environmental protection, whereas the latter consists of migration researchers who fear the debate will trigger "a potential backlash against migrants in general".¹⁴

Despite this divide in the discourse on environmental migration, research shows that changes in the environment potentially cause populations to move. The decision whether to migrate or to stay is in reality the outcome of a combination of drivers – environmental factors being only one besides political, economic, demographic and social aspects.¹⁵ However, environmental factors additionally have a reinforcing impact on the other drivers, rendering the environmental element all the more important.¹⁶

Whether migration occurs or not, ultimately, depends on the interaction of environmental changes with other drivers and existing vulnerabilities on the macro-level, as well as various intervening or facilitating factors on the micro- and meso-level (see Figure 1).¹⁷

For reasons of completeness it has to be mentioned that the relation between the environment and migration also goes the other way, as population movements have an impact on the environmental conditions of areas along the migratory routes.¹⁸ However,

¹³ European Parliament, Committee on Civil Liberties, Justice and Home Affairs, '*Climate Refugees*' – *legal and policy responses to environmentally induced migration*, 2011, p. 16.

¹⁴ European Parliament, Committee on Civil Liberties, Justice and Home Affairs, 2011, p. 16.

¹⁵ Foresight, *Migration and Global Environmental Change – Future Challenges and Opportunities*, London, The Government Office for Science, 2011, p. 11.

¹⁶ Interview with Dr. Margit Ammer, Vienna, 11 June 2019.

¹⁷ Foresight, 2011, p. 12; J. McAdam, *Climate Change, Forced Migration, and International Law*, Oxford, Oxford University Press, 2012, pp. 16/22.

¹⁸ Council of Europe, 'Environmentally induced migration and displacement: a 21st century challenge', Doc. 11785, 23 December 2008, p. 2

this paper focusses on the crucial proposition of an “[environmental] push’ to move caused by depletion of natural resource and capricious weather conditions”.¹⁹

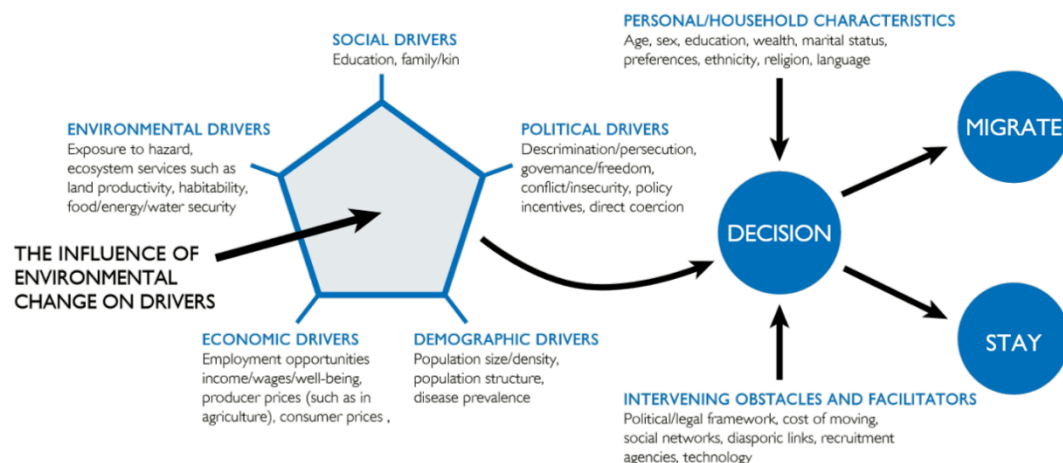


Figure 1: Drivers of Migration (Source: US Aid, 2016, p. 9).

2.2 DEFINING ENVIRONMENTAL MIGRATION

While the scholarly debate has reached an agreement that environmental factors do in fact influence human mobility and that climate change will augment the pressure to migrate in certain regions, there is still no consensus on which terms to use in order to describe this phenomenon and the persons affected by it.²⁰ Terminologies, such as ‘environmental migration’, ‘environmental displacement’, or ‘environmentally induced migration’, are used in parallel to refer to changing patterns of migration due to the influence of climate change and other environmental factors. In line with these terminologies, the terms ‘climate refugees’, ‘environmental migrants’, ‘environmentally displaced persons’ and many others with differing scopes are applied to persons who are on the move for environmental reasons.

The term ‘environmental refugees’ was introduced by the scientist Essam El-Hinnawi in a report for the UNEP in 1985, where it was defined as persons “*forced to leave their traditional habitat, temporarily or permanently, because of marked environmental*

¹⁹ T. Faist and J. Schade, ‘The Climate-Migration Nexus: A Reorientation’ in T. Faist and J. Schade (eds.), *Disentangling Migration and Climate Change*, Dordrecht, Springer Science and Business Media, 2013, p. 7.

²⁰ European Parliament, Committee on Civil Liberties, Justice and Home Affairs, 2011, p. 14.

*disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life”.*²¹ In the following debate, this term and definition were taken up and modified by various authors, such as the British environmentalist Norman Myers who extended the definition by examples of what he calls “*environmental factors of unusual scope, notably drought, desertification, deforestation, soil erosion, water shortages and climate change, [and] also natural disasters such as cyclones, storm surges and floods*”.²²

In the current discourse, the term ‘refugee’ is often used to emphasize the emergency affected people find themselves in and to stress the international community’s responsibility to provide help.²³ However, the use of the term in the context of environmental migration has been highly criticised, *inter alia* by the High Commissioner for Refugees (UNHCR), because of its distinct definition in international law, which is laid down in the 1951 Geneva Convention relating to the Status of Refugees and amended through its 1967 Protocol²⁴ (for an extended discussion of this definition and its applicability to environmental migration see Chapter 3.2). In order to avoid this criticism, the term ‘migrant’ has been introduced to the debate, as it broadens the scope of the phenomenon to include several forms of environmentally influenced population movements.²⁵

Following this trend in the scholarly discourse, the IPCC switched from the refugee terminology in its earlier Assessment Reports to the more comprehensive term of ‘environmental migration’ in its fourth report.²⁶

Similarly, the IOM uses the term ‘environmental migrants’ – defined as “*a person or group(s) of persons, who, predominantly for reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are forced to leave*

²¹ E. El-Hinnawi, *Environmental Refugees*, New York, United Nations, 1985, p. 4.

²² N. Myers and J. Kent, *Environmental Exodus – An emergent crisis in the Global Arena*, Washington DC, Climate Institute, 1995, p. 18.

²³ Faist and Schade, 2013, p. 6.

²⁴ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954), 189 UNTS 137, Article 1A para. 2; Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967), 606 UNTS 267, Article 1 para. 2.

²⁵ Faist and Schade, 2013, p. 6.

²⁶ Faist and Schade, 2013, pp. 5/6.

*their places of habitual residence, or choose to do so, either temporarily or permanently, and who move within or outside their country of origin or habitual residence.”*²⁷

This cumbersome definition highlights several aspects of the phenomenon which need to be taken into account to arrive at a comprehensive picture in general, and particularly when looking at the protection of the human rights of such persons: the distinction between climate change and general environmental change, including the sudden or slow appearance of the environmental change; the voluntariness of the decision to migrate; the duration of the absence and, lastly, the spatial destination of the move.

2.2.1 ...SUDDEN OR PROGRESSIVE CHANGES IN THE ENVIRONMENT...

When defining environmental migration, the first aspect to consider is the environmental reason for migration. Here, a distinction can be made between climate change and general changes in the environment.

While climate change is defined as “*a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods*” in Article 1 paragraph (2) of the UNFCCC, general environmental change also encompasses changes due to the natural variability of the climate. Citing only climate change as a reason for migration, therefore, highlights the relation between adverse effects of global warming and human mobility and limits the scope to population movements as a result of events occurring over an extended period of time.²⁸ Environmental migration, however, also includes temporary geophysical events and natural disasters, such as tsunamis, earthquakes and volcanic eruptions, whose occurrence might be neither of anthropogenic nature nor due to climate change.²⁹

²⁷ International Organization for Migration, *Glossary on Migration*, Geneva, International Organization for Migration, 2019, p. 62.

²⁸ A. Proelß, ‘Völkerrechtliche Instrumente für den Umgang mit Klimaflüchtlingen’, in J. Lozán et al. (eds.), *Warnsignal Klima: Die Meere – Änderungen und Risiken*, Hamburg, Wissenschaftliche Auswertungen, 2011, p. 364; Bundesamt für Migration und Flüchtlinge, 2012, p. 13.

²⁹ Bundesamt für Migration und Flüchtlinge, 2012, p. 13.

Additionally, a reference to changes in the environment in general accounts for the fact that an empirical differentiation between events ultimately caused by human-made climate change and events occurring due to natural variability and other sources of environmental degradation is only rarely possible.³⁰ This is due to the nature of climate change, which does not *per se* cause a certain event, but rather impacts on the intensity and frequency of weather-related disasters.

Environmental changes may be further classified into sudden-onset and slow-onset disasters. The former describes suddenly occurring extreme weather events, such as floods or hurricanes, which are forecasted to occur with increasing frequency in the years to come due to climate change³¹ and which have a direct influence on human mobility. The latter refers to subtle, but persistent environmental degradation intensified by climate change or fast forwarded through human depletion.³² Here, the link to migration is not as easy to identify, as slow-onset changes may occur over decades and, therefore, might play a less conscious role in the decision to migrate. “It is clear, however, that migration always constituted a core element of responses to changes in livelihoods”³³ and that both categories can result in migration either as an adaptation strategy or as a response after failing to adapt to the environmental changes.³⁴

2.2.2 ...ARE FORCED TO LEAVE OR CHOOSE TO DO SO...

Traditionally, the scholarly debate distinguishes between migration, which occurs based on a voluntary decision by the person migrating, and displacement, which is a forced form of migration due to external factors. However, this distinction is blurred in the debate on environmental migration, where the voluntariness is not clear-cut, but appears to be a continuum with smooth transitions between people who are in complete control of their

³⁰ Faist and Schade, 2013, p. 6.

³¹ European Parliament, Committee on Civil Liberties, Justice and Home Affairs, 2011, p. 20.

³² Bundesamt für Migration und Flüchtlinge, 2012, p. 13.

³³ European Parliament, Committee on Civil Liberties, Justice and Home Affairs, 2011, p. 22.

³⁴ European Parliament, Committee on Civil Liberties, Justice and Home Affairs, 2011, p. 22.

decision to migrate, on the one hand, and people left with no choice but to migrate, on the other hand.³⁵

In this context, forced migration usually occurs in the case of sudden-onset disasters where the decision to migrate might be a choice between life and death. For slow-onset degradation, however, it is less obvious whether people choose to migrate for economic reasons – i.e. because relocation promises better economic opportunities – or are forced to do so as their livelihood ceases to exist.³⁶ In between, environmental migration may occur somewhat semi-voluntary – or incrementally forced – in anticipation of the latter scenario, so that the decision to migrate is taken before it has become the only choice left.³⁷

The degree of voluntariness on this continuum is, furthermore, dependent on other reasons influencing the decision to migrate. It is hardly possible to determine what has ultimately been the decisive tipping point triggering human movement, as political, economic, demographic, social and environmental aspects are interrelated and may reinforce each other. Therefore, environmental factors only rarely constitute the sole cause for migration, but rather impact on other drivers and are, in turn, intensified through bad governance or a lack of adaptability, providing a multicausal basis for environmental migration (see also Chapter 2.1).³⁸

2.2.3 ...EITHER TEMPORARILY OR PERMANENTLY...

When the decision to leave the habitual home has been taken, the duration of the absence is dependent on how the environmental change underlying this decision impacts the human living space.³⁹

Sudden-onset disasters will most likely lead to temporary migration in the short to medium term, with the absence lasting only until the living environment has been rebuilt

³⁵ C. Jakobeit and C. Methmann, *Klimaflüchtlinge*, Hamburg, Greenpeace, 2007, p. 11; M. Ammer, *Climate Change and human rights: The status of Climate Refugees in Europe*, 2009, p. 25.

³⁶ Bundesamt für Migration und Flüchtlinge, 2012, p. 14

³⁷ Council of Europe, 2008, p. 2.

³⁸ Bundesamt für Migration und Flüchtlinge, 2012, p. 15.

³⁹ Bundesamt für Migration und Flüchtlinge, 2012, p. 15.

and is safe to return to.⁴⁰ When such natural catastrophes happen more frequently and gain in intensity, however, permanent migration may become an attractive alternative.⁴¹ Moreover, migrating permanently is the only remaining option, where the human living environment has been irreparably destroyed, so that a return to the space of origin is impossible. This is for example the case with small island states which are persistently shrinking due to the rising sea-level induced by climate change.⁴²

In between the two extremes of short-term and permanent migration, seasonal migration may be a solution for people living in environments where environmental changes variably impact livelihood seasonally, such as nomads in the Sahel.⁴³

2.2.4 ...WHO MOVE WITHIN OR OUTSIDE THEIR COUNTRY OF ORIGIN...

As is the case with a majority of migration movements, environmental migration largely happens within a country or towards neighbouring countries within the same region.⁴⁴ This can be explained by the fact that in emergency situations, such as following sudden-onset disasters, affected populations flee to the nearest safe areas. Similarly, slow-onset disasters most likely lead to internal population movements in the form of migration from the countryside to urban areas or from the coastlines towards the inner country.⁴⁵ However, such observations are difficult to generalize and international migration will for example occur in cases where a whole country is affected by the environmental change – e.g. in the sinking-island-scenarios – or where familial or other ties to countries outside the region exist.

⁴⁰ European Parliament, Committee on Civil Liberties, Justice and Home Affairs, 2011, p. 21.

⁴¹ Bundesamt für Migration und Flüchtlinge, 2012, p. 15.

⁴² Bundesamt für Migration und Flüchtlinge, 2012, p. 15.

⁴³ Bundesamt für Migration und Flüchtlinge, 2012, p. 15.

⁴⁴ Bundesamt für Migration und Flüchtlinge, 2012, p. 14.

⁴⁵ Bundesamt für Migration und Flüchtlinge, 2012, p. 14.

2.2.5 SUB-CATEGORISATION OF ENVIRONMENTAL MIGRANTS

A categorisation proposed by Walter Kälin, a Swiss humanitarian and human rights lawyer, further differentiates environmental migrants in five sub-groups:⁴⁶

- (i) Persons displaced by sudden-onset disasters,
- (ii) Persons living in areas affected by slow-onset environmental degradation,
- (iii) Inhabitants of ‘sinking’ small island states,
- (iv) Persons resettled from high-risk zones which are assessed to be too dangerous for human habitation on account of environmental dangers, and
- (v) Persons fleeing environmental conflict triggered by resource scarcity.⁴⁷

Persons moving as a consequence of sudden-onset disasters, such as floods, storms or earthquakes, mostly continue to have the possibility to return to their place of origin, so that displacement occurs only temporarily with the duration depending on recovery efforts.⁴⁸ In most cases, such movement will remain internal. However, where the only escape route leads to another country, where the country of origin’s response capacity is exhausted or where stronger protection is available in a neighbouring country, sudden-onset disasters will also cause cross-border displacement.⁴⁹

Slow-onset environmental degradation, such as rising sea-levels, increased droughts and desertification, has a detrimental impact on both the living conditions and economic opportunities in the affected areas. This may cause some persons to move pre-emptively in anticipation of further deterioration of the environment or, where these areas have become entirely uninhabitable, leaves affected populations with no choice but to migrate, leading to permanent displacement without the possibility to return.⁵⁰ Inhabitants of small island states threatened with submersion due to rising sea-levels constitute a special case

⁴⁶ Kälin uses this categorisation in the context of climate change only, but with a slight variation of the first sub-group, it is equally useful for conceptualising environmental migrants in general.

⁴⁷ W. Kälin, ‘Conceptualising Climate-Induced Displacement’, in J. McAdam (ed.), *Climate Change and Displacement: Multidisciplinary Perspectives*, Oxford, Hart Publishing, 2010, pp. 85/86.

⁴⁸ Kälin, 2010, p. 85.

⁴⁹ Kälin, 2010, p. 87.

⁵⁰ Kälin, 2010, p. 85.

of persons affected by environmental degradation and, therefore, face the same problems.⁵¹

Where governments designate high-risk zones as too dangerous for human habitation, populations living in these areas are evacuated and relocated to other regions within their country of origin. However, where offered relocation sites are not appropriate or sustainable solutions are lacking, persons from high-risk zones may decide to move across borders to neighbouring countries.⁵²

Lastly, environmental changes cause a decrease in essential resources, potentially leading to an escalation of existing tensions into environmental conflicts and violence, which in turn can result in both internal as well as cross-border displacement.⁵³

In order to ensure a comprehensive approach to the aspects discussed, this paper, in line with the IOM definition, uses the term ‘environmental migration’ to refer to all forms of human mobility influenced by changes in the environment and the term ‘environmental migrant’ to refer to people on the move due to environmental factors, independent of the duration and distance of their move or the voluntariness of their decision. For such cases, where movement is clearly on the forced end of the voluntariness continuum – for example when persons are fleeing from the direct consequences of sudden-onset disasters – this paper uses the terms ‘environmental displacement’ and ‘environmentally displaced person’ respectively. Reference to Kālin’s categories is made throughout the paper, but particularly when discussing the applicability of existing instruments of international law to the environmental migration context in Chapter 3, to ensure all sub-groups of environmental migrants are covered by a protection framework.

2.3 AFFECTED POPULATIONS

Due to the definitional disagreement and the multi-causality of human mobility, only limited data is available regarding the numerical dimension of environmental migration as a whole. Particularly, populations migrating because of the adverse impacts of slow-

⁵¹ Kālin, 2010, p. 85.

⁵² Kālin, 2010, p. 91.

⁵³ Kālin, 2010, p. 92.

onset disasters, such as droughts, sea-level rise and other forms of environmental degradation, continue to lack official recording. For this reason, it is difficult to determine the overall number of people who in the past have migrated due to environmental factors, and even more so to predict the number of environmental migrants for the future. However, several estimates exist in the literature, the ones widely known and cited most often, dating back to the reports of Myers,⁵⁴ who – based on the number of internally displaced persons (IDPs) – estimates that in 1995, 25 million people were ‘environmental refugees’.⁵⁵ Moreover, he predicts that this number will have increased to at least 50 million by the year 2010 and that environmental changes might eventually result in 200 million people at risk of environmental displacement in 2050.⁵⁶ Both predictions do not include persons displaced by geophysical events, such as earthquakes, and – although based on the best data available – make use of various bold hypotheses.⁵⁷

While it is difficult to obtain substantiated figures, a differentiated reflection of the number of people displaced by sudden-onset disasters, on the one hand, and the size of the populations living in regions disproportionately affected by environmental degradation, on the other hand, will allow for an educated approximation of the extent of environmental migration.

Since 2008, the IDMC publishes yearly data on the number of people internally displaced by sudden-onset disasters. The data is based on reports from several sources, such as the United Nations (UN), the International Federation of the Red Cross and Red Crescent Societies, non-governmental organisations, as well as governments’ disaster management agencies.⁵⁸ The reported numbers do not contain information on how long people remain in displacement nor how far they migrate or where they ultimately resettle, although it seems that most displaced populations stay within the same country.⁵⁹ Thus, while internal displacement alone does not cover the full range of movements of environmental

⁵⁴ Bundesamt für Migration und Flüchtlinge, 2012, p. 29.

⁵⁵ Myers and Kent, 1995, p. 1.

⁵⁶ Myers and Kent, 1995, p. 1.

⁵⁷ Brown, 2008b, p. 8.

⁵⁸ Internal Displacement Monitoring Centre, *Global Report on internal displacement 2018 – Methodological Annex*, 2018b, p. 8.

⁵⁹ International Organization for Migration, 2016, p. 6.

migrants, it does account for the majority of human mobility in this context and is, therefore – in the absence of suitable data – used to approximate the overall number of persons displaced by sudden-onset disasters.

