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Mariya Gromilova
University of Tilburg, m.gromilova@uvt.nl

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ARTICLE

Finding Opportunities to Combat the Climate Change Migration Crisis: The Potential of the “Adaptation Approach”¹

MARIYA GROMILOVA*

I. INTRODUCTION

The time when climate change was primarily the concern of scientists is long gone. Today, the “human face” of climate change is visible to the world through the many people that suffer its consequences, such as sea-level rise, droughts, cyclones, and tsunamis. These impacts present a threat to lives and livelihoods and will induce millions of people to move, some of them permanently. Though the evidence of this phenomenon remains

1. This article builds upon my previous research conducted as a part of my doctorate dissertation and finalises my research project. The preceding publications: MARIYA GROMILOVA & NICOLA JÄGERS, *Climate Change Induced Displacement and International Law*, in RESEARCH HANDBOOK ON CLIMATE CHANGE AND ADAPTATION LAW (Edward Elgar & Johann Verschuuren eds. 2013); Mariya Gromilova, *Can the EU Seasonal Workers Directive Alleviate the Pending Crisis of Climate-induced Displacement? Lessons from Oceania*, EUR. LAB. L. J. (forthcoming) [hereinafter *Lessons from Oceania*]; Mariya Gromilova, *Rescuing Tuvaluans: Towards an ICJ Advisory Opinion on the International Legal Obligations to Protect the Environment and Human Rights of Populations Affected by Climate Change*, 10 INTERCULTURAL HUM. RTS. L. REV. 233, (2015) [hereinafter *Rescuing Tuvaluans*]; Mariya Gromilova, *Revisiting Planned Relocation as a Climate Change Adaptation Strategy: The Added Value of a Human Rights-Based Approach*, 10 UTRECHT L. REV. 76 (2014) [hereinafter *Revisiting Planned Relocation*].

* PhD Researcher, Department of European and International Public Law, Tilburg Law School, Tilburg Sustainability Centre, the Netherlands; email: M.Gromilova@uvt.nl.

limited, in its Fifth Assessment Report, the Intergovernmental Panel on Climate Change (IPCC) is in the high agreement that climate change will increase the displacement of people over the course of the 21st Century.² Due to the fact that climate change-related impacts are to a large extent irreversible, adaptation might be the only available and appropriate response, according to the IPCC.³

Given the scope and turbulence of the issue, the topic of climate change migration is unsurprisingly high on the agenda of politicians and academics. The issue is multifaceted and continually challenges with fundamental questions such as: what is happening and where? How many people will have to move? Where will they go? Who is responsible for helping them? What is their legal status, etc.?

The attempts to generate knowledge and reach understanding in order to answer these questions are numerous. Regardless of the efforts of empirical research groups, political lobbying, research institutes, international organizations and NGOs, the success is poor. International law is also of little help, since there are normative gaps that prevent people induced to move by climate change from being considered under existing frameworks or from acquiring a defined legal status; these gaps also prevent the establishment of a mechanism or mechanisms for their protection.⁴ The conceptual difficulties, from both

2. IPCC, CLIMATE CHANGE 2014: IMPACTS, ADAPTATION, AND VULNERABILITY 20 (2014) [hereinafter IPCC 2014].

3. By “irreversible” it is meant that even when all the GHG emissions be stopped today, the marginal changes will be seen only in 30–40 years. See GROMILOVA & JÄGERS, *supra* note 1, at 1; see also Intergovernmental Panel on Climate Change, *Climate Change 2007: Impacts, Adaptation and Vulnerability*, at 19 (2007) [hereinafter IPCC 2007].

4. Oli Brown, INT'L ORG. FOR MIGRATION, PUB. NO. 31, MIGRATION AND CLIMATE CHANGE 36 (2008); Frank Biermann & Ingrid Boas, *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees*, 10 GLOBAL ENVTL. POL. 60, 63 (2010) [hereinafter *Preparing for a Warmer World*]; David Hodgkinson et al., *The Hour When the Ship Comes in: A Convention for Persons Displaced by Climate Change*, 36 MONASH U. L. REV. 69, 75–77 (2010); see also GROMILOVA & JÄGERS, *supra* note 1; Frank Biermann & Ingrid Boas, *Protecting Climate Refugees: The Case for a Global Protocol*, ENV'T: SCI & POL'Y FOR SUSTAINABLE DEV. 11 (2008), <http://www.environmentmagazine.org/Archives/Back%20Issues/November-December%202008/Biermann-Boas-full.html> [http://perma.cc/PRZ7-WLP4] [hereinafter *Protecting Climate Refugees*]; Jekwu Ikeme, *Equity, Environmental*

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theoretical and legal perspectives, are multiple and originate in the complex nature of the phenomenon.

However, apart from many limitations of law, politics, and scientific and technological progress, the debates on climate-induced population movement have achieved several significant results that offer opportunities. Some of them are yet to be seen (the negotiations in Paris and potential inclusion in its outcome-document of the commitment for the developed states to “[a]ssist[] in providing organized migration and planned relocation” due to climate change),⁵ while others have already gained support amongst policy-makers and academics. This is the case for the 2010 Cancun Adaptation Agreement, which differentiated between different types of climate change-induced mobility by acknowledging migration, induced displacement, and planned relocation as climate change adaptation strategies; the Agreement invited the Parties to enhance understanding and cooperation with regard to these adaptation strategies.⁶ The Cancun Adaptation Framework reemphasized the obligation of adaptation under Article 4(1)(b) of the U.N. Framework Convention on Climate Change (UNFCCC) and invited Parties to cooperate regarding specific actions on the national, regional, and international levels when it comes to the issue of population movement due to climate change.⁷ It has also suggested for the first time that migration, displacement, and planned relocation can become part of National Adaptation Plans (NAPs).⁸ As Kälin and Schrepfer put it, the Cancun Adaptation Agreement is “the

Justice and Sustainability: Incomplete Approaches in Climate Change Politics, 13 GLOBAL ENVTL. CHANGE 195 (2003).

5. U.N. Framework Convention on Climate Change Ad Hoc Working Group on the Durban Platform for Enhanced Action, *Negotiating Text*, U.N. Doc. FCCC/ADP/2015/1, at 32 (Feb. 25, 2015), <http://unfccc.int/resource/docs/2015/adp2/eng/01.pdf> [<https://perma.cc/89TD-FN4A>] [hereinafter Durban Platform for Enhanced Action].

6. UNFCCC Conference of the Parties, *Rep. of the Conference of the Parties on its Sixteenth Session, Held in Cancun from 29 November to 10 December 2010*, ¶ 14, U.N. Doc. FCCC/CP/2010/7/Add.1 (Mar. 15, 2011) [hereinafter *Cancun Agreements*].

7. *See generally id.*

8. *Id.* ¶ 14; *see also* Walter Kälin & Nina Schrepfer, U.N. High Comm’r for Refugees, *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches*, U.N. Doc. PPLA/2012/01, at 49–50 (2012).

most important step thus far” made at the international level regarding the issue of climate-induced population movement.⁹

The Cancun Agreement is a non-binding instrument included within the UNFCCC framework, which nevertheless has implications that go far beyond the single agreement. As I argue here, viewing an issue of climate-induced population movement as a matter of adaptation, *i.e.*, approaching it through the adaptation approach, allows us to integrate the opportunities offered by other relevant legal regimes. This ultimately allows us to breach the normative gaps peculiar to fragmented international law and conceptualize the complex issue of climate-induced population movement.

The aim of this article is to demonstrate the benefits of applying adaptation approach in conceptualising the issue of climate-induced population movement and its potential to respond to the main priorities to be addressed in the context of population movement induced by climate change. This article proceeds with Section 2, which provides an overview of the main difficulties to conceptualization of the issue of climate induced population movement from empirical and legal perspectives. Section 3, drawing upon the state of play presented above, identifies the main priorities that have to be addressed. Section 4 focuses on the opportunities the Cancun Adaptation Agreement offers. First, however, I assess in this section the benefits of treating population movement as a matter of adaptation to find out how the adaptation approach can be utilized to integrate relevant provisions of various legal frameworks and how an effective response to the pending climate migration crisis can be developed and implemented.

A. Definitions

The two basic concepts used throughout the article are “climate-induced population movement” and “adaptation approach to climate-induced population movement.”

Climate-induced population movement: This is the term used throughout this article, and stands for a movement of persons in response to climate change impacts (both sudden-onset

9. *Id.* at 49.

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and slow-onset) of both temporary and permanent character in the form of migration, induced-displacement, or planned relocation.

Adaptation approach to climate-induced population movement: Adaptation, when it comes to people, is understood as “the process of adjustment to actual or expected climate and its effects, in order to moderate harm or exploit beneficial opportunities.”¹⁰ When it comes to adaptation in the context of climate-induced population movement, the Cancun Adaptation Framework expressed that migration, induced-displacement, and planned relocation can be this general adjustment.¹¹ The adaptation approach to climate-induced population movement is defined, for the purpose of this article, as a proactive approach in which migration, induced-displacement, and planned relocation are used as adaptation measures that allow people to adjust to changing climate by moving from places at risk.

II. STATE OF PLAY AND DIFFICULTIES IN CONCEPTUALIZATION

Population movement in response to climate change has been under the spotlight of politicians and academics for at least the last decade.¹² The predictions on the scale and the magnitude of the issue are quite alarming, and, depending on the perception of climate change as a factor for migration, range between 25 million and 1 billion.¹³ There is agreement that climate change

10. Intergovernmental Panel on Climate Change, *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation, Annex II: Glossary of Terms*, at 556 (2012).

11. See *Cancun Agreements*, *supra* note 6, ¶ 14(f).

12. ÉTIENNE PIGUET ET AL., *MIGRATION AND CLIMATE CHANGE* 2–6 (Cambridge Univ. Press 2011).

13. See U.N. Secretary-General, *Climate Change and its Possible Security Implications*, ¶ 54, U.N. Doc. A/64/350 (Sept. 11, 2009); CHRISTIAN AID, *THE HUMAN TIDE: THE REAL MIGRATION CRISIS* 22 (2007); Norman Myers, *Environmental Refugees in a Globally Warmed World*, 43 *BIOSCIENCE* 752, 757 (2003); Jon Barnett & Michael Webber, *Accommodating Migration to Promote Adaptation to Climate Change* 14–15 (World Bank, Working Paper No. 5270, 2010); François Gemenne, *Environmental Changes and Migration Flows: Normative Frameworks and Policy Responses* 158 (Apr. 3, 2009) (unpublished

will most severely affect people from the developing and least-developed countries, already vulnerable, most depended on natural capital, and with the least financial and physical capacity to adapt to climate change.¹⁴ Ironically, these people most affected by climate change are also the least responsible for emissions of greenhouse gases.¹⁵ This suggests that countries affected by climate change will probably not be able to manage the problem without assistance, and also that there is *at least* a moral obligation on the part of those who have contributed to climate change to provide assistance. While there is a debate as to whether this assistance is a legal obligation or is entirely voluntary, it is in fact in the best interests of the developed countries to provide assistance.¹⁶ Unmanaged, sporadic, last minute movements are associated with multiple risks, including political and economic instability, security concerns, and widespread human rights implications not only for those who are induced to move but also for receiving and neighbouring areas.¹⁷

This complex state of play, and the fundamental questions it puts forward, demands answers and solutions. There are, however, numerous difficulties in conceptualizing the issue from both empirical and legal perspectives.

A. Issue of Causation

First, there is the fundamental issue of causation. The empirical studies that have been undertaken show the complexity of the relationship between environmental factors and migration.¹⁸ Climate change is only one factor among several

Ph.D. dissertation, University of Liège), for different estimations and two different schools of thoughts (maximalists and minimalists).

14. Jon Barnett & Michael Webber, *Migration as Adaptation: Opportunities and Limits*, in CLIMATE CHANGE AND DISPLACEMENT: MULTIDISCIPLINARY PERSPECTIVES 37, 39 (Jane McAdam ed., Hart Publ'g, 2010) [hereinafter *Migration as Adaptation*]; see also Kälin & Schrepfer, *supra* note 8, at 4–5.

15. Brown, *supra* note 4, at 31.

16. GROMILOVA & JÄGERS, *supra* note 1, at 77, 94–96.

17. See Brendan Gogarty, *Climate-Change Displacement: Current Legal Solutions to Future Global Problems*, J.L. INFO. & SCI., Dec. 2011, at 176–77.

18. See *Environmental Change and Forced Migration Scenarios (EACH-FOR)*, CLIMATE CHANGE, ENV'T & MIGRATION ALLIANCE, <http://www.ccema-portal.org/article/read/each-for-project-publications> [<http://perma.cc/2JUG-BVBW>] [hereinafter CCEMA] (“EACH-FOR was a two year long research project

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others in explaining migration dynamics,¹⁹ and is closely linked to economic, political, and social factors.²⁰ Therefore, environmental degradation is undoubtedly a driver of displacement, but it is unlikely that it is the unique cause, as other conditions, such as labour market opportunities, are always taken into account in people’s decisions to migrate.²¹ Causation is even more complex when personal perceptions of risks, vulnerability, and the capacity to adapt are taken into account.²² Therefore, long and heated discussions on causation allow us, at best, to conclude that environmental degradation is an “impact multiplier and accelerator to other drivers of human mobility” rather than a predominant cause for migration.²³ Furthermore, as Etienne Piguet et al. argues, environmental factors are not only intertwined with other factors for decisions to migrate but can also be a cause or effect of other factor that gives a totally different conceptual context to the problem.²⁴ This is the case with migration in response to the conflict over scarce resources, for example.

