Global Developments in Climate Policy and Migration Policy: Can the UN Be a Base to Create an Adequate Legal Framework?[1]

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ABSTRACT *This commentary discusses how the latest resolution adopted by the UN Human Rights Council (UNHRC), recognizing "The Human Right to a Safe, Clean, Healthy and Sustainable Environment," paves the way for a juridico-political argument over Climate-induced problems. First and foremost in this piece, the climate change-related refugee movement is examined from a critical perspective. Additionally, the paper also asserts that the issue of 'climate refugees' is neglected, and climate-induced migration challenges the current international migration framework. Therefore, this commentary seeks to investigate the impacts and relevance of international law and politics on 'climate refugees' in the case of the Republic of Haiti. Lastly, the paper offers practical solutions for those displaced by environmental factors.*

Keywords: Migration and Climate Policies, International Law, Climate Refugees

Climate Change: Globally Yours![2]

In the case of climate change, refugee policy must be developed, and this new concept must be urgently adopted at the national level. Some states have already developed legal frameworks and national strategies to address the problems associated with the negative climate change's impact on migration; one of the most emerging climate change challenges arises when developing new migration policies due to the current terminology. At the point of climate refugee policy, a legal basis should be established by taking into account people who have migrated from devastated lands or who have no chance to migrate and who are somewhat, as Heslin defined, "trapped."[3] This piece questions whether international law provides a sustainable and effective legal framework to regulate climate-induced problems, i.e. climate-induced migration and the right to life.

In the absence of a widely accepted definition, there is not yet a single dataset fully applicable to climate migration. For that reason, within the foreseeable future, and even at present, the word 'migration' will be utilized as "an umbrella term to allude to forced and voluntary forms of movement"[4] which can happen within the setting of climate and natural change. Although migration is possible for some of the people struggling with climate problems, it is debatable whether all residents of these high-risk places desire or seek the chance to migrate.

As is well known, the current global warming and the destruction of nature have also made climate-related problems more diverse. The decision to migrate is frequently affected by several distinct variables. A wide range of environmental and climatic factors could affect climate-based migration from sudden-onset crises like floods, typhoons, and forest fires to slow-onset processes, such as desertification and sea-level rise.[5] Taking action and understanding slow–onset climate migration brings with it some of the key policy challenges. The policy document to first refer to this issue is the 2010 Cancun Adaptation Framework. Within the scope of this document, forced and voluntary migration forms are addressed; by referring to the continuity of migration, it discusses migration, planned relocation, and displacement.

It is indeed difficult to separate climate-driven migration decisions from other motivational factors such as social, economic, political, and security unless they are sudden large-scale movements. In addition, many migrants who appear to have migrated on the ground that declining livelihoods and economic reasons are likely to migrate as a reflection of climate change effect.[6]

Climate-related crises also bring conflict and security problems. Because when the political instability, economic crisis, and population movements that already exist in some countries come together with the climate crisis, the current situation may become more severe. It could exac-

erbate states' fragility. The situation even includes the risk of turning into conflict.[7] However, it should be underlined that it is difficult to say that there is a direct link between migration and climate change.[8] However, a well-organized migration and climate policy are important in preventing a potential threat from emerging in fragile contexts.

According to the Internal Displacement Monitoring Centre (IDMC),[9] the natural disasters triggered 30.7 million new displacements in 145 countries and territories in 2020.[10] This shows why this issue is so important. However, these figures mostly focus on the sudden onset of disasters within the borders of the country and fall short in explaining the data on cross-border movements. According to the IDMC, there were an estimated 46,000 additional external displaced people as a result of extreme weather, and 32,000 new external displaced people as a result of drought.[11] Between 2008 and 2020, there were over 3.5 million new people who were displaced because of drought and extreme heat.[12]

The Task Force on Displacement of the United Nations Framework Convention on Climate Change (UNF-CCC)[13] developed the recomendations. The UNFCCC Task Force on Displacement was established within the Warsaw International Mechanism for Loss and Damage in 2015, as part of the Paris Climate Change Agreement (WIM).[14] The Task Force has put forward a set of recommendations on how to deal with displace-

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ment and climate change impacts. The recommendations are also applicable to all types of human mobility, mainly to slow-onset events.[15] The WIM provides recommendations for the creation of a displacement facility to assist states in addressing cross-border and internal climate-induced displacement while also building national capacity.

