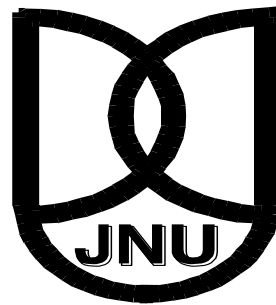


MIGRATION IN INTERNATIONAL LAW: A CASE STUDY OF ENVIRONMENTALLY INDUCED MIGRATION

*Thesis submitted to Jawaharlal Nehru University
for the award of the degree of*

DOCTOR OF PHILOSOPHY

KHEINKOR LAMARR




Centre for International Legal Studies
School of International Studies
Jawaharlal Nehru University
New Delhi-110067
2021

RECOMMENDATION FORM FOR EVALUATION BY THE EXAMINER/S

CERTIFICATE

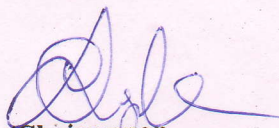
This is to certify that the dissertation/thesis titled MIGRATION IN INTERNATIONAL LAW: A CASE STUDY OF ENVIRONMENTALLY INDUCED MIGRATION submitted by Mr/Ms. KHEINKOR LAMARR in partial fulfillment of the requirements for award of degree of M.Phil/M.Tech/Ph.D of Jawaharlal Nehru University, New Delhi, has not been previously submitted in part or in full for any other degree of this university or any other university/institution.

We recommend this thesis/dissertation be placed before the examiners for evaluation for the award of the degree of M.Phil/M.Tech./Ph.D.


Signature of Supervisor

Date:




Signature of Dean/Chairperson

Date: 22/03/2021

Chairperson
Centre for International Legal Studies
School of International Studies
Jawaharlal Nehru University
New Delhi - 110087


प्र. अश्विनी कुमार महापात्रा
Prof. Aswini K. Mohapatra
डीन/Dean
अंतराष्ट्रीय अध्ययन संस्थान
School of International Studies
जवाहरलाल नेहरू विश्वविद्यालय
Jawaharlal Nehru University
नई दिल्ली / New Delhi-110067



DEDICATION

I dedicate this thesis in loving memory of my Grandfathers, Koka and Papun who first led me to cherish the written word and to my Grandmother Beipun for her love and affection.

ACKNOWLEDGEMENT

Firstly, I wish to convey my deepest gratitude and sincere regard to my supervisor Prof. Bharat H. Desai for his continuous support and guidance during the preparation and writing of my thesis. His insightful comments, patience, guidance, motivation, and enthusiasm throughout my research have been invaluable assets to me. The successive drafts of the thesis were checked and corrected by my supervisor even during the national lockdown period since 24 March 2020 and thereafter when JNU has so far remained closed. I could not have envisaged having a better supervisor and mentor for my thesis. It has been an honour and privilege to have had him as my supervisor.

I also extend my appreciation to the other faculty members of CILS, Prof. V.G. Hegde and Assistant Professor F. Jamal for their help, suggestions and valuable insights on my field of work.

I also thank the non-teaching staff of CILS, Madam Savitri Bisht, and Mr. Hariom Patel for their continued support in administrative matters during the course of my work.

I acknowledge with thanks the assistance of the Libraries and Library staff of Jawaharlal Nehru University for providing me with the avenues and support that have helped me complete my work to the best of my capabilities. I also appreciate access provided by Indira Gandhi National Open University (IGNOU) Library and Documentation Division, South Campus Library of Delhi University, North-Eastern Hill University and the American Library.

I also express my deep gratitude and sincere thanks to my parents for their unstinting encouragement, for providing me with intellectual and academic inputs and being my pillars of emotional support especially during the COVID-19 Pandemic. A special thanks to my young cousin Pragyamon (Gudu) for her support in innumerable ways and providing me much needed upliftment in moments of stress and anxiety.

Last but by no means the least, a thank you to all my colleagues, friends, and extended family during this period of thesis writing for their love, support, and encouragement.

I thank God Almighty (Blai Kynrad) for his grace and blessings and for keeping me safe and healthy throughout the period of my work.

Kheinkor Lamarr

TABLE OF CONTENTS

DECLARATION	
DEDICATION	
ACKNOWLEDGEMENT	
LIST OF CASES	V
LIST OF TABLES	VII
LIST OF IMAGES	VIII
LIST OF ABBREVIATIONS	IX
CHAPTER I. INTRODUCTION	1-28
I. The Challenge	
II. International Migration	
III. Terms and Definitions	
IV. Literature Review	
A. Theories of Migration	
B. Migration in International Law: An Overview	
(i) International Legal Regime on Cross-Border Migration	
• Refugee, Migrant Workers, Smuggled and Trafficked Migrants	
• Human Rights Instruments	
(ii) Institutional Mechanism Governing Cross-Border Migration	
C. Environment as a Migration Factor: Impact of Climate Change	
D. Migration and Security Concerns	
E. Legal Framework on Migration in India	
V. Definition, Rationale and Scope of The Study	
VI. Research Questions	
VII. Hypotheses	
VIII. Research Methodology	
IX. Chapterization	
CHAPTER II. HUMAN MIGRATION AND INTERNATIONAL LAW: A NORMATIVE UNDERSTANDING	29-60
I. Introduction	
II. The Phenomena of Migration: A Brief History	
III. Classification of Migration	
A. Geographical or Distance-Based Classification	
B. Classification based on Duration of Migration	
C. Causal Classification or Motive-Based Migration	
D. Classification Premised upon Demography and Economics	
E. Classifications based on Political and Legal Considerations	
IV. Theories of Migration	
A. Ravenstein’s Laws of Migration	
B. Neoclassical Theories of Migration	

- C. Lee's Theory
- D. New Economics of Labour Migration (NELM)
- E. World Systems Theory
- F. The Network Approach
- G. Women in Migration Theories
- H. Gravity Model
- I. Migration in Political Theory
 - (i) Theory I: The State Imperative
 - (ii) Theory II: Open Borders
- V. Environment and Migration**
- VI. International Law Dimensions on Migration: Historical Perspective and Theoretical Basis**
 - A. The Right of Free Movement of People
 - B. The Law of Hospitality
 - C. Sovereign Power of State and Its Authority to Grant Admission to Aliens
 - D. The Gradual Decline of The Principle of Free Movement
- VII. Conclusion**

CHAPTER III. INTERNATIONAL LEGAL FRAMEWORK ON CROSS-BORDER MIGRATION: A HUMAN RIGHTS PERSPECTIVE 61-95

- I. Introduction**
- II. Migration and International Law**
- III. International Legal Regime Governing Migration**
 - A. Treaty Law
 - (i) Protection of Refugees
 - (ii) Migrant Workers
 - (iii) Trafficking and Migrant Smuggling
 - (iv) Human Rights Instruments
 - Non-discrimination
 - Freedom of Movement
 - (v) Trade Law
 - B. Customary International Law
 - (i) Ius-Cogens
 - C. General Principles of Law
 - D. Judicial Decisions
- IV. Soft Law or Non-Formal Sources of International Law**
- V. Legal Protection for Environmentally Induced Migrants**
 - A. UNGA Resolutions
 - B. Other Global Initiatives
- VI. Conclusion**

CHAPTER IV. ENVIRONMENTALLY INDUCED MIGRATION: INTERNATIONAL LEGAL IMPLICATIONS 96-129

- I. Introduction**
- II. Environmental and Climate Change: Increasing**

Concerns

III. Impact of Environment on Human Mobility

A. Effects of Climate Change on Migration

IV. Cases of Environmentally Induced Migration

A. Small island Nations

B. Droughts and Ecosystem Degradation

C. Natural Hazards and Extreme Weather Events

V. Environmentally Induced Migration: Conceptual Contours

A. Classification

B. Nomenclature and Definition

C. The Trajectory of the Discourse

VI. International Environmental Law Framework

A. United Nations Convention to Combat Desertification (UNCCD)

B. International Climate Change Framework: UNFCCC

(i) The UNFCCC and its Conference of Parties (COP)

C. 2030 Sustainable Development Goals (SDGs)

VII. Legal Considerations on Environmentally induced migration

VIII. Conclusion

CHAPTER V. ENVIRONMENTALLY INDUCED MIGRATION AND ROLE OF INTERNATIONAL ORGANISATION 130-151

I. Introduction

II. International Organisations (IOs)

III. United Nations High Commissioner for Refugees (UNHCR)

A. Role of The UNHCR

IV. International Organization for Migration (IOM)

A. IOM and Environmentally Induced Migration

(i) Migration, Environment and Climate Change Division (MECC)

V. Other Relevant International Migration Institutions

A. Organisation for Economic Co-operation and Development (OECD)

B. World Trade Organisation

C. Global Forum on Migration & Development (GFMD)

D. United Nations Organisation

(i) International Labour Organization (ILO)

(ii) Office of the High Commissioner for Human Rights (OHCHR)

(iii) Global Migration Group

(iv) UN Network on Migration

(v) UN Treaty Bodies

- The Case of Ioane Teitiota of the Island Nation of Kiribati

VI. Conclusion	
CHAPTER VI. ENVIRONMENTALLY INDUCED MIGRATION: INDIAN LAW AND POLICY	152-174
I. Introduction	
II. India And Migration	
A. Partition of India 1947	
B. 1971 Migration from Bangladesh	
C. Contemporary Migration Discourse in India	
III. Domestic Legal Framework Impacting Migrants	
A. Constitution of India	
B. Citizenship Act of India	
C. Citizenship Amendment Act of 1986	
D. Citizenship Amendment Act of 2003	
E. Citizenship Amendment Act of 2019	
F. International Law Obligations	
IV. Environmentally Induced Migration and Indian Position	
V. Conclusion	
CHAPTER VII. CONCLUSIONS	175-191
BIBLIOGRAPHY	192-222
ANNEXURE I: LIST OF IMPORTANT UNGA RESOLUTIONS ON MIGRATION	223
ANNEXURE II: LIST OF UNFCCC COPS TILL 2020	250
ANNEXURE III: CITIZENSHIP PROVISIONS IN INDIAN CONSTITUTION	255
ANNEXURE IV: NANSEN PRINCIPLES	258
ANNEXURE V: 1992 RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT	260
ANNEXURE VI: PHOTOGRAPHIC REPRESENTATION OF ENVIRONMENTAL AND CLIMATE CHANGE	264

LIST OF CASES

1. *Abdulaziz, Cabales and Balkandali v. the United Kingdom* (Judgement), (1985), European Court of Human Rights, 15/1983/71/107-109.
2. *Barcelona Traction, Light and Power Company Limited (Belgium v. Spain)*, (Second Phase) (1970), ICJ Reports, 3.
3. *Caeser v. Trinidad and Tobago*, (2005), Inter American Court HR (Series C) No. 123.
4. *Case concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, (2010), ICJ Reports 1.
5. *Central Bank of India v. Ram Narain*, 1955 AIR SC 36.
6. *Colombia v. Peru (Asylum Case)*, (1950), ICJ Reports, 395.
7. *Ebrahim Vazir Mavut v. State of Bombay*, 1954 AIR SC 229.
8. *European Roma Rights Centre and Others v. Immigration Officer at Prague Airport*, (2004), UKHL 55.
9. *Fong Yue Ting v. United States*, (1893), 149 US 698.
10. *Ioane Teitiota v. New Zealand*, (advance unedited version) (2020), HRC, CCPR/C/127/D/2728/2016.
11. *Juridical condition and rights of the undocumented migrants, Advisory opinion*, (2003), OC-18/03, Inter-American Court HR (Ser A) No. 18, 101.
12. *Kedar Pandey v. Narain Bikram Sah*, 1966 AIR SC 160.
13. *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, (1996), ICJ Reports, 226.
14. *Louis De Raedt v. Union of India*, 1991 AIR SC 1886.
15. *Lubicon Lake Band v. Canada* (1990), HRC, NO. 167/1984, UN Doc. Supp. No. 40 (A/45/40).
16. *Nationality Decrees Issued in Tunis and Morocco, Advisory Opinion*, (1923), PCIJ (Ser B) No. 4.
17. *Nicaragua v. United States* (merits), (1986) ICJ Reports, 14.
18. *Nishimura Ekiu v. U.S.*, (1892), 142 U.S. 651.
19. *Nottebohm case (Liechtenstein v. Guatemala) (S P)*, (1955), ICJ Reports, 4.

20. *Prosecutor v. Furundzija* (Judgement), (1998), International Criminal Tribunal for the Former Yugoslavia (ICTY), Trial Chamber II, Case No. IT- 95-17/1-T.
21. *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion*, (1949), ICJ Reports, 174.
22. *Sandra Lovelace v. Canada* (1981), HRC, No. 24/1977, UN Doc. CCPR/C/13/D/24/1977.
23. *Sarbananda Sonowal v. Union Of India & Anr*, 2005 AIR SC 2920.
24. *Shanno Devi v. Mangal Sain*, 1961 AIR SC 58.
25. *The Attorney General For The Dominion of Canada v. Everett E Cain and James Raymond Gilhula*, (1906), A.C. 542.
26. *The State Trading Corporation Of India Ltd. & Others v. The Commercial Tax Officer, Visakhapatnam And Others*, 1963 AIR SC 1811.

LIST OF TABLES

Table 1.	Showing Principal Theories of Migration and Their Salient Features.	47
Table 2.	Core International Legal Instruments Adopted in the Field of International Migration Law and Their Relevant Provisions.	70
Table 3.	Important Human Rights Treaty Provisions.	75
Table 4.	R Stojanov's Classification of Environmentally Induced Migration.	111
Table 5.	Chart Depicting Human Mobility in Relation to Climate Change.	113
Table 6.	List of IOM Member and Observer States as of 2020.	138
Table 7.	List of IOM's Regional Offices.	140
Table 8.	United Nations Treaty Bodies.	147

LIST OF IMAGES

Image 1:	Temperature data showing rapid warming (1889-2019) with 2016 achieving highest temperature data since 1880.	101
Image 2:	Sea Level Change Since 1993 Depicting A Rate of Change As An Increase Of 3.3 Millimetres Per Year.	104
Image 3:	Flowing Meltwater from the Greenland Ice Sheet.	105
Image 4:	Lake Chad 1972 and 2007.	108
Image 5:	Lake Chad in 2017.	108
Image 6:	The 17 SDG Goals.	125
Image 7:	Asia-Pacific Map Detailing Impacts of Climate Change on the Region.	168
Image 8:	Indo-Bangladesh Border (Dawki-Jaflong).	171

LIST OF ABBREVIATIONS

1. ACHR	American Convention on Human Rights
2. CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
3. COE	Council of Europe
4. COVID-19	Coronavirus Disease of 2019
5. CRC	Convention on the Rights of the Child
6. Doc.	Document
7. ECHR	European Convention on Human Rights
8. ed(s)	Editor(s)
9. esp.	Especially
10. GATS	General Agreement on Trade in Services
11. GFMD	Global Forum on Migration and Development
12. GMG	Global Migration Group
13. HRC	United Nations Human Rights Committee
14. i.e.	That is
15. ICC	International Criminal Court
16. ICCPR	International Covenant on Civil and Political Rights
17. ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
18. ICESCR	International Covenant on Economic, Social and Cultural Rights
19. ICJ	International Court of Justice
20. ICPD	International Conference on Population and Development

21. ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
22. ICTY	International Criminal Tribunal for the Former Yugoslavia (ICTY)
23. IDM	International Dialogue on Migration
24. IDMC	Internal Displacement Monitoring Centre
25. IGO	Intergovernmental Organisation
26. ILO	International Labour Organization
27. IO	International Organisation
28. IOM	The International Organization for Migration
29. IPCC	Intergovernmental Panel on Climate Change
30. MECC	Migration, Environment and Climate Change Division
31. MOU	Memorandum of Understanding
32. NELM	New Economics of Labour Migration
33. NGO	Non-governmental Organisation
34. No.	Number
35. OAS	Organization of American States
36. OAU	Organization of African Unity
37. OECD	Organisation for Economic Co-operation and Development
38. OHCHR	The Office of the United Nations High Commissioner for Human Rights
39. PCIJ	Permanent Court of International Justice
40. RC	Convention Relating to the Status of Refugees
41. RC Protocol	Protocol Relating to the Status of Refugees

42. SC	Supreme Court
43. SCPF	Standing Committee on Programmes and Finance
44. UDHR	Universal Declaration of Human Rights
45. UN	United Nations
46. UNCCD	United Nations Convention to Combat Desertification
47. UNEP	United Nations Environment Programme
48. UNFCCC	United Nations Framework Convention on Climate Change
49. UNGA	United Nations General Assembly
50. UNHCR	Office of the United Nations High Commissioner for Refugees
51. UNTS	United Nations Treaty Series
52. VCLT	Vienna Convention on The Law of Treaties
53. WIM	Warsaw International Mechanism for Loss and Damage
54. WMO	World Meteorological Organization
55. WTO	World Trade Organisation

CHAPTER I. INTRODUCTION

“Migration is an expression of the human aspiration for dignity, safety and a better future. It is part of the social fabric, part of our very make-up as a human family.”

– Ban Ki-moon
Former United Nations (UN) Secretary-General.

I. THE CHALLENGE

The phenomenon of human migration is age-old. It has occasioned the exchange of concepts, ideas, cultures, religious practices and the sharing of technological innovation, knowledge and expertise. Migration has led to demographic shifts and has been instrumental in the creation of diaspora communities.¹

The advent of globalisation and phenomenal advancement in technology are causes for the escalation in international migration. The year 2019 assessed international migrants globally to be 272 million.² This proportional increase in international migration has led to a growth in the complexity and scope of the phenomenon of migration. Even the present ongoing pandemic Coronavirus Disease of 2019 (COVID-19) apart from creating a multitude of challenges in diverse areas, has had an impact on the migrant situation as well.

Part of the complexity of issues surrounding migration may be attributed to the development of nation-states, more robust border controls and increase and sophistication of laws regulating immigration and citizenship. So, today migration is no longer possible for people as and when they choose.

In the legal realm, the challenge posed by human migration is mainly in the area of migrant rights as well as considerations towards the populations of host States. Contemporary challenges in this field include the trafficking of women and child migrants, the increased flow of clandestine or “illegal” migrants, to the issue of refugees, economic migrants and most recently to ‘environmentally induced migrants’.

¹ Garland, Robert et al. (2020), “How has Migration Changed the World?” in Matt Elton (ed.) *BBC World Histories*, Issue 23, UK: Immediate Media Company Bristol Limited, p. 78.

² IOM (2020), *World Migration Report 2020*, Geneva: IOM, p. 3; available at: https://www.un.org/sites/un2.un.org/files/wmr_2020.pdf (accessed on 27 August 2020).

Environmental degradation has surfaced as one of the major global threats impinging upon every aspect of human life. It has posed novel challenges to nations across continents. Its impacts have been felt by different nations differently depending upon the climatic situation, geographical location, economic development and social advancement. The individual or combined effect of environmental degradation and climate change has triggered both human and animal migration from their current habitats both within and across national borders. In the case of environmentally induced migration due to the uncertainty as well as disagreement on the terminology, definition and recognition, many countries and relevant international organisations appear reluctant to negotiate the legal norms and framework for the protection of these migrants. The scope and scale of such environmentally induced migration are expected to increase manifold in future due to unpredicted and frequent occurrence of natural disasters and climate change-induced hazards. In international law, only a few categories, namely “refugees” and “stateless persons”³ have been recognised as people whom countries have an obligation to protect.

Thus, if migrants do not fall within such categories or as those who can migrate lawfully for purposes of employment or education are in a position of jeopardy if they migrate cross-border. Such individuals are at risk of detention and forcible expulsion. Such a situation calls for all possible efforts to assess the problem of environmentally induced migration to develop an appropriate legal and policy framework to redress it. Though the prospect of laws and policies relating to the environmentally induced migration for the legal protection and rights of the migrants are minimal, yet soft norms, ad-hoc plans and policies are at work in different forums and institutions in the UN System and beyond.

II. INTERNATIONAL MIGRATION

Cross-border human mobility has been a subject of interest and discussion even amongst the early scholars of international law, like Hugo Grotius, Francisco de Vitoria and Emer de Vattel. The past few years has seen the rising appreciation for migrant vulnerability and the corresponding call to ensure due respect for migrant rights at the international stage. Nevertheless, international migration, unlike other

³ See *Convention Relating to the Status of Stateless Persons*, (1954), 360 UNTS 117; *Convention on the Reduction of Statelessness*, (1961), 989 UNTS 175.

cross-border issues, has lacked a coherent legal and institutional framework at the global level. The present international law on migration is a patchwork of legal and institutional frameworks⁴ that deal with specific aspects of international migration like that of refugees under the *Convention Relating to the Status of Refugees*,⁵ 1951(RC) or the rights of migrant workers under the International Labour Organization Conventions.

Socio-political and economic factors have for long been considered to be the “traditional” drivers of migration. John Rawls offers persecution of religious and ethnic minorities, political oppression, famines, and population pressure as the leading causes of migration.⁶ For him the above-mentioned reasons are connected to unjust “domestic political institutions”.⁷ Interestingly, the environment which has since pre-history been both a “push and pull” factor of migration has had limited space in migration-related literature.

Amitav Ghosh, the Jnanpith award author, in his book “The Great Derangement. Climate Change and The Unthinkable” also recounts the story of his ancestors whom he terms as “ecological refugees” who had migrated from Bangladesh in the mid-1850s due to the Padma River changing its course drowning the village of his ancestors and unmooring them.⁸

It was around the 1980s that environmental degradation and human impact on ecology gained attention when such issues were brought to world’s limelight through books like “Silent Spring”⁹ and “Animal Liberation”¹⁰. It is more recently when the adverse impacts of climate change have been felt that “environment” itself as a migration driver received significant recognition.

⁴ Koser, Khalid (2010), “Introduction: International Migration and Global Governance”, *Global Governance*, 16(3):301-315, p. 301; available at: <https://www.jstor.org/stable/29764947> (accessed on 15 December 2017).

⁵ *Convention Relating to the Status of Refugees*, (1951), 189 UNTS 137.

⁶ Rawls, John (2002), *The Law of Peoples: With, the Idea of Public Reason Revisited*, UK: Harvard University Press, pp. 8-9.

⁷ Reinhardt, Karoline (2012), “No Migration in a Realistic Utopia? Rawls’s The Law of Peoples and the Topic of Migration”, in Goran Collste (ed.), *Proceedings from the 49th Societas Ethica Annual Conference*, Romania: Lucian Blaga University Sibiu, p. 175; available at: <https://ep.liu.se/ecp/097/015/ecp12097015.pdf> (accessed on 12 December 2020).

⁸ Ghosh, Amitav (2016), *The Great Derangement. Climate Change and The Unthinkable*, Gurgaon, Haryana: Penguin Books, pp. 4-5.

⁹ Carson, Rachel (1962), *Silent Spring*, Boston: Houghton Mifflin, reprinted 2002.

¹⁰ Singer, Peter (1975), *Animal Liberation*, New York: New York Review of Books, reprinted 1990.

Climate change, in particular, has received much attention for its relationship to migration because of sea-level rise, which poses a threat to small island nations and has intensifying effects upon natural environmental drivers of migrations.¹¹ Nonetheless, this area is yet a new and challenging field of research. It is challenging because demonstrating environmental drivers as factors of migration is difficult, and there are considerable knowledge and data gaps.

Different parts of the world have increasingly observed habitat destruction, freak weather events and other disasters (both human-made and natural) that impinge upon the migration of people to safer places. Bangladesh, for instance, has witnessed environmental hazards and increasing landlessness which is considered to be a significant contributing factor for migration. The African continent has also been experiencing such environmentally induced migration across borders for the past several decades.¹² Such people driven to migrate due to environmental factors have come to be variously termed as ‘environmental refugees’¹³, ‘environmental migrant’¹⁴, ‘climate refugees’¹⁵ etc.

The former “Director General of the International Organization for Migration” (IOM) William Lacy Swing on the occasion of World Food Day 2017 said:

“Climate action is paramount. Climate change is having far-reaching effects on agricultural productivity and food security. It is among the main reasons for the record numbers of people compelled to migrate from rural areas to towns and cities around the world. . . .”¹⁶

¹¹ Moore, Rob (2019), “IPCC Report: Sea Level Rise Is a Present and Future Danger”, *NRDC*, 25 September 2019; available at: <https://www.nrdc.org/experts/rob-moore/new-ipcc-report-sea-level-rise-challenges-are-growing> (accessed on 9 June 2020); See also Pörtner, Hans-Otto et al. (eds.) (2019), *IPCC Special Report on the Ocean and Cryosphere in a Changing Climate*, IPCC, Chapter 4; available at: https://www.ipcc.ch/site/assets/uploads/sites/3/2019/12/SROCC_FullReport_FINAL.pdf (accessed on 9 June 2020).

¹² IOM (2014), *IOM Outlook on Migration, Environment and Climate Change*, Geneva: IOM, p. 40; available at: https://publications.iom.int/system/files/pdf/mecc_outlook.pdf (accessed on 8 December 2019).

¹³ Myers, Norman (1993), “Environmental Refugees in a Globally Warmed World”, *BioScience*, 43(11):752-761; available at: <https://www.jstor.org/stable/1312319> (accessed on 15 December 2017).

¹⁴ IOM (2019), *International Migration Law. Glossary on Migration*, Geneva: IOM, p. 64; available at: https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf (accessed on 18 October 2019).

¹⁵ Adlakha, Nidhi (2020), “No country for climate refugees”, *The Hindu*, 28 February 2020; available at: <https://www.thehindu.com/opinion/columns/how-the-climate-crisis-is-uprooting-more-people-than-war/article30942108.ece> (accessed on 4 January 2021); See also White, Gregory (2011), *Climate Change and Migration: Security and Borders in a Warming World*, New York: Oxford University Press, p. 13.

¹⁶ United Nations Climate Change (2017), “Climate Change Is A Key Driver of Migration and Food Insecurity”, United Nations Climate Change, 16 October 2017; available at: <https://unfccc.int/news/climate-change-is-a-key-driver-of-migration-and-food->

The “UN Food and Agriculture Organization” said that “in 2015, there were 244 million international migrants, 40% more than in 2000”.¹⁷ In the year 2015, “19 million people were internally displaced due to natural disasters” and “between 2008 and 2015, an average of 26 million people have been displaced annually by climate or weather-related disasters”.¹⁸ It is projected that the magnitude of migration will further expand owing to the increasing occurrence of tropical storms, floods and droughts in many parts of the world which will impact countless peoples’ survival opportunities specially in “climate-vulnerable communities”.¹⁹

The issue of environmental and climate change is intrinsically linked with migration which is a subject of present-day importance and not a futuristic prospect. There is growing evidence that environment and climate change are important migration drivers, both internal and cross-border.²⁰ However, notwithstanding this growing recognition of environmentally induced migration, the legal and normative framework remains poorly developed. There was a considerable interest generated that The *Paris Agreement*,²¹ 2015 would substantially deal with environmentally induced migrants. This interest was engendered because, earlier during the “United Nations Framework Convention on Climate Change Conference of Parties” at Warsaw in 2013, States had endeavoured to resolve the difficulties and issues that are faced by people subjected to climate-induced displacement. These expectations, however, remained largely unfulfilled.

The subject of environmentally induced migration and migrants raises many questions. Such questions include issues of whether or not there exist any rights or obligations in international law to address concerns of the migration of people due to consequential environmental processes like climate change. It is worth bearing in mind that presently international law does not identify environmentally induced migrants as a specific group justified to have special protection and safe-guards under law. Thus, there exists, a normative gap in international law in this respect.

insecurity#:~:text=Climate%20change%20is%20having%20far,and%20cities%20around%20the%20world (accessed on 1 September 2020).

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ IOM (2014), n. 12, p. 40.

²¹ *Paris Agreement*, (2015), FCCC/CP/2015/L.9/Rev.1; available at: <https://unfccc.int/resource/docs/2015/cop21/eng/109r01.pdf> (accessed 3 September 2020).

Legal considerations on this subject also hit strongly on ideas of justice and ethics as many at-risk communities to environmental and climate change have been negligible contributors to environmental degradation and climate change.

Given this, this work intends to contribute to this nascent but fast-evolving field of environmentally induced migration and resultant migrant concerns. The work in this endeavour looks into the international law history of migration and concept of freedom of movement that forms the theoretical and jurisprudential foundations of the international migration law framework.

This work further examines the contemporary international legal regime and institutional mechanism on migration and their relevance to the subject of environmentally induced migration. As environmentally induced migration, factors in environmental and climate change, the work has also analysed the international environmental law framework. Therefore, this work has tried to achieve a comprehensive understanding of the legal position of environmentally induced migration, by not only looking at the subject from the lens of international migration law but from the perspectives of international environmental law and human rights as well. The attempt is to have a more nuanced and informed perspective of environmentally induced migration.

III. TERMS AND DEFINITIONS

Many terms and expressions like ‘migration’, ‘migrant’, ‘environmentally induced migration’ have been used in the present work.

Migration: The Oxford dictionary defines the term as “the movement of large numbers of people, birds or animals from one place to another”.²² The term in this work signifies the movement of humans unless specified differently.

Migrant: The Oxford dictionary defines this term as “a person who moves from one place to another, especially in order to find work”.²³ In international law, there is no universally accepted legal definition of the term ‘migrant’. Different legal instruments or organisations have nevertheless defined certain specific categories of migrants. For

²² Wehmeier, Sally (Chief Editor) (2005), *Oxford Advanced Learner's Dictionary*, India: Oxford University Press, p. 968.

²³ Ibid.

example, The Office of the United Nations High Commissioner for Human Rights (OHCHR) has described ‘international migrants’ as “any person who is outside a State of which they are a citizen or national, or, in the case of a stateless person, their State of birth or habitual residence”.²⁴ International migrants have normally also been defined as those people residing in a foreign country for more than twelve months.²⁵ The IOM has also developed its definition of ‘migrant’ which is however not intended for the creation of a legal category. The IOM defines the term ‘migrant’ as:

“An umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons. The term includes a number of well-defined legal categories of people, such as migrant workers; persons whose particular types of movements are legally defined, such as smuggled migrants; as well as those whose status or means of movement are not specifically defined under international law, such as international students.”²⁶

Also, ILO’s 1975 *Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers*²⁷ (Convention 143) provides a definition for the term “migrant worker” to be:

“. . . a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker.”²⁸

Immigrant: This term means “a person who has come, esp. legally, into a foreign country in order to live there permanently.”²⁹

Emigrant: This is a person “who leaves their country to live in another”.³⁰

Environmentally Induced Migration: This phrase has been used by many,³¹ including the United Nations Environment Programme (UNEP).³² In this work this

²⁴ OHCHR, *Differentiation Between Migrants and Refugees*; available at: <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/MigrantsAndRefugees.pdf> (accessed on 17 February 2020).

²⁵ Koser, n. 4, p. 303.

²⁶ IOM (2019), n. 14, p. 132.

²⁷ *Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975(Supplementary Provisions) (No. 143)*, (1975), Geneva, 60th ILC session.

²⁸ *Ibid.*, at Article 11(1).

²⁹ Paul Procter (editor-in-chief) (1996), *Cambridge International Dictionary of English*, India: Cambridge University Press, p. 706.

³⁰ Wehmeier, n. 22, p. 498.

³¹ See for example, Committee on Migration, Refugees and Population (2008), “Environmentally induced migration and displacement: a 21st century challenge”, *Parliamentary Assembly Council of Europe*, Doc. 11785; available at: <https://www.refworld.org/pdfid/49997bbb0.pdf> (accessed on 2 September 2020).

phrase is indicative of a comprehensive relationship between environment and migration. This thesis has used this terminology as it provides for a broader, more nuanced and holistic approach to the area of migration due to environmental concerns. Nevertheless, there are varied nomenclature, terminology and definition used to describe human mobility in terms of environmental factors. Chapter IV has discussed this terminological and definitional conundrum. The term environmentally induced migration/migrants are used in this work to refer to the phenomenon more generally and from a broader perspective.

Human Mobility: This expression has been used in the broadest sense to include migration internal or cross-border and even displacement.

IV. LITERATURE REVIEW

Humans across the ages have migrated in search of habitable land or better opportunities. With the passage of time and demarcation of territory and borders, such migratory movements became classified in terms of internal and cross-border migrations. The complexity and scope of the phenomenon of migration have sparked a variety of debates. These academic discourses have given rise to a fair amount of migration literature across different aspects of the subject.

A. Theories of Migration

The search to conceptualise the phenomenon of migration has led to the advancement of a variety of theories. These theories have attempted to answer the reason for and continuation of the migration phenomenon.

Migration for long has been attributed principally to political, economic and social factors.³³ The rising ethnic and religious tensions have also given rise to higher degrees of migration. The economic disparities amongst developed and developing countries are factors which have been considered to encourage skilled labour to move away from the developing countries and move into developed countries. Economic

³² *Contribution to The Sixteenth Coordination Meeting on International Migration. United Nations Environment Programme*, (2018), Population Division Department of Economic and Social Affairs United Nations Secretariat, UN/POP/MIG-16CM/2018/8; available at: <https://www.un.org/en/development/desa/population/migration/events/coordination/16/documents/papers/8.%20UNEP.pdf> (accessed on 8 June 2020).

³³ White (2011), n. 15.

factors dominate the explanation given for ‘voluntary’ migration³⁴, while the basis of ‘forced’ migration is typically credited to political factors alone.³⁵

Migration literature discussing the conceptual understanding of migration is dominated by labour and economic migration theories. Earnest G. Ravenstein is widely regarded as the earliest migration theorist. His significant contribution was concluding that a “push-pull” process governed migration, i.e., disadvantageous circumstances of a particular place “push” people away while advantageous circumstances of another place “pull” people in.³⁶ This theory of Ravenstein’s postulates that migration takes place because of better external circumstances which mainly includes lucrative economic possibilities. He also states that migration differential like gender, social class and age influence a person’s mobility.

