

THE RELEVANCE OF CLIMATE CHANGE RELATED MOBILITY SOFT-LAW DEVELOPMENTS TO THE DRY CORRIDOR OF CENTRAL AMERICA

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INTRODUCTION

Migration flows in the Americas have increased in the past decade.¹ It has been widely documented that violence in Central America is one of the main reasons of why people leave their places of origin.² Yet the causes of migration are more diverse and include the impacts of climate change in the region,³ such as the effects of drought and changing weather patterns in the Dry Corridor of Central America.⁴ This situation poses multiple challenges to both the countries of origin of migrants and the countries of their destination. For example, there may be questions about the legal status of the people displaced, what their rights are, and the scope of protections they should receive.

The trend in recent developments in international law is towards a stronger recognition of the connection between climate change and human mobility, and, therefore, the need to grant protections to people displaced by the effects of climate change, such as the obligation to observe the *non-refoulement* principle and also to grant some form of humanitarian protection. There has been rich debate on whether the refugee protections framework is adequate to address the phenomenon of climate change-related mobility, as well as an important development of soft-law instruments that support increased awareness of the particular needs of displaced populations.

In order to have a clearer picture of the scope of the soft-law developments regarding climate change-related displacement, Sections I, II, III, and IV of this paper will cover the most relevant initiatives and instruments in international law, briefly touching on some important domestic and regional examples.

1. Dep't of Econ. & Soc. Affairs, Population Div., Int'l Migration 2019: Rep., U.N. Doc. ST/ESA/SER.A/438, at 6 (2019).

2. *9 Questions (and Answers) About the Central American Migrant Caravan*, WOLA (Oct. 22, 2018), <https://www.wola.org/analysis/9-questions-answers-central-american-migrant-caravan/>; *Central American Migration: Root Causes and U.S. Policy*, CONG. RSCH. SERV. (Jun. 13, 2019), <https://fas.org/sgp/crs/row/IF11151.pdf>.

3. Francesco Bassetti, *Environmental Migrants: Up to 1 Billion by 2050*, FORESIGHT (May 22, 2019), <https://www.climateforesight.eu/migrations-inequalities/environmental-migrants-up-to-1-billion-by-2050/>.

4. Food & Agric. Org. of the U.N. [FAO], *Dry Corridor Central America, Situation Rep. 1* (June 2016), <http://www.fao.org/3/a-br092e.pdf>.

But how are these dynamic developments relevant to the context of the Americas? Section V will discuss the characteristics of the effects of climate change in El Salvador, Guatemala, and Honduras, countries referred to as the Northern Triangle of Central America.⁵ Along with Nicaragua, these countries form the geographical region of the Dry Corridor.⁶ Although Nicaragua has also seen an increase in migration flows, the focus will be on the first three countries because they have experienced even larger movements, and because they also share similar social characteristics.⁷ For the purpose of this paper, both terms will be used interchangeably, but when referring to the Dry Corridor, it will be in reference only to El Salvador, Guatemala, and Honduras unless otherwise specified.

Section V will also describe the legal frameworks that grant humanitarian protections in Mexico and the United States and the role of these countries as the destinations of people fleeing Dry Corridor countries for a combination of factors in which drought and lack of food security, as consequences of climate change, act as threat multipliers to an already complex scenario.⁸ This overlap and the lack of proper data documenting the links between the effects of climate change in the region, violence and migration, may jeopardize the effects of climate change, which are often overlooked in the process of tackling the root causes of migration from the Dry Corridor.

5. FAO, ESTUDIO DE CARACTERIZACIÓN DEL CORREDOR SECO CENTROAMERICANO 8 (Dec. 2012), https://reliefweb.int/sites/reliefweb.int/files/resources/tomo_i_corredor_seco.pdf.

6. *Id.*

7. Allison O'Connor et al., *Central American Immigrants in the United States*, MIGRATION POL'Y INST. (Aug. 15, 2019), <https://www.migrationpolicy.org/article/central-american-immigrants-united-states-2017>.

8. INT'L ORG. FOR MIGRATION & WORLD FOOD PROGRAMME, HUNGER WITHOUT BORDERS, THE HIDDEN LINKS BETWEEN FOOD INSECURITY, VIOLENCE AND MIGRATION IN THE NORTHERN TRIANGLE OF CENTRAL AMERICA 24 (2016), https://documents.wfp.org/stellent/groups/public/documents/liaison_offices/wfp277544.pdf.

I. THE TERMS “ENVIRONMENTAL REFUGEES,” “ENVIRONMENTAL MIGRANTS,” AND “CLIMATE CHANGE RELATED DISPLACEMENT.”

A. *Displacement and Climate Change*

In 1985, Hassam El-Hinnawi, a researcher at the United Nations Environment Programme (“UNEP”), used the term “environmental refugees” to refer to people “who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardised their existence and/or seriously affected the quality of their life.”⁹ This term sought to emphasize the impacts of unrestrained development and pollution on certain populations.¹⁰

In the more than three decades that have followed the appearance of the “environmental refugee” concept, an ongoing debate has persisted over the particular circumstances that people being forced to leave their places of origin face and the protections to which they are entitled. The label that people under these circumstances receive has also been a matter of debate, especially because the degree of protection may vary if they qualify as “refugees” under the 1951 Refugee Convention.¹¹ Multiple scholars have used different terms to define the populations that leave their places of origin, either within the same country or crossing international borders.¹² Some examples are ecomigrants, climate refugees, or climate displacees.¹³

Other scholars prefer the use of broader concepts, so they place the emphasis on the phenomenon rather than on the population. For example, Robert McLeman and François Gemenne refer to the phenomenon as “environmental migration

9. Benoît Mayer, *Definitions and Concepts*, in ROUTLEDGE HANDBOOK OF ENVIRONMENTAL DISPLACEMENT AND MIGRATION 323, 324 (Robert McLeman & François Gemenne eds., 2018).

10. JANE MCADAM, CLIMATE CHANGE, FORCED MIGRATION, AND INTERNATIONAL LAW 39-40 (2012) [hereinafter CLIMATE CHANGE, FORCED MIGRATION].

11. *Id.* at 46, 48.

12. Robert McLeman & François Gemenne, *Environmental Migration Research*, in ROUTLEDGE HANDBOOK OF ENVIRONMENTAL DISPLACEMENT AND MIGRATION 3, 4 (Robert McLeman & François Gemenne eds., 2018).

13. *Id.*

and displacement.”¹⁴ Jane McAdam uses the term “climate change displacement.”¹⁵ McLeman and Gemenne explain that, in selecting this term, they seek to provide “a broad but clearly delineated description of the phenomenon that is easily recognizable and does not carry any specific legal implications.”¹⁶

Similarly, McAdam points out that the term “climate change refugee” has been used to describe populations that “will be forced to leave their homes as a result of climate change impacts.”¹⁷ McAdam considers that this term could be useful for political or advocacy purposes; however, she notes that the term is flawed because it projects a sense of helplessness that can be offensive to some populations, especially in the Pacific Islands.¹⁸ After extensive research in the Pacific Islands of Kiribati and Tuvalu, McAdam explains that this term is rejected by the same population it seeks to define.¹⁹ She concludes that people from those islands do not have a desire to leave their places of origin, but rather they are forced to escape.²⁰

Other scholars suggest that the use of a single term, such as “climate displaced,” may be misrepresentative because protection challenges may be different depending on the reason for displacement.²¹

Although there is not an internationally recognized definition to address the movement of people due to climate change, the International Organization for Migration (“IOM”)²² suggested the following working definition:

14. *Id.*

15. MCADAM, CLIMATE CHANGE, FORCED MIGRATION, *supra* note 10, at 39 (discussing the application of international refugee law to “people displaced by the impacts of climate change.”).

16. McLeman & Gemenne, *supra* note 12, at 4.

17. MCADAM, CLIMATE CHANGE, FORCED MIGRATION, *supra* note 10, at 39.

18. *Id.* at 40–41.

19. *Id.* at 40.

20. *Id.* at 41.

21. Elizabeth Ferris & Jonas Bergmann, *Soft Law, Migration and Climate Change Governance*, 8 J. HUM. RTS. & ENVIRONMENT 7 (2017); MCADAM, CLIMATE CHANGE, FORCED MIGRATION, *supra* note 10, at 40.

22. *Environmental Migration*, ENV’T MIGRATION PORTAL, <https://environmental-migration.iom.int/environmental-migration> (last visited Apr. 10, 2020).

Environmental migrants are persons or groups of persons who, predominantly for reasons of sudden or progressive change in the environment that adversely affects their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad.²³

Regardless of labels, there is consensus that populations are being displaced within their same countries and internationally due to climate change, whether climate change is a direct or indirect factor in such movement.²⁴ Thus, international cross-border movement in the context of climate change has been considered a normative gap²⁵ in the international protection regime.²⁶

B. *Types of Displacement*

1. *Internal Displacement*

The vast majority of climate-related movement takes place within the same country.²⁷ Although people moving under these circumstances are, in principle, covered by existing international human rights law, those protections are weak in implementation. In 1998, the United Nations (“U.N.”) adopted the Guiding Principles on Internal Displacement, a compilation of legal norms “relevant to the needs and rights of the internally displaced and

23. *Id.*

24. Walter Kalin & Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change Normative Gaps and Possible Approaches*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES 58 (Feb. 2012), <https://www.unhcr.org/4f33f1729.pdf>.

25. See Volker Turk & Rebecca Dowd, *Protection Gaps*, THE OXFORD HANDBOOK OF REFUGEE AND FORCED MIGRATION STUDIES (Elena Fiddian-Qasimiyeh et al. eds., 2014), <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-024> (last visited Sept. 14, 2020).

26. Kalin & Schrepfer, *supra* note 24, at 40, 42.

27. Brookings Project on Internal Displacement, *Climate Change and Internal Displacement* 1 (Oct. 2014), <https://www.brookings.edu/wp-content/uploads/2016/06/Climate-Change-and-Internal-Displacement-October-10-2014.pdf>.

to the corresponding duties and obligations of States and the international community for their protection and assistance.”²⁸

The Principles are drawn from existing international human rights, humanitarian law, and refugee law and have been recognized by the international community.²⁹ Two particular rights applicable to internal migration are the right to freedom of movement and the right to choose one’s residence.³⁰ Implementation of the Principles is a challenge because they remain a soft law instrument.³¹

The Internal Displacement Monitoring Centre (“IDMC”) estimated that there were 28 million new displacements across 148 countries and territories in 2018.³² Out of these, 10.8 million new displacements were due to conflict and 17.2 million new displacements were due to disasters, 16.1 million of which were for weather related events, including sudden-onset and slow-onset events.³³

Although there are data gaps,³⁴ internal displacement has also been reported in high numbers in the three countries of the Northern Triangle of Central America (“NTCA”).³⁵ The latest estimates available from December 2018 show that El Salvador recorded approximately 246,000 displacements,³⁶ Honduras

28. Francis M. Deng, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, Addendum: Guiding Principles on Internal Displacement*, U.N. Commission on Human Rights 2–3 (Feb. 11, 1998), <https://www.refworld.org/docid/3d4f95e11.html>.

29. See Brookings Project on Internal Displacement, *supra* note 27, at 7.

30. Kalin & Schrepfer, *supra* note 24, at 24.

31. *Id.* at 30.

32. Internal Displacement Monitoring Centre, *Global Report on Internal Displacement* 5 (May 2019), <https://www.internal-displacement.org/sites/default/files/publications/documents/2019-IDMC-GRID.pdf>.

33. *Id.* at 6–7 (weather-related events recorded in the IDMC data include storms, floods, cyclones, hurricanes, droughts, wildfires, landslides, and extreme temperatures).