Recommendations aim for states to reformulate existing immigration policies, laws, and strategies to be prepared for any migration in the context of their human rights obligations and climate impacts. In addition to legislative and policy work, they are called upon to take action to facilitate existing immigration, whether regular or irregular. It is important to note that the UNFCCC's works, in and as a part of slow-moving climate issues, are strategically linked to state institutions.

Empowering external operational actors could be one of the most effective strategies to assist the Task Force on Displacement implements. In some states, such as Peru, the compatibly

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Task Force is already drafting national plans based on the concepts described in these global policy texts, indicating that they can act as a catalyst in the development of national policies. It shows that policymakers can help solve the complicated difficulties encountered by migrants, reduce current risk, and play a leading role in problem-solving by addressing complex climate problems.[16] Considering migration only in the context of slow-starting environmental degradation carries the risk of ignoring other issues and leaving them out of the discussion. However, in the climate-induced migration crisis, both the loss of economic and property, infrastructure problems, and the loss of cultural heritage are issues that need to be discussed.[17] The difficulties experienced by the host communities in the migration process are another issue that needs to be discussed and resolved.

It will also be critical to encouraging internal movement, by taking into consideration the phenomenon of urbanization, for refugees affected by the slow onset of the climate disaster. Because people who have lost many livelihoods and economic opportunities as a consequence of the slow-onset climate challenges will move to urban centers in pursuit of a better life. However, due to drought, rising sea levels, and increased human density, city centers will also no longer be livable places.[18] A similar policy can be established in the international arena by taking the policy of the Bangladeshi government to relocate internal migrants to secondary cities rather than Metropole cities.[19] Despite being considered as a last alternative, planned resettlement policies, which are already in place in more than 60 countries, will play a primary role in the future in making migration secure and regular due to slow-onset deterioration.[20]

Another issue is the financial assistance which is a lifejacket for disadvantaged migrant families, allowing them to cover their needs. Rather than long-term adjustment investments, fiscal remittances are generally employed for poverty alleviation.[21] The 3x1 program for immigrants developed in Mexico is one of the most notable examples of financial aid. As part of this program, for every dollar of remittance sent/invested in initiatives that communities develop for refugees, national authorities give three dollars. It aims to promote financial assistance projects.[22] However, the effort to solve the financial problems of refugees with aid is a difficult process to continue.

COVID-19 quarantine area with fences made of barbed wire for the Coronavirus positive cases in the new refugee camp in Kara Tepe. Lesbos Island, Greece, on September 19, 2020.

NICOLAS ECONOMOU / NurPhoto via Getty Images

By creating job opportunities rather than financial aid; providing families with a self-sufficient life should be given priority. While financial aid is important, it should be used as support in a secondary position.

An Indisputable Fact: Climate Change

A report published by the World Bank in 2018 provided quite eye-opening data evaluating the global projection. According to the data, three regions of the world, Latin America, South Asia, and Sub-Saharan Africa, predicted that 143 million people will be internally displaced by 2050 due to the negative consequences of the climate crisis. However, the current situation is evolving so rapidly that the forecast was updated in 2020, and it is stated that the figure will increase from 143 to 216 million people.[23] The Intergovernmental Panel on Climate Change (IPCC) highlights the urgency of action needed on climate change in one of its most recent texts, announcing the current situation as a 'red code for humanity.'