Building upon Ravenstein’s work, a variety of other theories have also been conceptualised to the extent that in migration scholarship the major modern-day theories are premised upon the conclusions presented by Ravenstein. Everett Lee’s work which is one of the most widely used models of migration is one such theory.³⁷

Lee reconceptualised the theory of Ravenstein by emphasizing and accentuating the internal (push) elements. He advanced an argument that variables like distance, dependents and physical and political impediments could hamper or hinder migration.³⁸ He pointed out that aspects of a personal nature like an individual’s education, family connections, his comprehension and understanding of the circumstances prevalent at place of destination, etc., can encourage or discourage migration.

There are an assorted number of theories on migration which have developed like the *Neoclassical Economic Theory*, the *World Systems Theory* and *Equilibrium Model of Migration*.

³⁴ Swain, Ashok (1996), “Environmental migration and conflict dynamics: focus on developing regions”, *Third World Quarterly*, 17(5): 959-973; available at: <https://www.jstor.org/stable/3993239> (accessed on 15 December 2017).

³⁵ Gordenker, L. (1989), “Early warning of refugee incidents” in Gil Loescher and Laila Monahan (eds.) *Refugees and International Relations*, Oxford: Oxford University Press; Swain, n 34.

³⁶ Ravenstein, E.G. (1889), “The Laws of Migration”, *Journal of the Royal Statistical Society*, 52(2):241-305; available at: <https://www.jstor.org/stable/2979333> (accessed on 17 October 2019).

³⁷ Lee, Everett S. (1966), “A Theory of Migration”, *Demography*, 3(1):47-57; available at: <https://www.jstor.org/stable/2060063> (accessed on 17 October 2019).

³⁸ Ibid.

According to the neoclassical economic theory, migration is considered to be propelled due to variabilities in wages across labour markets. The elementary model of this theory underscores that migrants act in their economic self-interest and proposes that the worldwide “demand and supply” for labour is associated with international migration.³⁹ This theory discusses the movement of people to be a conscious and voluntary movement.

The world systems theory is credited to have been developed by Immanuel Wallerstein.⁴⁰ In the area of migration theorists have built upon this theory by linking international migration to the world market and economic globalisation. This proposition asserts that international migration is a derivative of heightened capital mobility and links the determinants of migration to structural change in world markets.⁴¹

The equilibrium model of migration conceives population flow “as the geographical mobility of workers who are responding to imbalances in the spatial distribution of land, labour, capital and natural resources”.⁴²

A review of the literature shows that the environment as a factor has been absent from the dominant discourse as the focus traditionally has been upon economic and voluntary migration patterns. Present-day characteristics of international migration are understood to be from the marginal or developing countries to the central or developed countries. The theoretical frameworks mainly discuss economic motivations for the movement of persons. Forced migration is understood to describe situations of people fleeing due to political or religious unrest.

³⁹ Sjaastad, Larry A. (1962), “The Costs and Returns of Human Migration”, *Journal of Political Economy*, 70(5) Part 2: Investment in Human Beings:80–93; available at: <https://www.jstor.org/stable/1829105> (accessed on 17 January 2019); Todaro, Michael P. (1969), “A Model of Labor Migration and Urban Unemployment in Less Developed Countries”, *The American Economic Review*, 59(1):138–148; available at: <https://www.jstor.org/stable/1811100> (accessed on 17 January 2019).

⁴⁰ Wallerstein, Immanuel (1974), *The Modern World System, Capitalist Agriculture and The Origins of the European World Economy in The Sixteenth Century*, New York: Academic Press.

⁴¹ Sassen, Saskia (1988), *The Mobility of Labor and Capital: A Study in International Investment and Labor Flow*, UK: Cambridge University Press; Massey, Douglas S. et al. (1993), “Theories of International Migration: A Review and Appraisal”, *Population and Development Review*, 19 (3): 431-466; available at: <https://www.jstor.org/stable/2938462> (accessed on 28 March 2019).

⁴² Wood, Charles H. (1982), “Equilibrium and Historical-Structural Perspectives on Migration”, *International Migration Review*, 16(2):298-319; available at: <https://www.jstor.org/stable/2545100> (accessed on 7 November 2019).

With the changes in climatic conditions, there exists today a high likelihood to exacerbate insecurity over water and food resources in many areas of the world. The changing climatic conditions are significant factors in pushing people to migrate to countries where the environment is safer, and resources like food and water are more readily available.

B. Migration in International Law: An Overview

Vincent Chetail argues that historically the migration of people “has been framed by international law” and that “from its inception, international law has had a symbiotic relationship with migration”.⁴³ Chetail elucidates this point by stating that in international law there exists extensive history on the issue of “legal status of aliens”. Further, it was through the “right of communication” amongst people that both Vitoria and Grotius originally recognised peoples’ liberty of movement.⁴⁴

Currently, however, international migration law has been much less noticeable in comparison to the well-known fields of international refugee and human rights law.⁴⁵ It is also seen that international migration unlike various other cross-border concerns lacks a coherent legal and institutional framework at the international arena.⁴⁶ It seems to have developed haphazardly over a period of time in trying to deal with emerging concerns and issues at specific points in history.⁴⁷ Further, the existing legal framework is spread out over an extensive grouping of rules and principles that belong to diverse international law fields which include human rights and labour law, consular and diplomatic law and nationality law.

(i) *International Legal Regime on Cross-Border Migration*

The international legal regime on migration encompasses both legally binding international law as well as non-legally binding principles and best practices. The international law framework is narrow in focus. It deals with specialised migration

⁴³ Chetail, Vincent (2016), “Sovereignty and Migration in the Doctrine of the Law of Nations: An Intellectual History of Hospitality from Vitoria to Vattel”, *European Journal of International Law*, 27(4):901-922.

⁴⁴ Ibid.

⁴⁵ Foster, Michelle (2015), “Research Handbook on International Law and Migration”, *International Journal of Refugee Law*, 27(2):392–394.

⁴⁶ Koser, n. 4.

⁴⁷ Opeskin, Brian (2009), “The Influence of International Law on the International Movement of Persons”, *United Nations Development Programme Human Development Reports Research Paper 2009/18*; available at: http://hdr.undp.org/sites/default/files/hdrp_2009_18.pdf (accessed on 14 November 2019).

topics about the protection of refugees, migrant workers and instruments intended to combat human trafficking and smuggling of migrants.⁴⁸ Richard Plender authored one of the seminal works on international migration law.⁴⁹ Since then much interest in this field was generated and several books authored on this subject matter.⁵⁰

The signature and ratification of the instruments relating to migrants have been made in varying degrees. The most signed and ratified instruments have been in the realm of the protection of refugees and smuggling of migrants whereas instruments that safeguard the rights and entitlements of migrant workers are about only twenty-five percent of all Member States.⁵¹ The existing international law framework on migration provides a legal and normative fabric regarding international migrant rights and the responsibilities and authority of sovereign States to direct the flow of people across their borders.⁵²

Migrants have been designated as international migrants or internal migrants and voluntary or forced migrants. Migrants have also been categorised into migrant workers and refugees.

However, there remain gaps in the legal framework and literature in respect to economic migrants, environmentally induced migrants, migration for family-specific purposes and irregular migration. Also, so far internationally the term “migrant” has no clear cut, recognised or accepted definition.⁵³

Refugee, Migrant Workers, Smuggled and Trafficked Migrants

The RC and its *Protocol Relating to the Status of Refugees*,⁵⁴ 1967 (RC Protocol) are chief elements in the international framework of refugee protection. The RC defines

⁴⁸ Ibid.; Martin, Susan (2005), “The Legal and Normative Framework of International Migration”, *Paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration*, Global Commission on International Migration; available at: https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/tp/TP9.pdf (accessed on 14 November 2019).

⁴⁹ Plender, Richard (1972), *International Migration Law*, Leiden: A. W. Sijthoff.

⁵⁰ Sohn, L.B. and T. Buergenthal (eds.) (1992), *The Movement of Persons Across Borders, Studies in Transnational Legal Policy No. 23*, Washington DC: The American Society of International Law; Aleinikoff, T.A. and Vincent Chetail (eds.) (2003), *Migration and International Legal Norms*, The Hague: TMC. Asser Press; Cholewinski, R. Perruchoud and E. MacDonald (eds.) (2007), *International Migration Law, Developing Paradigms and Key Challenges*, The Hague: TMC. Asser Press.

⁵¹ United Nations Treaty Collection; available at: <https://treaties.un.org/> (accessed on 22 August 2020).

⁵² Martin, n. 48.

⁵³ IOM (2019), n. 14, p. 132.

⁵⁴ *Protocol Relating to the Status of Refugees*, (1967), 606 UNTS 267.

“refugee” and subsequently spells out their rights, and sets forth a State’s obligations under law to protect and safeguard them.

The central feature of the RC is the principle of “*non-refoulement*”. The principle restrains States from expelling or forcefully casting out individuals having refugee status to a country where they face severe threats to their life or freedom.⁵⁵ This principle has today come to be considered by many as a rule of customary international law.⁵⁶

Concerning the migrant workers category, the members of the International Labour Organization (ILO) have adopted three legally-binding conventions which are geared towards upholding and safeguarding the rights of migrant workers. The *Convention concerning Migration for Employment*,⁵⁷ 1949 (Convention 97) seeks to help “migrants for employment” and looks into their conditions of work and recruitment.⁵⁸ Convention 97 undertakes to see that migrant workers and nationals are equally treated in areas relating to their labour conditions, wages, “social security”, “employment taxes” and accessing justice.⁵⁹

One of the first multilateral attempts made to look into the situation of irregular migrant workers and see to the prosecution of “manpower trafficking” was accomplished in the Convention 143.⁶⁰ Convention 143 stressed that Member States are obliged “to respect the basic human rights of all migrant workers”.⁶¹

The third legally binding ILO instrument is the *Convention concerning Decent Work for Domestic Workers*,⁶² 2011 (Convention 189). The Convention 189 states that all domestic workers, as well as those domestic workers who are migrants, enjoy similar basic labour rights and are to be protected from abuse.⁶³ The basic rights are reasonable work conditions,⁶⁴ precise information regarding “terms and conditions of

⁵⁵ RC, Article 33(1).

⁵⁶ Wallace, Rebecca M.M. (2014), “The principle of non-refoulement in international refugee law” in Vincent Chetail & Celine. Bauloz, (eds.), *Research Handbook on International Law and Migration*, Cheltenham: Edward Elgar Publishing.

⁵⁷ *Convention concerning Migration for Employment (Revised 1949) (No. 97)*, (1949).

⁵⁸ *Ibid.*, at Article 1, Annex 1 and II.

⁵⁹ *Ibid.*, at Article 6.

⁶⁰ Convention 143, Article 5.

⁶¹ Convention 143, Article 1.

⁶² *Convention concerning Decent Work for Domestic Workers (No. 189)*, (2011), Geneva, 100th ILC session.

⁶³ *Ibid.*, at Articles 2(1), 5, 8(3),15 and 17.

⁶⁴ *Ibid.*, at Article 6.

employment”⁶⁵ and regard towards the “fundamental principles and rights at work” like that of “freedom of association” and “right to collective bargaining”.⁶⁶

Apart from the above three ILO conventions, we also have a United Nations (UN) multilateral treaty governing the protection of migrant workers and families. *The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 1990⁶⁷ (ICRMW), entered into force on 1st July, 2003 after the threshold of 20 ratifying States was reached. The principal goal of the ICRMW is to advance and promote the human rights of migrants. However, the ICRMW has not generated any new migrant rights. Its main intent has been to promote “equality of treatment” between migrants and nationals and guaranteeing conducive labour conditions.

Regarding issues of smuggling of migrants and trafficking of human beings, two protocols supplement the *United Nations Convention against Transnational Organized Crime*.⁶⁸ The first protocol is *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 2000⁶⁹ (Protocol against Trafficking) which entered into force in the year 2003 and as of the year 2020 it has been ratified by a total of 178 Member States of the UN. The States which have ratified the Protocol against Trafficking have a duty to furnish aid and provide protection to “victims of trafficking in persons”. Under the Protocol against Trafficking, States have the obligation of carrying out measures to help bestow upon the “victims of trafficking in persons” with “medical, psychological and material assistance”⁷⁰; “employment, educational, and training opportunities”⁷¹; “Appropriate housing”⁷²; and “Counselling and information, in particular as regards their legal rights”⁷³.

⁶⁵ Ibid., at Article 7.

⁶⁶ Ibid., at Article 3.

⁶⁷ *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, (1990), 2220 UNTS 3.

⁶⁸ *United Nations Convention against Transnational Organized Crime*, (2000), 225 UNTS 209.

⁶⁹ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, (2000), 2237 UNTS 319.

⁷⁰ Ibid., at Article 6 (3) (c).

⁷¹ Ibid., at Article 6 (3) (d).

⁷² Ibid., at Article 6 (3) (a).

⁷³ Ibid., at Article 6 (3) (b).

The second protocol is the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, 2000⁷⁴ (Protocol against Smuggling of Migrants) which as of the year 2020 has been ratified by a total of 150 Member States of the UN. Article 3(a) of this Protocol defines “smuggling of migrants” to be:

“. . .the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;”

Migrant smuggling fundamentally differs from the case of “trafficking in persons” as all cases of smuggling may not involve coercion or exploitation. Also, by definition migrant smuggling essentially necessitates cross border movement.

Human Rights Instruments

As a consequence of having sovereignty over their territory States’ enjoy extensive command to monitor the flow of foreigners within and over their borders. However, this power of a State has restrictions and is bound by certain rights which are accorded to foreign nationals under international law. The growth and evolution of international human rights law has been instrumental in the creation of limitations and impediments on such State authority. It also sees to it that migrants are protected and their rights upheld within a States’ border.⁷⁵ Most legal instruments pertaining to human rights make no mention of migrants in any straight-forward manner, but they may be considered to have done it in an implicit way.

For instance, the *Universal Declaration of Human Rights*⁷⁶ (UDHR) in Article 2 puts forth that:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

Though the above provision does not mention migrants in an express manner it may be inferred to do so.⁷⁷

⁷⁴ *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime*, (2000), 2241 UNTS 507.

⁷⁵ Opeskin (2009), n. 47.

⁷⁶ *Universal Declaration of Human Rights*, (1948), UNGA Resolution, 217 A (III).

⁷⁷ Grant, Stephanie (2011), “The Recognition of Migrants’ Rights Within the UN Human Rights system: The First 60 years”, in Marie-Benedicte Dembour and Tobias Kelly (eds.), *Are Human Rights*

The principal fundamental rights of every person have been set forth in the *International Covenant on Civil and Political Rights*⁷⁸ (ICCPR). These include the “right to life”⁷⁹; “liberty and security”⁸⁰; right not to be “subjected to arbitrary arrest or detention”⁸¹ and not “be held in slavery” or “servitude”⁸² and not “be subjected to torture or to cruel, inhuman or degrading treatment or punishment”⁸³. Such basic rights are of profound importance to the case of migrant rights.

Relevant rights that have a bearing on migrants can also be found in the *International Covenant on Economic, Social and Cultural Rights*⁸⁴ (ICESCR), *International Convention on the Elimination of All Forms of Racial Discrimination*⁸⁵ (ICERD) as well as *Convention on the Elimination of All Forms of Discrimination Against Women*⁸⁶ (CEDAW).

*Convention on the Rights of the Child*⁸⁷ (CRC) also sets forth that the rights enshrined in the CRC is applicable to all children “without discrimination of any kind, irrespective of the child’s” race, religion or abilities.⁸⁸ Article 11 of the CRC also proscribes the trafficking of children under 18 years old. These articles become useful in the protection of migrant children.

Further, the UN General Assembly (UNGA) “*Declaration on the Human Rights of Individuals Who are not Nationals of the Country in Which They Live*”⁸⁹, 1985 specifically accords to “aliens” who have been defined to be “any individual who is not a national of the State in which he or she is present”⁹⁰, certain basic human rights. These rights include “the right to life and security of person”; “rights to freedom of expression” and “assembly”; “right to be equal before the courts”; freedom from

for Migrants? Critical Reflections on the Status of Irregular Migrants in Europe and the United States, USA: Routledge.

⁷⁸ *International Covenant on Civil and Political Rights*, (1966), 999 UNTS 171.

⁷⁹ *Ibid.*, at Article 6.

⁸⁰ *Ibid.*, at Article 9.

⁸¹ *Ibid.*, at Article 9.

⁸² *Ibid.*, at Article 8.

⁸³ *Ibid.*, at Article 7.

⁸⁴ *International Covenant on Economic, Social and Cultural Rights*, (1966), 993 UNTS 3.

⁸⁵ *International Convention on the Elimination of All Forms of Racial Discrimination*, (1965), 660 UNTS 195.

⁸⁶ *Convention on the Elimination of All Forms of Discrimination Against Women*, (1979), 1249 UNTS 13.

⁸⁷ *Convention on the Rights of the Child*, (1989), 1577 UNTS 3.

⁸⁸ *Ibid.*, at Article 2.

⁸⁹ *Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live*, (1985), UNGA Resolution, A/RES/40/144.

⁹⁰ *Ibid.*, at Article 1.

“torture”, “cruel, inhuman or degrading treatment” and punishment.⁹¹ The aforementioned rights have also found place in the “*International Covenant on Civil and Political Rights General Comment No. 15: The Position of Aliens Under the Covenant*”⁹² (CCPR General Comment No. 15).

(ii) ***Institutional Mechanism Governing Cross-Border Migration***

The world has been a witness to the proliferation of significant numbers of International Organisations (IO) following World War II.⁹³ Migration, similar to the various other fields of international law, has equally come within the purview of many such institutions. *The Office of the United Nations High Commissioner for Refugees* (UNHCR), IOM⁹⁴ and ILO are amongst the most well-known and leading amidst such institutions.

The United Nations General Assembly through the resolution *Refugees and stateless persons*⁹⁵ on 3 December 1949 embarked upon the idea of founding a “High Commissioner’s Office for Refugees” by the 1st of January 1951. The UNGA adopted the *Statute of the Office of the United Nations High Commissioner for Refugees*⁹⁶ on the 14th of December in the year 1950 as an “Annex” to “Resolution 428 (V)”⁹⁷. UNHCR’s foremost responsibility was in the domain of addressing the refugee complication which surfaced due to the European wars. The UNHCR’s work is underpinned by the RC, which came to be finalized by the year 1951. Over the years, the mandate of the UNHCR has seen considerable extension, and today its mandate extends itself to refugees, stateless persons and internally displaced persons. It also has a mechanism arranged to tackle the infringement of rights of migrants.⁹⁸

⁹¹ Ibid., at Articles 5 and 6.

⁹² UN Human Rights Committee (1986), *CCPR General Comment No. 15: The Position of Aliens Under the Covenant*, 27th sess; available at: <https://www.refworld.org/docid/45139acfc.html> (accessed on 30 December 2020).

⁹³ Thompson, Alexander and Duncan Snidal, (2011), “International Organization: Institutions and Order in World Politics”, in Francesco Parisi (ed.) *Production of Legal Rules*, Edward Elgar Publishing, p. 311; available at: https://politicalscience.osu.edu/faculty/athompson/pdf/Thompson&Snidal_ParisiChap17.pdf (accessed on 4 September 2020).

⁹⁴ Opeskin (2009), n. 47.

⁹⁵ *Refugees and Stateless Persons*, (1949), UNGA Resolution, 319 (IV).

⁹⁶ *UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees*, (1950), UNGA Resolution, A/RES/428(V).

⁹⁷ *General Assembly Resolution 428 (V)*, (1950).

⁹⁸ UNHCR (2015), “Migrant Definition”, *Emergency Handbook*; available at: <https://emergency.unhcr.org/entry/44937/migrant-definition> (accessed on 5 February 2020).

The IOM established in 1951 is an intergovernmental organisation (IGO). The IOM supplies States with technical help for overseeing and administering immigration as well as works towards engineering programs and policies for migrants. According to the IOM's official website, its work entails "the orderly and humane management of migration" and to advance the international collaboration and partnership over the affairs and concerns pertaining to migration. IOM's work involves the furtherance of international migration law, to advance migrant policy debates, seek to preserve and uphold migrants' rights and health and also work over the aspects of gender in migration. The IOM since the year 2000 has also been producing world migration reports to help understand migration around the world. The IOM, however, has no legal protection mandate.

There is a significant distinction between UNHCR and IOM. UNHCR has a formal protection mandate and deals with forced migration through a rights-based approach; the IOM on the other hand has no formal protection mandate and deals with both voluntary and involuntary forms of migration utilizing a service-oriented approach.⁹⁹

Concerning ILO, it is "the only tripartite UN agency" which assembles the workers, employers and the governments of its 187 Member States.¹⁰⁰ The uniqueness of ILO stems from the fact that its policies and labour standards reflect the views and opinions of the workers, employers and governments. ILO gives equal weightage to their voices. ILO is primarily engaged in the setting up of labour standards and developing policies which involves fostering the ideals of "decent work for all" women and men. For migrants, the ILO guidelines and criteria for migration furnishes to both origin and destination countries with the necessary implements for overseeing and dealing with movement of migrants whilst securing sufficient safeguards for this particularly at-risk class of workers. The ILO also has international legal instruments which sets forth rights for all working persons that encompass even migrant workers.

C. Environment as a Migration Factor: Impact of Climate Change

The environmental factors have always played a role in human mobility, be it to flee sudden natural calamity or for better opportunities when faced with degrading

⁹⁹ Opeskin (2009), n. 47.

¹⁰⁰ ILO, *About the ILO*; available at: <https://www.ilo.org/global/about-the-ilo/lang--en/index.htm> (accessed on 5 February 2020).

environmental conditions.¹⁰¹ Literature focusing upon the migration-environment matrix in migration studies is, however limited.

It is relatively recent when greater notice has been accorded towards the question of human migration within the backdrop of environmental changes in view of the severe repercussions resulting due to climatic changes and global warming.¹⁰²

In the upcoming decade, climate change has the capability to heighten and deepen the influence of political, social and economic push factors. Nations in the Arabian Peninsula, many parts of the Levant, Central and Southwest Asia, North Africa and the Horn of Africa are already experiencing a water shortage. Specifically, the countries of Yemen, Sudan, Somalia and Syria are some of the most critically affected. The prognosis for the atoll nations of the Indian and South Pacific Oceans is amongst the most dismal for climate-induced displacement.

The large amounts of migration presently taking place from the regions of the Middle East and Africa to Europe is likely to carry on unabated; the only difference being that the reasons for such migrations will be less probable due the factors of political and social unrest and more because of the effects of climate change and economic disenfranchisement.¹⁰³ Also, “by 2025, 1.8 billion people will experience absolute water scarcity, and two-thirds of the world will be living under water-stressed conditions”.¹⁰⁴

The preeminent and best-known literature on environmentally induced migration has been authored by Norman Myers.¹⁰⁵ Myers was for long a very forceful advocate of environmental factors being a pivotal factor influencing and contributing towards migration. His argument was that the root factors of environmental degradation

¹⁰¹ Chazalnoel, Mariam Traore and Daria Mokhnacheva (2014), “Environmental Migration: Human Rights and Legal Issues”, *Insights on Law & Society*, 14(3):26-28; available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/insilaso14&div=30&id=&page=> (accessed on 9 October 2018).

¹⁰² Stern, Nicholas (2006), *The Stern Review on the Economics of Climate Change*, UK: Cambridge University Press; Chazalnoel, (2014), n. 101.

¹⁰³ Rogers, Paul (2017), “Climate Change, Migration and Security”, *Briefings, Migration and Sustainable Security*, Oxford Research Group; available at: <https://www.oxfordresearchgroup.org.uk/climate-change-migration-and-security> (accessed on 9 September 2020).

¹⁰⁴ Ibid.

¹⁰⁵ Myers, Norman (1997), “Environmental Refugees”, *Population and Environment*, 19(2):167-182; available at: <https://www.jstor.org/stable/27503569> (accessed on 28 October 2020); Myers, Norman (2002), “Environmental Refugees: A Growing Phenomenon of the 21st Century”, *Philosophical Transactions of the Royal Society*, 357(1420):609-613; available at: <https://www.jstor.org/stable/3066769> (accessed on 28 October 2020).

frequently drive people who migrate due to poverty.¹⁰⁶ Myers contends that “environmental refugees” promises to figure as one of the leading human crises of our times.¹⁰⁷

Nevertheless, there exist notable lacuna in international and national law about environmentally induced migration. For instance, the RC has no satisfactory system to manage and help persons who have been displaced as a result of incremental environmental changes or natural disasters.¹⁰⁸

Different labels are used to describe the people displaced and migrating due to environmental change like ‘environment migrants’, ‘climate refugees’ and ‘environmental refugees’ and the phenomenon itself been described as ‘climate migration’, ‘environmental migration’ or even “climigration”.¹⁰⁹

The term ‘environmental refugees’, is one term which has gained widespread popular appeal as such people are seen to have had to leave their native lands and look for safe harbour someplace else, having negligible expectations of going back home. However, this term has also been heavily criticised especially by refugee experts. For instance, Castles argues that “the term ‘environmental refugee’ is simplistic, one-sided and misleading. It implies a monocausality which very rarely exists in practice.”¹¹⁰

Today, there exist many contentions as to the terminology appropriate for people displaced by environmental and climatic factors. The literature points to a divide between scholars advocating for the term environmental refugees and those opposed or sceptical of it.

The importance of environment and climate-related human migration has nonetheless steadily begun to gain traction in multinational forums. The intelligence gathered and analysed by the *Intergovernmental Panel on Climate Change* (IPCC) seems to demonstrate a broad scientific consensus which supposes that world-wide increase in the temperatures of the atmosphere in the upcoming decades will in all probability

¹⁰⁶ Myers (1993), n. 13.

¹⁰⁷ Myers (1997), n. 105.

¹⁰⁸ Richardson, Benjamin J. (2010), “Climate Change and Displacement: Multidisciplinary Perspectives, 2010, edited by J. McAdam.”, *Transnational Legal Theory* 1(4): 645-650.

¹⁰⁹ White, Gregory (2012) “The “Securitization” of Climate-Induced Migration” in Kavita R. Khroy (ed.) *Global Migration Challenges in the Twenty-First Century*, USA: Palgrave Macmillan.

¹¹⁰ Castles, S. (2002), “Environmental change and forced migration: making sense of the debate”, *New Issues in Refugee Research (Working Paper No. 70)*, Geneva: UNHCR, p. 8.

affect rainfall patterns, sea heights, and result in dangerous weather occurrences, etc.¹¹¹ The “Fourth Assessment Report-IPCC” mentioned the “potential for population migration” owing to an increase in the number of regions impacted by droughts and an escalation in the severity of tropical cyclonic activities.¹¹²

The climate negotiations under the *United Nations Framework Convention on Climate Change*¹¹³ (UNFCCC) have been instrumental in bringing to light the human consequences associated with climate change to an international policy arena. The aspect of climate-induced displacement has also been discussed explicitly at the UNFCCC's Conference of Parties (COP) coming into substantial focus during the COPs at Cancun¹¹⁴ and Doha.¹¹⁵ Based upon the foundations of the previous COPs, in the year 2013, the issue of climate-induced displacement was more concretely addressed during COP19, held in Warsaw. At this COP the States concurred to undertake discussions over matters facing individuals who are vulnerable to climate-induced displacement as a segment of their deliberations on “loss and damage” through the adoption of the “Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts” (WIM).¹¹⁶ The *Paris Agreement* placed WIM directly under the COP and to serve as a forum for conference for parties of the *Paris Agreement*.¹¹⁷

¹¹¹ Report to the European Council on Climate Change and International Security (2008), *Population and Development Review*, 34(3):587-593; available at: <http://www.jstor.org/stable/25434726> (accessed on 15 December 2017).

¹¹² Intergovernmental Panel on Climate Change (2007), “Summary for Policymakers” in Parry, M.L. et al. (eds.), *Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge, UK: Cambridge University Press; available at: <https://www.ipcc.ch/site/assets/uploads/2018/02/ar4-wg2-spm-1.pdf> (accessed on 12 December 2017).

¹¹³ *United Nations Framework Convention on Climate Change: resolution / adopted by the General Assembly*, (1992), 1771 UNTS 107.

¹¹⁴ *Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010 Addendum Part Two: Action taken by the Conference of the Parties at its sixteenth session*, (2010), FCCC/CP/2010/7/Add.1, paragraph 14(f); available at: <https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf> (accessed on 15 August 2019).

¹¹⁵ *Report of the Conference of the Parties on its eighteenth session, held in Doha from 26 November to 8 December 2012 Addendum Part Two: Action taken by the Conference of the Parties at its eighteenth session* (2012), FCCC/CP/2012/8/Add.1, Decision 3/CP.18, paragraph 7(a) (vi); available at: <https://unfccc.int/resource/docs/2012/cop18/eng/08a01.pdf> (accessed 12 June 2020).

¹¹⁶ Fornale, Elise and Curtis Doebbler (2017), “UNHCR and protection and assistance for the victims of climate change”, *The Geographical Journal*, 183(4):329–335.

¹¹⁷ Paris Agreement, Article 8.

After COP19, there was a significant interest that the *Paris Agreement* would consider and make substantial provisions to handle this particular subject.¹¹⁸ However, the *Paris Agreement* briefly mentioned migrants only in its preamble.¹¹⁹

Another significant and recent event was the unanimous adoption of the *New York Declaration for Refugees and Migrants*,¹²⁰ 2016 (New York Declaration) by the UNGA. The New York Declaration addresses the concerns faced by refugees and migrants. It additionally addresses persons “forced to flee or are displaced across borders in the context of sudden- or slow-onset disasters, or in the context of the effects climate change”.¹²¹

Another important event of an international character has been the “*Nansen Conference on Climate Change and Displacement in the 21st Century*” which was held in Oslo by the government of Norway in the month of June in the year 2011 which led to ten “*Nansen Principles*”.¹²² These principles are a policy guideline that involve and look into displacement resulting from disasters through the determination of important players and pertinent activity fields. These “*Nansen Principles*” in 2012 metamorphosed into the “Nansen Initiative on disaster-induced cross-border displacement”, that led to the generation of an “open and inclusive” intergovernmental forum.¹²³

There are, however, considerable gaps in this field, and the literature does not deal comprehensively with the challenges revolving around environmentally induced migration, especially on the points of legal and policy implications of such a

¹¹⁸ Bettini, Giovanni (2015) “What Can and Should We Expect from COP21 on Climate Migration?”, *Connecting the Spots Notes on Migration and Environment from A Geographical Perspective*; available at: <http://www.transre.org/en/blog/what-can-and-should-we-expect-cop21-climate-migration/> (accessed on 10 July 2018).

¹¹⁹ Paris Agreement, Preamble.

¹²⁰ *New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly*, (2016), UNGA Resolution, A/RES/71/1.

¹²¹ UNHCR, *The New York Declaration for Refugees and Migrants Answers to Frequently Asked Questions*, p. 3; available at: <https://www.globalcompactrefugees.org/sites/default/files/2019-12/New%20York%20Declaration-%20Frequently%20Asked%20Questions%20%282017%29.pdf> (accessed on 2 December 2019).

¹²² Norwegian Refugee Council/Internal Displacement Monitoring Centre (2011), *The Nansen Conference: Climate Change and Displacement in the 21st Century*, Norwegian Refugee Council, available at: <https://www.unhcr.org/protection/environment/4ea969729/nansen-conference-climate-change-displacement-21st-century-oslo-6-7-june.html> (accessed on 12 October 2018).

¹²³ McAdam, Jane (2014), “Creating New Norms on Climate Change, Natural Disasters and Displacement: International Developments 2010–2013”, *Refuge: Canada’s Journal on Refugees*, 29(2): 11-26; Gemenne, François and Pauline Brücker (2015), “From the Guiding Principles on Internal Displacement to the Nansen Initiative: What the Governance of Environmental Migration Can Learn from the Governance of Internal Displacement”, *International Journal of Refugee Law*, 27(2):245–263.

phenomenon. Most literature in the area of migration research is concentrated on refugee law, human trafficking and undocumented migrants. Besides, the ambiguity revolving around a term with which to denote people migrating due to environmental factors is a cause for concern.

D. Migration and Security Concerns

National security has been a particular focus in most academic and political debates concerning human migration. The increase in irregular and clandestine migrants has occasioned the most anxiety amongst States and heightened the view of migration to be a threat towards national security. The safety and security dimension have manifested itself into concerns regarding changing demographics, terror activities as well as economic concerns.

The development in the argument over the rights of migrants has today also given a new dimension to the question of security that is, whose security is of concern, is it of the State or of the migrants. As such, there has developed an understanding of human security set against the concept of national security.¹²⁴

Traditionally apprehensions over security in the area of migration have been envisaged in terms of military and geopolitical concerns alone.¹²⁵ Concerning the increasing anxieties attributed to climate change, climate security has also been invoked for more robust border controls. Policymakers and activists have proposed an expansion of security concerns to include environmental concerns as well.¹²⁶

Anxieties over environment related issues are at present being encountered at a global level, and this invocation of these problems as security concerns has also spearheaded ethical concerns over the penalisation of people prompted to cross borders due to

¹²⁴ Kerwin, Jonathan (2013), *Globalisation and National Security*. New York: Routledge.

¹²⁵ Lahav, Gallya (2003), "Migration and Security: The Role of Non-State Actors and Civil Liberties in Liberal Democracies", *HUWU Paper*; available at: https://www.un.org/en/development/desa/population/events/pdf/2/ITT_COOR2_CH16_Lahav.pdf (accessed on 1 September 2020); Tallmeister, Julia (2013), "Is Immigration a Threat to Security?", *E-International Relations*; available at: <https://www.e-ir.info/2013/08/24/is-immigration-a-threat-to-security/> (accessed on 4 July 2020).

