



COMILLAS
UNIVERSIDAD PONTIFICIA

ICAI

ICADE

CIHS

FACULTAD DE DERECHO

TRABAJO DE FIN DE GRADO

THE LEGAL LIMBO OF ENVIRONMENTAL MIGRANTS

Área de Derecho Internacional Público y Relaciones Internacionales

Tutor: José Ángel López Jiménez

Autor: Mercedes García Vallejo

Grupo: 5ºE5

Madrid, Abril 2019

TABLE OF CONTENTS

1. List of abbreviations.....	2
2. Introduction	2
2.1. Introduction and structure.....	2
2.2. State of investigation	4
2.3. Methodology	7
2.4. Hypothesis of investigation.....	9
3. Relation between climate and migration.....	11
4. Types and tendencies of environmentally induced migrations	18
3. Legal protection of cross-border environmental migrants	19
3.1. Human rights problems caused by the lack of regulation of environmentally-induced migrations.....	19
3.2. Why is there a legal gap in the protection of cross-border environmental migrants?.....	21
3.2.1. Are they refugees?.....	22
3.2.2. International conventions regulating the legal status of environmental migrants	28
4. Possible legal solutions to the lack of protection of cross-border environmental migrants.....	35
5. Conclusion.....	40
6. References	44

1. List of abbreviations

- COP: Conference of the Parties
- IDMC: Internal Displacement Monitoring Centre
- IDPs: Internally Displaced Persons
- IFRC: International Federation of Red Cross and Red Crescent Societies
- INDCs: Intended Nationally Determined Contributions
- IPCC: Intergovernmental Panel on Climate Change
- IOM: International Organization for Migrations
- OAU: Organization of African Unity
- OCHA: Office for the Coordination of Humanitarian Affairs
- OECD: Organization for Economic Co-operation and Development
- SIDS: Small Islands Developing States
- UN: United Nations
- UNEP: United Nations Environment Program
- UNHCR: United Nations High Commissioner for Refugees
- UNISDR: United Nations Office for Disaster Risk Reduction
- WIM: Warsaw International Mechanism

2. Introduction

2.1. Introduction and structure

Environmentally induced migration is a growing problem which has not yet been effectively addressed by any legal mechanism. Millions of individuals flee every year from the devastating consequences of different natural hazards, such as floods or droughts. Most of them remain in their own country, moving to a safer area, and they normally return to their places when the danger is under control. However, when they go back, they find themselves in very precarious situation due to the loss of all their possessions, sometimes even the access to natural resources. In fact, the rebuilding process of these affected areas is such a costly and long process that some governments lack of means to carry it out, since these affected areas are normally middle or low income countries. Hence, some of these migrants decide to move permanently to these safer areas, or even to another country.

This cross-border environmental migration is the main focus of this dissertation, since it is an issue that belongs to the field of the study of international public law in relation to the responsibility of states to admit foreign nationals trying to enter their territory.

The current tendency is that host countries refuse to act in accordance to already recognized principles of humanitarian law, such dignity and security of all individuals, housing or, in general, the right of individuals to have the essential standard of living for their well-being and the well-being of their families, and they do not grant a special protection to this environmental migrants, sometimes, they do not even admit their entrance. Among these host countries are Australia and New Zealand, for migrants fleeing from the small islands of the Pacific, countries in Central America, for migrants coming from the Caribbean islands or even from other Central American countries, or countries in Sub-Saharan Africa, which are normally the neighboring countries of those suffering natural hazards, such as desertification, and whose nationals run away from in search for new land.

The motives that drove the election of this topic were based on the realization that, although it is evident that people in the situation previously explained are in need for a guarantee of their safety, since their displacement is induced by a force that they totally lack control of, the climate, there is currently no legal mechanisms which set the standards on how this protection should be carried out.

While there are several conventions on environmental law, primarily focused on adaptation and mitigation measures against climate change, and several conventions on human rights and the rights of refugees, which do not include environmental causes as a threatening factor, there is any legal instrument directly concerned with the issue in question. And this results in the commission of severe violations of the most basic human rights of environmental migrants, during and after the act of migration. That is why the concept of the “legal limbo” of environmental migrants seemed to be the most descriptive one for the situation in which these individuals find themselves.

. Therefore, this paper aims to analyze the problem of the legal gap in the protection of these migrants, and what legal solution would be more effective to end it.

Regarding the structure of the research, the first chapter is focused on the relation between climate a migration, namely the environmental factors that trigger human

mobility, what areas of the world are more vulnerable to this threat, and how are natural hazards worsened by climate change. It uses three study cases, one in Bangladesh, another in the Sahel and the last one in The Philippines, to evidence the links among all the elements of this relation, and to explain the challenging situation that environmental migrants face.

The second chapter, types and tendencies of migrations of environmentally induced migrations, explains the existing patterns of human mobility depending on the natural hazard each group of persons are threatened by. It explains when migrants tend to move within the borders of a country, when they move to a different one, and whether the tendency is to return to their place of origin or to move permanently to the safer area.

The third one is the core part of this study, since it analyzes the issues of human rights that environmental migrants face and the legal gap itself. This gap is approached from a historical point of view, explaining how the international community has dealt with the status of environmental migrants until reaching the notion that is currently accepted. It analyzes if environmental migrants are protected by the 1951 Refugee Convention, and thus, if they could be considered refugees; if there is any other international convention on environmental law that talks about what rights individuals have in relation to the consequences of climate change, albeit indirectly; and if there is any other international framework concerned with their protection, such as the Nansen Initiative.

Finally, the last chapter is focused on the current academic and institutional propositions to fill this legal gap. It analyzes what some authors have proposed, what have been the criticism of other authors to these suggestions, and what is the position of international organizations, such as the UNHCR or IOM, on each of those propositions.

2.2. State of investigation

This topic has been deeply analyzed by academic researches and by groups of experts working *ad hoc* to elaborate reports published by International Organizations such as the IOM or the UNHCR, or by the United Nations offices and working groups concerned with the environment and climate change, such as the UNEP and the UNFCCC.

The issue of environmental migrants was introduced with the debate of whether they could be considered refugees or not. El-Hinnawi's report for the UNEP back in 1985 is considered to be the starting point of the discussion, and the great majority of the following investigations were based on supporting or refuting the definition of "environmental refugees" that this paper coined. Some authors supported that it was positive to use the connotation inherent to the concept of "refugee" to this issue to enhance the international awareness on the need of their protection. However, some others defended a more legalistic approach, and they refused to be flexible with the literal definition of refugees included in the 1951 Convention on the rights of Refugees, proposing using the alternative name of "environmental migrants". Hence, when International Organizations began to focus on their legal status, they did not start from the scratch, and they contributed to clear out the academic discussion by embracing only the terminology proposed as the alternatively.

Once the more conceptual approach was sorted out, International Organizations focused on data collecting and other technical investigations to offer a more comprehensive explanation of the social and climatic situation that these migrants were facing. And the first reports specialized on this topic were published. The research on this field has reached more importance as natural disasters have become more frequent, and the migration flows more massive. Hence, it is currently an issue present in all conversations carried out by big international organisms about climate change, and it has even become a mandatory chapter in conventions on migration. For instance, environmental migration was included in the 2030 Agenda of 2015 and the Global Compact on Migration of 2018, which are currently among the reference instruments on the measures that states should take to guarantee a global protection of all individuals.

Regarding the legal gap, there also are a high number of academic and professional researches on the suitability of the existing legal instruments and what could be done in a future. This issue is addressed by several dissertations and university magazines about international public law, mainly from Anglo-Saxon universities, such as the *Harvard Environmental Law Review* or the *UNSW Law Journal*.

On the other hand, the information extracted from reports and conventions of international organizations was limited to recognize that environmental migrants cannot count with any legal instrument that protects their rights. All the UNFCCC conventions analyzed, the ones on environmental law, as much as the Sendai Framework pointed out

the need for a new legal system and the vulnerabilities of environmental migrants. However, they did advance in the implementation of any innovative legal measure. Only after the proposals of the Nansen Initiative, international organizations assumed the urge of protecting these migrants and currently last reports do mention the necessity of states to take action.

However, there are other areas related to the legal limbo of environmental migrants that are still unexplored, and thus that could not be included in this paper, but which are herein proposed as future lines of investigation. For example, there are no investigations yet about what would happen if governments decide not to move on the creation of new national laws to protect environmental migrants. As it will be later explained, the most supported solution to this problem currently is to set international standards by an international professional working group, and leave on the national governments' hands the issuing of new laws in accordance to these principles. Hence, if governments do not do so, the debate would still be opened and migrants would have to remain unprotected for at least another decade whereas natural disasters would not disappear, but become more intense.

Another issue that has not been linked to environmental migration in the academic arena is how the strengthening of anti-immigration political parties is or would affect this issue. This tendency is not only affecting European countries, but also some host countries of cross-borders environmental migrants. If these parties block passing new legislation or if they somehow succeed in their political campaigns against environmental migration, all efforts to gain international awareness on this issue and to advance towards an effective legal mechanism could be crumbled down.

Finally, after the research conducted for writing this dissertation, it has been observed that there are not many reports concerned with how developing countries, where the majority of environmental migrants come from, should implement measures to control migration flows when they lack economic means, or with how developed ones could contribute to this task without interfering in their political structure. Neither is there reports talking about how is it going to be monitored how developing countries that are also host countries for other migrants (a tendency repeated frequently in the area of the African Sahel), are implementing the international standards on environmental migration when these countries do not normally have structures of power strong enough to impose norms to local authorities.

2.3. Methodology

The approach used to elaborate this paper has been the historical-chronological one. Firstly, the relation between climate and environmental migrations has focused on how natural phenomena used to affect individuals living in vulnerable areas, and how it is now worsened by the impact of climate change, until getting to current tendencies of mobility and human rights problems. Secondly, the analysis of the legal instruments follows the same methodology. It is firstly described how this issue was introduced in the academic sphere, and how the theories studying this issue have later evolved. This timeline has been, since the beginning, conditioned by natural events that fostered large migrations, and it has been observed that right after a catastrophe, investigations on this issue have exponentially increased.

The investigation is based on reports of international organizations or academic platforms with international credibility, on the analysis of international conventions themselves, and on other research papers of scientific or legal journals. Besides, the structure of the paper reflects in itself how the investigation was addressed.

The first part was focused on understanding the impact of climate on migration flows. This is probably the most technical part, since the reports used, such as the ones elaborated by the IPCC, describe different climate events and phenomena with specific scientific vocabulary, which has been here simplified to adapt it to the language of a social science paper. The next part regarding the relation among developing countries, most vulnerable countries to natural hazards, and countries of origin of environmental migrants, is complemented with statistical data from organizations such as the World Bank. In addition, the election of the three examples included to highlight this interrelation, was based on the classification of the World Bank of high, middle, or low income countries. The rest of bibliography used to write about these cases is based on very specific reports, and that is why it is different in each case.

Moreover, the analysis of the tendencies of migration follows the categories established by E. Wilkinson, L. Schipper, C. Simonet, and Z. Kubik (2017) in the 2030 Agenda report. This Agenda was studied in depth in another class of this university, Immigration and Refugee Law, where it was also studied the international backing that this text received. Hence, it seemed more reliable to base this paper on the Agenda rather than in individual academic theses.

This first part could be considered an introduction to the problem of environmental migrants, and it leads to explain what kind of human right problems these tendencies imply. This is summed up in a figure 4, retrieved from J. McAdam and M. Limon's report (2015) about human rights, climate change and cross-border displacement. The figure describes with precision what kind of natural disaster causes each of human problems that can arise from these devastating phenomena, and how it ends up generating a vulnerability that needs to be overcome by granting protection to some rights in specific.