34. See Álvaro Sardiza Miranda et al., Internal Displacement Monitoring Centre, *Painting the Full Picture, Persistent Data Gaps on Internal Displacement Associated with Violence in El Salvador, Guatemala and Honduras* 5, 25 (Nov. 2019), https://www.internaldisplacement.org/sites/default/files/publications/documents/ntca_persisting_data_gaps.pdf.

35. *Id.* at 5.

36. *Country Information: El Salvador*, INTERNAL DISPLACEMENT MONITORING CTR., <https://www.internal-displacement.org/countries/el-salvador> (last visited Sept. 10, 2020).

recorded 190,000,³⁷ and Guatemala recorded 242,000.³⁸ Most of these displacements are caused by criminal violence, but natural disasters such as floods are also a reason for displacement.³⁹

Both the changing weather patterns and the drought that has affected the region for over a decade have had an impact on the agriculture sector, particularly on small producers and rural communities.⁴⁰ The United Nations Food and Agriculture Organization (“FAO”) and the World Food Programme (“WFP”) have underscored the role of changing weather patterns in food security.⁴¹ FAO’s research estimates that 1.9 million basic grain small producers in Central America who live in the Dry Corridor are subsistence farmers, which means that losing their crops has a direct effect in the possibility of covering their basic food needs.⁴² Internal or cross-border displacement becomes the most likely option for people in this situation.⁴³

37. *Country Information: Honduras*, INTERNAL DISPLACEMENT MONITORING CTR., <https://www.internal-displacement.org/countries/honduras> (last visited Sept. 10, 2020).

38. *Country Information: Guatemala*, INTERNAL DISPLACEMENT MONITORING CTR., <https://www.internal-displacement.org/countries/guatemala> (last visited Sept. 10, 2020).

39. The IDMC compiles figures of displacement caused by conflict and disaster. The data available for the three countries varies depending on multiple factors. For example, in Guatemala internal displacement is not recognized officially; therefore, the data is not tracked. The three countries share similar environmental impact in agriculture, but at the same time, environmental changes affect them in a different manner depending on their geographical characteristics and in domestic policies. *Country Information: Honduras*, *supra* note 37; *Country Information: Guatemala*, *supra* note 38; *Country Information: El Salvador*, *supra* note 36.

40. FAO, *Dry Corridor Central America*, *supra* note 4, at 1.

41. *Id.*

42. *Erratic Weather Patterns in the Central American Dry Corridor Leave 1.4 Million People in Urgent Need of Food Assistance: FAO in Emergencies*, FOOD & AGRIC. ORG. OF THE U.N. (Apr. 25, 2019), <http://www.fao.org/emergencies/fao-in-action/stories/stories-detail/en/c/1192519/>.

43. See INT’L ORG. FOR MIGRATION, *MIGRATION, ENVIRONMENT, AND CLIMATE CHANGE: ASSESSING THE EVIDENCE* 24 (2009), https://publications.iom.int/system/files/pdf/migration_and_environment.pdf (explaining that seasonal or circular migration patterns occurring in developing countries may lead to permanent migration due to droughts and desertification).

2. *Cross-Border and International Displacement*

When displacement crosses one or more borders, it is unclear what legal framework applies to the people entering a new country. Scholars and international organizations have studied this normative gap from an international and a regional perspective.⁴⁴ Additionally, national courts from countries that host internationally displaced populations have interpreted the scope of their domestic protections in order to close this normative gap while deciding what kind of protections to grant to displaced individuals.⁴⁵

This paper focuses on the different developments that have taken place in the international law arena to address the issue of cross-border or international displacement caused by climate change. This phenomenon has gained more recognition after the publication of the Intergovernmental Panel on Climate Change's ("IPCC") fourth assessment report in 2007.⁴⁶ The report ties potential population migration to areas affected by drought, intense tropical cyclone activity, and high sea level.⁴⁷

The most recent IPCC report continues to recognize this trend by expressing that there is high agreement that "[c]limate change is projected to increase displacement of people."⁴⁸ The IPCC explains that susceptibility for displacement increases for populations that do not have the resources to plan their migration experience and that face extreme weather events such as floods

44. MCADAM, CLIMATE CHANGE, FORCED MIGRATION, *supra* note 10, at 42.

45. OFF. OF THE U.N. HUM. RTS. HIGH COMM'R, THE SLOW ONSET EFFECTS OF CLIMATE CHANGE AND HUMAN RIGHTS PROTECTION FOR CROSS-BORDER MIGRANTS 22–23 (2017), <https://disasterdisplacement.org/portfolio-item/slow-onset> (demonstrating that New Zealand has begun to address displaced persons).

46. Jane McAdam, *Creating New Norms on Climate Change, Natural Disasters and Displacement: International Developments 2010–2013*, 29 REFUGE, no. 2, 2014, at 11, 11 (2013) [hereinafter McAdam, *Creating New Norms on Climate Change*].

47. Intergovernmental Panel on Climate Change, Climate Change 2007: Synthesis Report Summary for Policy Makers 13 (2007) [hereinafter IPCC Panel 2007], https://www.ipcc.ch/site/assets/uploads/2018/02/ar4_syr_spm.pdf.

48. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2014: SYNTHESIS REPORT SUMMARY FOR POLICY MAKERS 73 (2014) [hereinafter IPCC PANEL 2014], https://www.ipcc.ch/site/assets/uploads/2018/05/SYR_AR5_FINAL_full_wcover.pdf.

and droughts.⁴⁹ Furthermore, with the increasing risks associated with climate change, displacement tends to be more permanent than temporary.⁵⁰

C. *Relevance of Climate Change-Related Movement for the Development of International Law*

As described in the following section, extensive research has shown that the 1951 Refugee Convention by itself may not apply to a person displaced solely for the effects of climate change.⁵¹ It may be the secondary effects of climate change that trigger the Convention or other protections that were originally created for a population with certain characteristics.⁵²

Elizabeth Fisher, Eloise Scotford and Emily Barrit argue that the nature of climate change is “legally disruptive,”⁵³ and that the “highly polycentric, uncertain, socio-politically charged and dynamic nature” of climate change “presents particular challenges for legal orders and adjudication.”⁵⁴

In the context of forced displacement caused by climate change, its disruptive nature means that the legal frameworks that protect people forced to migrate—either internally or externally—are confronted by changing push factors that cause displacement. Thus, Fisher, Scotford and Barrit explain that

49. *Id.* at 73.

50. *Id.* at 71.

51. JANE MCADAM, CLIMATE CHANGE DISPLACEMENT AND INTERNATIONAL LAW: COMPLEMENTARY PROTECTION STANDARDS 12 (2011) [hereinafter MCADAM, CLIMATE CHANGE DISPLACEMENT AND INTERNATIONAL LAW], <https://www.unhcr.org/4dff16e99.pdf>; Barney Thompson, *Climate Change and Displacement*, U.N. HIGH COMM’R FOR REFUGEES (Oct. 15, 2019), <https://www.unhcr.org/en-us/news/stories/2019/10/5da5e18c4/climate-change-and-displacement.html>.

52. *Climate Change and Disaster Displacement*, U.N. HIGH COMM’R FOR REFUGEES, <https://www.unhcr.org/en-us/climate-change-and-disasters.html> (last visited Sept. 2, 2020) (explaining the difficulty of applying refugee status to displaced persons in accordance with the 1951 Convention and steps being taken to resolve the issue).

53. Elizabeth Fisher et al., *The Legally Disruptive Nature of Climate Change: Climate Change and Legal Disruption*, 80 MOD. L. REV. 173, 174 (2017).

54. *Id.* at 174.

existing legal frameworks have to evolve or new ones will need to be developed.⁵⁵

According to Olivia Dun and François Gemenne, the main reason for the lack of a clear definition is related to the difficulty of isolating environmental factors from other reasons of why people migrate.⁵⁶ In defining a legal framework, Benoît Mayer cautions it is important to remember that, when debating over the terminology, it is still human beings who are migrating.⁵⁷ Therefore, climate-related displacement poses a relevant challenge to international law.

II. LEGAL DEVELOPMENTS FOR THE PROTECTION OF REFUGEES AND PERSONS DISPLACED BY THE EFFECTS OF CLIMATE CHANGE

A. *The 1951 Refugee Convention and Other Soft Law Developments*

1. *The Refugee Convention Framework*

The 1951 Refugee Convention Relating to the Status of Refugees and its 1967 Protocol provide the following definition for the term “refugee:”

[Any 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; or who, not having a nationality and being outside the country of his former habitual residence

55. *Id.* at 178.

56. Olivia Dun & François Gemenne, *Defining ‘Environmental Migration’*, FORCED MIGRATION REV., Oct. 2008, at 10, 10.

57. Mayer, *supra* note 9, at 328.

as a result of such events, is unable or, owing to such fear, is unwilling to return to it.⁵⁸

According to Jane McAdam, there are multiple obstacles to arguing that people displaced in the context of climate change fall into this definition.⁵⁹ Per the above definition, in order to be considered as “refugees,” a person has “to establish that they have a well-founded fear of being persecuted for reasons of their race, religion, nationality, political opinion or membership of a particular social group.”⁶⁰ The main obstacle to be protected by the Convention is that, in many cases, weather related displacement may not amount to the level “persecution”⁶¹ based on one of the elements of the definition.⁶²

McAdam argues that the “secondary impacts of disaster”⁶³ may trigger the application of the 1951 Convention. This means that the effects of climate change by themselves may not qualify a person as a “refugee” within the Convention definition.⁶⁴ Rather, policies adopted after a disaster may make a refugee claim succeed. For example, policies may discriminate in terms of access to humanitarian assistance for reasons of race or religion.⁶⁵

58. Convention Relating to the Status of Refugees art. 1, Apr. 22, 1954, 138 U.N.T.S. 2545.

59. MCADAM, CLIMATE CHANGE, FORCED MIGRATION, *supra* note 10, at 42.

60. Jane McAdam, *From the Nansen Initiative to the Platform on Disaster Displacement: Shaping International Approaches to Climate Change, Disasters and Displacement*, 39 Univ. N.S.W. L.J. 1517, 1535 (2016) [hereinafter McAdam, *From the Nansen Initiative*].

61. U.N. High Commissioner for Refugees, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, ¶ 51, U.N. Doc. HCR/1P/4/ENG/REV. 3 (2011), <https://www.refworld.org/docid/4f33c8d92.html>.

62. *Id.* ¶¶ 52–53 (explaining that the definition of persecution is subjective in nature and depends upon an individual’s experience).

63. McAdam, *From the Nansen Initiative*, *supra* note 60, at 1535.

64. MCADAM, CLIMATE CHANGE DISPLACEMENT AND INTERNATIONAL LAW, *supra* note 51, at 12.

65. McAdam, *From the Nansen Initiative*, *supra* note 60, at 1535.

2. *Soft Law Developments*

In light of this gap in international law, awareness about the phenomenon of human mobility in the context of climate change has grown among multiple actors, including states, international organizations, non-governmental organizations, and academia.⁶⁶ Research in this area has also increased, especially after the publication of the IPCC's fourth assessment report in 2007.⁶⁷ The broad awareness has been echoed in international conferences and initiatives that seek to tackle this issue.⁶⁸

For instance, in preparation for the 2010 United Nations climate change conference ("COP16"), a Task Force on Climate Change was established with the purpose of integrating climate change into humanitarian programs and fostering inter-agency analysis and cooperation.⁶⁹ A positive outcome of the conference regarding climate change displacement was the inclusion of a paragraph in the Cancún Adaptation Framework of 2010, which specifically called for measures to address climate change-induced displacement.⁷⁰ This paragraph provided a framework for later efforts led by the U.N. High Commissioner for Refugees ("UNHCR"), as well as the creation of the Nansen Initiative in 2012.⁷¹

The Nansen Initiative was a consultative process launched by Switzerland and Norway whose main objective was to address the challenges of cross-border displacement in the context of climate change.⁷² The Initiative, described as "state-led" and "bottom-up," conducted regional consultations and culminated with a

66. *Id.* at 1523.