¹²⁶ Swain, n. 34; Tallmeister, n. 125.

climate-induced migration.¹²⁷ Further arguments have been made that a lack of a coordinated response to climate change migrants is a threat to global security.¹²⁸

E. Legal Framework on Migration in India

In most migration dialogues, it is perceived that countries of the Global South like India are simply source countries of migration.¹²⁹ Nevertheless, the fact is that these countries are also destination countries and receive large numbers of migrant populations, especially from neighbouring countries.¹³⁰

India has seen and continues to see a large-scale migrant population from neighbouring countries. India has experienced both manifest and clandestine forms of Migration which commenced mainly during and after India's partition into two States in the year 1947. Thereafter the second migration of any consequence happened in the year 1971 in the course of East-Pakistan's (Bangladesh) war of independence.¹³¹ The primary domestic legal regime which has an impact on migration and migrants in India is the *Constitution of India*,¹³² *The Foreigners Act*¹³³ and *The Citizenship Act*¹³⁴.

For environmentally induced migration, it is acknowledged that climate change shall unfavourably impact India. However, there exist hardly any literature or study on the effects that climate change will have on migration in India.¹³⁵ Climate change may have two effects for India: one being internal migration and the other being the inflow of migrants from neighbouring countries like Bangladesh due to sea-level rise.¹³⁶

¹²⁷ White (2012), n. 109.

¹²⁸ Toscano, Julia (2015), "Climate Change Displacement and Forced Migration: An International Crisis", *Arizona Journal of Environmental Law and Policy*, 6: 457-490; available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/arijel6&div=5&id=&page=> (accessed on 15 December 2017).

¹²⁹ Awad, Ibrahim and Usha Natarajan (2018), "Migration Myths and the Global South", *The Cairo Review of Global Affairs*; available at: <https://www.thecairoreview.com/essays/migration-myths-and-the-global-south/> (accessed on 18 August 2020).

¹³⁰ Khadria, Binod et al. (eds) (2009), *India Migration Report 2009: Past, Present and the Future Outlook*, New Delhi: International Migration and Diaspora Studies Project, Jawaharlal Nehru University.

¹³¹ Datta, Pranati (2004) "Push-Pull Factors of Undocumented Migration from Bangladesh to West Bengal: A Perception Study", *The Qualitative Report*, 9 (2):335-358.

¹³² *Constitution of India*, 1950.

¹³³ *The Foreigners Act*, 1946.

¹³⁴ *The Citizenship Act*, 1955.

¹³⁵ Panda, Architesh (2010), "Climate Refugees: Implications for India", *Economic and Political Weekly*, 45(20): 76-79.

¹³⁶ *Ibid*; Rajan, S. Chella (2008): "Blue Alert. Climate Migrants in South Asia: Estimates and Solutions", *A Report by Greenpeace India Society*; available at: <https://www.tellus.org/pub/rajan-blue-alert-report.pdf> (accessed on 10 October 2018).

V. DEFINITION, RATIONALE AND SCOPE OF THE STUDY

The objective of this study has been primarily to deal with understanding the legal and institutional framework concerning the phenomenon of environmentally induced migration and the plight of the migrant people under International Law. The subject of the environment has been marginal within the broader discourse of migration which is primarily considered to be driven by socio-political and economic factors. The work has analysed the current international legal framework on migration generally and environmentally induced migration in particular. It comprises both relevant legal instruments (hard as well as soft law) and the institutional mechanisms.

The scope of the study entails the normative understanding of international migration and migrant rights under international law. Concepts like freedom of movement, sovereignty and their connection with human migration and rights of migrants have been discussed. The study also tries to understand the factors and processes that trigger migration and environmentally induced migration in particular. It looks into the questions of terminology, types of environmentally induced migration and the interrelations between human migration and climate change. It covers the legal regime and policy tools which exist to address environmentally induced migration. For this purpose, it has looked into relevant aspects of International Refugee Law, International Human Rights Law and International Environmental Law as well as the role of institutional mechanisms like the IOM, UNHCR and ILO. The study also encompasses India's legal and policy framework towards migration and environmentally induced migration.

The study, however, is limited in two important aspects. Firstly, it deals primarily on cross-border human migration under international law and not internal migration which is governed under a different legal regime. Further migrations for purposes of tourism, conferences, academics and the like are excluded even if they are of a cross-border nature. Secondly, concerning environmentally induced migration, the thesis looks into the environment-migration relationship from the perspective of the environment's impact on migration.

This study does not cover aspects of migration's impact on the environment. Also, the work focuses on the natural environmental drivers of migration and the impacts of

climate change on migration. It does not deal with aspects of environmentally induced migration due to development projects like building of dams or environmental disasters caused due to industrial accidents like the Bhopal Gas Tragedy or Chernobyl.

VI. RESEARCH QUESTIONS

1. What is the historical trajectory of international migration under international law?
2. Do contemporary international migration law and human rights law address the environmentally induced migration and migrants?
3. Is the international environmental law framework relevant for environmentally induced migration and migrants?
4. What role do international organisations and other institutional mechanisms play concerning migration generally and environmentally induced migration/migrants in particular?
5. What is India's legal and policy framework for migration, migrant rights and environmentally induced migrants?

VII. HYPOTHESES

1. The entrenchment of the concept of Westphalian nation-state system and sovereignty led to the gradual decline in freedom of movement and rise in immigration controls.
2. The current international legal framework is inadequate in dealing with environmentally induced migration and migrants.

VIII. RESEARCH METHODOLOGY

This study is primarily a doctrinal study and as such comprises theoretical and legal research. It addresses historical, analytical and deductive approaches. It is an international law research work duly carried out with the aid of the international law sources as set forth in the *Statute of the International Court of Justice*¹³⁷ (ICJ Statute) under Article 38. For its primary sources, the work has mainly relied upon international legal instruments and documents of the UN and regional and domestic legal instruments. The work has also availed instruments from other international

¹³⁷ *Statute of the International Court of Justice*, (1948), 33 UNTS 993, Article 38.

organisations. Books, journals, commentaries and other online sources have been relied upon as secondary source material. Insights for this work were also gained through participation and contribution in conferences and informal contact with legal and subject experts of this field.

IX. CHAPTERIZATION

Chapter I: Introduction

Chapter II. Human Migration and International Law: A Normative Understanding

This chapter discusses the phenomenon of migration. It firstly looks at migration from the standpoint of history. It deals with the conceptual contours of the phenomenon through a discussion of the factors of migration, its classification and principal migration theories. The chapter then looks into the situation of migration in the context of international law history. The chapter has taken into consideration both historical and social sciences perspectives; however, the predominant focus has been to see migration from the lens of international law.

Chapter III. International Legal Framework on Cross-Border Migration: A Human Rights Perspective

This chapter offers a comprehensive knowledge of the legal instruments on migration under International Law. Efforts have been made to chart out the legal regime on migration and to peruse it from a human rights perspective. The chapter mainly examines two legal regimes that of international migration law which includes the legal regime on refugees and international human rights law.

Chapter IV. Environmentally Induced Migration: International Legal Implications

This chapter discusses the normative questions surrounding the issue of environmentally induced migration. It focuses on environmental and climate change impacts on migration. It makes an examination of the relevance of international environmental law on the environment-migration dynamic. It seeks to articulate the legal issues surrounding environmentally induced migration and migrants.

Chapter V. Environmentally Induced Migration and Role of International Organisation

This chapter examines the role of international organisations and institutions which deal with migration and migrants. In particular special emphasis has been given to the IOM and the UNHCR. Other relevant organisations and institutional mechanisms like the OHCHR and the ILO have also been discussed.

Chapter VI. Environmentally Induced Migration: Indian Law and Policy

This chapter has examined the Indian national legal framework on migration. It analyses whether the legal and policy debate on migration focusses upon the environment-migration relationship.

Chapter VII. Conclusions

This final chapter provides an overall summary and contains the findings and recommendations of the work.

CHAPTER II

HUMAN MIGRATION AND INTERNATIONAL LAW: A NORMATIVE UNDERSTANDING

I. INTRODUCTION

The issue of migration evokes a multitude of responses in different people. It must be noted that human migration has been taking place for ages¹ primarily as a mode of acquiring better life opportunities. Over the years, this phenomenon has generated a varied and wide-ranging debate in various fields extending from sociology, economics to politics. The emergence of nation-states and the drawing of boundaries may be seen as catapulting the phenomenon of migration into the legal realm. The legal implications of this phenomenon are evident in the case of cross-border human movement, which gives migration an international character and relevance.

This chapter discusses the phenomenon of human migration. Firstly, it provides an overview of migration from a historical lens. Secondly, it proceeds to discuss the classification of migration and examines the contemporary theories on international migration. The chapter then traces migration history in international law. Whilst doing so it attempts to address the normative questions of human mobility and the connection between state sovereignty and migration.

II. THE PHENOMENA OF MIGRATION: A BRIEF HISTORY

Human migration has erroneously been assumed to be a recent phenomenon. The reality, however, is that the movement of people has taken place throughout history. In the words of Ellsworth Huntington, “History in its broadest aspect is a record of man’s migrations from one environment to another.”² If we are to look at the history of man, it will be a history of human mobility. This movement of people has impacted upon the culture, politics and lifestyle of communities around the world.

¹ *New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly, (2016), UNGA Resolution, A/RES/71/1, para 1.*

² Huntington, Ellsworth (1919), *The Red Man's Continent: A Chronicle of Aboriginal America*, Hard Press, reprinted 2006, p. 5.

Societies did not develop in a uniform series from one to the other. Humans were present long before there was history. Today, pre-history³ alternatively, proto-history provides the earliest antecedents of human history⁴ and is deciphered mainly from archaeological data. In this period, migration was motivated primarily due to environment-related factors like droughts, a search for freshwater sources or better hunting grounds. Archaeological data evidence has recently led to a resurgence of interest in the environment as a factor in the making of history.⁵

With the advent of a sedentary lifestyle, also, the environment continued to play an essential factor in human mobility. Climatic changes and divergence of river courses in no small part were responsible for the abandonment of settlements and the migration of populations.⁶ As civilisations advanced and became established, migration drivers began to include economic and political concerns, i.e., better jobs opportunities, to move away from conflict zones, war and religious strife.

In East Africa about 2.5 million years ago, humans first evolved from an earlier genus of apes known as *Australopithecus*. The earliest human migration was set into motion when *Homo erectus* began to move out of Africa⁷ into and across Eurasia about 2 million years ago.⁸ Thus, our ancestors had already been migrating before they were even fully human. It is through migration that humans were able to occupy vast territories on earth which also led to the present-day configuration of political and cultural maps.⁹

It is generally agreed and backed by genetic and archaeological evidence that modern human beings migrated and spread out across the globe. They migrated out from Africa into Asia and Europe penultimately reaching the Americas and Australia.¹⁰ It is considered that the earliest modern humans arrived in India around 50,000 years ago

³ Sharma, R.S. (2005), *India's Ancient Past*, New Delhi: Oxford University Press, p. 14.

⁴ Thapar, Romila (2002), *The Penguin History of Early India: From the Origins to AD 1300*, New Delhi: Penguin Books, p. 70.

⁵ *Ibid.*, at p. xxi.

⁶ Sharma, n. 3, p. 41.

⁷ Thapar, n. 4, p.70; Sharma, n. 3, p. 51.

⁸ Harari, Yuval Noah (2011), *Sapiens: A Brief History of Humankind*, London: Vintage Books, p. 6.

⁹ McNeill, William H. (1984), "Human Migration in Historical Perspective", *Population and Development Review*, 10(1):1-18.

¹⁰ Tumble, Chinmay (2018), *India Moving: A History of Migration*, India: Penguin Random House India, p. 9; Livi-Bacci, Massimo (2012), *A Short History of Migration*, Translated by Carl Ipsen, Cambridge: Polity Press, p. 2; Harari, n. 8, p. 87.

from Africa due to early coastal migration.¹¹ These early migratory periods tend to be less documented, mainly due to a dearth of evidence. Most indicators about such migrations are from the written records of other civilisations, archaeological¹², linguistic and cultural evidence.¹³ The motivations for these early movements were mainly demographic developments, climate change and better living environment.¹⁴

The pre-historic societies of hunter-gathers migrated as part and parcel of a natural way of life.¹⁵ However, with the advancement of civilisations and a move towards an agrarian way of life, the human population started to settle down in particular places, and the concept of 'home' was established.¹⁶ The move from hunter-gather society to an agrarian life pattern has been referred to as *Neolithic Revolution* by some and *Agricultural Revolution* by others.¹⁷

This transition to an agrarian pattern of life started around 9500-8500 BC.¹⁸ The Neolithic pattern of life marked a departure from the hunter-gatherer way of life and the beginnings of agriculture and domestication of animals; a crucial development heralding the start of sedentary patterns of life.¹⁹ Most population-movements of early human is associated with this revolution. The Indo-Aryan migration from Central Asia, for instance, is attributed to commence after 8000 BC.²⁰

With the advent of settled society, a significant worth was attached to this concept of 'home'. This concept was so profound that even today, an uprooted individual with no home is observed with suspicion and mistrust. Sedentary societies have viewed with suspicion nomadic and migratory tribes. Such mistrust is evidenced by how Gypsies or the Roma people have been seen and consequently discriminated. This wariness also led to distinguishing citizens from others. Early Greeks had made sharp

¹¹ Sharma, n. 3, p. 52.

¹² Sharma, n. 3, p 14.

¹³ Thapar, n. 4, Chapter 3.

¹⁴ Mackova, Lucie and Kysucan, Lubor (2016), "The History and Politics of Human Mobility", *Development, Environment and Foresight*, 2(1):23-34, p. 25.

¹⁵ Ibid., at p 24.

¹⁶ Ibid., at p 24.

¹⁷ Harari, n. 8, pp. 87-109.

¹⁸ Harari, n. 8, p. 87.

¹⁹ Thapar, n. 4, p. 74; Roberts, J.M. (1981), *The Pelican History of the World*, Great Britain: Penguin Books, pp. 48-49; Wells, H.G. (1965), *A short History of the World*, Great Britain: Penguin Books, p. 42.

²⁰ Sharma, n. 3, p. 103.

distinctions between ‘citizens’ and ‘barbarians’²¹. In ancient times, this feeling was keener as nomadic groups of people also posed a healthy military threat to settled societies.²² There have been many instances of military aggression against civilisations that also led to population movement.

Some significant examples of ancient migratory movements are the Bronze Age ‘Phoenician’ colonisation of the Mediterranean²³, the ‘Hunnic’ migration in which the invasions by the Huns encouraged what is known as the “Great Migration”²⁴, the invasion of the ‘Dorians’ which destroyed the advanced civilisation of the ‘Mycenaen’ Greece²⁵. There is likewise the biblical legend of the exodus of Jews from Egypt to the “Promised Land” in the Book of Exodus.²⁶

The early modern history of migration is marked mainly by European colonialism. One example of this is the European colonisation of the Americas.²⁷ The period between 1846-1940 saw over 50 million people leave Europe for the Americas.²⁸ Along with colonisation, there began the slave trade, and indentured labour that also led to the movement, in this case, forced movement of people. Many African men, women and children were forcefully displaced due to transatlantic slavery.²⁹ The historian Robin Cohen has described distinct periods of migration in modern history

²¹ Nafziger, James A.R. (1983), “The General Admission of Aliens under International Law”, *American Journal of International Law*, 77 (4): 804-847, p. 809.

²² Mackova, n. 14, p. 24.

²³ Cartwright, Mark (2016), “Phoenician Colonization”, *Ancient History Encyclopedia*; available at: https://www.ancient.eu/Phoenician_Colonization/ (accessed on 22 November 2020).

²⁴ Mark, Joshua J. (2018), “Huns”, *Ancient History Encyclopedia*; available at: <https://www.ancient.eu/Huns/> (accessed on 22 November 2020); Mayall, Peter et al. (2017), “Migrating Huns and modified heads: Eigenshape analysis comparing intentionally modified crania from Hungary and Georgia in the Migration Period of Europe”, *PLOS ONE*, 12(2): e0171064; available at: <https://doi.org/10.1371/journal.pone.0171064> (accessed on 22 November 2020).

²⁵ Daniel, John Franklin et al. (1948), “The Dorian Invasion: The Setting.” *American Journal of Archaeology*, 52(1): 107–110; available at: <https://www.jstor.org/stable/500556> (accessed on 21 Nov. 2020).

²⁶ Sandmel, Samuel et al. (eds.) (1976), *The New English Bible with The Apocrypha Oxford Study Edition*, New York: Oxford University Press, pp. 55-99.

²⁷ Mark, Joshua J. (2020), “European Colonization of the Americas”, *Ancient History Encyclopedia*; available at: https://www.ancient.eu/European_Colonization_of_the_Americas/ (accessed on 22 November 2020).

²⁸ Worrall, Simon (2016), “During Last Mass Migration, Europeans Were the Immigrants”, *National Geographic*; available at: <https://www.nationalgeographic.com/news/2016/04/160424-refugee-migration-immigration-history-eastern-europe-jews-ngbooktalk/#:~:text=During%20Last%20Mass%20Migration%2C%20Europeans%20Were%20the%20Immigrants&text=An%20immigrant%20family%20on%20Ellis,migrants%20returned%20to%20their%20homelands> (accessed on 22 November 2020).

²⁹ Garland, Robert et al. (2020), “How has Migration Changed the World?” in Matt Elton (ed.) *BBC World Histories*, Issue 23, UK: Immediate Media Company Bristol Limited, p. 77.

that started with the opening up of global communicating links and long-distance trade. He recognises the following periods³⁰:

1. the voluntary migrations made by European settlers,
2. the forced migration of people from China and India through slavery and indentureship,
3. the migration to the New World with the industrialisation of the USA and
4. the migration induced due to World War II.

Slavery and indenture ship were two of the predominant forms of migration in 'modern' history.³¹ Other distinct migratory movements in modern history include examples like migrations of the Roma people since the 1400s, the Jewish migration during the 20th century into Palestine, migration out of Vietnam by the "boat people" at the conclusion of the 1975 Vietnam War and the Afghan migration as a result of the 1979 Soviet invasion.

We can thus see that there has been migration from the very beginning. Most of these large-scale migrations were motivated by demographic developments and environmental changes. These large-scale migrations have substantially determined the shape of our contemporary world. The freedom of movement has in large parts been responsible for this and may be considered as one of the important facets of society throughout history. However, with the commencement of the 20th century, it is noticeable that while there has been a gradual rise and recognition of many freedoms, the freedom of movement has shrunk.

III. CLASSIFICATION OF MIGRATION

Various forms of migration may be classified depending on the reasons, factors and even the nature of the movement. Scholars have tried to classify migration in a variety of ways. One classification has recognised four principal types of migration; namely, labour, asylum, return and chain migration. Another standard classification of migration is to categorise it as forced³² and voluntary migration. With the

³⁰ Cohen, Robin (ed.) (1995), *The Cambridge Survey of World Migration*, Great Britain: Cambridge University Press, pp. 1-3.

³¹ *Ibid.*, at p. 2.

³² Fisher, Peter, et al. (1997), "Should I Stay or Should I Go?" in Thomas Hammer et al. (eds.), *International Migration, Immobility and Development: Multidisciplinary Perspectives*, New York: Berg Publishers, p. 50.

formalisation of borders, migration can be classified on the basis of domestic migration or international migration. Further, it may also be seen based on its causes like political migration, social migration, cultural migration and economic migration.

The classification of migration may be done in two ways: descriptive classification and interpretative classification (migration theories). This section discusses the descriptive classifications that mainly deal with understanding the objective criteria used in classifying the type of migration. The following are some of the commonly used modes of descriptive classification of migration:

A. Geographical or Distance-Based Classification

This classification is constructed upon the distance covered in terms of geography. It includes administrative or political organisation of territories. For example, a province, a state or a region. This type of classification comprises of internal migration³³ which would include migrating in a local scale and international migration which will involve the crossing of international borders from one country to another³⁴ or on a global scale from one continent to another.

B. Classification based on Duration of Migration

This type of classification considers time as a factor of classification. It is the intentional or effective duration in which an individual or group of individuals intends to or effectively stays away from their place of origin. This classification thus gives rise to the nature of migration, which basically means whether the nature of the migration is temporary or is permanent.³⁵ Temporary migration would include seasonal migration or migrating for work for a specific period or completion of a study course. Permanent migration would mean moving to another country with no intention of ever returning to the place of origin.

³³ Rees, P (2001), "Internal Migration (Rural–Urban): Industrialized Countries", *International Encyclopedia of the Social & Behavioral Sciences*, pp. 7741-7749; available at: <https://doi.org/10.1016/B0-08-043076-7/02199-9> (accessed on 22 November 2020).

³⁴ OHCHR, *Differentiation Between Migrants and Refugees*; available at: <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/MigrantsAndRefugees.pdf> (accessed on 17 February 2020).

³⁵ Chen, Joyce J. et al. (2019), "Temporary and permanent migrant selection: Theory and evidence of ability-search cost dynamics", *Review of Development Economics*; available at: <https://doi.org/10.1111/rode.12617> (accessed on 22 November 2020).

C. Causal Classification or Motive-Based Migration

This form of classification is dependent upon the factors, reasons or motivations that generate human mobility. The following categories may be identified within this classification:

- 1) *Voluntary Migration*: This includes human mobility which is free, i.e., a result of free choice of the person or persons migrating. The reasoning for such migration may depend upon economic or labour concerns, health reasons like medical treatment, for study or tourism.³⁶
- 2) *Involuntary or Forced Migration*: This is a category that includes the forced movement of people due to a variety of reasons such as environmental and political concerns like conflict, natural disasters and persecution.³⁷ This category includes Refugees, Asylum Seeker, Displaced Persons.
- 3) *Collective Behaviour*: This form of migration is movement as part of a group and might have cultural intonations. Nomadic and ethnic groups generally conform to this pattern of movement. The Roma migratory patterns may be attributable to such behaviour.

Classification based on motive is one of the most common means of classifying migratory movements. Traditionally, the voluntary and involuntary movement has been a foremost method of classification.

This traditional view of ‘voluntary’ and ‘involuntary’ migration highlights the complex challenges of migration. This complexity is furthered as sometimes there is a blurring of lines between ‘forced’ and ‘voluntary’ forms of migration. For instance, the socio-economic and political conditions may make it necessary to move even when there are no overt forms of persecution exerted. The RC³⁸ specifies five overt forms of persecution. They are namely persecution founded upon “race, religion, nationality, membership of a particular social group or political opinion”.³⁹

³⁶ Chatty, Dawn (2013), “Forced Migration”, *Wiley Online Library*; available at: <https://doi.org/10.1002/9781444351071.wbeghm236> (accessed on 22 November 2020).

³⁷ *Ibid.*

³⁸ *Convention Relating to the Status of Refugees*, (1951), 189 UNTS 137.

³⁹ *Ibid.*, at Article 1(A)(2).

D. Classification Premised upon Demography and Economics

This classification takes into account the economic and demographic conditions of the migrants. The different categories of migration under such classification include the subjects of migration, like individual migration, family migration⁴⁰, an exodus, child and young migration⁴¹, elderly migration, gender migration. The second category includes migration depending upon the types of work that migrants perform like skilled migration, unskilled migration.⁴²

E. Classifications based on Political and Legal Considerations

This classification is dependent upon the migration policy of sending and receiving States. There are many categories under this classification, depending upon the various policies of States. However, generally, some of the common categories may be identified as regular migration and irregular or unauthorised migration.⁴³

IV. THEORIES OF MIGRATION

Migration as a subject engenders a lot of debates and questions, mainly due to the intricacy of the phenomenon. One of the primary questions that arise is ‘why do people migrate?’. Over the years, various scholars and academics have attempted to answer this question resulting in several migration theories.

These theories have tried to identify the causes and effects of migration and have also tried to explain migratory flows. However, the multifaceted nature of migration has made it difficult to have one comprehensive theory on the subject irrespective of attempts to do so. Alan Simmons observes that migration theories generally deal with particular kinds of migration based upon specific historical and social set-ups leading to a disaggregated and fragmented field of migration.⁴⁴

⁴⁰ Migration Data Portal (2020), “Family Migration”, *Types of Migration*; available at: <https://migrationdataportal.org/themes/family-migration> (accessed on 22 November 2020).

⁴¹ Migration Data Portal (2020), “Child and young migrants”, *Types of Migration*; available at: <https://migrationdataportal.org/themes/child-and-young-migrants> (accessed on 22 November 2020).

⁴² Chaudhuri, Sarbajit (2004), “International Migration of Skilled and Unskilled Labour, Welfare and Skilled-Unskilled Wage Inequality: A Simple Model.” *Journal of Economic Integration*, 19(4): 726–741; available at: <https://www.jstor.org/stable/23000720> (accessed on 21 November 2020).

⁴³ *The Citizenship Act, 1955*, Section 2(1)(b).

⁴⁴ Simmons, Alan (1987), “Explaining migration: Theory at the Crossroads”, in J. Duchene (ed.) *Explanations in the Social Science: The search for causes in Demography*, Louvain-la-Neuve, Belgium: Université catholique de Louvain, Institut de Demographie, pp. 73-92.

The present theories of migration have developed mainly in isolation from one another.⁴⁵ The following section takes a look into some of the prominent international migration theories. The various theoretical models of migration have attempted to understand and explain why migration begins. However, each of the models uses different concepts and frames of references. It should be noted that many of the migration theories are primarily labour migration theories. The theories discuss the initiating causes of migration like the neo-classical theory, while others like the network theory theorise upon the self-perpetuating causes of migration. Nevertheless, the following section has also attempted discussing migration in political theory as well.

A. Ravenstein's Laws of Migration

Ravenstein's theory is considered to be one of the oldest migration theories. He was an English geographer, who used England and Wales' census data to develop his "Laws of Migration" in 1889.⁴⁶ Most migration scholarship traces its conceptual and theoretical origins to the work of Ravenstein.⁴⁷ In fact he opined that a "push-pull" process governed migration, i.e., disadvantageous circumstances of a particular place "push" people away while advantageous circumstances of another place "pull" people in.

This theory of Ravenstein's postulates that migration takes place because of better external circumstances which mainly includes lucrative economic possibilities. He concluded that:

"Bad or oppressive laws, heavy taxation, an unattractive climate, uncongenial social surroundings, and even compulsion (slave trade, transportation), all have produced and are still producing currents of migration, but *none of these currents can compare in volume with that which arises from the desire inherent in most men to "better" themselves in material respect.*"⁴⁸ (*emphasis added*)

He further forwarded the proposition that the amount of migration would fall when there is an increase in distance⁴⁹; that migration occurred in stages rather than in a

⁴⁵ Massey, Douglas S. et al. (1993), "Theories of International Migration: A Review and Appraisal", *Population and Development Review*, 19 (3): 431-466, p. 432; available at: <https://www.jstor.org/stable/2938462> (accessed on 28 March 2019).

⁴⁶ Ravenstein, E.G. (1889), "The Laws of Migration", *Journal of the Royal Statistical Society*, 52(2):241-305; available at: <https://www.jstor.org/stable/2979333> (accessed on 17 October 2019).

⁴⁷ McLeman, Robert A. (2014), *Climate and Human Migration: Past Experiences, Future Challenges*, USA: Cambridge University Press, p. 17.

⁴⁸ Ravenstein, n. 46, p. 286.

⁴⁹ Ravenstein, n. 46, pp. 286-287.

long move⁵⁰ and that a person's decision to move was dependant on differentials like that of age, gender or social class.

B. Neoclassical Theories of Migration

The neoclassical theory was for an extended period, the dominant paradigm in economics. In this theory, it is assumed that individuals are rational and make rational choices as to where they will live and work. Under this assumption, neoclassical theories have tried to explain migration both at the micro and macroeconomic perspectives.

Some of the first explanations for migration, both domestic and international, centered upon an individual's own judgement. In other words, prior to taking a decision on moving to another place and leaving one's place of residence, an individual is likely to examine both the costs and benefits of migrating.

One of the early microeconomic neoclassical theories on migration was the 1962 paper published by Larry Sjaastad.⁵¹ In this paper, it has been stated that individuals migrate when the wage is higher someplace else than their current place of residence. Sjaastad's paper has been associated with the explanatory approach to migration. His approach towards migration is that he views it as an "investment increasing the productivity of human resources, an investment which has costs and which also renders returns."⁵² One of the most exceptional contributions of Sjaastad has been to introduce the notion of human capital, i.e., marketable skills, training, aptitude, etc., into migration theory. According to him, the migrating option available to an individual is based upon his or her human capital. Sjaastad's approach of analysing private costs and benefits is only, however applicable to voluntary movement.

Apart from Sjaastad, J.R. Harris and Michael P. Todaro have also made significant contributions to the neoclassical microeconomic theory. Harris and Todaro⁵³ have extended Sjaastad's proposition of migration due to higher wages elsewhere by suggesting that expected wage differences in different regions drive migration. The

⁵⁰ Ravenstein, n. 46, p. 286.

⁵¹ Sjaastad, Larry A. (1962), "The Costs and Returns of Human Migration", *Journal of Political Economy*, 70(5) Part 2: Investment in Human Beings:80-93; available at: <https://www.jstor.org/stable/1829105> (accessed on 17 January 2019).

⁵² *Ibid.*, at p. 82.

⁵³ Harris, J. R. and Michael P. Todaro (1970), "Migration, unemployment, and development: A two-sector analysis." *American Economic Review*, 60: 126-142.

neoclassical economic theory, in essence, state that underlying everything migration is prompted mostly by reasoned economic cognition of the comparative costs and benefits or profitability, which is fundamentally monetary but also psychological.

At the macroeconomic level, the focus shifts from the individual to the supply-side growth theories. Here, migration is an essential part of a developing country's transition to a developed economy. The macro-economic theory is probably one of the oldest theories developed to explain labour migration.⁵⁴ This theory states that international migration is caused due to the differences in the demand and supply of labour. The differential in wages is what induces workers to migrate from a low wage country to a higher wage one. The macro-economic theory has, to a large extent, shaped the thought process of society over the matter of international migration additionally forming the basis of many immigration policies.⁵⁵

C. Lee's Theory

In the year 1966, Everett Lee proposed another theory of migration. Lee reformulates Ravenstein's theory and places greater emphasis on internal factors. He also uses Sjaastad's approach as groundwork for his theory.

The theory conceptualises migration to be primarily the result of a calculation made by an individual over the positive aspects of the destination vis-à-vis negative aspects of the origin. The model of Lee pioneered the seminal understanding of "intervening opportunities" that exists betwixt an individual migrant's place of origin and destination.⁵⁶ Lee states that it is more the perception of factors rather than actual factors at the place of origin and destination that results in migration.⁵⁷ In this regard, Lee broaches personal connections and sources of knowledge and particulars with respect to place of destination as factors that influence the decision to migrate.⁵⁸

While discussing Ravenstein's laws of migration, Lee alongside negative, positive and intervening factors make reference to additional factors like the notion of

⁵⁴ Lewis, W. Arthur (1954). "Economic Development with Unlimited Supplies of Labor", *The Manchester School of Economic and Social Studies*, 22: 139-191; Ranis, Gustav and J.C.H. Fei (1961), "A Theory of economic development", *American Economic Review*, 51: 533-565.

⁵⁵ Massey (1993), n. 45, pp. 433-434.

⁵⁶ Piché, Victor (2013), "Contemporary Migration Theories as Reflected in their Founding Texts", Translated by Catriona Dutreuilh, *Population 2013/1*, 68:141-164.

⁵⁷ Lee, Everett S. (1966), "A Theory of Migration", *Demography*, 3(1):47-57, p. 51; available at: <https://www.jstor.org/stable/2060063> (accessed on 17 October 2019).

⁵⁸ *Ibid.*

specialisation in particular skills and occupations.⁵⁹ Other scholars would later develop these additional factors. Lee's theory, in essence, postulates the neoclassical microeconomic theory of migration that relies upon individual choice.⁶⁰

A point which needs to be noted with respect to Lee's theory is that he discusses discrimination⁶¹ which lays the groundwork for subsequent work on multicultural and multiracial societies.⁶²

Lee's theory has, however, faced many criticisms along several lines. One primary criticism of his theory has been that the theory is more of a conceptual framework which merely provides a classification of the various factors that cause migration.⁶³ Further, his paper is dominated by micro-individual factors and does not discuss macro-structural aspects.⁶⁴

D. New Economics of Labour Migration (NELM)

It was during the 1980s that the NELM theory gained popularity. This theory is primarily a critique of the neoclassical theory and has been associated with Oded Stark.⁶⁵ Stark and Bloom⁶⁶ make a substantial departure from the individual-oriented microeconomic theories by putting forward the notion of family strategy. Their theory calls attention to the interconnectedness of the migrants with their family and relations and emphasises upon managing risk and sharing of the risk amongst themselves. The NELM pioneered the way from an individual-oriented vision of migration to one conceived as a product of family actions.

The NELM critique of the neo-classical theory is essentially along three lines. Firstly, that migration does, in fact, take place even when the expected income in the destination is low. Secondly, that migration may be temporary as well and is not always a permanent one. Thirdly, that households are risk-neutral.⁶⁷

⁵⁹ Ibid., at p. 54.

⁶⁰ Piché, n. 56, p. 143.

⁶¹ Lee, n. 57, p. 53.

⁶² Piché, n. 56, p. 143.

⁶³ Piché, n. 56, p. 143.

⁶⁴ Piché, n. 56, p. 143.

⁶⁵ Stark, Oded (1991), *The Migration of Labor*, Oxford: Basil Blackwell Publishing Ltd, p. 406.

⁶⁶ Stark, Oded and D. Bloom (1985), "The New Economics of Labor Migration", *The American Economic Review*, 75(2):173-178.