Before starting the analysis of the legal gap, the paper also explores the evolution of the concept of "environmental refugees" to the concept of "environmental migrants". This part is based on the academic discussions of scholars who are a reference on migration issues, such as El-Hinnawi, Black, Hugo or McAdam. The study of their thesis was carried out through primary and secondary sources. In the case of Hugo, Morrissey and Bates, their theories were extracted from specialized magazines on law and migration issues which contained articles written by these authors. However, Hathaway's book had a restricted access online and it was not possible to access directly to it from any other way. Hence, this author is cited in accordance to Perout's book, which was read entirely as part of the investigation process. Moreover, El-Hinnawi's, Apap's and Black's theses were included in reports published by the UNEP, the European Parliament, and the UNHCR respectively. In this part, there is another study case. It is the study of the jurisprudence of the New Zealand's Immigration Tribunal, which helps to understand how Courts are currently dealing with applications for a refugee status coming from environmental migrants. It is presented in this paper according to the explanations of Jane McAdam, a professor in the Faculty of Law in the Australian University of New South Wales, as she reported to a magazine called *Migration Studies* published by the University of Oxford.

The rest of the paper is focused on the analysis of the legal instruments related to this topic. This part is mainly based on the study of the conventions themselves, and only a few academic researches, such as the one conducted by Yamamoto, Andreola and De Salles in 2018, helped to go through their interpretation. Some concepts of the 2030 Agenda were also helpful as a basis to know which conventions should be subject of analysis.

This is the core part of the investigation, but also were most difficulties were found, mainly in adapting the study of the conventions to the pre-designed structure of

this paper. Moreover, the length of the research has also limited the possibility of exploring other legal solutions, or even the comparison of the status of environmental migrants with the protection mechanisms included in other human rights conventions.

Finally, the part of analysis of this dissertation concludes with the potential legal solutions to the legal limbo situation of environmental migrants. The study of each alternative draw from the three types of conventions analyzed (the 1951 Convention on Refugees, the conventions on environmental law, and the Nansen Initiative) and focuses later on what the academic and the institutional arenas have said about the feasibility of finding the solution under the scope of each of them. Hence, the theories of some of the authors introduced as the reference scholars in this field are used again to analyze some of the propositions, combined with other sources, such as the report written by Docherty and Giannini for the *Harvard Environmental Law Review* magazine, or Prieur's proposition of a new convention included in *The Urban Lawyer*.

2.4. Hypothesis of investigation

As it was previously introduced, this paper is organized around one main hypothesis and other six sub hypotheses.

The main hypothesis is that environmental migrants lack of any kind of legal protection, and thus that there is a limbo in the regulation of most basic rights and their legal status, both in the destination and origin countries. This is the issue that inspired the choice of this dissertation's subject matter. Therefore, this hypothesis is the focal point around which the rest of sub hypotheses are formulated.

In accordance with the order of the structure of the paper, the first two sub hypotheses concern the relation between climate, vulnerable communities and mobility, while the other four tackle the issue of the legal limbo itself.

The first one is that there is a clear link among geography, economic underdevelopment of countries and countries' vulnerability to natural hazards. This means that countries which are sited in areas of the world where it is more difficult to find good conditions of living are normally the ones identified as underdeveloped countries from an economic point of view, but also the ones that are most likely to be threatened by natural disasters, such as floods or land desertification. The hypothesis is that these

causes are interrelated and that it is why most of environmental migrants come from this category of countries.

The second one is that there are different tendencies of mobility of people depending on the kind of natural disasters that provoke the exodus. There are people who move permanently, temporarily, to another country, or to a different area of their own country. And it all depends on the kind of natural violence they face and on the possibility of recovery of their previous life conditions after the disaster.

The third sub hypothesis introduces the matter of the lack of regulation of environmental migrants' rights. And it is that they cannot be considered refugees because environmental causes are not included in the scope of the Geneva Convention on the rights of refugees. Therefore, there are rights provided by this status, such as non-refoulement, that are not granted to environmental migrants when they arrive to the destination country.

The fourth one is that the legal framework provided by international conventions on environmental law does not address the issue of environmentally-induced migrations directly, since these Conventions, such as the Paris Agreement, are more focused on the mitigation of the effects of climate change, but not on how does it affect individuals.

The next sub hypothesis is that, even outside the scope of conventions addressing human rights or environmental problems, there is no other international legal instrument that regulates the status of people displaced because of climate and environmental causes. And, since there are no binding norms on how these people should be treated, the legal limbo is still existing.

Finally, the last sub hypothesis is that the international community has no imminent intention to create such legal framework that could end with this lack of protection of environmental migrants.

3. Relation between climate and migration

The 2015 Protection Agenda, published by The Nansen Initiative, group offers a comprehensive definition of displacements of people due to natural disasters¹, and it furthermore forecasts that, annually, “there are 22.5 million people displaced by sudden onset climate and weather disasters, and other 3.9 million people migrating to avoid the effects slow onset disasters, such as the rising of sea level, the desertification or the environmental degradation” (The Nansen Initiative, 2015:14).

However, that amount of people displaced is not proportionally distributed along all areas of the world, since there are some communities that are more vulnerable to natural disasters than others. This is due to several factors, such as the frequency, intensity and nature of disasters that could arise in that area of the planet or the level of preparedness of the community to face its consequences. And hence, when these factors reach a risk level, and other unfavorable demographic, political, social, economic and developmental factors are added, these communities start to be considerate “vulnerable”, which means that in case of a disaster, people would see themselves forced to move to safer areas.

Displacement related to weather and climate has exponentially increased over the last years, threatening to be one of the most serious humanitarian crises of the next decades. This is because factors that conditioned the level of vulnerability have been reproduced, exacerbated the preexisting risk of natural disasters. For example, the population growth and urbanization make the general consume of natural resources increase. Moreover, the rising of coastal zones and floodplains as populated areas makes their inhabitants to be more exposed to natural disasters. And finally, because of the consequences of climate change that the entire world has started to experiment over the last years (Wilkinson and Peters, 2015); (Foresight, 2011).

However, to throw some light on how these factors affect the risk communities of suffering a natural catastrophe, it is firstly necessary to analyze what types of

¹ “disaster displacement refers to situations where people are forced to leave their homes as a result of a disaster or in order to avoid the impact of an immediate and foreseeable natural hazard, including the adverse impacts of climate change”(The Nansen Initiative, 2015: 16).

environmental risks affect the mobility of people: sudden onset natural disasters, and slow onset ones.

The first category of disasters includes those related to biological causes, such as epidemics and insect infestations; climatological ones, such as droughts, extreme temperatures and wildfires; meteorological factors, such as storms, and also all disasters caused by earthquakes, volcanos or floods. Above all of them, floods, droughts, storms and earthquakes have always been identified by the scientist community as the most dangerous factors for people's lives and property damages (Sodhi, 2016: 3).

Inside this category, it is important to highlight that, while slow onset disasters are usually more clearly linked with the effects of climate change, it also affects the sudden onset ones, and all these floods, draughts and other phenomena are becoming more recurrent and intense since climate change started to severely influence the atmosphere.

The second category of these natural disasters which imply mobility risks includes what is known as slow onset disasters, which are identified with the desertification or the deterioration of the environment. Climate change is also making the impact of slow onset disasters more severe, but it implies different effects depending on the part of the world where the disasters occur. For example, in the high latitudes, mid-latitude wet regions and the equatorial Pacific, due to the global warming, annual rainfall levels will increase, causing more floods and, in the long term, more deterioration. While in mid-latitude and subtropical dry regions, these levels will likely decrease, and thus, the desertification of the land will spread faster (IPCC, 2014).

Slow onset disasters are as dangerous as sudden onset ones. Their effects might be not seen right after the disaster happens, but they equally imply a risk to the livelihoods of communities that face this deterioration of their environment. Moreover, as it will be explained later, these disasters normally affect communities also vulnerable to local conflicts and other political tensions, and they could become more frequent and violent if these communities are facing this scarcity of natural resources (Walsham, 2010). For all these inconveniences, it is becoming more frequent that people living in areas vulnerable to this environmental deterioration migrate to other areas as an adaptation strategy.

Once the types of natural disasters that affect the mobility of people are explained, it is also important to tackle the issue that these disasters do not affect all areas of the world equally. While some of them are unavoidable, given the intensity of the disaster

itself, others can be more contained if the country affected by the disaster counts with services with a high capacity of response to the chaos generated by the catastrophe. This normally depends on the budget and level of organization of governments to deal with this kind of emergencies (Wilkinson and Peters, 2015); (Shepherd et al., 2013). However, geographical factors are also crucial to analyze a country's vulnerability to a natural hazard.

It is thus not surprising realizing that the most vulnerable communities to these environmental risks are set in developing countries. In particular, according to Wilkinson, Schipper, Simonet and Kubik (2017), the most disproportionate effects of natural disasters and land devastation occur in the countries called Small Island Developing States (SIDS)². Hence, SIDS suffer the highest level of exposure to natural catastrophes because of their geographical situation and because none of these countries is categorized as a high-income one (Kumari Rigaud et al., 2018).

Both of these causes of vulnerability are evidenced by the next images, which show that developing and "poor" countries (in terms of Poverty headcount ratio at \$1.25 a day at 2005 International Prices indicator) (Figure 1) are also the most affected areas of the world by natural disasters (Figure 2) and the ones that will be more affected in the following years by droughts, due to the increasing of temperatures, and by the increasing of annual rainfalls (Figure 3).

Figure 1. Share of the population living on less than \$1.25 per day

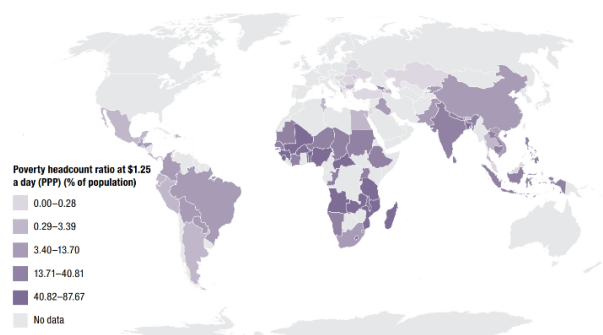


Figure 1. Share of the population living on less than \$1,25 per day (Wilkinson and Peters, 2015: 14)

² Some examples of territories categorized as SIDS are Fiji and Tonga, in the Pacific, and Belize, Cuba, and Haiti in the Caribbean (Migration Data Portal, 2019).

Figure 4. Number of reported victims of natural disaster by 100,000 inhabitants, 1996–2005

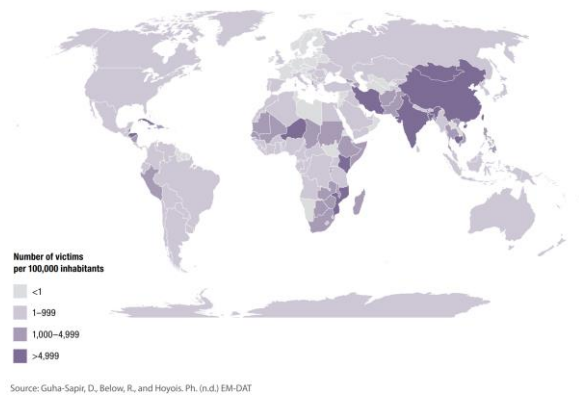
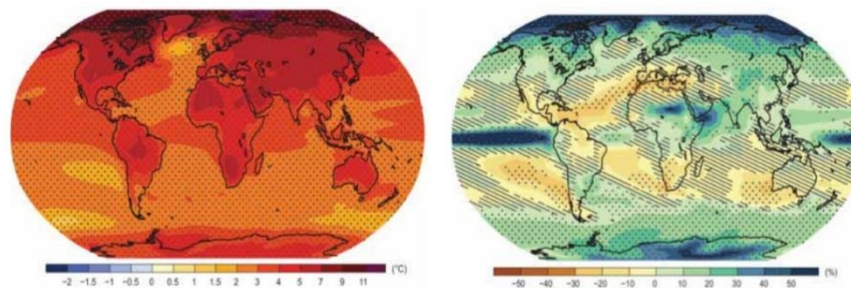


Figure 2. Number of reported victims of natural disasters by 100.000 inhabitants, 1996-2005 (Wilkinson and Peters, 2015: 20)

Figure 2. Annual surface temperature and precipitation change

Change in average surface temperature (1986–2005 to 2081–2100) Change in average precipitation (1986–2005 to 2081–2100)



These are maps of annual surface temperature change (darkening to red) and precipitation (darkening to blue) changes by the end of the 21st century under a business as usual GHG scenario. Hatching indicates regions where the projected change is relatively small. Stippling indicates regions of relatively large changes with high climate model agreement. See IPCC AR5(18) for full description.