The situation is becoming rapid, widespread, intensifying, and even irreversible as time passes. A 1°C increase in air temperature will expose 2.2 percent of the world's population to rising sea levels.[24] It should be noted that slow-onset climatic changes are more likely to cause migration than sudden-onset events.[25] When discussing migration and the slow-onset effects of the climate crisis, it is necessary to identify 'hotspots' where repeated disaster displacements occur. There is a correlation between slow-onset events and sudden-onset disasters. To give an example, rising

sea levels can trigger flooding, while rising temperatures can cause forest fires. On the one hand, as a result of the rise in sea level, saltwater intrusion leads to deterioration of freshwater; on the other hand, losses in agricultural lands due to heat waves induce the depletion of the ecosystem which impacts human security directly. The Caribbean region, particularly Haiti, is one of these hotspots. The prevalence of such combinations of sudden-onset and slow-onset hazards and gang warfare[26] conflict in the Caribbean region often leads to migration decisions.[27]

Republic of Haiti: A Hub for Migration

'Haiti' and 'forced migration' have been synonyms for much of this decade. Between 1961 and 2012, Haiti was hit by more than 180 natural disasters, several of which killed a substantial number of people.[28] While the Haitian migrant crisis demonstrates that such crises are more likely to arise in the absence of serious policy change, it also demonstrates how ill-prepared the world is for migration and climate change. For example, in 2021, the world watched in horror as U.S. Border Patrol officers in Texas attempted to detain and repatriate Haitian immigrants. It is important to remember that Haiti is dealing with a range of problems including earthquakes, political unrest, and extreme poverty which are only the tip of the iceberg. When we analyzed closely the Haiti case, it is regarded as the most climate-vulner-

able country in the Caribbean and Latin America. Reduced agricultural crop yields partly owing to climate change force people in the region to migrate, endangering their habitats.[29]

The country's history is an intersection of natural catastrophe and colonialism. The restructuring of the rural economy that began during the U.S. occupation from 1915 to 1934 is the basis of this interrelated problem. In the past, from agriculture to banking, Haiti's economy was re-engineered as an export platform to serve U.S. interests. These developments, however, have increased in the last 30 years. Haiti's local market for key products like rice has collapsed as a result of pressure to decrease tariffs on imports from the United States. Deforestation has advanced to the point where only 3 percent of Haiti's tree canopy survives now. As a consequence of these, soil erosion, deforestation, land ownership, and population increase were all inducing internal migration from rural areas to cities by the mid-twentieth century.

Hundreds of thousands of people were internally displaced hereby, pushing into urban regions that were not prepared to handle the inflow of people. Cities with populations exceeding 400,000 people, such as Cite Soleil, are overcrowded and under-resourced. The 2010 earthquake was also fatal due to this fast expansion of substandard urbanism and overpopulation. For many people, therefore, there appears to be no other viable option than to risk their lives by traveling to the U.S. Haiti is an obvious

case study of environmental injustice that foreshadows what will happen if global climate action drives more people to flee their homes. Approximately 200,000 Haitians live in the U.S. without legal papers. After the 2010 Earthquake, these people were awarded Temporary Protection Status, which allowed them to send money to their home, worth as much as $2 billion a year, without fear of deportation. It was an important contribution to the restoration of the country.

Haiti is the poorest country in the Western Hemisphere; in 2018, the GDP per capita was $870. Between 1998 and 2017, Haiti ranked fourth among countries hit by extreme weather conditions, For instance, according to climate forecasts, temperatures in the Caribbean are expected to rise by between 0.78°C to 2.16°C by 2050 which induces rising sea levels (predicted to rise 0.13 to 0.4 meters by 2030),[30] strong tropical hurricanes (intensifying by 5 to 10 percent by 2050),[31] coastal erosion and flooding.[32]

By 2050, the island will experience a decrease of up to 43 millimeters in average annual precipitation, as well as a greater risk of droughts, resulting in crop loss, reduced agricultural productivity, and increasing food poverty.[33] As the World Food Program warns, soil deterioration, erosion, flooding, desertification, and water scarcity will all be exacerbated by deforestation. With a predominantly agricultural economy that employs 66 percent of the workforce and accounts for 27 percent of GDP, Haiti

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is, notably, vulnerable to the effects of climate catastrophe.[34] Droughts in Haiti, which relies significantly on rainfall for agriculture, resulted in "crop losses of more than 50 percent" and a major drop in the food supply in 2016, resulting in "food insecurity for 3.6 million people."[35]

Paving the Way for a Legal Regulation over Climate-Induced Problems?