⁶⁷ Karpestam, Peter and Fredrik N.G. Anderson (2013), "Economic Perspectives on Migration", in Steven J. Gold and Stephanie J. Nawyn (eds.), *Routledge international Handbook of Migration Studies*, London/New York: Taylor and Francis Books, p. 16.

In a stark departure from the neo-classical theory, it focuses and takes into account households and family ties in the context of migration. Thus, the main contribution made by this theory is its postulation that households are the primary actors and decision-makers in the choice to migrate and not individuals. The NELM theory thus is of much relevance in studies and research conducted in developing countries.

E. World Systems Theory

Most of the theories discussed above have relied upon micro-individual factors in explaining migration. However, many scholars have pointed out that migration may be understood by taking into consideration macro-structural factors, i.e., to look at it from a global context. Akin Mabogunje⁶⁸ was amongst the first scholars to propose a systems approach towards migration. Mabogunje's framework identifies all factors that may influence migration, including economic, social and political environment to technology.⁶⁹ He also identifies two other additional factors which later received significant attention. These factors were "information" and "feedback" with the point of origin.⁷⁰ These two factors opened the doorway to analyse the importance of social and family networks as well as money transfers in the phenomenon of migration. The significance of Mabogunje's approach is in the fact that his approach sees the phenomenon as a movement that is circular and rooted in a network of independent variables and not as a linear one-way phenomenon.⁷¹

Other scholars in the systems approach, however, see migration from a more generic vantage point. They consider migration to be a consequence of the demand for labour. Saskia Sassen is one such scholar. For her, immigration is primarily an urban phenomenon. She may be credited for the concept of a "global city".⁷²

⁶⁸ Mabogunje, A. (1970), "Systems Approach to a Theory of Rural-Urban Migration", *Geographical Analysis*, 2(1):1-18.

⁶⁹ Ibid., at p. 3.

⁷⁰ Ibid., at p. 12.

⁷¹ Ibid., at p. 16.

⁷² Sassen, Saskia (1988), *The Mobility of Labor and Capital: A Study in International Investment and Labor Flow*, UK: Cambridge University Press; See also Sassen, Saskia (2001), *The Global City: New York, London, Tokyo*, New Jersey: Princeton University Press.

F. The Network Approach

This approach underpinned the idea of cumulative causation and was put forward by Douglas Massey.⁷³ According to Massey, a network is an element of social structure. He establishes a relationship between networks and the impacts of “feedback” over migration. In his paper, he points out how, after a point of time, migration becomes self-perpetuating by way of the cumulative causation and circular processes. Massey distinguishes between factors causing migration from those factors that maintain migration. The existence of network structures allows for the formation of social capital. It is postulated that by being a member of a “network” strengthens the possibility of migrating, as a “network” to large extents decrease risks and costs while increasing the advantages.⁷⁴

Krissman⁷⁵ has critiqued the networks approach developed by Massey.⁷⁶ According to Krissman, Massey has seen migrant networks as only positive factors and has restricted such networks only to family and social networks that exist in the same regions of origin as the migrants’ hail from.⁷⁷ Such theories have been unable to explain “how migration flows originate”.⁷⁸ Krissman, on the other hand states that networks are not limited to only social and family networks but include other stakeholders and intermediaries as well.⁷⁹ For example, employers looking for migrant labour as well as traffickers linked to criminal organisations. Therefore, such migration networks are not always positive but maybe negative influences as well.⁸⁰

G. Women in Migration Theories

For a lengthy period, migration literature was focused only on men. However, in 1984 Mirjana Morokvasic brought about the idea of the relationship between migration and

⁷³ Massey, Douglas S. (1990), “Social Structure, Household Strategies, and the Cumulative Causation of Migration”, *Population Index*, 56(1): 3-26.

⁷⁴ Palloni, A. et al. (2001), “Social Capital and International Migration: A Test Using Information on Family Networks”, *American Journal of Sociology*, 106(5):1262- 1298.

⁷⁵ Krissman, F. (2005), “Sin Coyote Nipatrón: Why The “Migrant Network” Fails to Explain International Migration?”, *International Migration Review*, 39(1):4-44; available at: <https://www.jstor.org/stable/27645475> (accessed on 8 November 2020).

⁷⁶ *Ibid.*, at pp. 4-5.

⁷⁷ *Ibid.*, at p. 24.

⁷⁸ *Ibid.*, at p. 5.

⁷⁹ *Ibid.*, at p. 35.

⁸⁰ *Ibid.*, at p. 24.

women pointing out that migration concerns women as much as it does men.⁸¹ Though, Mirjana pointed out the role of women in migration, yet most literature pertaining to migration pay scant attention to this idea. Nevertheless, some scholars following Mirjana have addressed the issue of gender roles in migration literature. For example, Boyd⁸², Pessar⁸³ and Lutz⁸⁴ have advocated that gender must be developed as a central concept in migration theory. The stress in this theory is upon the division of labour around gender lines which pre-empts women to take a subordinate position.⁸⁵ This subordinate position in turn either limits her geographical mobility or places her in insecure jobs in places of destination.

H. Gravity Model

This theory is a geographical analysis of migration which examines the relationship between distance and migration.⁸⁶ It has been established that there exists an inverse relationship between the two. Migration is inversely proportional to the distance separating two places and directly proportional to the product of their population size. This model is used to understand the “gross migration flows between regions”.⁸⁷

I. Migration in Political Theory

The international movement of people involves exit (emigration) from a place of origin and entry (immigration) into a place of destination.

The prevailing public discourse over migration in States has been along the binary of ‘for’ or ‘against’ migration. Some call for open borders, while others advocate restrictive policies. Those opposing it do so principally along two lines a) viewing migration as posing a challenge to national identity (cultural nationalism) and b) for economic reasons.

⁸¹ Morokvasic, Mirjana (1984), “Birds of Passage Are Also Women...”, *The International Migration Review*, 18(4):886–907; available at: <https://www.jstor.org/stable/2546066> (accessed on 22 November 2020).

⁸² Boyd, M. (1989), “Family and Personal Networks in International Migration: Recent Developments and New Agendas”, *International Migration Review*, 23(3): 638-670.

⁸³ Pessar, P.R. (1999), “The Role of Gender, Households, and Social Networks in the Migration Process: A Review and Appraisal”, in C. Hirschman et al. (eds.), *The Handbook of International Migration: The American Experience*, New York: Russell Sage Foundation, pp. 53-70.

⁸⁴ Lutz, H. (2010), “Gender in the migratory process”, *Journal of Ethnic and Migration Studies*, 36(10): 1647-1663.

⁸⁵ Piché, n. 56, p. 147.

⁸⁶ Rogers, A. (2008), “Demographic Modeling of the Geography of Migration and Population: A Multiregional Perspective”, *Geographical Analysis*, 40: 276-296.

⁸⁷ Poot, Jacques et al. (2016), “The gravity model of migration: the successful comeback of an ageing superstar in regional science,” *Investigaciones Regionales-Journal of Regional Research*, 36:63-86.

Migration in political theory can be categorised into two chief theories. The following is a brief account of both the theories.

(i) ***Theory I: The State Imperative***

The conventional view is that States have the prerogative and authority to control or oversee the movement of people within its borders. Most theorists who write about freedom, equality, justice and democracy assume that their conjectures and postulations would be applicable within the framework of a nation-state, i.e., applicable to individuals who are already members. This gives credence to the idea that an individual may enjoy rights only through political memberships. That is why even in the realm of international human rights law which “envisions rights to all, be they migrants, refugees or stateless persons, it is usually seen that non-citizens face difficulties in accessing their rights”.⁸⁸

Michael Walzer has examined the issue of political membership in depth.⁸⁹ He answers the question of whether states should permit people to move whenever they want in the negative. For him, political communities had the duty and responsibility to offer security, welfare and culture of its members. His theory is based on the cultural imperative. He states that a State had a right to control immigration with the qualification that a State had no right to curtail the right to exit.

Walzer also in his theory, recognises that a political community would often, however, be morally bound to open their country to those who share their national or ethnic identity. He likens a state to a family in which members are morally connected to people who live outside their households.⁹⁰ The recently passed law the *Citizenship Amendment Act, 2019*⁹¹ in India can arguably be said to prescribe to this idea of Walzer. This law seeks to give citizenship through a fast-track process to the Hindu, Buddhist, Jain, Sikh, Christian and Parsi community from India’s neighbouring countries of Afghanistan, Bangladesh or Pakistan.⁹² India, as the birth-place of Hinduism, has been put forward as the natural home for Hindus around the world.

⁸⁸ Lamarr, Kheinkor (2018), “Jurisprudence of Minority Rights: The Changing Contours of Minority Rights”, *RAIS Conference Proceedings*, p. 176; available at: <http://rais.education/wp-content/uploads/2017/10/015March.pdf> (accessed on 1 September 2020).

⁸⁹ Walzer, M. (1983), *Spheres of Justice: A Defence of Pluralism and Equality*, New York: Basic Books.

⁹⁰ *Ibid.*, at p. 41.

⁹¹ *The Citizenship (Amendment) Act, 2019*.

⁹² Tharoor, Shashi (2020), *The Battle of Belonging. On Nationalism, Patriotism, and What it Means to be Indian*, New Delhi: Aleph Book Company, p. 258.

Also, the rationale for granting citizenship to the members of these religious communities from the specific countries of Afghanistan, Pakistan and Bangladesh is because these three countries have a shared common history with India.

(ii) Theory II: Open Borders

This theory is premised upon the liberal idea of the moral equality of all human beings. Scholars who favour this theory interpret liberal principles in a manner which would necessitate the requirement of a policy of open borders. Others like Adam Smith have raised objections to restriction on labour mobility which is linked to his view on “the right to free commerce”.⁹³

One of the foremost proponents of this theory is Joseph Carens.⁹⁴ Carens bases his position for open borders by building upon the ideas of “libertarianism”, “liberal egalitarianism” and “utilitarianism”. According to him, citizenship in the absence of free movement is a birth-right akin to feudal privilege. He states “(t)he current restrictions on immigration in Western democracies-even in the most open ones like Canada and the United States-are not justifiable. Like feudal barriers to mobility, they protect unjust privilege”.⁹⁵ According to Carens “[O]ne would insist that the right to migrate be included in the system of basic liberties for the same reasons that one would insist that the right to religious freedom be included: it might prove essential to one’s plan of life”.⁹⁶

Theories propagating the idea of open borders all share the supposition of the equal moral worth of all human beings. Recently, other scholars have added additional arguments supporting the cause for open borders. The arguments include the concept of equality of opportunity, which is to say that human beings would need global equality of opportunity to be able to claim moral equality. The argument thus contends against forms of discrimination. D. Moellendorf⁹⁷ argues that everyone in the world should have the same opportunity, thus propagating the idea that a level

⁹³ Smith, A. (1982), *Lecture on Jurisprudence*, Indianapolis: Liberty Fund, p. 8. Cited in Colin Grey (2017), *Justice and Authority in Immigration Law*, USA: Hart Publishing, p. 164.

⁹⁴ Carens, Joseph (1987), “Aliens and Citizens: The Case for Open Borders” *Rev. Politics*, 49(2): 251-73.

⁹⁵ *Ibid.*, at p. 270.

⁹⁶ *Ibid.*, at p. 258.

⁹⁷ Moellendorf, D. (2002), *Cosmopolitan Justice*, Boulder, CO: Westview, p. 49.

playing field which provides everyone with an equal access to opportunities is a major component towards achieving global justice.⁹⁸

The other reasoning and advocacy for open borders rest upon the concept of freedom. In this argument, the “right to freedom of movement” is put forward to be a fundamental human right to be able to obtain the complete spectrum of life choices. Persons should have a right to migrate to other nations based on their own selection. The right to freedom of movement is also seen to be a logical extension of the right to exit. P. Cole⁹⁹ argues the right to depart or exit from a State presupposes the right to set foot into another country and that “one cannot consistently assert that there is a fundamental human right to emigration but no such right to immigration”.¹⁰⁰

Proponents of open borders do however proffer certain qualifications. This qualification is primarily in the realm of national security. For example, Carens says that a state is justified in excluding migrants if they pose a threat to national security.¹⁰¹

The theory of open borders, which is premised upon libertarian philosophy, has been challenged and critiqued. M. Blake¹⁰² contests the claim that restriction on migration violates any forms of moral equality. According to Blake, a liberal State has duties of humanitarian assistance to foreigners, but that does not imply an obligation to permit their admittance into the dominion of their State.

Another critique has been forwarded by D. Miller¹⁰³ who argues that the right to freedom of movement can in no way be construed to have a similar standing as that of a human right. In cases where a State is unable to provide for its citizens with their human rights, international migration may become essential like the case of refugees.

⁹⁸ Shachar A. (2009), *The Birth-right Lottery: Citizenship and Global Inequality*, Cambridge, MA: Harvard University Press; Caney, S. (2009), “Cosmopolitan Justice and Equalizing Opportunities”, *Metaphilosophy*, 32(1-2):113-34.

⁹⁹ Cole, P. (2000), *Philosophies of Exclusion: Liberal Political Theory and Immigration*, Edinburgh: Edinburgh University Press.

¹⁰⁰ Ibid., at pp. 52-53; See also Nafziger, A.R. Cited in Chamberlain, M. D. (1983), “The Mass Migration of Refugees and International Law”, *The Fletcher Forum*, 7: 93-108, p. 94; available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/forwa7&div=10&id=&page=> (accessed on 22 January 2018).

¹⁰¹ Song, Sarah (2018), “Political Theories of Migration”, *Annual Review of Political Science*, 21:385-402, p. 390.

¹⁰² Blake, M. (2001), “Distributive Justice, State Coercion, and Autonomy”, *Philosophy & Public Affairs*, 30(3):257-96.

¹⁰³ Miller, D. (2016), *Strangers in our Midst: The Political Philosophy of Immigration*, Cambridge, MA: Harvard University Press.

However, the obligation to admit such migrants in the interest of justice does not elevate the “right to freedom of movement” to the level of an inalienable human right.

TABLE 1:

SHOWING PRINCIPAL THEORIES OF MIGRATION AND THEIR SALIENT FEATURES

MIGRATION THEORY	SALIENT FEATURES
1) Ravenstein’s Laws of Migration	<ul style="list-style-type: none"> • The theory is considered as one of the oldest migration theories. • The theory postulates that a “push-pull” process governs migration. • Better external economic opportunity is the primary cause of migration. • Mobility is influenced by geographical distance and gender, social class, age, etc.
2) Neoclassical Theories of Migration	<ul style="list-style-type: none"> • These theories are considered as the dominant economic migration theories. • The theory credits migration to an individual’s own decision-making ability. In essence, migration is largely stimulated by rational economic considerations.
3) Lee’s Theory	<ul style="list-style-type: none"> • The theory reformulates Ravenstein’s theory. • The theory conceptualises migration as primarily the result of calculations made by an individual of the positive factors at the destination and the negative factors of the origin. • The theory states that it is the perception of the factors rather than the actual factors of migration that induces migration.
4) New Economics of Labour Migration	<ul style="list-style-type: none"> • The 1980s saw this theory gain popularity. • It primarily developed as a critique of neoclassical theory. • As a departure from the individual-centric microeconomic theory, it introduces the concept of family strategy. • The theory brings prominence to households as the primary actors and decision-makers in the choice to migrate and not individuals.
5) World Systems Theory	<ul style="list-style-type: none"> • This theory takes into consideration macro-structural factors.

	<ul style="list-style-type: none"> • Akin Mabogunje was one of the first to propose this Systems approach identifying ‘information’ and ‘feedback’ with the place of origin as two additional factors of migration. • Sasia Sassen, another proponent of this theory, sees migration as an urban phenomenon.
6) The Network Approach	<ul style="list-style-type: none"> • This theory was put forward by Douglas Massey and underpinned the idea of cumulative causation. • The theory postulates that after a point of time, migration becomes self-perpetuating. • Massey makes a distinction between factors that cause migration and factors that maintain migration.
7) Women in Migration Theories	<ul style="list-style-type: none"> • Mirjana Morokvasic in 1984 pointed out that migration also concerns women. • Such migration theories advocate that gender as a central concept must be developed.
8) Gravity Model	<ul style="list-style-type: none"> • This is a geographical model of migration. • It examines the distance-migration relationship.
9) Migration in Political Theory	<ul style="list-style-type: none"> • These theories are majorly divided into two political thoughts—one of them advocating for open borders and another for restrictive policies. • The State Imperative theory is founded on the conventional view of regulating the movement of persons. • The Open Borders theory is a theory premised upon liberal ideas favouring the movement of people without or minimal impediments.

V. ENVIRONMENT AND MIGRATION

The migration of people more often than not is a combination of causes rather than a linear cause-effect relationship. Nevertheless, the primary causes of migration have been identified. In the vast corpus of migration literature, for a considerable length of time, the primary factors attributed for the migration of people have been considered

to be political, economic and social factors.¹⁰⁴ For the case of voluntary migration, the emphasis is placed on economic motivations and with respect to cases of forced migration; emphasis generally is placed upon political factors.¹⁰⁵

Though environmental factors are also factoring in the movement of people, over the years, they have been largely overshadowed by economic and political factors in migration literature. As seen from the preceding section, the theories of migration have been concentrated more on the economic and political angles. Even Ravenstein, who acknowledges that an “unattractive climate” would result in migration, states that the primary overarching factor in migration is economic. Recently, environment as a causal factor in modern migration has been re-enforced due to the recent rising environmental concerns and climate change.¹⁰⁶

VI. INTERNATIONAL LAW DIMENSIONS ON MIGRATION: HISTORICAL PERSPECTIVE AND THEORETICAL BASIS

Traditionally the principle of sovereignty has been understood to be a State’s absolute and supreme authority over its population and its territory. Jean Bodin was the first to explicitly formulate the doctrine of sovereignty in his work *De Republica* in 1576.¹⁰⁷ In the context of human mobility, the conventional narrative has been that the competence to prohibit aliens or foreigners was one of the oldest entitlements of a State in the exercise of its sovereign function.¹⁰⁸ The majority decisions of the *Nishimura*¹⁰⁹ case along with the *Fong Yue Ting*¹¹⁰ case gives credence to the principle of absolutism in immigration governance. These case laws were among the

¹⁰⁴ Ravenstein, n. 46; Harris, n. 53.

¹⁰⁵ Swain, Ashok (1996), “Environmental migration and conflict dynamics: focus on developing regions”, *Third World Quarterly*, 17(5): 959-973, pp. 963-964; available at: <https://www.jstor.org/stable/3993239> (accessed on 15 December 2017).

¹⁰⁶ Adamo, Susana B. and Haydea Izazola (2010), “Human Migration and the Environment”, *Population and Environment*, 32 (2/3): 105-108, p. 105; See also McMichael, Celia et al. (2012), “An Ill Wind? Climate Change, Migration, and Health”, *Environmental Health Perspectives*, 120(5):646-654; available at: <http://www.jstor.org/stable/41548660> (accessed on 15 December 2017); Toscano, Julia (2015), “Climate Change Displacement and Forced Migration: An International Crisis”, *Arizona Journal of Environmental Law and Policy*, 6: 457-490, p. 462; available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/arijel6&div=5&id=&page=> (accessed on 15 December 2017).

¹⁰⁷ Waldock, Sir Humphrey (ed.) (1963), *J.L. Brierly The Law of Nations: An Introduction to The International Law of Peace*, Sixth Edition, New York and Oxford: Oxford University Press, p. 7.

¹⁰⁸ *Nishimura Ekiu v. U.S.*, (1892), 142 U.S. 651; *The Attorney General for The Dominion of Canada v. Everett E Cain and James Raymond Gilhula*, (1906), A.C. 542.

¹⁰⁹ *Nishimura Ekiu v. U.S.*, n. 108.

¹¹⁰ *Fong Yue Ting v. United States*, (1893), 149 US 698.

earliest, which favoured the discretionary powers of States over immigration.¹¹¹ As recent as in year 2004 in the case of *European Roman Rights Centre and others v. Immigration office at Prague Airport*, the British Supreme Court held: “The power to admit, exclude and expel aliens was among the earliest and most widely recognised powers of the sovereign state”.¹¹²

This narrative, however, is disputable.¹¹³ R. Plender, for instance, highlights, “the right to exclude aliens has not always been regarded as an essential attribute of a state’s sovereignty”.¹¹⁴

With certain exceptions, control over immigration is in actuality a very contemporary State creation with strong controls over immigration having been ushered in during the transition into the twentieth century.¹¹⁵ Thus, the notion of restriction of movement being one of the earliest recognised powers of the State founded on sovereign authority is grounded on false premises. It is true that most sedentary societies have viewed nomadic groups and strangers with suspicion. However, this did not historically transcend into regular control of immigration and restrictive immigration policies.¹¹⁶

Many also erroneously view migration to be of purely domestic jurisdiction. The position that foreigners have had within the realm of law, in fact, has had a lengthy lineage in international law history. It is during the period between sixteenth to eighteenth century that the initial theories and concepts of the Law of Nations enacted an important part in making the frame of international law and its founding and rudimentary ideas. A historical perspective shows that migration has had a synergetic relationship with international law and migration has, in fact, been formulated by

¹¹¹ Grey, Colin (2017), *Justice and Authority in Immigration Law*, USA: Hart Publishing, p. 93.

¹¹² *European Roma Rights Centre and Others v. Immigration Officer at Prague Airport*, (2004), UKHL 55, para. 11 (Lord Bingham).

¹¹³ Chetail, Vincent (2016), “Sovereignty and Migration in the Doctrine of the Law of Nations: An Intellectual History of Hospitality from Vitoria to Vattel”, *European Journal of International Law*, 27(4):901-922.

¹¹⁴ Plender, Richard (1972), *International Migration Law*, Leiden: A. W. Sijthoff, p. 39.

¹¹⁵ Humphries, Beth (2002), “Fair Immigration Controls- or None at All?”, in Steven Cohen et al. (eds.) *From Immigration Controls to Welfare Controls*, London and New York: Routledge, p. 218; available at:

https://books.google.co.in/books?id=eORQAwAAQBAJ&pg=PA218&lpg=PA218&dq=immigration+control+a+twentieth+century+phenomenon&source=bl&ots=zBjCCoWTd9&sig=ACfU3U38j8FB1cNAn3_7_OtxjaMEcDh_fw&hl=en&sa=X&ved=2ahUKEwigv7e1y7HqAhW_zzgGHUZrBJMQ6AEwCXoECAoQAQ#v=onepage&q=immigration%20control%20a%20twentieth%20century%20phenomenon&f=false (accessed on 3 September 2020).

¹¹⁶ Plender, n. 114, p. 39.

international law. Such as, under Ancient Roman Law, the expression “*jus gentium*” denominated the group of customary rules which governed the position of foreigners in respect to law.¹¹⁷

By the latter part of the sixteenth century, international law had begun to gain recognition as a separate stream of study.¹¹⁸ One of the earliest central issues discussed in international law was the question of the movement of persons across borders. This is made clear by the founding texts of the early scholars of international law like Francisco de Vittoria, Hugo Grotius and Emer de Vattel. These scholars are some of the most influential writers of international law.¹¹⁹

This early discussion was centred upon the ‘dialectic’ of sovereignty and hospitality. The understanding is that there existed a long-standing debate and tension between these two principles that created a conflict over the question of whether or not a State could impose direct control on alien migration.¹²⁰ The cross-border movement of persons thus was one of the earliest reflections of international law scholars. The earliest body of teachings in the law of nations prompts the understanding in us that international law and migration are in consonance with each other.

Francisco Vittoria and Grotius first acknowledged the free movement of people as an international law rule which was posited under the “right of communication” amongst persons. Pufendorf as well as Christian von Wolff, in contrast, maintained and emphasised upon the notion of States’ having discretion and a choice over allowing or denying the entrance of aliens or foreigners to their soil. Vattel, on the other hand, chose the middle path to both of these ideas and qualified that the State’ sovereign authority for making a decision over the allowance or denial of entry to foreigners was “counterbalanced” by the right of necessity which embodied the conditional freedom of admission.¹²¹

¹¹⁷ Bederman, David. J. (2004), *International Law in Antiquity*. UK/USA: Cambridge University Press, pp. 84-85.

¹¹⁸ Waldock, n. 107, p. 25.

¹¹⁹ Waldock, n. 107, pp. 25-40.

¹²⁰ Plender, n. 114, p. 38.

¹²¹ Chetail (2016), n. 113, p. 920.

A. The Right of Free Movement of People

Francisco de Vitoria (1480-1546) acknowledged and conceptualised the free movement of people by way of the “right of communication” which was subsequently reiterated by Hugo Grotius (1583-1645).

Vitoria played a significant role in the establishment of the right to free movement in gaining the status of a ‘cardinal’ concept in international law. He conceptualised the principle as a universal norm by grounding it upon people’s inherent sociability and the long-standing tradition of hospitality.¹²² For him, the liberty to make voyages to and from different nations was a rule of international law which had been recognised by nations.¹²³

Vitoria nevertheless, qualified the above mentioned right for travelling to various places and the corresponding obligation to provide due hospitality. According to him, he underlined the fact that if travellers were “doing something evil by visiting foreign nations”¹²⁴ then these rights are no longer binding. Vitoria’s right of communication is premised upon a larger conceptualisation of international law that was based on ideas of equality and comity amongst foreign countries.

Though Vitoria’s conception is attractive and sound, his ideas faced criticism as his *ius communications* was also used as a legal basis that sought to justify the colonialization of the Americas. In fact, his notion of the right of communication was developed during the course of his address “On the American Indians” which he made in the University of Salamanca. It was during this address that he voiced and deliberated over the conquest of the new world by Spain which was a very contentious matter.

B. The Law of Hospitality

Hugo Grotius upheld and developed Vitoria’s *ius communications*. Grotius’ endorsement of Vitoria has, in turn, augmented the concept of free movement. Grotius envisaged this right outside the colonial conquest; thus, the conceptualization of free movement was strengthened, evolved and garnered a more universal appeal than Vitoria’s conception.

¹²² Chetail (2016), n. 113, p. 904.

¹²³ Chetail (2016), n. 113, p. 904.

¹²⁴ De Vitoria (1992), “On the American Indians”, in A. Pagden and J. Lawrance (eds), *Francisco de Vitoria: Political Writings*, at p 278. Quoted in Chetail (2016), n. 113, p. 904.

Grotius further delineated two key components of the principle, namely. The right to leave or depart from a person's own nation and the right to abide and live in an alien nation. For Grotius, these two rights were the two faces of one coin creating a symmetry.

Grotius reaffirmed free communication to be a foundational concept intrinsic to international law and relied on the sanctity of the law of hospitality. He in his work "*Mare Liberum*" remarks "Nature has given to all peoples a right of access to all other peoples".¹²⁵ He further states:

"Indeed the most famous jurists extend its application so far as to deny that any state or any ruler can debar foreigners from having access to their subjects and trading with them. Hence is derived that *law of hospitality which is of the highest sanctity*".¹²⁶ (*emphasis added*)

Grotius has given considerable attention to the principle of sovereignty. He even stated that a State is justified in waging war in defence of the sovereign property. A corollary to this would mean the exclusion of aliens in defence of property rights. Grotius however, stated that it was barbarous to exclude aliens and contrary to the law of nations without just cause.¹²⁷ Grotius further stated that even a famine could not be considered a just cause for the expulsion of aliens.¹²⁸

Grotius has also highlighted the right of innocent passage. He said that "free Passage ought to be granted to Persons where just Occasion shall require, over any Lands and Rivers, or such Parts of the Sea as belong to any Nation".¹²⁹ He similar to Vitoria claimed that this right might be exercised through force. Grotius remarked that "The middle Opinion then is the best, that the Liberty of Passing ought first to be demanded, and if that be denied, it may be claimed by Force."¹³⁰

Grotius stated that the right to depart from a person's own nation was augmented and strengthened by the right to continue to live in or stay in an alien nation. However,

¹²⁵ Grotius, Hugo (1609), *The Freedom of the Seas, or the Right Which Belongs to the Dutch to take part in the East Indian Trade*, Translated by Ralph Van Deman Magoffin, Introduction by James Brown Scott, Director of the Carnegie Endowment for International Peace, New York: Oxford University Press, 1916, Chapter 1, p. 8; available at: https://oll.libertyfund.org/titles/552#Grotius_0049_279 (accessed on 24 January 2019).

¹²⁶ Ibid.

¹²⁷ Plender, n. 114, p. 41.

¹²⁸ Plender, n. 114, p. 41.

¹²⁹ Grotius, Hugo (1625), *The Rights of War and Peace*, Richard Tuck(ed) from the Edition by Jean Barbeyrac (2005) Indianapolis: Liberty Fund, Book II chapter II at 439, para. Xiii.1; available at: https://oll.libertyfund.org/titles/1947#Grotius_0138.02_100 (accessed on 24 January 2019).

¹³⁰ Ibid., at Book II, Chapter II, at p. 441, para. xiii. 3.

Grotius did qualify both the right to depart from one's nation and the right to stay in an alien nation. Grotius recognised that the right to depart from one's nation was not unqualified as it could be the subject of some control and regulations pursuant to war and interest of society.¹³¹ Similarly, in respect to the right to stay in a country not one's own, the right 'pre-supposes' a 'just cause' to remain in a foreign country and the non-national's deference to the rules and laws of the hosting nation.¹³²

Grotius quoting Cicero recalled "It is our duty to have compassion on such whose misery is owing not to their crimes but misfortune".¹³³ For Grotius, an example of 'just cause' would be 'refugees'. According to him, "refugees" were eligible and qualified to receive sanctuary¹³⁴ as such persons were not guilty of any transgressions or offences unlike those who had committed crimes who ought to be punished by the State. He thus demarcated a set of people who deserved protection and those who did not.

C. Sovereign Power of State and its Authority to Grant Admission to Aliens

In sharp variance to Vitoria and Grotius, succeeding intellectuals of international law like Pufendorf, Wolf and Vattel have insisted upon the discretion of the State for refusing admission to foreigners.

The change from hospitality to sovereign discretion coincides with the rise of nation-states and idea of sovereignty as subscribed to in the 1648 *Treaty of Westphalia*¹³⁵. The Treaty of Westphalia was instrumental in bringing about an end to the thirty-year war which had been prevailing in Europe in 1648.¹³⁶ This Treaty was a harbinger of a series of significant changes in international relations. From the legal and political standpoint, the Treaty of Westphalia was instrumental for laying the foundations of the modern nation-states. The nation-states model which has come to be known as the Westphalian model emphasises the primacy of State Sovereignty. Westphalian sovereignty denotes the notion of non-involvement of others in the internal issues of a sovereign State and the territorial integrity and security of a State.¹³⁷ The Westphalian

¹³¹ Ibid., at Book II, Chapter II, at pp. 554-555, para. xxiv.2.

¹³² Ibid., at Book II, Chapter II, at p. 446, para. xv.1.

¹³³ Ibid., at Book II, Chapter II, at pp. 1068-1069, para. v. 1.

¹³⁴ Ibid., at Book II, Chapter XXI, at p. 1075, para. vi.1.

¹³⁵ *Treaty of Westphalia*, (1648), 1 Parry 271.

¹³⁶ Mansbach, Richard W. and Kirsten L. Taylor (2014), *Introduction to Global Politics*, Second Edition, London: Routledge, p. 45.

¹³⁷ Ibid., at p. 200.

model was conceptualised with the intent of protection of those residing within the borders of a State. This model, however, proves inadequate for international situations like environmental challenges, famines and cases where the sovereign himself is responsible for the persecution of the population of the State.

Samuel von Pufendorf (1632-1694) was among the early academics who made a move away from the “right of communication” which had been received from Vitoria and further endorsed by Grotius. One of the chief departures was that Pufendorf distinguished departure from admission. Unlike Grotius he considered them to be two different concepts which were ruled by a diverse set of standards.

Concerning departure, he in line with Grotius reasserted that “every man reserved to himself the liberty to remove at discretion”¹³⁸ but that such a right was subject to legitimate restrictions.

The major departure made by Pufendorf was in context of the right to continue to stay in an alien nation and the admission of aliens into the domain of a nation. According to him, the right to leave in essence is construed as a right of its own thereby also consigning the right of admittance into other countries to fall within the jurisdiction and domain of the sovereign of that country.¹³⁹ In other words, the right to leave did not automatically coincide or correlate with the right to admission into another.

According to Pufendorf, the right to leave was an individual’s right, but the right to enter was conditioned on the sovereign’s power to refuse admittance.¹⁴⁰ Today, this distinguishing of two rights has become conventional wisdom.

Pufendorf’s main concerns were focused on indiscriminate access for all kinds of foreigners.¹⁴¹ In his work, “*De Jure Naturae et Gentium*”, Pufendorf did provide for some limitations to the sovereign’s authority to refuse admittance. According to him, a sovereign had an obligation to grant admittance to aliens who requested it for lawful

¹³⁸ Pufendorf, S. Von (1749), *The Law of Nature and Nations or a General System of the Most Important Principles of Morality, Jurisprudence and politics* (5thedn, [1672]), Book VIII, Chapter XI. at 873, para ii. Quoted in Chetail (2016), n. 113, p. 910.

¹³⁹ Chetail (2016), n. 113, p. 910.

¹⁴⁰ Pufendorf, S. Von (1749), *The Law of Nature and Nations or a General System of the Most Important Principles of Morality, Jurisprudence and politics* (5thedn, [1672]), Book III, Chapter III. at 252-253, para ix. Cited in Chetail (2016), n. 113, p. 910.