Due to the uncertainties in the understanding of causation it is hard to identify the magnitude of the phenomena, estimate the number of people that will move, and draw projections for the

within the frames of FP6 (Priority 8.1 – Policy-oriented research) of the European Commission.”). See generally INT’L ORG. FOR MIGRATION, MIGRATION, ENVIRONMENT AND CLIMATE CHANGE: ASSESSING THE EVIDENCE (Frank Laczko & Christine Aghazarm eds., 2009); Rafael Reuveny, *Ecomigration and Violent Conflict: Case Studies and Public Policy Implications*, 36 HUM. ECOLOGY 1 (2007).

19. Graeme Hugo, *Environmental Concerns and International Migration*, 30 INT’L MIGRATION REV. (SPECIAL ISSUE) 105, 110–13 (1996).

20. See GOV’T OFFICE FOR SCI., MIGRATION AND GLOBAL ENVIRONMENTAL CHANGE: FUTURE CHALLENGES AND OPPORTUNITIES 44–54 (2011), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/287717/11-1116-migration-and-global-environmental-change.pdf

[<https://perma.cc/HQ9U-4LCR>]; Jane McAdam, *Swimming Against the Tide: Why a Climate Change Displacement Treaty is Not the Answer*, 23 INT’L J. REFUGEE L. 1, 10 (2011) [hereinafter *Swimming Against the Tide*]; Barnett & Webber, *supra* note 13, at 5–6.

21. Benoit Mayer, *The International Legal Challenges of Climate Induced Migration: Proposal for an International Legal Framework*, 22 COLO. J. INT’L ENVTL. L. & POL’Y 357, 366 (2011).

22. PIGUET ET AL., *supra* note 12, at 12–13.

23. Kálin & Schrepfer, *supra* note 8, at 7.

24. PIGUET ET AL., *supra* note 12, at 12.

future. Though, the empirical evidence remains scarce,²⁵ there are, however, significant efforts to explore the extent of the issue.²⁶ These studies confirm the reality of the issue, though also acknowledging its complexity the mixed character of push factors.²⁷ Furthermore, in its Fifth Assessment Report the Intergovernmental Panel on Climate Change (IPCC) is in the high agreement that climate change will increase the displacement of people over the course of the 21st Century.²⁸ A deeper understanding of the issue and further empirical research are nevertheless required.

B. Absence of Single Pattern

Second, population mobility in response to climate change can take different patterns. Migration varies depending on the length of time and distance. For example, migration can be *temporary* or *permanent*; it can also be *internal* or *cross borders*. Most researchers currently agree that most of the climate induced population movement will predominantly be temporary and will happen internally.²⁹ These types of mobility will occur mostly in reaction to sudden-onset disasters and rapid-onset phenomena (such as cyclones, typhoons and floods).³⁰ Slow-onset

25. Stephen Castles, *Afterword: What Now? Climate-Induced Displacement after Copenhagen*, in CLIMATE CHANGE AND DISPLACEMENT: MULTIDISCIPLINARY PERSPECTIVES, *supra* note 14, at 239, 243.

26. See generally KOKO WARNER ET AL., WHERE THE RAIN FALLS: CLIMATE CHANGE, FOOD AND LIVELIHOOD SECURITY, AND MIGRATION (2012), http://www.axa.com/lib/axa/uploads/wheretherainfalls/Wtrf_ExecutiveSummary.pdf [<https://perma.cc/ULZ4-K35Y>]; WORLD BANK, CLIMATE CHANGE AND MIGRATION: EVIDENCE FROM THE MIDDLE EAST AND NORTH AFRICA (Quentin Wodon et al. eds., 2014); CCEMA, *supra* note 18.

27. See generally WARNER ET AL., *supra* note 26; WORLD BANK, *supra* note 26; CCEMA, *supra* note 18.

28. IPCC 2014, *supra* note 2, at 20.

29. Jane McAdam, U.N. High Comm'r for Refugees, *Climate Change Displacement and International Law: Complementary Protection Standards*, U.N. Doc. PPLA/2011/03, at 8–10 (2010); *Swimming Against the Tide*, *supra* note 20, at 8, 11–12; Sheila C. McAnaney, *Sinking Islands? Formulating a Realistic Solution to Climate Change Displacement*, 87 N.Y.U. L. Rev. 1172, 1178–79 (2012) [hereinafter *Sinking Islands*].

30. Walter Kälin, *Conceptualizing Climate-Induced Displacement*, in CLIMATE CHANGE AND DISPLACEMENT: MULTIDISCIPLINARY PERSPECTIVES, *supra* note 14, at 81, 82; PIGUET ET AL., *supra* note 12, at 15.

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impacts of climate change will also induce population movement, which is expected to be gradual and essentially also internal.³¹

There will, however, be cross-border movements, some of which will be permanent in nature (such as in cases of slow-onset environmental degradation or, in cases of small island states, where there is a risk of submergence of the entire territory).³²

Since there is no clear pattern of climate-related migration, and with many different types of movement possible, the conceptualization is hampered by the fact that each scenario will require a separate approach with specific concerns to be addressed.³³

C. Absence of Single Form

Third, mobility can also take various forms, such as *voluntary migration, induced displacement, or resettlement/planned relocation*.³⁴ As Piguet et al. remarks: “It is indeed extremely difficult to capture the decision-making process among potential migrants and to understand why, how and when people decide to leave.”³⁵ The distinction between forced and voluntary, therefore, often stays blurred.³⁶ This presents further obstacles in conceptualization and legal protection since, as Warner emphasizes, “[t]he needs of affected people vary across different types of human mobility: migration, displacement and planned relocation.”³⁷

31. *Swimming Against the Tide*, *supra* note 20, at 8 ; *Sinking Islands*, *supra* note 29, at 1179.

32. Kälén, *supra* note 30, at 85.

33. *See id.* at 85–86. Kälén distinguished five different scenarios of climate-induced migration, addressing displacement following: sudden-onset disasters, slow-onset environmental degradation, the disappearance of the state (small island states), displacement from the areas acknowledged as “high-risk zones too dangerous for human habitation,” and “unrest seriously disturbing public order, violence or even armed conflict.” *Id.*

34. *Cancun Agreements*, *supra* note 6, ¶ 14.

35. PIGUET ET AL., *supra* note 12, at 15.

36. *Id.*

37. KOKO WARNER ET AL., *CHANGING CLIMATE, MOVING PEOPLE: FRAMING MIGRATION, DISPLACEMENT AND PLANNED RELOCATION* 8 (2013).

D. Regional Aspect

Fourth, conceptualization of the issue is hampered by the fact that climate-induced population movement has a strong regional character.³⁸

The IPCC's Fifth Assessment Report identified that risks associated with climate change are "regionally differentiated" and "unevenly distributed."³⁹ The specific context of the region often impacts the length of movement and specific obstacles faced by those who have to relocate. For instance, while migration from small island states will not involve big numbers of people, it might, however, be cross-border, with no opportunity for islanders to return. In Africa, migration is mainly happening within the continent but is hampered by the number of people affected, conflicts, and political clashes.⁴⁰ Governments in different countries can also have different approaches in managing mobility, with some stimulating it and some deterring it.⁴¹ Furthermore, data about the nature and extent of population movements from some regions is less available than from others.⁴²

Although, as some academics argue, this regional context creates a great potential for addressing the issue,⁴³ it also impedes the process of conceptualization.

38. See generally PEOPLE ON THE MOVE IN A CHANGING CLIMATE: THE REGIONAL IMPACT OF ENVIRONMENTAL CHANGE ON MIGRATION (Etienne Piguet & Frank Laczko eds., 2014).

39. IPCC 2014, *supra* note 2, at 12.

40. Nancy C. Tolentino & João Peixoto, *Migration, Remittances and Development in Africa: The Case of Lusophone Countries*, ACP OBSERVATORY ON MIGRATION 5, ACP Doc. ACPOBS/2011/BN03 (2011), <https://publications.iom.int/books/migration-remittances-and-development-africa-case-lusophone-countries> [<https://perma.cc/M6F8-7ND9>].

41. *Swimming Against the Tide*, *supra* note 20, at 18.

42. Such a lack of data, for instance, is identified in regard to Asia and Pacific. See ASIA DEV. BANK, POLICY OPTIONS TO SUPPORT CLIMATE-INDUCED MIGRATION IN ASIA AND THE PACIFIC, at ix, 4 (2012), <http://www.adb.org/sites/default/files/publication/29662/addressing-climate-change-migration.pdf> [<https://perma.cc/RFE5-XRGE?type=source>].

43. *Swimming Against the Tide*, *supra* note 20, at 25–26 (arguing that dealing with the problem on the regional level by promoting migration through regional and bilateral agreements is beneficial); Angela Williams, *Turning the Tide: Recognizing Climate Change Refugees in International Law*, 30 L. & POL'Y, 502, 518 (2008) (same).

E. Legal Gaps

The four conceptual complications listed above make it extremely hard to create a definition, estimate the numbers of people moving, and draw prognoses for the future. This in turn poses difficulties in finding a legal approach, giving legal status to people moving due to climate change, and establishing protection mechanisms. Below the limitations of the relevant legal frameworks and the few opportunities they offer are analyzed.

1. Refugee Law

Although the 1951 United Nations Convention relating to the Status of Refugees (“Refugee Convention”) is the most relevant legal framework at the international level for the protection of populations displaced across borders, it is also commonly agreed that it is unfit for the problem of climate-induced population movement.⁴⁴ The definition of “refugee” in the Refugee Convention includes three main elements: the person is outside of the country of origin, due to persecution based on a closed number of grounds, and the person is unable or unwilling to avail himself of the protection of their country.⁴⁵ People migrating due to climate change and environmental issues do not fall within this definition. Besides the requirement of exile, which will not be fulfilled by those who move internally, climate change cannot be categorised as persecution, since persecution is commonly connected to the actions of government.⁴⁶ Furthermore, the Refugee Convention limits the grounds for persecution to race, religion, nationality, membership of a particular social group, or political opinion, and does not leave much room for

44. GROMILOVA & JÄGERS, *supra* note 1, at 80–89; Kälin & Schrepfer, *supra* note 8, at 31–34; JANE MCADAM, *CLIMATE CHANGE, FORCED MIGRATION, AND INTERNATIONAL LAW*, 44-48 (Oxford Univ. Press 2012); *see also* Brown, *supra* note 4, at 13–15.

45. Convention Relating to the Status of Refugees, art. 1, ¶ 2, July 28, 1951, 189 U.N.T.S. 150.

46. 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, HCR/1P/4/ENG/REV.3, at 13 (Dec. 2011) (“Persecution is normally related to actions by the authorities of a country.”).

interpretation.⁴⁷ Meanwhile, the nature of climate change impacts is, to a large extent, indiscriminative and is not tied to particular characteristics such as a person's background or beliefs.⁴⁸

As Kälin and Schrepfer demonstrate, there are, however, a few situations where people displaced by climate change could fit under the refugee definition. Among these are the "situations of violence, serious human rights violations or armed conflict triggered by disputes over shrinking natural resources . . . if persecutory measures are based on the race, religion, nationality, membership of a particular social group or political opinion of affected persons."⁴⁹ Other cases could be when a government denies certain groups of people assistance or protection against climate change, or when the climate change-related policy of a government has a discriminative impact on specific groups of people.⁵⁰ In such cases, it might be possible to establish a cause-effect relationship between the impacts of climate change on people and governmental actions. Nevertheless, this kind of correlation will not be found in the majority of cases of climate-induced population movement.

It is important to note that several regional instruments contain a broader definition of a refugee. Among notable examples are the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"),⁵¹ the 1984 Cartagena Declaration on

47. Williams, *supra* note 43, at 508.

48. GROMILOVA & JÄGERS, *supra* note 1, at 85.

49. Kälin & Schrepfer, *supra* note 8, at 33; *see also* JON BARNETT & NEIL ADGER, SECURITY AND CLIMATE CHANGE: TOWARDS AN IMPROVED UNDERSTANDING 5-8 (2005) (discussing the impact of relative poverty on the potential for armed conflict); DAN SMITH & JANANI VIVEKANANDA, INT'L ALERT, A CLIMATE OF CONFLICT: THE LINKS BETWEEN CLIMATE CHANGE, PEACE AND WAR 9-22 (2007) (discussing the potential for armed conflicts due to climate change).