Looking at the numbers for the years 2008 until 2017, a global average of at least 24.7 million people per year have been newly displaced by natural catastrophes, whereas the absolute annual numbers of disaster IDPs ranged from a minimum of 15.0 million people in 2011 to a maximum of 42.4 million people in 2010 (see figure 2).⁶⁰

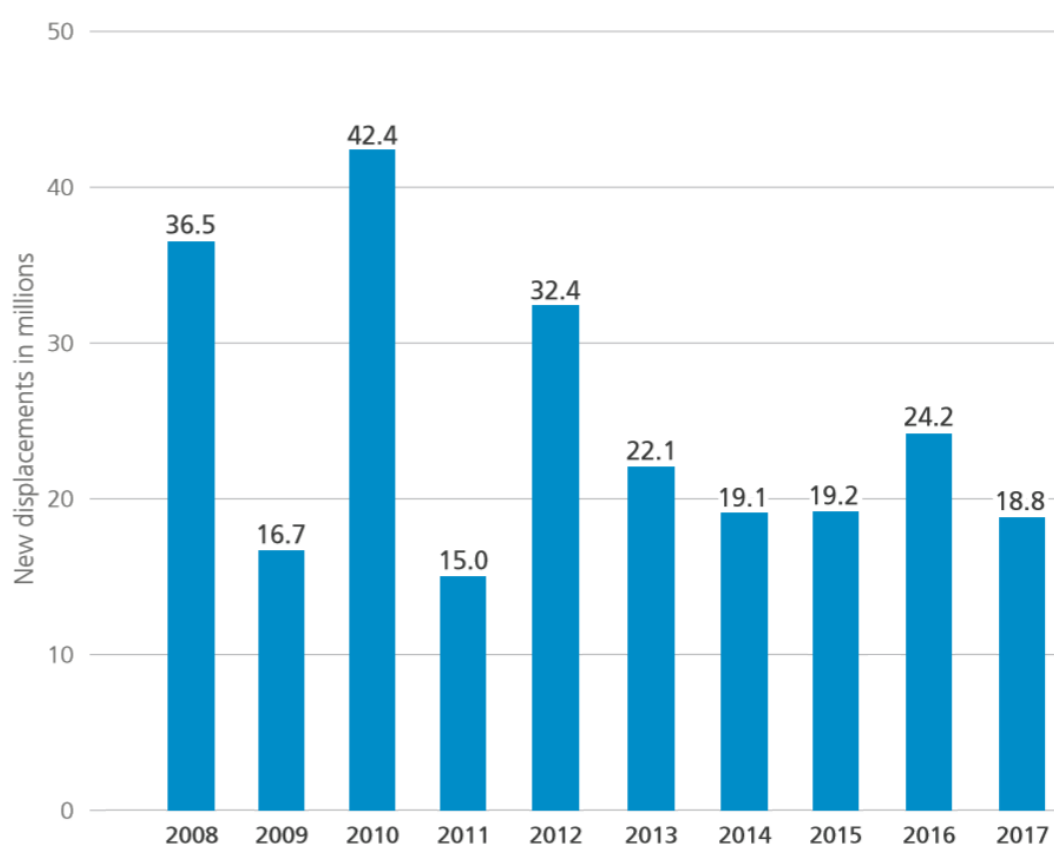


Figure 2: New displacements due to disasters (2008-2017) (Source: Internal Displacement Monitoring Centre, 2018a, p. 2).

In 2017 alone, 18.8 million people in 135 countries around the world were newly displaced by sudden-onset disasters, accounting for 61 per cent of the total of new internal

⁶⁰ Internal Displacement Monitoring Centre, *Global Report on internal displacement 2018*, 2018a, p. 2.

displacement in 2017.⁶¹ While a relatively small number of displacements was triggered by geophysical events, – i.e. earthquakes and volcanic eruptions – storms and floods accounted for the majority of persons displaced by weather-related hazards with a global total of 7.5 million and 8.6 million people displaced respectively (see figure 3).⁶²

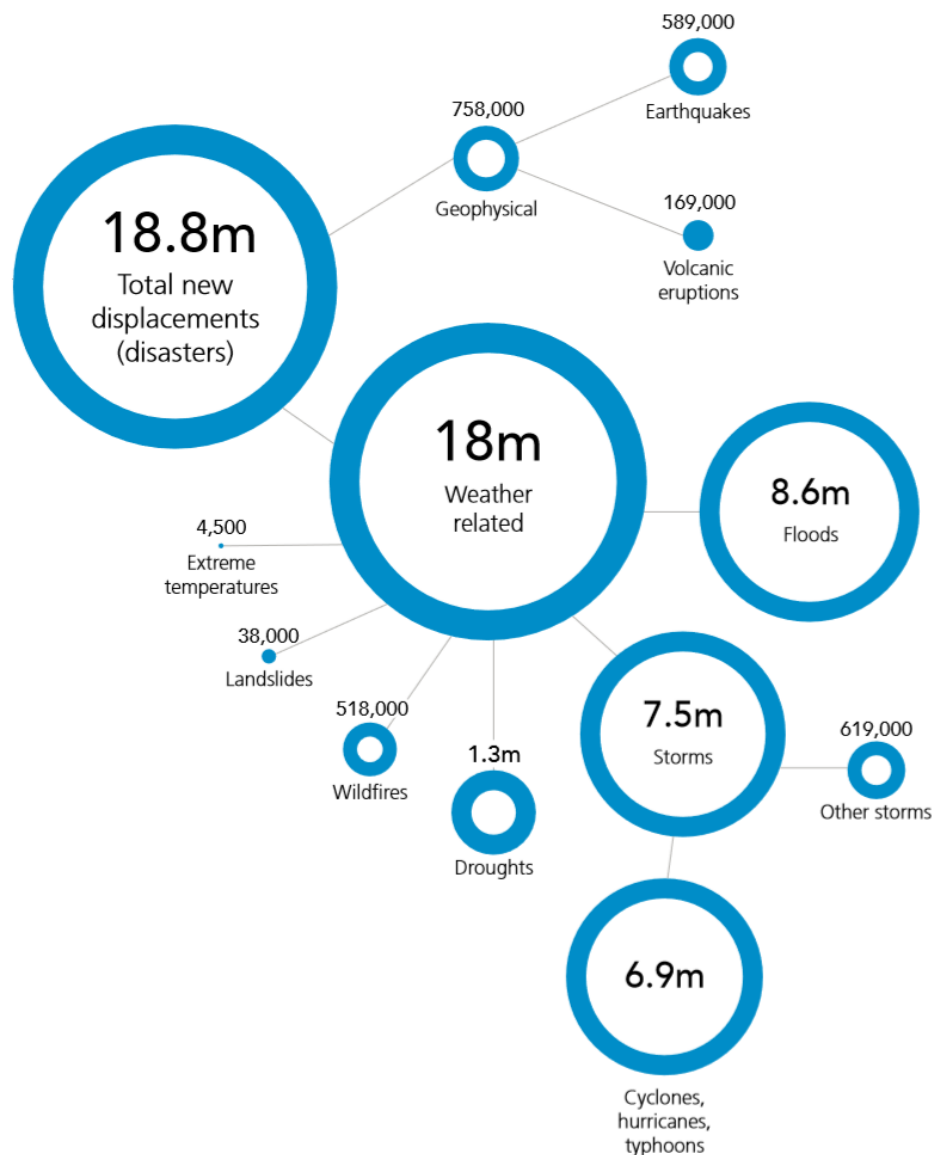


Figure 3: Breakdown of new disaster displacements in 2017 (Source: Internal Displacement Monitoring Centre, 2018a, p. 7).

⁶¹ Internal Displacement Monitoring Centre, 2018a, p. 6.

⁶² Internal Displacement Monitoring Centre, 2018a, p. 7.

Almost 10 million of the 18.8 million new displacements in 2017 associated with sudden-onset disasters were caused by only ten weather-related events, with the largest one – Hurricane Irma – displacing more than two million people in the Caribbean and the USA in August and September.⁶³

The ranking of countries with the most people affected by disaster displacement is headed by China, with 4.5 million people newly displaced in 2017, followed by the Philippines (2.5 million), Cuba and the USA (with 1.7 million each), and India (1.3 million).⁶⁴ These countries not only constitute the five countries with more than 1 million persons displaced by sudden-onset disasters, but are also representative for the regional distribution of displacement across the globe. As the numbers from previous years show,⁶⁵ South and East Asia, the Pacific and the Americas have been predominantly affected by disaster displacement in the past – a trend which continues in 2017 (see figure 4).⁶⁶

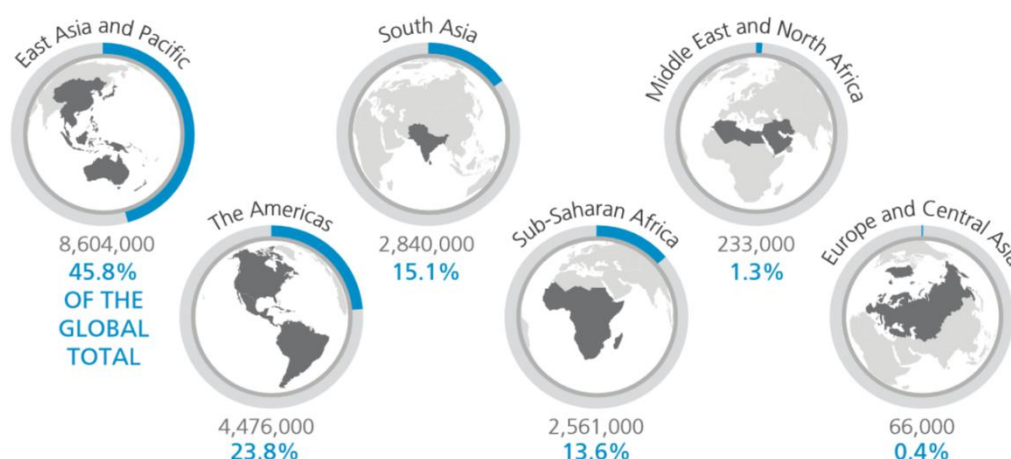


Figure 4: New disaster displacements in 2017 by region (Source: Internal Displacement Monitoring Centre, 2018a, p. 16).

More than 8.5 million people were displaced by disaster in the East Asia and Pacific region, accounting for almost half of all disaster IDPs in 2017, with China and the

⁶³ Internal Displacement Monitoring Centre, 2018a, p. 52.

⁶⁴ Internal Displacement Monitoring Centre, 2018a, p. 7.

⁶⁵ International Organization for Migration, *Atlas des migrations environnementales*, Extract, Paris, Presses de la Fondation nationale des sciences politiques, 2016, p. 6.

⁶⁶ Internal Displacement Monitoring Centre, 2018a, p. 16.

Philippines heading the list of most affected countries in the region.⁶⁷ This is *inter alia* due to the fact, that the region today hosts around 30 per cent of the world population concentrated mainly in urban areas along the many coastal lines.⁶⁸

The Americas region ranked second in the comparison of regions of the world in terms of displacement associated with sudden-onset disasters, at nearly 24 per cent of the global total of disaster displacement. The majority of these was caused by the largest disaster event of the year, Hurricane Irma, together with other storms of the Atlantic hurricane season.⁶⁹ While Cuba and the USA head the list of countries with the most persons displaced in the region, a number of small island developing nations in the Caribbean were disproportionately affected by the disaster events of 2017.⁷⁰

Similarly, in South Asia, the majority of the 2.8 million persons newly displaced in 2017 was affected by the monsoon season, whose impacts – although mirroring the monsoons of previous years – “were still significant in a region of high exposure and vulnerability associated with poverty, inequality and unsustainable development”.⁷¹ Sub-Saharan Africa, in turn, makes for a similar share of the global total of disaster displacements with almost 14 per cent, resembling the region’s share of the global population,⁷² while Europe, Central Asia, North Africa and the Middle East together account for less than two per cent of the populations displaced by disasters.⁷³

These reported numbers of displacement associated with sudden-onset disasters in the past provide an idea about the scale of disaster displacement and predictions on the future displacement see this phenomenon continuously growing. While the IDMC predicted the average annual internal displacement associated with disaster at 11 million people in 2017, it adjusted its prediction to 13.9 million people annually displaced by sudden-onset disasters just one year later.⁷⁴ IDMC’s disaster displacement risk model anticipates floods

⁶⁷ Internal Displacement Monitoring Centre, 2018a, p. 28.

⁶⁸ Internal Displacement Monitoring Centre, 2018a, p. 28.

⁶⁹ Internal Displacement Monitoring Centre, 2018a, p. 38.

⁷⁰ Internal Displacement Monitoring Centre, 2018a, pp. 38 and 42.

⁷¹ Internal Displacement Monitoring Centre, 2018a, p. 34.

⁷² Internal Displacement Monitoring Centre, 2018a, p. 17

⁷³ Internal Displacement Monitoring Centre, 2018a, p. 16.

⁷⁴ Internal Displacement Monitoring Centre, *Global Report on internal displacement 2017*, 2017, p. 45; Internal Displacement Monitoring Centre, 2018a, p. 52.

to be responsible for the majority of people displaced in any given year in the future, with storm surges caused by cyclones displacing on average 2 million people annually in the future.⁷⁵ Furthermore, the disaster displacement risk continues to be concentrated in South Asia – with a prospective number of 4.2 million people displaced annually – and East Asia and the Pacific region – with an average of 5 million people displaced by disasters in any given year in the future (see figure 5).⁷⁶ This predicted regional distribution of disaster displacement risk is also reflected in the list of countries predicted to have the highest number of persons affected by disaster displacement, headed by India and followed by China, Bangladesh, Vietnam and the Philippines (see figure 6 for a map of country risks).⁷⁷

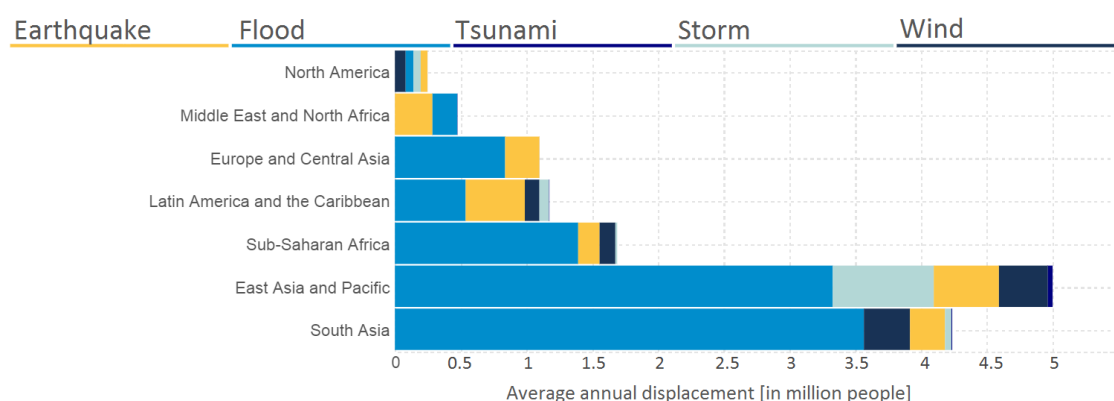


Figure 5: Average annual future displacement (Source: Internal Displacement Monitoring Centre, Global Risk Model, <http://www.internal-displacement.org/database/global-displacement-risk-model/>).

⁷⁵ Internal Displacement Monitoring Centre, *Global Displacement Risk Model*, available from <http://www.internal-displacement.org/database/global-displacement-risk-model/> (accessed 7 July 2019); Internal Displacement Monitoring Centre, 2018a, p. 9.

⁷⁶ Internal Displacement Monitoring Centre, *Global Displacement Risk Model*, available from <http://www.internal-displacement.org/database/global-displacement-risk-model/> (accessed 7 July 2019).

⁷⁷ Internal Displacement Monitoring Centre, *Global Displacement Risk Model*, available from <http://www.internal-displacement.org/database/global-displacement-risk-model/> (accessed 7 July 2019); Internal Displacement Monitoring Centre, 2018a, p. 53.

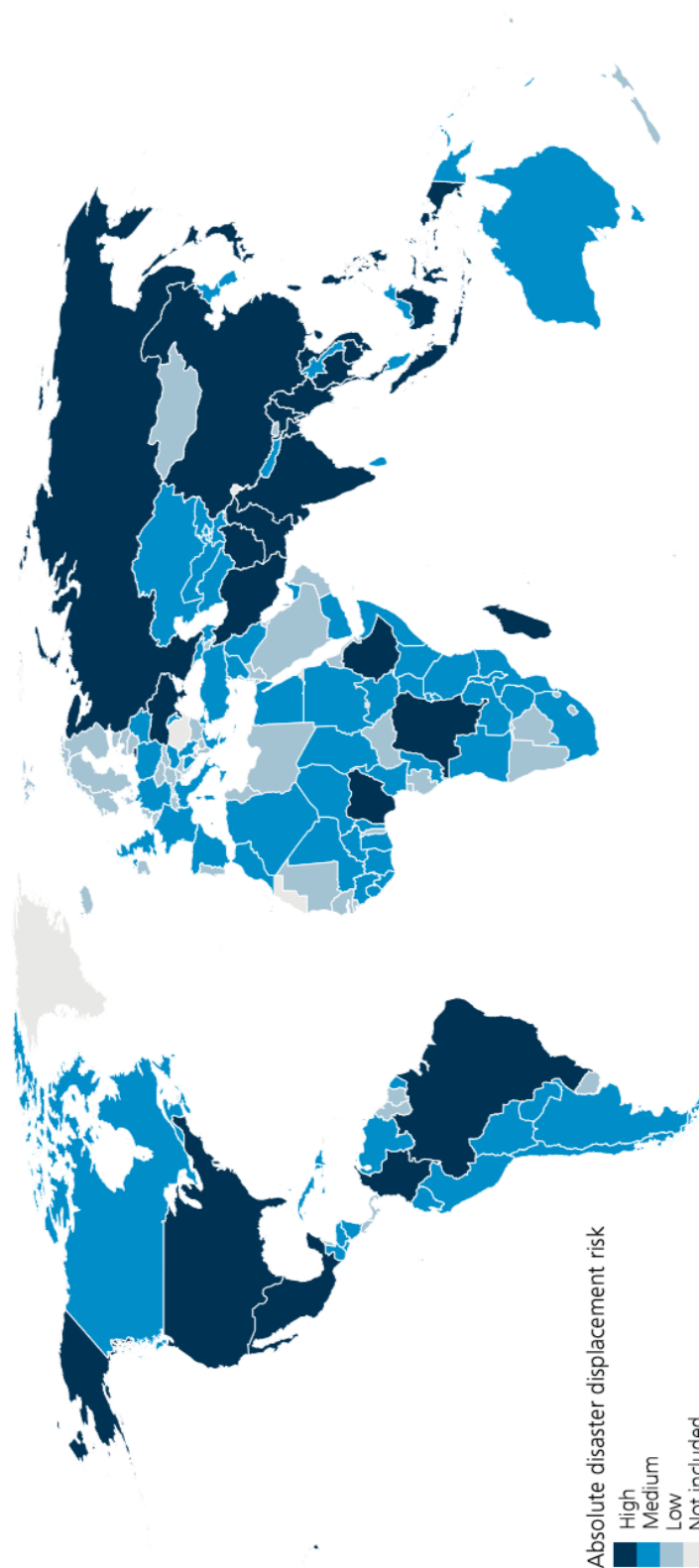


Figure 6: Map of countries at low, medium and high disaster displacement risk (Source: Internal Displacement Monitoring Centre, 2018a, p. 53).

These predictions serve as conservative estimates for the number of people displaced by disasters during any given year in the future. However, they are based on predictions of how many houses will be severely damaged or destroyed, as well as average household sizes and, thus, do neither include people preventatively evacuated nor people forced to move due to slow-onset degradation.⁷⁸

Estimates on the number of people displaced by slow-onset disasters are much more controversial and difficult to obtain and only limited data is available concerning numbers of people who have migrated in the past.⁷⁹ However, a “much larger number of people is expected to migrate as a result of gradual deterioration rather than as a result of [sudden-onset] natural disasters”.⁸⁰

In 2017, the IDMC for the first time reported data on displacement associated with drought, estimating that at least 1.3 million people have been displaced over the year,⁸¹ of which almost 900,000 displacements happened in Somalia alone.⁸² Already existing water scarcity, as well as desertification are likely to further exacerbate due to climate change, so that the share of land affected by droughts will severely increase.⁸³ Thus, by 2025 an estimated 1.8 million people will be living in affected areas, mainly in Africa and Asia, and water scarcity and droughts are projected to displace between 24 to 700 million persons worldwide.⁸⁴

While the phenomenon of sea-level rise will happen over centuries, current predictions concerning the effects of climate change estimate that coastal populations living in areas less than one meter above sea-level will be adversely affected within the coming decades.⁸⁵ Already today, about 40 million people in the biggest coastal cities in both developed and developing countries are exposed to inundations.⁸⁶ In the long-term,

⁷⁸ Internal Displacement Monitoring Centre, 2018a, p. 52.