¹⁴¹ Pufendorf, S. Von (1749), *The Law of Nature and Nations or a General System of the Most Important Principles of Morality, Jurisprudence and politics* (5thedn, [1672]), Book III, Chapter III. at 251-252. Cited in Chetail (2016), n. 113, p. 911.

reasons like commercial motives.¹⁴² He further maintained that a sovereign who did admit foreigners must make certain they were ministered to properly “in accordance with their stations”.¹⁴³

In the process of rejection of free movement to be a concept and an axiom of international law; Pufendorf reversed the elements of the discourse by making the principal to be sovereignty and hospitality the exception.¹⁴⁴ Thus, the admission of a foreigner came to be considered to be a courtesy or boon which was accorded at the discretion of the host State based on a State’s own interest. Pufendorf, however, did attempt to achieve a synthesis between the two principles by formulating the rule:

“every state may reach a decision according to its own usage on admission of foreigners who come to it for reasons other than are necessary and deserving of sympathy; only no-one can question the barbarity of showing indiscriminate hostility to those who come on peaceful missions”.¹⁴⁵

Therefore, he maintained that hospitality should be granted when humanitarian consideration coincided with State’s interest.

Pufendorf’s departure from hospitality to sovereign power and authority was furthered, approved and further synthesised by Christian von Wolff (1679-1754). Wolff though was more revolutionary than Pufendorf in his ideas and proposition over the extents of authority a State has in the area concerning that of allowing entry to aliens. According to Wolff, no nation or a private person may assert any right or privilege whatsoever on their own behalf whilst within the territorial limits of another nation.¹⁴⁶ He even further stated that a State could even impose a criminal penalty on those entering. This discretionary authority of a sovereign State is grounded upon a “patrimonial conception of the state whereby ownership of its territory equated with sovereignty.”¹⁴⁷

Wolff nonetheless mitigated the far-reaching ramifications made due to his formulation by counterbalancing a state’s discretion by recollecting the right that had for long been in existence, that of free passage. As such sovereignty would not prejudice the “right of harmless use”. This obligation to allow the entry of persons

¹⁴² Plender, n. 114, p. 41.

¹⁴³ Plender, n. 114, p. 41.

¹⁴⁴ Chetail (2016), n. 113, p. 911.

¹⁴⁵ Pufendorf. Quoted in Plender, n. 114, p. 42.

¹⁴⁶ Wolf, C Von (1749), *Jus Gentium Methodo Scientifica Pertractatum*, Translation by J.H. drake (1934), vol. 2. Ch.III, at p 149, para, 293. Cited in Chetail (2016), n. 113, p. 913.

¹⁴⁷ Chetail (2016), n. 113, p. 912.

who were foreigners to a State was however a flawed conception as he said that we ought to be compassionate towards exiles but that no nation is duty-bound to receive exiles. Thus, ‘morally’ a State may have an obligation to grant entry to foreigners but remain ‘legally’ free to refuse them admittance.

It can be seen that after Grotius and Vitoria, gradually the idea of sovereign discretion upon the movement of aliens/people came into more prominence with the ideas of scholars such as Pufendorf and Wolff. Both of these points of view seem to be polar opposites.

Emer de Vattel’s (1714-1767) observations, on the other hand, falls in the middle position, i.e., between the supporters of free movement vis-à-vis exponents of state sovereignty. Vattel like Wolff and Puffendorf followed the conventional understanding that emigration and immigration fall under the State’s sovereign power and discretion. He, however, qualified state sovereignty via two caveats that of innocent passage and necessity.¹⁴⁸ Vattel’s writings also give us a glimpse of the practice of States during his times. He observes that “In Europe free access is granted to all those who are not enemies of the State, though certain countries exclude vagabonds”.¹⁴⁹

According to Vattel, every individual has full authority and freedom to leave his own country as long as such a movement did not any way cause the wellbeing of his country to be placed into jeopardy. He also affirmed that in certain circumstances, a person has the right to renounce his country. This freedom of emigration stemmed primarily from natural law. Vattel did observe that this principle may be derived out of “several sources of positive law” like a country’s constitution, international conventions or the unambiguous authorization given by the sovereign.¹⁵⁰

With respect to the right of admission in concert with Wolff, Vattel affirms that such right would directly fall under a States’ jurisdiction. Vattel, however, qualifies this authority of the State. He stated that the right of innocent passage may not be rejected in the absence of reasoned and well-founded reasoning. If refused without concrete

¹⁴⁸ Chetail (2016), n. 113, pp. 918- 919.

¹⁴⁹ De Vattel, Emer (1916), *Law of Nations or the Principles of Natural Law*, Translated by Charles D. Fenwick, Washington: Carnegie Institution of Washington, Chapter VIII, at para. 100. available at: <https://home.heinonline.org/> (accessed on 11 October 2019).

¹⁵⁰ De Vattel, Emer (2008), *The Law of Nations, Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*, B. Kapossy and R. Whatmore (eds.), at pp. 224–225, para. 225. Cited in Chetail (2016), n. 113, p. 916.

reasons the refusal will constitute an abuse of a State's power of control over entry into its territory.¹⁵¹ He wrote:

“The owner of a country can only refuse a passage to others on those special occasions when it might be hurtful or dangerous to him; but when sought for a lawful cause it should be granted as often as it does not involve inconvenience to the owner. Since the grant is obligatory upon him, and he cannot refuse it if he wishes to fulfil his duties and not abuse his rights of ownership, he cannot lawfully attach burdensome conditions to the grant.”¹⁵²

Furthermore, he goes on to state that if the State apprehends danger, then the State may ask for pledges from those wanting to exercise this right of innocent passage. This pledge could not be declined as “the right of passage only exists on condition of its not being hurtful to the State”.¹⁵³

The second caveat placed upon the sovereign powers of the State by Vattel was ‘necessity’. Vattel’s right of necessity is an attempt at reconciling the tension between sovereignty and hospitality. This right proves to be a significant restriction upon state sovereignty. According to Vattel:

“the right which necessity alone gives to the performance of certain actions that are otherwise unlawful, when, without these actions, it is impossible to fulfil an indispensable obligation”.¹⁵⁴

Vattel also extends the right of necessity to refugee-like situations. He writes that “the right of necessity can, in certain cases, authorise a people who have been driven from their own country to settle in the territory of another Nation.”¹⁵⁵

D. The Gradual Decline of the Principle of Free Movement

Most scholars up to the 19th century considered the principle of freedom of movement to be a fundamental principle of individual liberty. Even with respect to the admission of aliens and emigration, it was considered to be an attribute of the freedom of movement. Even those who favoured the sovereign authority of the State to restrict entry, it was qualified that undue restrictions should not be imposed in this respect.

¹⁵¹ De Vattel, Emer (2008), *The Law of Nations, Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*, B. Kapossy and R. Whatmore (eds), Book II, Ch VIII, p. 312. Para. 100. Cited in Chetail (2016), n. 113, p. 916.

¹⁵² De Vattel (1916), n. 149, Chapter X, para. 132.

¹⁵³ De Vattel (1916), n. 149, Chapter X, para 133.

¹⁵⁴ De Vattel, Emer (2008), *The Law of Nations, Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*, B. Kapossy and R. Whatmore (eds), Book II, ch. IX, at 320, para. 119. Quoted in Chetail (2016), n. 113, p. 920.

¹⁵⁵ De Vattel (1916), n. 149, Chapter X, para. 136.

Though the viewpoint of sovereign authority started to gain favour when nation-states began to rise and assume centre stage in international politics, the Westphalian conceptualisation of nation-states with borders did not simultaneously coincide with strict migration controls. It was only during the late 19th century did stricter immigration controls start to come into prominence. Tighter immigration controls came into prominence following the conclusion of the First World War.¹⁵⁶ Nevertheless, by virtue of the establishment of the UN and the conceptualisation of Human Rights, the idea of freedom movement gained new ground.

Today, it is a traditionally accepted view that a State may impose immigration controls. However, this does not preclude international law requirements that do pose a limit on the unbridled power of a State to restrict entry.¹⁵⁷

VII. CONCLUSION

Migration of humans has been seen to be as old as the history of man. There exist a variety of factors that result in the movement of people. The primary factors attributed to this movement are socio-economic and political. There is also a growing consensus that the environment is also a great driver of migration.

Migration has been classified in a variety of ways like duration, geographical distance and motivations. Migration literature consists of various theories that try to interpret and construe the reasoning for the movement of people and the perpetuation of such a phenomenon. What is evident, however, is that most of the prominent theories are premised primarily on ideas of labour migration. In such theories' economic considerations reign supreme and other considerations are not adequately surveyed. Thus, considerations of environment for instance has remained mainly in the background and overshadowed in much of migration literature.

Migration in the legal realm, specifically in international law, has been a consideration since the earliest conceptualisation of the law of nations. Some of the oldest and early doctrines of the law of nations demonstrated in writings of the founding texts show us that migration was one of the first areas of reflection in international law. The prevalent narrative today is that States have always had

¹⁵⁶ See Plender, n. 114, Chapter 1, for detailed insights into the decline of the principle of freedom of movement.

¹⁵⁷ **Chapter III** discusses the contemporary international law framework in the area of migration.

unbridled autonomy to restrict the movement of people. Contrary to this narrative however, the early scholars of international law emphasized upon an idea that State's sovereignty did not coincide with notions of control over migration at the same time. That is to say they both were not “concomitant”¹⁵⁸ factors. In fact, sovereignty and hospitality coexisted for an extensive period of time as two primary characteristics of the law of nations.

The early history and legal scholarship of eminent scholars like Vitoria, Grotius, Pufendorf, Wolf and Vattel show that complete and outright State discretion over the area of migration was not acknowledged. Also, many of these scholars gave consequence to ideas of humanitarian assistance and refugee like situations to be a just cause for migration. Though conventional wisdom today pre-supposes migration control the dialectic between sovereignty and hospitality is important to be able to conceptualise and de-conceptualise the constructs over ideas of cross-border movement of people.

Having discussed the historical and jurisprudential trajectory of migration in international law the next chapter continues the legal discussion on migration. It makes an exploration of the contemporary international law framework on migration.

¹⁵⁸ Chetail (2016), n. 113, p. 902.

CHAPTER III
INTERNATIONAL LEGAL FRAMEWORK ON CROSS-BORDER
MIGRATION: A HUMAN RIGHTS PERSPECTIVE

I. INTRODUCTION

In the contemporary international law framework, there exists no single corpus of international law on migration. However, there exist various international conventions, standards, mechanisms and institutions that deal with emerging concerns of migrants and the phenomenon of migration itself. Though not systematic, they can together be considered to comprise the international legal regime on migration.

Having had an understanding of migration in international law history in the previous chapter, this chapter has been written to offer a comprehensive knowledge of the present-day legal instruments pertaining to migration under international law. Efforts have been made to understand international law's influence on the movement of people. This chapter appraises the international law framework inasmuch as it pertains to human migration, and thus the legal regime is examined via the lens of human rights. It examines the core international law principles of human rights that have a bearing upon the rights of migrants. As the challenges associated with the issue of environmentally induced migration are amongst the foremost contemporary issues in migration today; the chapter then applies itself to understanding the status of environmentally induced migration and migrants under the rubric of international migration and human rights law.

II. MIGRATION AND INTERNATIONAL LAW

For the better management of contemporary patterns of international migration, it is essential to understand the international law regime governing migration.

Over the years, the nature and scope of international law have undergone many changes. International law has evolved and is now no longer limited exclusively to relations amongst States.¹ However, in the field of migration law, States are often still acknowledged as the main subject of International law. The reason for this is that the

¹ Mansbach, Richard W. and Kirsten L. Taylor (2014), *Introduction to Global Politics*, Second Edition, London: Routledge, pp. 348-383.

laws relating to migration are predominantly perceived to be domestic, and States consider the determination of entry and exit of people across its territory to be within its sovereign authority. Domestic affairs as per Article 2(7) of the *Charter of the United Nations*² (UN Charter) is generally understood to imply an area where the state authority remains supreme and is not restricted under any international obligation.³

The issue of migration has significantly evolved in consonance with the progress of international law. It has come to be internationalised especially by the development of human rights law. Therefore, this area may no longer be simplistically viewed through the lens of domestic affairs. As early as in the year 1923 in the *Nationality Decrees Case* the Permanent Court of International Justice (PCIJ) said that, “the question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations”.⁴ Thus, it is no longer accurate to assert that States have absolute discretion over the question of admission and expulsion of people.

The current understanding of sovereignty has undergone a great transformation and is no longer considered to be an unbridled and absolute power. This change is most apparent in the context of the limitations over the sovereign power of States in the light of Human Rights Laws.⁵ The former UN General Secretary Kofi Annan also expressed the same when he placed a higher value on individual human rights than on State sovereignty.⁶

In the area of migration also international law lays out a set of legal principles, like protection of refugees and human rights which limits the absolute authority of a State over the question of migration and migrant rights.⁷

² *Charter of the United Nations*, (1945), 1 UNTS XVI.

³ UN Charter, Article 2(7). The Article provides: “Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII”.

⁴ *Nationality Decrees Issued in Tunis and Morocco, Advisory Opinion*, (1923), PCIJ (Ser B) No. 4, p. 24.

⁵ Perruchoud, Richard (2012), “State Sovereignty and Freedom of Movement” in Brian Opeskin et al. (eds.), *Foundations of International Migration Law*, UK: Cambridge University Press, p. 123.

⁶ Mansbach, n. 1, p. 351.

⁷ Aleinikoff, T. A. (2003), “International Legal Norms and Migration: A Report”, in T. A. Aleinikoff and Vincent Chetail (eds), *Migration and International Legal Norms*, The Hague: TMC Asser Press, p. 1.

The expression ‘international migration law’ itself was first coined by Louis Varlez and used in international legal scholarship in the year 1927.⁸ It was during the interwar period that the contemporary legal regime pertaining to migration gradually started to develop and take its present shape. This development was sporadic, marked by unsystematic and partial measures. The laws on migration which evolved were functional and depended on the rise of specific areas of concern. For example, a significant area of concern was the question of nationality. The issue of distinguishing between nationals and aliens was of substantial interest. It resulted in the “*Convention on Certain Questions Relating to the Conflict of Nationality Law*”,⁹ 1930 and “*Protocol Relating to Military Obligations in Certain Cases of Double Nationality*”,¹⁰ 1935. Even to this day, the issue of nationality remains a hotly debated area and remains central to international law governing migration. Other areas of concern were exploitative labour practices, human trafficking and slave trade. Although such issues were not confined to cross-border movements alone, their international dimensions made them an issue of global concern.

By the close of Second World War the world witnessed great numbers of refugee populations fleeing persecution. This scene was the forerunner for the legal regime of refugee protection. The unaccountable human misery and viciousness witnessed during the Second World War led to a call for a dramatic overhaul of the old order. This call led to the founding of the United Nations Organisation. The UN’s inception ushered in a new order of laws and institutions and also had a substantial impact on the laws concerning migration.

For a proper evaluation of the international legal regime dealing with migration, it is essential to appreciate the source of the laws. The expression “sources of law” is conventionally understood to imply the methods of the creation of the legal rules.¹¹

⁸ Varlez, L. (1927) “Les migrations internationales et leur réglementation”, *Recueil des cours de l’Académie de droit international*, 20, 1927–V, 17. Cited in Chetail, Vincent (2014), “The transnational movement of persons under general international law – Mapping the customary law foundations of international migration law” in Vincent Chetail & Celine. Bauloz, (eds.), *Research Handbook on International Law and Migration*, Cheltenham: Edward Elgar Publishing, p. 3.

⁹ *Convention on Certain Questions Relating to the Conflict of Nationality Laws*, (1930), 179 League of Nations Treaty Series 89, No. 4137.

¹⁰ *Protocol Relating to Military Obligations in Certain Cases of Double Nationality*, (1935), 178 League of Nations Treaty Series 227, No. 4117.

¹¹ Virally, Michel (1968), “The Sources of International Law”, in Max Sorensen (ed.) *Manual of Public International Law*, London: Macmillan, p. 120.

Four sources of international law have been authoritatively mentioned in the ICJ¹² Statute in Article 38(1). These include a) international conventions; b) customary international law; c) “general principles of law recognised by civilised nations”; and d) “judicial decisions and the teachings of the most highly qualified publicists of the various nations”.¹³

Customary International Law and International Conventions are indisputably recognised as sources of international law¹⁴ and regarded by many to be the most important sources of international law. Under the *Vienna Convention on the Law of Treaties*,¹⁵ 1969 (VCLT), “Treaty” is defined to be “an international agreement concluded between States in written form and governed by international law... whatever its particular designation”.¹⁶ On the other hand, customary international law evolves from the practice of States. The manner in which customary international law develops is when a widespread group of States consistently adopt a particular practice to recurring situations and attach legal significance to it.

The four different international law sources play a role in defining the legal obligations of international migration law, albeit with certain differences. For example, Treaties are premised upon the consent of the States. Therefore, treaty obligations will be legally binding solely upon such States who have become a party to the treaty and have given their express consent to be bound by it. Customary international law, on the other hand, is legally binding on all States, which also includes newly independent States.¹⁷ It, however, is not legally binding upon those states who have persistently objected to a particular customary law during the period of its formation.¹⁸

When widely adopted a treaty may form the basis for the crystallisation of new customary international law, and a customary international law may be codified in a treaty as well. Customary international law can also evolve independently of a Treaty. The legal obligations can, therefore, arise in parallel and similar in scope both under treaty and customary law. So, for a particular law which is both treaty and

¹² *Statute of the International Court of Justice*, (1948), 33 UNTS 993.

¹³ *Ibid.*, at Article 38(1).

¹⁴ Virally, n. 11, p. 143.

¹⁵ *Vienna Convention on the Law of Treaties*, (1969), 1155 UNTS 331.

¹⁶ *Ibid.*, at Article 2(1)(a).

¹⁷ Virally, n. 11, pp. 137-138.

¹⁸ Virally, n. 11, p. 138.

customary international law then the obligations for it will apply on State parties to the Treaty. Also, simultaneously, the same law will be applicable to non-state parties under customary international law.

III. INTERNATIONAL LEGAL REGIME GOVERNING MIGRATION

Customary international law and international conventions are the two international law sources amongst the four which are considered to be important as they create binding obligations upon states. In the legal regime pertaining to migration, they are very relevant.

A. Treaty Law

The legal regime on migration encompasses legally binding international law and also encompasses non-legally binding principles and best practices. Treaties and conventions form a part of binding international law. As discussed earlier, the legal framework on migration under international law is not systematic. The treaties which have been formulated came about depending upon problems associated with migrants as and when they arose. We find that the legal framework has been mainly focussed upon certain specific and specialised areas of migration and migrant protection. For instance, some treaties deal with the protection of refugees, migrant workers etc.

Certain treaties dealing with issues of migration have been widely ratified like the RC¹⁹ and the RC Protocol²⁰. However, there are some treaties like the ICRMW²¹ that have entered into force with relatively fewer parties.

The normative framework of international migration at the universal level focuses upon three categories of migrants - “refugees”, “migrant workers” and “smuggled and trafficked migrants”. At present, there exist seven multilateral treaties which represent the core instruments in international migration law. All of these legal instruments have seen ratifications to varying extents by the member states.

Apart from these core treaties that focus upon refugees, migrant workers or smuggled and trafficked migrants, various other multilateral agreements that have been made for

¹⁹ *Convention Relating to the Status of Refugees*, (1951), 189 UNTS 137.

²⁰ *Protocol Relating to the Status of Refugees*, (1967), 606 UNTS 267.

²¹ *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, (1990), 2220 UNTS 3.

a more general-purpose are also applicable in the field of migration. These mainly include the considerable human rights law instruments.

At this juncture it should be noted that the legal framework and protection mechanism pertaining to the group of migrants who fall within the definition of ‘refugees’ has become very well defined and systematised. The legal framework for refugees as such has become a regime of its own setting it apart from the international legal framework on migration. Also, the Refugee Law Regime provides for a definition for the term ‘refugee’. However, the international migration regime is yet to have a universally accepted definition for the term ‘migrant’.²² Further, unlike refugees, there is no central UN agency for the protection of all migrants.

(i) Protection of Refugees

The international refugee regime consists primarily of the 1951 RC and the RC Protocol. These two form the primary refugee protection instruments.

The RC was adopted immediately post Second World War to deal with the refugee situation of European origin. For this reason, it had at first a deadline limiting its application to the then “known groups of refugees, i.e. persons who had become refugees as a result of events occurring before 1st January 1951.”²³ When different refugee situations began to arise, post the adoption of the RC, a move was made to make the RC applicable to such new refugee situations. This move resulted in the RC Protocol which removed the earlier dateline²⁴ and geographical limitations.²⁵ This made the RC a truly universal international legal instrument for refugee protection.

The RC in its very first Article defines the term “Refugee”. The Article defines a “Refugee” to mean an individual who has a “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 to, or owing to such fear, is unwilling to avail himself of the protection of that country.”²⁶

²² IOM (2019), *International Migration Law. Glossary on Migration*, Geneva: IOM, p. 132; available at: https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf (accessed on 18 October 2019).

²³ UN High Commissioner for Refugees (1990), *The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary by Dr. Paul Weis*, p. 4; available at: <https://www.refworld.org/docid/53e1dd114.html> (accessed on 14 February 2020).

²⁴ RC Protocol, Article 1(2).

²⁵ RC Protocol, Article 1 (3).

²⁶ RC, Article 1.

So, for a person to be considered eligible and fall within the ambit of the term ‘Refugee’, he or she must be fleeing their country due to the five principal reasons enumerated in the above definition.

The definition provided in the RC thus is narrow in scope. It does not include other forms of hardships that might make it impossible for a person to live in one’s own country with minimum adequate conditions. It is strictly confined to situations arising out of the five reasons of persecution provided in the definition.

It is fascinating to note that the term ‘persecution’ on the other hand, has not been defined in the RC. However, it clearly constitutes a cornerstone of the refugee definition. The refugee regime has more frequently come to be characterised by increasing contestations over the scope of the substantive provisions and procedural mechanism for the access of protection under this regime.

The importance of the RC is two-fold. Firstly, it provides for a well-defined protection regime for those who come within the scope of the definition. Secondly, the RC enshrines “non-refoulement” as its core principle.

This principle of “non-refoulement” prohibits a State who is party to the RC from expelling or returning refugees who have already entered into the State’s territory.²⁷

The principle of “non-refoulement” is found in Article 33 of the RC. The expression comes from the term “refouler” which literally translated means ‘to return’. In this respect the RC provides:

“No contracting state shall expel or return (“*refoule*”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”²⁸

The principle is applicable to all those who fall within the definitional ambit of Article 1 of the RC. The principle is explicitly applicable to refugees outside their country of nationality and cannot be claimed by those who are yet to leave their country.²⁹ Also, the formal determination of refugee status is not a determinant factor for the

²⁷ Grey, Colin (2017), *Justice and Authority in Immigration Law*, USA: Hart Publishing, p. 54; See also, Kesby, Alison (2012), *The Right to Have Rights: Citizenship, Humanity, and International Law*, New York: Oxford University Press, pp. 28-31.

²⁸ RC, Article 33 (1).

²⁹ *European Roma Rights Centre and Others v. Immigration Officer at Prague Airport*, (2004), UKHL 55, para. 16 (Lord Bingham).

application of the principle of “non-refoulement”.³⁰ Consequently, this principle of “non-refoulement” should be respected even in cases where the status of refugee is still to be decided.³¹

There, however, are exceptions to the principle of “non-refoulement”. Such exceptions have been set forth in Article 33(2) of the RC which mentions that the protection of the principle of “non-refoulement” will not be available to individuals who are considered to be a threat of danger to the security of the receiving country. A person will also be ineligible if convicted by a final judgement of a grave crime and considered to be a danger to the community.

The primary thrust of the RC is to ensure that refugees are provided with international protection in the circumstances when the country of origin of the refugee is averse or unable to provide them with protection on account of the five reasons of “persecution”.

(ii) Migrant Workers

In recent years, the situation of the migrant workers has assumed importance in the area of migration law and policy debates. After refugees, this group of migrants has gained due recognition in the international legal sphere. Subsequently, multilateral treaties have explicitly been adopted to deal with this particular category of migrants.

Most developed economies have for long supplemented their labour supply through foreign migrant workers. With increased immigration regulations by the late 19th century, however, such situations also came under the direct purview of the State mechanisms.³²

In fact, the questions that surround the situation of the migrant workers range from decent pay, working hours, their access to justice, to not be exploited, etc. It is noteworthy here to mention that the International Labour Organization (ILO) has been the most pro-active with its concern regarding the rights of migrant workers. Towards

³⁰ *Report of the United Nations High Commissioner for Refugees*, (1985), Supplement No.12 (A/40/12), para. 22; available at: <https://www.unhcr.org/afr/excom/unhcrannual/3ae68c340/report-united-nations-high-commissioner-refugees.html> (accessed on 4 January 2021); *Report on the Twenty-eighth Session of the Executive Committee of the High Commissions Programme*, (1977), UN doc A/AC.96/549/, para. 53 (4)(c).

³¹ Wallace, Rebecca M. M. (2014), “The principle of non-refoulement in international refugee law” in Vincent Chetail & Celine. Bauloz, (eds.), *Research Handbook on International Law and Migration*, Cheltenham: Edward Elgar Publishing, p. 418.

³² Grey, n. 27, p. 51.

this end, the ILO have adopted three legally-binding conventions which are geared towards upholding and safeguarding the rights of migrant workers. These instruments are namely Convention 143³³, Convention 97³⁴ and Convention 189³⁵.

Aside from ILO, the UN has likewise spearheaded the formation of a Convention to deal with problems concerning migrant workers. This UN convention is the ICRMW³⁶. The ICRMW in Article 2 (1) gives a definition for the term “migrant worker”. The provision reads:

“The term ‘migrant worker’ refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”.³⁷

The primary objective of the ICRMW is respect for a migrant’s human rights. It is an extensive and complex document. It puts forwards many technical queries as well as places monetary obligations upon the members party to the ICRMW. However, the ICRMW has not seen many ratifications and as of December 2020 there are only 56 State parties to this convention.³⁸ The reason behind this may be attributable to both practical and political concerns.

(iii) Trafficking and Migrant Smuggling

Questions and concerns over human trafficking and migrant smuggling have been areas of great concern for States in the arena of Crimes. Trafficking and migrant smuggling is a specific form of migration which is forced or coerced or is of an exploitative nature.³⁹

It is fairly recent that this category has emerged as a distinct category of migrants. Nonetheless, though recent, the issues and concerns over this category of migrants have been addressed at the universal level. Two protocols supplement the *United*

³³ *Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975(Supplementary Provisions) (No. 143)*, (1975), Geneva, 60th ILC session.

³⁴ *Convention concerning Migration for Employment (Revised 1949) (No. 97)*, (1949).

³⁵ *Convention concerning Decent Work for Domestic Workers (No. 189)*, (2011), Geneva, 100th ILC session.

³⁶ *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, (1990), 2220 UNTS 3.

³⁷ *Ibid.*, at Article 2(1).

³⁸ See United Nations Treaty Collection; available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4 (accessed on 24 December 2020).

³⁹ Gold, Steven J. and Stephanie J. Nawyn (eds.) (2013), *Routledge international Handbook of Migration Studies*, London/New York: Taylor and Francis Books, p. 97.

*Nations Convention against Transnational Organised Crime*⁴⁰ which have a bearing on the protection of this category of migrants.

These protocols are namely the Protocol against Trafficking⁴¹ and the Protocol against Smuggling of Migrants⁴². Both these two Protocols emphasise upon information exchange and joint effort towards the curtailing and putting a stop to trafficking and smuggling. With the case of trafficked migrants, in a departure from traditional legal enforcements the Protocol against Trafficking views them more from the perspective of victims and not the perspective of criminals.⁴³

TABLE 2:

CORE INTERNATIONAL LEGAL INSTRUMENTS ADOPTED IN THE FIELD OF INTERNATIONAL MIGRATION LAW AND THEIR RELEVANT PROVISIONS⁴⁴

S.L No.	CORE INTERNATIONAL INSTRUMENTS OF INTERNATIONAL MIGRATION LAW	ENTRY INTO FORCE	STATUS (AS OF DECEMBER 2020)	IMPORTANT PROVISIONS
1	Convention relating to the Status of Refugees 1951	22 April 1954	Parties:146	Article 1: Definition of Term Refugee Article 3: Non-Discrimination Article 16: Access to Courts Article 22: Public education Article 26: Freedom of Movement Article 27: Identity Papers Article 28: Travel Documents Article 31: Refugees Unlawfully in the

⁴⁰ *United Nations Convention against Transnational Organized Crime*, (2000), 225 UNTS 209.

⁴¹ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, (2000), 2237 UNTS 319.

⁴² *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime*, (2000), 2241 UNTS 507.

⁴³ Protocol against Trafficking, Article 2; See also Weissbrodt, David and Justin Rhodes (2014), "United Nations treaty bodies and migrant workers" in Vincent Chetail & Celine. Bauloz, (eds), *Research Handbook on International Law and Migration*, Cheltenham: Edward Elgar Publishing, p. 306; United Nations Convention against Transnational Organized Crime, n. 40, Article 25.

⁴⁴ UN Treaty Collection; available at: https://treaties.un.org/pages/ParticipationStatus.aspx?clang=_en (accessed on 5 December 2019); International Labour Organization; available at: <https://www.ilo.org/dyn/normlex/en/f?p=1000:12001::NO::> (accessed on 5 December 2019).

				Country of Refugee Article 33: Prohibition of Expulsion or Return
2	Protocol relating to the Status of Refugees 1967	4 October 1967	Parties: 147	Article 1(3): Application of the Protocol "without any geographic limitation"
3	Migration for Employment Convention (Revised), 1949 (No. 97)	22 Jan 1952	Parties: 50	Article 4: Facilitation of the departure, journey and reception of migrants for employment. Article 6: Non-Discrimination. Article 11: Definition of the term "migrant for employment".
4	Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	09 Dec 1978	Parties: 25	Article 1: Respect the basic human rights of all migrant workers. Article 10: Equality of opportunity and treatment in respect of employment and occupation etc. Article 11: Definition of term "migrant worker".
6	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990	1 July 2003	Parties: 56	Article 1: Application of the Convention to all migrant workers and members of their families without distinction. Article 2: Definition of term "migrant worker". Article 4: Definition of the term "members of the family". Article 7: Non-discrimination. Article 9: Right to Life. Article 10: prohibition against torture. Article 11: prohibition against

				<p>slavery or servitude. Article 12: Freedom of thought, conscience and religion. Article 16: Right to liberty and security of person. Article 17: If lawfully deprived of liberty the right to be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity. Article 18: Right to equality before the courts and tribunals. Article 22: Right against collective expulsion. Article 29: Right of a child of a migrant worker to a name, to registration of birth and to a nationality.</p>
7	Protocol to Prevent, Suppress and punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000	25 December 2003	Parties: 178	<p>Article 3: Use of terms. Article 6: Assistance to and protection of victims of trafficking in persons. Article 7: Status of victims of trafficking in persons in receiving States. Article 9: Prevention of trafficking in persons.</p>
8	Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the	28 January 2004	Parties: 150	<p>Article 3: Use of terms. Article 5: Criminal liability of migrants. Article 8: Measures against the smuggling</p>

	United Nations Convention against Transnational Organized Crime, 2000			of migrants by sea. Article 11: Border measures. Article 18: Return of smuggled migrants.
--	---	--	--	---

(iv) Human Rights Instruments

As discussed in the preceding sections, international migration law deals explicitly with three categories of migrants- “refugees”, “migrant workers” and “smuggled and trafficked migrants”. However, apart from these three distinct categories which have found prominence within the domain of international law; there are yet other categories who have not been given due recognition. Such categories for example include the undocumented migrants and environmentally induced migrants. It is precisely in this context and even from a broader perspective that other multilateral human rights treaties which have been drafted for general purposes become relevant to the field of migration.

A State enjoys broad authority in the making of rules and regulations in its domestic matters as well as with its relationship with other sovereign States. The authority of sovereign States to regulate entry, exit and control its borders is undisputed in legal theory and practice.⁴⁵ This authority extends over the regulation of movement of foreign nationals across the borders of its territory and treatment meted out to such individuals. However, the evolution and growth of international human rights have placed certain limits on this discretionary authority of the State.⁴⁶ In the area and domain pertaining to migration, international human rights law oversees the manner in which migrants should be treated inside the borders of States.

Human rights law comprises of a collection of international rules which have been recognized through custom or treaty. It allows individuals and groups to make demands and assertion towards particular rights, prerogatives and interests from the government. Human rights may be defined as inherent rights that belong without discrimination to each and every person simply because they are human.

⁴⁵ Perruchoud, n. 5, p. 150.

⁴⁶ See Shaw, Malcolm N. (2017), *International Law*, Eighth Edition, India: Cambridge University Press, p. 212.

The catastrophic and ruinous circumstances that emerged in consequences to the Second World War spearheaded the recognition of rights for an individual which could be enforced by an individual directly against a violating State. World leaders acknowledged that there was a need for the upholding and recognition of human rights on a global scale. It was in response to this need that the United Nations Organization was established in 1945. The UN Charter necessitates and calls for all members to take joint and separate action for the achievement of, “Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.⁴⁷ The UN has over the years been instrumental for the formation of a variety of legal instruments geared towards achieving respect and recognition of human rights.

The principal notion of human rights is that all humans irrespective of who they are and without exception enjoy protection. The UDHR⁴⁸ in Article 2 provides that:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, *without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.* Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs.” (*emphasis added*)

The legal framework of International Human Rights primarily comprises of the UDHR and seven other UN human rights treaties. Collectively and as a whole these eight legal documents constitute the international standard for due esteem approbation and advancement of Human Rights.

The UDHR, the ICCPR⁴⁹ and the ICESCR⁵⁰ together have been referred to as the “International Bill of Human Rights”⁵¹, and they provide for the human rights of all persons. The other treaties protect specific groups like women and children. They are namely ICERD⁵², CEDAW⁵³, CRC⁵⁴, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*⁵⁵, 1984 (CAT) and ICRMW.