Figure 3. Annual surface temperatures and precipitation change (Wilkinson and Peters, 2015: 15)

To this chain that connects vulnerability to sudden and slow onset natural disasters to developing nations, another link should be added, since environmental migration also comes from these vulnerable areas. According to the study published by the World Bank in 2018, mobility trends of the past two decades show that the majority of environmental migrants come from countries outside the Organization for Economic Co-operation and Development (OECD), meaning from countries identified as low and middle income ones according to the categories of the World Bank (Kumari Rigaud et al., 2018); (Bilak et al, 2016: 23).

The next examples try to illustrate this cycle that connects developing countries to countries vulnerable to natural disasters and countries of origin of environmental migrants. These cases have been chosen because several of the above-mentioned reports have identified them among the most severe episodes of migration caused by environmental factors. In the three cases, there are common elements: the three countries are low and lower- middle income ones; they are especially vulnerable to natural disasters and environmental degradation; in the three countries large flows of migrations have appeared after a specific natural event; and in all of them experts forecast a future scenario where these facts will be worsen by climate change.

- Floods in Bangladesh

Bangladesh suffered a severe crisis caused by uncontrollable floods during the summer of 2014. And as it was introduced before, the level of severity of the crisis can be explained by different factors: firstly, Bangladesh is located in South Asia, one of the most vulnerable areas of the world to the increase of rainfalls due to the global warming; its internal geographical characteristics also made floods more difficult to stop, since lots of its cities are settled on floodplains and crossed by more than 230 waterways; and finally, the condition of Bangladesh of a developing middle income country and its challenging political and socio-economic circumstances made it more difficult to find a convenient response to the crisis (The World Bank Group, 2019a) (Walter, 2015).

As a result, the rains from August to September 2014 that caused these floods affected 3.5 million people settled along the whole country: “56 people died, more than 100 people were injured, and 34,000 homes were destroyed. Also, 86,000 ha of cropland and seedbed were damaged, without a chance of recovery, meaning not only food insecurity, but also a declining in wages and employment in those rural areas” (Food Security Cluster, 2015). Thus, property destruction and lack of economic opportunities in these areas induced the migration of 325,000 of those 3.5 million to urban areas, where employment is more diversified (IFRC, 2014).

These rains were caused by the increasing in the level of the rainfall during the monsoon season. According to IPCC 2014, because of the effects of climate change, this level will continue rising in the following years, and aggravated by more drainage problems of the rivers, it will end up causing more frequent and intense floods (Walter, 2015). This, together with the environmental degradation, will continue destroying properties and croplands, placing Bangladesh in a situation where more people will be

lacking natural resources and employment, since these most vulnerable areas are dedicated to the agricultural sector. Hence, more people will be environmentally-induced to migrate, both to urban areas and to other countries, especially to India (Gemenne, Brücker and Ionesco, 2012).

- Droughts in the Sahel

Mali and Burkina Faso are low income countries located in Sub-Saharan Africa and crossed by the Sahel dessert (The World Bank Group, 2019b, 2019c). Both countries rely as the principal economic resource on the production of rain-fed agriculture during a three months-rainy season per year. This circumstance makes food and economic security of these countries very vulnerable to changes in climate.

Climate in Sahel changes more radically in shorter periods than in the rest of the world. This is a natural condition of this part of the world. However, climate change is making these extremes more radical ³. The last crisis caused by this variability occurred in 2012, when a drought deeply affected Mali and Burkina Faso. This drought brought about land desertification and degradation, and hence a severe food crisis that affected 19 million people in the region (Peasron and Niaufre, 2013).

Unlike the previous case of Bangladesh, where migrations respond to sudden onset disasters, in this case, migrations are an indirect adaptation strategy to a slow onset event. These two agricultural countries with a national income not enough to reshape its main economic sector, suffer gradually the consequences of environmental change. The devastation of the land is gradually, and eventually it will reach a point when their inhabitants would have to migrate permanently in order to survive.

The migrations in these countries have mainly been internal and short-distance. In Mali, migrants go to cities during the dry seasons, while in Burkina migrants move from rural to other rural areas. In both countries, most of these migrants used to be male migrating to work in other areas and who later used to come back to their rural town to continue working there during the growing season. However, the current tendency is that

³ The climate of the Sahel is conditioned by the Gulf of Guinea and the Atlantic Ocean. According to Giannini, Saravanan and Chang (2003), with climate change, both masses of water have been warmed, “the first one causing difficulties for rain-bearing clouds to form and resulting in less rain, while the second one is generating more moisture and thus more Monsoon rainfalls” (Wilkinson and Peters, 2015: 22).

migrations become permanent and affect more member of the household (Peasron and Niaufre, 2013).

- Super Typhoon Haiyan (Yolanda) in Philippines

Lower-middle income Philippines (The World Bank Group, 2019d) is located in the area called the “typhoon belt”, which makes this country one of the most threatened areas of the world by typhoons per year. But again, this is not the only factor that makes this country so vulnerable to natural hazards. Another reason is, for example, the way that the Philippines have addressed its urbanization process. Local communities ended up building cheap houses with non-resistant materials, and natural barriers which used to restrain the extreme consequences of these natural disasters over the land were deconstructed. Moreover, global warming is causing ice melting and the expansion of the water of oceans, which result in the rising of sea, which, at the same time, has a direct impact on the intensity of the storms that provoke typhoons. And finally, due to its condition as a lower-middle income country, the authorities of Philippines lack of adequate programs to deal with emergencies (Makhoul, 2014); (Nicholls and Cazenave, 2010.).

These factors contributed to the devastating consequences of 2013 Super Typhoon Haiyan, commonly known as Yolanda. It affected the most underdeveloped areas of Philippines and hence the least prepared ones to cope with such a catastrophe. The Typhoon left “6,000 of deaths, 1.1 million houses damaged, and 4.1 million people displaced”. Only 2 percent of them, the poorest and most affected displaced people, went to evacuation sites, while the rest of the displacements occurred among regions (OCHA & UNEP 2014). Most of the displaced people returned to their places and received financial support, thanks to a quite efficient humanitarian action. However, as usually happens with a great part of internal migrants, most of them lost their property rights over their former lands. This, together with the destruction of agricultural, forestry and fishery areas, and with the complexity of the housing reconstruction process, evidenced that this support was not enough to recover their initial situation, and people previously lacking resources became even poorer after the Haiyan (Makhoul, 2014).

This case addresses a sudden onset natural disaster in an area prone to these phenomena, and yet not sufficiently prepared. Moreover, it is an area where climate change will seriously affect, and thus where natural disasters will be more likely to occur over the following years.

4. Types and tendencies of environmentally induced migrations

As it can be seen in the examples above, depending on the type of the natural hazard they face, disaster-displaced people can move internally or internationally, following different patterns.

Most of them move temporarily, especially the ones facing sudden onset disasters, and they normally displace within the border of their own country (The Nansen Initiative, 2019). However, this does not mean that their situation is not highly precarious, since internally displaced persons find several obstacles to recover their previous situation, especially the loss of property or crops during the displacement or the rights over their lands.

However, there are other natural disasters that affect almost the whole country, and hence people are forced to move to neighboring countries to stay safe. Sometimes, it happens because most of the country's infrastructures and basic services are destroyed. And other times because the disaster overwhelms the institutional capacities of the affected government to respond to the new humanitarian demands⁴. Either way, cross-border displaced persons are the ones facing more difficulties in their pursuing for protection and for decent living standards.

Furthermore, a different tendency of mobility is manifested in relation to people who have to cope with more and more frequent disasters, and who end up moving repeatedly in a short period of time (IDMC, 2016). Thus, while environmentally-displaced people by sudden onset disaster usually return to their homes, in these cases, this tendency is changing, since people under these circumstances do not see this return as a feasible solution anymore. Some of them forecast that other disasters are likely to happen again, which would leave them with no time to rebuild their homes or fertilize their lands, while some others would find their former homes inside government-confined "no-build zones", which would as well leave them without housing (Jackson, Fitzpatrick and Singh, 2016).

⁴ In this regard, experts have observed that "a lack of durable solutions is one reason why internally displaced persons may subsequently move abroad" (The Nansen Initiative, 2015: 9)

Finally, there are other communities forced to migrate permanently to avoid slow onset disasters, since the deterioration to the environment would end up making their lands inhabitable. This category is especially remarkable in the case of SIDS, where the sea level rise causes severe losses of land, salinization and coastal erosion challenges, and in the case of gradual droughts, which end up causing unavoidable famines (The Nansen Initiative, 2015: 24); (Wilkinson et al. 2017).

Studies predict that the inhabitants of these vulnerable areas would move firstly internally, since most of them do not have enough economic resources to afford international transportation. However, they would eventually have to move abroad because of the lack of safe spaces in their own Islands or dry lands (The Nansen Initiative, 2015: 14).

This last category is where environmental migration is more problematically accounted, since it responds to gradual processes where sometimes climate factors are ignored, and migrations are explained just thorough the lens of economic or demographic factors. Thus, to avoid leaving vulnerable communities unprotected, this category of environmental migrants is the one needing more regulation.

3. Legal protection of cross-border environmental migrants

3.1. Human rights problems caused by the lack of regulation of environmentally-induced migrations

The problem of this environmentally-induced humanitarian crisis is its legal limbo, which not only obstructs the bureaucracy of states that deal with migration flows, but which also leaves these migrants without their most basic human rights.

During the displacement, and as a consequence of it, migrants risk their lives, physical integrity and health. They normally lose their basic goods and services, such as water, food, sanitary facilities, property restitution and access to their own land. Migrants moreover have to cope with discrimination regarding not only access to humanitarian assistance and justice, but also employment and livelihood opportunities both in foreign countries and in their own ones. They are separated from their families; they lose their personal documentation, which do not allow them to displace lawfully; sometimes they are forcedly relocated (when it is not necessary for their survival) or involuntary returned or resettled. They are as well exposed to a lack of safety and security, especially

vulnerable groups, since gender-based violence and the abuse and exploitation of children increase during displacements (Inter-Agency Standing Committee, 2011).

The relation between human rights problems and environmental issues can be more specifically appreciated in this table (figure 4):

CLIMATE IMPACT	HUMAN IMPACT	RIGHTS IMPLICATED
<p>SEA LEVEL RISE</p> <ul style="list-style-type: none"> • Flooding • Sea Surges • Erosion • Salination of land and water 	<ul style="list-style-type: none"> • Loss of land • Drowning, injury • Lack of clean water, disease • Damage to coastal infrastructure, homes and property • Loss of agricultural lands • Threat to tourism, lost beaches 	<ul style="list-style-type: none"> • Self-determination (ICCPR, ICESCR, 1) • Life (ICCPR, 6) • Health (ICESCR, 12) • Water (CEDAW, 14; ICRC 24) • Means of subsistence (ICESCR, 1) • Standard of living (ICESCR, 12) • Culture (ICCPR, 27) • Property (UDHR, 17)
<p>TEMPERATURE INCREASE</p> <ul style="list-style-type: none"> • Changes in disease vectors • Coral bleaching • Impact on Fisheries 	<ul style="list-style-type: none"> • Spread of disease • Changes in traditional fishing livelihood and commercial fishing • Threat to tourism, lost coral and fish diversity 	<ul style="list-style-type: none"> • Life (ICCPR, 6) • Health (ICESCR, 12) • Means of subsistence (ICESCR, 1) • Adequate standard of living (ICESCR, 12)
<p>EXTREME WEATHER EVENTS</p> <ul style="list-style-type: none"> • Higher intensity storms • Sea Surges 	<ul style="list-style-type: none"> • Dislocation of populations • Contamination of water supply • Damage to infrastructure: delays in medical treatment, food crises • Psychological distress • Increased transmission of disease • Damage to agricultural lands • Disruption of educational services • Damage to tourism sector • Massive property damage 	<ul style="list-style-type: none"> • Life (ICCPR, 6) • Health (ICESCR, 12) • Water (CEDAW, 14; ICRC 24) • Means of subsistence (ICESCR, 1) • Adequate standard of living (ICESCR, 12) • Adequate and secure housing (ICESCR, 12) • Education (ICESCR, 13) • Property (UDHR, 17)
<p>CHANGES IN PRECIPITATION</p> <ul style="list-style-type: none"> • Changes in disease vectors • Erosion 	<ul style="list-style-type: none"> • Outbreak of disease • Depletion of agricultural soils 	<ul style="list-style-type: none"> • Life (ICCPR, 6) • Health (ICESCR, 12) • Means of subsistence (ICESCR, 1)

Figure 4. Examples of some of the impacts of climate change on the enjoyment of human rights (McAdam and Limon, 2015: 7)

Therefore, the main focus of this paper is how this lack of protection can be avoided through effective legal instruments.