⁷⁹ Bundesamt für Migration und Flüchtlinge, 2012, p. 30.

⁸⁰ European Parliament, Committee on Civil Liberties, Justice and Home Affairs, 2011, p. 21.

⁸¹ Internal Displacement Monitoring Centre, 2018a, p. 7.

⁸² UNHCR, *Factsheet Somalia*, December 2017, available from <https://data2.unhcr.org/en/documents/details/61590> (accessed 7 July 2019), p. 3.

⁸³ Jakobeit und Methmann, 2007, p. 5.

⁸⁴ UN Water, *Water and Climate Change*, available from <https://www.unwater.org/water-facts/climate-change/> (accessed 7 July 2019).

⁸⁵ European Parliament, Committee on Civil Liberties, Justice and Home Affairs, 2011, p. 27.

⁸⁶ International Organization for Migration, 2016, p. 8.

however, sea-level rise will affect about 40 per cent of the world's population, which live within 100 kilometres from a coast,⁸⁷ and will have a particular impact on the almost 150 million people living in river deltas and small island states.⁸⁸

The number of people living in areas affected by slow-onset degradation provides a prospect of the extent of the phenomenon, but it has to be noted that only a smaller share of these populations is likely to actually migrate due to the environmental pressure (see Chapter 2.1 for more details on factors affecting the decision to migrate).

In order to obtain a holistic picture of the populations affected, it has to be mentioned that people living in poverty are disproportionately impacted by environmental changes due to their limited capacity to access costly environmental adaptation strategies.⁸⁹ This inequality is also reflected in the figures on disaster displacement, as 61 per cent of disaster displacements in 2014 took place in lower middle-income countries, which are home to only around a third of the global population.⁹⁰

2.4 HUMAN RIGHTS AT STAKE AND PROTECTION NEEDS

The 'International Bill of Rights', consisting of the Universal Declaration of Human rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), grant certain fundamental rights to all human beings – whether displaced internally or across borders, by environmental factors or other migration drivers, or not in displacement at all.⁹¹ These rights remain relevant for environmental migrants during all phases of migration, but may be classified into different protection areas: firstly, protection of life, security of the person, physical integrity and dignity; second, protection of rights related to basic

⁸⁷ The Ocean Conference, *Factsheet: People and Oceans*, 2017, available from <https://www.un.org/sustainabledevelopment/wp-content/uploads/2017/05/Ocean-fact-sheet-package.pdf> (accessed 7 July 2019), p. 1.

⁸⁸ European Parliament, Committee on Civil Liberties, Justice and Home Affairs, 2011, p. 27.

⁸⁹ Jakobeit und Methmann, 2007, p. 4; Council of Europe, 2008, p. 2.

⁹⁰ Internal Displacement Monitoring Centre, *Global Estimates 2015*, 2015, p. 25.

⁹¹ R. Zetter, *Protecting environmentally displaced people*, 2011, p. 16.

necessities of life; third, protection of other economic, social and cultural rights; and last, protection of other civil and political rights.⁹²

Where environmental migration is a direct consequence of sudden-onset or slow-onset disaster events, the first two areas of rights protection have utmost priority immediately following the event. Included in these areas are the right to life (Art. 6 ICCPR) and the right to an adequate standard of living (Art. 11 ICESCR), consisting of the right to food, the right to water as defined in the Economic and Social Council's General Comment No. 15, and the right to shelter and housing.⁹³

The right to life and security of person constitutes an absolute right, defined as non-derogable even in emergency events by the Human Rights Council's General Comment No. 6, and is at stake, where environmental disaster events such as droughts, floods or storms, directly threaten people's lives, as well as their means of existence.⁹⁴ In general, but also in the context of environmental migration in particular, the realisation of this right is closely connected to the physical environment, as well as to the protection of other fundamental rights to basic necessities, including the right not to be deprived of one's means of subsistence (Art. 1(2) ICCPR and ICESCR).⁹⁵

As environmental changes are predicted to decrease food production, this will severely impact food security, particularly in the world's poorer regions.⁹⁶ Additionally, provision of humanitarian food assistance to persons displaced in the aftermath of natural disasters increases the role of the right to food, including the right to be free from hunger, as well as the importance of non-discrimination in access to assistance.⁹⁷ Similarly, the right to water is adversely affected by environmental changes due to reduced fresh water

⁹² M. Bradley and R. Cohen, 'Disasters, Displacement and Protection: Challenges, Shortcomings and Way Forward', in T. Faist and J. Schade (eds.), *Disentangling Migration and Climate Change*, Dordrecht, Springer Science and Business Media, 2013, p. 210.

⁹³ Bradley and Cohen, 2013, p. 210.

⁹⁴ L. Horn and S. Freeland, 'More than hot air: reflections on the relationship between climate change and human rights', *University of Western Sydney Law Review*, no. 13, 2009, p. 103.

⁹⁵ Human Rights Council, *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, p. 9.

⁹⁶ Horn and Freeland, 2009, p. 103.

⁹⁷ R. Cohen, 'An institutional gap for disaster IDPs', *Forced Migration Review*, no. 32, 2009, p. 58; Human Rights Council, 2009, p. 9.

availability and is, furthermore, at stake in disaster displacement contexts.⁹⁸ In the context of the latter, the right to shelter comes into play as well, while the more general right to housing is impacted by the loss of homes due to both slow-onset and sudden-onset disasters, as well as the relocation they typically bring about.⁹⁹

In the long-term after disaster events struck, as well as where environmental migration happens due to or in anticipation of increasing environmental degradation, the third and fourth area of rights protection gain in relevance. These areas include for example access to education and employment opportunities, on the one hand, and electoral rights and political freedoms, on the other hand.¹⁰⁰ Moreover, in the case of environmental displacement the need for documentation presents a big issue, as personal belongings are likely to be destroyed by disaster events, whereas the right to property (Art. 17 UDHR), as well as protection from inequities with regard to property restitution or compensation is of relevance to a majority of environmental migrants.¹⁰¹

Property and housing rights are closely linked to the return options to the region of origin, as former property will be lost, where return may not be possible or reasonable, particularly in the case of recurrent disaster events or if areas have become uninhabitable.¹⁰² However, where return is appropriate, temporary environmental migrants may still need assistance in rebuilding their lives and livelihoods in a sustainable way.¹⁰³

While the above-mentioned rights apply to all environmental migrants equally, some groups, such as women, children or socially marginalized groups are more vulnerable to violations of these rights.¹⁰⁴ Unequal gender roles and discrimination existing in many societies make women more exposed to risks by environmental changes, in addition to

⁹⁸ Horn and Freeland, 2009, p. 104.

⁹⁹ Horn and Freeland, 2009, p. 105.

¹⁰⁰ Bradley and Cohen, 2013, p. 201.

¹⁰¹ S. Leckie, 'Human rights implications', *Forced Migration Review*, no. 31, 2008, p. 18; Cohen, 2009, p. 58; R. Cohen and M. Bradley, 'Disaster and Displacement: Gaps in Protection', *International Humanitarian Legal Studies*, no. 1, 2010, p. 100.

¹⁰² Cohen and Bradley, 2010, p. 130; The Nansen Initiative, *Agenda for the protection of cross-border displaced persons in the context of disasters and climate change*, vol. 1, 2015, p. 30.

¹⁰³ The Nansen Initiative, 2015, p. 29.

¹⁰⁴ Cohen and Bradley, 2010, p. 120.

potentially becoming victims of gender-based violence during migration.¹⁰⁵ Similarly, indigenous people are exceptionally affected by changes to the environment, due to the cultural connection to their traditional territories and livelihoods which are also often particularly susceptible to environmental changes.¹⁰⁶

In addition to these vulnerable groups, citizens of states at risk of losing their entire territory require special protection. While conventions dealing with the status of stateless persons exist,¹⁰⁷ “statelessness [under international law] means being without a nationality, not without a state”.¹⁰⁸ Thus, the legal definition of statelessness only captures persons who have been denied citizenship, i.e. who are *de jure* stateless.¹⁰⁹ In the context of environmental migration, however, some people are rendered *de facto* stateless, when the state of which they are nationals ceases to exist, as in the case of small island states becoming entirely uninhabitable due to sea-level rise.¹¹⁰

While this chapter has shown that a number of human rights play a role in the context of environmental migration, states’ obligations to guarantee such rights are far from self-evident. International law does not contain a right to a healthy environment on which the rights claims of environmental migrants can be based, nor does it recognise ‘common but differentiated responsibilities’ of states which would hold states accountable for their differing contributions to environmental changes.¹¹¹

Environmental displacement within the state of origin may to an extent be covered by existing legislation on internal displacement, but other forms of internal environmental migrants, perceived to move more voluntary, e.g. as a result of slow-onset degradation, face serious gaps in the protection and guarantee of their human rights.¹¹² Similarly, environmental migrants crossing borders, although entitled to general human rights

¹⁰⁵ Human Rights Council, 2009, p. 15.

¹⁰⁶ Horn and Freeland, 2009, p. 105; HRC, 2009, p. 17.

¹⁰⁷ Convention relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960), 360 UNTS 117; Convention on the Reduction of Statelessness (adopted 30 August 1961, entered into force 13 December 1975), 989 UNTS 175.

¹⁰⁸ Kälin, 2010, p. 101.

¹⁰⁹ J. McAdam and M. Limon, *Human Rights, Climate Change and cross-border displacement: the role of the international human rights community in contributing to effective and just solutions*, 2015, p. 17.

¹¹⁰ McAdam and Limon, 2015, p. 17/18.

¹¹¹ Proelß, 2011, p. 365/366.

¹¹² Human Rights Council, 2009, pp. 19/20.

protection in the destination state, are not adequately covered by international law and, thus, “would generally not have a right to entry to that state in the first place”¹¹³ and furthermore, “lack a clear right to remain in the states where they sought shelter”.¹¹⁴

The next chapter, therefore, discusses several existing instruments of international law which cover or could potentially be expanded to cover the rights of different groups of environmental migrants.

¹¹³ McAdam and Limon, 2015, p. 19.

¹¹⁴ Bradley and Cohen, 2013, p. 213

3 EXISTING LEGAL INSTRUMENTS AND THEIR POTENTIAL TO EXPAND TO ENVIRONMENTAL MIGRANTS

While all groups of environmental migrants are protected by universal human rights norms, such as the ICCPR or the ICESCR, these norms alone are not sufficient to adequately guarantee their human rights. The following chapter, therefore, explores the legal feasibility of adapting or particularizing existing international refugee and environmental law in order to address the emerging challenge of environmental migration.

3.1 THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

3.1.1 SCOPE OF THE INSTRUMENT

The Guiding Principles on Internal Displacement as adopted by the UN General Assembly in 1998 constitute an instrument of soft law. As such, they are not legally binding on states and do not impose new obligations, but rather summarise and advance existing obligations under international humanitarian, refugee, and human rights law.¹¹⁵ Influenced by the responsibility to protect thinking, the Guiding Principles on Internal Displacement acknowledge that the primary responsibility for protection of and assistance to IDPs lies with the sovereign national state in which they are displaced, while the international community's responsibility is only invoked when a state is unwilling or unable to assist and protect.¹¹⁶

¹¹⁵ M. Ammer et al., *Rechtsstellung und rechtliche Behandlung von Umweltflüchtlingen*, 2010, p. 50; S. Vöneky and F. Beck, 'Umweltschutz und Menschenrechte', in A. Proelß (ed.), *Internationales Umweltrecht*, Berlin, De Gruyter, 2017, p. 171.

¹¹⁶ R. Cohen, 'The Guiding Principles on Internal Displacement: An innovation in international standard setting', *Global Governance*, no. 10, 2004, p. 459; R. Zetter, 'The role of legal and normative frameworks for the protection of environmentally displaced people', in F. Laczko and C. Aghazarm (eds.), *Migration, Environment and Climate Change: Assessing the evidence*, Geneva, International Organization for Migration, 2009, p. 417; F. Gemenne and P. Brücker, 'From the Guiding Principles on Internal Displacement to the Nansen Initiative: What the Governance of Environmental Migration can learn from the Governance of Internal Displacement', *International Journal of Refugee Law*, vol. 27, no. 2, 2015, p. 252.

The Guiding Principles consist of a set of 30 principles recognising both the rights of IDPs and the obligations of states towards them.¹¹⁷ They approach internal displacement with a focus on the needs of IDPs in the different phases of displacement, therefore offering protection against displacement and during displacement, as well as principles protecting IDPs after the displacement situation has ended, i.e. during return or resettlement.¹¹⁸ Notably, the Guiding Principles contain provisions protecting against arbitrary displacement and forced return, prohibiting discriminatory assistance, and protecting property rights, as well as a clear definition of who is considered to be an IDP.¹¹⁹ With the two most important aspects being coercion and remaining within national borders, the Guiding Principles define internally displaced persons 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.”*¹²⁰

3.1.2 POTENTIAL FOR EXPANSION TO ENVIRONMENTAL MIGRATION

Since armed conflict is uncontested as a cause of internal displacement, persons fleeing internally from environmentally motivated armed conflicts and violence triggered by resource scarcity are the most evident sub-group of environmental migrants included under the protection framework of the Guiding Principles.¹²¹ Additionally, the definition of IDPs contained in the Guiding Principles explicitly mentions natural and human-made disasters as causes of internal movement and, thus, also entails protection for several of the other sub-groups of environmental migrants introduced by Kālin.

¹¹⁷ Cohen, 2004, p. 459.

¹¹⁸ Cohen, 2004, pp. 463/465.

¹¹⁹ Zetter, 2009, p. 417.

¹²⁰ Commission on Human Rights, *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2, 11 February 1998, p. 5.

¹²¹ W. Kālin, ‘Displacement caused by the effects of climate change: Who will be affected and what are the gaps in the normative framework for their protection?’, *The Brookings Institution*, 10 October 2008, available from <https://www.brookings.edu/research/displacement-caused-by-the-effects-of-climate-change-who-will-be-affected-and-what-are-the-gaps-in-the-normative-framework-for-their-protection/> (accessed 27 May 2019).

The reference to natural disasters extends protection to persons uprooted by sudden-onset disasters – hydro-meteorological as well as geophysical ones – as long as the persons displaced do not move across an international border.¹²² Moreover, inhabitants evacuated out of high-risk zones fall within this reference, where they are relocated to safe areas within the country.¹²³

In addition to these sub-groups displaced by natural causes, persons forced to move within national borders as a result of changes to the environment, which are anthropogenic in nature, are also recognized as IDPs. Such anthropogenic environmental changes can be understood to include targeted destruction of the environment, as well as the consequences of climate change.¹²⁴ The latter of these two would include inhabitants of small island states internally displaced as a result of rising sea-levels, which have rendered part of the country submerged and, thus, uninhabitable.¹²⁵ Similarly, the sub-group of environmental migrants uprooted by environmental degradation and slow-onset disasters, such as desertification, could potentially be covered by the protection framework of the Guiding Principles, if slow-onset changes to the environment are unambiguously classified as disasters, and in cases where areas become uninhabitable and movement, therefore, ceases to be voluntary.¹²⁶

Lastly, besides their own potential for expansion, the Guiding Principles on Internal Displacement and its developing process could also serve as a role model for an instrument on environmental migration, as the Principles are a synthesis and analogy of existing internationally binding norms. To start with something that states can agree on – even below soft law – which bears the potential for legal development, and then gradually advance to soft law, and so forth, seems to be a very reasonable approach.¹²⁷

¹²² Vöneky and Beck, 2017, p. 171.

¹²³ Kälin, 2008.

¹²⁴ Vöneky and Beck, 2017, p. 171.

¹²⁵ Kälin, 2008.

¹²⁶ Kälin, 2008; Zetter, 2009, p. 417.

¹²⁷ Interview with Dr. Margit Ammer, Vienna, 11 June 2019.

3.1.3 LIMITATIONS IN EXPANDING TO ENVIRONMENTAL MIGRATION

Although the Guiding Principles in theory seem to be a promising instrument for protection covering several groups of environmental migrants, their non-binding nature constitutes a severe limitation to their practical implementation.¹²⁸ As a soft-law instrument, their translation into binding national laws and policies is at the discretion of states, and the few that have adopted domestic legislation with regard to IDP protection mostly restrict their laws to displacement triggered by conflict and violence.¹²⁹ Thus, while the value of the Guiding Principles is endorsed by the international community and their extension to persons uprooted by natural disasters was affirmed by the UN General Assembly in 2007,¹³⁰ the lack of effective enforcement and accountability mechanisms, nevertheless, constitutes a major shortcoming of the norm.¹³¹

Furthermore, both constitutive elements contained in the definition of IDPs, i.e. the criterion of coercion and the requirement of displaced persons to remain within national borders, further restrict the applicability of the norm to other sub-groups of environmental migrants.

The coercive element confines protection to situations in which the environment has become entirely uninhabitable or resource scarcity has become life-threatening, while omitting cases where people move pre-emptively in expectation of deteriorating environmental conditions, as such movement may be considered voluntary.¹³² Thus, inhabitants of sinking island states, as well as persons moving for reasons of other slow-onset environmental changes cannot claim protection for their human rights under the framework of the Guiding Principles at a time when their environment – although degrading – is still inhabitable.¹³³ This restriction again shows that environmental

¹²⁸ Based on the Guiding Principles on Internal Displacement, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) was adopted in 2009 constituting a first binding implementation with at least regional applicability.

¹²⁹ Cohen and Bradley, 2010, p. 108; Gemenne and Brücker, 2015, p. 251.

¹³⁰ United Nations General Assembly, *Protection of and assistance to internally displaced persons*, A/RES/62/153, 18 December 2007.

¹³¹ Zetter, 2011, p. 51.

¹³² Ammer et al., 2010, p. 51; M. Gromilova and N. Jägers, 'Climate change induced displacement and international law', in J. Verschuuren, *Research Handbook on Climate Change Adaptation Law*, Cheltenham, Edward Elgar Publishing, 2013, p. 93.

¹³³ Kälin, 2008.

migration occurs on a continuum where it is difficult to determine when movement becomes forced, rather than on a bipolar distinction (for more details on the distinction between voluntary and forced movement, see Chapter 2.2).

Similarly, the requirement that displaced persons remain within national borders limits the applicability of the Guiding Principles with regard to environmental migration in general. Although predictions conclude that the majority of environmental migrants will move within their country, thus, falling under the scope of the norm, a significant number in need of protection will move across international borders.¹³⁴ Notably, this will be the case for persons displaced by sudden-onset disasters – either in border regions where a neighbouring country might be the nearest safe area or where a state’s limited capacity to respond means that better protection is available abroad – or for inhabitants of sinking small island states and persons whose entire country has become uninhabitable due to environmental degradation.¹³⁵ This limitation makes it clear that the Guiding Principles on Internal Displacement, although very important for the protection of internal environmental migrants, are only partly adequate to address environmental migration, since ultimately “internal displacement is about *where* people moved, [while] environmental migration is about *why* they moved”.¹³⁶

Since a clear protection gap for international environmental migrants remains, the next two chapters focus on mechanisms for protection abroad.

3.2 1951 GENEVA CONVENTION RELATING TO THE STATUS OF REFUGEES

3.2.1 SCOPE OF THE INSTRUMENT

While international law does not provide for a general right to asylum, the 1951 Geneva Convention relating to the Status of Refugees ensures respect for the human rights of refugees by bindingly codifying the “right to seek and to enjoy in other countries asylum

¹³⁴ R. Zetter, ‘Protecting People Displaced by Climate Change: Some Conceptual Challenges’, in J. McAdam (ed.), *Climate Change and Displacement: Multidisciplinary Perspectives*, Oxford, Hart Publishing, 2010, p. 143.

¹³⁵ Kälin, 2008.