⁴⁷ UN Charter, Article 55 (c).

⁴⁸ *Universal Declaration of Human Rights*, (1948), UNGA Resolution, 217 A (III).

⁴⁹ *International Covenant on Civil and Political Rights*, (1966), 999 UNTS 171.

⁵⁰ *International Covenant on Economic, Social and Cultural Rights*, (1966), 993 UNTS 3.

⁵¹ OHCHR, *Fact Sheet No.2 (Rev.1), The International Bill of Human Rights*; available at: <https://www.ohchr.org/documents/publications/factsheet2rev.1en.pdf> (accessed on 1 December, 2020).

⁵² *International Convention on the Elimination of All Forms of Racial Discrimination*, (1965), 660 UNTS 195.

⁵³ *Convention on the Elimination of All Forms of Discrimination Against Women*, (1979), 1249 UNTS 13.

The UDHR is considered as the most basic document of Human Rights. Being a declaration, the UDHR is not legally binding on States. However, the UDHR has an excellent bearing upon the evolution of human rights and can be considered to be the fountain of human rights. It is based on UDHR that all other contemporary Human Rights instruments have followed. Certain provisions of the UDHR have also attained customary international law status.⁵⁶ Baring the ICRMW most members of the UN have ratified the six of the seven treaties.

TABLE 3:

IMPORTANT HUMAN RIGHTS TREATY PROVISIONS

CONTEMPORARY HUMAN RIGHTS OF MIGRANTS	TREATY PROVISIONS
Equality and Non-Discrimination	UDHR: Article 2 ICCPR: Article 2 ICESCR: Article 2(2) ICERD: Article 1 ICRMW: Article 7 CRC: Article 2
Right to Life and Liberty	UDHR: Article 3 ICCPR: Article 4, Article 6, Article 9 ICRMW: Article 16
Right to Enter one's own Country	ICCPR: Article 12 ICERD: Article 5
Right to Culture, Religion and Language	ICCPR: Article 18, Article 27 ICRMW: Article 12 ECHR: Article 9 ACHR: Article 12 ICESCR: Article 15
Right to Freedom of Expression	ICCPR: Article 19 ICRMW: Article 13 UDHR: Article 19 ACHR: Article 13 ECHR: Article 10
Protection from refoulement and arbitrary expulsion	ICCPR: Article 13 ICRMW: Article 22(1), Article 22(2) ACHR: Article 22(9)
Right to Nationality	UDHR: Article 15 CRC: Article 7, Article 8 ICCPR: Article 24

⁵⁴ *Convention on the Rights of the Child*, (1989), 1577 UNTS 3.

⁵⁵ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, (1984), 1465 UNTS 85.

⁵⁶ Chetail, Vincent (2014), "The transnational movement of persons under general international law – Mapping the customary law foundations of international migration law", in Vincent Chetail & Celine. Bauloz, (eds), *Research Handbook on International Law and Migration*, Cheltenham: Edward Elgar Publishing, p. 15.

	ICRMW: Article 29
Right to Health	UDHR: Article 25 ICESCR: Article 12 ICRMW: Article 28
Right to an Adequate Housing	ICESCR: Article 11 ICRMW: Article 43
Right to Work	UDHR: Article 23(1), ICESCR: Article 6, Article 9 ICRMW: Article 25, Article 26 ACHR: Article 6(2) ECHR: Article 4
Right to Education	UDHR: Article 26(1) ICESCR: Article 13 ICRMW: Article 30
Human Rights Provisions specifically for non- citizens	CRC: Article 22 CAT: Article 3 International Convention for the Protection of All Persons from Enforced Disappearances: Article 16

UDHR: Universal Declaration of Human Rights; **ICCPR:** International Covenant on Civil and Political Rights; **ICESCR:** International Covenant on Economic, Social and Cultural Rights; **ICRMW:** International Convention on the Protection of the Rights of all Migrant Workers; **ICERD:** International Convention on the Elimination of All Forms of Racial Discrimination; **ACHR:** American Convention on Human Rights; **ECHR:** European Convention on Human Rights; **CRC:** Convention on Rights of Child; **CAT:** Convention Against Torture

The rights which have been envisaged within these Human Rights instruments are applicable to everyone, and these instruments may be inferred to deal with the rights of migrants as well.⁵⁷ The idea of “non-discrimination” which is a core concept within these human rights treaties is of particular significance to migrant rights protection. Almost all human rights treaties make a nuanced and direct mention to the aforementioned concept.

Non-discrimination

The bedrock upon which human rights is based is the idea of non-discrimination. The principle of non-discrimination essentially means that all persons should equally enjoy all human rights purely based upon the fact that they are human. In consequence, international human rights law, in general, necessitates that everyone should enjoy equal treatment, be they national or non-national. This principle has

⁵⁷ Kesby, n. 27, pp. 98-99; For an account of the problems faced by migrants in accessing human rights see, Dembour, Marie-Benedicte and Tobias Kelly (eds.) (2011), *Are Human Rights for Migrants? Critical Reflections on the Status of Irregular Migrants in Europe and the United States*, New York: Routledge, pp. 6-11.

been recognised and provided for in the UDHR⁵⁸ as well as in the provisions pertaining to the ICCPR⁵⁹. The human rights committee also, within the *CCPR General Comment No. 15*⁶⁰ explained that all rights provided for in the ICCPR as a general rule must be assured and “guaranteed without discrimination between” nationals and non-nationals.⁶¹ These rights include freedom of thought, conscience and religion, freedom from arbitrary detention, right against “torture or to cruel, inhuman or degrading treatment”, equality before the law. Also, non-nationals should have the right to marry, have protection as minors and the right to peaceful association and assembly.⁶² *CCPR General Comment No. 15* does specify that states may qualify the rights of non-nationals, but such limitations must be only those as may be lawfully imposed under the ICCPR.⁶³

The ICERD in Article 1(2) provides that a distinction may be made between citizens and non-citizens. However, “*General Recommendation no. 30: Discrimination against Non-Citizens*”⁶⁴ (General Recommendation no. 30) states that the Article 1(2) of the ICERD must be construed in a manner so as to “avoid undermining the basic prohibition of discrimination”⁶⁵. Also, the CRC in its second Article sets forth that the provisions of the convention will be applicable to every child without “discrimination of any kind”.

As evidenced by the provisions set forth in these conventions, this principle of “non-discrimination” along with the “equality before the law” and “equal protection of the law” represent the general principles for human rights.

⁵⁸ UDHR, Article 2. The provision provides: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

² Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

⁵⁹ ICCPR, Article 26. The Provision provides: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

⁶⁰ UN Human Rights Committee (1986), *CCPR General Comment No. 15: The Position of Aliens Under the Covenant*, 27thsess; available at: <https://www.refworld.org/docid/45139acfc.html> (accessed on 30 December 2020).

⁶¹ *Ibid.*, at para. 2.

⁶² *Ibid.*, at paras. 2-7.

⁶³ *Ibid.*, at para. 7.

⁶⁴ Committee on the Elimination of Racial Discrimination (2004), *General Recommendation no. 30: Discrimination against Non-Citizens*, 64thsess, UN Doc. CERD/C/64/Misc.11/rev.3.

⁶⁵ *Ibid.*, at para. 2. See also paras 3 and 4.

For migrants, the concept of “non-discrimination” represents that any and all differences between the treatments dispensed out in the case of migrants vis-à-vis citizens must follow international law and must not be in violation or contravention of migrants’ internationally recognised human rights. Article 2 of the CRC especially is important in regards to the situation of migrant children who are in a position of significant vulnerability.

Freedom of Movement

The liberty to travel and move from place to place is celebrated and acknowledged by many as one of the fundamental and most basic of human liberties.⁶⁶ As discussed earlier, the regulation of international migration is regarded as the last bastion of State Sovereignty. It is, therefore, within this context, the idea of freedom of movement as a human right becomes highlighted.

Historically when States in the contemporary sense was not yet established, and there existed minimum or no border controls free movement flourished and was more the norm than an exception.⁶⁷ However, the world scenario is much changed, and States today impose restrictions on the movement, more so in the context of non-nationals.

Hannah Arendt observes that “nobody would ever be able to arrive at a place where freedom rules if he could not move without restraint”.⁶⁸ The natural law conception of the right to leave finds formal consecration in the UDHR.⁶⁹ The UDHR in Article 13(1) mentions that, “Everyone has the right to leave any country, including his own, and to return to his country”. Several other treaties at both the international and regional levels have also recognised the freedom of movement along similar lines as provided for in the UDHR.⁷⁰

⁶⁶ Perruchoud, n. 5, p. 126.

⁶⁷ Chetail (2014), n. 56, pp. 29-30.

⁶⁸ Arendt, Hannah (1962), *On Revolution*, New York: Penguin Books, pp. 32-33.

⁶⁹ Chetail (2014), n. 56, p. 15.

⁷⁰ Treaty provisions at the International Level include ICCPR, Article 12; ICERD, Article 5 (d)(i); *International Convention on the Suppression and Punishment of the Crime of Apartheid*, (1973), UNGA Resolution A/RES/3068(XXVIII), Article 2 (c); CRC, Article 10 (2); ICRMW, Article 8(1); *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Fourth Geneva Convention), (1949), 75 UNTS 287, Articles 35, 37 and 48; Treaties at the regional level include *Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto*, (1963), Council of Europe (COE), ETS 46, Article 2 and 3(2); *European Social Charter*, (1961), COE, ETS 35; *European Convention on the Legal Status of Migrant Workers*, (1977), COE, ETS No.093; *American Convention on Human Rights*, “*Pact of San Jose*”,

As it stands contemporary human rights provisions within international as well as regional treaties allow for the freedom of movement inside the territorial limits of a State. It also recognises the right of departure and right to return to the country of one's nationality. However, the aforementioned right does not include a right to enter another country upon leaving one's own.

It is in this context that the State authority over freedom of movement is emphasised in its exercise of restrictions upon the admission of non-nationals⁷¹ which also extends to their expulsion. States can also define admissible classes of migrants and make rules to refuse the admission of others⁷² on various grounds ranging from health to national security.

International Human Rights Law does, however, put limitations on the authority of States over regulation of flow of persons over its borders. States in exercise of its authority over the admission of migrants must act in line with the principle of "non-discrimination". Also, specific categories of migrants enjoy special protection against non-admission. The primary category falling within this ambit is refugees under the internationally accepted obligation of non-refoulement. This protection provided to refugees is significant as it will apply regardless of lawful or unlawful entry of such refugees within the territory of another State.

Apart from this special protection accorded to refugees which put limitations on a State's power to expel migrants the CAT also states that "No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture".⁷³ Additionally, provisions in the ICCPR also places an obligation not to place migrants in their jurisdiction in a position where they may be subjected to "cruel, inhuman or degrading treatment".⁷⁴ The obligation not to expel a migrant who may be subjected

Costa Rica (1969), Organization of American States (OAS), Article 22; *African Charter on Human and Peoples' Rights ("Banjul Charter")*, (1981), Organization of African Unity (OAU), CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, Article 12(2); *Arab Charter on Human Rights*, (1994), League of Arab States.

⁷¹ ICRMW, Article 79; *Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live*, (1985), UNGA Resolution, A/RES/40/144, Article 2(1); See also *Abdulaziz, Cabales and Balkandali v. the United Kingdom* (Judgement), (1985), European Court of Human Rights, 15/1983/71/107-109, para. 67.

⁷² Perruchoud, n. 5, p. 131.

⁷³ CAT, Article 3.

⁷⁴ ICCPR, Article 7.

to torture in transit or destination country is absolute. It may not be derogated from even under circumstances when there exist war or national security issues.⁷⁵

Human rights provisions also allow for migrants who face expulsion to the benefit of procedural guarantees.⁷⁶ However, such procedural guarantees do not take into consideration, undocumented migrants. Notably, the ICRMW does, however, extend procedural guarantees to migrants facing expulsion irrespective of their legal status.⁷⁷

Conceptually, a right to leave will necessarily also entail the symmetrical right to enter another country on leaving from one's own country. Contemporary international law, however, does not recognise such a right, i.e., the nationals of one country do not have a right to enter into a foreign country.⁷⁸ Thus, the conception of having a right to depart from one's own nation and consequent right to stay in a foreign nation which had been considered as two faces of one coin as recognised by early international law scholars like Grotius is no longer applicable.

⁷⁵ Perruchoud, n. 5, p. 134.

⁷⁶ ICCPR, Article 13.

⁷⁷ ICRMW, Article 22. The Article provides: "1. Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.

2. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law.

3. The decision shall be communicated to them in a language they understand. Upon their request where not otherwise mandatory, the decision shall be communicated to them in writing and, save in exceptional circumstances on account of national security, the reasons for the decision likewise stated. The persons concerned shall be informed of these rights before or at the latest at the time the decision is rendered.

4. Except where a final decision is pronounced by a judicial authority, the person concerned shall have the right to submit the reason he or she should not be expelled and to have his or her case reviewed by the competent authority, unless compelling reasons of national security require otherwise. Pending such review, the person concerned shall have the right to seek a stay of the decision of expulsion.

5. If a decision of expulsion that has already been executed is subsequently annulled, the person concerned shall have the right to seek compensation according to law and the earlier decision shall not be used to prevent him or her from re-entering the State concerned.

6. In case of expulsion, the person concerned shall have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities.

7. Without prejudice to the execution of a decision of expulsion, a migrant worker or a member of his or her family who is subject to such a decision may seek entry into a State other than his or her State of origin.

8. In case of expulsion of a migrant worker or a member of his or her family the costs of expulsion shall not be borne by him or her. The person concerned may be required to pay his or her own travel costs.

9. Expulsion from the State of employment shall not in itself prejudice any rights of a migrant worker or a member of his or her family acquired in accordance with the law of that State, including the right to receive wages and other entitlements due to him or her."

⁷⁸ Perruchoud, n. 5, p. 129.

The State authority regulates the right of entry and residence in a foreign country. The conventional wisdom of a State's competence in this regard rests on the notion of territorial sovereignty. It is representative of the foundational "axiom" in classical international law which has been founded upon the Westphalian idea of Nation-States.⁷⁹

As it stands today, the right to leave in essence is incomplete as it remains contingent upon the right to enter another country.

(v) **Trade Law**

Apart from the earlier stated four broad groups, international trade law also has a certain impact upon the situation of migrants. This area focuses upon international collaboration in respect to management of international migration specially in terms of movement of service providers. The *General Agreement on Trade in Services*⁸⁰ (GATS) provides for States voluntarily consenting and committing themselves to rules regarding the admission of specific categories of migrants.⁸¹

B. Customary International Law

The only mode for the creation of universally binding norms is customary international law. Though, treaty law has grown, customary international law remains an important international law source.⁸² The unwritten nature of customary international law makes it difficult sometimes to identify it, thus leading to controversy among States. There are two components of customary international law: an objective element which is State Practice whilst the subjective element is expressed by the term "*Opinio Juris*". In essence, customary international law arises in consequence of the conduct of those whom it binds.⁸³

In the field of migration law, there is an assertion that the principle of "non-refoulement" is of customary law nature. This assertion has been backed by the arguments that there exists widespread state practice as many member states of the United Nations are party to a treaty or several treaties which endorse this principle.⁸⁴ The principle of "non-refoulement" apart from being expressed and laid down in the

⁷⁹ Chetail (2014), n. 56, p. 28.

⁸⁰ *General Agreement on Trade in Services*, (1869), UNTS 183, 33 I.L.M. 1167.

⁸¹ *Ibid.*, at Annex on Movement of Natural Persons Supplying Services Under the Agreement.

⁸² Virally, n. 11, p. 129.

⁸³ Virally, n. 11, p. 130.

⁸⁴ Report of the United Nations High Commissioner for Refugees, n. 30, para. 23.

RC can also be found in other regional treaties like the 1969 *Organization of African Unity (OAU) Convention Governing Specific Aspects of Refugee Problems in Africa*⁸⁵ and the 1969 *American Convention on Human Rights*⁸⁶. Further, in the year 2001 a declaration of State parties to the RC and the RC Protocol recognized “the principle of non-refoulement, whose applicability is embedded in customary international law”.⁸⁷

There also exists a relationship between customary international law and treaty law. Many a convention is a codification of customary law. In this manner, a norm ends up having two legal bases, one as customary law and the other as treaty law. For example, the right to “self-defence” as an inherent right exists both in customary international law and the treaty provision of the UN Charter.⁸⁸ Treaty law and customary law have a dynamic relationship. They both interact mutually and support each other. However, they remain distinct sources of international law. In the *Military and Paramilitary Activities in and against Nicaragua*⁸⁹ case the ICJ stated that conventional and customary rules retain a separate existence, i.e., “customary international law continues to exist and to apply, separately from international treaty law, even where the two categories of law have an identical content”.⁹⁰

In the realm of migration law as well, there have been many such instances where a treaty is a codification of customary law. For example, *Convention on Certain questions relating to the conflict of Nationality Laws*,⁹¹ 1930 in its first provision states:

“It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.”

A treaty can also provide the impetus for the formation of a new custom. The right to leave may be considered to be an example of such a formation of customary law. This may be deciphered from the fact that there exist widespread and representative

⁸⁵ *Convention Governing the Specific Aspects of Refugee Problems in Africa*, (1969), 1001 UNTS 45, Article 2(3).

⁸⁶ *American Convention on Human Rights, “Pact of San Jose”*, Costa Rica (1969), n. 7-, Article 22(8).

⁸⁷ *Declaration of States Parties to the 1951 Convention and or Its 1967 Protocol relating to the Status of Refugees*, (2002), UNHCR/MMSP/2001/09, Preamble, para. 4.

⁸⁸ *Nicaragua v. United States* (merits), (1986) ICJ Reports, 14; Shaw, n. 46, pp. 71-72.

⁸⁹ *Nicaragua v. United States*, n. 88.

⁹⁰ *Ibid.*, at p. 96, para 179.

⁹¹ *Convention on Certain Questions Relating to the Conflict of Nationality Laws*, (1930), 179 League of Nations Treaty Series 89, No. 4137.

participation of States in human rights treaties of the UN which acknowledge this right.

(i) *Ius-Cogens*

Within the context of the international legal system, everything is done through a consensual basis. The only exception to this norm is in respect to “Peremptory Norms of General International Law”, also termed as *Ius-Cogens*.

Ius-Cogens assumes that there exist particular rules which are fundamental, from which States cannot derogate from in any manner what so ever. As such, any treaty that contradicts a peremptory norm becomes void. The VCLT in Article 53 defines *Ius-Cogens* as “A norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” The identification of these norms has formed a basis for debates amongst academicians.

Concerning migration as well *Ius-Cogen* assumes relevance. This can be especially seen in the realm of human rights, for example, the prohibition of torture is an acknowledged peremptory norm of international law.⁹² The peremptory nature of “non-refoulement”, however, remains more controversial.⁹³

The Inter-American Court of Human Rights in the case of *Juridical condition and rights of the undocumented migrants*, stated:

“the principle of equality before the law, equal protection before the law and non-discrimination belongs to *Jus-Cogens*, because the whole structure of National and International public order rests on it”.⁹⁴

*Barcelona Traction*⁹⁵ case has also been instrumental in heralding the importance of protecting human rights norms. The ICJ in this case stated:

“When a State admits into its territory foreign investments or foreign nationals, ... it is bound to extend to them the protection of the law and assumes obligations concerning the treatment to be afforded them. These obligations,

⁹² *Prosecutor v. Furundzija* (Judgement), (1998), International Criminal Tribunal for the Former Yugoslavia (ICTY), Trial Chamber II, Case No. IT- 95-17/1-T, 153; *Caeser v. Trinidad and Tobago*, (2005), Inter American Court HR (Series C) No. 123.

⁹³ See also Report of the United Nations High Commissioner for Refugees, n. 30, para. 23.

⁹⁴ *Juridical condition and rights of the undocumented migrants, Advisory opinion*, (2003), OC-18/03, Inter-American Court HR (Ser A) No. 18, para. 101.

⁹⁵ *Barcelona Traction, Light and Power Company Limited (Belgium v. Spain)*, (Second Phase) (1970), ICJ Reports, 3.

however, are neither absolute nor unqualified. In particular, an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination.”⁹⁶

An argument can thus be proffered that The Barcelona Traction case has emphasised upon the existence of *jus cogens* norms in the area pertaining to migration.

C. General Principles of Law

As per the ICJ Statute under Article 38 (1) (C), it lists an additional source of International Law “the general principles of law recognised by civilised nations”.⁹⁷ The General Principles of International Law comprises principles which are common amongst the foremost legal systems in the world. The contents of the general principles of law have raised many controversies among states and varied opinions as to what it refers to.⁹⁸ Nevertheless, with the progress of time, the content has been refined in international jurisprudence.⁹⁹ Some examples of General Principles of law include, “good faith”, *pacta sunt servanda*, *estoppel*,¹⁰⁰ etc.

In the field of migration, these have been instrumental for the development of minimum standards of treatments of aliens during 19th and early 20th century.¹⁰¹ Such principles required that aliens were not to be treated below a common standard of conduct which has been recognised by most nations. These general principles have today come to be crystallised in the form of basic guarantees like the right to life, right against arbitrary detention and right to a fair trial.

⁹⁶ Ibid., at paras. 33-34.

⁹⁷ This provision was drafted in 1920 and as such “the term civilised nations” is no longer accepted in its colonial understanding and is instead understood to mean the primary national legal systems present around the world today. Further, with the evolution of international law, the Eurocentric understanding has today come to encompass a universal one.

⁹⁸ Shaw, n. 46, p. 72.

⁹⁹ Chetail, Vincent (2012), “Sources of International Migration Law”, in Brian Opeskin et.al (eds.), *Foundations of International Migration Law*, UK: Cambridge University Press, p. 82.

¹⁰⁰ Shaw, n. 46, pp. 75-78.

¹⁰¹ Chetail (2012), n. 99, p. 82.

D. Judicial Decisions

Apart from the previously discussed sources of law, the ICJ statute also envisages judicial decision to be a subsidiary source of international law.¹⁰² Judicial decision *per se* is not a source of law, but is evidence as to whether some rules have become part of International Law. Therefore, judicial decisions are important. Judicial decisions include not only the judgements of international courts like the ICJ and International Criminal Court (ICC) but also include regional and national courts and tribunals. In fact, in the area of migration, domestic decisions are particularly relevant such as in cases of extradition and readmission and refugee determination. The value and merits may, however vary. For instance, more weight and value are given to judgements of International Courts *vis-à-vis* national courts.

One of the most landmark cases which has a bearing on migration is the *Nottebohm case*¹⁰³ of the ICJ. This case is significant for the legal regime of nationality. In this case, the ICJ provided an authoritative definition of nationality and re-stated that states are principally competent to determine nationality.¹⁰⁴ Another case on migration would be the *Diallo case*¹⁰⁵ which settled two provisions of the ICCPR in the context of expulsion. The court held that any expulsion must be in accordance with the law which was construed to mean as requiring the compliance of both National and International Law.¹⁰⁶

The judgements arrived at by the ICJ though binding only among the parties to the dispute they do have considerable authority beyond that. These decisions are instrumental for the determination of International Customs or *Ius-Cogens*.¹⁰⁷

IV. SOFT LAW OR NON-FORMAL SOURCES OF INTERNATIONAL LAW

The ICJ Statute, in Article 38 lays down the sources of law. The ensuing years have, however, seen the placement of normative statements in non-binding political

¹⁰² ICJ Statute, Article 38 (1) (d).

¹⁰³ *Nottebohm case (Liechtenstein v. Guatemala) (S P)*, (1955), ICJ Reports, 4.

¹⁰⁴ *Ibid.*, at pp. 20, 23.

¹⁰⁵ *Case concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, (2010), ICJ Reports 1.

¹⁰⁶ *Ibid.*, at para. 65.

¹⁰⁷ *Colombia v. Peru (Asylum Case)*, (1950), ICJ Reports, 395; *Barcelona Traction, Light and Power Company Limited (Belgium v. Spain)*, (Second Phase) (1970), ICJ Reports 3.

instruments such as resolutions, declarations and programmes of action. Increasingly, the formal sources of international law have been supplemented by numerous such instruments commonly referred to as ‘soft law’.

There have been numerous debates over whether such instruments and the process of their adoption is evidence of a new mode of international lawmaking. Presently, States seem to perceive such texts as not legally binding and simply to be political commitments which could, in turn, lead to the formation of law. Some even consider soft-law to be a social norm.¹⁰⁸ Soft law norms however, does have “their own significance at the normative level”.¹⁰⁹

There as yet exists no universally acknowledged or recognised definition of ‘Soft Law’. P. Sreenivasa Rao, succinctly states that “Soft law comes in different forms and it may be difficult to define the same”.¹¹⁰ Scholars tend to also alternatively use the term “Soft law” to denote provisions that are of a tenuous or indeterminant nature present in a legally binding treaty. From a legal viewpoint, it would be inaccurate to term any non-binding instrument to be ‘law’ either soft or hard, but this is done by many mainly for the sake of expediency.¹¹¹ Similarly, in this work as well for the sake of convenience, the term ‘soft law’ is used to denote normative statements which have been contained in non-legally binding instruments.

Soft-law has been steadily gaining ground, especially in areas that require more flexibility and urgency and areas where States are as yet hesitant to agree for more concrete commitments.¹¹² Soft law also exercises considerable influence in international politics.¹¹³

Today, soft law has become an important source for the development of migration law and policy. Soft law which has been derived from resolutions or accords of international organisations, conference recommendations and declarations have

¹⁰⁸ Shelton, Dianah L (2008), “Soft Law”, in David Armstrong et al. (eds.), *Routledge Handbook of International Law*, Abingdon: Routledge, GWU Legal Studies Research Paper No. 322. GWU Law School Public Law Research Paper No. 322, p. 3; available at: <https://ssrn.com/abstract=1003387> (accessed on 14 January 2020).

¹⁰⁹ Desai, Bharat H. (2003), *Institutionalizing International Environmental Law*, New York: Transnational Publisher, p. 114.

¹¹⁰ Rao, P.S. (2007), “Role of Soft Law in the Development of International Law: Some Random Notes” in *Asian-African Legal Consultative Organisation, Fifty Years of AALCO: Commemorative Essays in International Law*, New Delhi: AALCO, 62-91, p. 62.

¹¹¹ Shaw, n. 46, p. 87.

¹¹² Desai (2003), n. 109, p. 112.

¹¹³ Shaw, n. 46, p. 88.

become the root through which issues of migration are being sought to be addressed. Soft law assumes significance as often it acts as a precursor to hard law.

Soft law, although not an official source of international law is of note. The rationale for this is *first*, its relationship with customary international law, as they at times provide an evidence of custom. An illustration of this relationship may be seen with regards to resolutions of international organisations, particularly of the UNGA. The resolutions of the UNGA help show the existence of *Opinio Juris*. The ICJ in the *Nicaragua* case has stated that:

“The effect of consent to the text of such resolutions... may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution by themselves”.¹¹⁴

The ICJ Further in the *Legality of the Threat or Use of Nuclear Weapons* Case explained that:

“General Assembly resolution, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide the evidence necessary for establishing the existence of a rule or the emergence of an *Opinio Juris*. To establish whether this is true of a given General Assembly resolution, it is necessary to look at its content and the conditions of its adoption. . . .”¹¹⁵

Therefore, for the assessment of whether a resolution is evidence of *Opinio Juris*, two conditions need to be fulfilled.

1. The content of the resolution should be written in prescriptive terms ensuring that the existence of an obligation is highlighted.
2. The resolution must be adopted by a high degree of States. This adoption must be consensual and representative of a majority of States.

It is very rarely that General Assembly (GA) resolutions are capable of fulfilling the conditions mentioned above in the field of migration. However, there are some resolutions in the area of migration which do fulfil these conditions and are thus relevant. For example, “*Declaration on Territorial Asylum*”,¹¹⁶ 1967 and the “*Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in which They Live*”,¹¹⁷ 1985. These declarations were unanimously adopted

¹¹⁴ *Nicaragua v. United States*, n. 88, p.100, para. 188.

¹¹⁵ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, (1996), ICJ Reports, 226, pp. 254-255.

¹¹⁶ *Declaration on Territorial Asylum*, (1967), UNGA Resolution, A/RES/2312(XXII).

¹¹⁷ *Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live*, (1985), UNGA Resolution, A/RES/40/144.

by the GA and are a restatement of existing norms endorsed in various multilateral treaties.

Second, soft law also provides guidance for the application of treaty law and may be used as a tool of treaty interpretation. It compliments Treaty Law by filling in gaps that are present in a treaty which may arise for specific issues and their implementation. This circumstance may be seen in ILO Conventions which are supplemented by recommendations. For example, both Convention 97 and the Convention 143 are complemented by recommendations.¹¹⁸ Those recommendations provide guidance to State parties on several issues.

Third, soft law can be seen on its own merit. It plays an important part in the formation of the normative process in international law, which contributes in the process of crystallisation of emerging norms. Even when Soft Law does not in due course of time harden it still becomes a reference mark¹¹⁹ and maybe used for the facilitation of Inter-State co-operation.¹²⁰ In the field of migration, such manner of promising use of soft law has been witnessed. For example, way back in the year 1994, the “*Cairo Declaration on Population and Development*”¹²¹ and its accompanying Programme of Action, the “*Programme of Action of the International Conference on Population and Development*”, 1994, with its thorough and comprehensive recommendations for measures which were to be taken by States in the context of international migration¹²² provided for one of the first inclusive approaches to multilateral co-operation in the field of migration. This declaration substantively brought attention to the nexus between migration and development. Another example is the “*Conference on Security and Cooperation in Europe Final Act*”,¹²³ 1975.

¹¹⁸ *Migration for Employment Recommendation (Revised)* (ILO Convention No. R86), 1949; *Recommendation concerning Migrant Workers* (ILO Convention No. R151), 1975.

¹¹⁹ Desai (2003), n. 109, p.120.

¹²⁰ Chetail (2012), n. 99, p. 88.

¹²¹ *Cairo Declaration on Population and Development*, (1994), International Conference of Parliamentarians on Population and Development; available at: https://www.unfpa.org/sites/default/files/event-pdf/Cairo_Declaration_English.pdf (accessed on 1 September 2020).

¹²² UN Population Fund (UNFPA) (1995), *Report of the International Conference on Population and Development*, Cairo, 5-13 September 1994, A/CONF.171/13/Rev.1, (ICPD), Ch X.

¹²³ *Conference on Security and Cooperation in Europe Final Act*, (1975), Helsinki; available at: <https://www.osce.org/files/f/documents/5/c/39501.pdf> (accessed on 1 September 2020).

In year 2006, the UN convened a “High-Level Dialogue on International Migration and Development”. This dialogue resulted in the formation of the “Global Forum on Migration and Development” (GFMD) established for the sole purpose of strengthening multilateral co-ordination in the field of migration. Though not a decision-making body, the GFMD is a state-driven process and a platform for norm-setting negotiations. Apart from the GFMD there are other multilateral initiatives like the “ILO Multilateral Framework on Labour Migration”¹²⁴ which was adopted in the year 2005. This multilateral framework spells out “non-binding principles and guidelines for a rights-based approach to labour migration”.

V. LEGAL PROTECTION FOR ENVIRONMENTALLY INDUCED MIGRANTS

Examination of the treaties and conventions has shown that, at present, none of the international law treaties identifies environmentally induced migrants as a specific group. In other words, environmentally induced migrants have not been recognised as a subject in international treaty law the way recognition have been given to refugees¹²⁵ and migrant workers¹²⁶. It is thus imperative to examine to what extent it is possible to apply the principles enshrined in these treaties and especially those of the human rights treaties for upholding rights and protecting environmentally induced migrants in order to meet the ends of justice.

Firstly, the people migrating as a result of environmental and climate change-induced factors may invoke the human rights treaties for their protection. This is because the basic rights enshrined within these treaties are applicable to all as the human rights instruments are based upon the principle of “non-discrimination”. In this respect particularly the “right to life and liberty”¹²⁷, and protection from arbitrary expulsion¹²⁸ guaranteed in the human rights treaties assumes great significance for people migrating due to a worsening environmental condition.

¹²⁴ ILO (2006), *ILO's Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach*, Geneva: International Labour Office; available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_178672.pdf (accessed on 5 January 2021).

¹²⁵ *Convention Relating to the Status of Refugees*, (1951), 189 UNTS 137.

¹²⁶ *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, (1990), 2220 UNTS 3.

¹²⁷ UDHR, Article 3; ICCPR, Articles 4, 6, 9; ICRMW, Article 16.

¹²⁸ CAT, Article 3; ICCPR, Article 7.

Secondly, with respect to the RC many have advocated that it is applicable to environmental migrants and have even termed these migrants as “climate refugee” or “environmental refugee”.¹²⁹

From the definition of the term ‘refugee’, it can be seen that the movement of people due to environmental reasons do not fall within the purview of the definition. Thus, when considered purely from a legal perspective “climate/environment refugee” would be a misleading terminology. This point is further strengthened as those persons who are moving because of environmental factors do not ‘flee’ because of persecution as is understood under refugee law. This is because though rising sea levels, hazardous weather-events etc. are damaging they do not as yet under law meet the threshold for ‘persecution’. Of course, the reason why many are tempted to invoke the term “refugee” for such migrants is that the refugee law framework would provide a well-defined protection regime. The invocation and recognition of a person as “refugee” would automatically provide for international protection. Also, the principle of “non-refoulment” is an added benefit.