67. McAdam, *Creating New Norms on Climate Change*, *supra* note 46, at 11.

68. McAdam, *From the Nansen Initiative*, *supra* note 60, at 1523.

69. McAdam, *Creating New Norms on Climate Change*, *supra* note 46, at 12.

70. U.N. Climate Change Conf., Rep. of the Conf. of the Parties on its Sixteenth Session, Held in Cancun from 29 Nov. to 10 Dec. 2, U.N. Doc. FCCC/CP/2010/7/Add.1 ¶ 20 (Nov. 29, 2010), <https://undocs.org/en/FCCC/CP/2010/7/Add.1>.

71. McAdam, *Creating New Norms on Climate Change*, *supra* note 46, at 12.

72. *About Us*, THE NANSEN INITIATIVE, <https://www.nanseninitiative.org/secretariat/> (last visited Sept. 11, 2020).

Protection Agenda that was endorsed by more than 100 governments.⁷³

The Protection Agenda highlights that “[d]isaster displacement is multi-causal with climate change being an important, but not the only factor.”⁷⁴ Other factors that have been recognized to exacerbate the impacts of natural hazards are “[p]opulation growth, underdevelopment, weak governance, armed conflict, violence, as well as poor urban planning in rapidly expanding cities.”⁷⁵ Ultimately, the Nansen Initiative favored an approach that focuses on good practices by states and regional organizations.⁷⁶

The work of the Nansen Initiative continued through the Platform on Disaster Displacement, which was launched at the World Humanitarian Summit in 2016.⁷⁷ The Platform continues the same good practices approach spearheaded by the Nansen Initiative to strengthen national and regional efforts to prevent and respond to disaster-displacement.⁷⁸ At the same time, the Platform has the goal of implementing the recommendations made by the Nansen Initiative Protection Agenda.⁷⁹

A parallel effort that works on recommendations to address climate change displacement and proposals is the Task Force on Displacement, which was established by the twenty-first session of the Conference of the Parties (“COP21”).⁸⁰ The Task Force

73. THE NANSEN INITIATIVE, CONFERENCE REPORT GENEVA 8 (Oct. 13, 2015), <https://www.nanseninitiative.org/wp-content/uploads/2015/02/GLOBAL-CONSULTATION-REPORT.pdf>.

74. THE NANSEN INITIATIVE, AGENDA FOR THE PROTECTION OF CROSS-BORDER DISPLACED PERSONS IN THE CONTEXT OF DISASTERS AND CLIMATE CHANGE 6 (Vol. I Dec. 2015), <https://disasterdisplacement.org/wpcontent/uploads/2019/07/ENProtectionAgendaVolumeI-lowres.pdf>.

75. *Id.*

76. *About Us*, THE NANSEN INITIATIVE, *supra* note 72 (explaining the method by which the Nansen Initiative intends to achieve its goal of protecting people displaced due to climate change).

77. *Our Response*, PLATFORM ON DISASTER DISPLACEMENT, <https://disasterdisplacement.org/the-platform/our-response> (last visited Aug. 24, 2020).

78. *Id.*

79. *Id.*

80. Task Force on Displacement at a Glance, U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE, (Oct. 2019), https://unfccc.int/sites/default/files/resource/TFD_brochure_29102019.pdf.

involves multiple actors that work on the issue of climate change displacement from different perspectives.⁸¹ UNHCR participates in both the Task Force, bringing its humanitarian perspective, as well as the Platform on Disaster Displacement from a human mobility approach.⁸² Other participants include the Adaptation Committee of the United Nations Framework Convention on Climate Change (“UNFCCC”), the United Nations Development Program (“UNDP”), and civil society groups.⁸³

It is important to note that multiple stakeholders do not favor the creation of a new binding international convention on cross-border-disaster displacement.⁸⁴ Rather, they aim to continue developing soft-law frameworks.

B. *Regional Declarations and Initiatives*

The 1951 definition of “refugee” was later expanded by regional initiatives by the Organization of African Unity (“OAU,” later replaced by the African Union) and by the Cartagena Declaration adopted by the Regional Conference of Migration.⁸⁵ These definitions have been adopted by some domestic legislation in countries in those regions, leaving the possibility for greater flexibility when granting refugee status.⁸⁶

81. *Task Force on Displacement*, U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE, <https://unfccc.int/wim-excom/sub-groups/TFD#eq-5> (last visited Aug. 23, 2020).

82. *Id.*

83. *Id.*

84. *Our Response*, PLATFORM ON DISASTER DISPLACEMENT, *supra* note 77.

85. U.N. High Comm’r for Refugees, *Persons Covered by the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and by the Cartagena Declaration on Refugees*, ¶ 2, U.N. Doc. EC/1992/SCP/CRP.6 (Apr. 6, 1992); *About the African Union*, AFRICAN UNION, <https://au.int/en/overview> (last visited Apr. 29, 2021).

86. The 1984 Cartagena Declaration recommended the following expanded definition of “refugee” to include “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.” U.N. High Comm’r for Refugees, *Cartagena Declaration on Refugees*, at 36 (Nov. 22, 1984), <https://www.unhcr.org/en-us/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html>; FRANCES NICHOLSON & JUDITH KUMIN, A GUIDE TO INTERNATIONAL REFUGEE PROTECTION AND BUILDING STATE ASYLUM SYSTEMS 21 (2017); Tsion Tadesse Abebe, et al., *After 50 Years, Africa’s Refugee Policy Still Leads*, INST. FOR

From the African perspective, in 2011–2012, some African countries applied the expanded definition of the 1969 OAU Convention in a *prima facie* manner to populations from Somalia, which had been displaced by severe droughts.⁸⁷

From the Central and North American perspective, the member countries of the Regional Conference on Migration (“RCM”) worked together with the Nansen Initiative to create a framework applicable to the context of these countries that include, among others, the three Northern Triangle Countries, Mexico, and the United States.⁸⁸ The result was the Guide to Effective Practices for RCM Member Countries: Protection for Persons Moving Across Borders in the Context of Disasters, which was published in 2016.⁸⁹ As a first step, the Guide recognizes that disasters have the potential to trigger population movements,⁹⁰ which represents a challenge for the region.

The Guide does not create new international obligations for RCM member states, but it supports the “more effective and consistent use of existing law, policy and practice to ensure an appropriate response to the needs of cross-border disaster-displaced persons.”⁹¹ By “disaster,” the Guide refers to such situations that are:

SEC. STUD. (June 20, 2019), <https://issafrica.org/iss-today/after-50-years-africas-refugee-policy-still-leads>.

87. According to UNHCR’s handbook, an example of *prima facie* determination is granted “in the absence of evidence to the contrary.” U.N. High Comm’r for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, 44, U.N. Doc. HCR/IP/4/ENG/REV. 1 (Jan. 1992). See also McAdam, *From the Nansen Initiative*, *supra* note 60, at 1536.

88. THE NANSEN INITIATIVE, PROTECTION FOR PERSONS MOVING ACROSS BORDERS IN THE CONTEXT OF DISASTERS 9 (Gabriela Hernández ed., Nov. 2016), https://portal.rcmvs.org/sites/default/files/publicaciones/en_guide_rcm_march_2017.pdf (discussing cooperation between RCM member countries which include Guatemala, El Salvador, Honduras, Mexico, and the United States); *About Us*, REG’L CONF. ON MIGRATION, <https://rcmvs.org/en/about-us> (last visited Apr. 12, 2021).

89. See generally THE NANSEN INITIATIVE, PROTECTION FOR PERSONS MOVING ACROSS BORDERS IN THE CONTEXT OF DISASTERS, *supra* note 88.

90. *Id.* at 4.

91. *Id.* at 8.

[A] “serious disruption of the functioning of a community or a society – involving widespread human, material, economic or environmental losses and impacts which exceeds the ability of the affected community or society to cope using its own resources,” and which is caused in part or in whole by a sudden and serious natural hazard.⁹²

III. INTERNATIONAL HUMAN RIGHTS LAW AND CLIMATE CHANGE

A. *Rights Protected in a Context of Movement*

Human rights treaties include an array of rights and binding obligations for state parties⁹³ that become relevant in the context of climate change. The Office of the High Commissioner for Human Rights (“OHCHR”) submitted a report to the COP21 that highlighted the range of binding legal obligations with the potential to be breached by states in connection with climate change.⁹⁴

Treaties like the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (“ICCPR”) require states to guarantee effective remedies for human rights violations.⁹⁵ Therefore, failure to adapt measures to prevent foreseeable human rights harms caused by climate

92. *Id.* at 9–10 (quoting U.N. Off. for Disaster Risk Reduction, 2009 UNISDR Terminology on Disaster Risk Reduction, at 9, https://www.preventionweb.net/files/7817_UNISDRTerminologyEnglish.pdf (last visited Apr. 18, 2021)).

93. Submission of the Off. of the High Comm’r for Hum. Rts. to the 21st Conf. of the Parties to the U.N. Framework Convention on Climate Change, Understanding Human Rights and Climate Change, at 6, <https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf> (last visited Aug. 23, 2020).

94. Dug Cubie, *Human Rights, Environmental Displacement and Migration*, in ROUTLEDGE HANDBOOK OF ENVIRONMENTAL DISPLACEMENT AND MIGRATION 329, 335 (Robert McLeman & François Gemenne eds., 2018).

95. G.A. Res. 2200 (XXI) A, International Covenant on Civil and Political Rights, art. II, § 3(a) (Dec. 16, 1966).

change is a breach of this obligation.⁹⁶ The OHCHR acknowledges that the impacts of climate change affect human rights.⁹⁷

The same report enumerates the main rights that may be disrupted by lack of state action in the context of climate change, starting with the right to life, because it is the most visible in light of the toll that extreme weather events have.⁹⁸ In the words of the OHCHR report, “[c]limate change kills through drought, increased heat, expanding disease vectors and a myriad of other ways. . . . [C]limate change is already responsible for approximately 400,000 deaths per year and that number is expected to rise to 700,00[0] by 2030.”⁹⁹ Therefore, the obligation of states to mitigate and adapt to climate change become relevant in order to prevent violations to the right of life.

Other rights include the right to self-determination, especially of indigenous people in small islands of the Pacific; the right to development; the right to food, water, and sanitation; the right to health; the right to housing; the right to education, and the rights of future generations.¹⁰⁰

B. *Domestic and Regional Jurisprudence on Climate Change as a Human Right*

1. *Australia and New Zealand*

The islands of the Pacific have experienced the effects of sea level rise and erosion more than any other region.¹⁰¹ Due to the islands’ proximity, populations that have been displaced have mostly traveled to New Zealand and Australia.¹⁰² As a result,

96. See *id.*; G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. VIII (Dec. 10, 1948).

97. Understanding Human Rights and Climate Change, *supra* note 93, at 2.

98. *Id.* at 13–14.

99. *Id.* at 14.

100. *Id.* at 14–25.

101. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007: THE PHYSICAL SCIENCE BASIS 411 (Susan Solomon et al. eds. 2007) (noting the high magnitude of sea level rise in the Pacific region).