3.2. Why is there a legal gap in the protection of cross-border environmental migrants?

As explained in previous chapters, most of environmentally-induced displacement occurs within the borders of a country (The Nansen Initiative, 2015). Internally-Displaced Persons (IDPs) are already contemplated under an international framework: the 1988 UN Guiding Principles on Internal Displacement. It defines IDPs in its article 2 as those “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of (...) natural or human-made disasters, and who have not crossed an internationally recognized State border.” (Guiding Principles on Internally Displaced Persons, 1998).

This declaration consists of a non-binding but universally agreed on set of principles (Glahn, 2009) that cover protection for people displaced within the borders of a country during and after displacement (Internal Displacement Monitoring Center, 2019). The declaration also states that national authorities’ most important responsibility is to grant these displaced persons with the same rights and freedoms as other nationals of that country have.

While these provisions take the form of “principles” and no international treaty specifically address this topic, this practical guidance includes concrete recommendations for governments and other international actors, and it has inspired national laws and policies to develop effective responses to address the issues arising from internal displacement (Global Protection Cluster, 2018).

However, the same cannot be said for cross-border environmental migration. All scholars and international organizations already cited in this paper recognize the current legal gap in the protection and status of people leaving their countries due to environmental disasters. There is no international consensus on which international convention best addresses their protection. There are propositions to include environmental migrants under the scope of environmental law instruments, while other experts defend that they should be protected by human rights law mechanisms, such as the 1951 Convention for Refugees. Hence, this chapter will firstly analyze if climate-induced migrants are recognized as “environmental refugees” and thus if they are granted with the protection of the Geneva Convention; and, secondly, it will study if there is any other specific international convention which regulates their legal status.

3.2.1. Are they refugees?

The first literature addressing the mobility of people in relation to environmental causes started to use the term of “environmental refugees” in 1970s. As reported by Black (2001), this term was coined by Lester Brown, of the Worldwatch Institute, but it was mostly popularized after a report published by the United National Environmental Program (UNEP) in 1985, written by the social scientist El-Hinnawi. This report defines environmental refugees as:

“ those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life” (El-Hinnawi, 1985: 4).

This concept was supported by different authors, such as Jodi Jacobson (1988)⁵, Norman Myers and Jennifer Kent (1995)⁶ (Perout, 1995); (Black 2001).

This initial approach that conceived them as refugees helped to increase the international awareness on the precarious reality of a great amount of people displaced due to environmental factors. However, this term was also highly criticized by other scholars, such as Trollaldalen⁷, for several reasons (Bates, 2002). Among this criticism, the most heard reasoning against that terminology was based on the grounds that environment is not the only factor which affects migration, and that it is complicated to separate it from the social, political and economic factors which also shape people’s decisions to migrate. Besides, it was argued that not all people displaced because of environmental causes are in such a critical situation to be considered refugees rather than just migrants (Morrissey, 2012); (Bates, 2002).

⁵ Jacobson, J. (1988). *Environmental refugees: a yardstick of habitability*. Washington DC: World Watch Institute.

⁶ Myers, N. and J. Kent. (1995). *Environmental exodus: An emergent crisis in the global arena*. Washington DC: The Climate Institute.

⁷ Trollaldalen, J.M., Birkeland, N.M., Borgen, J. & Scott, P.T. (1992) *Environmental refugees - a discussion paper. (Unpublished report)*. Oslo, Norway: World Foundation for Environment and Development

That is why other theories, such as Suhrke's (1994)⁸ and Hugo's (1996)⁹ were developed to differentiate the scope of the concept of 'migrants' from the scope of 'refugees'. This distinction was mostly based on the level of control of those people migrating due to environmental causes to have under control the circumstances arisen from the migration.

For instance, and according to this reasoning, Hugo's theory explains population mobility as a continuum line with two extremes, totally voluntary migration, and totally forced migration:

The first case includes those migrants who domain the process of migration and who choose to migrate just to improve their life conditions. Hugo places here people moving because of the gradual deterioration of the environment and categorize them as the proper "Migrants". The opposite to this situation, according to the level of control that migrants have over their mobility, is what Hugo calls involuntary migration. This category includes people moving because of a real threat of suffering physical damages, or even dying, if they remained where they live. They totally lack control over their migration process and relocation. Here is where "environmental refugees" belong. However, according to Hugo's classification, there is middle step in this continuum, representing the ones compelled to migrate by their problematic environmental conditions, but who still have a certain level of control over the decision to migrate. And here is where this author places "environmental migrants" (Hugo, 1996); (Morrissey, 2012).

Nevertheless, while these new categories were more inclusive with the different forms of mobility and the different types of environmental challenges, there still were important criticism to use the term, and hence the status, of "refugee" with people in this situation. Principally, because the term "refugee" has a specific legal meaning in the context of the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of

⁸ Suhrke, A. (1993). *Pressure points: environmental degradation, migration and conflict. Paper for the Workshop on Environmental Change, Population Displacement, and Acute Conflict, June 1991*. Ottawa: Peace and Conflict Studies Program, University of Toronto and The American Academy of Arts and Sciences, Cambridge, MA.

⁹ Hugo, G. 1996. Environmental concerns and international migration. *International Migration Review* 30(1): 105-131.

Refugees, a term which do not include environmental factors as a reason to grant such status (Apap, 2019). According to these texts, a refugee is:

“a person with well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it” (article 1 of the UN 1951 Convention and 1967 Protocol Relating to the Status of Refugees)

According to Hathaway, this definition was agreed by the international community in order to control the migration flows from Europe after the Second World War (Perout, 1995: 21). However, over time, new circumstances fostered the broadening of the scope of the term “refugee”. But, is this broadening enough to protect also “environmental refugees”?

Hathaway stated that international law recognizes as categories of refugees: “those protected by the Convention or the Protocol those protected by regional agreements (Organization of African Unity; Organization of American States); those who fear harm as a result of serious disturbances of public order; and those involuntary migrants as a result of natural or man-made causes” (Perout, 1995: 24).

The first category corresponds to the above definition of refugees, and according to a literal interpretation of that article, it seems clear that environmental/climatic/natural disaster factors are not contemplated as reasons to grant such status. Recent jurisprudence can be used as an illustrative example of how countries consider that the refugee status does not apply for environmental migrants.

In 2014, the New Zealand’s Immigration and Protection Tribunal ruled that a family coming from the SIDS of Tuvalu was allowed to stay in New Zealand. The family applied for the refugee status claiming that returning would imply a risk to their lives due to the lack of fresh drinking water and the sea-level rise in Tuvalu. However, as the Tribunal pleaded, the decision was not based on the grounds of the 1951 Convention, but just on “humanitarian and discretionary grounds”, since the family had family living in New Zealand (McAdam, 2015: 131-132). The reasons stated by this Tribunal not to recognize the Tuvalu nationals the status of refugees were the following.

Firstly, that the fear of “persecution” is appreciated when, in the origin country, “violations of human rights are likely to happen, and these violations derive from human actions”. The Court said that, while it is true that climate change and disasters are harmful for people, the international and domestic law does not recognize them as possible causes of “persecution”; secondly, that the persecution must be rooted on the grounds on people’s “race, religion, nationality, political opinion, or membership of a particular social group”, while climate change and natural disasters affect people indiscriminately, not because of their belonging to a specific group; moreover, the Court said that blaming the polluting practices of the whole international community for this persecution is not a valid argument, since international law only considers people’s “own government or a non-state actor from whom the government is unwilling or unable to protect them” as possible persecutors; and finally, that claiming a need to international protection would be acceptable only if people’s own country actively ignores or lacks of means to stop this persecution. However, in this case, the government of Tuvalu took measures to restrain the impact of this natural hazard, since it provided people with humanitarian assistance and controlled the waste of natural resources (McAdam, 2015: 134).

The second and third category mentioned by Hathaway are linked to regional refugee law. In Africa, the OAU Convention provides protection to persons:

“compelled to leave on account of inter alia events seriously disturbing public order in either part or the whole of his country of origin or nationality” (article I (2) of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, 1974).

While the Cartagena Declaration in Latin America protects 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” (article III (3) of the Cartagena Declaration on Refugees, 1984)¹⁰.

These definitions could seem appropriate to describe some challenging situations occurring during natural disasters. Nevertheless, the UNHCR *Climate Change, Disasters and Displacement* report in 2017 claims that “the predominant view among relevant

¹⁰ adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama, held at Cartagena, Colombia from 19 - 22 November 1984.

States is that such an interpretation is not supported (...) [unless] there are inter-linkages between displacement drivers, such as disasters, conflict, widespread violence and/or a breakdown of national government systems” (Goodwin and McAdam, 2017: 35-36).

Finally, Hathaway’s last category of refugees, involuntary migrants as a result of natural or man-made causes, has been supported by the UNHCR in some occasions by the means of material assistance or humanitarian aid for repatriation or resettlement (Perout 1995:24). However, the organization has never identified people receiving this assistance as “refugees”.

For example, the UNHCR planned in 2005 a “multi-million-dollar emergency relief operation” focused on shelter, non-food relief, and logistics to help the victims of a tsunami in Indonesia and Sri Lanka. However, the organization itself described this act as an “unprecedented response”, and as an “exceptional decision”, since, as UNHCR Ruud Lubbers stated, the agency mandate is “to protect, assist and find solutions for refugees fleeing persecution and conflict”. In addition, the ones who received this help were categorized by the UN agency just as “victims of a natural disaster”, never as “environmental refugees” (Pagonis, 2005).

More recently, the UNHCR *Climate Change, Disasters and Displacement* report stated that:

“drivers of displacement are typically multi-causal, and conflict, persecution and disasters can be inter-linked. Persecution can occur in disaster situations, and people who flee across a border in the aftermath of a disaster may include Convention refugees (persecuted for reasons unrelated to the disaster) (...) In some cases, refugee law may be applicable under international refugee law, if a government were to withhold humanitarian assistance from people displaced by the impacts of a disaster, sideline the recovery needs of marginalized groups, or target individuals for engaging in disaster-relief work, for example, then such people may qualify as refugees based on a standard analysis under the Refugee Convention” (Goodwin and McAdam, 2017: 35).

In other words, what these examples show is that, if environmental migrants are granted a refugee status, it is not because of environmental or climatic factors, but because these factors trigger one of the conflict situations included in the 1951 Convention that

justify migration, and none of the refugee's categories described by Hathaway has ever got international recognition for the context of environmentally-induced migrations.

Therefore, the term "environmental refugee" has gradually been left behind, and it has been evolving towards the term "environmental migrants". Additionally, the term "environmentally/climate displaced persons" is also gaining popularity in reference to migrants who do not have much "volition in taking the decision to migrate" (Apap, 2019).

These two last terms are currently the ones used by international institutions to talk about this issue, and hence the ones that this paper will refer to.

In particular, The Nansen Initiative and the Platform on Disaster Displacement, following the categories established by the Cancun Climate Change Adaptation Framework, recognize three forms of human mobility in relation to environmental causes: displacement, migration, and planned relocation¹¹. In addition, different reports published by these platforms directly mention that they do not endorse the term "climate refugees" since, while this is how non-specialized media popularly name the victims of sudden onset disasters, the concept does not exist in international law.