There has been much advocacy for the expansion of the definition of “refugee” in the RC. Efforts have been made by the Central American and OAU countries to broaden the term and make it more inclusive.¹³⁰ Demand has also been made for the definition of refugee to also include within its domain environmental factors.¹³¹ As early as the year 2006 a proposition for the amendment of the RC was put forward by Maldives.¹³² The amendment proposed was to include the term ‘Climate Refugee’ in the definition of ‘Refugee’.¹³³

The main reason for rejecting proposals for the amendment of the definition of ‘refugee’ is the fear that a re-opening of the discussion of the RC would lead to the rejection of the Convention itself especially in the contemporary world scenario

¹²⁹ The question of terminology for environmentally induced migrants has been discussed in detail in **Chapter IV**.

¹³⁰ Swain, Ashok (1996), “Environmental migration and conflict dynamics: focus on developing regions”, *Third World Quarterly*, 17(5): 959-973, p. 964; available at: <https://www.jstor.org/stable/3993239> (accessed on 15 December 2017).

¹³¹ Frelick, Bill (2020), “It is time to change the definition of refugee”, *Aljazeera*, 26 January 2020; available at: <https://www.aljazeera.com/indepth/opinion/time-change-definition-refugee-200126095857235.html> (accessed on 5 February 2020).

¹³² McAdam, Jane (2011), “Swimming Against the Tide: Why a Climate Change Displacement Treaty is not an answer”, *International Journal of Refugee Law*, 23(1): 2-27, p. 6.

¹³³ Ibid.

where anti-migrant and anti-refugee sentiments abound. Nonetheless, RC, as it stands today, does not accord protection to environmental migrants.

A. UNGA Resolutions

There has been considerable debate over the legal position of the effect that UNGA resolutions have on International Law. For example, in the previous section, it has been seen how UNGA resolutions at times may be seen to reflect *Opinio Juris*. Irrespective of the divergence in legal opinion over the effect of UNGA resolutions upon international law, it is nevertheless required that they be considered.

In the field of migration, there have been numerous UNGA resolutions.¹³⁴ Essential observations about these UNGA resolutions that are intended towards protecting migrants include the reaffirmation of Article 13 of the UDHR that deals with the right of freedom of movement. All UNGA resolutions regarding migrants' request Member States to protect, uphold, safeguard and promote the human rights of all migrants in accordance with the UDHR. What is important to note is that the wordings may vary from resolution to resolution, but they have been adopted through a consensus and have been addressed to all member states.¹³⁵ A re-affirmation of the UDHR is done in almost all UNGA resolutions pertaining to migration. Certain other important themes which have been referred to in several of the UNGA resolutions on migration in some form or the other include:

1. The emphasis upon the “global character” of migration.¹³⁶
2. The interrelatedness of migration and development.¹³⁷
3. Concern over the situation of irregular migrants, children and women migrants.¹³⁸
4. They highlight the fact that migration often takes place within the same geographical regions.¹³⁹

The UNGA resolutions on migration also emphasise upon a human rights perspective over the issue of migration and migrant rights. They lay stress on the right against “arbitrary arrest and detention” of migrants, call to States to promote and

¹³⁴ Refer to [Annexure I](#) in this study: List of Important UNGA Resolutions on Migration.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Ibid.

“effectively” defend the human rights and essential freedoms of all migrants notwithstanding their migration status and to respect the “inherent dignity” of migrants.¹⁴⁰ The UNGA resolutions have also expressed concern over certain States’ domestic legislative measures that might restrict the fundamental freedoms and human rights of migrants.¹⁴¹

The environmental impact upon migration has also been a topic of discussion within the UN. A UNGA Resolution¹⁴² far back as the year 1988, expressed its apprehension and worry over the sufferings of those who were affected by natural disasters. It noted that natural hazards caused losses to both life and property and also prompted population displacement. The discussion of the UN in this respect was, however, more in line with humanitarian aid in times of such emergency crisis by neighbouring States and not hosting the disaster displaced persons as refugees. Over time other UNGA Resolutions have also come to highlight and specifically describe the environment as a driver of migration.¹⁴³

B. Other Global Initiatives

The government of Norway hosted the “*Nansen Conference on Climate Change and Displacement in the 21st Century*” in Oslo in the year 2011 was an important international event on the subject of environmentally induced migration. This conference was instrumental in the formulation of ten principles which have come to be known as the *Nansen Principles*.¹⁴⁴ These principles, while not being a soft law instrument, is still relevant as a policy framework which comprehensively outlines how to manage the situation with respect to displacement of people who have been impacted by environmental disasters. The very first principle of the “Nansen Principles” emphasize the requirement for a thorough information base and awareness to enable satisfactory “responses to climate and environmentally related displacement”.¹⁴⁵ Principles II to IV enumerates the roles of pertinent stakeholders.¹⁴⁶

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² *Humanitarian assistance to victims of natural disasters and similar emergency*, (1988), UNGA Resolution, A/RES/43/131.

¹⁴³ Refer to Annexure I in this study: List of Important UNGA Resolutions on Migration.

¹⁴⁴ Norwegian Refugee Council/Internal Displacement Monitoring Centre (2011), *The Nansen Conference: Climate Change and Displacement in the 21st Century*, Norwegian Refugee Council; available at: <https://www.unhcr.org/protection/environment/4ea969729/nansen-conference-climate-change-displacement-21st-century-oslo-6-7-june.html> (accessed on 12 October 2018).

¹⁴⁵ Ibid., at Principle I.

The humanitarian consequence of environment and climate-induced migrations as an adaptation challenge was for the first time explicitly recognised by the international community at the Nansen conference.¹⁴⁷ By the year 2012, these principles have developed into the “*Nansen Initiative on disaster-induced cross-border displacement*” that formed an “open and inclusive” intergovernmental forum.¹⁴⁸

Other significant developments concerning environmentally induced migration and migrants have been the unanimous adoption by all 193 member States of the UN of the *New York Declaration*¹⁴⁹ at the UNGA.

The *New York Declaration* is a “political declaration” which contains commitments that are equally applicable to both refugees and migrants¹⁵⁰ in areas ranging from xenophobia, racism¹⁵¹ to human trafficking¹⁵². The *New York Declaration* also contains different commitments for migrants¹⁵³ and refugees¹⁵⁴.

The *New York Declaration* is also considered as a landmark development in the area of environment-related migration, as the declaration considers displacement of people “forced to flee or are displaced across borders in the context of sudden- or slow-onset disasters, or in the context of the effects climate change”.¹⁵⁵ The *New York Declaration*, states the commitment towards “addressing the drivers that create or exacerbate large movements” and “combating environmental degradation and ensuring effective responses to natural disasters and the adverse impacts of climate change”.¹⁵⁶ This *New York Declaration* also makes a commitment to assist

¹⁴⁶ Ibid., at Principles II-IV.

¹⁴⁷ Kälin, Walter (2012), “From the Nansen Principles to the Nansen Initiative”, *Forced Migration Review* 41:48.

¹⁴⁸ McAdam, Jane (2014), “Creating New Norms on Climate Change, Natural Disasters and Displacement: International Developments 2010-2013” *Refuge: Canada’s Journal on Refugees*, 29(2):11-16, p. 11; Gemenne Francois and Pauline Brucker (2015), “From the Guiding Principles on Internal Displacement to the Nansen Initiative: What the Governance of Environmental Migration Can Learn from the Governance of Internal Displacement”, *International Journal of Refugee Law* 27(2): 245–263, p. 245.

¹⁴⁹ *New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly*, (2016), UNGA Resolution, A/RES/71/1.

¹⁵⁰ Ibid., at paras. 21, 22-40.

¹⁵¹ Ibid., at para. 39.

¹⁵² Ibid., at para. 35.

¹⁵³ Ibid., at paras. 21, 41-63.

¹⁵⁴ Ibid., at paras. 21, 64-87.

¹⁵⁵ UNHCR, *The New York Declaration for Refugees and Migrants Answers to Frequently Asked Questions*, p. 3; available at: <https://www.globalcompactrefugees.org/sites/default/files/2019-12/New%20York%20Declaration-%20Frequently%20Asked%20Questions%20%282017%29.pdf> (accessed on 2 December 2019).

¹⁵⁶ *New York Declaration*, n. 149, at para. 43.

“impartially and on the basis of needs, migrants in countries that are experiencing conflicts or natural disasters, working, as applicable, in coordination with the relevant national authorities”.¹⁵⁷ Also, of relevance are the commitments for the protection of all refugees and migrants regardless of their status.¹⁵⁸

The *New York Declaration* also built the groundwork of further action by initiating the way forward towards the development of two “Global Compacts” which have subsequently come to be adopted.

The year 2018 saw the formal adoption of first the *United Nations Global Compact for Refugees* (Refugee Compact)¹⁵⁹ and subsequently the *United Nations Global Compact for Safe, Orderly and Regular Migration* (Migration Compact).¹⁶⁰ The adoption of these two compacts which deal with population mobility has come to be understood as a new signal of “moral and political undertaking”.¹⁶¹ The two Compacts however are not legally binding nevertheless they do provide an agreement upon a common text.¹⁶² These two Compacts have been welcomed by and large by the international community and are considered to have great future potential.¹⁶³ The two Compacts have undertaken to respect the human rights of both refugees and migrants and ensure that they can live a safe, empowered and dignified life.

These two compacts also play an important role in the field of environmentally-induced migration. The Migration Compact is an international agreement which for the first time identified climate and environmental change as the driving forces of migration.¹⁶⁴ In its Objectives and Commitments section, the Migration Compact commits to ensuring that “desperation and deteriorating environments do not compel them to seek a livelihood elsewhere through irregular migration”.¹⁶⁵ It also recognises adaptation in country of origin as a priority and commits to advance measures for resilience and adaptation tactics to deal with the situations of both sudden and slow

¹⁵⁷ Ibid., at para. 50.

¹⁵⁸ Ibid., at paras. 5, 6, 32, 41.

¹⁵⁹ *Global Compact on Refugees*, (2018), UN doc A/73/12 (Part II).

¹⁶⁰ *Global Compact for Safe, Orderly and Regular Migration*, (2018), UN doc A/RES/73/195.

¹⁶¹ McAdam, Jane (2019), “The Global Compacts on Refugees and Migration: A New Era for International Protection?”, *International Journal of Refugee Law*, 30(4):571-574, p. 571.

¹⁶² Chimni, B.S (2018). “Global Compact on Refugees: One Step Forward, Two Steps Back”, *International Journal of Refugee Law*, 30(4):630-634, p. 630.

¹⁶³ Türk, Volker (2018), “The Promise and Potential of the Global Compact on Refugees”, *International Journal of Refugee Law*, 30(4): 575-583.

¹⁶⁴ See Migration Compact, n.160, para. 12, para. 18.

¹⁶⁵ Migration Compact, n. 160, para. 18.

onset natural disasters. The Refugee Compact also acknowledges that environmental degradation as well as sudden-onset natural disasters may lead to external forced displacement. Interestingly, the Refugee Compact does state that though environmental degradation and natural disasters have with increased frequency started to have a link and bearing upon the drivers of refugee movements, they in themselves are not causing the movement of refugee.¹⁶⁶

VI. CONCLUSION

The international regime on migration, although not systematic, does provide for protection and rights to migrants. However, States hold extensive authority with regards to the question of migration, especially with respect to regulation of immigration or the movement of non-nationals across their territorial borders. The Human Rights Regime does, to an extent, limit this broad authority enjoyed by a State in respect to foreign nationals. Thus, migrants also have the basic rights like the “right to life, liberty and security”; the “right not to be held in slavery or servitude”; the “right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment”.

However, gaps remain in the legal framework dealing with migration and the protection of migrants. This is primarily because the legal framework addresses concern of migrants as and when they develop and over the years, the legal regime has specifically addressed certain groups of migrants and their particular issues. Therefore, protection gaps remain for situations dealing with questions of migration for family and economic reasons and more importantly, for this particular work concerning migration due to environmental concerns. Hence, the next chapter, will deal with the case of environmentally induced migration and migrants.

¹⁶⁶ See Refugee Compact, n. 159, para. 8.

CHAPTER IV.
ENVIRONMENTALLY INDUCED MIGRATION: INTERNATIONAL
LEGAL IMPLICATIONS

I. INTRODUCTION

Having examined the contemporary international law framework on migration in the previous chapter, this chapter dedicates itself to the case of environmentally induced migration.

The term “environment” comes from the French root “environ” which stands for “surrounding”. The environment may be understood to be both natural and human-made surroundings. The elements of air, soil and water upon which organisms live comprises the natural surroundings whilst housing, roads, bridges and the like are the human-made components. The environment impacts all life. To be able to live a dignified life, a healthy and sustainable environment is essential.

The World has, however, in the past decades, witnessed increasing environmental degradation that has consequently raised a myriad of environmental concerns. We are witnessing increased biodiversity loss, scarcity of potable water, ozone layer depletion, anthropogenic changes to the climate, desertification, soil erosion etc. The environmental issues we are confronted with today are in large parts, unwanted and unintended and “inherently complex” to solve.¹ Many such concerns are global in its scope and relevance, requiring a global response.² These environmental and ecological concerns have far-reaching grievous consequences to all living organisms.

A leading environmental concern in the present-day scenario is the adverse consequences that climate change causes on the biodiversity of the planet and consequent grave human costs. Climate change discourses have claimed the attention and limelight in virtually all fields, ranging from the field of politics, law and academics to every aspect of public life. It is now having an impact in the field of migration as well.

¹ Nagtzaam, Gerry, et al. (2020), *International Environmental Law A Case Study Analysis*, UK: Routledge, p. 1.

² Desai, Bharat H. (1992), “Threats to the World Eco-System: A Role for the Social Scientists”, *Social Science & Medicine*, 35(4): 589-96.

This chapter has sought to bring environmentally induced migration and the legal position of such migrants into sharper perspective. In this vein, it discusses the classification and nomenclature for environmentally induced migration. It focuses upon the climate change, environment and migration dynamic and the potential repercussions of sea-level rise on small island nations. It examines international environmental law dimensions that impact environmentally induced migration and migrants and the legal issues which arise.

II. ENVIRONMENTAL AND CLIMATE CHANGE: INCREASING CONCERNS

Climate activists and scientists have for the past decades been pointing out the real and severe consequences of environmental and climate change. However, it has been relatively recent that this issue has come into the limelight, and people have moved past the questions of “is climate change a reality?” to perceive the consequences.³

End of the year 2019 and beginning year 2020 saw the devastation left in the wake of the Australian Bushfires. The loss of life, the area of forest cover, destroyed, and loss of animal life has been overwhelming. Climate change has been considered to have been instrumental in the increased intensity of the bushfire.⁴ The 28 major hurricanes that “struck land” in the Northern Hemisphere in the year 2018 were speculated to have also been caused due to the warming climate.⁵ The year 2019 recorded the highest temperatures during the month of July globally at “1.71 degrees F above the 20th-century average of 60.4 degrees”.⁶ This temperature was the highest seen in 140 years of records.

³ Serna, Joseph (2020), “Deadly fires in Australia have made climate change converts, as in California”, *Los Angeles Times*, 13 February 2020; available at: <https://www.latimes.com/environment/story/2020-02-13/australian-on-climate-change-bushfires-and-the-new-normal> (accessed on 14 February 2020).

⁴ Ghosh, Pallab (2020), “Climate change boosted Australia bushfire risk by at least 30%”, *BBC*, 4 March 2020; available at: <https://www.bbc.com/news/science-environment-51742646> (accessed on 14 June 2020); Fountain, Henry (2020) “Climate Change Affected Australia’s Wildfires, Scientists Confirm”, *The New York Times*, 04 March 2020; available at: <https://www.nytimes.com/2020/03/04/climate/australia-wildfires-climate-change.html> (accessed on 14 June 2020).

⁵ Gibbens, Sarah (2018), “2018’s deadly hurricane season, visualized”, *National Geographic*, 20 December 2018; available at: <https://www.nationalgeographic.com/environment/2018/12/hurricane-season-explained-maps-photos/> (accessed on 15 February 2020).

⁶ National Oceanic and Atmospheric Administration (2019), *July 2019 was hottest month on record for the planet*, 15 August 2019; available at: <https://www.noaa.gov/news/july-2019-was-hottest-month-on-record-for-planet> (accessed on 1 September 2020).

Human-caused climate change is impacting every living being on earth. Drastic climate change and global warming's impacts are increasingly affecting plant and animal life as well. Some sources say that nearly three thousand animal species of the Western Hemisphere will be required to find new habitats as an adaptation mechanism⁷ from worsening climate conditions.

The rising temperatures are impacting species forcing them to move towards cooler climate areas leading to weighty consequences for humanity.⁸ In fact, this movement of species is the largest since the last Ice Age about 25,000 years back. Land-based species are considered to be migrating towards the poles on an average of 17 km per decade whilst sea-based species by 72km per decade⁹ leading to mass re-distribution of animal life.

This impact on animals will invariably impact humans as well. As global warming occurs, species are migrating to different areas as a way of adapting to the climate. "They are moving up slopes and toward the poles. That is already altering what people can eat; sparking new disease risks; upending key industries; and changing how entire cultures use the land and sea."¹⁰

III. IMPACT OF ENVIRONMENT ON HUMAN MOBILITY

Since the time of Darwin, the relevance of ecological relations to human affairs has been recognised.¹¹ In the late year 2016, the residents of the *Inupiat Eskimo* village of Alaska voted to migrate to the mainland and leave their home which had become severely affected due to coastal erosion due to climate change.¹² The historic floods in

⁷ Poon, Linda (2016), "How Climate Change Will Affect Animal Migration, in One Map", *City Lab*, 24 August 2016; available at: <https://www.citylab.com/environment/2016/08/how-climate-change-will-impact-animal-migration-in-one-stunning-map/496961/> (accessed on 15 February 2020).

⁸ Carrington, Damian (2017), "Climate change: global reshuffle of wildlife will have huge impacts on humanity", *The Guardian*; available at: <https://www.theguardian.com/environment/2017/mar/30/climate-change-global-reshuffle-of-wildlife-will-have-huge-impacts-on-humanity> (accessed on 15 February 2020).

⁹ Ibid.

¹⁰ Welch, Craig (2017), "Half of All Species Are on the Move - And We're Feeling It", *National Geographic*, 27 April 2017; available at: <https://www.nationalgeographic.com/news/2017/04/climate-change-species-migration-disease/> (accessed on 15 February 2020).

¹¹ Audi, Robert (ed.) (1995), *The Cambridge Dictionary of Philosophy*, New York: Cambridge University Press, p. 268. See also Nagtzaam, n. 1, p. 600.

¹² Serhan, Yasmeeen (2016), "The Vote on the Future of a Native Alaskan Community", *The Atlantic*, 18 August 2016; available at: <https://www.theatlantic.com/news/archive/2016/08/alaskas-eroding-island/496421/> (accessed on 15 February 2020).

Louisiana and significant increase in wildfires in the U.S.¹³ caused as a consequence of extreme weather events have also resulted in driving out people from their homes.

The environment and migration relationship are multifaceted. However, this relationship has had a bearing throughout the course of human history.¹⁴ The contributory factors to human migration have primarily included political, social and economic aspects.¹⁵ Migration literature has, however, been less attentive to the environment as a factor of migration. Recently, with the adverse effects of climate change being more clearly perceived, this situation has changed.¹⁶

However, this relationship between environment and human mobility is riddled with complexities. This complexity is highlighted with the dearth of comprehensive data¹⁷ as well as the difficulty of attributing human mobility directly to environmental factors. Another conundrum lies in the inherent multi-causal aspect of human mobility.¹⁸

The past few decades have also seen increasing awareness and a rise in scientific and academic reports about the influence of environment on human migration.¹⁹ For instance, in the year 1994 at the *International Conference on Population and Development*, environmental degradation was recognised as a factor affecting international migration.²⁰ In fact, the year 2007 saw United Nations Development

¹³ Wolters, Claire, “Climate 101: Wildfires”, *National Geographic*; available at: <https://www.nationalgeographic.com/environment/natural-disasters/wildfires/> (accessed on 15 February 2020).

¹⁴ Lee, H.F. et al. (2008), “Climatic change and Chinese population growth dynamics over the last millennium”, *Climatic Change*, 88:131–156, pp. 131-132; available at: <https://doi.org/10.1007/s10584-007-9329-1> (accessed on 1 February 2020).

¹⁵ Rawls, John (2002), *The Law of Peoples: With, the Idea of Public Reason Revisited*, UK: Harvard University Press, pp. 8-9; Harris, J. R., and Michael P. Todaro (1970). “Migration, unemployment, and development: A two-sector analysis.” *American Economic Review*, 60: 126-142.

¹⁶ Chazalnoel, Mariam Traore and Daria Mokhnacheva (2014), “Environmental Migration: Human Rights and Legal Issues”, *Insights on Law & Society*, 14(3):26-28, p. 26; available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/insilaso14&div=30&id=&page=> (accessed on 9 October 2018).

¹⁷ Webersik, Christian (2012), “Climate-induced migration and conflict: what are the links?”, in Kirsten Hastrup and Karen Fog Olwig (eds.), *Climate Change and Human Mobility Global Challenges to the Social Sciences*, Cambridge: Cambridge University press, p. 148.

¹⁸ Kälin, Walter and Sanjula Weerasinghe (2017), *Environmental Migrants and Global Governance: Facts, Policies and Practices*, IOM; available at: <https://publications.iom.int/books/environmental-migrants-and-global-governance-facts-policies-and-practices> (accessed on 2 February 2020).

¹⁹ Nagtzaam, n. 1, p. 600.

²⁰ *Report of the International Conference on Population and Development* (1995), A/CONF.171/13/Rev.1; available at: https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/icpd_en.pdf (accessed on 25 September 2020); Ivanov, Dimitry V. and Damir K. Bekyashev (2016), *Environmental Migration in International Law*, UK: Cambridge Scholars Publishing, p. 14.

Program (UNEP) take note that environmental degradation which is happening worldwide takes a toll on development as well as lead to human migration.²¹ The IPCC also has in its report discussed how severe weather incidents are likely to give rise to displacement of people which could also later turn into permanent migration with the increase of such events in the future.²²

With regards to academic literature, Norman Myers has been a forerunner in this discussion and influential in raising widespread awareness over factoring in the environment to be a driver of migration.

A. Effects of Climate Change on Migration

Climatic changes occur naturally on earth. The concern today is that there is a rapid increase in surface temperature²³ which is not the normal course of events. For example, when Global Warming happened in the past, it had taken 5000 years for the planet to warm by 5 degrees.²⁴ The prediction for warming in the next century is 20 times faster.

²¹ UNEP (2007), *Global Environment Outlook GEO4, Environment for Development*, Malta: UNEP, pp. 21-23; available at: <https://www.unenvironment.org/resources/global-environment-outlook-4> (accessed on 5 January 2021).

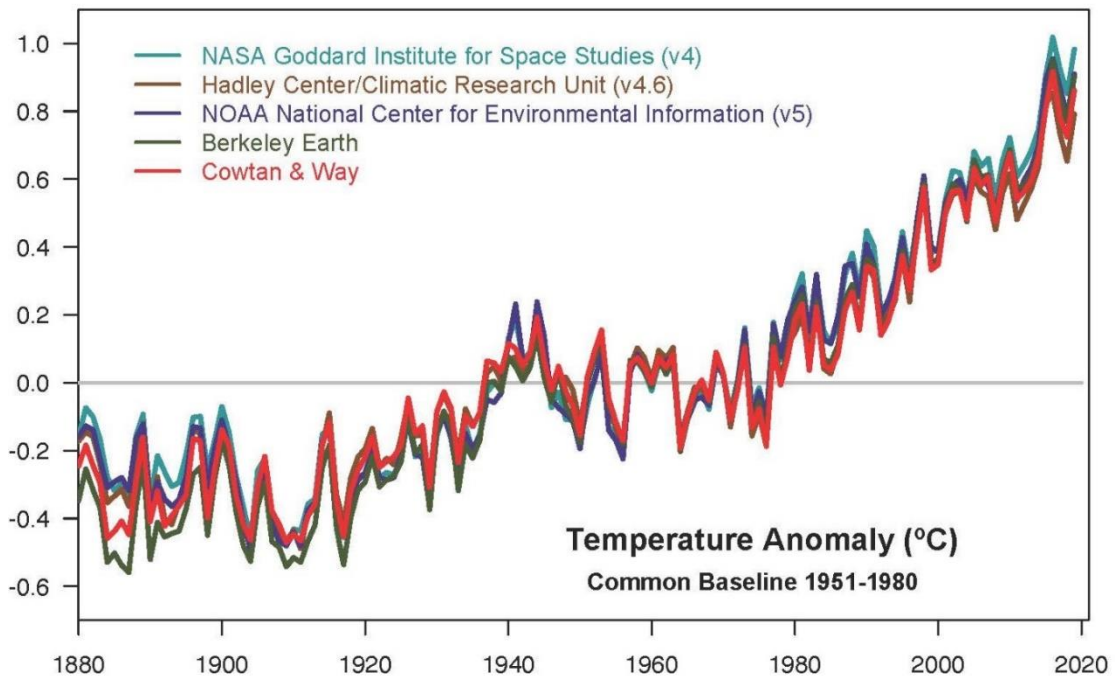
²² Intergovernmental Panel on Climate Change (2007), "Summary for Policymakers" in Parry, M.L. et al (eds.), *Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge, UK: Cambridge University Press; available at: <https://www.ipcc.ch/site/assets/uploads/2018/02/ar4-wg2-spm-1.pdf> (accessed on 12 December 2017).

²³ Pachauri, R.K. and A. Reisinger (eds.) (2007), *Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, Geneva: IPCC, p. 30; available at: https://www.ipcc.ch/site/assets/uploads/2018/02/ar4_syr_full_report.pdf (accessed on 30 July 2020).

²⁴ Earth Observatory NASA (2010), *How is Today's Warming Different from the Past?*; available at: <https://earthobservatory.nasa.gov/features/GlobalWarming/page3.php> (accessed on 15 February 2020).

IMAGE: 1

TEMPERATURE DATA SHOWING RAPID WARMING (1889-2019) WITH 2016 ACHIEVING HIGHEST TEMPERATURE DATA SINCE 1880.²⁵



The serious ramifications of climate change have today been thus recognised. The adverse effects of climate change are not limited to biodiversity damage and degrading ecosystems but to all aspects of life on earth. Climate change involves “not only rising average temperatures but also extreme weather events, shifting wildlife populations and habitats, rising seas, and a range of other impacts”.²⁶ By the 1990s, the potential effect of climate change on migration were also identified.²⁷

²⁵NASA’s Global Climate Change; available at: <https://climate.nasa.gov/scientific-consensus/> (accessed on 15 February 2020).

²⁶ Nunez, Christina (2019), “Causes and Effects of Climate Change”, *National Geographic*; available at: <https://www.nationalgeographic.com/environment/global-warming/global-warming-overview/> (accessed on 15 February 2020); See also Lamarr, Kheinkor (2020), “Climate Change and Migration: Human Rights Challenges”, in Chiradeep Basak et al. (eds.) *In Pursuit of Climate Resilience*, Assam: National Law University and Judicial Academy, Assam, p. 90.

²⁷ IPCC, World Meteorological Organization and United Nations Environment Programme (1992), *Climate Change: The 1990 and 1992 IPCC Assessments*, Canada: IPCC, at p. 103; available at: https://www.ipcc.ch/site/assets/uploads/2018/05/ipcc_90_92_assessments_far_full_report.pdf (accessed on 2 September 2020).

The IPCC Synthesis report published in year 2015 concludes that the warming of the climate is “unprecedented” and “unequivocal”.²⁸ The report concludes that climate change has impacted both natural and human systems across the globe. These impacts range from the quantity and quality of water, impacts on crop yields to the acidification of oceans.²⁹ It has led to a rise in sea levels and severe weather incidents³⁰ and impacting migration patterns.³¹ The cause for more worry is the prediction that such impacts are to continue and likely to become worse.³² The impacts, however, will be varied in different areas.³³ Studies point towards flooding, droughts and heat as potential drivers of migration.³⁴

This evidence of extreme weather events like increased precipitation leading to flooding, heatwaves and the progressively evident rising sea levels³⁵ is a cause of grave human rights concerns for the affected populations. These events are likely to affect human health and undermine food security.³⁶

The IPCC Synthesis Report published in year 2015 also concludes that climate change will increase human displacement on account of the consequences of drought, flooding and severe weather events.³⁷ Thus, it can be seen that climate change has the likelihood of escalating and strengthening natural disasters which could lead to people becoming displaced. Additionally, climate change has the ability to heighten and reinforce the impacts of the socio-economic and political push factors connected to migration. The sea level rises because of climate change is a situation of much concern having serious implications for small island nations and future population displacement and migration.³⁸

²⁸ Pachauri, R.K. et al. (eds.) (2015), *Climate Change 2014, Synthesis Report*, Geneva: IPCC; available at: https://www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf (accessed on 15 February 2020).

²⁹ Ibid., at p. 6.

³⁰ Ibid., at pp. 7-8.

³¹ Ibid., at p. 73.

³² Ibid., at pp. 8-10.

³³ Ibid., at pp. 11-13.

³⁴ Jeremy Lennard (ed.) (2015), “Global Estimates 2015: People Displaced by Natural Hazard-Induced Disasters”, *IDMC*; available at: <https://www.internal-displacement.org/sites/default/files/inline-files/20150713-global-estimates-2015-en-v1.pdf>. (accessed on 19 February 2019).

³⁵ Mimura, Nobuo (2013), “Sea-level Rise Caused by Climate Change and Its Implications for Society”, *Proceedings of The Japan Academy, Series B Physical and Biology Sciences*, 89(7): 281–301.

³⁶ Pachauri, n.28, p. 13.

³⁷ Pachauri, n.28, p. 16.

³⁸ Kelman, Ilan (2015), “Difficult decisions: Migration from Small Island Developing States under climate change”, *Earth’s Future*; available at:

A pre-dominant question generally asked is whether the environment is a sole driver of migration. This question arises as, in scientific analysis in general, an effect is attributed to a single cause. However, migration is a phenomenon which is multi-causal in nature and is riddled with complexities. Socio-economic and political factors have long been recognised as the main drivers of migration; so, what is important is to recognise that environment is one of the primary migration drivers rather than questioning whether or not the environment is a sole migration driver.

The environment at times plays a sole factor in migration which is manifest and at other times has an indirect impact on human mobility. Natural disasters and calamities like tsunamis and cyclones have a direct impact on human mobility. Such migrations are patently attributed to environmental factors. Climate-change has the potential to exacerbate such weather-related disasters. On the other hand, broader environmental conditions like desertification, environmental degradation and increase in salinity indirectly impact upon human mobility. These factors for instance have a negative impact upon crop yields which, in the long run, lead to an economic crisis ultimately affecting the sustenance of the people. In such cases, the cause for migration is commonly attributed to economic factors while the root cause was actually environment.

The complexity of determining if the environment is a factor of migration makes the discussion over environmentally induced migration as compared to other categories of migrants a challenging subject.

IV. CASES OF ENVIRONMENTALLY INDUCED MIGRATION

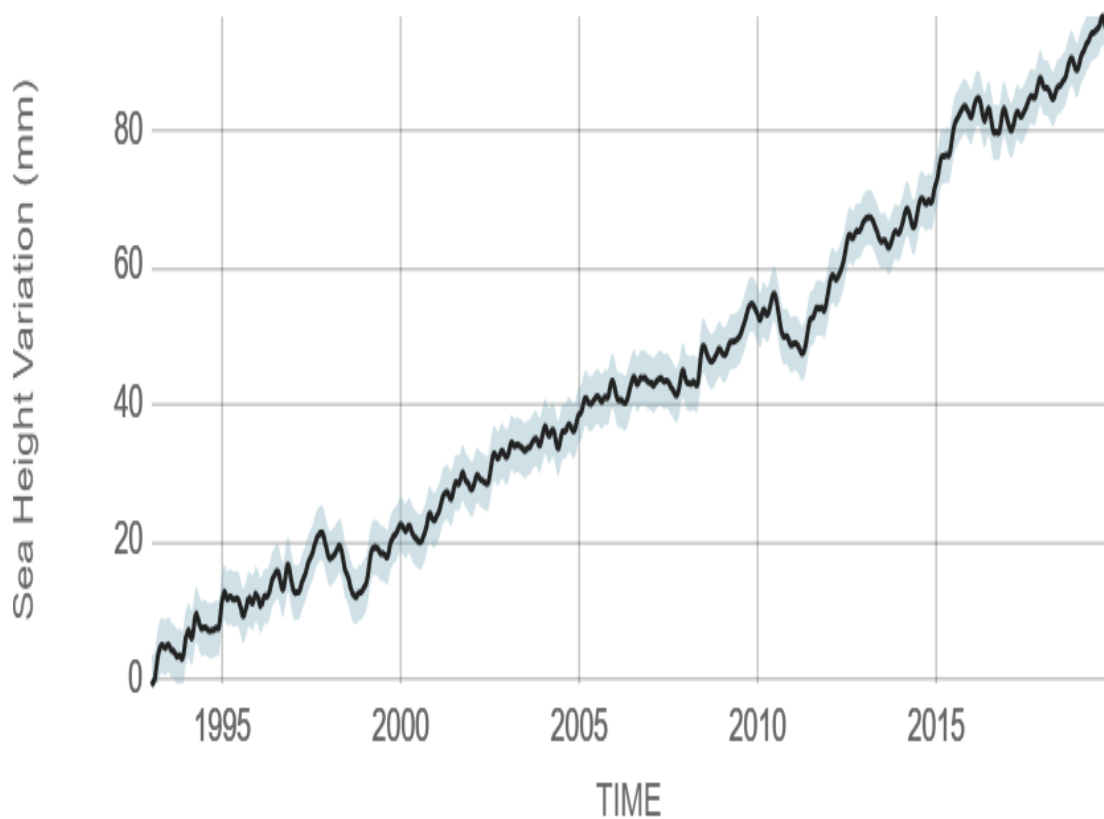
As the residents of the Inupiat Eskimo village of Alaska, there are a large number of cases which have come to the forefront which has or is likely to induce migration due to environmental factors. Some of these cases which by no means depict the entire spectrum of environmentally induced migration include the fate of the small island nations, the droughts and ecosystem degradation, the increasingly extreme weather events of hurricanes like the Hurricane Katrina etc.