¹³⁶ Gemenne and Brücker, 2015, p. 260.

from persecution” laid down in Article 14 UDHR.¹³⁷ The Convention, thus, introduces a substitute protection through the international community for every person who “*owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country*”.¹³⁸

The holistic combination of subjective fear of persecution, objectively determined group factors and a lack of protection by the home country developed in the specific context of World War II, reflects individual, social and juridical historical approaches to international protection as constitutive elements of the refugee definition.¹³⁹ Whereas any person meeting these definitional criteria is entitled to the rights and protection awarded under the Refugee Convention, formal recognition of the refugee status is only declaratory in nature.¹⁴⁰

Although the element of persecution is not specified in the context of the Refugee Convention, it is commonly accepted to refer to serious harm to an individual through the violation of human rights combined with a state’s failure to protect that individual against the specific violation.¹⁴¹ Inferred by analogy from the conditions under which return of a refugee is prohibited under Article 33 of the Refugee Convention, under the prevailing opinion a threat to life or freedom for reasons of one of the Convention grounds amounts to persecution in all circumstances.¹⁴² Moreover, the literature also increasingly recognises serious violations of other civil and political, as well as economic, social and cultural rights for reason of one of the Convention grounds as persecution.¹⁴³ For the latter group of rights, the seriousness of the violation can be determined by assessing a state’s

¹³⁷ A. Betts, ‘Survival Migration: A new protection framework’, *Global Governance*, no. 16, 2010, p. 361.

¹³⁸ Convention Relating to the Status of Refugees, (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, Article 1A para. 2; Protocol Relating to the Status of Refugees, (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267, Article 1 para. 2.

¹³⁹ J. McAdam, *Complementary Protection in International Refugee Law*, Oxford, Oxford University Press, 2007, p. 31/32

¹⁴⁰ C. Marcs, ‘Spoiling Movi’s River: Towards recognition of persecutory environmental harm within the meaning of the Refugee Convention’, *American University International Law Review*, vol. 24, no. 1, 2008, p. 37

¹⁴¹ Vöneky and Beck, 2017, p. 168.

¹⁴² Gromilova and Jägers, 2013, p. 83.

¹⁴³ Ammer, 2009, p. 43

fulfilment of the core obligations of each human right, as identified by General Comment No. 3 of the Committee of Economic, Social and Cultural Rights on the nature of States Parties' obligations.¹⁴⁴ However, even in cases where the core obligation is met, violations of farther-reaching obligations may cumulatively constitute persecution as well.¹⁴⁵

The Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and 1967 Protocol relating to the Status of Refugees, furthermore, suggests that "persecution is normally related to actions by authorities of a country".¹⁴⁶ Additionally, the omissions of state actions can inflict persecution, where they are disproportionately targeted towards specific parts of the population for one of the Convention grounds, as such omissions constitute a lack of effective state protection.¹⁴⁷ In this context, it is irrelevant whether a persecutory intention of the state authorities is proven, but it is the unavailability of sufficient protection which renders an individual unable or unwilling to avail him- or herself of the protection of that state.¹⁴⁸

The five protected Convention grounds provide a further criterion for refugee status, determining that persecution needs to be motivated by reasons of race, religion, nationality, membership of a particular social group or political opinion. While religion, political opinion, race and nationality – although the latter two both refer to membership in a specific ethnic group and may frequently overlap – are rather clearly delineated,¹⁴⁹ membership in a particular social group may take on various forms.

A social group is comprised of members with "similar background, habits or social status"¹⁵⁰ and exists irrespective of the persecution.¹⁵¹ It may be characterised by immutable characteristics shared among its members besides the risk of persecution, or

¹⁴⁴ Ammer, 2009, p. 45.

¹⁴⁵ Ammer, 2009, p. 45.

¹⁴⁶ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, Geneva, 1992, para. 65.

¹⁴⁷ Ammer, 2009, p. 46.

¹⁴⁸ Ammer, 2009, p. 46/47.

¹⁴⁹ UNHCR, 1992, para. 68/74.

¹⁵⁰ UNHCR, 1992, para. 77.

¹⁵¹ Ammer, 2009, p. 50.

through the external social perception as a group.¹⁵² Furthermore, it is not necessary for all members of the particular social group to be at risk of persecution, but the individual targeting for the specific reason of being a member of that group functions as the decisive factor.¹⁵³

3.2.2 POTENTIAL FOR EXPANSION TO ENVIRONMENTAL MIGRATION

Evidently, the refugee definition does not reference environmental factors either as a form of persecution or as one of the grounds on which persecution can occur.¹⁵⁴ Nevertheless, the Refugee Convention can potentially be construed to cover international environmental migrants.

Arguably, the lack of a specification of the term ‘persecution’ reflects an intention to allow the refugee definition to evolve and adapt to contemporary circumstances not foreseen at the time the Refugee Convention was drafted.¹⁵⁵ Therefore, environmental harm is not explicitly excluded from constituting persecution in the context of the Refugee Convention. In fact, changes in the environment lead to an infringed enjoyment of a variety of human rights of persons affected (see Chapter 2.4) and potentially bring about persecution, where such infringement amounts to serious violations of state obligations. A comprehensive understanding of the persecution element in the provisions of the Refugee Convention could derive “an implicit human right to freedom from life-threatening and otherwise intolerable environmental conditions”.¹⁵⁶

A violation of this right evidently occurs where deliberate environmental harm is inflicted upon a minority population either by state authorities or by a third party in absence of state protection.¹⁵⁷ Similarly, environmental changes may, for example, amount to persecution, if they result in populations being deprived of their cultural existence,¹⁵⁸ a

¹⁵² UNHCR, *Guidelines on International Protection: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, HCR/GIP/02/02, 7 May 2002, para. 6/7.

¹⁵³ Ammer, 2009, p. 48.

¹⁵⁴ Ammer, 2009, p. 42.

¹⁵⁵ Marcs, 2008, p. 45.

¹⁵⁶ J. Cooper, ‘Environmental Refugees: Meeting the requirements of the refugee definition’, *New York University Environmental Law Journal*, vol. 6, no. 2, 1998, p. 492.

¹⁵⁷ Ammer, 2009, p. 49.

¹⁵⁸ Marcs, 2008, p. 51.

situation which is especially relevant to indigenous populations whose culture is significantly connected to their environment and livelihoods.

Furthermore, ‘environmental persecution’ can be established in cases where persons are at risk of starvation due to decreasing food production or destruction of livelihoods, or where the right to health is seriously affected, when the underlying environmental changes have been caused or worsened by state actions or omissions.¹⁵⁹ Similarly, where state actions or omissions in response to environmental changes disproportionately affect certain parts of the population or disadvantage a specific ethnic, religious, political or social group, the persecutory element of the definition is fulfilled. In this case, persecution results from a specific human behaviour (or lack thereof) in response to changes in the environment.¹⁶⁰ Concretely, this occurs when a state fails to take mitigative measures in a region prone to disasters or environmental degradation because that region is inhabited by an ethnic or religious minority perceived to be inferior or when certain groups are intentionally discriminated against in the provision of humanitarian aid in the aftermath of natural disasters.¹⁶¹ An example for the latter situation are policies following the 2004 tsunami in the Indian Ocean which effectively obstructed members of the Dalit caste – a caste that is considered untouchable in the Hindu varna system – from accessing protection and humanitarian aid, while at the same time assistance was provided to members of ‘superior’ castes.¹⁶²

Persecution can also be established, when a state deliberately contributes to or refrains from delaying the occurrence of slow-onset disasters, thereby targeting parts of its population which are predominantly dependent on the environment (e.g. through agriculture).¹⁶³ After the First Gulf War, the Iraqi government under Saddam Hussein used this form of persecution to deliberately deprive the so called Marsh Arabs – a Shiite tribe inhabiting and cultivating wetlands between the rivers Euphrates and Tigris – of

¹⁵⁹ Ammer, 2009, p. 45/46.

¹⁶⁰ Vöneky and Beck, 2017, p. 169.

¹⁶¹ Ammer, 2009, p. 50; Bradley and Cohen, 2013, p. 212.

¹⁶² Vöneky and Beck, 2017, p. 169.

¹⁶³ J. McAdam, ‘Climate Change-related Displacement of Persons’, in C. Carlarne, K. Gray and R. Tarasofsky, *The Oxford Handbook of international climate change law*, Oxford, Oxford University Press, 2016, p. 522.

their livelihoods, by systematically draining the marshes.¹⁶⁴ In such a case, environmental degradation is used as a weapon against particular groups and may even amount to ‘environmental cleansing’.¹⁶⁵

Like the unspecified persecution element, including membership of a particular social group as one of the Convention grounds reveals an intention to keep the refugee definition open to unforeseen future developments.¹⁶⁶

In the context of environmental migration, poverty and social class are an important element which increases vulnerability and negatively impacts the adaptive capacity of populations.¹⁶⁷ Thus, marginalized groups living in poverty are disproportionately affected by environmental changes, which, in turn, reinforce poverty and inequality. Since in general poverty constitutes a structural problem, it can be perceived as an immutable characteristic creating a particular social group in the sense of the Refugee Convention.¹⁶⁸

A similar line of argumentation, constructs environmental migrants as a social group of individuals who are “politically powerless to protect their environment”,¹⁶⁹ and who are, therefore, reliant on state policies for effective environmental protection.¹⁷⁰

3.2.3 LIMITATIONS IN EXPANDING TO ENVIRONMENTAL MIGRATION

Although the two unspecified elements of persecution and membership in a particular social group are theoretically open to include broader categories of people fleeing from their country of origin, it is unlikely that environmental changes *per se* will be recognised as persecutory in the sense of the Refugee Convention.¹⁷¹ While the loss of livelihood or living environment indisputably causes severe harm to the populations affected, the threshold to be considered persecution is high and requires significant involvement or

¹⁶⁴ Ammer, 2009, p. 49; Vöneky and Beck, 2017, p. 168.

¹⁶⁵ Ammer, 2009, p. 49.

¹⁶⁶ Marcs, 2008, p. 60.

¹⁶⁷ Zetter, 2009, p. 398.

¹⁶⁸ Ammer et al., 2010, p. 64.

¹⁶⁹ Cooper, 1998, p. 526.

¹⁷⁰ Ammer, 2009, p. 51.

¹⁷¹ S. Martin, *Climate Change and International Migration*, Geneva, International Organization for Migration, 2010, p. 8.

failure from state authorities, whether acting themselves as persecutors or enabling persecution by a third party through a lack of protection.¹⁷²

In the context of climate change, the logic behind the refugee regime would have to be significantly twisted, since it is rarely the countries from which environmental migration predominantly originates that are responsible for causing it. Contrarily, if a persecutor needed to be construed for climate change-induced environmental migration, it would be the international community as a whole, and high-emitting countries in particular.¹⁷³ Thus, persons are not fleeing their own government, but rather their government's inevitably decreasing ability to assist them, as climate change advances.¹⁷⁴

Even where environmental migration situations are considered persecutory, the nexus to one of the Convention grounds would still need to be fulfilled. As environmental changes *per se* inflict generalised harm, no link to race, religion, nationality, or political opinion, but rather a connection to geographic location can be established.¹⁷⁵

Furthermore, the indiscriminative nature of environmental change makes it difficult to construct an immutable characteristic forming a particular social group other than the vulnerability to environmental harm, or so to speak the risk of 'persecution'.¹⁷⁶ The approach to characterise environmental migrants as a social group due to an increased vulnerability for persons living in poverty bears theoretical potential, but is in practice impeded by the lack of a monitoring system of the Refugee Convention.¹⁷⁷ Constructing environmental migrants as social group which is politically powerless to protect its environment is equally flawed, since such a powerlessness is not shared by all and, thus, again leaves only the threat of 'persecution' as common feature.¹⁷⁸

¹⁷² J. McAdam, *Climate Change Displacement and International Law: Complementary Protection Standards*, Geneva, UNHCR, 2011b, p.12/13.

¹⁷³ McAdam, 2011b, p. 12.

¹⁷⁴ McAdam, 2011b, p. 12.

¹⁷⁵ Gromilova and Jägers, 2013, p. 85.

¹⁷⁶ Ammer et al., 2010, p. 64; J. McAdam and B. Saul, 'An insecure climate for human security? Climate-induced displacement and international law', in A. Edwards and C. Ferstman (eds.), *Human Security and non-citizens*, Cambridge, Cambridge University Press, 2010, p. 372.

¹⁷⁷ Interview with Dr. Margit Ammer, Vienna, 11 June 2019.

¹⁷⁸ Ammer, 2009, p. 51.

Ultimately, it is state involvement which makes environmental harm discriminate and establishes the link to one of the Convention grounds. Therefore, persecution does not arise from the environmental disaster or resource scarcity itself, but from a state's action or omission which results in the use of environmental degradation as a political tool against or restricted access to resources and aid for a particular group.¹⁷⁹

Besides these normative issues of framing environmental migration in a way that would constitute persecution under the Refugee Convention, a number of conceptual issues make the Convention further unsuitable to protect environmental migrants.

Firstly, the Refugee Convention only awards protection to persons already outside their country of origin.¹⁸⁰ This requirement of exile excludes not only those who will be displaced within the borders of their own state, but also those whose movement across an international border has not yet taken place, rendering it inapplicable to the majority of environmental migrants.¹⁸¹ Rather than such an *in-situ* protection, environmental changes necessitate a pre-emptive approach guaranteeing protection for people at risk of displacement resulting from a loss of livelihoods and habitat.¹⁸²

Furthermore, the protection granted under the Refugee Convention is ultimately resolved by three possible durable solutions, the most ideal of which is safe and voluntary return to the country of origin.¹⁸³ While this might be a suitable premise for mostly temporary persecutory displacement situations, returning home will become factually impossible for many environmental migrants, where regions have become entirely uninhabitable due to slow-onset disasters.¹⁸⁴

Finally, the Handbook on the Procedures and Criteria for Determining Refugee Status – serving as an authoritative interpretation of the Refugee Convention – explicitly excludes persons displaced by sudden-onset disasters from accessing protection under this regime.¹⁸⁵ Were the refugee definition to be expanded to explicitly cover environmental

¹⁷⁹ McAdam and Limon, 2015, p. 16.

¹⁸⁰ McAdam, 2016, p. 522.

¹⁸¹ Gromilova and Jägers, 2013, p. 83.

¹⁸² Gromilova and Jägers, 2013, p. 83.

¹⁸³ Zetter, 2009, p. 398.

¹⁸⁴ Zetter, 2010, p. 142.

¹⁸⁵ UNHCR, 1992, para. 39.

migrants despite these concerns, this could prove to be devaluing the existing protection by diluting the meaning of the term.¹⁸⁶

All of these issues render the Refugee Convention insufficient for guaranteeing the human rights of environmental migrants, other than of those exceptional cases where persons are migrating not because of the environmental harm itself, but because of the state's handling of it.

EXCURSUS: REGIONAL INSTRUMENTS OF REFUGEE PROTECTION

While the 1951 Geneva Convention relating to the Status of Refugees undoubtedly represents the major convention of international refugee law, it is important to note that a number of regional instruments exist, which – although following the definition of the Refugee Convention – contain a wider understanding of the concept.¹⁸⁷

The first of those is the Convention governing the specific aspects of refugee problems in Africa adopted in 1969 by the Organisation of African Unity and nowadays ratified by most of the Member States of its successor organization, the African Union. It is the only binding regional instrument of refugee law and extends protection to persons outside of their country of origin due to “events seriously disturbing public order in either part or the whole of [their] country of origin”.¹⁸⁸ Similarly, the non-binding Cartagena Declaration on Refugees by several Latin American countries also protects those threatened by “circumstances which have seriously disturbed public order”.¹⁸⁹

Arguably, both sudden- and slow-onset environmental disasters may result in serious disturbance of public order, straining the protective capacities of states and, thus, displacing persons outside of their country of origin. However, both instruments mention the disturbance of public order in systematic relation with other flight reasons, such as external aggression, foreign domination, and similar war-like situations. The *eiusdem*

¹⁸⁶ D. Keane, ‘The Environmental Causes and Consequences of Migration: A search for the meaning of “Environmental Refugees”’, *Georgetown International Environmental Law Review*, vol. 16, 2004, p. 215; Gemenne and Brücker, 2015, p. 255.

¹⁸⁷ Gromilova and Jägers, 2013, p. 81.

¹⁸⁸ Organization of African Unity, *Convention governing the specific aspects of refugee problems in Africa* (adopted 10 September 1969, entered into force 20 June 1974), 1001 UNTS 45, Article 1 (2).

¹⁸⁹ Organization of American States, *Cartagena Declaration on Refugees*, 1984, para. 3.

generis rule, therefore, prescribes the undefined term ‘events disturbing public order’ to be interpreted in line with the meaning of the preceding specified legal terms, thereby preventing the inclusion of environmental migrants under the respective refugee definitions.¹⁹⁰

Similarly, the refugee definition of the Arab Convention on regulating status of refugees in the Arab Countries from 1994 mentions “events resulting in major disruption of public order”, but it also explicitly refers to persons taking refuge abroad “because of the occurrence of natural disasters”.¹⁹¹ However, the convention has to date not been ratified by any state.¹⁹²

3.3 COMPLEMENTARY PROTECTION

3.3.1 SCOPE OF THE INSTRUMENT

Since the Refugee Convention does not provide a satisfactory protection regime for international environmental migrants, it is worth considering complementary protection mechanisms, which *per definitionem* represent an alternative to the current predominant protection source, i.e. the Refugee Convention. Their meaning in international law is variable,¹⁹³ but complementary protection currently is regarded as expanding “countries’ protection obligations beyond the ‘refugee’ category”.¹⁹⁴ Complementary protection, therefore, widens the eligibility criteria for international protection by dropping the link to a protected ground and instead, basing protection on the *non-refoulement* principle contained in various international human rights treaties.¹⁹⁵

The *non-refoulement* obligation of states arises *inter alia* from Article 6 and 7 ICCPR and Article 3 of the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), which prohibit states from returning persons present within their jurisdiction to another country where they would face the risk of being

¹⁹⁰ Vöneky and Beck, 2017, p. 170.

¹⁹¹ League of Arab States, *Arab Convention on Regulating Status of Refugees in the Arab Countries*, 1994, Article 1.

¹⁹² Gromilova and Jägers, 2013, p. 82.

¹⁹³ McAdam, 2007, p. 23.

¹⁹⁴ McAdam, 2011b, p. 16.

¹⁹⁵ McAdam, 2007, pp. 21/23; Ammer, 2009, p. 56.

subjected to torture or other serious violations of human rights.¹⁹⁶ Similar obligations are also contained in regional instruments, such as Article 3 of the European Convention on Human Rights (ECHR) or Article 5 of the American Convention on Human Rights (ACHR). Thus, these provisions widen states' protection obligations from persons at risk of persecution towards persons at risk of arbitrary deprivation of life, for instance through generalized violence, as well as towards persons possibly subjected to torture or cruel, inhuman, or degrading treatment.¹⁹⁷ For the latter case, the severity of ill-treatment is considered to be hierarchical, with torture as the most severe form distinguished from cruel, inhuman, or degrading treatment by the degree of suffering inflicted.¹⁹⁸

As complementary protection simply constitutes an alternative protection mechanism to the one under the Refugee Convention, it also grants a legal status to the persons protected which is not confined to a lesser duration or lower quality.¹⁹⁹ Rather, the eligibility criteria, status and form of protection granted are dependent on a state's national legislation, since complementary protection mechanisms are "the response by States to *individual* asylum seekers who cannot be removed by virtue of an extended principle on *non-refoulement* under international law".²⁰⁰

Codified national policies granting a right to remain for persons whose removal is not possible or at least not advisable, exist in several states, taking on various forms, such as subsidiary protection on the European Union level, temporary protection in the USA, or the 'persons in need of protection' status in Canada.²⁰¹

3.3.2 POTENTIAL FOR EXPANSION TO ENVIRONMENTAL MIGRATION

Since civil and political rights as well as economic, social and cultural rights are infringed through changes in the environment, there are two potential avenues for incorporating environmental migrants under complementary protection mechanisms.

¹⁹⁶ Gromilova and Jägers, 2013, p. 96; McAdam and Limon, 2015, p. 16.

¹⁹⁷ McAdam, 2011b, pp. 16/17.