102. Jillian Ash & Jillian Campbell, *Climate Change and Migration: The Case of the Pacific Islands and Australia*, 36 J. PAC. STUD. 53, 54 (2016) (discussing the need for migration policies between the Pacific islands and Australia).

courts in these countries have interpreted the scope of protections that should be afforded to people displaced by the effects of climate change.¹⁰³

Of both countries, New Zealand's jurisprudence is the most developed. New Zealand recognizes that refugee status could apply in some cases, but still, applicants have to prove some form of "persecution" as per the Convention definition.¹⁰⁴ Furthermore, in a case that reached the U.N. Human Rights Committee, New Zealand had previously held that "if a government is taking steps within its power to protect people from the effects of climate change, then it will not abrogate its obligations under human rights law."¹⁰⁵

2. *European Court of Human Rights*

In the European context, there is no explicit right to a healthy environment under the European Convention on Human Rights ("ECHR").¹⁰⁶ Therefore, climate change in connection with violations of human rights has been analyzed from the perspective of the right to life and the right to respect for private and family life.¹⁰⁷ The ECHR has found violations to these rights for severe environmental pollution (*Fadeyeva v. Russia*); for failure to provide information about environmental risks or

103. See Jane McAdam, *Building International Approaches to Climate Change, Disasters, and Displacement*, 33 WINDSOR Y.B. ACCESS TO JUST. 1, 5 (2016) (noting that from 2000 to 2015, Australia and New Zealand analyzed refugee protections in over twenty climate refugee claims and denied protections to all).

104. *Id.* at 4–5 (noting that New Zealand has recognized refugee law may apply if individuals are exposed to treatment that amounts to persecution).

105. *Id.* at 6 (referring to *Teitiota v. Chief Exec. of the Ministry of Bus., Innov. & Emp't* [2015] NZSC 107 (N.Z.)).

106. Eur. Ct. H.R., *Guide on Article 8 of the European Convention on Human Rights, Right to respect for private and family life home and correspondence*, 30 (2020) [hereinafter *European Court of Human Rights, Guide on Article 8 of the European Convention on Human Rights*] https://echr.coe.int/Documents/Guide_Art_8_ENG.pdf.

107. Ingrid Leijten, *Human Rights v. Insufficient Climate Action: The Urgenda Case*, 32 NETH. Q. HUM. RTS. 112, 113 (2019), <https://journals.sagepub.com/doi/full/10.1177/0924051919844375> (discussing how the Court of Appeals found the Dutch Government's Climate Change mitigation efforts to fall below their obligations under Articles 2 and 8 of the European Convention of Human Rights).

hazards (*Guerra and Others v. Italy*); and for noise pollution (*Moreno Gómez v. Spain*), among other interpretations.¹⁰⁸

An important development in the framework of the ECHR is that the court recognizes a positive obligation for states to take appropriate measures to safeguard the lives of those within their jurisdiction, including “a legislative and administrative framework designed to provide effective deterrence against threats to the right to life.”¹⁰⁹ Some scholars explain that, in practice, this positive obligation “mean[s] that States must provide people with sufficient information, warnings, options to leave and safe areas to move to.”¹¹⁰ A similar approach to that of New Zealand is used in Tuvalu with regard to rising sea levels.¹¹¹

3. *Inter-American Court of Human Rights*

The Inter-American context has not analyzed climate change displacement, but there has been jurisprudence relating to the right to a healthy environment recognized in Article 11 of the San Salvador Protocol.¹¹² The Inter-American Court of Human Rights (“IACHR”) also considers climate change displacement as part of the economic, social, and cultural rights protected by Article 26 of

108. European Court of Human Rights, *Guide on Article 8 of the European Convention on Human Rights*, *supra* note 106, at 37–38 (referencing *Fadeyeva v. Russia* No. 55723/00, 2005-IV Eur. Ct. H.R.; *Guerra and Others v. Italy*, No. 14967/89, 1998-I Eur. Ct. H.R.; and *Moreno Gómez v. Spain*, No. 4143/02, 2004-X Eur. Ct. H.R.).

109. Bruce Burson et al., *Duty to Move People Out of Harm’s Way in the Context of Climate Change and Disasters*, 37 REFUGEE SURV. Q. 379, 384–85 (2018), <https://academic.oup.com/rsq/article-abstract/37/4/379/5208892>.

110. *Id.* at 386.

111. *Id.* (explaining that Tuvalu jurisprudence holds a view similar to that of New Zealand in that imposing legal requirements to mitigate underlying causes of naturally occurring events beyond reasonable governmental regulation would create an “impossible burden.”).

112. A-52: Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of El Salvador” art. 11, Nov 17, 1988, O.A.S.T.S. No. 69 [hereinafter Protocol of El Salvador]. Article 11, Right to a Healthy Environment, has two sections: “1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The State Parties shall promote the protection, preservation, and improvement of the environment.” *Id.*

the American Convention.¹¹³ The IACHR has analyzed multiple cases relating to Article 11 of the San Salvador Protocol and also in connection with other rights such as personal integrity, right to life, community property, and cultural identity, among others.¹¹⁴ The IACHR's jurisprudence has been developed, especially in the context of indigenous communities.¹¹⁵

More recently, upon request by Colombia, the IACHR issued its Advisory Opinion 23,¹¹⁶ which is the first legal public statement made by an international human rights court focusing on environmental law.¹¹⁷ Although the context that preceded the Advisory Opinion is not related to migration,¹¹⁸ the interpretation the IACHR made is relevant to the countries in the region that are members of the American Convention on Human Rights.¹¹⁹

In the opinion, the IACHR acknowledged:

[T]he existence of an irrefutable relationship between the protection of the environment and the realization of other human rights, due to the fact that environmental degradation affects the effective enjoyment of other human rights. . . .

113. Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) Official Summary (Nov. 15, 2017).

114. Jorge C. Gamboa, *Medio Ambiente Frente a la Corte Interamericana de Derechos Humanos: Una Ventana de Protección*, DERECHOS HUMANOS Y MEDIO AMBIENTE, Oct. 2017, at 103, 103–04, 110 <https://www.corteidh.or.cr/tablas/r37170.pdf>.

115. *Id.* at 143.

116. *Id.* at 142.

117. Mónica Fera-Tinta & Simon C. Milnes, *International Environmental Law for the 21st Century: The Constitutionalization of the Right to a Healthy Environment in the Inter-American Court of Human Rights Advisory Opinion 23*, 12 ANUARIO COLOMBIANO DE DERECHO INTERNACIONAL 43, 49 (2019).

118. Advisory Opinion 23 was requested by Colombia because of “the ability (or lack thereof) of international law to regulate unrestrained development of infrastructure megaprojects, not least given to the trans-boundary harms they may cause.” *Id.* at 50. The construction of infrastructure projects has “effects that may exceed state boundaries.” *Id.* at 49–51 (discussing how Columbia asked for the opinion due to fears that the project could cause environmental harm to neighboring countries).

119. Countries bound to this treaty include Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela. Protocol of El Salvador, *supra* note 112 (being bound to the treaty means that these countries are bound to the Court's opinion).

[T]he Court emphasized the interdependence and indivisibility between human rights, the environment and sustainable development, since the full enjoyment of all human rights depends on a favorable environment.¹²⁰

The IACHR concluded that, in order to respect and ensure the rights to life and personal integrity, state parties have to comply with multiple obligations such as preventing environmental damages, carrying out environmental impact assessments, preparing contingency plans, and mitigating significant environmental damage.¹²¹ Furthermore, the IACHR decision requires a good faith obligation to cooperate to protect against environmental damage; an obligation to notify other states that could be affected by transboundary damage; a right of access to information; public participation in decision-making; and access to justice.¹²²

The IACHR has not studied cases relating to climate change displacement in the region.¹²³ However, it remains an option amid the broad interpretations of the instruments that are recognized.

C. *Global Compact for Safe, Orderly and Regular Migration*

In December 2018, the U.N. General Assembly adopted the Global Compact for Safe, Orderly and Regular Migration in Marrakech, Morocco.¹²⁴ The Global Compact is a non-binding

120. Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) Official Summary, at 2 (Nov. 15, 2017).

121. *Id.* at 4.

122. *Id.* at 3–5.

123. Press Release, Paul Crowley & Terry Fenge, Inuit Circumpolar Conference, Inuit Petition Inter-American Commission on Human Rights to Oppose Climate Change Caused by the United States of America (Dec. 7, 2005), <https://www.inuitcircumpolar.com/press-releases/inuit-petition-inter-american-commission-on-human-rights-to-oppose-climate-change-caused-by-the-united-states-of-america/>.

124. Intergovernmental Conf. to Adopt the Glob. Compact for Safe, Orderly and Regular Migration, *Draft Outcome Document of the Conference*, U.N. Doc. A/CONF.231/3, at 1 (Dec. 10–11, 2018).

instrument that recognizes the need to anticipate future trends, including the impacts of climate change.¹²⁵

Walter Kälin, Envoy Chair of the Platform on Disaster Displacement, describes the inclusion of disaster and climate change-related displacement in the Global Compact as a breakthrough because it reflects a connection between disaster and migration.¹²⁶ Kälin underscores the need for systematic efforts by States and other actors for implementation.¹²⁷

The Global Compact acknowledges that people may be affected by both sudden-onset natural disasters and slow-onset effects of climate change.¹²⁸ Although the Global Compact represents important progress for the recognition of the impacts of climate change in human mobility, it lacks support from the United States,¹²⁹ which has important consequences for the region. The United States objected to the adoption of the Global Compact, arguing that the Global Compact contains goals and objectives that are inconsistent with U.S. law, its sovereignty and the interest of the U.S. society:

The United States also is concerned that Compact supporters, recognizing the lack of widespread support for a legally-binding international migration convention, seek to use the Compact and its outcomes and objectives as a long-term means

125. U.N. Secretary-General, U.N. Secretary-General on the Adoption of the Global Compact for Safe, Orderly and Regular Migration (Dec 19, 2018), <https://www.un.org/sg/en/content/sg/statement/2018-12-19/un-secretary-general-the-adoption-of-the-global-compact-for-safe-orderly-and-regular-migration>.

126. Walter Kälin, *The Global Compact on Migration: A Ray of Hope for Disaster-Displaced Persons*, 30 INT'L J. REFUGEE L. 664, 665 (2018), <https://doi.org/10.1093/ijrl/eeey047>.

127. *Id.* at 667.

128. *Id.* (discussing how climate change might not directly cause refugee movements, but it can interact with drivers of refugee movements and make those movements bigger).

129. Press Release, United States Mission to the U.N., National Statement of the United States of America on the Adoption of the Global Compact for Safe, Orderly, and Regular Migration (Dec 7, 2018), <https://usun.usmission.gov/national-statement-of-the-united-states-of-america-on-the-adoption-of-the-global-compact-for-safe-orderly-and-regular-migration/> (declaring that the United States will not be a part of the Global Compact).

of building customary international law or so-called “soft-law” in the area of migration. . . .