50. Kälin & Schrepfer, *supra* note 8, at 32-33; Jane McAdam, *From Economic Refugees to Climate Refugees?*, 10 MELBOURNE J. INT'L L. 579, 591-93 (2009) [hereinafter *From Economic Refugees*].

51. Organization of African Unity [OAU] Convention Governing the Specific Aspects of Refugee Problems in Africa, art. 1, ¶ 2, Sept. 10, 1969, 1001 U.N.T.S. 45 (including any person compelled to leave his/her country because of "external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality").

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Refugees of Latin America (“Cartagena Declaration”),⁵² and the 1994 Arab Convention on Regulating Status of Refugees in Arab Countries (“Arab Convention”).⁵³ Furthermore, people induced to movement by climate change can arguably find protection under EU legislation. The EU Temporary Protection Directive provides temporary protection in the situation of “mass-influxes” of “persons at serious risk of, or who have been the victims of, systematic” or “endemic violence.”⁵⁴ The EU Qualification Directive allows for subsidiary protection of applicants who do not qualify for Convention refugee protection and therefore may receive subsidiary protection if it is considered that the applicant faces “a real risk of suffering serious harm.”⁵⁵

However, none of the regional instruments (the OAU Convention, the Cartagena Declaration, the Arab Convention) are understood to cover climate migrants nor are they supported by *opinio juris*.⁵⁶ When it comes to the EU, the Temporary

52. Org. of Am. States, *Cartagena Declaration on Refugees*, art. 3, ¶ 3 (Nov. 22, 1984) (extending the definition of refugee to 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”).

53. League of Arab States, *Arab Convention on Regulating Status of Refugees in the Arab Countries*, art. 1 (1994) (defining a refugee as “[a]ny person who unwillingly takes refuge in a country other than his country of origin or his habitual place of residence because of the sustained aggression against, occupation and foreign domination of such country or because of the occurrence of natural disasters or grave events resulting in major disruption of public order in the whole country or any part thereof”).

54. Council Directive 2001/55, art. 2(c), 2001 O.J. (L 212) 12, 14 (EC) [hereinafter *Temporary Protection Directive*] (describing minimum standards for giving temporary protection in the event of a mass influx of displaced persons and measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof).

55. Council Directive 2004/83, art. 2(e), 2004 O.J. (L 304) 12, 14 (EC) [hereinafter *Qualification Directive*] (describing minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted); Vikram Kolmannskog & Finn Myrstad, *Environmental Displacement in European Asylum Law*, 11 EUR. J. MIGRATION & L. 313, 319 (2009).

56. As regard to the Arab Convention, no States have ratified the Arab Convention and therefore it has no legal force. The application of the definition of the OAU Convention is not supported by the *opinio juris* of African states.

Protection Directive offers some temporary opportunities for people forcibly displaced by climate change in cases when a qualified majority of the Council will qualify the flight of displaced people as a “mass influx.”⁵⁷ The Temporary Protection Directive is not a solution for individuals in need of protection nor for those who need to stay longer or permanently.⁵⁸ The subsidiary protection under Article 15 of the Qualification Directive for people displaced by climate change is questionable. It is highly challenging to show that these people are at “a real risk of suffering serious harm” in the sense of “serious harm” as defined in the Directive.⁵⁹ The protection will, therefore, mainly lean on the principle of *non-refoulement*,⁶⁰ which is addressed further.

Interestingly, whereas international and regional refugee law can be considered as failing in providing protection to people induced to move by climate change, national laws in certain countries have been more successful in dealing with the problem. Currently, two states, Finland and Sweden, have adopted asylum laws granting subsidiary protection for “environmental migrants.”⁶¹ These regulations are an exception to the rule and have not been in frequent use. Nevertheless, the Scandinavian example shows that individual states have the potential to issue immigration and asylum policy to provide legal protection for environmental migrants.⁶²

The Cartagena Declaration in practice has not been understood as covering natural disasters. See McAdam, *supra* note 29, at 14–15.

57. Kolmannskog & Myrstad, *supra* note 55, at 317.

58. *Id.* at 318.

59. *Id.* at 319.

60. *Id.* at 323. The *non-refoulement* principle is dealt with in the following section.

61. 4 ch. 2–2a §§ Aliens Act (SFS 2005:716) (Swed.) (extending to anyone who has left his or her native country and does not wish to return there because he or she: (1) has a fear of the death penalty or torture or is in need of protection as a result of war or other serious conflicts in the country, and (2) is unable to return to the native country because of an environmental disaster); 6 ch. 88a § Aliens Act (SFS: 1152/2010) (Fin.) (providing an “alien residing in Finland is issued with a residence permit on the basis humanitarian protection” if they cannot return because of an armed conflict or environmental disaster).

62. See generally Benjamin Glahn, “Climate Refugees”? Addressing the International Legal Gaps, INT’L B. ASS’N (2009), <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=B51C02C1-3C27-4AE3-B4C4-7E350EB0F442> [<http://perma.cc/V7Y3-Z4H8>].

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Even though regional or national instruments could give opportunities, approaching the issue of climate-induced displacement through the refugee regime does not cover those who will be displaced within the state and does not allow for a proactive approach, meaning that protection only applies after the displacement takes place. Furthermore, it only covers cases of sudden-onset events and does not allow for the protection of people affected by slow-onset environmental degradation.

It is also crucial to note that fitting people displaced by climate change into the refugee regime distorts the principally different nature of the issue. The case of people affected by climate change involves different types of moral and legal responsibility. As McAdam puts it:

Whereas refugees within the *Refugee Convention* definition flee their own government (or actors that the government is unable or unwilling to protect them from), a person fleeing the effects of climate change is not escaping his or her government, but rather is seeking a refuge from—yet within—states that have contributed to climate change.⁶³

People displaced by climate change are willing to have the protection of their country and in many cases do not want to leave.⁶⁴

2. Human Rights Law

Taking the number of human rights that are threatened during climate-induced population movements, the relevance of human rights law is beyond doubt.⁶⁵

In 2008, the U.N. Human Rights Council adopted Resolution 7/23, which was the first U.N. Resolution to recognize “that climate change poses an immediate and far-reaching threat to people and communities around the world and has significant implications for the full enjoyment of human rights.”⁶⁶ In 2009, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the International Council on Human Rights

63. *From Economic Refugees*, *supra* note 50, at 592.

64. *Revisiting Planned Relocation*, *supra* note 1, at 85.

65. *Id.* at 81–87.

66. Human Rights Council Res. 7/23, U.N. Doc. A/HRC/7/78 (Mar. 28, 2008).

Policy (ICHRP) adopted Resolution 10/4, which addressed the relationship between human rights and climate change in international law was.⁶⁷ This resolution noted “climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights.”⁶⁸

The list of human rights that can be implicated during climate-induced movement is extensive and includes, among others, the right to life, the right to adequate food, the right to water, the right to health, the right to adequate housing, the right to take part in cultural life, the right to self-determination, and the right to development.⁶⁹

The advantage of human rights law when it comes to the issue of climate-induced movement is that it applies to all people regardless of whether one is displaced or not. Therefore, the issue of causality, which is one of the central conceptual challenges, is avoided.⁷⁰ However, there are further obstacles. These obstacles vary depending on the type and the character of movement.

a. Displacement within the State

It is the duty of states to respect, protect, and fulfil all human rights and fundamental freedoms regardless of their political, economic, and cultural systems. Under human rights law, states have the primary legal obligation towards those within its territory and jurisdiction.⁷¹ The normative framework for those displaced within a state is therefore better developed than for those who have crossed borders due to climate change. First of all, there are hard-law instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the

67. Human Rights Council Res. 10/4, U.N. Doc. A/HRC/10/29 (Mar. 20, 2009).

68. *Id.*

69. *Revisiting Planned Relocation*, *supra* note 1, at 81–87. This list of implicated human rights is not exhaustive since the nature of human rights is such that all of them are interdependent, interrelated and indivisible.

70. GROMILOVA & JÄGERS, *supra* note 1, at 88.

71. International Covenant on Civil and Political Rights, art. 1, Dec. 19, 1966, 999 U.N.T.S. 14668 [hereinafter ICCPR]; John H. Knox, *Climate Change and Human Rights Law*, 50 VA. J. INT'L L. 163, 196 (2009); *see also* International Covenant on Economic, Social, and Cultural Rights, art. 1, Dec. 16, 1966, 993 U.N.T.S. 14531 [hereinafter ICESCR].

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International Covenant on Economic, Social, and Cultural Rights (ICESCR), which fixate the obligations of states towards individuals within its territory or under its jurisdiction.⁷² Second, the soft-law protection applies. People who are forcibly displaced internally fall under the remit of the 1998 *Guiding Principles on Internal Displacement*.⁷³ The movement has to be of a forced character, which covers the situations of sudden-onset environmental impacts. The Guiding Principles is a soft-law instrument that has no binding power on governments. Third, it has to be taken into account that most of the states affected by climate change and within which the displacement of people will take place are developing or least-developed countries—financially weak and with a poor capacity to ensure human rights of their populations.⁷⁴ Furthermore, this instrument does not apply to those who move due to slow-onset environmental degradation in a pre-emptive manner.

Concerning those who are displaced within the state due to the slow-onset environmental degradation, states have the obligation to respect, protect, and fulfil the human rights of *all* people within their jurisdiction.⁷⁵ However, the point made above

72. ICCPR, *supra* note 71, art. 2; Manisuli Ssenyonjo, *Economic, Social and Cultural Rights*, in INTERNATIONAL HUMAN RIGHTS LAW: SIX DECADES AFTER THE UDHR AND BEYOND 49, 71–73 (Mashood Baderin & Manisuli Ssenyonjo eds., 2010).

73. See Francis M. Deng (Rep. of the U.N. Secretary-General), *Guiding Principles on Internal Displacement*, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998). At the regional level there is also the 2009 Kampala Convention. African Union, *Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (Oct. 23, 2009). This instrument is legally binding for state parties and covers those displaced by natural disaster. Importantly, the Kampala Convention lays down the responsibility of governments that have failed to act according to their human rights obligations in preventing disasters or impacts where such harm is foreseeable. See *id.* Already twenty-two countries have ratified the Convention. *The Kampala Convention*, INTERNAL DISPLACEMENT MONITORING CENTRE, <http://www.internal-displacement.org/sub-saharan-africa/kampala-convention/> [<http://perma.cc/J3JT-SFFJ>]. This instrument, however, remains outside the scope of this article, since it does not cover the movement in response to the slow-onset environmental degradation and pre-emptive movement.

74. STEPHEN HUMPHREYS, *Climate Change and International Human Rights Law*, in INTERNATIONAL LAW IN THE ERA OF CLIMATE CHANGE 29, 38 (Edward Elgar ed., 2012).

75. Eur. Court of Human Rights, *European Convention on Human Rights*, art. 1 (2013); Human Rights Comm., General Comment No. 31: The Nature of

is equally relevant here. These are usually developing countries where access to justice often proves problematic.⁷⁶

b. Crossing the Border

If a person flees across a national border due to environmental factors, this person will be entitled to general human rights guarantees in a receiving state in line with the human rights obligations of that state.⁷⁷ Since people induced to move by climate change probably will search for a job and, therefore, can be considered as “engage[d] in remunerated activity,”⁷⁸ the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families is a relevant instrument. However, first of all, this Convention does not provide for any rights to be admitted to a foreign territory and to remain there.⁷⁹ Secondly, the search for a job in most cases will probably not be the first need for displaced people, since finding a place to stay and ensuring that they have access to food and water will likely be higher priorities.⁸⁰

While most of the people displaced by climate change will not have a right to be admitted into and to remain on the territory of other state, they can find protection against being removed. This can be possible under complementary protection that follows from the principle of *non-refoulement*, which has been enshrined in several human rights provisions such as the prohibition of torture and other inhuman or degrading treatment.⁸¹ According to the principle of *non-refoulement*, asylum seekers already present within a jurisdiction cannot be removed by that state to a country where the person will face a real risk of persecution or exposure to torture, inhuman treatment, or other serious human rights

the General Legal Obligation Imposed on States Parties to the Covenant, ¶¶ 3, 10, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) [hereinafter General Comment No. 31]; ICCPR, *supra* note 71, art. 2.

76. GROMILOVA & JÄGERS, *supra* note 1, at 93–94.

77. ICCPR, *supra* note 71, art. 2(1).

78. G.A. Res. 45/158, art. 49, ¶ 1 (Dec. 18, 1990), <http://www.un.org/documents/ga/res/45/a45r158.htm> [<https://perma.cc/FG9Y-PKRM>].