¹⁹⁸ McAdam, 2011b, p. 23.

¹⁹⁹ McAdam, 2007, p. 23.

²⁰⁰ Ammer, 2009, p. 57.

²⁰¹ McAdam, 2007, p. 20; Ammer et al., 2010, p. 67.

The first and direct one is for international environmental migrants to invoke a civil or political right which by itself gives rise to a protection claim, such as the right to life. Thus, persons fleeing from sudden-onset disasters or armed conflict which has been triggered by environmental changes and the resulting resource scarcity qualify as needing complementary protection based on humanitarian principles or based on a threat to life resulting from generalized violence.²⁰²

The other possibility arises from severe violations of economic, social and cultural rights, which are not *per se* connected to a specific protection mechanism, but can potentially be rephrased as amounting to inhuman or degrading treatment.²⁰³ As degrading treatment amongst others entails “the denial of sufficient basic services necessary for a dignified existence”,²⁰⁴ the loss of livelihood and lack of access to resources resulting from environmental changes fulfil the requirements of complementary protection provided that the living conditions of persons affected are sufficiently severely impaired.²⁰⁵ Thus, if the severity threshold is met, protection obligations towards environmental migrants arise from both ICCPR and CAT, even where complementary protection has not been codified nationally.²⁰⁶

3.3.3 LIMITATIONS IN EXPANDING TO ENVIRONMENTAL MIGRATION

While the latter avenue theoretically allows for economic, social and cultural rights to be considered as degrading treatment, a claim to complementary protection will in reality only arise in very extreme circumstances, where survival is considered entirely impossible in the country of origin.²⁰⁷ In fact, general poverty or lack of resources within a state are not considered to substantiate a need for protection under current international jurisprudence,²⁰⁸ unless access to resources is actively denied resulting in violations of human rights by the state, rather than environmental circumstances.²⁰⁹

²⁰² Kälin, 2008.

²⁰³ Ammer, 2009, p. 59.

²⁰⁴ Gromilova and Jägers, 2013, p. 97.

²⁰⁵ Ammer, 2009, p. 59.

²⁰⁶ Zetter, 2011, p. 20.

²⁰⁷ McAdam and Limon, 2015, p. 16.

²⁰⁸ McAdam, 2011b, p. 17.

²⁰⁹ McAdam and Saul, 2010, p. 379; McAdam and Limon, 2015, p. 16.

Complementary protection will, thus, only apply once the environmental changes have become sufficiently extreme and the impairment of living conditions is immediate²¹⁰ and provides a resort when a state or region has become entirely uninhabitable. However, it does not account for movement which happens pre-emptively, i.e. in anticipation of such a deterioration of the environment, rendering it, for example, inadequate for inhabitants of small island states at risk of being submerged by rising sea-levels.²¹¹

In the context of sudden-onset disasters, where humanitarian principles may give at least rise to a temporary protection claim, complementary protection is in practice limited to persons already present in the jurisdiction of another state at the time when the disaster strikes.²¹²

Furthermore, even where complementary protection is suitable to cover certain groups of environmental migrants, only a limited number of states or regional organisations have implemented national legislation, so that extensive jurisprudence exists only in the ECHR and ACHR context, leading to a rather regional application of the mechanism.²¹³

3.4 UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

3.4.1 SCOPE OF THE INSTRUMENT

The UNFCCC was adopted in 1992 and is of a different nature than the instruments discussed so far. While the Guiding Principles on Internal Displacement, as well as the Refugee Convention and complementary protection provisions form part of international human rights law and are concerned with specific forms of human movement, the UNFCCC instead is a major instrument of international environmental law dealing with the most prominent environmental factor, namely climate change.²¹⁴ As such, it establishes general interests of the international community in the context of climate change and sets out shared goals with the main objective being the “stabilization [sic] of

²¹⁰ McAdam, 2011b, p. 25.

²¹¹ McAdam, 2011b, p. 25.

²¹² Cohen and Bradley, 2010, p. 131.

²¹³ Betts, 2010, pp. 364/365.

²¹⁴ Gromilova and Jägers, 2013, p. 103.

greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”.²¹⁵

In order to reach this and other goals set out in the UNFCCC, state parties have agreed on several principles which are intended to guide state conduct.

The principle of “common, but differentiated responsibilities and respective capabilities”²¹⁶ recognises the global consequences of climate change, as well as the fact that developed states have not only contributed more intensely to climate change, e.g. through the higher emission of greenhouse gases, but also that these states are more capable to address climate change by taking counteracting and mitigating measures.²¹⁷ Thus, developed states are urged to take the lead in combating climate change.²¹⁸ Additionally, Article 3 paragraph 2 UNFCCC places particular emphasis on the needs of developing states which are especially vulnerable and, therefore, disproportionately affected by the consequences of environmental changes.²¹⁹

Furthermore, the UNFCCC requires states to take precautionary measures preventing or mitigating adverse effects of climate change,²²⁰ and explicitly states that a “lack of full scientific certainty should not be used as a reason for postponing such measures”.²²¹ This is especially relevant where certain actions, if continued, result in irreversible damage to the environment.²²² Lastly, the UNFCCC also commits states to the implementation of facilitative measures to ensure adequate adaptation mechanisms to climate change are developed, and obliges developed states to provide developing states with financial assistance dedicated to this purpose.²²³

²¹⁵ United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994), 1771 UNTS 107, Article 2.

²¹⁶ United Nations Framework Convention on Climate Change, Article 3 (1).

²¹⁷ United Nations, Rio Declaration on Environment and Development, 1992, Principle 7; S. Ladly, ‘Border carbon adjustments, WTO-law and the principle of common but differentiated responsibilities’, *International Environmental Agreements*, vol. 12, no. 1, 2012, pp. 69/70.

²¹⁸ United Nations Framework Convention on Climate Change, Article 3 (1).

²¹⁹ United Nations Framework Convention on Climate Change, Article 3 (2).

²²⁰ Gromilova and Jägers, 2013, p. 104.

²²¹ United Nations Framework Convention on Climate Change, Article 3 (3).

²²² Gromilova and Jägers, 2013, p. 104.

²²³ United Nations Framework Convention on Climate Change, Article 4 (1)b; Gromilova and Jägers, 2013, pp. 104/105.

3.4.2 POTENTIAL FOR EXPANSION TO ENVIRONMENTAL MIGRATION

The principles set out in the UNFCCC are standards of international cooperation which are equally relevant for the protection of environmental migrants. The common but differentiated responsibilities approach holds developed states accountable for their contribution to climate change which is a major root cause of environmental movement. Moreover, it reflects the fact that developed countries benefited from their environmentally harming behaviour through accelerated economic growth. This in turn enhances their capacities to respond to the effects of climate change and to adapt to the environmental changes, resulting in a lower number of environmental migrants originating from them. Contrarily, developed countries rather are destination countries of environmental migrants.

The particular vulnerability of developing countries to environmental migration is not only reflected in the focus given to their needs in Article 3 paragraph 2 UNFCCC, but also in the commitment for cooperation in developing adaptive measures. Article 4 paragraph 8 UNFCCC emphasises that some regions – such as small island states, low-lying coastal areas, and areas prone to drought, desertification or sudden-onset disasters – are in disproportionate need of a functioning adaptation mechanism, mirroring the regions where most environmental migrants will originate from (see Chapter 2.3 for more details on affected populations).

Furthermore, the Cancun Agreement negotiated under the Conference of the Parties (COP) to the UNFCCC in 2010 explicitly welcomes the cooperation of states “with regard to climate change induced displacement, migration and planned relocation [...] at national, regional and international level”.²²⁴ This was strengthened through the establishment of the Warsaw International Mechanism for Loss and Damage in 2013²²⁵ and was further complemented through the establishment of a Task Force on Displacement under the UNFCCC at the 2015 COP in Paris, with the aim “to develop

²²⁴ Conference of the Parties, *The Cancun Agreements*, FCCC/CP/2010/7/Add.1, 15 March 2011, para. 14 (f).

²²⁵ V. Künzel, ‘Schritte der Staatengemeinschaft zum Schutz klimabedingter Migranten und Vertriebener’, in S. Burkhardt and S. Franke (eds.), *Klima- und Umweltbedingte Migration*, München, Hanns-Seidel-Stiftung e.V., 2017, p. 18.

recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change”.²²⁶

3.4.3 LIMITATIONS IN EXPANDING TO ENVIRONMENTAL MIGRATION

While the UNFCCC contains principles also relevant for the management of environmental migration, it does not contain a reference to human mobility at all, but instead remains rather general in its provisions on adaptation measures.²²⁷ Only with the Cancun Agreement in 2010 has an explicit reference to climate change-induced displacement been achieved, which, however, is only weakly formulated. Although this has been strengthened through the establishment of the Task Force on Displacement, concrete steps how to translate the task force’s recommendations into action are still missing, which suggests that there is a long way to go until obligations of state parties to take specific actions are agreed upon.²²⁸

Moreover, the UNFCCC – although establishing common responsibility – does not establish specific state obligations, but rather codifies common objectives. In that way, it is less concerned with the protection of individuals directly affected but understands climate change and its consequences as a “common concern of humankind”.²²⁹

Lastly, even if migratory issues are in the future successfully addressed under the UNFCCC – for example through an additional protocol – the scope of the convention restricts assistance to climate change-induced migration, which is only a part of environmental migration.²³⁰

²²⁶ UNFCCC, *Taskforce on displacement at a glance*, 2017, available from https://unfccc.int/files/na/application/pdf/tfd_at_a_glance.pdf (accessed 7 July 2019), p. 2.

²²⁷ Gromilova and Jägers, 2013, p. 106.

²²⁸ Bradley and Cohen, 2013, p. 220; Künzle, 2017, p. 19.

²²⁹ United Nations Framework Convention on Climate Change, Präambel Abs. 1; Vöneky and Beck, 2017, p. 165.

²³⁰ Gemenne and Brücker, 2015, p. 256.

3.5 CONCEPTUAL SUMMARY – ELEMENTS OF AN INSTRUMENT PROTECTING THE HUMAN RIGHTS OF ENVIRONMENTAL MIGRANTS

In summary, the existing legal framework exhibits a number of shortcomings with regard to its applicability in the context of environmental migration.

Firstly, the instruments discussed approach migration from an *in-situ* perspective, awarding rights protection and humanitarian assistance in situations where movement has already taken place, rather than looking at ways how movement can be prevented or organised before it has even occurred. Secondly, the protection they grant is intended to be temporary for as long as it is impossible for the affected persons to return to their country of origin – a possibility which is not available for a majority of environmental migrants. Thirdly, the instruments discussed address either internal or cross-border movements, whereas environmental migration – although predicted to remain predominantly internal – occurs in both forms. Fourthly, persons moving across borders are viewed as seeking protection from their own government, while environmental migrants are able to avail themselves to their government's albeit limited protection.

Lastly, none of the instruments makes explicit reference to any form of environmental migration, rendering their practical application to the environmental context rather limited.

An instrument with a specific mandate to environmental migration, thus, needs to address these issues in a comprehensive way, by combining the four elements of disaster response, prevention of movement through strengthened resilience and adaptation, planned migration, and mitigation of environmental changes.

Undeniably, significant weight needs to be given to guidelines on the provision of humanitarian aid and protection during spontaneous movements, thereby ensuring that the rights of persons temporarily displaced as a consequence of sudden-onset disasters or environmental conflict are guaranteed. For this purpose, adequate provisions can be derived from Section III and Section IV of the Guiding Principles on Internal Displacement, which ensure for example respect for the dignity of displaced persons, an

adequate standard of living and non-discrimination in the provision of and access to humanitarian assistance.²³¹

While *in-situ* protection and provision of humanitarian assistance are crucial in spontaneous displacement situations, the other part of environmental migration is predictable and has to be tackled in a forward-looking manner. Rather than only responding to the occurrence of human movement, measures in the environmental context, therefore, need to be equally concerned with either preventing situations that trigger the need for migration or – where this is not feasible – managing such movement well in advance in order for it to occur in a planned and organised way.

The former approach is applicable to situations where migration would be the last resort after other adaptation strategies have failed. Strengthening the capacities of populations to adapt to the environmental changes they face and building up their resilience, for example through improved early-warning systems or coastal protection, ultimately results in a reduced disaster risk and prevents some populations from being forced to migrate. Rather than awarding protection from the government of the country of origin, international assistance needs to focus on supporting governments and local communities in the implementation of domestic measures, which enable states to better protect the populations affected in their country.²³² Such measures enhance resilience and adaptive capacity of populations affected,²³³ thus, resulting in a lower number of people forced to migrate for environmental reasons. Since adaptive capacities eventually reach their limits of effectiveness when changes to the environment progress too far, measures for increased resilience need to be combined with effective mitigation measures, in order to address the root causes of environmental migration, i.e. preventing environmental changes from occurring.²³⁴ Therefore, such mitigation actions are equally important and can range from

²³¹ Commission on Human Rights, 1998, Principles 11/18/24.

²³² F. Biermann and I. Boas, 'Preparing for a warmer world: Towards a Global Governance system to protect climate refugees', *Global Environmental Politics*, vol. 10, no. 1, 2010, p. 75.

²³³ R. Zetter, 'Why they are not refugees – Climate change, environmental degradation and population displacement', *Siirtolaisuus (Migration)*, vol. 44, no.1, 2017, p. 27.

²³⁴ H. Ragheboom, *The international legal status and protection of environmentally-displaced persons: A European perspective*, Leiden, Brill Nijhoff, 2017, p. 540.

anti-seismic constructions to further-reaching activities, as for example the reduction of greenhouse gas emissions to reduce the effects of climate change.²³⁵

However, strengthening other adaptation strategies and building resilience together with mitigation will not eliminate environmental movement completely.²³⁶ Contrarily, environmental migration itself is an effective adaptive response, especially in extreme situations where other adaptation strategies are not feasible or sustainable and environmental changes are irreversible, such as small island states threatened by sea-level rise.²³⁷ Movement from regions prone to slow-onset degradation or at increased risk of sudden-onset disasters is, therefore, predictable and – in contrast to spontaneous movement in the wake of political turmoil or conflict – can be planned long-term.²³⁸ Organised resettlement and re-location, as well as labour migration schemes are pathways, which provide a safe solution for moving away from areas prone to environmental change and also suitably address potential pre-emptive movement from high-risk zones, small island states and regions affected by other forms of slow-onset degradation.²³⁹ These migration options ensure the agency and dignity of persons are respected and provide durable long-term prospects, rather than temporary interim solutions.

All approaches need to be informed by the principle of international burden-sharing which was introduced by the UNFCCC, as populations of developing countries are more vulnerable to environmental changes, while developed countries have more resources, as well as higher capabilities to respond to them and have – at least in the context of climate change – disproportionately contributed to their occurrence.²⁴⁰ Through investing in humanitarian assistance, enhanced resilience, mitigation actions and resettlement,

²³⁵ Ragheboom, 2017, p. 540.

²³⁶ Zetter, 2017, p. 27.

²³⁷ M. Ammer et al., *Time to act – how the EU can lead on climate change and migration*, Brussels, Heinrich-Böll-Stiftung, 2014, p. 20.

²³⁸ F. Biermann and I. Boas, 'Für ein Protokoll zum Schutz von Klimaflüchtlingen', *Vereinte Nationen*, no. 1, 2008a, p. 12.

²³⁹ McAdam, 2011b, p. 57.

²⁴⁰ F. Biermann and I. Boas, 'Protecting Climate Refugees: The case for a global protocol', *Environment: Science and Policy for Sustainable Development*, vol. 50, no. 6, 2008b, p. 13.

international burden-sharing, thus, remedies the structural factors underlying environmental migration.²⁴¹

Besides the individual human rights from the first approach on disaster response which are based on the rights universally guaranteed in the ICCPR and ICESCR, a specific mandate for environmental migrants additionally needs to address collective rights for regionally defined groups, i.e. populations from certain villages, provinces, or even entire nations.²⁴² Particularly, where planned resettlement takes place, high priority needs to be given to social and cultural considerations, as well as economic and livelihood needs.²⁴³

Since return to the former home is mostly impossible in the context of environmental migration, provisions granting temporary asylum are not a sustainable option and need to be replaced by progressive rights protection in the form of institutionalised permanent immigration and integration measures in the regions and countries to which environmental migrants are resettled.²⁴⁴ Such permanent measures need to include rights provisions for the compensation and restitution of property, as well as the allocation of land to resettled populations.²⁴⁵

These provisions apply to internal and international environmental migrants alike, as – although the protection obligation shifts to another state – their needs are fundamentally the same.²⁴⁶ However, while persons resettled in their own country of origin effectively remain a citizen of that country, *“there is much more to relocation than simply securing territory [in the case of cross-border resettlement]. Those who move need to know that they can remain and re-enter the new country, enjoy work rights and health rights there, have access to social security if necessary, be able to maintain their culture and traditions”*²⁴⁷ and so forth. Crucially, additional provisions regulating the non-rejection at the border, as well as a *non-refoulement* obligation of states towards international

²⁴¹ Zetter, 2017, p. 24.

²⁴² Biermann and Boas, 2008a, p. 12.

²⁴³ Zetter, 2017, p. 27.

²⁴⁴ Biermann and Boas, 2010, p. 75; Zetter, 2011, p. 14.

²⁴⁵ Zetter, 2017, p. 27.

²⁴⁶ McAdam, 2011b, p. 68.

²⁴⁷ McAdam, 2011b, p. 58/59.

environmental migrants need to be included, which could be based on the permissibility, factual possibility and reasonableness of return to their country of origin.²⁴⁸

In light of the prevailing shortcomings of international law in the context of environmental migration and the specific aspects needed to ensure comprehensive protection of the human rights of environmental migrants, a tailored instrument seems to be the most promising option.

However, the negotiation of provisions which are more than just the lowest common denominator will prove to be rather difficult in the current political climate. Additionally, even if such a treaty was to be agreed upon, this would only be the first step towards effective protection, as actual implementation and enforcement pose another obstacle.²⁴⁹ Therefore, a specific instrument should not necessarily take the form of a binding international treaty. Instead, a global guiding framework could, in a manner similar to that of the Guiding Principles on Internal Displacement, draw on existing provisions from international human rights law and explicitly state their application in the context of environmental migration without imposing new obligations on states.²⁵⁰ Such an instrument may inform state practice and facilitate the translation of specific provisions into national laws, so that it may over time result in a binding multilateral framework.²⁵¹ Furthermore, regional instruments are equally desirable as international ones, as they can effectively respond to particular regional scenarios and potentially prepare the ground for similar instruments of global scope.²⁵²

²⁴⁸ Kälin, 2008; McAdam, 2011b, p. 68.

²⁴⁹ McAdam, 2011a, p. 17.

²⁵⁰ McAdam, 2011b, p. 57.

²⁵¹ McAdam, 2011b, p. 57.

²⁵² McAdam, 2011a, p. 26.

4 PROJECTED FUTURES

The need for a tailored instrument on environmental migration has already become evident in the previous chapters both through the numerical data on affected populations and the legal analysis of existing instruments of international protection with regard to their limited applicability to environmental migrants. In order to further strengthen this assertion, projections about the future state of the world with and without a global instrument on environmental migration provide a utopian illustration.

It is essential to note that the futures described in the following sub-chapters are neither imaginary nor are they predictions describing “the statistically most probable outcome based on the best current knowledge”.²⁵³ Instead they serve as projections of the future which in the context of current uncertainties describe a *plausible* outcome.²⁵⁴

Before projecting what the future may plausibly look like with or without an international instrument on environmental migration as the one described in Chapter 3.5, it is first necessary to establish which environmental changes causing population movements inform these projections. Both the dystopian as well as the eutopian projection are based on the assumption that the average temperature on Earth has increased compared to the average temperatures that are currently experienced. However, such an average increase does not appear uniformly, but rather temperatures are higher over land and lower over the two thirds of the Earth’s surface covered by oceans.²⁵⁵ Similarly, temperature rise also increases when moving to the continental interiors and from low to high latitudes.²⁵⁶

Furthermore, sea-levels in the projected environments have risen “*causing damage to the most vulnerable coastal wetlands with associated negative impacts on local fisheries, seawater intrusion into groundwater supplies in low-lying coastal areas and small islands, and elevated storm surge and tsunami heights, damaging unprotected coastlines.*”²⁵⁷ Precipitation patterns have shifted in two general directions with the

²⁵³ K. Campbell et al., *The Age of Consequences – The Foreign Policy and National Security Implications of Global Climate Change*, 2007, p. 36.