...[T]he Compact fails to distinguish adequately between foreign nationals who have legal status in host countries and those who are unlawfully present. Strengthening control over borders is central to national security, economic prosperity, and the rule of law. . . . In the United States, foreign nationals who are not lawfully present are not “irregular” – they are illegal aliens violating the laws and immigration policies of our nation and are subject to prosecution and removal.¹³⁰

IV. DEVELOPMENT OF PROTECTIONS IN UNITED NATIONS BODIES

A. *Human Rights and Refugee Protection Entities*

1. *United Nations High Commissioner on Refugees (UNHCR)*

The nature of climate change-related displacement and the fact that it lacks a sole legal framework dedicated to address it has activated multiple actors. As covered in previous sections, there are currently state-led initiatives as well as developments of U.N. bodies and regional organizations.¹³¹

The UNHCR has played an important role in fostering the debate about the legal status of displaced populations since its

130. *Id.*

131. See Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) Official Summary, at 2 (Nov. 15, 2017) (showing the Inter-American Court of Human Rights recognizes a person’s right to a healthy environment); see also European Court of Human Rights, *Guide on Article 8 of the European Convention on Human Rights*, *supra* note 106 (showing that European Court of Human Rights recognizes a right to a healthy environment).

mandate¹³² covers situations of forced displacement.¹³³ This U.N. agency has recognized for several years the effect that climate change has on the displacement of people, stressing that the effects of climate change and disasters can “worsen the threats that force people to flee across international borders.”¹³⁴

Moreover, the UNHCR has said that “[f]orced displacement across borders can stem from the interaction between climate change and disasters with conflict and violence, or it can arise from natural or man-made disasters alone. Either situation can trigger international protection needs.”¹³⁵

The polycentric nature of climate change-related displacement requires interagency coordination to assist displaced individuals, and it needs to address the reasons for their displacement. The humanitarian work from UNHCR is very relevant for the provision of services to those individuals being displaced and to the determination of their legal status.¹³⁶ However, the nature of the displacement requires a broader approach that calls for the involvement and coordination of multiple agencies and state and non-state actors. Thus, the work of UNHCR along with other agencies in the framework of the UNFCCC Task Force on Displacement is important.

132. U.N. High Comm’r for Refugees, Note on the Mandate of the High Commissioner for Refugees and His Office (Oct. 2013), <https://www.unhcr.org/en-us/protection/basic/526a22cb6/mandate-high-commissioner-refugees-office.html> (stating that the office of High Commissioner for Refugees was created in response to forced-displacement and statelessness around the world).

133. The core mandates cover refugees, asylum seekers, returnees, and stateless persons. *Id.* at 3–8. UNHCR is also involved with internally displaced people. *Id.* at 9–10. Even if it does not have a general or exclusive mandate to do it, UNHCR has been authorized by the General Assembly in order to enhance protections. *Id.* at 3–9 (reviewing the times the High Commissioner can get involved, including refugees and asylum seekers, returnees, stateless people, and, in special circumstances, the internally displaced).

134. Barney Thompson, Climate Change and Displacement, U.N. HIGH COMM’R FOR REFUGEES (Oct. 15, 2019), <https://www.unhcr.org/en-us/news/stories/2019/10/5da5e18c4/climate-change-and-displacement.html>.

135. *Id.* (quoting Filippo Grandi (U.N. High Commissioner for Refugees), Opening statement at the 70th session of the Executive Committee of the High Commissioner’s Programme (Oct. 7, 2019), <https://www.unhcr.org/admin/hcspeeches/5d9b0ad44/opening-statement-70th-session-executive-committee-high-commissioners-programme.html>).

136. *Id.*

2. *International Organization for Migration (IOM)*

The International Organization for Migration (“IOM”) has been involved in programs addressing the links between climate change and migration since the 1990s.¹³⁷ More recently, IOM launched its Environmental Sustainability Programme in 2017 with the goal to include environmental sustainability principles into IOM’s work.¹³⁸ Like other international organizations, IOM acknowledges the “cross-cutting” nature of environmental-related displacement.¹³⁹ Consequently, it works together with other U.N. bodies in the context of the Environment Management Group (“EMG”), which was established in 2001, in order to enhance inter-agency coordination within the U.N. in issues relating to the environment and human settlements.¹⁴⁰

IOM has also been involved in regional assessments.¹⁴¹ Regarding the countries of the Northern Triangle of Central America, the organization has highlighted the negative effects of drought in agriculture, the need of strengthening resilience of rural populations, and the importance of planned and well-managed temporary relocations.¹⁴²

3. *U.N. Human Rights Committee*

The U.N. Human Rights Committee is the entity that “monitors implementation of the International Covenant on Civil

137. Int’l Org. for Migration [IOM], Standing Comm. on Programmes and Fin., *Update on Policies and Practices Related to Migration, the Environment and Climate Change and IOM’s Environmental Sustainability Programme*, 24 Session IOM Doc. S/24/5 (May 23, 2019), https://governingbodies.iom.int/system/files/en/scpf/24th/S-24-5-Update%20on%20policies%20and%20practices%20related%20to%20MECC_0.pdf.

138. *Id.* at 2.

139. *Id.*

140. U.N. Env’t Mgmt. Grp., 26th Senior Officials Meeting of the United Nations Environment Management Group (SOM 26) <https://unemg.org/about-emg/senior-officials-meeting-som/> (last visited Aug. 16, 2020).

141. See generally, e.g., Raquel Lejtregger (Consultora International Organization for Migration), *La movilidad humana en la agenda climática de las Américas, Necesidades y Oportunidades*, ONU MIGRACION (2019), https://publications.iom.int/system/files/pdf/analisis_mecc_americas.pdf.

142. *Id.* at 44–49.

and Political Rights [ICCPR] by its State parties.”¹⁴³ In January 2020, the Human Rights Committee issued its decision in the case of Ioane Teitiota, a national of the Republic of Kiribati.¹⁴⁴ Mr. Teitiota was deported from New Zealand to Kiribati after “the Immigration and Protection Tribunal [of New Zealand] issued a negative decision concerning his claim for asylum.”¹⁴⁵ His wife and young children also returned to Kiribati.¹⁴⁶

In that case, the Committee concluded that New Zealand did not violate Mr. Teitiota’s right to life under Article VI of the ICCPR because there was not a “clearly arbitrary or erroneous in this regard, or amounted to a denial of justice.”¹⁴⁷ In assessing the case, the Committee considered the scope of the right to life in the light of previous opinions.¹⁴⁸ It also recognized that climate change played a role in the movement of persons in the Pacific.¹⁴⁹

This was the first time the U.N. body issued an opinion regarding a potential violation to the right of life in the context of forced migration and climate change.¹⁵⁰ Additionally, the Committee recognized an obligation by states to not return individuals to places where climate change poses a real risk to their right to life.¹⁵¹ The Committee found that “[t]he obligation not to extradite, deport or otherwise transfer pursuant to [A]rticle

143. *Human Rights Committee*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/hrbodies/ccpr/pages/ccprindex.aspx> (last visited Aug. 16, 2020).

144. U.N. Int’l Covenant on Civil and Political Rights Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016, ¶ 2.2, U.N. Doc. CCPR/C/127/D/2728/2016 (Jan. 7, 2020), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CPR%2fC%2f127%2fD%2f2728%2f2016&Lang=en.

145. *Id.*

146. *Id.* ¶ 4.4.

147. *Id.* ¶¶ 9.6, 9.9; International Covenant on Civil and Political Rights, *supra* note 95, art. VI, § 1.

148. *Id.* ¶¶ 8.4–8.5 (citing previous right to life decisions).

149. *Id.* ¶ 7.1.

150. Jane McAdam, *Climate Refugees Cannot Be Forced Back Home*, SYDNEY MORNING HERALD (Jan. 20, 2020), <https://www.smh.com.au/environment/climate-change/climate-refugees-cannot-be-forced-back-home-20200119-p53sp4.html>.

151. Adaena Sinclair-Blakemore, *Teitiota v. New Zealand: A Step Forward in the Protection of Climate Refugees under International Human Rights Law?*, OXFORD HUM. RTS. HUB (Jan. 28, 2020), <http://ohrh.law.ox.ac.uk/teitiota-v-new-zealand-a-step-forward-in-the-protection-of-climate-refugees-under-international-human-rights-law/>.

6 of the Covenant may be broader than the scope of the principle of *non-refoulement* under international refugee law, since it may also require the protection of aliens not entitled to refugee status.”¹⁵² From one perspective, even if ultimately the Committee did not find a human rights violation, this decision represents international litigation as an additional mechanism that would add to the dynamic development of soft law regarding climate change displacement. From another perspective, the ruling has important limitations, especially for the high threshold required to demonstrate a breach to the right of life.¹⁵³ If the impacts of climate change in Kiribati do not meet the threshold, it is unlikely that other regions could.¹⁵⁴

The Committee will hear a claim by Torres Strait Islander against Australia, for alleged violations to the ICCPR for Australia’s lack of action to address climate change.¹⁵⁵

B. *Climate Change Related Bodies*

Climate change related bodies have also played an important role in acknowledging the connection between climate change and human mobility.¹⁵⁶ For example, the connection gained more recognition after the publication of the IPCC’s fourth assessment report.¹⁵⁷ In the case of UNFCCC, it has also been active in the field, mainly through the UNFCCC Task Force that has developed recommendations for integrated approaches regarding

152. U.N. Int’l Covenant on Civil and Political Rights Human Rights Committee, *supra* note 143, ¶ 9.3.

153. Sinclair-Blakemore, *supra* note 151.

154. *Id.*

155. Sabin Center for Climate Change Law, *Petition of Torres Strait Islanders to the United Nations Human Rights Committee Alleging Violations Stemming from Australia’s Inaction on Climate Change*, <http://climatecasechart.com/non-us-case/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australias-inaction-on-climate-change/> (last visited Aug. 16, 2020).

156. Dominic Kniveton et al. *Climate Change and Migration: Improving Methodologies to Estimate Flows*, 33 IOM MIGRATION RESEARCH SERIES, at 1, 31–32 (2008) (explaining that the connection gained attention after the Intergovernmental Panel on Climate Change released its Fourth Assessment Report).

157. *Id.*; see IPCC PANEL 2017, *supra* note 47, at 13 (detailing, *inter alia*, that climate change-caused increases in sea level and drought are projected to cause population-scale migration).

environmental displacement.¹⁵⁸ The Task Force issued its report in 2018.¹⁵⁹ This report highlights the effects of slow onset events on access to basic resources such as food, water, and shelter, which leads to serious disruptions in livelihoods.¹⁶⁰

Furthermore, the report identifies the potential of the Global Compact on Migration to trigger a review of existing national human mobility frameworks.¹⁶¹ It also highlights good practices around the world in which national actors in both the climate and migration fields have worked together fostering a comprehensive approach to climate change-related mobility.¹⁶² Two examples of this coordinated approach are Bangladesh and Ghana.¹⁶³

C. *“Soft Law” Protecting People Displaced by Climate Change—Intersection of Environmental Law, International Human Rights Law and Refugee Law*

As the previous sections outline, climate change-related displacement has been studied by multiple international initiatives and U.N. bodies from several perspectives, including human mobility, protection of human rights, and the effects of climate change, among others.¹⁶⁴ The nature, causes, and effects of the phenomenon of climate change-related displacement in different regions in the world, along with the disruptive nature of climate change,¹⁶⁵ makes this comprehensive approach relevant

158. Platform on Disaster Displacement, *Recommendations for Integrated Approaches to Avert, Minimize and Address Displacement Related to the Adverse Impacts of Climate Change*, at 10 (July 2018), <https://unfccc.int/sites/default/files/resource/WIM%20TFD%20II.3%20Output.pdf>.

159. U.N. Framework Convention on Climate Change [UNFCCC], *Report of the Task Force on Displacement*, ¶ 1 (Sept. 17, 2018) [hereinafter UNFCCC, *Report of the Task Force on Displacement*], https://unfccc.int/sites/default/files/resource/2018_TFD_report_17_Sep.pdf.

160. *Id.* ¶ 14.

161. *Id.* ¶ 11.

162. *Id.* ¶ 10.

163. *Id.* ¶ 11.

164. See Brookings Project on Internal Displacement, *supra* note 27, at 1.

165. See Fisher et al., *supra* note 53, at 177 (describing the way climate change can be disruptive because conventional legal doctrine cannot solve climate change-related legal issues).

to a coordinated response and to the development of an international law framework to address it.