The UNHRC (hereinafter the Council) was given life by the UN General Assembly Resolution 60/251 to enhance the effectiveness of the battle against human rights violations, promote human rights globally, and ensure equal treatment towards states parties in implementing procedures and monitoring pledges.[36] The Council was created to replace the UN Human Rights Committee, which seemed to fail to contribute to human rights development as had been expected. Another critical issue that needs to be touched on is that the Council is a subsidiary organ of the General Assembly. In contrast, the

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Human Rights Committee was operating under the jurisdiction of the Economic and Social Council.[37]

The Council, as one of its most essential duties, has the responsibility "to promote universal respect for the protection of all human rights and fundamental freedoms"[38] by using its power to "address situations of violations of human rights, including gross and systematic violations," and to do that by making recommendations.[39] With the ability to give suggestions, the Council holds power to shape future developments in human rights. Reaffirmed by the General Assembly Resolution 250/61, the General Assembly is the Council responsible for giving recommendations to enhance and develop international law in the human rights area, both to the General Assembly in specific[40] and everybody in general.[41] By replacing the Human Rights Committee, the Council has had impactful achievements in human rights. For instance, the creation of the Council brought about regular gatherings and systemized processes dealing with human rights, most notably debated ones, i.e., gender rights.[42] As Abebe

recited, this action of the Council was the first important step into an area that was "off-limits."[43]

These steps are essential that the Council eventually put them in a concrete source for human rights. In other words, the Council has the power of standard-setting in which it has already contributed a lot. For instance, "International Convention for the Protection of All Persons from Enforced Disappearance," "Optional Protocol to the Convention on the Rights of the Child on a communications procedure,"[44] and "Optional Protocol to the International Covenant on Economic, Social and Cultural Rights"[45] are the documents that indicate the power of the Council to set standards.[46]

Recently, the Council took a historical decision relating to the environment and human rights.[47] The Council recognized "the right to a safe, clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights."[48] This determination and resolution are of much importance that a new legal framework is on its way to being implemented by states. For instance, a recent study on climate-induced migration issues claims that an outsider, i.e. climate, has undermined the state system's sole principal, namely 'sovereignty.' Therefore, states will be making decisions no matter if they will be satisfied to do so.[49] Accepting the conclusion of the Human Rights Council into consideration, their claim seems to be validated because climate change and cli-

mate-induced problems are unavoidable realities that human beings will eventually have to face and figure out.

First and foremost, the Council underlines some international documents, such as the Universal Declaration of Human Rights and Vienna Declaration and Program of Action reaffirmed by the Council.[50] Moreover, in its resolution, the Council reminds that "all human rights are universal, indivisible, interdependent and interrelated."[51] This way of understanding solidifies the power of the discourse of any possible adjustments relating to the environment. Additionally, by recalling General Assembly resolution 70/1 of September 25, 2015, the Council, indeed, correlates development and human rights in the manner of sustainability. Therefore, the Council touches upon the concrete and normative sides of the law, the former signifies the sociality, and the latter underlines the moral aspects of the law. In other words, the Council, to legitimize its arrangements, does not hesitate to remind the ethical and positive roots of the law. Thus, it reminds and urges states to obey their commitments in the conferences held before on environment.