²⁵⁴ Campbell et al., 2007, p. 36.

²⁵⁵ G. Dyer, *Climate wars – how peak oil and the climate crisis will change Canada (and our lives)*, Toronto, Random House, 2008, p. 14.

²⁵⁶ Campbell et al., 2007, pp. 42 and 44.

²⁵⁷ Campbell et al., 2007, p. 42.

tropics and high latitudes experiencing increased precipitation, while decreased precipitation prevails in the subtropics and mid-latitudes, making these regions susceptible to extended drought periods.²⁵⁸

The described environmental changes are deliberately non-numerical, as it is not decisive for these illustrative projections to what exact degree they occur, nor is it relevant to date the projections to a specific year in the future.

4.1 DYSTOPIA – ENVIRONMENTAL CONFLICT AND FORTRESS EUROPE/USA

In the absence of an instrument on environmental migration, movement occurs unplanned as the need for migration arises and disproportionately affects regions in which vulnerability is already high, instead of being organised and its burden being equitably shared by the international community.

The relationship between human mobility and international security is a mutually reinforcing one, where population movements increase the likelihood of violence and conflict, which in turn trigger more migration.²⁵⁹ In the context of environmental migration, another element, i.e. environmental changes, is added to this self-perpetuating cycle, increasing both the causes and consequences of human movement with resource scarcity and a shift of habitable areas added to and interrelated with the conflict element.²⁶⁰

Existing global asymmetries are reinforced through changes to the environment as the availability of survival resources, such as habitable and cultivatable land, food and water, decreases and more people are dependent on and competing for fewer means of existence.²⁶¹ Such competition triggers unorganised movement to alleviate the population pressure or, where the imbalance of resources and population becomes critical, results in conflict which again motivates people to migrate.²⁶² In the destination regions, the cycle

²⁵⁸ Campbell et al., 2007, pp. 44/45.

²⁵⁹ O. Brown, *Migration and Climate Change*, Geneva, International Organization for Migration, 2008a, p. 33.

²⁶⁰ Campbell et al., 2007, p. 56.

²⁶¹ H. Welzer, *Klimakriege – wofür im 21. Jahrhundert getötet wird*, Frankfurt am Main, S. Fischer Verlag, 2008, p. 14/15.

²⁶² Welzer, 2008, p. 25.

starts all over, not helped by the fact that migration “redraw[s] the ethnic map of many countries, bringing previously separate groups into close proximity with each other and in competition for the same resources”,²⁶³ thus also reinforcing previous existing tensions.²⁶⁴ Since environmental changes hit poorer societies disproportionately hard (see Chapter 2.3 for more details on affected populations), environmental migration can lead to their environmental collapse, turning already fragile states into failed states and increasing the instability in the entire region.²⁶⁵ Other parts of the world, even though not primarily affected by these events, perceive environmental migration and its consequences as threatening and respond with increased security needs and radical solutions, such as walling-off and other border security measures.²⁶⁶

Concretely, South and East Asia with its many low-lying and coastal regions, as well as numerous islands, faces massive permanent land losses.²⁶⁷ Bangladesh is but one example of countries in the region which become increasingly uninhabitable due to sea-level rise and the frequent occurrence of hydrometeorological disasters, leading to movement towards the inner country, on the one hand, and across one of the many already contested borders, on the other hand.²⁶⁸ Since the increase in average temperatures has already put a strain on food and water availability, the competition over scarce resources between the resettling and resident populations creates instability within Bangladesh and increases the already existing political tensions with its neighbouring countries, particularly India which is the destination country not only for the majority of Bangladeshi migrants, but also for the inhabitants of the small islands in the Bay of Bengal who eventually have to move to the mainland due to the rising sea-levels.²⁶⁹ On the other end of India, the existing frictions with Pakistan and China over the contested territories of the Kashmir region are complemented by disputes over water, as the region becomes more and more arid and the Indus River, lifeline of Pakistan, brings serious floods due to glacial melts in the summer

²⁶³ Brown, 2008a, p. 33.

²⁶⁴ Welzer, 2008, p. 249.

²⁶⁵ Brown, 2008a, p. 33; Welzer, 2008, p. 30.

²⁶⁶ Welzer, 2008, pp. 199/248.

²⁶⁷ Dyer, 2008, p. 14.

²⁶⁸ Campbell et al., 2007, p. 57.

²⁶⁹ Campbell et al., 2007, p. 57.

followed by a decreased flow of water in the winter.²⁷⁰ Intensifying environmental changes and the resulting migratory movements are, thus, not only threatening the internal stability of the respective countries, but are also conducive to a reinforcement of the already tense situation on the Indian subcontinent.²⁷¹

Similarly, water shortages challenge the north of China which are aggravated by droughts, as the monsoon fails to bring enough rainfall.²⁷² Thus, migration occurs both from rural to urban areas, further straining the capacities of overpopulated cities, and towards the parts of the country which still receive enough precipitation causing low-level conflicts between ethnic minorities to escalate over the competition for resources.²⁷³

In Africa, environmental migration first occurs internally, away from the rural regions, as agriculture becomes more and more unsustainable, towards urban centres promising other economic activities and social services. Such movement puts high pressure on the already weak capacities of governments and increases not only the risk of state failure, but also continues to fuel existing unresolved conflicts and political disputes.²⁷⁴ “The impact of [environmental] migration will be felt throughout Africa, but its effect on Nigeria and East Africa pose particularly acute geopolitical challenges” due to the high instability in that region.²⁷⁵ Similarly, the political tensions in the Middle East are complicated over water disputes between Syria, Israel, Lebanon, Jordan and the Palestinian territories, as well as between Syria, Iraq, Iran and Turkey, physically linked by the Jordan River, on the one hand, and Euphrates and Tigris, on the other hand, causing populations to move in attempts to secure access to water sources as well as to escape the arising conflicts.²⁷⁶

The eventually resulting cross-border migration reinforces tensions and instability in both regions, which are detrimental to the international security climate. As violence spreads and means of existence shrink, populations move further abroad – south towards the

²⁷⁰ Dyer, 2008, pp. 115/118.

²⁷¹ Campbell et al., 2007, p. 75.

²⁷² Dyer, 2008, p. 6.

²⁷³ Campbell et al., 2007, p. 62.

²⁷⁴ Campbell et al., 2007, pp. 57/58.

²⁷⁵ Campbell et al., 2007, p. 57.

²⁷⁶ Campbell et al., 2007, p. 60.

stronger regional states, such as South Africa, or north aiming to reach the perceived safety and stability of Europe.²⁷⁷

Europe itself faces only moderate internal consequences of environmental migration, as the impact of higher temperatures on food production in the Mediterranean countries is still largely compensated by the northern parts.²⁷⁸ Externally, however, pressure on Europe's borders increases giving rise to nationalism and strict border security measures, further securitising the public discourse on migration similar to what could be observed during the European migrant 'crisis' from 2015 onwards.²⁷⁹ Since the number of environmental migrants heading towards Europe is significantly higher than the numbers arriving during the 2010s, such measures eventually peak in the aim to seal the continent off from the influx of migrants through the externalisation of its borders. Development policy is mostly understood as preventative security policy contributing to the continued status of 'Fortress Europe' as relative winner from environmental changes.²⁸⁰

Similar reactions are triggered at the southern borders of the USA, which is the main destination country for environmental migrants from Central America and the Caribbean islands. While the former experiences severe heatwaves, resulting in water scarcity and famine, the latter are subject to intensified storms and rising sea levels, directing population movements towards the less affected prosperous North.²⁸¹ However, the country faces its own challenges, with *"the southwestern United States suffer[ing] more frequent and longer-lasting droughts that cause problems, not only for agriculture, but for its fast-growing cities, while low-lying coastal areas in the Gulf and mid-Atlantic states [will] face the risk of multiple Hurricane Katrinas"*.²⁸² Giving priority to its own citizens, most of these changes are compensated through costly adaptation measures maintaining internal stability, while the country is forcefully walled off from further immigration.

²⁷⁷ Campbell et al., 2007, pp. 59 and 76.

²⁷⁸ Campbell et al., 2007, p. 37.

²⁷⁹ Dyer, 2008, p. 21.

²⁸⁰ Welzer, 2008, p. 22.

²⁸¹ Campbell et al., 2007, p. 56.

²⁸² Dyer, 2008, p. 15.

In summary, the industrialised states for the time being hold sufficient resources to compensate for the impacts of environmental changes within their territories and, thus, are only moderately affected by environmental migration themselves. The developing states around the equator, however, collapse under the pressure of environmental migration to their already fragile systems. When mitigation activities are further neglected and changes to the environment continue to aggravate, however, even the prosperous countries in the Global North will not anymore be able to compensate for the impacts on their resources and land, while simultaneously pushing away environmental migrants from the Global South at their borders.

This dystopian projection is not intended to predicate that environmental migratory movements inevitably lead to violence, but that uncontrolled environmental migration constitutes a potential source of conflict, so that environmental changes not only provoke migration, but also other non-linear social events and the forms they will take are unforeseeable.²⁸³ Such social consequences of environmental changes and the resulting migration already manifest themselves today, making it evident that it is not crucial how high temperatures or sea-levels are going to rise in the future.²⁸⁴

4.2 EUTOPIA – RESOLVING VULNERABILITY THROUGH INTERNATIONAL BURDEN-SHARING

The negotiation of an international instrument addressing environmental migration has not been an easy one, but as the issue gained more and more momentum, the international community finally agreed that it needed to be addressed. Since environmental changes do not cause a problem of absoluteness for humankind, but rather deepen the existing problems of distribution, they are ultimately resolvable and do not need to result in a security threat. Thus, the developed nations decided along a rationale of self-interest to secure future peace and stability for themselves through investing in the adaptation of less affluent states.²⁸⁵

²⁸³ Welzer, 2008, p. 247.

²⁸⁴ Welzer, 2008, p. 258.

²⁸⁵ Biermann and Boas, 2010, p. 83.

Several years after the instrument's entry into force, the number of environmental migrants is significantly reduced, displacement periods, where they cannot be avoided, are considerably shorter, labour migration schemes are extensively available and the successful integration of relocated communities has rendered their host states more culturally diverse than ever.

The global fund for environmental adaptation established under the instrument receives fixed financial contributions from its state parties respective of their economic capabilities. The developed states are taking the lead and, thus, enable less affluent nations to access funding for the provision of humanitarian assistance in response to displacement caused by sudden-onset disasters and for various adaptation measures which render their populations less vulnerable to the adverse impacts of environmental changes on their livelihood or ensure successful relocation.

Through the environmental adaptation fund South and South East Asia – two of the most affected regions some years ago – successfully implement a number of technical measures reducing their disaster risk. Concretely, offshore dykes protect the regions' long coastlines from inundation and sea-level rise²⁸⁶ and several thousand kilometres of drainage channels act as backstop mechanism ensuring the safe outflow of water should flooding break through. Some countries, such as Bangladesh, have implemented reforestation programs which not only contribute to increased stability of the coastlines and reduce the impacts of sudden-onset disasters, but also serve as an additional source of livelihood for the resident population.²⁸⁷ Other measures with similar effects have been implemented throughout the region resulting in a lower number of environmental migrants originating out of it and easing pressure on former destination countries, such as India.

Similar measures have been taken by the states of the Pacific and Caribbean region, which are complemented by extensive relocation programmes both within the states and beyond

²⁸⁶ K. Warner et al., 'Integrating Human Mobility issues within National Adaptation Plans', *UNU-EHS Publication Series*, Policy Brief no. 9, 2014, p. 45.
Ministry of Environment and Forest (Government of the People's Republic of Bangladesh), *National Adaptation Programme of Action (NAPA)*, 2005, available from <https://unfccc.int/resource/docs/napa/ban01.pdf> (accessed 20 June 2019), pp. 20/25.

their borders. Where feasible, comprehensive Safer Island Strategies, following the role model introduced by the Maldives, have enhanced the safety of the islands' populations through resettling "communities from the smaller, more vulnerable islands [in]to larger, better protected ones" and enable governments to concentrate their country's adaptation efforts.²⁸⁸

Other states, such as China or Mexico and other Central American countries, experience lower environmental migration since establishing enhanced food security programs and counting on livelihoods which have adapted well to the variability in temperature.²⁸⁹ Additionally, strengthened social security systems provide a safety net to vulnerable populations.²⁹⁰

Water management systems in the Middle East contribute to a relaxation of the disputes around the waters of both the Jordan River, and Euphrates and Tigris, and efficient irrigation systems allow for a maximisation of food outcomes.²⁹¹ Together, these mechanisms provide the region with protection against droughts, easing tensions around existential resources and, as a consequence, reduce migratory movements.

The African continent benefits from similar projects on water management and irrigation systems and, as the environmental pressure diminishes, states cooperate with the aim to "safeguard[ing] spaces for the traditional movements of communities, in particular pastoralists, within their country or across borders during times of drought or flooding",²⁹² a vital part of which includes measures of conflict resolution. Other cooperative programmes in the region support the temporary and permanent movement of persons to areas where jobs are available independent of the environment, allowing parts of the population significantly affected by environmental changes to create remittances to their families enabling them to remain on their original homelands.²⁹³

²⁸⁸ Ministry of Environment, Energy and Water (Republic of Maldives), *National Adaptation Program of Action*, 2007, available from <https://unfccc.int/resource/docs/napa/mdv01.pdf> (accessed 20 June 2019), p. 47.

²⁸⁹ Warner et al., 2014, p. 45.

²⁹⁰ Warner et al., 2014, p. 45.

²⁹¹ Warner et al., 2014, p. 45.

²⁹² Warner et al., 2014, p. 43.

²⁹³ Warner et al., 2014, p. 43.

The developed states which are able to adequately compensate for the environmental changes, are only moderately affected by environmental migration, and some of them, such as Europe, Australia, or New Zealand, even profit from extended growing seasons thanks to the higher temperatures.²⁹⁴ Together with the decreasing pressure on their borders, as resilience to environmental changes in the countries of the Global South grows, this has opened the way for a culture of welcome in which the developed states set aside suitable lands for communities in need of relocation beyond their own country. Resettlement programmes coupled with sophisticated participation and integration initiatives prepare the migrants as well as the host populations for the process of planned relocation, ensuring a smooth transition and the safeguarding of human rights.²⁹⁵ Recently established labour migration schemes additionally opened the pathway to regular South-North migration for person whose income opportunities in their countries of origin have diminished. In this regard, Europe represents a particular exemplar, with the rise of Green Parties across European states and on the EU-level continuing since the decisive EU-elections in 2019, resulting in the public rejection of the idea of ‘Fortress Europe’ and a political boost for ecological rights and climate action.

As the technical and scientific knowledge advances, further adaptation measures are constantly developed and implemented in close consultation with affected communities ensuring that local needs are taken into account and all considerations with regard to environmental migration are addressed by policy responses building resilient capacity and organising planned relocation.²⁹⁶

Additionally, a universal disaster response plan ensures effective assistance to and protection of persons displaced by sudden-onset disasters across the world irrespective of whether their movement has been internal or across a border. Standardized temporary and permanent admission schemes guarantee access to all human rights for those displaced.²⁹⁷ However, thanks to the various adaptation measures combined with advanced early

²⁹⁴ Brown, 2008a, p. 19.

²⁹⁵ Warner et al., 2014, p. 43.

²⁹⁶ Warner et al., 2014, p. 43.

²⁹⁷ Warner et al., 2014, p. 45.

warning systems and regional evacuation plans, implementation of the disaster response plan is only rarely necessary.

It is essential to note that even the effective implementation of the instrument on environmental migration can only address the adverse impacts of environmental changes to a certain degree. When changes to the environment are too drastic, the developed states become equally affected and can no longer compensate for their adverse effects. Eventually, the adaptive capacity of populations around the world is exhausted and environmental migration reoccurs – while desirable destination areas diminish. Thus, an instrument on environmental migration is only successful when complemented with genuine mitigation efforts to limit the anthropogenic influence on the environment, in order to largely limit environmental changes to an extent which the international community is able to cope with.

5 POLITICAL FEASIBILITY

From a moral standpoint, there are a number of reasons why states should cooperate in order to achieve an effective instrument of protection for environmental migrants. “*One argument highlights the humanitarian motivation for protecting people who are impacted by [environmental] change [...] the other, and equally compellingly [sic], argument rests on claims for restorative justice, which rests on the rationale that some form of compensation is necessary where involuntary displacement, loss of livelihoods and resettlement occur*”.²⁹⁸ Additionally, security concerns linking environmental migration to conflicts could also provide a persuasive argument for states to agree on an international protection instrument. However, the reality of political will often proves to be different, especially in states which are not directly affected by environmental migration on their territory.

5.1 EUROPEAN UNION

In the EU, environmental migration – or more specifically climate change-induced migration – has been the topic of several policy documents since the 1990s, when the European Parliament first discussed the issue of ‘climate refugees’ in a report on *The Environment, Security and Foreign Policy* in 1999.²⁹⁹ The document recognised the potential impacts of environmental migration on the EU’s development and humanitarian assistance programs, on EU immigration policies as well as on the political stability in other parts of the world.³⁰⁰

Almost 10 years later, in 2007, the European Commission considered various options for EU action in a Green Paper on *Adapting to climate change in Europe*,³⁰¹ which acknowledged that sudden-onset disasters and conflicts over natural resources could lead

²⁹⁸ Zetter, 2010, p. 144.

²⁹⁹ M. Ammer, ‘Klimawandel und Migration/Flucht: Welche Rechte für die Betroffenen in Europa?’, in A. Kallhoff (ed.), *Klimagerechtigkeit und Klimaethik*, Berlin, De Gruyter, 2015, p. 83.

³⁰⁰ Ammer et al., 2014, p. 24.

³⁰¹ Commission of the European Communities, *Adapting to climate change in Europe – options for EU action*, Green Paper, COM(2007) 354 final, 29 June 2007.

to forced migration and internal displacement and recommended that climate migration should be taken into account in the EU's migration management policies.³⁰²

In 2008, the European Commission continued this security-focussed theme in its report on *Climate Change and International Security*, which predicted that the EU “must expect substantially increased migratory pressure”³⁰³ because of environmental migrants and warned that environmental migration will threaten European interests through enhanced conflict potential along the migratory routes.³⁰⁴ The report, furthermore, stressed that the EU should take a leading role regarding the topic of environmental migration by developing “a comprehensive European migration policy, in liaison with all relevant international bodies”.³⁰⁵ During this period, several research projects, such as the Environmental Change and Forced Migration Scenarios (EACH-FOR), were financed to collect information on the relationship between environmental change and forced migration, and the topic was considered of greatest concern to the European Refugee Fund.³⁰⁶

A 2011 study on *Climate Refugees* commissioned by the European Parliament took the discussion even further and analysed possibilities to include environmental migrants under existing international instruments, thereby identifying large protection gaps for this group of migrants in both international and EU law.³⁰⁷

Two years later, in 2013, the EU's Member States agreed on an *EU strategy on adaptation to climate change* accompanied by a Commission Staff Working Document (CSWD) concerned with *Climate change, environmental degradation and migration*. The CSWD used “the broad term ‘environmentally induced migrant’ [...] provisionally as a broad category encompassing all types of migrants moving internally and crossing international

³⁰² M. Mayrhofer and M. Ammer, ‘People moving in the context of environmental change: The cautious approach of the European Union’, *European Journal of Migration and Law*, vol. 16, 2014, p. 395.

³⁰³ European Commission, *Climate Change and International Security*, Paper from the High Representative and the European Commission to the European Council, 2008, p. 7.

³⁰⁴ R. Bär, ‘Klimaflüchtlinge ohne Schutz’, *GLOBAL+*, no. 32., 2008, p. 6; European Commission, 2008, p. 15; Ammer et al., 2014, p. 25.

³⁰⁵ Ammer et al., 2014, p. 25.

³⁰⁶ Mayrhofer and Ammer, 2014, p. 394.