That conceptual line is also followed by the IOM and the UNHCR, which states that terms such as "environmental refugee" or "climate change refugee" have no legal basis in international refugee law (IOM, 2019a).

In conclusion, the protection of environmental migrants under the 1951 Refugee Convention or under any other internationally accepted category of refugees, is not supported by the international community. Hence, the term "environmental refugee" is not correctly applied for those migrating due to environmental factors.

Therefore, the following chapters will focus on whether there is any other international convention addressing this legal limbo.

¹¹ Displacement (either cross- border or internal displacement) is defined as "forced movements of people"; migration refers to "primarily voluntary movement of persons"; and planned relocation to "planned process of settling persons or groups of persons to a new location" (The Nansen Initiative, 2015 a); (Platform on Disaster Displacement, 2018).

3.2.2. International conventions regulating the legal status of environmental migrants

The analysis will firstly focus on conventions on environmental law, which target environmentally-induced migration indirectly, and secondly, the paper will refer to other conventions directly concerned with the rights of people who migrate.

- International conferences on environmental law

Environmental law addresses the issue of environmental migrants indirectly for two reasons: because it is focused on relations among nation states, rather than on the rights of individuals or communities (Docherty and Giannini, 2009), and because the main objective of conventions on this issue is to regulate adaptation and mitigation measures against the adverse effects of climate change and natural disasters, rather than how these phenomena affect individuals.

The most important international framework on this context is the one established within the scope of the United Nations Framework Convention on Climate Change (UNFCCC). This treaty was set up in 1992 as a call for international cooperation to combat climate change and its negative impacts. It currently counts with the participation of the 197 parties and it is governed by the Conference of the Parties (COP), which different meetings have led to the settlement of international standards on environmental law and, more importantly, to international agreements such as Kyoto (1997) or Paris (2015) (UNFCCC, 2019a).

UNFCCC Parties talked about the importance of addressing human mobility related to environmental causes for the first time at the Cancun Adaptation Framework, the COP 16 of 2010 (IOM, 2019b); (Warner, 2012).

The legal text that emerged from the conference invites Parties “to undertake measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels” (article 14 (f) of the Decision 1/CP.16 of the Cancun Agreements).

With the adoption of this paragraph, signatory states recognize for the first time in a binding declaration the existence of displacement and relocation induced by environmental causes, and even the necessity of some communities to migrate to adapt

themselves to the adverse effects of these hazards. Moreover, they seem to show consensus on the need to cooperate among them to overcome this issue.

The same idea was followed by the decision 3.18 paragraph 7 (a) (vi) of the 2012 Doha Convention (COP 18), which defends same need.

However, these texts did not provide with any specific idea of what measures should be implemented to protect environmental migrants or environmentally displaced persons.

The first step towards this concretization was taken by the Paris Agreement of 2015 (COP 21) (Yamamoto, Andreola and de Salles, 2018). The most important outcome of this legally-binding Agreement was its article 50 about *loss and damage of climate change*, which requests:

“the Executive Committee of the Warsaw International Mechanism (WIM) to establish, according to its procedures and mandate, a task force to complement, draw upon the work of and involve, as appropriate, existing bodies and expert groups under the Convention including the Adaptation Committee and the Least Developed Countries Expert Group, as well as relevant organizations and expert bodies outside the Convention, to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change” (Paris Agreement, 2015).

Nevertheless, the main objective of the Agreement was reaching a compromise among parties to limit greenhouse gas emissions and the warmth of the planet (UNFCCC, 2019b), not setting legal standards to regulate the protection of environmental migrants.

Hence, when addressing this issue, legal gaps can be easily found in the text of the Agreement. Firstly, because the intention of paragraph 50 was the development of “recommendations”, a non-legally-binding instrument of international soft law. Secondly, because the text makes no reference to the type of vulnerabilities that people facing these disasters suffer, or to the type of migrations existing depending on the nature of the hazard. Therefore, without taking these two points into consideration, it looks difficult that this text provides with an appropriate basis to advance in these persons’ legal consideration. And finally, because the Intended Nationally Determined Contributions (INDCs) which parties compromised to submit to the secretariat, one of core measure of the Agreement, did not include an obligation to address the topic of migration. In fact,

only 34 out of the 162 INDCs made references to human mobility (Wilkinson et al., 2017: 105-107).

However, the analysis on the effectiveness of the Agreement towards the regulation of this situation seems incomplete without taking into consideration the previously mentioned Task Force on Displacement.

The Executive Committee of the Warsaw International Mechanism (WIM) for Loss and Damage was created under COP 19 in 2013, but the establishment of the Task Force occurred in March 2017. The 2018 final report of the WIM, which includes all these recommendations, recognizes the humanitarian problems caused by sudden and slow onset natural disasters, and the importance of regulating human mobility provoked by these factors. However, these recommendations do not offer direct solutions to this lack of regulation, but vague and general considerations. For instance, the report asks Parties to “consider the formulation of national and subnational legislation, policies, and strategies (...) taking into consideration human rights obligations and other relevant international standards”, and governments to “consider the adoption of specialized legislation ensuring an effective coordination among the actors dealing with human mobility and climate change policy areas, defining roles and responsibilities, clarifying rights and duties of individuals and communities and putting in place effective accountability mechanisms” (UNFCCC, 2018).

Hence, the value of this Task Force and the WIM in general must be recognized only in terms of providing an adequate mechanism of research and awareness to identify the elements that will later be useful to develop comprehensive laws.

Most of the subsequent COPs organized by the UNFCCC have followed this same path. One good example is the 2016 COP22 in Morocco, which developed recommendations in relation to funding, data collection or technical support (UNHCR, 2016), but which do not propose how to overcome the legal limbo of these migrations.

The last part of this study on international agreements and conventions that indirectly approach this situation will focus on a mechanism outside the scope of the UNFCCC: the Sendai Framework for Disaster Risk Reduction 2015-2030.

This Sendai Framework (Japan, 2015), endorsed by UN General Assembly by the UN Doc. A/RES/69/283, is the 15-year non-binding document which follows the 2005 World Conference on the Prevention of Natural Disasters of Hyogo (Yamamoto et

al, 2018). It is organized around four priorities: “understanding disaster risk; strengthening disaster risk governance to manage disaster risk; investing in disaster risk reduction for resilience; and enhancing disaster preparedness for effective response and to “Build Back Better” in recovery, rehabilitation and reconstruction” (UNISDR, 2015)¹².

This text is useful in order to make it visible why it is necessary to protect environmental migrants, since it clearly describes the risks they must cope with in case of disasters, and how this protection should be done, since it supports the creation of normative frameworks as the only effective measure. It also offers a positive approach to migration, saying that “migrants contribute to the resilience of communities and societies, and their knowledge, skills and capacities can be useful in the design and implementation of disaster risk reduction” (UNISDR, 2015).

However, the text still shows some gaps in its propositions and studies. Firstly, because it just covers human mobility in the context of Disaster Risk Resolution. Thus, it focuses on displacement due to extreme natural events, but not on migration as a strategy against the slow onset disasters (Wilkinson et al, 2017). And moreover, because it does not mention what rights are these migrants or displaced persons entitled for, or what rights should be covered by the new normative frameworks.

- **International framework addressing directly the legal situation of environmental migrants and environmentally displaced persons**

This second part will focus on international conventions which primary concern is the mobility of persons vulnerable to different factors. Some of these conventions are focused on environment and climate change as the main factors of this vulnerability, such as the Nansen Platform on Disaster Displacement or the Platform on Disaster Displacement, while others compass more general approaches.

¹² While the first priority focuses on data collection and evaluation, the second one directly talks about “establishing responsibilities through laws, regulations, standards and procedures”, and about “empowering local authorities through regulatory and financial means to work and coordinate with (...) migrants in disaster risk management at the local level”. The third one addresses the need of allocating money in activities of prevention and reaction to natural disasters. And the last priority focuses on “disaster preparedness, contingency policies or relief activities” (UNISDR, 2015).

The analysis must start with the Nansen Platform on Disaster Displacement. This initiative started with the 2011 Nansen Conference on Climate Change and Displacement in Oslo, after which Norway and Switzerland sponsored at one UNHCR Conference the setting up of a platform to work on the protection of people environmentally-displaced people across borders (The Nansen Initiative, 2019). Thus, the Nansen Initiative was created, leading to the 2015 Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, currently supported by 109 governments (Zgoła, 2017).

The Protection Agenda intends to identify the necessary practices to enhance the assistance given to environmental migrants, including a consensus of the minimum standards of treatment. However, it is not aimed to create new legal standards, or to extend the existing legal obligations on refugee and human rights law. What it seeks is to inspire governments and international institutions to draft “new laws, soft law instruments or binding agreements” that follow the practices identified as the most effective ones by the Agenda in the granting of humanitarian rights to all displaced people (The Nansen Initiative, 2019).

Additionally, the Protection Agenda is the first document which includes an statement on this lack of regulation of the circumstances under which environmental migrants should be admitted in a new country, what are their rights during their stay, or what determines their return or a new legal status. Taking all these gaps into account, it also tries to harmonize all the admission processes in host countries on the grounds that all states should respect already agreed principles of international law such as humanitarian treatment or international solidarity.

The Agenda is organized in three parts: “protecting cross-border disaster-displaced persons, managing disaster displacement risk in the country of origin, and priority areas for future action” (The Nansen Initiative, 2015).

The first one is where the Protection Agenda states that people facing both sudden and slow onset natural hazards should be admitted in the countries where they migrate to. However, it also recognizes that the power of opening their borders is a decision under the scope of these host states’ sovereignty rights, and thus, that the decision it is totally at its own discretion. That is why the Agenda encourages them to use that power to comply with international human rights law or bilateral agreements that establish the free

movement to certain categories of persons and the ban of their forcible return in some situations (The Nansen Initiative, 2015: 24).

In this first part it is also included how the Agenda proposes to develop the analysis of whether environmental migrants should be protected by the host country. It says that this analysis must be performed casuistically. It must comprise the threat that the disaster implies to migrant's lives or safety, taking into account individual factors, such as pre-existing vulnerabilities¹³, or ties with family members in the country of destination. Besides, in case that host states do not consider they have the obligation to protect them, the Agenda states that they can only justify this non-admission decision on a real, objective and proportionate threat that migrants imply to the host communities due to their criminal activities (The Nansen Initiative, 2015: 22-23).

This analysis is pioneer not only due to the comprehensive provisions on how environmental migrants/displaced people should be treated, but also because it includes what kind of measures can be taken. For instance, it proposes: granting travel and entry visas upon the arrival of people coming from countries affected by a disaster, or issuing humanitarian ones; prioritizing the proceedings of applications for regular migration, or making them simpler by suspending some documentation requirements¹⁴; granting entry and temporary stay for a group or "mass influx" of cross-border disaster-displaced persons; or prioritizing as well the review of their asylum applications, especially if it would help to suspend their deportation when returning pose a risk on their lives and safety (The Nansen Initiative, 2015: 26-29).

In the second part, the most relevant provision for this study is the Agenda's statement on planned relocation. It is seen as a highly problematic practice, and thus the Agenda claims it should be a last resort measure. Nevertheless, in case it is the only option available, this text encourages setting national and local laws to perform this relocation through processes adapted to the local context, which ensure both the dignity of migrants

¹³ if they are "wounded persons, children, women headed households, people with disabilities, older persons or members of indigenous people" (The Nansen Initiative, 2015)

¹⁴ Among all legal instruments analyzed in this paper, the Protection Agenda takes the one most focused on the rights of individuals, since its approach to some measures for their protection takes into account important circumstances that other conventions ignores. For example, it specifically includes provisions to simplify some documentation requirements because, in the research conducted to the drafting of the Agenda, it was observed that migrants normally lose their passports and other documentation during the disaster, since they get wet and destroyed because of floods, they disappear after a tornado, or because people have to leave their homes urgently without the chance to collect them.

relocated and the rights of those already living in the host communities (The Nansen Initiative, 2015: 38).