One of the most important sentences in the resolution reads as follows: "Recognizing further that environmental degradation, climate change, and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy human rights, including the right to life."[52] Here, the Council furthers and reaffirms the progressive determination of the Human Rights Committee on the case concerning climate-induced migration,[53] which was also taken from General Comment No. 36.[54] Therefore, it is not an exaggeration to say that the discourse among human rights bodies seems to constitute unity, coherence, and harmony, i.e., paves the way for a possible precedent. To supplement this argument, the recent recommendation of the Parliamentary Assembly of the Council of Europe (the Assembly) constitutes a benchmark sample.[55] Accordingly, the Assembly believes that a new legal framework, specifically dealing with the climate crisis, needs to be implemented to fill the gap that resulted in the ineffectiveness of the European Convention on Human Rights. Indeed, as the Parliamentary Assembly mentions, the European Convention on Human Rights (after this, the Convention) does not directly deal with or regulate the right to a clean and safe environment. The European Court of Human Rights has long been dealing with such cases through incorporating these violations into other rights and obligations outlined in the Convention.[56] According to the Assembly, "recognizing an autonomous right to a healthy environment would have the benefit of allowing a violation to be found irrespective of whether another right had been breached and would therefore raise the profile of this right."[57] A binding instrument should be adopted for such an intention, namely an Additional Protocol to the Convention.[58]

Additionally, the Assembly also encourages the Council of Europe to benefit and incorporate the terminology used by the UN into its legal framework. As for us, the Assembly tries to build a coherent, determined, and uniform body of law relating to the environment.[59] Another point to be considered is the UN Security Council (UNSC), which is the most critical organ in ensuring international peace and security and the binding nature of its resolutions, according to Article 24 of the United Nations Charter. Although the Security Council included environmental degradation due to war and conflict in its resolutions before the 2000s,[60] it has officially put ecological problems, especially climate change, on its agenda since 2007. At first, the debates on whether climate change was a subject of the Security Council turned into a discussion on what the Security Council can do about climate change and environmental degradation in the following years. While the effects of climate change on security were discussed for the first time in 2007, the possible consequences of this problem on human rights were expressed by UN Secretary-General Ban Ki-moon as follows:

> The adverse effects of changing weather patterns, such as floods and droughts, and related economic costs, including compensation for lost land, could risk polarizing society and marginalizing communities. That, in turn, could weaken the institutional capacity of the State to resolve conflict through peaceful and democratic means, to ensure social cohesion and to safeguard human rights.[61]

In the discussions that continued on the triangle of climate change, secu-

rity, and sustainable development in the following years, it was stated by many members during the climate change-themed open debates[62] that human rights are generally interconnected with peace, security, and sustainable development. Human rights have been further elaborated in recent debates on climate change and related security implications of the UNSC. In the last discussions held in 2019, 2020, and 2021, it was underlined that climate change is a security problem that undermines human rights and sustainable development. The concept of human rights was privatized because it has devastating effects on gender equality and children.[63]

Back to the scope, the UN Human Rights Council, by enlarging the content of the provision, says that "the importance of a safe, clean, healthy, and sustainable environment" is critical to the enjoyment of all human rights, actually preparing the base for future normative legislative arrangements. To support its argument, the Council underscores the initiative of numerous human rights bodies' declarations and NGO's initiatives.[64] According to the Council, this body of rights is also interrelated to other rights that exist in international law.[65] Furthermore, the Council affirms that "the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law."[66] Hence, the Council calls for states to build and encourage a common language on implement-

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ing "the right to a safe, clean, healthy and sustainable environment, per their respective mandates." That is possible if states can establish close work with other UN organs and other entities, including NGOs and regional organizations, on gender equality.[67] Finally, the Council invites "the General Assembly to consider the matter" and decides "to remain seized of the matter."[68]

As a result, a body of binding arrangements is on its way to being adopted by the states, as evident in the Human Rights Council's resolution and other relevant international bodies' decisions. Furthermore, a common language is being constructed, which, in the future, will be the basis for all international documents relating to rights on the environment.

Conclusion: D-Day for Humanity?

The 'migration as adaptation' framework could be helpful for policymakers in determining how voluntary migration can help decrease vulnerability and exposure to climate-related

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damages. On the other hand, changing the framework's focus to individual flexibility and mobility opportunities may lessen political forces' role.[69] Also, this framing weakens thinking about issues of inequality, injustice, and atonement by moving the focus to individual flexibility and action options, minimizing political forces' accountability.[70]

It is thus an issue of how to design realistic policy measures that recognize that migration may be unavoidable in some circumstances and serve to lessen migrants' vulnerabilities while increasing the beneficial effects of movement on migrants and communities. Humanitarian visas, for example, might be provided to persons suffering from significant environmental deterioration, such as following the 2010 earthquake in Haiti; Brazil offered humanitarian visas to Haitian refugees, as well as the Peruvian temporary visa model, which is another example.[71] Implementing such projects or practices could help prevent the problems that refugees will experience. Immigrants' integration efforts should be aided by policies that reduce their trauma and ensure that they arrive safely at their destination.