³⁰⁷ Ammer et al., 2014, p. 24.

borders for reasons related to climate change or environmental degradation”³⁰⁸ and recognised the adaptation aspect of migration.³⁰⁹ While the document evidently views migration management as an effective and beneficial way to reduce environmental displacement, the EU’s focus is on environmental migration within states and migration “between developing countries in the same region”³¹⁰ rather than towards the EU.³¹¹ Therefore, environmental migration is mostly considered to be a concern of the external dimension of EU migration policies and, consequently, of EU development cooperation and humanitarian aid policies.³¹²

As the number of refugees arriving in Europe as a consequence of the deterioration of the Syrian civil war began to increase in the beginning of 2015, the European Commission reaffirmed the EU’s international commitments and its role as “a safe haven for those fleeing persecution”³¹³ in the *European Agenda for Migration*. At the same time, the Agenda recognises the need for action against traffickers, smugglers, and irregular migration in general, as well as for securing the EU’s external borders.³¹⁴ The latter call for action can be viewed in the light of an increasing securitisation of migration in the political discourse during this period – a phenomenon, which socially constructs migration as a danger for European societies and their sovereignty.³¹⁵ This is reflected in the public opinion, where immigration ranked as one of the top ten topics European citizens worried about in 2015, its mention rising by seven percentage points since 2012.³¹⁶ Furthermore, this discursive turn can also be noticed in the use of language of both media and politicians, who often revert to linguistic themes related to threats or natural catastrophes, such as ‘wave of refugees’, ‘refugee crisis’, or ‘influx of refugees’,

³⁰⁸ European Commission, *Climate change, environmental degradation, and migration*, SWD(2013) 138 final, 16 April 2013, p. 15.

³⁰⁹ Mayrhofer and Ammer, 2014, p. 421.

³¹⁰ European Commission, 2013, p. 28.

³¹¹ Ammer et al., 2014, p. 32.

³¹² European Commission, 2013, p. 35.

³¹³ European Commission, *A European Agenda on Migration*, COM(2015) 240 final, 13 May 2015, p. 2.

³¹⁴ European Commission, *A European Agenda on Migration*, COM(2015) 240 final, 13 May 2015, p. 6.

³¹⁵ R. Buraczynski, *Die Herstellung von Sicherheit an der EU-Außengrenze*, Wiesbaden, Springer VS, 2015, p. 35; V. Dzihic, C. Günay and D. Pisoiu, ‘Migration managen? Die Widersprüche der EU-Migrationspolitik und ihre Auswirkungen auf die europäische Nachbarschaft’, *öiip Trendbericht*, no. 2, 2018, p. 2.

³¹⁶ European Commission, *Die öffentliche Meinung in der Europäischen Union*, Standard-Eurobarometer 84, 2015, p. 21.

thereby deliberately associating migration with disorder, fear and uncontrollable events.³¹⁷

This view was addressed in 2017 in the European Parliament's most recent resolution considering the issue, which emphasised that responses to migratory challenges "should not focus only on a security-based approach",³¹⁸ but takes up the previous theme of a need for the development cooperation to continuously address climate change as a driver of migration,³¹⁹ with Member States taking on a leading role "in recognising the impact of climate change on mass displacement, as the scale and frequency of displacements are likely to increase".³²⁰ Moreover, the resolution calls on the EU's Member States to implement their commitments for combating climate change under the Paris Agreement and boldly advocates for a "special international protection status which takes account of the specific nature of [the] situation"³²¹ of persons displaced by climate change.

Thus, the consideration of these documents shows that the EU's early approaches framed environmental migration as a security concern, which were later on consolidated by the development approach of the external dimension of migration which "refers to the inclusion of migration and asylum policies into external relations with third countries".³²² Essentially, however, both approaches pursue the objective of reducing immigration to the EU's Member States through strengthened controls within and outside of the EU and fail to take movement towards the EU and the human rights protection of environmental migrants into account.³²³

³¹⁷ J. Klatzer, 'Die "Asylantenflut" in unseren Köpfen', *Kurier*, 15 September 2015, available from <https://kurier.at/politik/inland/macht-der-sprache-die-asylantenflut-in-unseren-koepfen/151.956.717> (accessed 7 July 2019); J. Kallenbrunnen, "'Lawine", "Strom", "Ansturm" – so negative sprechen wir über Flüchtlinge', *Stern*, 13 November 2015, available from <https://www.stern.de/politik/deutschland/fluechtlinge--lawine--strom-und-ansturm---so-negativ-wird-ueber-asylbewerber-gesprochen-6551130.html> (accessed 7 July 2019).

³¹⁸ European Parliament, *Addressing refugee and migrant movements: the role of EU external action*, 2015/2342(INI), 5 April 2017, para 1.

³¹⁹ J. Apap, 'The concept of "climate refugee" – Towards a possible definition', *Briefing*, European Parliament, 2019, p. 9.

³²⁰ European Parliament, 2017, para. 31.

³²¹ European Parliament, 2017, para. 31.

³²² Ammer et al., 2014, p. 27.

³²³ Ammer et al., 2014, p. 27; Mayrhofer and Ammer, 2014, p. 392.

In practice, policies implemented so far are cautious at best and despite several documents calling for a leadership role of the EU and its Member States, the institutional responses have been very reluctant, as the topic takes on a low priority compared to other issues on the EU's agenda.³²⁴

In the absence of an EU-wide agreement, individual Member States have shown various initiatives to protect some groups of environmental migrants in their asylum policies.

Sweden, for example, has introduced a third category of protected persons into its asylum legislation, so that asylum cannot only be granted to refugees and persons in need of subsidiary protection, but also to persons “otherwise in need of protection” including persons affected by sudden-onset disasters and unable to return to their country of origin.³²⁵ However, this provision is of limited scope as it is only applicable, where no protection option within the country of origin exists, and as protection under this provision can be repealed should Sweden's capacity to receive migrants reach its limits.³²⁶ In practice, this provision has, as yet, not been invoked.³²⁷

Finland even offers two forms of protection for persons displaced by environmental disasters. The first is a national temporary protection status, which is granted for up to three years, where “there has been a massive displacement of people in the country [of origin] as a result of an armed conflict, some other violent situation or an *environmental disaster* (emphasis added)”³²⁸ making safe return to the country of origin impossible.

The second option in the Finnish asylum legislation is a humanitarian protection status for any person which “cannot return to his or her country of origin or country of former habitual residence as a result of an *environmental catastrophe* or a bad security situation which may be due to an international or internal armed conflict or a poor human rights situation (emphasis added)”.³²⁹ Similar to the Swedish provision, internal protection

³²⁴ Ammer et al., 2014, p. 26.

³²⁵ Ragheboom, 2017, p. 352.

³²⁶ Ragheboom, 2017, p. 352.

³²⁷ Ragheboom, 2017, p. 352.

³²⁸ M. Cooper, ‘Migration and disaster-induced displacement: European Policy, Practice, and Perspective’, *Center for Global Development Working Paper*, no. 308, 2012, p. 56.

³²⁹ As cited in Ragheboom, 2017, p. 353.

alternatives in the country of origin are viewed as preferable and the provision has, so far, not been used.³³⁰

Several other EU Member States also include some form of humanitarian protection in their asylum laws, which could potentially cover environmental migrants, and some states have even signalled their willingness to recognise environmental migrants as a distinct category in need of protection. In Bulgaria, for instance, the Ministry of Interior has acknowledged natural disasters as causes of migration in its policy statements³³¹ and in Belgium, several attempts were made to pass a resolution urging for an ‘environmental refugee’ status at the UN-, as well as at the EU-level.³³²

Nevertheless, no binding policy progress has been made so far and it seems that the EU and its Member States are willing to implement only incremental changes regarding development cooperation policies, rather than agreeing to new legal instruments on the topic.³³³

5.2 USA

In the last decades, the USA has experienced environmental migration both within its territory, as well as from outside, however, this is not specifically reflected in the country’s migration policies, which contain only scarce references to the issue.

As many other countries, the USA has implemented legislation on temporary protection in the 1990s, which awards a protected status to persons “in the United States who are temporarily unable to safely return to their home country because of ongoing armed conflict, *an environmental disaster*, or other extraordinary and temporary conditions (emphasis added)”.³³⁴

In the case of environmental disasters, temporary protected status needs to be sought for by the government of the country affected by the disaster, in contrast to cases of armed

³³⁰ Cooper, 2012, p. 56; Ragheboom, 2017, p. 353.

³³¹ Cooper, 2012, pp. 53/54.

³³² Cooper, 2012, p. 52.

³³³ Ammer et al., 2014, p. 26; S. Klepp and J. Herbeck, ‘The politics of environmental migration and climate justice in the Pacific region’, *Journal of Human Rights and the Environment*, vol. 7, no. 1, 2016, p. 59.

³³⁴ As cited in Martin, 2010, p. 8.

conflict, where temporary protection is granted unrequested.³³⁵ Notably, this provision is similar to the concept of ‘refugees *sur place*’, and therefore, only applicable to persons who are already present on the USA’s territory at the time the environmental disaster occurs and who are, as a consequence, unable to return to their country of origin.³³⁶ As such, the instrument is not suitable as a response to international environmental migration, where affected populations outside the USA are in need of admission to the country on humanitarian grounds.³³⁷

Furthermore, as the name suggests, the protection is only granted temporarily, so that migration due to permanent environmental changes, such as slow-onset degradation or sea-level rise, is not protected under the provision, and an already granted status can be revoked, if the effects of an environmental disaster continue to persist permanently.³³⁸

Besides the temporary protected status, environmental factors are not mentioned in immigration policies, but attitudes on environmental migration have to be viewed in light of continued restriction of general immigration policies of the current administration under President Donald J. Trump, as well as in the context of the securitised migration discourse, which has transferred globally from the European debates following the increase in refugee arrivals from 2015 onwards. In 2018, for example, a ‘zero-tolerance’ policy was enacted at the US-Mexican border with the objective “to criminally prosecute *everyone* who crossed the border without authorization for the crime of illegal entry (emphasis added)”³³⁹ and the number of refugees admitted to the country for resettlement purposes was decreased by more than half. Furthermore, temporary protected status has been ended for six countries in the same year, affecting several hundred thousand migrants in the USA.³⁴⁰

Future policies with regard to environmental migration are likely to be at least as restrictive, given that climate change has been increasingly framed as a security challenge

³³⁵ Martin, 2010, p. 9; Cohen and Bradley, 2010, p. 111.

³³⁶ Martin, 2010, p. 9.

³³⁷ Martin, 2010, p. 9.

³³⁸ Cohen and Bradley, 2010, p. 111.

³³⁹ S. Pierce, J. Bolter and A. Selee, *U.S. Immigration Policy under Trump: Deep changes and lasting impacts*, Washington D.C., Migration Policy Institute, 2018, p. 5/6.

³⁴⁰ Pierce, Bolter and Selee, 2018, p. 6.

to the USA bearing similarities to terrorism, that needs to be answered through a comprehensive national defence policy, of which development aid is a crucial part.³⁴¹ Thus, the United States Agency for International Development, for example, focuses its work in the context of environmental migration on adaptation strategies in potential countries of origin, emphasising that “*there is a risk of violent conflict if governments or other political systems fail to enable adaptation – whether intentionally, through neglect, or because they do not have the capacity – or if actors actively exploit environmental changes for destructive purposes*”.³⁴²

Such a focus on enhancing adaptive capacities in developing countries suggests that US authorities, like the EU, view environmental migration as occurring either within countries or between countries in the same region, i.e. as South-South migration. This is also reflected in responses to sudden-onset disasters affecting persons within the USA. For instance, after Hurricane Katrina displaced millions of US-residents in 2005, government officials avoided referring to them as IDPs, since according to US-views internal displacement occurs “elsewhere” and is generated by conflict alone.³⁴³ As a consequence, a rights-based approach is not applied to persons internally displaced by environmental disasters.³⁴⁴

However, looking beyond the Trump administration, the USA’s national post-war strategies viewed regular migration as economically desirable and culturally acceptable.³⁴⁵ Under former President Barack Obama, the “nation’s capacity to welcome”³⁴⁶ immigrants was seen as a prerequisite for innovation, economic prosperity and beneficial relations to other countries and immigration reform, which combines “effective enforcement of the law with a pathway to citizenship for those who earn it”,³⁴⁷

³⁴¹ B. Hartmann, ‘Rethinking Climate Refugees and Climate Conflict: Rhetoric, reality and the politics of policy discourse’, *Journal of International Development*, vol. 22, 2010, p. 240.

³⁴² US Aid, *Navigating Complexity: Climate, Migration, and Conflict in a Changing World*, Discussion Paper, Office of Conflict Management and Mitigation, 2016, p. 32.

³⁴³ Cohen and Bradley, 2010, p. 103.

³⁴⁴ Cohen and Bradley, 2010, p. 109.

³⁴⁵ J. Thompson, ‘Die Regierung Trump und die Grand Strategy der USA’, *CSS Analysen zur Sicherheitspolitik*, no. 212, 2017, p. 3.

³⁴⁶ The White House, *National Security Strategy*, Washington D.C., 2010, p. 29.

³⁴⁷ The White House, 2010, p. 15.

was, therefore, an important objective.³⁴⁸ Although such a reform never happened due to substantial political opposition, an end to the restrictive immigration and asylum policies in the USA is conceivable under a new – possibly Democratic – administration, rendering the country’s political majority closer to that of its left-leaning neighbour Canada, where Prime Minister Justin Trudeau successfully navigated the political discourse in the aftermath of the Syrian civil war and ensured that Canada’s position towards refugees and migrants remained open.³⁴⁹

5.3 SMALL ISLAND STATES

As small island states are particularly vulnerable to even small changes in the environment, it is unsurprising that a number of initiatives and strategies exist to enable them to cope with environmental changes, and in particular climate change.

Thus, several governments of small island states, such as the Maldives or Tuvalu, have campaigned for the explicit recognition of the category of ‘climate refugees’ within the international legal system, with the aim to attract international funding for the cause.³⁵⁰ One group of states, for example, advocated for an amendment of the refugee definition in the 1951 Refugee Convention to expand to persons fleeing a “*well-founded fear of life endangerment, harm or loss of life due to severe environmental impact, or due to materials left, existent or being released in the displacement grounds by the state, commercial entities or both*”.³⁵¹

However, such an expansion seems not just problematic in the light of immigration policies growing ever more restrictive but does also not reflect the viewpoint of residents of small island states. Since categorising them as refugees means relegating them to a

³⁴⁸ The White House, 2010, p. 29.

³⁴⁹ M. Carlier, ‘Explaining Differences in the Canadian and American Response to the Syrian Refugee Crisis’, *Virginia Policy Review*, vol. 9, no. 2, 2016, p. 69.

³⁵⁰ A. Thomas and L. Benjamin, ‘Policies and mechanisms to address climate-induced migration and displacement in Pacific and Caribbean small island developing states’, *International Journal of Climate Change Strategies and Management*, vol. 10, no. 1, 2018, p. 90.

³⁵¹ Cohen and Bradley, 2010, p. 129.

victim status, many of the inhabitants of small island states fear that this will create unequal power relations and will lead to a loss of their agency.³⁵²

Other initiatives, such as the Male' Declaration on the Human Dimension of Global Climate Change, have, therefore, focussed their efforts on demanding compensation. Established by the Alliance of Small Island States in 2007 as a re-launch of the 1989 Male' Declaration on Global Warming and Sea Level Rise, the document calls for the solidarity of the international community in enabling small island states to adapt to the effects of climate change.³⁵³ The Declaration stresses that small island states – although contributing only very little to climate change – are disproportionately affected by its effects and, furthermore, demands industrialised states to engage with resultant implications for human rights.³⁵⁴

Additionally, states in the Pacific region are cooperating on strengthening the region's resilience to climate change and its disaster risk management through the *Framework for Pacific Regionalism* and the *Framework for Resilient Development in the Pacific*.³⁵⁵ While the former provides a general regional approach “enabling freer movement of people and goods within and among countries”,³⁵⁶ the latter encourages national policies with regard to climate change-related human mobility, such as labour migration policies and planned relocation.³⁵⁷

Besides these efforts of transnational and regional alliances, small island states have also taken individual measures to enhance their country's ability to cope with the negative effects of climate change.

Apart from local adaptation strategies, the island state of Kiribati has developed a concrete migration strategy, taking a proactive role in shaping the future of its residents.³⁵⁸ Under the motto ‘migrate with dignity’, the government undertakes negotiations with

³⁵² Ragheboom, 2017, p. 512; Thomas and Benjamin, 2018, p. 90.

³⁵³ Klepp and Herbeck, 2016, p. 65.

³⁵⁴ Klepp and Herbeck, 2016, p. 65.

³⁵⁵ Economic and Social Commission for Asia and the Pacific, *Migration and climate change in Asia and the Pacific*, E/ESCAP/GCM/PRP/5, 5 September 2017, para. 45.

³⁵⁶ Economic and Social Commission for Asia and the Pacific, 2017, para. 46.

³⁵⁷ Economic and Social Commission for Asia and the Pacific, 2017, para. 47.

³⁵⁸ Klepp and Herbeck, 2016, p. 55.

various neighbouring countries about regional migration, community relocation and even new forms of citizenship.³⁵⁹ Aiming “to promote a socially acceptable, culturally sensitive and solidarity-expressing way of coping with the current and future effects of climate change”,³⁶⁰ the government also foresees enhanced possibilities for individual labour migration through the ‘up-skilling’ of its population.³⁶¹

This long-term planning is in line with the population’s refusal of a humanitarian or refugee status implying a life in dependence on (neighbouring) host societies and could serve as a role model for other regions affected by the adverse effects of climate change and prone to environmental migration.³⁶²

In addition to appealing to countries like Australia and New Zealand, the government of Kiribati has engaged in concrete negotiations with the Republic of Fiji over the acquisition of land in order to ensure Kiribati’s food security for the time being, but with the potential to be used for community resettlement in the future, which would bear the advantage of remaining in a similar climate and, thus, being able to maintain the current standard of living as well as Kiribati’s culture.³⁶³

Besides potentially becoming a host state to inhabitants of Kiribati, Fiji is also developing its own guidelines for relocation under the Climate Change division of the Ministry of Foreign Affairs.³⁶⁴ These relocation schemes include comprehensive vulnerability assessments in order to identify communities where relocation promises to be the best adaptation strategy.³⁶⁵

Similar resettlement strategies are adopted for the Maldives, where the government is implementing a ‘Safer Island Strategy’.³⁶⁶

³⁵⁹ Klepp and Herbeck, 2016, p. 56.

³⁶⁰ Klepp and Herbeck, 2016, p. 56.

³⁶¹ U. Kothari, ‘Political discourses of climate change and migration: resettlement policies in the Maldives’, *The Geographical Journal*, vol. 180, no. 2, 2014, p. 135.

³⁶² Klepp and Herbeck, 2016, pp. 55 and 66.

³⁶³ Klepp and Herbeck, 2016, pp. 69/70.

³⁶⁴ Klepp and Herbeck, 2016, p. 70.

³⁶⁵ Thomas and Benjamin, 2018, p. 94.

³⁶⁶ Kothari, 2014, p. 135.

This strategy aims to relocate residents which are currently living on more than 200 islands and consolidate the population to around 10 of the bigger islands, considered to already be more resilient in the face of the adverse effects of environmental changes.³⁶⁷ Additionally, such a relocation would allow further adaptation strategies to be focussed on a smaller number of islands as well as enhancing the capacity of the state's social system.³⁶⁸

A separate fund has been established in order to finance the consolidation of the population onto fewer safe islands, which is also destined to “buy new homeland elsewhere as an insurance policy in the event of wholesale displacement”,³⁶⁹ comparable to the acquisition of land by Kiribati.

5.4 DEVELOPMENTS ON THE INTERNATIONAL LEVEL

Looking at the general attitudes of states in the area of migration and asylum, political will is evidently characterised by a reluctance to generate more concessions, as decisions over who is allowed to enter and stay on a state's territory are attributed to the state's sovereignty.³⁷⁰ Since restrictions under environmental law, such as reductions on greenhouse gas emissions, are often perceived to be negatively influencing economic power and competitiveness, states are almost equally reluctant to implement provisions in this regard. It is, thus, unsurprising that little global progress has been made on the hybrid topic of environmental migration.³⁷¹

Instead, state practice in the context of environmental migration is defined by *ad hoc* actions, as well as temporary humanitarian measures by individual states, which at the very least signal that the seriousness of the issue has been recognized by the international community.³⁷² Indeed, the topic has gained growing attention in various UN activities, such as the *UN International Strategy for Disaster reduction, the World Humanitarian*

³⁶⁷ Kothari, 2014, p. 130.