The trend includes the increase of soft law instruments in the way of reports, studies by international organizations, the Global Compact on Migration, and more recently, the opinion by the U.N. Human Rights Committee in the case of Ioane Teitiota.¹⁶⁶ This body of soft law takes concepts and protections from different areas of law, tailoring it to the specific needs of the population in movement.¹⁶⁷ Additionally, the multiple regional consultations that have been held¹⁶⁸ are a step in the right direction to recognize the different effects of climate change to populations around the world.

There is a clear preference by multiple actors in continuing the development of this soft law trend that may involve more state actors than a binding international instrument.¹⁶⁹ An example of this preference crystallizes in the Global Compact for Safe, Orderly and Regular Migration because as a non-binding instrument, it is able to recognize the need to anticipate future trends, including the impacts of climate change¹⁷⁰ with the support of a 152 countries.¹⁷¹ Although soft law may be hard to implement at the national level, it is important that states are recognizing this connection.

166. Mariya Aleksandrova et al., *A Real Game Changer? The Implications of the UN's Ruling on 'Climate Refugees'*, THE CURRENT COLUMN (Feb. 24, 2020), https://www.diegdi.de/uploads/media/German_Development_Institute_Aleksandrova_Schraffen_Serraglio_24.02.2020.pdf.

167. Elizabeth Ferris & Jonas Bergmann, *Soft Law, Migration and Climate Change Governance*, 8 J. HUM. RTS. AND ENVIRONMENT 6, 14 (2017) (explaining how the Guiding Principles on Internal Displacement developed by the World Summit of 2005 are based on humanitarian and refugee law).

168. *Regional Consultations on Migration*, U.N. REG'L COMM'NS, <http://www.regionalcommissions.org/regional-consultations-on-migration/> (last visited Aug. 26, 2020).

169. Scott Leckie, *Climate-Related Disasters and Displacement: Homes for Lost Homes, Lands for Lost Lands*, in POPULATION DYNAMICS AND CLIMATE CHANGE 119, 129 (Jose Miguel Guzman et al. eds. 2009).

170. See Intergovernmental Conf. to Adopt the Glob. Compact for Safe, Orderly and Regular Migration, *supra* note 124, ¶¶ 7, 39(b).

171. Meeting Coverage, General Assembly, General Assembly Endorses First-Ever Global Compact on Migration, Urging Cooperation among Member States in Protecting Migrants, U.N. Meeting Coverage GA/12113 (Dec. 19, 2018).

This paper has addressed the general development of international law in order to recognize and protect populations in the move caused by climate change. The next section will analyze the regional examples of migration movements from El Salvador, Guatemala, and Honduras. These countries are commonly referred to as the Northern Triangle of Central America and that also form the Dry Corridor region.¹⁷² In these countries, a combination of factors, including the effects of drought on agriculture and complex sociopolitical problems, have resulted in a rise in migration flows.¹⁷³

V. CLIMATE CHANGE AS A “THREAT MULTIPLIER” AND THE RELEVANCE TO THE NORTHERN TRIANGLE OF CENTRAL AMERICA

A. *Background*

The UNFCCC Task Force Report found that slow-onset events often are hidden aggravating factors in many contexts, acting as a threat multiplier for other factors of crisis, such as economic, social, cultural and political factors.¹⁷⁴ In some situations, these factors may become difficult to separate from one another and may culminate in humanitarian crises, creating internal and cross-border displacement.¹⁷⁵ Furthermore, the UNFCCC report points out that slow-onset events can exacerbate already fragile situations and have the potential to multiply or magnify pre-existing conflict.¹⁷⁶

172. Carrie Seay-Fleming, *Beyond Violence: Drought and Migration in Central America's Northern Triangle*, NEWSECURITYBEAT (Apr. 12, 2018), <https://www.newsecuritybeat.org/2018/04/violence-drought-migration-central-americas-northern-triangle/>.

173. *Id.*

174. See UNFCCC, *Report of the Task Force on Displacement*, *supra* note 159, ¶ 59(g).

175. *Id.*

176. *Id.*

B. Central America

In Central America, climate change also acts as a threat multiplier.¹⁷⁷ The Dry Corridor region has experienced recent flows caused by a combination of extreme violence, poverty, drought, poor coffee harvests, and worsening political conditions.¹⁷⁸ The combination of factors has created powerful push factors driving Central Americans to leave their countries.”¹⁷⁹

The term “Dry Corridor” refers to a phenomenon characteristic of Central America, where different ecosystems are combined with tropical forests.¹⁸⁰ The region starts in Chiapas, the state in southern Mexico that borders Guatemala, and comprises the Pacific coast and mountainous regions in Guatemala, El Salvador, Honduras, Nicaragua, and part of Costa Rica.¹⁸¹ In Honduras, the Dry Corridor extends to regions close to the Caribbean coast.¹⁸²

Unique from other regions in the world, drought in Central America is cyclical; it is closely related to the El Niño phenomenon and impacts rainfall distribution in the rainy season.¹⁸³ Due to these characteristics, drought has a direct effect on agriculture and livestock.¹⁸⁴ Therefore, drought has been the slow-onset event with more consequences for the population in the Dry Corridor.¹⁸⁵

177. *See id.* at ¶¶ 60, 100 & n.38.

178. ANDREW SELEE, SILVIA E. GIORGULI-SAUCEDO, ARIEL G. RUIZ SOTO & CLAUDIA MASFERRER, *INVESTING IN THE NEIGHBORHOOD: CHANGING MEXICO-U.S. MIGRATION PATTERNS AND OPPORTUNITIES FOR SUSTAINABLE COOPERATION* 12 (Migration Pol’y Inst. 2019), <https://www.migrationpolicy.org/research/mexico-us-migration-opportunities-sustainable-cooperation>.

179. *Id.*

180. FAO, *ESTUDIO DE CARACTERIZACIÓN DEL CORREDOR SECO CENTROAMERICANO*, *supra* note 5, at 8.

181. *Id.*; *Conoce Chiapas*, CHIAPAS.GOB.MX, <https://www.chiapas.gob.mx/ubicacion/> (last visited Aug. 30, 2020).

182. FAO, *ESTUDIO DE CARACTERIZACIÓN DEL CORREDOR SECO CENTROAMERICANO*, *supra* note 5, at 8.

183. *Id.*

184. *Id.* at 9.

185. *See id.* (noting the role of poor basin management in worsening the effects).

This paper focuses on the effects of drought, though other sudden-onset natural disasters have also resulted in displacement of populations in the region (in particular hurricanes, storms, and earthquakes).¹⁸⁶ The most cited examples are Hurricane Mitch in Honduras in 1998, as well as the Volcano of Fire eruption in Guatemala in June 2018, which mostly affected indigenous communities.¹⁸⁷ Most recently, hurricanes Eta and Iota impacted parts of Central America just two weeks apart in November 2020.¹⁸⁸

The effects of drought on the population have been addressed mainly from two perspectives: (1) international cooperation and development;¹⁸⁹ and (2) regional interagency work of U.N. bodies and countries in the region through consultations by the Nansen initiative, the Regional Conference on Migration, and other specific responses to address the needs of the population migrating.¹⁹⁰

1. *Food Security and International Cooperation*

The three countries of the Dry Corridor have implemented bilateral, regional, and international cooperation programs in order to tackle the effects of drought, in particular basic food needs.¹⁹¹ FAO and the World Food Programme have conducted

186. See, e.g., Kevin Sieff, *Under the Volcano*, WASH. POST (Nov. 27, 2019), <https://www.washingtonpost.com/world/2019/11/27/after-volcano-indigenous-guatemalans-search-safer-ground-guatemala-or-united-states/?arc404=true>; John L. Guiney & Miles B. Lawrence, *Preliminary Report: Hurricane Mitch*, NAT'L HURRICANE CTR. (Jan. 28, 1999), https://www.nhc.noaa.gov/data/tcr/AL131998_Mitch.pdf.

187. Sieff, *supra* note 186; Guiney & Lawrence, *supra* note 186.

188. *Hurricane Iota Makes Landfall in Nicaragua*, N.Y. TIMES (Nov. 16, 2020), <https://www.nytimes.com/2020/11/16/world/hurricane-iota.html>.

189. See, e.g., UNFCCC, *Report of the Task Force on Displacement*, *supra* note 159, ¶¶ 1, 60, 100 & n.38 (detailing intergovernmental efforts to combat climate change in less developed countries); *About GCF*, GREEN CLIMATE FUND, <https://www.greenclimate.fund/about> (last visited Sept. 2, 2020) (explaining the Green Climate Fund's goal of "helping developing countries reduce their greenhouse gas emissions and enhance their ability to respond to climate change.").

190. See, e.g., THE NANSEN INITIATIVE, *Protection Agenda*, *supra* note 72; *About Us*, REG'L CONF. ON MIGRATION, *supra* note 88.

191. FAO, ESTUDIO DE CARACTERIZACIÓN DEL CORREDOR SECO CENTROAMERICANO, *supra* note 5, at 70.

work in the region to address the effects of drought on food security.¹⁹² In a joint report, the World Food Programme and IOM pointed out that it may seem logical to presume some links between food security, violence, and migration.¹⁹³ But the report highlights that it is not possible to support this connection due to the lack of evidence.¹⁹⁴ This means that the extent of this connection is unknown.

The Green Climate Fund (“GCF”), which is dedicated to “helping developing countries reduce their greenhouse gas emissions and enhance their ability to respond to climate change,”¹⁹⁵ recognizes the vulnerabilities of the Dry Corridor to climate change and currently conducts projects to restore degraded ecosystems.¹⁹⁶ For example, there are three projects in El Salvador, one of which targets the agricultural sector through adaptive agroecosystem management “[b]y improving access to water and building local capacity.”¹⁹⁷ The project started in 2019 and is projected to end in 2024.¹⁹⁸ Another GCF project targeting agricultural practices and improvements to water use is ongoing in Guatemala.¹⁹⁹ In the case of Honduras, a GCF project focuses on “climate resilience of vulnerable coniferous forests.”²⁰⁰

192. *Id.* at 8–9, 23; Int’l Org. for Migration [IOM] & World Food Programme [WFP], *Hunger Without Borders, The Hidden Links between Food Insecurity, Violence and Migration in the Northern Triangle of Central America*, at 9, 24 (2016) [hereinafter IOM & WFP, *Hunger Without Borders*], https://documents.wfp.org/stellent/groups/public/documents/liaison_offices/wfp277544.pdf?_ga=2.152919865.1092205399.1587998317-71036500.1587998317.

193. IOM & WFP, *Hunger Without Borders*, *supra* note 192, at 9.

194. *Id.* at 13.

195. *About GCF*, *supra* note 189.

196. *FP089: Upscaling Climate Resilience Measures in the Dry Corridor Agroecosystems of El Salvador (RECLIMA)* [hereinafter *RECLIMA*], GREEN CLIMATE FUND, <https://www.greenclimate.fund/project/fp089> (last visited Sept. 2, 2020).

197. *El Salvador*, GREEN CLIMATE FUND, <https://www.greenclimate.fund/countries/el-salvador> (last visited Sept. 2, 2020) (listing three projects for El Salvador); *RECLIMA*, *supra* note 196.

198. *RECLIMA*, *supra* note 196.

199. *FP087: Building Livelihood Resilience to Climate Change in the Upper Basins of Guatemala’s Highlands*, GREEN CLIMATE FUND, <https://www.greenclimate.fund/project/fp087> (last visited Sept. 2, 2020).