Finally, the last part of the Protection Agenda is structured as a conclusion, and it defends that the only way of making all these measures effective is by improving the data collecting, humanitarian protection measures, including mechanisms for lasting solutions, and the management of disaster displacement risk in the country of origin (The Nansen Initiative, 2015: 44).

In conclusion, the Nansen Protection Agenda seems to be the perfect framework to understand what legal provisions must be included in states' legal systems to cope with the adverse effects of natural hazards on vulnerable people, especially on those displaced outside their country.

However, this framework needs from states to be willing to do so. Hence, The Nansen Initiative called for a next step a year after the publication of the Protection Agenda, and established the Platform on Disaster Displacement.

This State-led Platform was launched at the World Humanitarian Summit in 2016 to encourage states to act in accordance with the recommendations of Protection Agenda. What it is currently doing is helping different countries to find solutions in events of displacements, especially through “facilitating regional efforts” and “filling data and knowledge gaps” (Platform on Disaster Displacement, 2018).

In addition, in 2018, experts working for this Platform published a report that could be seen as the reference for what kind of legal advancements the Nansen group was looking for, since it included some examples of how the Nansen Initiative had influenced the draft of new legal provisions that followed the Nansen recommendations.

For example, in September 2016, the New York Declaration for Refugees and Migrants stated that states have the duty to assist to people suffering the consequences of natural disasters; the same was addressed on December 2016 at the IOM Council; in January 2017 the Strategic Directions 2017–2021 of the UNHCR committed to enhance legal, policy and practical solutions for the protection of environmental migrants; in July 2018, at the Global Compact for Migration, climate change was recognized as a driver of migration and states accepted taking actions towards the availability of regular pathways for environmental migrants (Platform on Disaster Displacement, 2018); and in December 2018, the Global Compact on Refugees stated that “while not in themselves causes of

refugee movements, climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements (...) (and cause) internally displaced persons; and, in certain situations, external forced displacement (...) which may seek support from the international community to address them” (Global compact on refugees, 2018).

Outside the UN, at a local level, more progress has been achieved. For example, Brazil issued a new Immigration Law (Law 13445/2017, effective on November 2017) which includes temporary visas for humanitarian entry to “foreign nationals of any country in a serious or imminent situation of large-scale calamity or environmental disaster” (Brazilian Network of the UN Global Compact, 2018). And in August 2017, according to an article published in the IOM’s Environmental Migration Portal Newsletter, Costa Rica and Panama developed on their shared border a first ever disaster displacement simulation. This simulation was one of the measures of the Standard Operating Procedures that emerged after a Regional Conference for Migration, focused on what states can do using the existing law and practices to protect persons moving across borders after natural disasters (Disaster Displacement, 2017).

However, although currently the most important international actors already recognize the humanitarian problem of environmental migrations, there are future challenges that they need to address. The next question discussed in this paper will thus focus on what could be done to change this lack of regulation.

4. Possible legal solutions to the lack of protection of cross-border environmental migrants

The first proposition aiming to end with this legal limbo is mainly heard among academics, who state that the Geneva Convention definition of refugees should be extended to protect environmental migrants as well. Their thesis is that environmental migrants should be granted refugee status to gain all the rights derived from it, such as protection against collective expulsions at foreign countries’ borders, the right of asylum and of non-refoulement.

The first reason for this scholastic suggestion is that some authors defend that the compulsions that force people to move away from their country, and thus the factors that make migrants become refugees, are boarder than just political conflict.

For some authors, these compulsions can be of five types: physical threats, such as floods or volcanic eruptions (sudden onset natural disasters in general), economic insufficiency (drought, or famine) and religious, ethnic and ideological persecution (Olson, 1979:130). The supporters of this theory (such as Hugo, 1996), state that environmental migrants suffer compulsions included in this classification that make them lack the same control over their migration process than the ones suffering just a compulsion of the type of a military conflict and traditionally considered refugees.

Furthermore, other authors that defend they should be considered refugees, support that, behind many environmental migrations, there is a substantial level of culpability of the government of the country where the disaster was produced. Either because the displacement is induced by government-sponsored development projects, because the lack of them does not help to avoid the disaster, or because the State does not have resources to assist the victims of the disasters. In these cases, when international protection is the only viable option to guarantee these migrants' survival and according to jus cogens humanitarian principles, the recognition of the status of refugee turns to be vital (Williams, 2008).

Extending the protection of the 1951 Convention would imply interpreting the articles which define the causes for granting the status of refugee in a more contemporary and less literally manner. For example, some scholars argue that environmental migrants should be recognized as members of a particular social group, and that the government act of "persecution" against them could be identified as an omission of necessary measures to protect the environment (Williams, 2008); (Kumar, 2015).

However, as it was explained above¹⁵, this approach is not supported by the majority of the doctrine, nor by the UNHCR.

According to Perout's study, some authors argue that, since natural disasters mobilize large groups of people, states of destination tend to avoid going through the complex refugee determination process with large scales of migration flows. Thus, although some international organizations have changed their modus operandi with mass migrations to grant better protection to all asylum seekers, there is still no legal body which regulates this. Other authors defend that environmental problems tend to be thought as regional or local issues, mostly because a great amount of migration flows that

¹⁵ See chapter 3: legal protection of environmental migrants

natural disasters cause occur within the borders of a country. Hence, the international community is less aware of the necessity of taking global responsibilities on this issue. Finally, there are other arguments¹⁶ based on the fact that modulating the term “refugee”, a legal term that already has international recognition, could infringe upon the legal certainty of the 1951 Conference itself. And this could lead signatory States to shirk the responsibilities already assumed in the context of the Conference and even to boost anti-immigration stances that would make it even harder to handle the situation of millions of “environmental refugees” (Perout, 1995:26-27); (Morrissey, 2012:42).

On the other hand, criticism from international organizations is focused on the fact that most of environmental migrants are internally displaced. Hence, while the local government may be in part responsible for the displacement, or overwhelmed by it, in a specific part of a country, displaced people normally could still rely on the State’s capacity to relocate them within the borders of their own country, while traditional refugees could not (Apap, 2019).

Thus, according to the majority opinion, amending the Convention only for those migrating cross-borders could lead to more legal problems than seeking other legal alternatives.

These alternatives have been suggested only in the academic arena, while international organizations have not yet made any statement on what it seems to be more legally feasible.

The first of these alternatives is to negotiate a specific international convention on the rights and status of environmental migrants. Some experts on this field have already taken some steps towards its creation, leading to the Draft Convention on the International Status of Environmentally Displaced Persons. They defend that a new convention is necessary in order to impose a duty on States to comply with the principle of solidarity, “which dominates public international law and, in particular, environmental law according to principle 27 of the 1992 Rio Declaration” (Prieur, 2010, p.254).

Moreover, there are other propositions towards the creation of a hybrid convention with elements of both environmental law and human rights law. However, this alternative

¹⁶ Black, R. 2001. Environmental refugees: myth or reality? Working Paper no. 34. Geneva: United Nations High Commissioner for Refugees.

has been highly criticized because of its lack of precision, since if the problem discussed is that no legal instrument is effective, the focus of a new convention should be more specific and its scope should be clearly defined not to make the same mistake again and leave some migrants without protection. Besides, there already are enough frameworks that recognize the factual link between migration and environment. However, all these frameworks have proven to be concerned only about states' responsibilities not to avoid migration just in theory, but they have never been put into practice. Thus, what authors that criticize this potential alternative claim, is that a hybrid convention would again end up focused on governments' duties and not on individuals' rights, and thus that it would not address the issue at hand.

This is why most authors defend that the most coherent approach seems to be a convention able to adapt "elements of the existing refugee definition to include the specific circumstances of climate change" (Docherty and Giannini, 2009:363).

The authors advocating for this option say that a natural disaster cannot be a pretext for the derogation of displaced persons' human rights, and thus, that if there is a new convention addressing this issue in particular it should include civil, political, economic, social, and cultural rights, and also specific rights of refugees.

For example, as already included in the 1951 Convention, environmental migrants should have access to courts and legal assistance, freedom of expression, education, employment, housing... All these rights should be granted in accordance with the principles of non-discrimination and the minimum standard of treatment, and at the same level as nationals of host states. But, most importantly, environmental migrants should not be penalized for entering the host state unlawfully, and neither should they be forcibly returned when coming back to their origin country would threaten their life of safety (Docherty and Giannini, 2009).

Furthermore, in order to make it effective, a new convention should also incorporate a clear definition of its scope, of who is under its protection. It should likewise distribute the burden of protection among all nation states, and finally, it should create different neutral bodies and authorities to provide states with financial support to comply with it and to monitor that its provisions are being followed (Docherty and Giannini, 2009); (Priour, 2010).

This proposition is not, however, immune from criticism. Especially, because different international organizations have observed that states are reluctant to sign a new treaty on an area where they consider they already have commitments (Prieur, 2010).

This paper will conclude with the analysis of the other alternative suggested within the international law arena and which was materialized by the Nansen Initiative.

It consists in the advance in the setting of non-binding international standards, adapted to how environmentally-induced migration should be practically addressed, and trust on states' willingness to integrate the standards in their own national legislation.

This option seems to be the most accepted one by international organizations, which help is crucial for its effectiveness. After the publication of the Protection Agenda, the UNHCR committed immediately to work together with the Nansen team to gain support for states implementing it (Needham, 2015). Currently, this agency, together with the IOM, is involved in a Working Group based in Geneva to develop the activities of the work plan of the Platform on Disaster Displacement, the mechanism designed to implement the standards set out in the Protection Agenda (McAdam, 2016).

Moreover, it seems to be accepted also by states, since what inspired the part of the Protection Agenda that talks about the principles that states should follow in the protection of environmental migrants, the Nansen group based these principles on what was said in the global consultations conducted as part of the Nansen research strategy. These consultations asked states what they would be willing to commit with, or what standards they think that should shape those principles. And thus, this makes the Protection Agenda a very feasible tool, since is not based on idealistic aspirations, but on what states would actually enforce.

To conclude with the outcomes of the implementation of this alternative, some authors defend that it seems likely that states respect the Agenda because they can get to be more familiarized with the measures proposed. This is because the Agenda brings the issue to local, national or regional levels, and it does not leave it to results of complex international processes of policymaking (McAdam, 2016).

Therefore, this is the path that the international community seems to be following. The protection of environmental migrants and displaced persons now relies on the adoption by states themselves of all measures required to ensure their rights. However, it is too soon to know if this path is the correct one or if it will be enough.

5. Conclusion

It is estimated that, by 2050, between 50 and 200 million people would be environmentally-displaced, mostly in developing countries (Zetter, n.d.). And yet, the lack of regulation of their status and protection is a problem unresolved at regional, national and international levels.

In this dissertation, there were seven hypotheses of investigation related to this legal limbo which were postulated in the introduction and which the body of the paper aimed to resolve after a deep research.

In accordance to the order in which the different issues were presented in this paper, the first concern of this investigation was to prove the sub-hypothesis that there is a clear link among geography, economic underdevelopment of countries and countries' vulnerability to natural hazards. It can be concluded that this affirmation finds no contradiction according to the analysis of the chapter "Relation between climate and migration" It has been set that the reasons why some communities have always been more vulnerable to these hazards are their geographical location, as well as their lack of economic resources and political disorder due to their condition as middle-income or low-income countries. Firstly, because it is the geographic characteristics of the country which shapes the frequency, intensity and nature of disasters: in some dry areas of the world it is common that desertification arises, while countries affected by, for example, the Moonson rains, are more prone to have to deal with devastating floods. Moreover, because countries that have always been under these unfavorable conditions, like SIDS, have always found more difficulties to develop economically as other developed countries have done. Thus, with less economic resources to implement preparedness and post-disaster measures, the consequences of these phenomena are exacerbated: the government does not develop effective reconstruction processes, it cannot grant any service to the community, and sometimes the pre-existing political or armed conflicts increase in violence. Hence, people living in these affected areas end up with no housing, employment or even physically injured. This is the chain of events that forces them to migrate, and, as it has been explained, all these events are more likely to be triggered in underdeveloped countries.