79. See General Comment No. 31, *supra* note 75.

80. Kälin & Schrepfer, *supra* note 8, at 35.

81. GROMILOVA & JÄGERS, *supra* note 1, at 96–97.

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violations.⁸² As Kälin and Schrepfer observe, “the doctrinal basis of this jurisprudence is the idea that in all such cases it is not the behavior of the state of destination that is being adjudicated but that of the state whose authorities order the expulsion or deportation.”⁸³ However, a case has been decided in which it was acknowledged that deportation would be an inhuman act based on actions of the destination country. In *D v United Kingdom*, it was ruled that the removal of an HIV-infected person back to St. Kitts would reduce “already limited life expectancy and subject [the person] to acute mental and physical suffering.”⁸⁴ Arguably, people forcibly displaced by climate change may also be exposed to the “life threatening situation” if they are sent back.⁸⁵

However, it is doubtful that complementary protection following the principle of *non-refoulement* can offer meaningful protection to people displaced by climate change. As has been emphasized in *D v United Kingdom*, the circumstances of the case are “very exceptional” and, as Kolmannskog and Myrstad point out, the subsequent case-law has interpreted the possibilities offered by the case quite restrictively.⁸⁶ Moreover, the prohibition of sending people back is not giving people any rights to be admitted. This means that people will expose themselves to numerous live-threatening situations in attempts to cross borders.⁸⁷

c. Extraterritorial Obligations

It has been discussed that in both cases (when relocation happens within the state or when it takes place across state borders) it is problematic to ensure that displaced people will be sufficiently protected. This is, however, mainly connected to the

82. U.N. High Comm’r for Refugees, Note on the Principle of Non-Refoulement (Nov. 1997), <http://www.refworld.org/docid/438c6d972.html> [<http://perma.cc/6TAH-L9MH>].

83. Kälin & Schrepfer, *supra* note 8, at 35.

84. *D v. United Kingdom*, 24 Eur. H.R. Rep. 423, ¶ 52 (1997).

85. Kälin & Schrepfer, *supra* note 8, at 36; see MARGIT AMMER, CLIMATE CHANGE AND HUMAN RIGHTS: THE STATUS OF CLIMATE REFUGEES IN EUROPE 58–59 (2009), <http://www.migration-online.de/data/climatechangepaper0609.pdf> [<http://perma.cc/NH55-RSB8>].

86. Kolmannskog & Myrstad, *supra* note 55, at 322.

87. *Lessons from Oceania*, *supra* note 1.

fact that the regions where most of the people are and will be displaced are poor and generally fail to provide human rights protection to even their own citizens.

However, human rights law primarily addresses the obligations of other states when states fail to protect human rights of people within their territory. The International Covenant on Economic, Social and Cultural Rights (ICESCR) does not have a restricting jurisdictional clause. Article 2(1), provides:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant . . .⁸⁸

Consequently, economic, social, and cultural rights are generally considered to have an extraterritorial component.⁸⁹ The obligation of states to protect, respect, and fulfil these rights is not restricted to a given state's jurisdiction.⁹⁰

Moreover, the essential role of cooperation and assistance in facilitating the full realization of the relevant rights is further underlined by the specific provisions contained in articles 11, 15, 22, and 23 of the ICESCR.⁹¹ The ICESCR is particularly relevant for those who are displaced due to climate change as this will frequently imply a violation of economic, social and cultural rights, such as the right to housing, an adequate standard of living, or the right to health. According to Sepúlveda, the premise of Article 2(1) is that "some countries are not able to achieve the full realisation of economic, social and cultural rights if those countries in the position to assist do not actually provide them

88. ICESCR, *supra* note 71, art. 2(1).

89. GROMILOVA & JÄGERS, *supra* note 1, at 95.

90. *Rescuing Tuvaluans*, *supra* note 1, at 260–63. Furthermore, "State Parties to the ICESCR in a position to assist are also obliged to provide this assistance to those who are not parties to the Covenant." *Id.* at 280.

91. ICESCR, *supra* note 71, art. 11, 15, 22, 23.

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with assistance.”⁹² This understanding of extraterritorial character regarding the realization of economic, social, and cultural rights finds further support in the General Comments and other human rights reports and soft-law instruments.⁹³ The Maastricht principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights is one of the prominent developments in that regard.⁹⁴ Moreover, when it comes to climate change, the committee supervising the ICESCR has held that this obligation entails, *inter alia*, the obligation to “take steps through international cooperation and assistance, depending on the availability of resources, to facilitate the fulfilment of human rights in other countries, including disaster relief, emergency assistance, and assistance to refugees and displaced persons.”⁹⁵

The extraterritorial obligations within the context of climate-induced population movement play a vital role. As demonstrated, regions where most of climate-induced population movement takes and will take place lack the capacity to protect and fulfil the human rights of people within its territory. In many cases, neighbouring states also lack this capacity. Therefore, the assistance from those states that are in the position to assist can significantly diminish the human rights risks associated with migration, induced displacement and planned relocation.

92. Magdalena Sepúlveda, *Obligations of ‘International Assistance and Cooperation’ in an Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights*, 24 NETH. Q. HUM. RTS. 271, 290 (2006).

93. *See id.* at 290–92.

94. *See generally* ETO CONSORTIUM, MAASTRICHT PRINCIPLES ON EXTRATERRITORIAL OBLIGATIONS OF STATES IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (2013), http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUId%5D=23 [<http://perma.cc/TTW9-66UE>].

95. GROMILOVA & JÄGERS, *supra* note 1, at 95; *see also* U.N. Comm. Econ., Soc. & Cult. Rights, General Comment No. 12: The Right to Adequate Food (Art. 11), U.N. Doc. E/C.12/1999/5 (May 12, 1999); U.N. Comm. Econ., Soc. & Cult. Rights, General Comment No. 13: The Right to Education (Art. 13), U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999); U.N. Comm. Econ., Soc. & Cult. Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000); U.N. Comm. Econ., Soc. & Cult. Rights, General Comment No.15: The Right to Water (Arts. 11 and 12 of the Covenant), U.N. Doc. E/C.12/2002/11 (Sept. 25, 2015).

While the legal basis of the extraterritorial obligations might be acknowledged,⁹⁶ the character, scope, and the extent of these obligations are questionable.⁹⁷ First, regardless of the fact that the Committee has referred to states' obligations of international assistance and cooperation in various observations, comments, and practices, there is still a great level of disagreement as to whether the obligations underpinning the provision of Article 2 are legally binding.⁹⁸ There is no legally binding document that elaborates on the content of extraterritorial obligations. Second, the reach of extraterritorial obligations is a key issue.⁹⁹ Neither the form of assistance nor its reach is identified. As Knox argues, the obligation of international assistance is an extension of the duty to fulfil, which is an open-ended obligation that imposes positive, rather than negative, duties on states.¹⁰⁰ Furthermore, human rights law to a large extent remains attached to jurisdiction.¹⁰¹ Although the ICESCR suggests that the obligations extend beyond states, this understanding requires further support.

Yet, human rights law is an important framework when it comes to the issue of climate-induced population movement. The main advantage is that it applies to everyone regardless of whether the causation between climate change and population

96. Christian Curtis & Magdalena Sepúlveda, *Are Extra-Territorial Obligations Reviewable Under the Optional Protocol to the ICESCR?*, 27 NORDISK TIDSSKRIFT FOR MENNESKERETTIGHETER 54, 55–56, http://www.henderson.uottawa.ca/component/option,com_docman/task,doc_download/gid,83/lang,fr/ (2009) [<http://perma.cc/8DL2-MTKD>]; Knox, *supra* note 71, at 201–02.

97. Knox, *supra* note 71, at 207; Dominic McGoldrick, *Extraterritorial Application of the International Covenant on Civil and Political Rights*, IN EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES 41, 47–49 (FONS COOMANS & MENNO T. KAMMINGA EDS., 2004); see MALCOLM LANGFORD ET AL., *GLOBAL JUSTICE, STATE DUTIES: THE EXTRATERRITORIAL SCOPE OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN INTERNATIONAL LAW* (2014).

98. LANGFORD ET AL., *supra* note 96, at 62–63. In the debates surrounding the drafting of the optional protocol to the ICESCR, countries such as the UK, Canada, France, and others claimed that international cooperation and assistance is an “important moral obligation but not a legal entitlement.” *Id.* at 62 (internal quotations omitted).

99. *Id.* at 64.

100. *Rescuing Tuvaluans*, *supra* note 1, at 283–84; Knox, *supra* note 71, at 208.

101. HUMPHREYS, *supra* note 74, at 56.

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movement is established. It also lays down legal obligations of international assistance and cooperation, which is of a particular importance for people affected by climate change.

d. Human Rights-Based Approach to Climate Change

There is another important development within the human rights policy field that has great added value for the issue of climate-induced population movement. This development is the emergence of the human rights-based approach. The human rights-based approach has often been mentioned in relation to climate change in climate-change negotiations and discussions.¹⁰² In a nutshell, von Doussa defined it as follows: “[A] human rights-based approach provides a conceptual framework for climate change policies; a framework which is normatively based on international human rights standards and which is practically directed to promoting and protecting human rights.”¹⁰³ The importance of the human rights-based approach to adaptation has been emphasised by the Office of the UN High Commissioner for Human Rights (OHCHR), which has called for increased state action on adaptation and has emphasized the importance of applying a human rights-based approach in guiding policies and measures related to climate change mitigation and adaptation.¹⁰⁴ According to the OHCHR, a human rights-based approach should be integrated into any climate change adaptation or mitigation policy.¹⁰⁵

The added value of the human rights-based approach for each type of adaptation strategy suggested in the Cancun

102. HUMAN RIGHTS & EQUAL OPPORTUNITY COMM’N, HUMAN RIGHTS AND CLIMATE CHANGE 2 (2008), http://www.humanrights.gov.au/sites/default/files/content/pdf/about/media/papers/hrandclimate_change.pdf

[<http://perma.cc/P7XK-EC9T>]; see HUMPHREYS, *supra* note 74, at 56; Marc Limon, *Human Rights and Climate Change: Constructing a Case for Political Action*, 33 HARV. ENVTL. L. REV. 439, 440–48 (2009); Human Rights Council, REP. OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS ON THE RELATIONSHIP BETWEEN CLIMATE CHANGE AND HUMAN RIGHTS, A/HRC/10/61 (Jan. 15, 2009) [hereinafter *Climate Change & Human Rights Report*].

103. HUMAN RIGHTS & EQUAL OPPORTUNITY COMM’N, *supra* note 102, at 12.

104. See *Climate Change & Human Rights Report*, *supra* note 102, ¶¶ 92–99.

105. See *id.*

Agreement (migration, displacement, and planned relocation) is that it allows for a focus on individuals and sensitivity towards their problems. It allows for complementing the technical side of adaptation strategies, and making adaptation to climate change sensitive to human rights during each technical stage—preparation, implementation, and evaluation of adaptation strategies.¹⁰⁶

3. Climate Law

Since it is climate change that induces people to move, climate law is of central importance. The UNFCCC and its supporting instruments form a basis for a dynamic and rapidly evolving climate law regime.¹⁰⁷

a. Obligations Arising from Principles of the UNFCCC

i. No-Harm Rule

The preamble to the UNFCCC and Article 3 set out a number of international environmental principles applicable to the regime. Among these is the “no-harm” principle, which has also gained the status of international customary law.¹⁰⁸ The preamble recalls the words of Principle 21 of the 1972 Stockholm Declaration and Principle 2 of its successor, the 1992 Rio Declaration, and notes that states have:

the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or

106. See *Revisiting Planned Relocation*, *supra* note 1, at 92–94.

107. Kati Kulovesi, *Exploring the Landscape of Climate Law and Scholarship: Two Emerging Trends*, in CLIMATE CHANGE AND THE LAW 31, 35 (Erkki J. Hollo et al. eds., 2012).

108. *United States v. Canada*, 3 R.I.A.A. 1905, 1965 (1941); PHILIPPE SANDS & JACQUELINE PEEL, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW 196 (3d ed. 2012). Another principle of international customary law, which might be relevant is the “polluter pays principle.” This principle provides that the “polluter should, in principle, bear the costs of pollution.” SANDS & PEEL, *supra*, at 229. Nevertheless, the “polluter pays principle” has not received a lot of support and attention among States and in case law. *Id.*

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control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.¹⁰⁹

This principle allows for a claim that some states have caused damage to other states because of their greenhouse gas (GHG) emissions, which have resulted in the migration of people and, therefore, these states should also be responsible for helping these people. When a rule of customary international law, such as the “no-harm rule,” is breached, states can be held responsible for the damages.¹¹⁰ However, to establish the breach of this rule in reality is highly challenging due to the hurdle of establishing causality between the damaging activity and the damage to the third state.¹¹¹ The state where climate-induced movement takes place would therefore have to prove, first, that the emissions of some particular state have caused the specific climate change impact (for instance, sea-level rise) and, second, that this particular sea-level rise has led to the migration of people.¹¹² To establish this kind of causality under contemporary international law appears highly challenging, if not impossible.¹¹³

109. UNFCCC, May 9, 1992, 1771 U.N.T.S. 164, 166; U.N. Conference on the Human Environment, *Stockholm Declaration*, U.N. Doc. A/CONF/48/14/Rev.1 (June 16, 1972); U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF/151/26/Rev.1 (June 14, 1992).