200. *FP111: Promoting Climate-Resilient Forest Restoration and Silviculture for the Sustainability of Water-Related Ecosystem Services*, GREEN CLIMATE FUND, <https://www.greenclimate.fund/project/fp111> (last visited Sept. 2, 2020).

Funding for these and other projects is diverse. The GCF funding comes from a variety of sources, including developed countries, some developing countries, and regions.²⁰¹ Other entities have also invested in cooperation programs in the Dry Corridor, such as the European Union.²⁰² In the case of the United States, the US Agency for International Development (“USAID”) works in programs in the three Northern Triangle countries through an approach that includes four pillars: the productive sector, developing human capital, citizen security, and access to justice and strengthening institutions.²⁰³ During the Trump administration, U.S. aid was recently subjected to political scrutiny and suspended amid the increased flows of emigration from the region.²⁰⁴ The aid was restored after the United States reached migration deals with countries in the region.²⁰⁵

In the case of Mexico, the new federal administration launched a new development and cooperation plan, Plan de Desarrollo Integral (“PDI-Comprehensive Development Plan”).²⁰⁶ This plan comprises four areas of work, including migration

201. *About GCF*, *supra* note 189.

202. Terrence Jantzi, Paula Gil, Luis Ernesto Romano, Allan Lavell & Carlos Alfredo Puac, *Decentralized Evaluation: Executive Summary of the Final Evaluation of the Project “El Niño Response in the Dry Corridor of Centro America”*, El Salvador, Guatemala, Honduras and Nicaragua, 2016-2018, at 1 (WFP Mar. 2019), https://docs.wfp.org/api/documents/WFP-0000103600/download/?_ga=2.156775611.1092205399.1587998317-71036500.1587998317.

203. See U.S. AGENCY FOR INT’L DEV. [USAID] & U.S. DEP’T OF STATE, PROGRESS REPORT FOR THE UNITED STATES STRATEGY FOR CENTRAL AMERICA’S PLAN FOR MONITORING AND EVALUATION 1–2 (May 2019), https://pdf.usaid.gov/pdf_docs/PA00TQBJ.pdf.

204. Lesley Wroughton & Patricia Zengerle, *As promised, Trump slashes aid to Central America over migrants*, REUTERS (June 17, 2019) <https://www.reuters.com/article/us-usa-immigration-trump/as-promised-trump-slashes-aid-to-central-america-over-migrants-idUSKCN1TI2C7>.

205. Daniel Trotta, *U.S. restores aid to Central America after reaching migration deals*, REUTERS (Oct. 16, 2019) <https://www.reuters.com/article/us-usa-immigration-aid/us-restores-aid-to-central-america-after-reaching-migration-deals-idUSKBN1WV2T8>.

206. SECRETARÍA DE RELACIONES EXTERIORES, AGENCIA MEXICANA DE COOPERACIÓN INTERNACIONAL PARA EL DESARROLLO, INICIATIVAS DE MÉXICO PARA LA INSTRUMENTACIÓN DEL PLAN DE DESARROLLO INTEGRAL, <https://www.gob.mx/cms/uploads/attachment/file/485193/PDI.pdf> (last visited Sept. 14, 2020).

management, economic development, social welfare and environmental sustainability.²⁰⁷

Although the countries take different approaches, both Mexican and US cooperation and development programs in the Northern Triangle countries recognize the role of these programs in addressing root causes of migration.²⁰⁸

2. *Treatment of the Displaced Population*

UNHCR has highlighted that the population of refugees and asylum seekers from the Northern Triangle countries has increased in the past five years.²⁰⁹ By the end of 2019, there were about 400,261 people from the region seeking either refugee status or asylum.²¹⁰ An important characteristic is the mixed composition of the migration movement, which includes single individuals, families, unaccompanied children, as well as people from urban centers and rural areas.²¹¹

As was previously addressed, the Nansen Initiative conducted regional consultations, both with the Northern Triangle countries and other members of the Regional Conference of Migration.²¹² These consultations culminated in the Guide to Effective Practices for RCM Member Countries: Protection for Persons Moving Across Borders in the Context of Disasters.²¹³

207. *Id.* at 2.

208. See USAID & U.S. DEPT OF STATE, *supra* note 203; see also SECRETARÍA DE RELACIONES EXTERIORES, *supra* note 206.

209. U.N. HIGH COMM'R FOR REFUGEES, NORTH OF CENTRAL AMERICA SITUATION, FACT SHEET, at 1 (Jan. 2020), https://www.acnur.org/op/op_fs/5e3ddde94/unhcr-fact-sheet-north-of-central-america-situation-january-2020.html.

210. *Id.*

211. COMISIÓN MEXICANA DE AYUDA A LOS REFUGIADOS, ESTADÍSTICA DEL MES DE ABRIL 2020 (May 2, 2020), <https://www.gob.mx/comar/articulos/estadistica?idiom=es> (showing recent data of migrations into Mexico from the Northern Triangle countries); PETER J. MEYER, ET AL., CONG. RSCH. SERV., R43702, UNACCOMPANIED CHILDREN FROM CENTRAL AMERICA: FOREIGN POLICY CONSIDERATIONS (Apr. 11, 2016), <https://fas.org/sgp/crs/homsec/R43702.pdf> (showing relevant data of the unfolding migration patterns from Central America, including descriptions of mixed migration groups and migrants generally).

212. THE NANSEN INITIATIVE, PROTECTION FOR PERSONS MOVING ACROSS BORDERS IN THE CONTEXT OF DISASTERS, *supra* note 88, at 28.

213. *Id.*

Both Mexico and the United States are members of the RCM,²¹⁴ but their domestic legislation is relevant to understanding the scope of protections available in the region. They will be briefly addressed in the following subsections.

C. *Protection Provided by Domestic Legal Frameworks in Countries Hosting or Likely to Host Populations Displaced from the Dry Corridor*

1. *Mexico*

For many years, Mexico has been a transit point for people migrating from the Northern Triangle to the United States, but it has also become a final destination in past years.²¹⁵ Mexico is a member of the 1951 Refugee Convention, its 1967 Protocol, the 1984 Cartagena Declaration, and other international human rights instruments.²¹⁶ It has been active in other fora, including the Nansen Initiative, and has played an active role in the adoption of the Global Compact on Migration.²¹⁷

Mexico's legislation provides two kinds of legal protections that are relevant to nationals of other countries that leave their countries in search of humanitarian protection.²¹⁸ One is refugee

214. *Member Countries*, REG'L CONF. ON MIGRATION, <https://www.rcmvs.org/en/about-us/member-countries> (last visited Aug. 26, 2020).

215. Rachel Schmidtko, *Mexico is an Increasingly Viable Destination for Migrants*, FORBES (Dec. 11, 2018), <https://www.forbes.com/sites/themexicoinstitute/2018/12/11/mexico-is-an-increasingly-viable-destination-for-migrants/#229a9e9a1745>.

216. Convention relating to the Status of Refugees, *supra* note 58; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267; Cartagena Declaration on Refugees (Nov. 22, 1984), <https://www.unhcr.org/en-us/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html>. See also, e.g., International Covenant on Civil and Political Rights, *supra* note 95.

217. *Global Consultation*, THE NANSEN INITIATIVE, <https://www.nanseninitiative.org/global-consultations/> (last visited Sept. 6, 2020); Press Release, Secretaría de Relaciones Exteriores, Gobierno de México, U.N. General Assembly Endorses Global Compact for Safe, Orderly and Regular Migration (Dec. 19, 2018), <https://www.gob.mx/sre/prensa/un-general-assembly-endorses-global-compact-for-safe-orderly-and-regular-migration>.

218. Ley Sobre Refugiados, Protección Complementaria y Asilo Político, art. 13, Diario Oficial de la Federación [DOF] 27-01-2011, últimas reformas DOF 30-10-2014 (Mex.), formato PDF, <https://www.gob.mx/cms/uploads/attachment/file/>

status and the other is “complementary protection.”²¹⁹ These two options are relevant to nationals of Northern Triangle countries that have been consistently the majority of people apprehended by Mexican immigration authorities when trying to enter the country without proper documentation.²²⁰ For instance, out of the more than 182,940 total apprehensions in 2019,²²¹ more than 154,000 were apprehensions of nationals of El Salvador, Guatemala, and Honduras.²²²

The main group of individuals requesting refugee status in Mexico include nationals of the three Northern Triangle countries.²²³ In 2019, the top countries of origin of the claimants were Honduras, El Salvador, Cuba, Venezuela, Haiti and Guatemala.²²⁴ In general, refugee requests in Mexico increased significantly from 2018 to 2019. In 2019, there were 70,609 requests,²²⁵ but in 2018, there were only 29,630 refugee status claims.²²⁶

Mexico’s Law for Refugees, Complementary Protection and Asylum adopts the expanded definition of “refugee” provided by the 1984 Cartagena Declaration.²²⁷ This means that in addition

211049/08_Ley_sobre_Refugiados_Protecci_n_Complementaria_y_Asilo_Pol_tico.pdf (consultada el 12 septiembre 2020) (Mex.).

219. *Id.* arts. 2 § VIII, 28–32.

220. UNIDAD DE POLÍTICA MIGRATORIA, BOLETÍN MENSUAL DE ESTADÍSTICAS ~ MIGRATORIAS, EVENTOS DE EXTRANJEROS PRESENTADOS ANTE LA AUTORIDAD MIGRATORIA, SEGÚN CONTINENTE Y PAÍS DE NACIONALIDAD 132 (July 2020), http://portales.segob.gob.mx/work/models/PoliticaMigratoria/CEM/Estadisticas/Boletines_Estadisticos/2019/Boletin_2019.pdf.

221. *Id.*

222. There were 154,419 apprehensions of nationals of the three Northern Triangle countries: 22,267 from El Salvador, 52,525 from Guatemala and 79,627 from Honduras. *Id.*

223. Out of 18,230 total from the top ten countries for April 2020, 5,829 were from Honduras, 1,687 were from El Salvador, and 1,089 were from Guatemala. COMISIÓN MEXICANA DE AYUDA A LOS REFUGIADOS, ESTADÍSTICA DEL MES DE ABRIL 2020, <https://www.gob.mx/comar/articulos/estadistica?idiom=es> (last visited Sept. 14, 2020).

224. In 2019, 30,187 were from Honduras, 9,039 were from El Salvador, 8,708 were from Cuba, 7,677 were from Venezuela, 5,550 were from Haiti, and 3,800 were from Guatemala. *Id.*

225. *Id.*

226. *Id.*

227. Ley sobre Refugiados, Protección Complementaria y Asilo Político, *supra* note 218.

to the factors included in the 1951 Convention definition, a person may seek refugee status in Mexico for “generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances that have perturbed public order.”²²⁸ In case a person seeking protection does not meet the threshold to receive refugee status, Mexican legislation also contains the possibility to grant “complementary protection,”²²⁹ which is a subsidiary form of humanitarian protection.

Mexico has fostered a regional approach to migration movements from the Northern Triangle.²³⁰ It participates in UNHCR-led initiatives that seek to implement the Global Compact, along with civil society, private sector, and other stakeholders.²³¹ Due to its strategic geographical position and engagement with the United States and other countries in the region, Mexico has the potential to have an even more active role in dealing with the causes of displacement from the Dry Corridor.

2. *United States*

The United States is a member of the 1967 U.N. Protocol Relating to the Status of Refugees.²³² The United States acquired international obligations when it acceded to the Protocol in 1968, including the obligation to abide by the definition of “refugee” in Article 1 of the Convention and the principle of *non-refoulement*

228. Ley sobre Refugiados, Protección Complementaria y Asilo Político, *supra* note 218, art. 13 § II (translated from Spanish).