The second sub-hypothesis is that there are different tendencies of mobility of people depending on the kind of natural disasters that trigger the exodus. This hypothesis was

also proven right¹⁷, since it depends on the type of hazard that threatens communities and on the likelihood of accessing to decent conditions of living after the disaster. Firstly, those facing sudden onset disasters tend to move temporarily and within the border of their own country, unless the disaster is so destroying that it affects the whole national territory and they have no other remedy than moving abroad. By contrast, individuals affected by slow onset disasters, especially those facing desertification or the rising of the sea level, tend to move permanently. And since they are the ones that always come from underdeveloped countries, they tend to move internally first because they normally cannot afford travelling to another country. However, current scientific studies are predicting that this would change soon and they would end up migrating abroad because of the rapid sinking of their islands and the imminent impossibility of land fertilization. Finally, there is another category including the environmental migrants who have to face sudden onset disasters but with such a frequency that they do not feel safe in their countries anymore. While the past tendency was moving several times during a short period of time, this nowadays is turning into a trend of permanent settlement.

The third sub hypothesis affirms that environmental migrants cannot be considered refugees because environmental causes are not included in the scope of the Geneva Convention on the rights of refugees. And, indeed, the analysis carried out in the chapter 3.2.1¹⁸ shows that most of the international law literature has refused to grant them a refugee status, and even to designate them as “environmental refugees”. Most scholars and international organizations agree on the fact that they are not protected under the scope of the 1951 Refugee Convention because of legal and political reasons. Firstly, as some authors defend, because environmental causes are not contemplated in the Convention, and that it must be interpreted according to its literal sense to guarantee its legal certainty. And also, as others argue, because reframing its scope would lead some states to question if they should acquire more international law obligations. The same lack of international credibility can be applied regarding the inclusion of environmental migrants under the scope of other regional frameworks on the rights of refugees.

The fourth one stated that the legal framework provided by international conventions on environmental law does not address the issue of environmental migrants directly,

¹⁷ See the chapter “Types and tendencies of environmentally-induced migration”, page 18.

¹⁸ Page 22

leaving them with the same vulnerability problem. The result of the analysis of these conventions¹⁹ drives to this same conclusion. Both UN legal instruments studied, the Paris Agreement and Sendai Framework for Disaster Risk Reduction, focus on the adverse effects of climate change, and how to slow them down. However, these conventions do not pay attention to the impacts that climate change is already having on migrants, and they do not compel signatory parties to commit with any particular protection measure.

In the fifth sub it is argued that there is no other international legal instrument that regulates the status of people environmentally displaced. In this case, the analysis of the Nansen Protection Agenda contradicts this assumption²⁰. The Agenda has been the major step towards establishing some humanitarian and practical standards which could provide the international community with the basis for future legal texts. However, it is a non-legally binding instrument, so it does not directly impose the implementation of its provisions but relies on the willingness of states to integrate new measures in their own legal systems. Hence, the Protection Agenda could be considered an international legal instrument from the perspective of what texts standardize the regulation of this issue, but it is at the same time an incomplete instrument because its compliance is not ensured.

The last sub hypothesis is that the international community has no imminent intention to create such legal framework that could end with this lack of protection of environmental migrants. The verification of this hypothesis could be subject to several interpretations, since the research proved that states do not want to sign new conventions on the rights of migrants, but that they are though willing to homogenize some practices to protect them. Then, this sub hypothesis is not entirely supported, since some countries have already taken practical and legal actions to advance in the protection of environmental migrants' rights, and because the international organizations are starting to pressure states to act coherently with their obligations of international law. This conclusion was reached after the study of the three propositions of international actors to end with this legal gap²¹: enlarging the scope of the 1951 Convention to grant environmental migrants with asylum and the right of non-refoulement; setting up a new convention specifically concerned with environmentally-induced migrations, which

¹⁹ Pages 28-31

²⁰ See page 31, "International framework addressing directly the legal situation of environmental migrants and environmentally displaced persons"

²¹ See page 35

would include human rights measures and others related to the particular challenges of this type of displacement; and finally, the one that the international community seems to be more willing to accept, which is implementing the guidance provided by the Nansen Protection Agenda to convince origin and host states of the necessity of articulating national laws to protect environmental migrants.

The analysis of all these sub hypotheses leads to answer the main hypothesis of this investigation: environmental migrants lack of any kind of legal protection, and thus that there is a limbo in the regulation of most basic rights and their legal status, both in the destination and origin countries. This hypothesis is proven right, except for the non-binding standards set up by the Protection Agenda. In general, there are no legally binding agreements or jus cogens norms of international law to deal with environmental caused displacements. While the regulation of Internally Displaced Persons is more advanced with the Guiding Principles on Internal Displacement, the legal limbo in the protection of cross-border displaced persons has been addressed over the last years without success. If the approach states eventually commit with is the one proposed by the Nansen Initiative, it now depends on national governments to be coherent with their international public law obligations, especially with the principle of solidarity and humanitarian treatment. But there is no international apparatus that monitors this compliance, leaving the gap on the protection of environmentally-displaced people almost as deep as it was when this issue was only address in the academic arena.

Addressing the future challenges of this growing concern is crucial for the security of millions of people, who face a threat they cannot avoid just because they live in vulnerable areas of the planet. States have already recognized in different environmental law and human rights conventions their responsibility to palliate the negative effects of climate change and to ensure all persons' human rights. Therefore, in an issue such as environmentally-induced migrations, these responsibilities are more evident than ever, and a consensual and comprehensive legal solution is becoming urgent. It cannot be forgotten that this time it is not a remote and abstract climate threat with is at stake, but the lives of millions of people facing natural hazards every year.

6. References

- Apap, J., (2019). The concept of 'climate refugee'. Towards a possible definition. *European Parliamentary Research Service*. Retrieved June 10, 2019, from [http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621893/EPRS_BRI\(2018\)621893_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621893/EPRS_BRI(2018)621893_EN.pdf)
- Bates, D. (2002). Environmental Refugees? Classifying Human Migrations Caused by Environmental Change. *Population and Environment*. 23 (5), pp. 465-477
- Bilak, A., Cardona-Fox, G., Ginnetti, J., Rushing, E. J., Scherer, I., Swain, M., Walicki, N., Yonetani, M. (2016). *Global Report on Internal Displacement*. Geneva, Switzerland: Internal Displacement Monitoring Centre. Retrieved June 10, 2019, from <http://www.internal-displacement.org/globalreport2016/pdf/2016-global-report-internal-displacement-IDMC.pdf>
- Black, R. (2001). *Environmental refugees: myth or reality? Working Paper no. 34*. Geneva, Switzerland: United Nations High Commissioner for Refugees. Retrieved June 10, 2019, from <https://www.unhcr.org/research/RESEARCH/3ae6a0d00.pdf>
- Disaster Displacement (2017). Costa Rica and Panama Prepare for Cross-Border Disaster-Displacement. Retrieved June 10, 2019, from <https://disasterdisplacement.org/costa-rica-and-panama-prepare-for-cross-border-disaster-displacement>
- Brazilian Network of the United Nations Global Compact (2018), *New Migration Law Innovation and Corporate risks*. Retrieved June 10, 2019, from http://ahkbusiness.de/fileadmin/ahk_business_br/01_Home/AHK_Rio_de_Janeiro/2018/Download/New_Migration_Law_-_Innovation_and_Corporate_Risks_-_English.pdf
- Docherty, B. and Giannini T. (2009). Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees. *Harvard Environmental Law Review* 33, pp. 350-403. Retrieved June 10, 2019, from <https://pdfs.semanticscholar.org/6f66/5c3e836f23a774ba2e115c36a8f72fd3e218.pdf>

- El-Hinnawi, E. (1985). *Environmental Refugees*. Nairobi, Kenya: United Nations Environmental Programme.
- Food Security Cluster, (2015). *Food security, nutrition, shelter and early recovery assessment in flood affected areas of north-west Bangladesh August 2014*. Retrieved June 10, 2019, from https://fscluster.org/sites/default/files/documents/15-01-14Flood%20Recovery%20Assessmnet_Report_Final_0.pdf
- Foresight, (2011). *Migration and Global Environmental Change Future Challenges and Opportunities* (Final Project Report). London, UK: The Government Office for Science. Retrieved June 10, 2019, from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/287717/11-1116-migration-and-global-environmental-change.pdf
- Gemenne, F., Brücker, P. and Ionesco, D. (Eds.) (2012). *The State of Environmental Migration 2011*. Paris, France: Institute for Sustainable Development and International Relations and International Organization for Migration. Retrieved June 10, 2019, from http://publications.iom.int/system/files/pdf/state_environmental_migration_2011.pdf
- Giannini, A., R. Saravanan and P. Chang (2003) Oceanic forcing of Sahel rainfall on interannual to interdecadal time scales. *Science*, 302, pp. 1027–1030. doi:10.1126/science.1089357
- Glahn, B. (2009). 'Climate refugees'? Addressing the international legal gaps. Retrieved June 10, 2019, from <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=B51C02C1-3C27-4AE3-B4C4-7E350EB0F442>
- Global Protection Cluster, (2018). *20th Anniversary of the Guiding Principles on Internal Displacement: A Plan of Action for Advancing Prevention, Protection and Solutions for Internally Displaced People 2018-2020*. Retrieved June 10, 2019, from <https://reliefweb.int/sites/reliefweb.int/files/resources/20180523-gp20-plan-of-action-final.pdf>
- Goodwin-Gill G.S., McAdam, J. (2017). *UNHCR & Climate Change, Disasters and Displacement*. Geneva, Switzerland: United Nations High Commissioner for Refugees. Retrieved June 10, 2019, from

- <https://www.unhcr.org/protection/environment/596f25467/unhcr-climate-change-disasters-displacement.html>
- Hathaway, J.C. (1991). *The Law of Refugee Status*. Toronto/Vancouver, Canada: Butterworths Limited
 - Hugo, G. (1996). Environmental concerns and international migration. *International Migration Review* 30 (1): 105-131, doi:10.2307/2547462
 - Intergovernmental Panel on Climate Change, 2014: *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. Geneva, Switzerland: IPCC. Retrieved June 10, 2019, from https://www.ipcc.ch/site/assets/uploads/2018/05/SYR_AR5_FINAL_full_wcover.pdf
 - Internal Displacement Monitoring Center (2019). Guiding Principles on Internal Displacement. Retrieved from <http://www.internal-displacement.org/internal-displacement/guiding-principles-on-internal-displacement>
 - International Organization for Migration. (2019a). Environmental Migration. Environmental Migration Portal. Retrieved June 10, 2019, from <https://environmentalmigration.iom.int/environmental-migration>
 - International Organization for Migration. (2019b) Human Mobility in the UNFCCC. Environmental Migration Portal. Retrieved June 10, 2019, from <https://environmentalmigration.iom.int/human-mobility-unfccc>
 - International Federation of Red Cross and Red Crescent Societies (2014). *Emergency appeal operations update Bangladesh: Floods*. Retrieved June 10, 2019, from <https://reliefweb.int/sites/reliefweb.int/files/resources/MDRBD014OU1.pdf>
 - Jackson, R., Fitzpatrick, D., and Singh P.M., (2016). *Building back right. Ensuring equality in land rights and reconstruction in Nepal*. (Agency Briefing Paper). Oxford, UK: Oxfam International. Retrieved June 10, 2019, from https://d1tn3vj7xz9fdh.cloudfront.net/s3fs-public/file_attachments/bp-building-back-right-nepal-210416-en.pdf
 - Kumar, S. (2015). According Refugee Protection to Environmental Migrants: An Overview Under International Refugee Law. *International Journal of*

- International Law* (2) 1, pp. 126- 143. Retrieved June 10, 2019, from <http://www.ijoil.com/wp-content/uploads/2015/08/4.pdf>
- Kumari, K., de Sherbinin A., Jones B., Bergmann J., Clement V., Ober K., Schewe J., Adamo S., McCusker B., Heuser S., and Midgley A., (2018). *Groundswell: Preparing for Internal Climate Migration*. Washington, DC: The World Bank. Retrieved June 10, 2019, from https://www.uncclearn.org/sites/default/files/inventory/wbg_climatechange_final.pdf
 - Makhoul, I. (2014). Recovery and return after typhoon Haiyan/Yolanda. In F. Gemenne, P. Brücker, and D. Ionesco (Eds.), *The State of Environmental Migration 2014: A review of 2013* (pp. 13-30). Paris, France: Science Po Paris. Retrieved June 10, 2019, from <http://labos.ulg.ac.be/hugo/wp-content/uploads/sites/38/2017/11/The-State-of-Environmental-Migration-2014-13-30.pdf>
 - McAdam, J. (2015). The emerging New Zealand jurisprudence on climate change, disasters and displacement. *Migration Studies* 3 (1), pp.131-142. Retrieved June 10, 2019, from <https://pdfs.semanticscholar.org/47e5/e4f7edd6c42a8579968686c242489ddd971a.pdf>
 - McAdam, J. (2016). From The Nansen Initiative To The Platform On Disaster Displacement: Shaping International Approaches To Climate Change, Disasters And Displacement. *UNSW Law Journal Volume 39* (4), pp. 1518-1546. Retrieved June 10, 2019, from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2901910
 - McAdam J. and Limon M. (2015). *Human Rights, Climate Change and Cross-Border Displacement: The Role of the International Human Rights Community in Contributing to Effective and Just Solutions*. Switzerland: Universal Rights Group. Retrieved June 10, 2019, from http://www.universal-rights.org/wp-content/uploads/2015/12/CC_HR_Displacement_21.07.15_spread.pdf
 - Migration Data Portal (2019). Environmental migration. Retrieved June 10, 2019, from https://migrationdataportal.org/themes/environmental_migration
 - Morrissey, J., (2012). Rethinking the 'debate on environmental refugees': from 'maximilists and minimalists' to 'proponents and critics'. *Journal of Political Ecology*, 19 (1), pp.36-49.