110. *See Responsibility of States for Internationally Wrongful Acts*, [2001] 2 Y.B. Int'l L. Comm'n 31, U.N. Doc. A/CN.4/SER.A/2001/Add.1. “Every internationally wrongful act of the State entails the responsibility of that State.” *Id.* To establish this responsibility, the following elements must be met: (a) a wrongful act attributable to the state, (b) a causal link between the activity and damage, and (c) a violation of either international law or a violation of a duty of care, which is (d) owed to the damaged State. *See id.*

111. STEPHEN GARDINER ET AL., *CLIMATE ETHICS: ESSENTIAL READINGS* 84 (2010); *see* Richard Tol & Roda Verheyen, *State Responsibility and Compensation for Climate Change Damages—A Legal and Economical Assessment*, 32 ENERGY POL'Y 1109, 1110–14 (2004).

112. Rebecca E. Jacobs, *Treading Deep Waters: Substantive Law Issues in Tuvalu's Threat to Sue the United States in the International Court Of Justice*, 14 PAC. RIM L. & POL'Y J 103, 111 (2005); *see Rescuing Tuvaluans*, *supra* note 1, at 247–49, for other problems in establishing causation.

113. *See* Tol & Verheyen, *supra* note 110, at 1112; *see also* Christina Voigt, *State Responsibility for Climate Change Damage*, 77 NORDIC J. INT'L L. 1, 21 (2008).

ii. Precautionary principle

Another highly relevant principle is the precautionary principle, included in Article 3(3) of the UNFCCC. This principle requires parties to:

take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost.¹¹⁴

The principle requires proactive measures, which, in the case of climate-induced population movement, means that there is no need to wait for harm and establish causation. Even when it is not possible to wholly attribute the cause of population displacement to climate change, in the face of a lack of scientific evidence on the impact of climate change and the link to migration, it is necessary to take a precautionary approach. As Hugo observes, even though discussions on the extent of climate-induced displacement often tend to exaggerate the scope of the issue,¹¹⁵ it is nevertheless a fact that displacement is inevitable. In these cases, as Hugo argues, the precautionary principle must apply.¹¹⁶

This principle has been increasingly applied in courts, especially in environmental cases.¹¹⁷ As Sands and Peel argue, there is a sufficient support for an argument that the precautionary principle reflects a principle of customary law.¹¹⁸

114. UNFCCC, *supra* note 109, 1771 U.N.T.S. at 170.

115. GRAEME HUGO, *Lessons from Past Forced Resettlement for Climate Change Migration*, in *MIGRATION AND CLIMATE CHANGE* 260, 267 (2011).

116. *See id.*

117. *See, e.g.*, SANDS & PEEL, *supra* note 108, at 223–28. In particular, the Hague District Court has ruled that “[t]he fact that the amount of the Dutch emissions is small compared to other countries does not affect the obligation to take precautionary measures in view of the State’s obligation to exercise care.” Rb.-Hague 24 June 2015, RvdW 2015, 7196 M.NT. (URGENDA FOUNDATION/THE STATE OF THE NETHERLANDS) (NETH.), [http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:7196_\[http://perma.cc/W85N-G99C\]](http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:7196_[http://perma.cc/W85N-G99C]).

118. SANDS & PEEL, *supra* note 108, at 228.

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For the issue of climate-induced population movement, the precautionary approach has paramount importance, since it can encourage pro-active resettlement of communities in cases where relocation is the only option, can mobilize adaptation efforts at an early stage, and can also foster the provision of assistance in adaptation.

iii. Principle of common but differentiated responsibilities

Last, but not least, the UNFCCC lays down the principle of common but differentiated responsibilities, which is the central pillar of the climate law regime. Article 3(1) of the UNFCCC states:

The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.¹¹⁹

In the context of climate change-induced population movement, this principle means that those countries that have contributed the most to climate change should take a lead in assisting countries where climate change impacts cause population movement to respond and to manage this movement.

b. Treaty-based obligations

Positive obligations under the climate law regime follow the UNFCCC and its supporting instruments.¹²⁰ The obligations are differentiated among parties, in line with the principle of common but differentiated responsibilities.¹²¹

119. UNFCCC, *supra* note 109, 1771 U.N.T.S. at 169.

120. *See generally* Kulovesi, *supra* note 107.

121. UNFCCC, *supra* note 109, 1771 U.N.T.S. at 170 (“All Parties, taking into account their *common but differentiated responsibilities* and their specific national and regional development priorities, objectives and circumstances, shall” (emphasis added)).

Besides the positive obligations of states regarding mitigation, the UNFCCC lays down adaptation obligations, which are relevant in the case of climate-induced population movement.

More specifically, Article 4(1)(b) requires states to “[f]ormulate, implement, publish and regularly update national and, where appropriate, regional programmes containing . . . measures to facilitate adaptation to climate change.”¹²²

Obligations regarding adaptation are also differentiated among parties. Developing states must be assisted by developed states, and their success in adaptation depends on the extent to which this assistance is available to them.¹²³ In particular, Article 4(3) sets financial obligations aimed at helping developing countries meet the agreed full costs of preparing for adaptation and also to provide such financial resources, including for the transfer of technology needed by the developing country Parties to meet the agreed full incremental costs of implementing measures.¹²⁴ Article 4(4) goes further and provides that the developed country Parties and other developed Parties included in Annex II shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation.¹²⁵ This broad obligation, as some scholars argue, sets unlimited liability on the part of developed countries for the costs of adaptation.¹²⁶

Article 4, in general and specifically its subsections 4(3) and 4(4), is the most prominent reflection of the principle of common but differentiated responsibilities and clearly establishes the obligations of developed states. Further, it can be argued that these obligations can be translated into the context of climate change and population movement.

The most crucial development regarding climate change and population movement that has taken place within climate law is that migration, induced displacement, and planned relocation

122. *Id.*

123. *Id.* at 174.

124. *Id.* at 173.

125. *Id.*

126. See M.J. Mace, *Adaptation under the U.N. Framework Convention on Climate Change: The International Legal Framework*, in *FAIRNESS IN ADAPTATION TO CLIMATE CHANGE* 53, 64 (W. Neil Adger et al. eds., 2006).

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have been acknowledged as adaptation strategies.¹²⁷ The Cancun Agreement has invited the Parties to enhance understanding and cooperation with regard to migration, induced displacement, and planned relocation as adaptation strategies.¹²⁸ It has also encouraged least-developed countries to develop National Adaptation Plans (NAPs).¹²⁹ These plans can specify measures that can “facilitate adequate adaptation to climate change”¹³⁰ through, for instance, strategies for the planned relocation of people. Although the Cancun Adaptation Framework is a voluntary agreement that does not have binding power over its parties,¹³¹ it allows for specifying the form of assistance suggested by Article 4 of the UNFCCC.

Ensuring compliance with the provisions of Article 4 of the UNFCCC and paragraph 14(f) of the Cancun Agreement is problematic in reality.¹³² First of all, under Article 4(3), developed countries are expected to provide funding to developing countries to meet the “agreed full costs” and “agreed full incremental costs” of adaptation.¹³³ This means the costs agreed upon between developing countries and the UNFCCC’s financial mechanism, which is represented by the Global Environmental Facility (GEF).¹³⁴ Reaching agreement on projects that involve the relocation of people will, in reality, become problematic, since, besides the issue of financing, sensitive political issues (such as who will accommodate migrants) will have to be resolved. Second, developing countries are only eligible to receive finances that cover “incremental costs.”¹³⁵ The UNFCCC does not specify what

127. *Cancun Agreements*, *supra* note 6, ¶ 14.

128. *Id.*

129. UNFCCC Conference of the Parties, *Rep. of the Conference of the Parties on its Nineteenth Session, Held in Warsaw from 11 to 23 November 2013*, art. 15, U.N. Doc. FCCC/CP/2013/10/Add.1 (Jan. 31, 2014), <http://unfccc.int/resource/docs/2013/cop19/eng/10a01.pdf> [<http://perma.cc/FA74-D4QK>].

130. UNFCCC, *supra* note 109, 1771 U.N.T.S. at 170.

131. *Cancun Agreements*, *supra* note 6, ¶ 80(a); Rowena Maguire, *Foundations of International Climate Law: Objectives, Principles and Methods*, in *CLIMATE CHANGE AND THE LAW*, *SUPRA* NOTE 106, AT 83, 107; MCADAM, *supra* note 42, at 232.

132. See RODA VERHEYEN, *CLIMATE CHANGE DAMAGE AND INTERNATIONAL LAW: PREVENTION DUTIES AND STATE RESPONSIBILITY* 92–93 (2005).

133. UNFCCC, *supra* note 109, 1771 U.N.T.S. at 173.

134. Mace, *supra* note 126, at 63.

135. See UNFCCC, *supra* note 109, 1771 U.N.T.S. at 173.

“incremental costs” entail.¹³⁶ Mace argues that “incremental costs” refers to the cost in addition to actions necessary to address a national need and refers to the additional costs of more expensive environmental projects.¹³⁷ Arguably, the costs of actions that support aims other than purely the need to address climate change impacts, or that would be implemented anyway with funding from other sources, are, in a strict sense, not incremental.¹³⁸ This could be an obstacle in the context of climate-induced movement, which, as has been noted, is difficult to link purely with climate change impacts and arguably falls under funding and assistance from other sources, such as human rights frameworks.

Article 4(4) offers some opportunities, since it establishes unlimited liability on the part of the developed country Parties to assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.¹³⁹ Though the definition of adaptation measures is lacking under the UNFCCC, with the new Cancun Agreement in place, it can be concluded that population movement constitutes a form of adaptation strategy and therefore assistance should be provided in managing this migration, displacement, or planned relocation.

Yet, the way in which Article 4(3) and 4(4) are formulated, using the terms “shall” and “assist” makes clear that there is no straight obligation for Annex II countries to bear the full costs of adaptation in all developing countries.¹⁴⁰ Developed countries are only required to *endeavour* to assist developing countries that are particularly vulnerable to the adverse effects of climate

136. Susanne Olbrisch et al., *Estimates of Incremental Investment for and Cost of Mitigation Measures in Developing Countries* 11 CLIMATE POL'Y 970, 971 (2011).

137. Mace, *supra* note 126, at 66.

138. VERHEYEN, *supra* note 132, at 97; *see also* MARCO GRASSO, JUSTICE IN FUNDING ADAPTATION UNDER THE INTERNATIONAL CLIMATE CHANGE REGIME 75 (2010).

139. *See* UNFCCC, *supra* note 109, 1771 U.N.T.S. at 173; Mace, *supra* note 126, at 64.

140. *See* UNFCCC, *supra* note 109, 1771 U.N.T.S. at 173.

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change in meeting the cost of adaptation.¹⁴¹ This leaves developed states with a lot of room to manoeuvre.¹⁴² Even though the sixteenth session of the Conference of the Parties (COP) in 2010 made a positive contribution towards framing the issue of climate-induced movement and translated it into the obligations of states,¹⁴³ it is still questionable to what extent this obligation is enforceable. The next session of the parties (COP 21) is expected to take place in December 2015 in Paris.¹⁴⁴ The Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) aims to reach an outcome document with legal force applicable to all Parties in order for it to be adopted at the COP 21.¹⁴⁵ The current proposal includes the commitment for the developed states to “assist in providing organized migration and planned relocation” which has taken place due to climate change.¹⁴⁶ Should this provision gain legal force, the debate on climate-induced population movement will be greatly changed. However, whether this proposal will be accepted by the COP 21 remains to be seen.

4. Other Frameworks

There are several other relevant instruments that can be discussed in relation to the issue of climate-induced population movement. As has been shown, in some cases climate change effects can lead to a conflict.¹⁴⁷ In these cases, humanitarian law becomes relevant to climate-induced movement.¹⁴⁸ Humanitarian law, as is the case for human rights law, applies

141. RENÉ LEFEBER, *Climate Change and State Responsibility, in INTERNATIONAL LAW IN THE ERA OF CLIMATE CHANGE* 322 (Rosemary Rayfuse & Shirley V. Scott eds., 2012).

142. See *Rescuing Tuvaluans*, *supra* note 1, at 268–70.

143. See *Cancun Agreements*, *supra* note 6, ¶ 14.

144. See *Nations Unies: Conférence sur les Changements Climatiques 2015*, UNCCC, <http://www.cop21.gouv.fr/en/> [<https://perma.cc/PZ57-8G7F>].

145. See *generally* Durban Platform for Enhanced Action, *supra* note 5.

146. *Id.* at 33.