229. Ley sobre Refugiados, Protección Complementaria y Asilo Político, *supra* note 218, arts. 28–32.

230. AGENCIA MEXICANA DE COOPERACIÓN INTERNACIONAL PARA EL DESARROLLO, *supra* note 206.

231. Arturo Almenar, *UNHCR welcomes commitment by Central American states and Mexico to address forced displacement*, U.N. HIGH COMM’R FOR REFUGEES (Nov. 19, 2019), <https://www.unhcr.org/en-us/news/press/2019/11/5dc6849c4/unhcr-welcomes-commitment-central-american-states-mexico-address-forced.html>.

232. Protocol relating to the Status of Refugees, *supra* note 216.

in Article 33.²³³ In more recent developments, the United States objected to the adoption of the Global Compact.²³⁴

Unlike Mexico and other countries in the region that are parties to the Cartagena Declaration, the United States' definition of "refugee" is "virtually identical to the Protocol definition,"²³⁵ which is narrower. In an effort to harmonize its domestic law to those international obligations, Congress passed the Refugee Act in 1980, which "created a legal framework for refugees to apply from abroad and for asylum-seekers to apply from within the United States."²³⁶ Both refugees and asylum seekers have to meet the threshold of the definition of "refugee" provided in the Immigration and Nationality Act ("INA").²³⁷ This means that asylum protections are limited to people who have suffered persecution or would likely be persecuted "on account of race, religion, nationality, membership in a particular social group, or political opinion" if they are returned to their countries of origin.²³⁸

Although refugee status and asylum may provide the broadest protections in the United States for people fleeing their countries of origin, US legislation also includes other forms of humanitarian protection, such as Temporary Protected Status

233. U.N. HIGH COMM'R FOR REFUGEES, STATES PARTIES TO THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND THE 1967 PROTOCOL, <https://www.unhcr.org/en-us/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html> (last accessed Sept. 3, 2020); Protocol Relating to the Status of Refugees, *supra* note 216; Convention Relating to the Status of Refugees, *supra* note 58, arts. 1, 33.

234. U.S. Mission to the U.N., *National Statement of the United States of America on the Adoption of the Global Compact for Safe, Orderly, and Regular Migration* (Dec. 7, 2018), <https://usun.usmission.gov/national-statement-of-the-united-states-of-america-on-the-adoption-of-the-global-compact-for-safe-orderly-and-regular-migration/>.

235. REGINA GERMAIN, *ASYLUM PRIMER PRACTICAL GUIDE TO U.S. ASYLUM LAW AND PROCEDURE* 24 (Am. Immigr. Laws. Ass'n ed., 6th ed. 2010).

236. *Id.*

237. The full definition is located in 8 U.S.C. § 1101(a)(42): "The term 'refugee' means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion" 8 U.S.C. § 1101(a)(42).

238. *Id.*

(“TPS”), humanitarian parole, and other special parole programs for specific countries.²³⁹

The Secretary of the Department of Homeland Security has the power to designate nationals of certain countries for TPS due to conditions in those countries.²⁴⁰ These countries have to be designated by the Secretary by reasons such as “ongoing armed conflict,” “environmental disaster,” or “other extraordinary and temporary conditions.”²⁴¹ El Salvador and Honduras are currently designated countries, though TPS designation only covers individuals that comply with very specific requirements, including continuous US residence since February 2001 for El Salvador,²⁴² and since December 1998 for Honduras.²⁴³

Both countries were originally designated due to natural disasters.²⁴⁴ Honduras was designated due to the environmental disaster caused by Hurricane Mitch in 1998,²⁴⁵ and El Salvador was designated following the devastation from a series of

239. See U.S. CITIZENSHIP AND IMMIGR. SERVS., TEMPORARY PROTECTED STATUS, <https://www.uscis.gov/humanitarian/temporary-protected-status> (last updated Mar. 30, 2020); see U.S. CITIZENSHIP AND IMMIGR. SERVS., HUMANITARIAN OR SIGNIFICANT PUBLIC BENEFIT PAROLE FOR INDIVIDUALS OUTSIDE THE UNITED STATES, <https://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-individuals-outside-united-states> (last updated Dec. 16, 2019) [hereinafter HUMANITARIAN PAROLE]; See U.S. CITIZENSHIP AND IMMIGR. SERVS., IN-COUNTRY REFUGEE/PAROLE PROCESSING FOR MINORS IN HONDURAS, EL SALVADOR, AND GUATEMALA (CENTRAL AMERICAN MINORS – CAM), <https://www.uscis.gov/CAM> (last visited Sept. 3, 2020).

240. U.S. CITIZENSHIP AND IMMIGR. SERVS., TEMPORARY PROTECTED STATUS, *supra* note 239.

241. *Id.*

242. U.S. CITIZENSHIP AND IMMIGR. SERVS., TEMPORARY PROTECTED STATUS DESIGNATED COUNTRY: EL SALVADOR, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-el-salvador> (last updated Dec. 7, 2020).

243. U.S. CITIZENSHIP AND IMMIGR. SERVS., TEMPORARY PROTECTED STATUS DESIGNATED COUNTRY: HONDURAS, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-honduras> (last updated Dec. 7, 2020).

244. See Designation of Honduras Under Temporary Protected Status, 64 Fed. Reg. 524, 524 (Jan. 5, 1999); Designation of El Salvador Under Temporary Protected Status Program, 66 Fed. Reg. 14214, 14214 (Mar. 9, 2001).

245. Designation of Honduras Under Temporary Protected Status, 64 Fed. Reg. at 524.

earthquakes that occurred in 2001.²⁴⁶ Both designations were terminated in the Trump administration but remain in effect because of ongoing litigation.²⁴⁷

There is a rich debate over the adequacy of TPS as a “blanket protection,” especially for its high dependence of political decisions.²⁴⁸ As previously noted, TPS designation was terminated to El Salvador and Honduras but is still being applied because of pending litigation.²⁴⁹

Although it has some limitations, U.S. legislation includes other possibilities of humanitarian benefits, such as humanitarian parole.²⁵⁰ These benefits have been applied in the past in the context of special parole programs to respond to specific needs of certain populations, such as family reunification for nationals of Haiti and a program for reunification of certain Central American minors.²⁵¹ In these programs, immigration authorities use their discretionary powers on an ad hoc basis to authorize individuals to gain admission into the United States.²⁵² The Executive Order issued by President Joe Biden on February 4, 2021 on refugee processing and resettlement²⁵³ is a positive development to document the connection between climate change and migration. Section 6 of that Executive Order requests a report on climate change and its impact on migration that will increase the available information in this field.²⁵⁴

246. Designation of El Salvador Under Temporary Protected Status Program, 66 Fed. Reg. at 14214.

247. U.S. CITIZENSHIP AND IMMIGR. SERVS., UPDATE ON RAMOS V. NIELSEN, <https://www.uscis.gov/update-ramos-v-nielsen> (last updated Dec. 7, 2020).

248. See Bill Frelick, *What's Wrong with Temporary Protected Status and How to Fix it: Exploring A Complementary Protection Regime*, 8 J. MIGRATION AND HUM. SEC. 42, 42 (2020); JILL H. WILSON, CONG. RSCH. SERV., RS20844, TEMPORARY PROTECTED STATUS: OVERVIEW AND CURRENT ISSUES (Jan. 17, 2018), https://digital.library.unt.edu/ark:/67531/metadc1157017/m2/1/high_res_d/RS20844_2018Jan17.pdf.

249. See U.S. CITIZENSHIP AND IMMIGR. SERVS., UPDATE ON RAMOS V. NIELSEN, *supra* note 247.

250. U.S. CITIZENSHIP AND IMMIGR. SERVS., HUMANITARIAN PAROLE, *supra* note 239.

251. *Id.*

252. *Id.*

253. See generally Exec. Order No. 14013, 86 Fed. Reg. 8839 (Feb. 4, 2021).

254. *Id.* at 8843–44.

VI. CONCLUSIONS

Climate change related displacement has gained more recognition in the past two decades, with increased awareness from state actors, non-state actors, and international organizations. The development of soft-law has been consistent. International and regional initiatives, such as the Nansen Initiative²⁵⁵ and the Platform on Disaster Displacement,²⁵⁶ have been key in highlighting the differentiated effects that climate change has in the regions in the world. For example, these initiatives have brought attention to the effects of both rising sea levels in the Pacific Islands and drought on agriculture and food security in Central America.²⁵⁷

A positive outcome from this soft-law movement is the wide acceptance of the connection between climate change and human mobility, from the IPCC Synthesis Report, as well as from the works of the UNFCCC Task Force and the Global Compact for Migration.²⁵⁸ The challenges remain in implementation of recommendations and further engagement of important actors in global affairs, particularly the United States.

In terms of the migration movements from countries of the Northern Triangle of Central America, the drought and the effects of climate change “act[] as a threat multiplier”²⁵⁹ in an already complex sociopolitical scenario. Countries of the region have been part of regional consultations that have covered the connections between climate change and human mobility.²⁶⁰ It is important to continue to enhance the work of regional entities such as the RCM in collaboration with international organizations, such as UNHCR and IOM, that work with

255. See THE NANSEN INITIATIVE, AGENDA FOR THE PROTECTION OF CROSS-BORDER DISPLACED PERSONS IN THE CONTEXT OF DISASTERS AND CLIMATE CHANGE, *supra* note 74.

256. See *Our Response*, PLATFORM ON DISASTER DISPLACEMENT, *supra* note 77.

257. See THE NANSEN INITIATIVE, AGENDA FOR THE PROTECTION OF CROSS-BORDER DISPLACED PERSONS IN THE CONTEXT OF DISASTERS AND CLIMATE CHANGE, *supra* note 74, at 6.

258. See *supra* notes 48–50, 158–59, 124 and accompanying text.

259. UNFCCC, *Report of the Task Force on Displacement*, *supra* note 159, ¶ 60.

260. See THE NANSEN INITIATIVE, AGENDA FOR THE PROTECTION OF CROSS-BORDER DISPLACED PERSONS IN THE CONTEXT OF DISASTERS AND CLIMATE CHANGE, *supra* note 74, at 7.

migrants and asylum seekers in the region. In addition, it is crucial to increase collaboration with other international organizations working to tackle the effects of climate change, changing weather patterns and drought in the region, such as the Food and Agricultural Organization, the World Food Program and the Green Climate Fund. Moreover, it is important to integrate non-governmental organizations and the private sector to achieve a more comprehensive view of regional conditions. At the national levels, agencies working on migration and climate change issues can also work more closely together to monitor weather patterns and plan coordinated responses accordingly in case of disasters that can be prevented.

It is also important to conduct further research and gather data to document the links that climate change and drought have in the region. For example, more research should be done on the connection between the decision to migrate and the places of origin of the people migrating. One helpful option would be a database of all ongoing development programs in the Northern Triangle, including their impact on living conditions for people in the region, to determine whether the impacts of climate change affected their decision to migrate.

Regarding existing protections in the region, there are some developments in domestic legislation that are relevant to migrants and asylum seekers from the Northern Triangle, which include refugee status and complementary protection in Mexico and different forms of humanitarian protection in the United States.²⁶¹ To enhance protections and the body of soft-law in the region, other instruments can be pursued such as the possibility to request and update the IACHR Advisory Opinion 23 to recognize the connection between climate change and human mobility. Additionally, regional working documents acknowledging the importance of addressing the effects of climate change simultaneously as the root causes of migration should be pursued. Regional cooperation and the sharing of responsibilities among different state and non-state actors seems key to achieve these goals, and ultimately, to improve living conditions of people in the region.

261. See *supra* notes 220, 239 and accompanying text.