³⁶⁸ Kothari, 2014, p. 135.

³⁶⁹ Kothari, 2014, p. 135.

³⁷⁰ Ragheboom, 2017, p. 522.

³⁷¹ Ragheboom, 2017, p. 522.

³⁷² Klepp and Herbeck, 2016, p. 61; Ragheboom, 2017, p. 422.

Summit or the ongoing negotiations under the UNFCCC (see Chapter 3.4 for more details on the UNFCCC).³⁷³

Consequently, the general global standstill on this topic is marked by some notable exceptions. The first one is the Nansen Initiative, which is a state-led consultative platform, “aimed at building consensus among interested states on definitions and on effective means to address cross-border displacement in the context of sudden- and slow-onset disasters.”³⁷⁴ The initiative resulted in an *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change* supported by several international organisations and 109 states, such as the USA, the Member States of the European Union, several small island states, New Zealand and Australia.³⁷⁵ In 2016, it was followed by the Platform on Disaster Displacement with the objective to support states in the implementation of the Nansen initiative’s protection agenda.³⁷⁶ The platform’s success is presumably mostly attributable to its focus on regional dialogue and sharing of practices to avert and address disaster displacement, while it is at the same time not seeking to enforce new legal protection provisions.³⁷⁷

The *Sendai Framework for Disaster Risk Reduction 2015-2030* is also concerned with addressing the drivers of disaster displacement.³⁷⁸ The non-binding agreement calls for international cooperation for reducing the impacts of disasters on people, as well as infrastructure and advocates for national and local strategies, such as early warning systems.³⁷⁹

Similarly, the *Global Compact for Safe, Orderly and Regular Migration* endorsed in 2018 by the UN General Assembly also focuses on regional strategies and stresses the importance of adaptation and resilience capacities in the context of environmental

³⁷³ Künzel, 2017, p. 18.

³⁷⁴ Ragheboom, 2017, p. 529.

³⁷⁵ G. Bettini, ‘Where Next? Climate Change, Migration, and the (Bio)politics of Adaptation’, *Global Policy*, vol. 8, no. 1, 2017, p. 35; Ragheboom, 2017, p. 529.

³⁷⁶ Platform on Disaster Displacement, *PDD Fact Sheet*, 2018, available from https://disasterdisplacement.org/wp-content/uploads/2015/03/17072017_PDD_Fact-Sheet.pdf (accessed 7 July 2019).

³⁷⁷ Economic and Social Commission for Asia and the Pacific, 2017, para. 38; Künzel, 2017, p. 18.

³⁷⁸ Economic and Social Commission for Asia and the Pacific, 2017, para. 35.

³⁷⁹ Economic and Social Commission for Asia and the Pacific, 2017, para. 35.

migration.³⁸⁰ It is particularly important, since it marks the first – albeit non-binding – agreement calling for international cooperation in order to “*address migration movements, such as those that may result from sudden-onset and slow-onset natural disasters, the adverse effects of climate change, environmental degradation, as well as other precarious situations, while ensuring the effective respect, protection and fulfilment of the human rights of all migrants*”.³⁸¹

These examples show that – although efforts on the international level exist – they have not reached beyond continuous dialogue and non-binding recommendations on the topic. Translating these recommendations into binding normative progress and measures for implementation, however, seems to be more promising, when focussed on regional and bilateral arrangements.³⁸²

EXCURSUS: CLIMATE ACTION

Besides looking at efforts to manage environmental migration and to protect populations affected, international actions to minimise human movement also need to be taken into account. In order to limit the adverse effects of climate change to a degree that the international community is able to cope with, mitigation measures combatting climate change, such as states’ commitments under the Paris Agreement, play an important role.³⁸³

However, there are two main obstacles for effective climate action. One is the fact, that any favourable policy adopted requires far-sightedness, as it will only show its effects at some point in the mid- to long-term future, while temperatures and sea-levels continue to rise and climate change worsens in the short-term due to *inter alia* the concentration of greenhouse gases in the atmosphere from past inaction.³⁸⁴ The other obstacle stems from the nature of mitigation measures, whose costs arise for the particular country implementing them, whereas their benefits, such as a reduction of greenhouse gas

³⁸⁰ United Nations General Assembly, *Global Compact for Safe, Orderly and Regular Migration*, A/CONF.231/3, 30 July 2018, para. 18(i)/(k).

³⁸¹ United Nations General Assembly, 2018, para. 18(h).

³⁸² Interview with Dr. Margit Ammer, Vienna, 11 June 2019.

³⁸³ Künzel, 2017, p. 19.

³⁸⁴ Dyer, 2008, p. 165.

emissions, is distributed globally. This means that “the optimal strategy for each country is to get other countries to cut their emissions while each country does nothing”.³⁸⁵ Adaptation measures, to the contrary, concentrate both costs and benefits in the respective country adopting them and, thus, are more desirable from a game-theoretic perspective.

Although the EU has only achieved a medium rating for its levels of greenhouse gas emissions in the latest Climate Change Performance Index (CCPI) 2019, which “evaluates and compares the climate protection performance of 56 countries and the EU, which are together responsible for more than 90% of global greenhouse gas (GHG) emissions”,³⁸⁶ its overall rating has improved by five places from the year before to an overall high performance.³⁸⁷ This is mostly due to a high rating of its climate policy, which has been defined by a European Commission proposal in late 2018 laying out a long-term strategy for the EU to become climate-neutral by the year 2050.³⁸⁸ The implementation of this proposal would “enable the EU to deliver on its contribution under the Paris Agreement to reduce emissions by at least 40% by 2030, compared to 1990”³⁸⁹ and would strengthen the EU’s proactive role in international climate diplomacy ahead of the UN Climate Summit later in 2019. However, it was vetoed at an EU Council Summit at the end of June 2019 by the representatives of Poland, Hungary, Czechia and Estonia due to disagreements on the specific time frame.³⁹⁰ The other 24 EU Member States, nevertheless, plan to adhere to the proposal. This newly awakened commitment of states to the goals of the Paris Agreement can be explained by the growing pressure from civil society, particularly from the global *Fridays for Future* movement initiated by 16-year-old Swedish climate activist Greta Thunberg, and is reflected in the results of the

³⁸⁵ Dyer, 2008, p. 169.

³⁸⁶ J. Burck et al., *Climate Change Performance Index – Results 2019*, Germanwatch, New Climate Institute and Climate Action Network International, 2018, p. 4.

³⁸⁷ Burck et al., 2018, p. 17.

³⁸⁸ Burck et al., 2018, p. 17; European Commission, *A clean planet for all*, COM(2018) 773 final, 28 November 2018.

³⁸⁹ European Commission, *Going climate-neutral by 2050*, Luxembourg, Publications Office of the European Union, 2019, available from https://ec.europa.eu/clima/sites/clima/files/long_term_strategy_brochure_en.pdf (accessed 7 July 2019), p. 6.

³⁹⁰ D. Keating, ‘EU Decarbonization Plan for 2050 collapses after Polish Veto’, *Forbes*, 20 June 2019, available from <https://www.forbes.com/sites/davekeating/2019/06/20/eu-decarbonisation-plan-for-2050-collapses-after-polish-veto/#4454992130b2> (accessed 3 July 2019).

latest EU elections in May 2019, where the Green Party/EFA gained a considerable number of votes.³⁹¹ Particularly noteworthy in this regard is Germany, where the Green Party ranked second with a 10 percent plus in votes compared to the previous election period from 2014 to 2019.³⁹² One of the party's primary concerns is the guarantee of ecological and development rights with objectives, such as poverty reduction, food security, protection of natural means of subsistence through climate action, or combatting desertification.³⁹³ It is, therefore, conceivable that climate action, and related policies on environmental migration, will receive a higher priority on the future agenda, especially if endorsement of the Green Parties continues to grow across the EU.

In stark contrast to the EU, the USA ranks second to last in the overall CCPI ranking, meaning that it has been outpaced even by countries like China and the Russian Federation, whose emission targets are presumed to be highly insufficient to reach the objectives of the Paris Agreement.³⁹⁴ Moreover the country's climate policy ranks lowest in the CCPI due to President Trump's denying stance on climate change and his announcement that the USA will be ceasing the implementation of its commitments under the Paris Agreement, as, according to the President, it "disadvantages the United States to the exclusive benefit of other countries".³⁹⁵

Despite this withdrawal on the federal level, however, subnational efforts to reduce "greenhouse gas emissions consistent with the goals of the Paris Agreement",³⁹⁶ such as the coalition of 24 Governors under the *United States Climate Alliance*, exist. The states of the coalition reduced their emissions by 14 percent in the period between 2005 and 2016, lying 3 percentage points above the national average, and are estimated to

³⁹¹ European Parliament, *2019 European election results*, available from <https://election-results.eu/european-results/2019-2024/> (accessed 1 July 2019).

³⁹² European Parliament, *2019 European election results – Germany*, available from <https://election-results.eu/national-results/germany/2019-2024/> (accessed 1 July 2019).

³⁹³ BÜNDNIS 90/DIE GRÜNEN, *Die Zukunft ist grün – Grundsatzprogramm von BÜNDNIS 90/DIE GRÜNEN*, Berlin, Kompakt-Medien, 2002, pp. 167 and 169.

³⁹⁴ Burck et al., 2018, p. 7.

³⁹⁵ C. Borchers and A. Phillips, 'Transcript: President Trump's remarks on leaving the Paris climate deal', *Washington Post*, 1 June 2017, available from https://www.washingtonpost.com/news/the-fix/wp/2017/06/01/transcript-president-trumps-remarks-on-leaving-the-paris-climate-deal-annotated/?noredirect=on&utm_term=.9a3d1e3506c3 (accessed 1 July 2019).

³⁹⁶ United States Climate Alliance, *2019 Fact Sheet*, 2019, available from <https://www.usclimatealliance.org/us-climate-alliance-fact-sheet> (accessed 7 July 2019), p. 1.

accomplish an overall reduction of greenhouse gas emissions of up to 25 percent below 2005 levels by 2025.³⁹⁷

This clearly shows that positive trends in the context of climate change mitigation exist, but further actions are needed to fully address the significant gap between necessary reductions and current greenhouse gas emissions.

³⁹⁷ United States Climate Alliance, p. 1.

6 CONCLUSION

With 17.2 million people internally displaced by disasters in 2018 alone³⁹⁸ and in light of the progression of climate change, environmental migration proves to be one of the most pressing international issues of the years to come. As national migration policies have grown ever more restrictive in states of both the Global North and the Global South and *ad hoc* solutions will prove to be unsustainable in the long-term, migrants more often than not find themselves stuck in a political limbo between uninhabitable environments and loss of their means of subsistence at their places of origin, on the one hand, and no internationally binding instrument safeguarding their human rights and ensuring their ability to adapt or relocate, on the other hand. This raises the question of how the human rights of environmental migrants can be guaranteed by instruments of international law, such as the Guiding Principles on Internal Displacement, the 1951 Geneva Convention relating to the Status of Refugees and others.

6.1 RECAPITULATION

The literature on environmental migration is divided between sceptics who think that environmental factors cannot be determined as causing migration due to its multicausal nature, and alarmists who advocate for the recognition of environmental factors as predominant causes for population movements. While it is true that the decision to migrate can be triggered by socio-economic, demographic, political or environmental drivers, changes to the environment have an additional reinforcing influence on the other drivers and are, therefore, worth particular consideration. Given the lack of agreement on terms and definitions in the debate and in order to ensure a comprehensive approach to the phenomenon of environmental migration, this thesis defines environmental migrants in line with the definition by the International Organization for Migration as “*person[s] or group(s) of persons, who predominantly for reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are forced to leave*

³⁹⁸ Internal Displacement Monitoring Centre, 2019, p. 1.

*their places of habitual residence, or choose to do so, either temporarily or permanently, and who move within or outside their country of origin or habitual residence”.*³⁹⁹

This definition highlights that environmental migration encompasses persons who move due to both sudden- and slow-onset disasters, independent of the location of their decision on the voluntariness spectrum, the duration of their stay, or whether they move internally or across international borders.

When looking at the numbers of persons affected, it quickly becomes evident that environmental migration is an issue of global scope. In 2017, 18.8 million people have been internally displaced by sudden-onset disasters and droughts in 135 countries worldwide. However, almost half of those displacements occurred in East Asia and the Pacific region and another quarter is accounted for by displacements occurring in the Americas. The numbers also show that persons living in poverty and, consequently, developing states are disproportionately affected by changes to the environment.

Evidently, this is also the part of the population, which is in the greatest need of rights protection, although human rights are at stake for all groups of environmental migrants. Where people are moving as immediate response to disasters, the protection of life, security of person, physical integrity and dignity, as well as the protection of rights related to basic necessities are of utmost priority. The protection of other economic, social and cultural, and civil and political rights grows more important as the duration of the migratory situation lasts, with property rights and issues of citizenship being of particular concern.

This thesis discussed four existing instruments of international law that could potentially be expanded to cover the human rights of environmental migrants. The first one, the Guiding Principles on Internal Displacement, is an instrument of soft law, which explicitly mentions natural disasters as a cause of migration and contains extensive provisions on human rights protection before, during and after displacement. While the instrument itself is very useful and promising for environmental migrants, only very few states have translated the Guiding Principles into binding national legislation, and even

³⁹⁹ International Organization for Migration, 2019, p. 62.

fewer have included natural disasters, and instead have focussed on conflict IDPs only. Moreover, the Guiding Principles only apply to populations moving within their own state. Although internal environmental migrants are predicted to constitute the majority of environmental migrants, cross-border movement also needs to be addressed.

The Refugee Convention codifies the right to seek asylum from persecution for reasons of race, religion, nationality, membership of a particular social group and political opinion in a state other than the state of origin. The issue with this instrument is, that environmental factors apply indiscriminately, and so the environment itself does not persecute anyone. Therefore, protection under the Refugee Convention only exists in cases where a state's acts or omissions use environmental factors in a persecutory manner. However, approaches to define environmental migrants as a particular social group based on the disproportionate vulnerability of persons living in poverty could bear some potential, if further strengthened in the political debate.

Complementary protection provisions have shown to be less suitable for guaranteeing the human rights of environmental migrants, even though they extend states' obligations beyond the 'refugee' category. They are based on the principle of *non-refoulement* for persons who face the risk of arbitrary deprivation of life or of being subjected to torture and other cruel, inhuman or degrading treatment when returned to their country of origin. Although environmental factors evidently impose suffering upon affected populations, the current interpretation of international law does not perceive environmental factors as severe enough to reach the threshold of torture.

Lastly, the UNFCCC is an instrument of international environmental law, setting out general interests and shared goals of the international community in the context of climate change. Although it contains a number of principles relevant for the protection of environmental migration, such as the principle of common, but differentiated responsibilities and respective capabilities, explicit reference to migration only appears in the subsequent Cancun and Paris Agreements.

Thus, a clear protection gap exists with regard to environmental migrants and the various shortcomings of the instruments discussed showcase the urgent need for a tailored international instrument. Such a document not only needs to set out provisions for disaster

response, but also needs to combine measures to strengthen resilience and build adaptive capacities, as well as measures enabling planned relocation. The negotiation of such an agreement could prevent future conflicts and violence, inevitably occurring in a world where both inhabitable and cultivatable land and resources of subsistence are scarce, and instead promotes international cooperation to prevent environmental migration from happening in the first place and to achieve successful integration of relocated populations.

In theory, such an agreement is desirable for states with regard to humanitarian motivations, restorative justice considerations or security concerns. In reality, however, states' politics have shown to be different.

The EU has discussed environmental migration in several policy documents since the 1990s, the most important of which is a Commission Staff Working Document from 2013. The document clearly outlines the EU's stand on the issue focusing on population movements within states and between states of the same region, rather than concerning itself with environmental migration internationally or towards the EU. While some Member States have, nonetheless, addressed environmental migration in their national asylum policies, no EU-wide agreement exists.

In the USA, a temporary protection status exists for persons already present on US territory when an environmental disaster occurs in their country of origin rendering them unable to return. Besides this provision, environmental migration is not explicitly mentioned in its national legislation. In the light of general asylum and migration policies growing ever more restrictive under the current Trump administration, it seems, however, rather unlikely that the country would enter into any commitment on this topic in the near future.

Both positions have to be seen in the context of an ongoing securitisation of the migration debate resulting from an increase in refugee arrivals from 2015 onwards, which has lead media, politicians and the public opinion to compare the perceived threats arising from migration to that of terrorism. From this, as well as both the EU's and the USA's focus on development policies to enhance adaptation capacities in countries of the Global South, it seems unlikely that they would agree to open their borders for extensive resettlement or labour migration programmes in the context of environmental migration.

However, international cooperation on financing adaptation and possibly mitigation measures in the developing countries seems less far-fetched, considering that a reduction in environmental migration additionally defeats security concerns of Western nations.

Unsurprisingly, small island states – which are among the countries most affected by environmental migration – have started various initiatives to make the topic a global agenda. Some island states have advocated for amending the definition of the Refugee Convention to include a new category of ‘climate refugees’, while others have called for international solidarity in order to enable small island states to effectively adapt to the adverse impacts of climate change. Additionally, some states have taken national measures, such as relocation plans and land purchases to ensure that their populations can ‘migrate with dignity’.

On the international level, the global standstill is characterised by two major exceptions. The Nansen Initiative and its follow-up, the Platform on Disaster Displacement, provide a forum aimed at building consensus on a definition and effective means to address cross-border migration in the context of slow- and sudden-onset disasters. Furthermore, recommendations on environmental migration also found their way into the Global Compact for Safe, Orderly and Regular Migration, the first agreement “covering all dimensions of international migration in a holistic and comprehensive manner”.⁴⁰⁰ Nevertheless, efforts on the international level consist merely of continuous dialogues, while normative progress seems to be more likely on the regional or bilateral level.

Summing up, this thesis has shown that – although environmental migration is a very pressing issue – international law does not yet adequately guarantee the human rights of environmental migrants and that the political will to negotiate an urgently needed new instrument addressing this protection gap seems to be rather limited.

6.2 OUTLOOK: PROTECTION OF TRAPPED POPULATIONS

Although the focus of this thesis is on the human rights protection of environmental migrants, it is noteworthy that the relation between environmental factors and migration

⁴⁰⁰ International Organization for Migration, *Global Compact for Migration* [website], available from <https://www.iom.int/global-compact-migration> (accessed 7 July 2019).

can also be an impeding one. As changes to the environment reduce livelihoods and, therefore, household capital for populations depending on the environment for their subsistence, some parts of the population are faced with limited financial means, which are to a certain extent necessary in order to be able to migrate.⁴⁰¹

Thus, another protection gap arises in the context of environmental migration for persons “who are unable to migrate and who become trapped in parlous environmental circumstances”.⁴⁰² Persons belonging to vulnerable groups, for example due to their age, gender or lack of social networks, are disproportionately affected by changes to the environment and, at the same time least able to migrate.⁴⁰³ So, even though their best way of adapting to the adverse consequences of environmental change would be to migrate, this vulnerability makes them particularly likely to belong to ‘trapped populations’ and to be “at the epicentre of humanitarian emergencies (e.g. famine and starvation) that could be avoided by migrating”.⁴⁰⁴

It is important that the human rights of this group of persons are not overlooked when discussing environmental migration and that policies focus on assisting them in adaptation efforts, as well as on reducing structural and legal barriers to migration.⁴⁰⁵

⁴⁰¹ Zetter, 2009, p. 402.

⁴⁰² Foresight, 2011, p. 29.

⁴⁰³ Zetter, 2009, p. 402; Zetter, 2017, p. 25.

⁴⁰⁴ R. Nawrotzki and J. DeWaard, ‘Putting trapped populations into place: climate change and inter-district migration flows in Zambia’, *Regional Environmental Change*, vol. 18, no. 2, 2018, p. 534.

⁴⁰⁵ Nawrotzki and DeWaard, 2018, p. 534.

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