147. See *supra* notes 40–41 and accompanying text.

148. See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of the Victims of Non-International Armed Conflicts (Protocol II) art. 17(1), June 8, 1977, 1125 U.N.T.S. 609; Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 49, Aug. 12, 1949, 75 U.N.T.S. 287 [hereinafter Geneva Convention].

equally to all civilians affected by conflict and provides basic protection for those displaced during conflict.¹⁴⁹ It is, however, ignorant to the reasons underlying the conflict and resulting displacement and provides no specific relief for people affected by climate change.¹⁵⁰ As Kälin and Schrepfer skeptically note, the only way in which humanitarian law applies to the situation of movement due to climate change-induced conflict is when the country of refuge is a party to the conflict; otherwise, humanitarian law has no practical relevance in the protection of persons moving across borders.¹⁵¹

Since there is a lot of speculation with regard to the “sinking islands” and disappearance of entire states, a question that is also discussed by academics and politicians is whether climate change can create a precedent of statelessness.¹⁵² However, it is mostly agreed that it is not likely that people from sinking islands will become stateless in a legal sense and will fall under protection of the 1954 Convention Relating to the Status of Stateless People.¹⁵³ In that regard, Crawford concludes that there is “a strong presumption against the extinction of states.”¹⁵⁴ Even when territory as one of the elements of statehood disappears, it most likely will not lead to *de jure* statelessness, but rather *de facto* statelessness.¹⁵⁵ The legal definition of “statelessness”, as McAdam argues, was meant “to apply only to *de jure* statelessness—premised on the denial of nationality through the operation of the law of a particular state,” and it does not extend to *de facto* stateless.¹⁵⁶

149. See generally Geneva Convention, *supra* note 148.

150. Ben Saul & Jane McAdam, *An Insecure Climate for Human Security? Climate-Induced Displacement and International Law* 15 (Sydney Ctr. for Int'l L., Working Paper No. 4, 2008).

151. Kälin & Schrepfer, *supra* note 8, at 27–28.

152. See *id.* at 37–40; JANE MCADAM, ‘Disappearing States,’ *Statelessness and the Boundaries of International Law*, in CLIMATE CHANGE & DISPLACEMENT: MULTIDISCIPLINARY PERSPECTIVES, *supra* note 14, at 105, 105–30 [hereinafter *Disappearing States*].

153. Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117 [hereinafter *Stateless Persons Convention*].

154. JAMES R. CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 715 (Oxford Univ. Press, 2d ed. 2006).

155. Kälin & Schrepfer, *supra* note 8, at 38.

156. *Disappearing States*, *supra* note 152, at 119.

III. IDENTIFYING PRIORITIES FOR ACTIONS AND INTEGRATING OPPORTUNITIES

This complex state of play demonstrates that conceptualizing the issue under one existing legal framework may not be possible and also not preferable. The main priorities for policy and action when it comes to climate-induced population movement are multifaceted and require an integrated approach and support of different legal tools and actors. Drawing upon the empirical and legal state-of-the-art research presented above, and the latest initiatives proposed by academics and policy-makers, it is possible to identify several priorities to be addressed in the context of population movement induced by climate change.¹⁵⁷ While this list of priorities is not exhaustive, these are the most immediate tasks to be addressed by any future approach:

- Human rights of people induced to move by climate change are at risk and have to be protected;
- There is a need for a pre-emptive approach (adaptation strategies including those that prevent people from migrating, but also migration as an adaptation strategy, even in some cases as an end to adaptation);
- While primarily responsibility lies with the affected state, international assistance is vital, since the affected states will in many cases lack the capacity to adapt.
- There is a need for a regional-sensitive approach, since the problems associated with climate-induced movement, and the character of these movements, vary considerably depending on the region.

As has been shown in Section 2.5, no legal framework can simultaneously address all these priorities. However, as this article will further demonstrate, there is an approach that allows

157. See Kälin & Schrepfer, *supra* note 8, at 58–62; The Nansen Initiative, *Cross-Border Displacement in the Context of Disasters and Climate Change: A Protection Agenda*, 35–39 (Apr. 8, 2015), <https://www.nanseninitiative.org/wp-content/uploads/2015/02/DRAFT-Nansen-Initiative-Protection-Agenda-for-Consultation-08042015.pdf> [<https://perma.cc/PGF2-KF7R>]; *Preparing for a Warmer World*, *supra* note 4; *Sinking Islands*, *supra* note 29, at 1186–1201.

for integrating the opportunities offered by different fragments of the legal system. This suggested approach is the adaptation approach, which originated in the Cancun Adaptation Framework. As noted above, for the purpose of this article, the adaptation approach to climate-induced population movement is defined as a proactive approach in which migration, displacement, and planned relocation are used as adaptation measures that allow people to adjust to a changing climate (through moving from places at risk).¹⁵⁸ The benefits of the adaptation approach, and its potential in integrating the opportunities offered by various legal frameworks, are analyzed further.

IV. BENEFITS OF THE ADAPTATION APPROACH

A. A change of perspective

First of all, the adaptation approach allows for drawing a line between refugees and people moving in response to climate change. It allows for viewing mobility as positive rather than as a problematic trend. It gives opportunities for vulnerable populations and frees people from the “refugee label” and the way they are treated and perceived. Rather than being victims of a situation, it grants the potential for adjusting to the new situation “with dignity”.¹⁵⁹ It also allows for viewing the government of affected state as an ally in the process of adaptation, rather than the persecutor. States threatened by climate change are already showing an understanding of the importance of taking efforts to prepare for migration and enable it, so that it can indeed constitute adaptation and lead to a win-win situation for sending and receiving areas.¹⁶⁰

158. *See supra* Part I(A).

159. *See Pacific Islanders Reject “Climate Refugee” Status, Want to “Migrate with Dignity,” SIDS Conference Hears*, AUSTL. BROAD. CORP. (Sept. 5, 2014 10:52 PM), <http://www.abc.net.au/news/2014-09-05/pacific-islanders-reject-calls-for-27climate-refugee27-status/5723078> [<http://perma.cc/3SRE-RMQ5>]. The most prominent example is the Pacific state Kiribati, where the government actively lobbies on the international level to ensure “migrat[ion] with dignity” for its citizens. *See id.*

160. *Id.*

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However, “removing the stigma surrounding migration will not make climate change-induced population movement any less complex.”¹⁶¹ Ensuring that migration is adaptation rather than a failure to adapt¹⁶² will require careful supervision of the process and flexibility on the part of the adaptation approach.

B. Flexibility and Potential to Address the Risks Associated with Different Types of Mobility

Through the adaptation approach different types of mobility can be addressed. The Cancun Agreement acknowledged that population movement in response to climate change can take three forms: migration, displacement, and planned relocation.¹⁶³ Each one of these forms addresses movement of a different nature (forced, voluntary), length (temporary, permanent), and distance (internal, cross-border). When these different forms are approached from the adaptation perspective, movement induced by climate change can be a means to adaptation (such as in the case with migration and temporary displacement), but also can be the end of adaptation (in cases with permanent displacement and planned relocation).

This flexibility of the adaptation approach responds to the complex nature of movement induced by climate change and contributes to conceptualization of the issue, without a need to create a single definition or identify a single legal instrument applicable to the issue. It also allows for identifying the most crucial components for addressing each type of mobility.

The Cancun Agreement acknowledged the potential of each type of mobility, regardless of their different nature, to have a positive influence on the capacity of communities to adapt to climate change.¹⁶⁴ This potential varies for each type of mobility.

161. Lauren Nishimura, *Climate Change Migrants: Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies*, 27 INT’L J. REFUGEE L. 107, 130 (2015) [hereinafter *Climate Change Migrants*].

162. Koko Warner, *Global Environmental Change and Migration: Governance Challenges*, 20 GLOBAL ENVTL. CHANGE 402, 411–12 (2010).

163. See *Cancun Agreements*, *supra* note 6, ¶ 14(f).

164. See, e.g., *id.*, ¶¶ 12–15; see also Kálin & Schrepfer, *supra* note 8, at 20. See generally GOV’T OFFICE FOR SCI., *supra* note 20; U.N. Secretary-General,

In some cases it can improve the economic situation of migrants and their families, helping them to increase their resilience to climate change and allowing people to stay longer, while in other cases the best outcome is that most human rights risks are avoided.¹⁶⁵

Therefore, it is crucial to acknowledge that population movement as an adaptation strategy has its limits.¹⁶⁶ For each type of mobility, there are distinctive risks and concerns. As Barnett and Webber argue, for instance, “labour migration is the best way to use the power of migration to promote adaptation to climate change,”¹⁶⁷ whereas displacement is more problematic as there are many immediate humanitarian needs to be satisfied.¹⁶⁸ Planned relocation, or, as it is also called, community resettlement, is the adaptation strategy that entails most risks.¹⁶⁹ Nevertheless, the adaptation approach can be sensitive to these risks.

Most of the risks, particularly when it comes to planned relocation and displacement, arise from the human rights perspective.¹⁷⁰ As has been shown above, the human rights dimension of mitigation and adaptation policies is acknowledged.¹⁷¹ Furthermore, the warning has been made that even when the relevant law refers explicitly to human rights, there is still a danger that mitigation and adaptation policies may themselves undermine human rights.¹⁷² The adaptation framework, since it has recognized these humanitarian risks, is

International Migration and Development, U.N. Doc A/69/207 (July 30, 2014); WORLD BANK, GLOBAL ECONOMIC PROSPECTS 2006: ECONOMIC IMPLICATIONS OF REMITTANCES AND MIGRATION (2006); WARNER ET AL., *supra* note 26; Barnett & Webber, *supra* note 13.

165. *Lessons from Oceania*, *supra* note 1; Barnett & Webber, *supra* note 13, at 23–29 (warning that community resettlement “rarely leads to positive outcome”).

166. Kälin & Schrepfer, *supra* note 8, at 20. However, there is a way to minimize the risks with resettlement and planned relocation. See *Revisiting Planned Relocation*, *supra* note 1, at 92–95.

167. *Migration as Adaptation*, *supra* note 14, at 42.

168. *Id.* at 48.

169. *Id.* at 43.

170. See *Lessons from Oceania*, *supra* note 1; *Revisiting Planned Relocation*, *supra* note 1, at 81.

171. See *supra* Part II(E)(2).

172. *Migration as Adaptation*, *supra* note 14, at 49–50.

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more sensitive to human rights than the UNFCCC itself, and can address them.

As identified above, the adaptation framework strongly relies on the human-rights based approach, which essentially reaffirms that the process of climate change decision-making does integrate human rights issues and places a human’s well-being at the core of a particular adaptation strategy.¹⁷³ This means that the adaptation approach has potential to make migration, planned relocation, and, to some extent, resettlement a win-win situation for sending and receiving areas,¹⁷⁴ while, at the same time, ensuring that the human rights of individuals are acknowledged and prioritized throughout the whole process of decision-making, implementation, and evaluation of adaptation strategies.¹⁷⁵

C. Tools of the “Adaptation Approach” and Institutional Capacity

Population movement as an adaptation strategy relies on the support of different legal frameworks and therefore can make use of the tools available under them. The fact that the Cancun Agreement is developed under the UNFCCC makes the tools of climate law relevant. The fact that the humanitarian consequences of climate change have been acknowledged makes tools available under human rights law, such as the human rights-based approach discussed above. Last, but not least, since adaptation takes the form of migration, migration law is relevant. These relevant frameworks are supported by a number of institutions, which further strengthens the adaptation approach.

1. Climate Law Tools and Institutions

a. Tools

One of the central tools for adaptation within the UNFCCC is National Adaptation Programmes of Actions (NAPAs). NAPAs provide an opportunity for the Least-Developed Countries (LDCs) to identify priority activities that respond to their urgent and

173. *Revisiting Planned Relocation*, *supra* note 1, at 88–95.

174. *Lessons from Oceania*, *supra* note 1.

175. *See Revisiting Planned Relocation*, *supra* note 1, at 92–95.

immediate needs with regard to adaptation to climate change.¹⁷⁶ For the LDCs, NAPAs are the first step towards financing and implementation of adaptation measures.¹⁷⁷ The Cancun Adaptation Framework reemphasized the obligation of adaptation under Article 4(1)(b) of the UNFCCC, and invited Parties to cooperate regarding specific actions on the national, regional, and international levels when it comes to the issue of population movement due to climate change.¹⁷⁸ It has also suggested for the first time that migration, displacement, and planned relocation can become part of National Adaptation Plans (NAPs).¹⁷⁹ NAPs are different from NAPAs. The NAP process, established under the Cancun Adaptation Framework, enables Parties to formulate NAPs as a means of identifying medium- and long-term adaptation needs and developing and implementing strategies and programmes to address those needs. It builds upon the NAPA process, but, while the NAPA process was designed to produce one national adaptation programme of action, the NAP process has been designed to create a comprehensive system through which countries can integrate climate change adaptation into national planning and produce national adaptation plans on an ongoing basis.¹⁸⁰ Ultimately, NAPs allow for a more coherent and comprehensive country-owned, and country-driven, process of adaptation.¹⁸¹ Apart from LDCs, developing-country Parties are also encouraged to begin preparation of their NAP process.¹⁸²

176. *National Adaptation Programmes of Action*, UNFCCC (2014), http://unfccc.int/adaptation/workstreams/national_adaptation_programmes_of_action/items/7567.php [<http://perma.cc/8VB2-57ME>].