However, legal frameworks and binding documents should also be adopted by states to handle this unavoidable threat to the well-being of not only humankind but also the 'blue planet.' Indeed, international organizations are making earnest attempts to reduce the adverse effects of climate change and climate-induced problems. For instance, the UN could serve as a good base for promoting human rights and creating binding conventions imposing obligations over states. ∎

Endnotes

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52. "The Human Right to a Safe, Clean, Healthy and Sustainable Environment," p. 2.

53. Furthermore, the Committee recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. See, "Views Adopted by the Committee under Article 5 (4) of the Optional Protocol, Concerning Communication No.2728/2016," *United Nations Human Rights Committee*, UN Documents, CCPR/C/127/D/2728/2016, (January 7, 2020), par. 9.4, retrieved from https://www.refworld.org/pdfid/5e26f7134.pdf.

54. According to General Comment No. 36, the Human Rights Committee (founded upon the command of the International Covenant on Civil and Political Rights) determined that "Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors." See, "General Comment No. 36, Article 6 (Right to Life) of the International Covenant on Civil and Political Rights, on the Right to Life," *United Nations Human Rights Committee*, CCPR/C/GC/36, par. 6, retrieved from https://www.refworld.org/docid/5e5e75e04.html.

55. "Anchoring the Right to a Healthy Environment: Need for Enhanced Action by the Council of Europe," *Parliamentary Assembly of the Council of Europe*, *Resolution 2396*, (2021), retrieved from http://assembly.coe.int/nw/xml/XRef/Xref-XML-2HTML-en.asp?fileid=28644&lang=en.

56. "Anchoring the Right to a Healthy Environment," par. 4-5.

57. "Anchoring the Right to a Healthy Environment," par. 9.

58. "Anchoring the Right to a Healthy Environment." Another additional protocol has been proposed for the European Social Charter.

59. "Anchoring the Right to a Healthy Environment."

60. For instance, "Security Council resolution 689 (1991) [Iraq-Kuwait]," *UN Security Council*, (April 9, 1991), S/RES/689 (1991), retrieved from https://www.refworld.org/docid/3b00f13918. html. In this regard the UNSC "reaffirms that Iraq, without prejudice to its debts and obligations arising prior to August 2, 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage - including environmental damage and the depletion of natural resources - or injury to foreign Governments, nationals and corporations as a result of its unlawful invasion and occupation of Kuwait."

61. "Security Council Report," *UN Documents* -S/PV.5663 S/PV.5663 (Resumption 1), (April 17, 2007), retrieved from https://www.securitycouncilreport.org/un-documents/document/ener-spv-5663-res-1.php, p. 14.

62. "Letter Dated July 1, 2011, from the Permanent Representative of Germany to the United Nations Addressed to the Secretary-General," *UN Documents* – S/2011/408, (2011), retrieved from https://undocs.org/S/2011/408.

63. See, UN Documents S/PV.8748, S/PV.8451, S/2020/929, S/2020/1090, S/2021/198, retrieved https://undocs.org/S/2011/408.

64. "The Human Right to a Safe, Clean, Healthy and Sustainable Environment," p. 3.

65. "The Human Right to a Safe, Clean, Healthy and Sustainable Environment," p. 3 and Article 2.

66. "The Human Right to a Safe, Clean, Healthy and Sustainable Environment," p. 3 and Article 3.

67. "The Human Right to a Safe, Clean, Healthy and Sustainable Environment," Article 4/(a) and 4/(b).

68. "The Human Right to a Safe, Clean, Healthy and Sustainable Environment," Article 5 and 6.

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