- Needham, A., (2015). UNHCR commits to follow up on the Nansen Initiative on climate and disaster displacement and launches new overview of its work in this area. Retrieved June 10, 2019, from <https://www.unhcr.org/news/press/2015/10/561e5ea06/unhcr-commits-follow-nansen-initiative-climate-disaster-displacement-launches.html>
- Nicholls, R.J. and Cazenave, A., (2010). Sea-level rise and its impact on coastal zones. *Science* 328 (5985), pp.1517– 1520, doi: 10.1126/science.1185782
- Office for the Coordination of Humanitarian Affairs & United Nations Environment Program (2014). Typhoon Haiyan (Yolanda) Philippines. Environmental Situational Overview. Retrieved June 10, 2019, from <https://reliefweb.int/sites/reliefweb.int/files/resources/Philippines%20Haiyan%20Environmental%20Situational%20Overview%202014-1-14.pdf>
- Olson, M. E. (1979). Refugees as a Special Case of Population Redistribution. In L. A. P Gosling and L. Y. C. Lim. (Eds.) *Population Redistribution: Patterns, Policies and Prospects* (pp. 130-152). New York, USA: United Nations Fund for Population Activities
- Pagonis, J. (2005). UNHCR taking rare operational role in natural disaster response. Retrieved June 10, 2019, from <https://www.unhcr.org/news/latest/2005/1/41d9772e4/unhcr-taking-rare-operational-role-natural-disaster-response.html>
- Peasron, N., and Niaufre, C., (2013). Desertification and drought related migrations in the Sahel. The cases of Mali and Burkina Faso. In F. Gemenne, P. Brücker, and D. Ionesco (Eds.), *The State of Environmental Migration 2013: A review of 2012* (pp. 79-98). Paris, France: Institut du développement durable et des relations internationales. Retrieved June 10, 2019, from <http://labos.ulg.ac.be/hugo/wp-content/uploads/sites/38/2017/11/The-State-of-Environmental-Migration-2013-79-98.pdf>
- Perout, A., (1995). *Environmental Refugees: Defining Environmental Migrants and Finding Long Term Solutions to Deal with Environmental Migration* (published degree thesis). University of Montréal, Québec, Canada. Retrieved June 10, 2019, from <https://spectrum.library.concordia.ca/114/1/MM05105.pdf>
- Platform on Disaster Displacement (2018). *A State-Led Process Working Towards Better Protection for People Displaced Across Borders in the Context of Disasters and Climate Change*. Geneva, Switzerland: Platform on Disaster Displacement.

- Retrieved June 10, 2019, from https://agendaforhumanity.org/sites/default/files/resources/2018/Nov/24092018_PDD_leaflet_screen.pdf
- Prieur, M. (2010). Draft Convention on the International Status of Environmentally-Displaced Persons. *The Urban Lawyer*, 42/43, (4/1), pp. 247-257. Retrieved June 10, 2019, from <http://www.jstor.org/stable/41307740>
 - Shepherd, A., Mitchell, T., Lewis, K., Lenhardt, A., Jones, L., Scott, L., Muir-Wood, R. (2013). *The geography of poverty, disasters and climate extremes in 2030*. London, UK: Overseas Development Institute. Retrieved June 10, 2019, from <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8633.pdf>
 - Sodhi, M. S. (2016). *Natural disasters, the economy and population vulnerability as a vicious cycle with exogenous hazards*. *Journal of Operations Management*, 45, pp. 101–113. doi:10.1016/j.jom.2016.05.010
 - The Nansen Initiative (2015). *Agenda for the protection of cross-border displaced persons in the context of disasters and climate change. Volume 1*. Geneva, Switzerland: The Nansen Initiative. Retrieved June 10, 2019, from <https://nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>
 - The Nansen Initiative (2019). *Towards A Protection Agenda For People Displaced Across Borders In The Context Of Disasters And The Effects Of Climate Change*. Retrieved June 10, 2019, from <https://www.nanseninitiative.org/secretariat/>
 - The World Bank Group (2019a). Data for Bangladesh, Lower middle income. Retrieved June 10, 2019, from <https://data.worldbank.org/?locations=BD-XN>
 - The World Bank Group (2019b). Mali. Retrieved June 10, 2019, from <https://data.worldbank.org/country/mali>
 - The World Bank Group (2019c). Burkina Faso. Retrieved June 10, 2019, from <https://data.worldbank.org/country/burkina-faso>
 - The World Bank Group (2019d). Philippines. Retrieved June 10, 2019, from <https://data.worldbank.org/country/Philippines>
 - United Nations Framework Convention on Climate Change (2018). *Report of the Task Force on Displacement*. Retrieved June 10, 2019, from https://unfccc.int/sites/default/files/resource/2018_TFD_report_17_Sep.pdf

- United Nations Framework Convention on Climate Change (2019a). History of the Convention. Retrieved June 10, 2019, from <https://unfccc.int/process/the-convention/history-of-the-convention#eq-1>
- United Nations Framework Convention on Climate Change (2019b). Nationally Determined Contributions (NDCs). Retrieved June 10, 2019, from <https://unfccc.int/process/the-paris-agreement/nationally-determined-contributions/ndc-registry>
- United Nations High Commissioner for Refugees, (2016). Analysis of UNFCCC COP22 (Marrakech, Morocco, 7-18 November 2016). Retrieved June 10, 2019, from <https://www.unhcr.org/protection/environment/5890abe27/unhcr-analysis-of-cop22-unfccc.html>
- United Nations Office for Disaster Risk Reduction, (2015). *Sendai Framework for Disaster Risk Reduction 2015-2030*. Geneva: United Nations Office for Disaster Risk Reduction. Retrieved June 10, 2019, from https://www.unisdr.org/files/43291_sendaiframeworkfordrren.pdf
- Walsham, M. (2010). *Assessing the evidence: environment, climate change and migration in Bangladesh* (IOM Report). Dhaka, Bangladesh: International Organization for Migration, pp. 1-70. Retrieved June 10, 2019, from [https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/event/s/docs/Assessing the Evidence Bangladesh.pdf](https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/event/s/docs/Assessing%20the%20Evidence%20Bangladesh.pdf)
- Walter P. (2015). Floods and Rural-Urban Migration in Bangladesh. In F. Gemenne, C. Zickgraf & D. Ionesco (Eds.), *The State of Environmental Migration 2015: A review of 2014* (pp. 51-64). Belgium: The Hugo Observatory, University of Liège. Retrieved June 10, 2019, from <http://labos.ulg.ac.be/hugo/wp-content/uploads/sites/38/2017/11/The-State-of-Environmental-Migration-2015-51-64.pdf>
- Warner, K. (2012). Human migration and displacement in the context of adaptation to climate change: the Cancun Adaptation Framework and potential for future action. *Environment and Planning C: Government and Policy*, 30 (6), pp. 1061–1077, doi:10.1068/c1209j
- Wilkinson, E. & Peters, K. (eds.) (2015). *Climate Extremes and Resilient Poverty Reduction: Development Designed with Uncertainty in Mind*. London, UK: Overseas Development Institute. Retrieved June 10, 2019, from

<https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10130.pdf>

- Wilkinson, E., Schipper, L., Simonet, C., Kubik, Z., (2017). Climate change, migration and the 2030 Agenda for Sustainable Development. In Overseas Development Institute (Eds.), *Migration and the 2030 Agenda for Sustainable Development* (pp. 103-119). London, UK: Overseas Development Institute.
- Williams, A. (2008). Turning the Tide: Recognizing Climate Change Refugees in International Law. *Law & Policy*, 30 (4), pp. 502–529. doi:10.1111/j.1467-9930.2008.00290.x
- Yamamoto L., Andreola D., de Salles F., (2018). Human mobility in the context of climate change and disasters: a South American approach. *International Journal of Climate Change Strategies and Management* 10 (1), pp.65-85, <https://doi.org/10.1108/IJCCSM-03-2017-0069>
- Zetter, R. (n.d.). Environmentally Displaced People. Retrieved June 10, 2019, from <https://www.rsc.ox.ac.uk/policy/environmentally-displaced-people>
- Zgoła P.M. (2017). The Nansen Initiative and the Migrants in Countries in Crisis Initiative: New Frameworks for more Effective Migrants Protection. In G.C. Bruno, F.M. Palombino and V. Rossi (Eds), *Migration and The Environment. Some Reflections on Current Legal Issues and Possible Ways Forward* (pp. 147-166). Rome, Italy: CNR

Conventions referenced

- Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (Nov. 22, 1984). Cartagena Declaration on Refugees. Retrieved June 10, 2019, from https://www.oas.org/dil/1984_cartagena_declaration_on_refugees.pdf
- Organization of African Unity (Sep. 10, 1969), Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), 1001 U.N.T.S. 45. Retrieved June 10, 2019, from <https://www.refworld.org/docid/3ae6b36018.html>
- UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137. Retrieved June 10, 2019, from <https://www.refworld.org/docid/3be01b964.html>

- UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267. Retrieved June 10, 2019, from <https://www.refworld.org/docid/3ae6b3ae4.html>
- UNCHR (11 February 1988); Guiding Principles on Internally Displaced Persons (*E/CN.4/1998/53/Add.2*). Retrieved June 10, 2019, from <http://www.hchr.org.co/documentoseinformes/documentos/html/informes/onu/resdi/E-CN-4-1998-53-ADD-2.html>
- UNHCR (13 September 2018). Report of the United Nations High Commissioner for Refugees. Part II Global compact on refugees (*Supplement No. 12 (A/73/12 (Part II))*). Retrieved June 10, 2019, from https://www.unhcr.org/gcr/GCR_English.pdf
- UNFCCC (15 March 2011). The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (*FCCC/CP/2010/7/Add.1. 2. Decision 1/CP.16*). Retrieved June 10, 2019, from <https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>
- UNFCCC (28 February 2013). Report of the Conference of the Parties on its eighteenth session, held in Doha from 26 November to 8 December 2012 (*FCCC/CP/2012/8/Add.1*). Retrieved June 10, 2019, from <https://unfccc.int/resource/docs/2012/cop18/eng/08a01.pdf>
- UNFCCC (12 December 2015). ADOPTION OF THE PARIS AGREEMENT (*FCCC/CP/2015/L.9/Rev.1*). Retrieved June 10, 2019, from <https://unfccc.int/resource/docs/2015/cop21/eng/109r01.pdf>