177. Gromilova & Jägers, *supra* note 1, at 19.

178. See *Cancun Agreements*, *supra* note 6, ¶¶ 13–14.

179. Kälén & Schrepfer, *supra* note 8, at 50.

180. U.N. Framework Convention on Climate Change, *National Adaptation Plans: Technical Guidelines for the National Adaptation Process*, at 15 (Dec. 2012),

http://unfccc.int/files/adaptation/cancun_adaptation_framework/application/pdf/naptechguidelines_eng_high_res.pdf [<http://perma.cc/GFX9-JS25>] [hereinafter *National Adaptation Plans*].

181. U.N. Framework Convention on Climate Change, *The National Adaptation Plan Process: A Brief Overview*, at 8 (Dec. 2012), http://unfccc.int/files/adaptation/application/pdf/nap_overview.pdf [<http://perma.cc/H464-DCKT>].

182. *Non-LDC Info - National Adaptation Plans*, UNFCCC, http://unfccc.int/adaptation/workstreams/national_adaptation_plans/items/7596.php [<http://perma.cc/5PPA-2QLN>] (last updated Jan. 7, 2014).

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The adaptation approach, therefore, more than ever, allows for a bottom-up approach, where the plan is developed on the national level but can at the same time be financially supported and coordinated on the international level. In that regard, the COP 16 created an Adaptation Committee and a Subsidiary Body for Implementation (SBI), and established a new Green Climate Fund, through which the new multilateral funding for adaptation should flow.¹⁸³

So far, the acknowledgement of migration as a component of adaptation in NAPAs is, however, limited. The “Migration RPC’s Study”, an empirical study and comprehensive analysis of the forty-five NAPAs submitted to the UNFCCC by the end of 2010, reveals that migration is mainly recognized in NAPAs not as a coping strategy but rather as a negative side-effect of climate change.¹⁸⁴ Of the forty-five NAPAs reviewed, only fourteen NAPAs proposed priority projects that involve the resettlement of communities or addressing issues of displacement, while thirteen NAPAs included priority projects that aim to limit rural out-migration (especially rural-urban exodus), nine NAPAs included priority projects related to limiting transhumant migration, and one NAPA incorporated conflict-driven migration into its priority projects which focuses on resolution of the latter.¹⁸⁵ Therefore, so far migration is not viewed as a means to adaptation, but rather as an ad hoc reaction to the impacts of climate change. When it comes to NAPAs, the data and the way they develop are still lacking.¹⁸⁶

The fact that the majority of NAPAs still have a negative perception of migration on the national level runs counter to the general ambition set on the international level to use migration as an adaptation strategy that can boost development and contribute to resilience. Assistance in promoting and explaining the benefits of migration as an adaptation strategy is therefore

183. *Cancun Agreements*, *supra* note 6, ¶¶ 102–09.

184. Jon Sward & Samuel Codjoe, *Human Mobility and Climate Change Adaptation Policy: a Review of Migration in National Adaptation Programmes of Action (NAPAs)* 13 (Res. Programme Consortium, Working Paper No. 6, 2012).

185. *Id.* at 21–22.

186. See generally *National Adaptation Plans*, UNFCCC, http://unfccc.int/adaptation/workstreams/national_adaptation_plans/items/6057.php [<http://perma.cc/JM3N-LLGQ>] (last updated Nov. 2, 2015).

vital. Although countries develop their NAPAs and NAPs themselves, they can also receive assistance from external actors. As set out by the UNFCCC, each country selects a Global Environmental Facility agency to provide technical assistance in planning and implementation of its NAPA.¹⁸⁷ Additionally, the Least Developed Country Expert Group (LEG) is available to provide technical support and advice.¹⁸⁸ The LEG will also provide technical guidance and support to the NAP process.¹⁸⁹ Therefore, a better understanding by these actors of the benefits and potential of migration as an adaptation strategy can help to change the understanding of migration in NAPAs and future NAPs and optimize the potential of migration.

Furthermore, the “Migration RPC’s Study” reveals that even when NAPAs do refer to migration, they typically concern internal migration, as opposed to international migratory flows.¹⁹⁰ This should also be addressed and further integrated, since cross-border movements are inevitable in some regions (including permanent relocation in the case of small island states). This challenges the current understanding of NAPAs and NAPs, which is limited to the national level, and may require adjustments. Such possible adjustment could be the inclusions in NAPAs and NAPs of provisions that stimulate and require the development of bilateral migration or planned relocation agreements between states.

b. Institutional support

The Cancun Agreement, developed within the UNFCCC context, brings the issue of climate-induced population movement within the forum that has the potential to address it. The UNFCCC has a vast membership and a lot of developing countries and least-developed countries, which are acknowledged hot-spots of climate-induced population movement, such as Bangladesh, Tuvalu, Kiribati, and many of the affected African

187. Sward & Codjoe, *supra* note 184, at 8.

188. *Id.* at 9.

189. *National Adaptation Plans*, *supra* note 180, at 7.

190. Sward & Codjoe, *supra* note 184, at 7.

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states.¹⁹¹ Furthermore, the UNFCCC regime is built upon the principle of common but differentiated responsibilities, which makes it attractive for these vulnerable states to rely on the support of this regime.

The institutional regime under the UNFCCC is already established, with several mechanisms and funds relevant to adaptation. Among the mechanisms are: the Adaptation Committee established at COP 16,¹⁹² the Nairobi work programme (NWP) established at COP 12,¹⁹³ the Subsidiary Body for Implementation (SBI) established at COP 1,¹⁹⁴ and the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts established at the COP 19.¹⁹⁵

There are four funds relevant to adaptation under the UNFCCC: the Least Developed Countries Fund (LDCF), the Adaptation Fund, the Special Climate Change Fund (SCCF), and the Green Climate Fund. Though these funds have often been criticized for their inadequacy,¹⁹⁶ as McAnaney notes, most states still participate in the UNFCCC funding mechanisms.¹⁹⁷

In that regard, the advantage of bringing the issue of climate-induced population movement under the UNFCCC adaptation agenda is that besides the interest in the regime by the developing countries, many developed states also remain

191. *Status of Ratification of the Convention*, UNFCCC, https://unfccc.int/essential_background/convention/status_of_ratification/items/2631.php [<http://perma.cc/B8FP-SAXH>].

192. *Adaptation Committee*, UNFCCC, http://unfccc.int/bodies/adaptation_committee/body/6968.php [<http://perma.cc/T6JY-H7HN>].

193. *FOCUS: Adaptation*, UNFCCC, <http://unfccc.int/focus/adaptation/items/6999.php> [<http://perma.cc/6MSJ-RLL6>].

194. *See Subsidiary Body for Implementation (SBI)*, UNFCCC, <http://unfccc.int/bodies/body/6406.php> [<https://perma.cc/KL77-BK5W>].

195. *See Approaches to Address Loss and Damage Associated with Climate Change Impacts in Developing Countries Particularly Vulnerable to the Adverse Effects of Climate Change*, UNFCCC, http://unfccc.int/adaptation/workstreams/loss_and_damage/items/6056.php [<http://perma.cc/E7Y8-2DCH>].

196. *Revisiting Planned Relocation*, *supra* note 1, at 77. According to Climate Funds Update, there is USD 1.22 billion available to support all projects and programmes, while the World Bank Group estimated in 2010 that “the costs of adaptation to climate change in developing countries are . . . in the range of USD 75 to USD 100 billion a year between 2010 and 2050.” *Id.*

197. *Sinking Islands*, *supra* note 29, at 1207.

supportive of the regime.¹⁹⁸ Addressing population movement in response to climate change through the established adaptation regime is probably also politically feasible.¹⁹⁹ Although it is not likely that states will agree on binding obligations, the parties to the UNFCCC have agreed on adaptation goals and commitments.²⁰⁰ As statistics show, developed states are willing to provide aid.²⁰¹ Furthermore, the potential of strengthening existing funds, so that they can extend to migration as an adaptation strategy, seems more realistic than the creation of entirely new funds.

2. Human Rights Law Tools and Institutions

a. Tools

The emergence of the human rights-based approach to climate change, as discussed above in Section 2.5.2 and Section 3, is a significant development, which reaffirms that the process of climate change decision-making does integrate human rights issues and places a human's well-being at the core of a particular adaptation strategy. In particular, the human rights-based approach can ensure that during the process of planning, implementation, and evaluation of migration, displacement, or planned relocation as adaptation strategies, the human rights of the people involved are prioritized and secured.

b. Institutional support

As previously stated, the Cancun Agreement has confirmed the link between human rights law and climate law. Human rights institutions and treaty bodies therefore play an important role when it comes to ensuring that adaptation to climate change takes human rights into account. The Office of the High Commissioner for Human Rights (OHCHR), and, in particular,

198. *Rescuing Tuvaluans*, *supra* note 1, at 262.

199. *Sinking Islands*, *supra* note 29, at 1207.

200. *See, e.g., Cancun Agreements*, *supra* note 6.

201. *Contributor Countries*, CLIMATE FUNDS UPDATE, <http://www.climatefundsupdate.org/global-trends/donor-countries> [<http://perma.cc/J7MU-A3Z9>] (depicting relative sizes of contributions by country).

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the Human Rights Council, have acknowledged the importance of the link, especially when it comes to adaptation.²⁰² Therefore, with the help of the committees and agencies available under the human rights regime,²⁰³ the “rights-based approach” to climate change actions, including adaptation strategies, can be implemented.

There are a number of human rights supervisory bodies that have been tasked with overseeing compliance with human rights treaties. Such supervisory bodies as the Human Rights Committee (CCPR); the Committee on Economic, Social and Cultural Rights (CESCR); the Committee on the Rights of the Child (CRC); and the Committee on Migrant Workers (CMW) can play a crucial role in monitoring human rights violations related to climate-induced population movement and in some cases can consider individual complaints.²⁰⁴

In addition, although people induced to move by climate change do not fall under the mandate of the Office of the U.N. High Commissioner for Refugees (UNHCR), the UNHCR nevertheless plays an important role. First of all, the UNHCR has been constantly bringing attention to the issue of climate-induced migration and to the existing legal gap in that regard.²⁰⁵ Second, the UNHCR has experience in creating and lobbying for relevant instruments, such as the Guiding Principles on Internal Displacement,²⁰⁶ which can considerably support an adaptation framework.²⁰⁷ Furthermore, the expertise of the High Commissioner in view of emergencies, as well as its legal and

202. *Revisiting Planned Relocation*, *supra* note 1, at 81.

203. See Int’l Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, at 9–11 (2008).

204. See Jane Connors & Markus Schmidt, *United Nations*, in *INTERNATIONAL HUMAN RIGHTS LAW* 359, 377–87 (Moeckli, et al. eds., 2010).

205. Kälin & Schrepfer, *supra* note 8, at 53.

206. U.N. Comm’n on Human Rights, Rep. of the Representative of the Secretary-General, Mr. Francis M. Deng, Submitted Pursuant to Comm’n Resolution 1997/39: Addendum: Guiding Principles on Internal Displacement, U.N. DOC. E/CN.4/1998/53/Add.2 (Feb. 11, 1998).

207. Climate Change and Displacement: Identifying Gaps and Responses, *Summary of Deliberations on Climate Change and Displacement* (Feb. 22–26, 2011), <http://www.unhcr.org/refworld/docid/4d9f22b32.html> [<http://perma.cc/8CBJ-S62G>] [hereinafter *Summary of Deliberations*]; see also Kälin & Schrepfer, *supra* note 8, at 53.

technical expertise in dealing with refugee crisis, will be important.²⁰⁸

Last, but not least, the UNHCR is supporting some of the most recent and also most promising soft-law initiatives. Since paragraph 14(f) of the Cancun Agreement did not suggest how climate-induced population movement should be addressed, the “UNHCR took the initiative to bring together a group of experts . . . to discuss options for addressing” the issue.²⁰⁹ This group of experts is referred to as the roundtable of experts on climate change and displacement, and was organized by the UNHCR in 2011.²¹⁰ It highlighted the need for a global guiding framework for external displacement not covered by the current refugee regime.²¹¹ This roundtable informed the Nansen Conference on Climate Change and Displacement, and resulted in the Nansen Principles.²¹² Principle 9 stressed the need for a more coherent international approach “to meet the protection needs of people displaced externally owing to sudden-onset disaster” and proposed that “states, working in conjunction with UNHCR and other relevant stakeholders, could develop a guiding framework or instruments in this regard.”²¹³ It has also led to the Nansen initiative, launched by Norway and Switzerland in October 2012.²¹⁴ The Nansen Initiative is a bottom-up, state-led consultative process with multi-stakeholder involvement, and has an overall goal of building consensus among states on key principles and elements to protect people displaced across borders in the context of disasters caused by natural hazards, including those linked to climate change.²¹⁵ Though the Nansen Initiative is not an attempt to suggest a legal framework and the Nansen Principles are not a soft-law instrument,²¹⁶ it certainly improves

208. *Preparing for a Warmer World*, *supra* note 4, at 79.

209. Walter Kälin, *From the Nansen Principles to the Nansen Initiative*, 41 FORCED MIGRATION REV. 48, 49 (2012).

210. *Summary of Deliberations*, *supra* note 207, at 1.

211. *Id.*

212. NORWEGIAN REFUGEE COUNCIL, *The Nansen Conference: Climate Change and Displacement in the 21st Century*, AT 5, (June 5–7, 2011).

213. Kälin & Schrepfer, *supra* note 8, at 55.

214. *About us*, THE NANSEN INITIATIVE, <http://www.nanseninitiative.org/secretariat/> [<http://perma.cc/9R4N-FWLA>].

215. Kälin, *supra* note 209, at 49.

216. *Id.*

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understanding of the issue and can further support the adaptation approach initiated by the UNFCCC. The UNHCR, which plays an active role in Nansen Initiative,²¹⁷ can therefore further positively influence the development of understanding and further promoting the importance of the issue in the international arena.

3. Migration Law Tools and Institutions

a. Tools

The adaptation approach reveals the links between adaptation policies and migration policies. Migration policies can be a tool of the adaptation approach.²¹⁸ Examples of migration schemes in the Pacific, namely New Zealand’s Recognized Seasonal Employer Scheme (RSE) and Australia’s Seasonal Worker Program (SWP), demonstrate that migration schemes can be an effective tool in boosting adaptation in developing countries, allowing them to increase resilience and development.²¹⁹ Such schemes can be essential tools for managing different types of mobility as a form of adaptation.

Temporary (seasonal) labour migration schemes, for instance, can be successful tools when it comes to migration as a form of adaptation to climate change.²²⁰ Remittances sent back home, in addition to the knowledge and technologies gained during seasonal migration, contribute to the improvement of the economic situation, giving opportunities to implement adaptation measures and to increase the resilience of households.²²¹ When it comes to displacement, specific migration schemes that offer immediate temporary labour opportunities for displaced people can have the same positive impact, allowing people to restore their homes and livelihoods and to return to their country

217. *Id.*

218. *Lessons from Oceania*, *supra* note 1; *see also* PIGUET ET AL., *supra* note 12, at 24.

219. *Lessons from Oceania*, *supra* note 1.

220. *Id.*

221. *See, e.g.*, IPCC 2007, *supra* note 3, at 373, 728; Neil Adger et al., *Migration, Remittances, Livelihood Trajectories, and Social Resilience*, 31 *J. HUMAN ENV’T* 358, 359 (2002); Barnett & Webber, *supra* note 11, at 22.

faster.²²² When migration is an end to adaptation and takes a form of planned relocation/resettlement, specific labour schemes for relocated people can also ensure that planned relocation is successful, since people are given the economic basis for a fresh start.

There are numerous conditions required for labour schemes to contribute positively to adaptation.²²³ There should be a mechanism to prioritize hiring people from countries affected by climate change and a mechanism that can ensure that the gains of participation in labour programmes are actually going into climate change adaptation measures. Furthermore, migration schemes should support existing patterns of migration, so that people migrate to places where there is a cultural or historical connection (such as language or already established communities of migrants).

b. Institutional support

The International Organisation for Migration (IOM) and the International Labour Organisation (ILO) are other institutions that are relevant and that can further strengthen the adaptation approach to climate-induced displacement. As has been already identified, migration, particularly labour migration, can constitute a form of adaptation that benefits all parties involved. IOM might not be a suitable body to protect people induced to move due to climate change,²²⁴ but it can facilitate international cooperation on migration and further promote the understanding of migration as an adaptation strategy. As McAdam has noted, IOM is already trying to take an agenda-setting role on the issue.²²⁵ Piguet quotes IOM's statement that "international community is, in fact, ignoring labour mobility as a coping

222. See *Migration as Adaptation*, *supra* note 14, at 48.

223. *Lessons from Oceania*, *supra* note 1.

224. MCADAM, *supra* note 44, at 229.

225. *Id.* at 229–30. See generally Int'l Org. for Migration, *IOM Outlook on Migration, Environment and Climate Change* (2014) [hereinafter *IOM Outlook on Migration*]; Int'l Org. for Migration, *Compendium of IOM's Activities in Migration, Climate Change and the Environment* (2009); Int'l Org. for Migration, *Migration, Environment and Climate Change: Assessing the Evidence* (2009).

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strategy for climate stress.”²²⁶ In fact, in its latest report, *IOM Outlook on Migration, Environment and Climate Change*, the IOM pronounces its devotion to advocate for the capacity of migration to be an adaptation strategy through “continu[ing] its advocacy efforts together with its partners on the inclusion of human mobility within the post-Kyoto agreement,” raising awareness and understanding of the positive ways mobility can contribute to climate change adaptation, and ensuring that adequate funding is made available.²²⁷

ILO is playing an increasingly important role in enhancing the capacity of states affected by climate change to maximize the benefits of migration.²²⁸ The ILO’s expertise will also be extremely important when it comes to promoting a human rights-based approach to migration as an adaptation strategy, since ILO generally aims to promote rights at work, encourage decent employment opportunities, enhance social protection, and strengthen dialogue on work-related issues.²²⁹ Furthermore, the UNFCCC and the ILO are committed to strengthening their collaboration and mobilization of constituents in support of an ambitious and successful global climate change agreement.²³⁰

D. Towards an Integrative Approach

Last, but not least, the adaptation approach allows for integrating the opportunities offered by the frameworks identified above and for building a mutually supportive system of tools and institutions that can address the main priorities identified in the context of climate-induced population movement.

226. PIGUET ET AL., *supra* note 12, at 24; Int’l Org. for Migration, *World Migration Report 2008: Managing Labour Mobility in the Evolving Global Economy*, at 399 (2008).

227. *IOM Outlook on Migration*, *supra* note 224, at 66–69.

228. See *Enhancing the Capacity of Pacific Island Countries to Address the Impacts of Climate Change on Migration*, INT’L LABOUR ORG., http://www.ilo.org/global/topics/labour-migration/projects/WCMS_226212/lang-en/index.htm [<http://perma.cc/V8A5-U7W2>].

229. *Mission and Objectives*, INT’L LABOUR ORG., <http://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang-en/index.htm> [<http://perma.cc/48PX-UARQ>].

230. *Climate Change*, INT’L LABOUR ORG., http://www.ilo.org/global/topics/green-jobs/news/WCMS_302556/lang-en/index.htm [<http://perma.cc/EM2B-84W9>].

1. The first priority identified is the importance of protecting the human rights of people during migration, displacement, or planned relocation due to climate change.

Technical management of adaptation strategies (such as the drafting of plans and their implementation and evaluation) takes place under the UNFCCC agenda. As has been demonstrated, the UNFCCC has institutions and actors with sufficient expertise to carry this out. Treating population movement in response to climate change as an adaptation strategy also allows for complementing the technical expertise of the UNFCCC with the expertise accumulated under the human rights framework. Policy-makers have acknowledged the importance of applying the human rights-based approach to adaptation. The human rights-based approach helps to focus on how to ensure that human rights are taken into account during the whole process of migration, displacement, and planned relocation. The human rights-based approach can be integrated into the technical process of decision-making, implementation, and evaluation of adaptation strategies, such as during preparation, implementation, and evaluation of NAPAs and NAPs.

2. The second priority identified is the need for a pre-emptive approach.

In this regard, the precautionary principle established under the UNFCCC is central. As identified above, population movement can be both a means and an end to adaptation. When migration or displacement is a means to adaptation, it can be used to increase the resilience of places affected by climate change, to cease a stress on the environment, or to contribute to adaptation programmes through remittances. For example, this can be done through developing migration schemes and/or incorporating plans for displacement within NAPAs and NAPs.

The precautionary principle is also relevant when movement is an end to adaptation (planned relocation as an adaptation strategy). The precautionary principle can ensure that even when there is not enough scientific certainty about the time a certain area will be dramatically affected by climate change, actions must be taken to relocate people. The human rights-based approach

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can greatly compliment planned relocation as an adaptation strategy, since it can make sure that relocation is sensitive to the human rights risks for relocated people and people from receiving areas.

3. The third priority is the availability of international assistance.

As has been demonstrated, both human rights law and climate law require developed states to provide assistance to developing states. The extent and character of this assistance, however, is not clear. Acknowledgement of migration, displacement, and planned relocation as climate change adaptation strategies requires recognition of the humanitarian consequences of climate change. This allows for a different angle of looking at the obligations regarding assistance and cooperation in adaptation. Accordingly, the norms of climate law can be seen and interpreted in conjunction with human rights norms.²³¹ On the one hand, the focus on individuals and their human rights lays down the baseline against which to measure the extent and scope of assistance required in terms of adaptation under Article 4 of the UNFCCC. This means that while it is hard to establish which adaptation measures are required for individuals in the context of climate law alone (since the UNFCCC process is technical and scientist-led), this question gets more clarity when human rights concerns are involved. People in affected areas should get assistance in adaptation, at least to an extent that the negative human rights implications are diminished or prevented. On the other hand, when the matter of assistance is approached from the climate law perspective, the precautionary principle comes forward. Therefore, there is no need to wait for human rights violations when there are clear environmental concerns. This strengthens a human rights duty to fulfill (through international assistance and cooperation), since it can be claimed that the duty to fulfill arises where there are serious concerns (regardless of scientific uncertainty) that a country requires adaptation to climate change through migration, displacement, or planned relocation.

231. Limon, *supra* note 102, at 452.

Another advantage of looking at the matter of international assistance from the adaptation perspective is that the adaptation approach helps to clarify not only *when* the rights should be fulfilled (through proactive provision of assistance in adaptation), but also *who* should provide this assistance. The principle of common but differentiated responsibilities established in climate law can strengthen the principle of international assistance under Article 2(1) of the ICESCR. While there is a lot of scepticism about the extraterritoriality of human rights obligations, climate law highlights that global issues cannot be approached from a traditional territorial focus, but require cooperation. As Limon suggests, the principle of common but differentiated can reshape international human rights law and make it more responsive to the inequalities of the globalized world.²³² This shows that the adaptation approach allows for use of human rights law and climate law as mutually supportive frameworks and can help to achieve more than each of these domains of law could achieve alone.

4. The fourth priority is a need for a regionally sensitive approach

NAPAs and NAPs are the most relevant instruments in that regard, since they are the most prominent bottom-up tools when it comes to adaptation. Furthermore, as has been shown above, migration schemes can also be tools that support adaptation at the regional level. When these schemes are appropriately developed, they will allow people to migrate within “comfortable” routes and make migration, displacement, or planned relocation a more successful story from the human rights perspective.

V. CONCLUSIONS

The issue of climate-induced population movement is greatly important, with many risks involved and many questions regarding obligations, protection, and responsibilities remaining unanswered. The complex nature of the issue continuously challenges policy-makers and law-makers. International law

232. *Id.* at 474–75.

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remains fragmented and does not offer a clear way to conceptualize the issue.

While, at the moment, international law remains limited in its capacity to address the issue of climate-induced population movement, there are also developments that do have potential. As this article has demonstrated, the fact that the Cancun Adaptation Agreement has acknowledged migration, displacement, and planned relocation as adaptation strategies is a positive development. It was argued that this step in legislation allows for developing an adaptation approach, which has numerous benefits in effectively addressing priorities central for climate-induced population movement. The legal analysis also showed that this approach allows the integration of the opportunities offered by distinct legal frameworks. Furthermore, this shows the interlinkages within the fragmented international law.

In particular, the adaptation approach has the following strengths: it allows for addressing the issue of climate-induced population movement in a proactive way (since it relies on the precautionary principle); it can ensure that the human rights of people involved are at the core of planning, implementation, and evaluation of adaptation strategies (through the human rights-based approach); it suggests tools that can make migration, displacement, and planned relocation a more successful process (through specifically developed migration schemes and programs, NAPAs and NAPS); and it emphasises the obligations of developed countries (those who have contributed the most to climate change) to provide assistance in adaptation (this assistance follows from both human rights and climate law frameworks).

An understanding of the benefits of treating climate-induced population movements as a matter of adaptation must be further strengthened and integrated into the international agenda. Currently, the draft proposal that will be discussed at the COP 21 in December 2015 in Paris includes the commitment for the developed states to “assist in providing organized migration and planned relocation” due to climate change.²³³ This provision appears under the loss and damage framework and envisages

233. Durban Platform for Enhanced Action, *supra* note 5, at 33.

assistance in response to loss and damage occurred due to extreme events and slow-onset climate events. However, when it comes to adaptation to climate change, migration, displacement, and planned relocation are not included in the proposal. Although acceptance of the provision under the loss and damage framework will no doubt make a great contribution to the climate-induced migration debate, this will not support an adaptation approach. The important priorities identified for addressing the issue of climate-induced population movement include not only reactive measures (when loss and damage have already occurred). As has been shown, the pro-active approach is vital for both successful adaptation and effective protection of human rights. Therefore, it is crucial when looking at migration, displacement, and planned relocation to not only focus on loss and damage but also (and primarily) to focus on how these strategies can be promoted, managed, and integrated into the adaptation framework. The adaptation approach to climate-induced population movement has an important implication for the post-Kyoto negotiations. It is therefore highly advisable that population movement as a climate change adaptation strategy be developed further in the proposals for the COP 21.