A. Small island Nations

Amongst the many impacts ascribed to climate change, rising sea levels is one extremely worrying concern. The rising seas are credited to melting glaciers, and loss of the Greenland and Antarctica's ice sheets.³⁹ As a result, every year witnesses the rise in seas by about 3.2 mm.⁴⁰

IMAGE: 2

SEA LEVEL CHANGE SINCE 1993 DEPICTING A RATE OF CHANGE AS AN INCREASE OF 3.3 MILLIMETRES PER YEAR⁴¹



Source: climate.nasa.gov

³⁹ Jet Propulsion Laboratory NASA (2018), *Ramp-Up in Antarctic Ice Loss Speeds Sea Level Rise*; available at: <https://www.jpl.nasa.gov/news/news.php?feature=7159>. (accessed on 14 February 2020).

⁴⁰ Nunez, Christina, "Sea level rise, explained", *National Geographic*; available at: <https://www.nationalgeographic.com/environment/global-warming/sea-level-rise/> (accessed on 15 February 2020).

⁴¹ Satellite sea level observations, *NASA Goddard Space Flight Center*; available at: <https://climate.nasa.gov/vital-signs/sea-level/> (accessed 15 February 2020).

IMAGE: 3

FLOWING MELTWATER FROM THE GREENLAND ICE SHEET⁴²



⁴² NASA's Global Climate Change Official Website; available at: <https://climate.nasa.gov/evidence/> (accessed on 14 February 2020).

Rising sea levels are a cause for concern for the island nations and countries with coastal regions. The fate of the small-low lying island nations is more concerning as compared to those nations with a bigger landmass. The reason being those nations with a more significant landmass can resort to internal migration of people from the coasts inwards. At the same time, the population of island states would be unable to survive by moving inward. The situation is alarming for island nations which have been predicted to disappear altogether, leaving next to no scope of internal migration. The nations that are severely threatened are the Pacific nations of Tuvalu and Kiribati⁴³ and Maldives in the Indian Ocean which has its highest point just 2.4 meters above sea level.

A research paper published in the year 2016 has while researching the Solomon Islands a hotspot of sea-level rise identified “five vegetated reef islands that have vanished over” the period of 1947 to 2014 “and a further six islands experiencing severe shoreline recession”.⁴⁴ The paper also states that the shorelines recessions have led to the destruction of villages and community relocations. Another case of disappearing islands is the Vaan Island in the Gulf of Mannar. Though, this island is not a habited island it had in the past provided fisherman with a refuge from storms and is a hotspot for researchers.⁴⁵

B. Droughts and Ecosystem Degradation

Climate Change is expected to affect water availability. About 70-250 million people in Asia and Africa is expected to be negatively impacted due to such water shortages.⁴⁶ South America and the Middle East are already considerably affected by

⁴³ United Nations University Institute for Environment and Human Security (2017), *Pacific Islanders Faced with Climate-Induced Migration*; available at: <https://ehs.unu.edu/blog/articles/pacific-islanders-faced-with-climate-induced-migration.html>. (accessed on 5 February 2020); Burkett, Maxine (2011), “In Search of Refuge: Pacific Islands, Climate-Induced Migration, and the Legal Frontier”, *AsiaPacific Issues*, 98, Honolulu: East-West Center; available at: <https://environmentalmigration.iom.int/search-refuge-pacific-islands-climate-induced-migration-and-legal-frontier> (accessed on 5 February 2020).

⁴⁴ Albert, Simon et al. (2016) “Interactions between sea-level rise and wave exposure on reef island dynamics in the Solomon Islands”, *Environmental Research Letters*, 11(5):1-9.

⁴⁵ Thiagarajan, Kamala (2020), “Vaan Island in India’s Gulf of Mannar has been rapidly disappearing into the Laccadive Sea. But a team of marine biologists is working to save it” *Future Planet, BBC*; available at: <https://www.bbc.com/future/article/20200131-the-divers-trying-to-save-indias-vaan-island-from-sinking> (accessed on 5 February 2020).

⁴⁶ Solomon, S.D. et al. (eds.) (2007), “Climate Change 2007: The Physical Science Basis”, *Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge, United Kingdom and New York, NY, USA: Cambridge University Press; available at: https://www.ipcc.ch/site/assets/uploads/2018/05/ar4_wg1_full_report-1.pdf (accessed on 7 September 2020).

severe droughts. It has been argued that the large number of migrations which has been occurring from the regions of the Middle East and Africa to Europe will carry on. However, its primary driving factors will no longer be socio-political unrest but economic disparities and climate change.⁴⁷ A significant cause for concern is that the world's largest dryland populations live in developing and low-income countries that have a low adaptive capacity to changing environmental concerns.⁴⁸

The African region especially is very susceptible to environmental changes, especially as the population of this region is dependent on agriculture and natural resources. A concrete example of the problems in the African region due to water scarcity is the drying up of Lake Chad which borders four African Nations- Niger, Chad, Nigeria and Cameroon. This has contributed to the forced migration of people who have lost livelihoods in agriculture, fisheries and livestock.⁴⁹

Drought led desertification has also resulted in migrations in the Sahel region in the cases of Mali and Burkina Faso.⁵⁰

⁴⁷ Rogers, Paul (2017), "Climate Change, Migration and Security", *Briefings, Migration and Sustainable Security*, Oxford Research Group; available at: <https://www.oxfordresearchgroup.org.uk/climate-change-migration-and-security> (accessed on 9 September 2020).

⁴⁸ Foresight (2011) "Migration and Global Environmental Change: Future Challenges and Opportunities. Final Project Report", *The Government Office for Science, London*, p. 68; available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/287717/11-1116-migration-and-global-environmental-change.pdf. (accessed on 20 June 2020).

⁴⁹ Torelli, Stefano M. (2017), "Climate Driven Migration in Africa" *European Council on Foreign Relations*; available at: https://www.ecfr.eu/article/commentary_climate_driven_migration_in_africa (accessed on 5 February 2020).

⁵⁰ Pearson, Nakia and Camille Niaufre (2013), "Desertification And Drought Related Migrations In The Sahel – The Cases Of Mali And Burkina Faso", *The State of Environmental Migration*, 3:79-98, Institute for Sustainable Development and International Relations (IDDRI) / International Organization for Migration (IOM): Sciences Po Press; available at: https://publications.iom.int/system/files/pdf/state_environmental_migration_2013.pdf (accessed on 3 February 2020).

IMAGE: 4

LAKE CHAD 1972 AND 2007⁵¹

Lake Chad 1972 / 2007

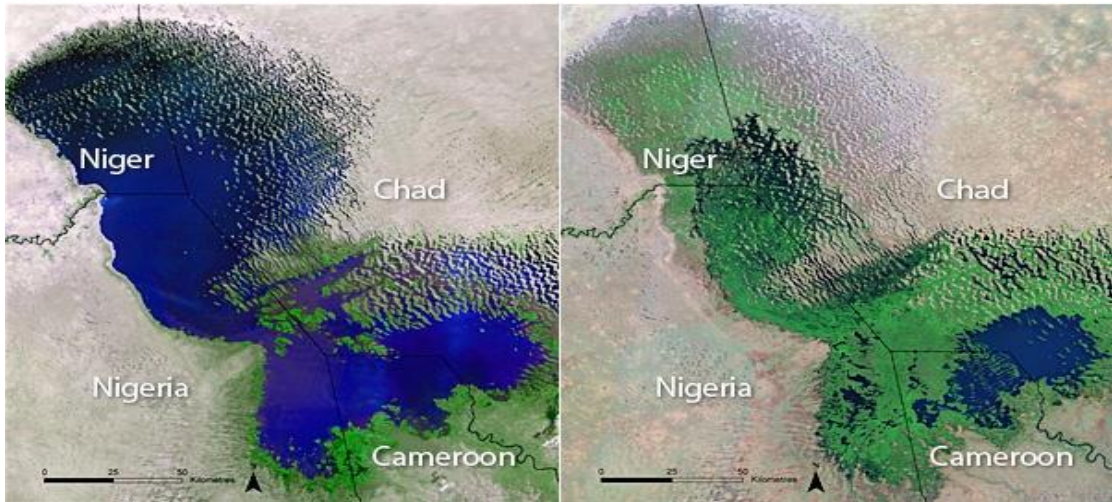
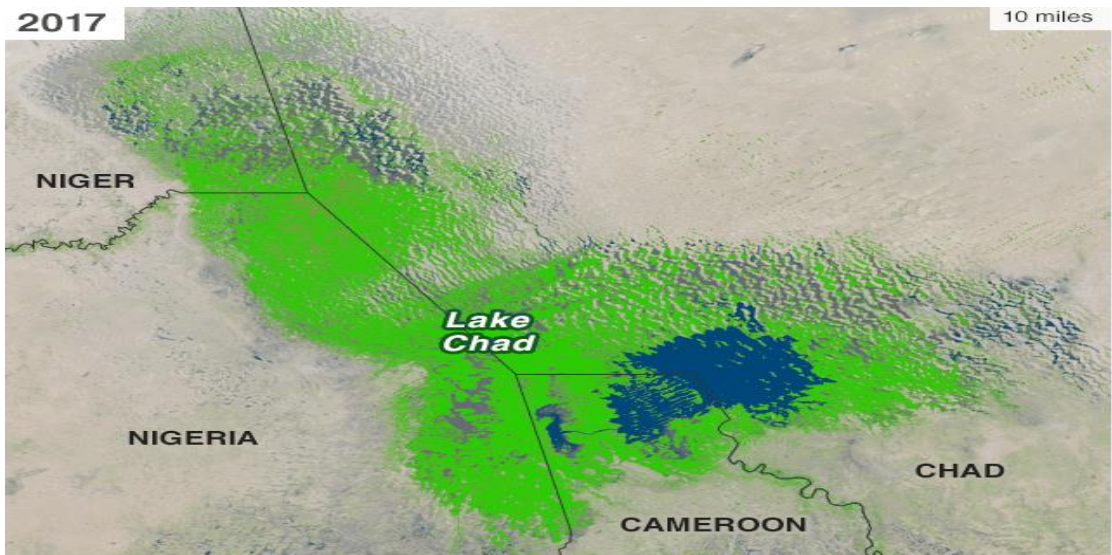


IMAGE: 5

LAKE CHAD IN 2017⁵²



⁵¹UNEP Atlas of Our Changing Environment, in Mark Notaras and Obijiofor Aginam, “Sucking Dry an African Giant Peace & Security: Africa, Conflict, Climate Change, Desertification, Peace, Our World,” *United Nations University*; available at: <https://ourworld.unu.edu/en/sucking-dry-an-african-giant> (accessed on 5 February 2020).

⁵²Will Ross, *Lake Chad: Can the vanishing lake be saved?*, BBC News; available at: <https://www.bbc.com/news/world-africa-43500314> (accessed on 5 February 2020).

C. Natural Hazards and Extreme Weather Events

There has been an increase in natural hazards like floods and volcanic eruptions and extreme weather events induced by climate change like heat waves and tsunamis and hurricanes. These events not only have affected the health of people, destroyed property but also resulted in migration and displacement of people.

Examples of human migration due to such events include the mass exodus of people due to *Hurricane Katrina* in the year 2005.⁵³ The Australian Bushfires which resulted in an “Unprecedented internal migration”.⁵⁴ The *Taal* volcanic eruption in the Philippines has also led to the forced movement of people to Manila seeking safer ground.⁵⁵

V. ENVIRONMENTALLY INDUCED MIGRATION: CONCEPTUAL CONTOURS

Environmentally induced migration is propelled generally by environmental or climatic changes.⁵⁶ These changes may be slow such as land desertification, sea-level rise, or sudden like tropical cyclones, droughts and floods.⁵⁷ The effects of climate change worsen, aggravate and expedite these drivers in a variety of complicated ways. A large section of humans might be left with no means or measures to help them migrate and as a consequence be left trapped or immobilized in unsafe environments. Whilst many others might be obliged and forced to migrate with increasing frequency, to greater distances and places, with the nature of the migration becoming more permanent, in pursuit of natural resources and finding gainful employment.

⁵³ Gibbens, Sarah (2019), “Hurricane Katrina, Explained”, *National Geographic*; available at: <https://www.nationalgeographic.com/environment/natural-disasters/reference/hurricane-katrina/> (accessed on 1 September 2020).

⁵⁴ Mills, Jennifer (2020), “Australian bushfires a glimpse of our future”, *Gulf news*; available at: <https://gulfnews.com/opinion/op-eds/australian-bushfires-a-glimpse-of-our-future-1.68834444> (accessed on 5 February 2020).

⁵⁵ Cabato, Regine (2020), “Taal volcano eruption forces thousands to seek safer ground in the Philippines”, *The Washington Post*; available at: https://www.washingtonpost.com/world/asia_pacific/taal-volcano-eruption-forces-thousands-to-seek-safer-ground-in-the-philippines/2020/01/13/4e2680f8-35cd-11ea-a1ff-c48c1d59a4a1_story.html (accessed on 5 February 2020).

⁵⁶ The discussion here is confined to the natural driving forces and does not include development projects, industrial accidents and intentional destruction of the environment.

⁵⁷ Brown, Oli (2008), *Migration and Climate Change*, Geneva: International Organization for Migration; available at: <https://olibrown.org/wp-content/uploads/2019/01/2008-Migration-and-Climate-Change-IOM.pdf> (accessed on 10 September 2020).

A. Classification

Environmentally induced migration has been classified in a different number of ways contingent upon say its principal causes or the voluntary or involuntary nature of the movement. There are many types of environmentally induced migration. Those resulting in immediate forced displacement of people due to natural disasters like cyclones, flash floods are more obviously recognisable. Nevertheless, migration due to declining agricultural productivity as a result of land degradation, high salinity content or water scarcity which take place over a period are less recognisable forms of environmentally induced migration and are more often interpreted to be caused due to economic factors and classified as economically driven voluntary migration.

In general migration within the context of the environment have come to be majorly classified in three different ways though not in any precise, systematic manner. It has been classified based on the principal causes of such migration, the nature of the migration, i.e., the temporary or permanent, forced or voluntary nature of such migration and the distance travelled. The third classification also includes the contours of the internal or cross-border pattern of migration.

R. Stojanov has classified environmentally induced migration based on its causes which he characterised into five categories.⁵⁸ They have been enumerated in the table below.

⁵⁸ Stojanov, R (2008), “Environmental Factors of Migration” in R Stojanov and J Novasak (eds.), *Development, Environment and Migration: Analysis of Linkages and Consequence*, Olomouc: Palacky University. Cited in Hugo, G (2010), “Climate Change-Induced Mobility and the Existing Migration Regime in Asia and the Pacific” in Jane McAdam (ed.), *Climate Change and Displacement: Multidisciplinary Perspectives*, Oxford and Portland, Oregon: Hart Publishing, p. 11.

TABLE 4:

R STOJANOV'S CLASSIFICATION OF ENVIRONMENTALLY INDUCED MIGRATION⁵⁹

CATEGORY	PRINCIPAL CAUSES
Natural Disasters	Floods, Earthquakes, Volcanic eruptions, landslides, coastal storms, hurricanes, tsunamis
Cumulative (slow-onset changes)	Land Degradation, droughts, water deficiency, climate change, Sea-level rise
Involuntarily Caused and Industrial Accidents	Nuclear accidents, factory disasters, environmental pollution
Development Projects	Construction of rivers and irrigation canals, mining natural resources, urbanisation
Conflict and workforce	Biological workforce, intentional destruction of the environment, conflicts due to natural resources

Environmentally induced migration, comparable to all other types of migration, has also been sought to be classified premised upon the involuntary (forced) or voluntary nature of the movement. However, in the cases of environmentally induced migration, it is more difficult to make such a classification under these two binaries clearly. This is because the conceptual contours with regards to voluntary environmentally induced migration can become blurry. The challenge arises when people choose to move, but this choice is more of an obligation to move due to worsening environmental changes so as to have a dignified life.

To help with such a quandary environment as a cause of migration has been visualised over a continuum.⁶⁰ The differentiation has been created based upon the degree of force and choice involved in the movement.⁶¹ In this differentiation, three categories have emerged⁶²:

⁵⁹ Ibid.

⁶⁰ Hunter, L. M. (2013). "Migration and environmental hazards" in G. Hugo (ed.), *Migration and Climate Change: The International Library of Studies on Migration*, 15: 273–302, p. 297, Cheltenham, UK, Northampton, MA: Edward Elgar. Cited in Silja Klepp (2017), "Climate Change and Migration", p. 5; available at: <https://oxfordre.com/climatescience/view/10.1093/acrefore/9780190228620.001.0001/acrefore-9780190228620-e-42> (accessed on 30 December 2019); Hugo, G (2010), "Climate Change-Induced Mobility and the Existing Migration Regime in Asia and the Pacific" in Jane McAdam (ed.), *Climate Change and Displacement: Multidisciplinary Perspectives*, Oxford and Portland, Oregon: Hart Publishing, p. 12.

⁶¹ Renaud, Fabrice et al. (2007), "Control, adapt or flee: how to face environmental migration?", *UNU-EHS Interdisciplinary Security Connections*, No. 5, available at: <https://collections.unu.edu/eserv/UNU:1859/pdf3973.pdf> (accessed on 30 December 2019).

⁶² Ibid., at p. 29.

1. “Environmentally motivated” a category in which migrants choose to move and environment features as a factor for such a choice;
2. “Environmentally forced” a category in which environmental changes has or is likely to destroy livelihood options necessitating that they move. Migrants, however, retain some choice as to the timings of their movements;
3. “Environmental refugees” a category in which due to environmental changes migrants are given no choice regarding their move or over the timing of their move.

Under the *Cancun Adaptation Framework*, an “Advisory Group on Climate Change and Human Mobility” was set up for the promotion of discussion over the aspects of human movement related to climate change and provide technical support to Parties.⁶³ The “Advisory Group on Climate Change and Human Mobility” has also sought to classify human movement in connection with climate change in three ways- (i) Migration, (ii) Displacement and (iii) Planned Relocation.

⁶³ UNFCCC (2011), “Report of the Conference of the Parties: The Cancun Agreements, Outcome of the work of the Ad Hoc Working Group on the Long-term Cooperative Action under the Convention”, FCCC/CP/2010/7/Add.1, Part Two: Action taken by the Conference of the Parties at its sixteenth session; available at: <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf#page=4> (accessed on 15 February 2020).

TABLE 5:

CHART DEPICTING HUMAN MOBILITY IN RELATION TO CLIMATE CHANGE⁶⁴

Human mobility		
Displacement Situations where people are forced to leave their home or place of habitual residence. Displacement is usually associated with intensive risk, where the occurrence of a disaster event is the primary driver of movement. It can take place within or across national borders.	Migration Movements which are, to some degree, voluntary. This is usually associated with extensive risk, and can take place within or across national borders. The decision to move is complex and often linked to multiple drivers, including but not limited to climate risk.	Planned relocation An organised relocation, typically instigated, supervised and carried out by the state with the aim of reducing (usually extensive) weather and climate risks. Ideally, planned relocation should be undertaken transparently and with the informed consent of, or upon the request of the community. It should also be accompanied by resettlement (the restoration of communities and socio-economic conditions) (McAdam and Ferris, 2015).

Graeme Hugo discusses the classification by understanding environmentally induced migration on the basis of displacement and adaptation.⁶⁵ It is generally assumed that all environmentally induced migration is “displacement migration” as this type is easily the most recognisable forms in the event of disasters, for instance. However, migration might also be an adaptive response by people and communities as a response to changing environmental and climatic conditions. According to Graeme, migration as adaptation or displacement would be dependent upon a time factor. When migration takes place in the event of exhaustion of all viable options, it would be displacement migration and when people migrate prior to a change in the environment which would make living impossible would be an adaptive migration.⁶⁶

⁶⁴Advisory Group on Climate Change and Human Mobility (2014), “Human mobility in the context of climate change: Recommendations from the Advisory Group on Climate Change and Human Mobility COP 20 Lima, Peru”; available at: <https://www.iom.int/files/live/sites/iom/files/pbn/docs/Human-Mobility-in-the-context-of-Climate-Change.pdf> (accessed on 15 February 2020).

⁶⁵ Hugo, n. 60, p. 13.

⁶⁶ Hugo, n. 60, p. 13.

Migration due to environmental factors is also predominantly classified as migration caused due to ‘sudden-onset’ or ‘slow-onset’ natural hazards.⁶⁷ The first is considered to create a large-scale but temporary mobility response while the latter would constitute small and gradual out-migration responses. Climate Change’s role, in this case, is most worrying as it has the potential to increase the rate, numbers and strength of the sudden onset natural hazards.

Another classification is also made in this field over the domestic or cross-border migration. Environmentally induced migration is generally considered to be predominantly domestic in nature and unlikely to involve cross-border migration.⁶⁸ The reason for this is limited global data on cross-border movement and few cases of note having been examined.⁶⁹ However, the cross-border aspect is also pretty much relevant today,⁷⁰ especially in the context of small island nations and the potential risks of climate change exacerbating the natural migration drivers. Walter Kälin an envoy of the “Platform on Disaster Displacement” on the occasion of the “Intersessional Panel Discussion on Human Rights, Climate Change, Migrants and Persons Displaced Across International Borders” said that “While the large majority of the displaced remain within their own country as internally displaced persons, some cross international borders to find protection and assistance abroad — usually in neighbouring countries or within their region”.⁷¹

A concrete case substantiating this point is the case which was communicated to the Human Rights Council (HRC) over a matter concerning one Ioane Teitiota hailing from the Pacific Nation of Kiribati who had migrated to New Zealand and had in the year 2013 made an application requesting protection from New Zealand. He claimed that his family and his own lives were in jeopardy as a result of his island nation

⁶⁷ Kälin, Walter and Sanjula Weerasinghe (2017), *Environmental Migrants and Global Governance: Facts, Policies and Practices*, IOM; available at: <https://publications.iom.int/books/environmental-migrants-and-global-governance-facts-policies-and-practices> (accessed on 2 February 2020).

⁶⁸ Ionesco, Dina (2019), “Let’s Talk About Climate Migrants, Not Climate Refugees”, Goal 13: Climate Action; available at: <https://www.un.org/sustainabledevelopment/blog/2019/06/lets-talk-about-climate-migrants-not-climate-refugees/> (accessed on 22 December 2020).

⁶⁹ See IOM, available at: https://migrationdataportal.org/themes/environmental_migration (accessed on 1 February 2020).

⁷⁰ Hugo, n. 60, p. 9.

⁷¹ Kälin, Walter (2017), “Human rights, migration and cross-border displacement in the context of adverse effects of climate change”, *Statement by the Envoy at the occasion of the Intersessional panel discussion on human rights, climate change, migrants and persons displaced across international borders, Human Rights Council*; available at: <https://disasterdisplacement.org/staff-member/human-rights-migration-and-cross-border-displacement-in-the-context-of-adverse-effects-of-climate-change> (accessed on 5 February 2020).

becoming uninhabitable due to rising sea levels.⁷² In fact, there have been over 15 others from the Pacific who have “made refugee claims in New Zealand, citing climate change as part of their basis of claim.”⁷³ A large-scale international migration in relation to environmental factors was also witnessed post-hurricane *Mitch* in the year 1998 which saw many people migrate from Nicaragua and Honduras to the United States.⁷⁴

B. Nomenclature and Definition

The literature on migration which discusses the environment as a factor is relatively new and an area that largely emerged in 1980s.⁷⁵ As a new and evolving research field, the area has generated a variety of research paradigms, debates and disagreements. An area which continues to have a great degree of variance and disagreements is on the subject of nomenclature or terminology for such migration patterns and consequently the migrants. Richard Black remarked that “there are perhaps as many typologies as there are papers on the subject”.⁷⁶

The variety of terminologies used include ‘environmental migration/migrants’, ‘climate migration/migrants’, “climigration”,⁷⁷ ‘climate/environmental refugees’,⁷⁸ ‘ecological refugees’⁷⁹. The phrase ‘environmental migrant/refugee’ is considerably broader in its ambit than ‘climate migrants/refugee’ as it links the movement of people to environmental change rather than specifically to climate change. Thus, the phrase ‘environmental migrant/refugee’ would also include human mobility due to changes in environmental conditions, for example, following a tsunami or earthquake.

⁷² This case is dealt with in greater detail in **Chapter V**.

⁷³ Doherty, Ben and Eleanor Ainge Roy (2017), “World Bank: let climate-threatened Pacific islanders migrate to Australia or NZ” , *The Guardian*; available at: <https://www.theguardian.com/environment/2017/may/08/australia-and-nz-should-allow-open-migration-for-pacific-islanders-threatened-by-climate-says-report> (accessed on 10 February 2020).

⁷⁴ IOM (2014), *IOM Outlook on Migration, Environment and Climate Change*, Geneva: IOM, pp. 13 and 40; available at: https://publications.iom.int/system/files/pdf/mecc_outlook.pdf (accessed on 8 December 2019).

⁷⁵ Klepp, Silja (2017), “Climate Change and Migration”, p. 2; available at: <https://oxfordre.com/climatescience/view/10.1093/acrefore/9780190228620.001.0001/acrefore-9780190228620-e-42> (accessed on 30 December 2019).

⁷⁶ Black, R. (2001), “Environmental refugees—myth or reality?”, *New Issues in Refugee Research (Working Paper No. 34)*, Geneva: UNHCR, p. 1.

⁷⁷ White, Gregory (2012), “The “Securitization” Of Climate-Induced Migration” in Kavita R. Khroy (ed.), *Global Migration Challenges in the Twenty-First Century*, USA: Palgrave Macmillan, p. 18.

⁷⁸ Islam, Rafiqul (2013), “Climate Refugees and International refugee Law”, in Rafiqul Islam and Jahid Hossain Bhuiyan, (eds.), *An Introduction to International Refugee Law*, Leiden/Boston: Martinus Nijhoff Publishers, p. 217.

⁷⁹ Ghosh, Amitav (2016), *The Great Derangement. Climate Change and The Unthinkable*, Gurgaon, Haryana: Penguin Books, p. 4.

Myers, who is considered to be one of the foremost proponents of the environment as a key factor which contributes to migration, has used the term ‘environmental refugee’. He states that the leading human crisis of the times will be “environmental refugees”.⁸⁰ According to him, the root cause of even those who migrate because of poverty is environmental degradation.⁸¹

The term ‘environmental refugee’ is said to have first been coined by El-Hinnawi in the year 1985 as a report title for the UNEP.⁸² Others claim that it was, in fact, Lester Brown of the World Watch Institute who in the year 1970 first used the term.⁸³ El-Hinnawi defined environmental refugee 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 jeopardised their existence and/or seriously affected the quality of their life”⁸⁴

One of the more impassioned contestations in this area has been usage of the expression ‘refugee’ in the context of migrants resulting from environmentally induced migration. Many have criticised this usage⁸⁵ for a variety of reasons, like ascribing such migration as monocausal. Mainly, however, it is because using the term ‘refugee’ is felt to have conflated the issue and of having undermined the complexity of real-life refugee situations.⁸⁶

Usage of the term ‘refugee’ or ‘migrant’ for the people moving as a result of environmental factors is, in the end, more a difference in the normative and political standpoints of people. However, when persons are categorised as ‘refugees’, they are

⁸⁰ Myers, Norman (1997), “Environmental Refugees”, *Population and Environment*, 19(2):167-182; available at: <https://www.jstor.org/stable/27503569> (accessed on 28 October 2020).

⁸¹ Myers, Norman (1993), “Environmental Refugees in a Globally Warmed World”, *BioScience*, 43(11):752-761; available at: <https://www.jstor.org/stable/1312319> (accessed on 15 December 2017).

⁸² *Contribution to The Sixteenth Coordination Meeting on International Migration. United Nations Environment Programme*, (2018), Population Division Department of Economic and Social Affairs United Nations Secretariat, UN/POP/MIG-16CM/2018/8; available at: <https://www.un.org/en/development/desa/population/migration/events/coordination/16/documents/papers/8.%20UNEP.pdf> (accessed on 8 June 2020).

⁸³ Black, n. 76, p. 1; Islam, n. 78, p. 216.

⁸⁴ El-Hinnawi, E (1985), *Environmental Refugees*, Nairobi: UNEP, at p 4. Quoted in Ashok Swain (1996), “Environmental migration and conflict dynamics: focus on developing regions”, *Third World Quarterly*, 17(5): 959-973, pp. 964-965; available at: <https://www.jstor.org/stable/3993239> (accessed on 15 December 2017); Also see, Desai, Bharat H. (1990), “Managing Ecological Upheavals: A Third World Perspective”, *Social Science & Medicine*, 30(10):1065-72.

⁸⁵ Castles, S. (2002), “Environmental change and forced migration: making sense of the debate”, *New Issues in Refugee Research (Working Paper No. 70)*, Geneva: UNHCR, p. 5.

⁸⁶ Hastrup, Kirsten and Karen Fog Olwig (eds.) (2012), *Climate Change and Human Mobility: Global Challenges to the Social Sciences*, Cambridge: Cambridge University Press, p. 7.

greatly benefitted as they come within the purview of the well-defined protective refugee regime. Ascribing the term ‘environmental refugees’ to persons migrating as a consequence of environmental factors, would create binding international legal obligations on States.

The IOM which uses the term “environmental migrant” does provide for a working definition. They have been defined as:

“A person or group(s) of persons who, predominantly for reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are forced to leave their places of habitual residence, or choose to do so, either temporarily or permanently, and who move within or outside their country of origin or habitual residence.”⁸⁷

C. The Trajectory of the Discourse

The early 1990s saw many critiques to the work of theories which propounded that there will be a great number of environmental migrants. Scholars like Myers, who had cited vast numbers of people who had been affected by environmental displacement were severely critiqued. There was also considerable debate that such theories were alarmist in nature and that there was no such situation of concern. More balanced criticism was along the lines that the links between environmental factors and migration had been shown as linear and straightforward whilst in actuality; the links were more profound and complex.⁸⁸

The trajectory of the debate has now taken a shift towards a more comprehensive but at the same time complex understanding of the issue of environmentally induced migration. Scholars like Black⁸⁹, Castles⁹⁰, T. Faist and J. Schade⁹¹ have been pivotal in taking the debate into a different direction. They have stressed upon the multi-causal links between migration and environment.⁹²

⁸⁷ IOM (2019), *International Migration Law. Glossary on Migration*, Geneva: IOM, p. 64; available at: https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf (accessed on 18 October 2019).

⁸⁸ Black, n. 76; Upadhyay, et al., (2015), “Conceptualizing and contextualizing research and policy for links between climate change and migration”, *International Journal of Climate Change Strategies & Management*, 7(3):394–417; Castles, n. 85.

⁸⁹ Black, n. 76.

⁹⁰ Castles, n. 85.

⁹¹ McLeman, Robert. et al. (eds.) (2016), *Environmental Migration and Social Inequality*, New York: Springer.

⁹² See also Hastrup, n. 86; For a view on environmentally induced migration as a process of adaptation see, McLeman, Robert A. (2014), *Climate and Human Migration: Past Experiences, Future Challenges*, USA: Cambridge University Press.

Setting aside the differences in scientific and academic viewpoints over the subject area of environmentally induced migration over the various issues of types, nature and nomenclature for the area, the reality of environmental migration has come to be recognised and acknowledged.⁹³ Not counting alarming figures of environmental migrants and considerable data gaps, there is still enough foundational evidence to link human migration with environmental changes which may be intensified due to the impacts of climate change. This warrants that we take a look into the legal and policy dimensions of this phenomenon.

VI. INTERNATIONAL ENVIRONMENTAL LAW FRAMEWORK

The relevance of international migration regime in relation to environmentally induced migration has been discussed in the previous chapter. With the interconnections between climate and environmental change with human migration becoming pronounced, it is incumbent upon us to examine if the international environmental law is of any significance as a legal framework for environmentally induced migration/migrants.

International Environmental Law is indeed applicable to the contours of environmental and climate change migration. From a jurisprudential standpoint, many foundational environmental law principles like “common but differentiated responsibility”, “precautionary principle”, “cooperation” and “responsibility towards future generations” incorporated within the *Rio Declaration on Environment and Development*⁹⁴ assumes importance as they envisage environmental protection and sustainable development.

Even in the regional environmental law context, we see the development of norms which become important for environmentally induced migration. An illustration of

⁹³ World Bank (2013), *Turn Down the Heat: Climate Extremes, Regional Impacts, and the Case for Resilience*, A report for the World Bank by the Potsdam Institute for Climate Impact Research and Climate Analytics, Washington, DC: World Bank; available at: https://www.worldbank.org/content/dam/Worldbank/document/Full_Report_Vol_2_Turn_Down_The_Heat_%20Climate_Extremes_Regional_Impacts_Case_for_Resilience_Print%20version_FINAL.pdf (accessed on 18 July 2020).

⁹⁴ *Rio Declaration on Environment and Development*, (1992), UN Doc. A/CONF.151/26 (vol. I), 31 ILM 874; These principles are contained in subsequent environmental agreements, including the UNFCCC; See Annexure V for the Rio Declaration.

this is the *Aarhus Convention*.⁹⁵ The convention recognises the “right to live in an environment adequate to his or her health and well-being”⁹⁶ and access to justice.⁹⁷

Of particular significance in this context is the *United Nations Convention to Combat Desertification*⁹⁸, 1994 (UNCCD) and the UNFCCC⁹⁹.

A. United Nations Convention to Combat Desertification (UNCCD)

The UNCCD is particularly important as regards to slow-onset environmental changes. In the year 2014, during the 105th session of the IOM the UNCCD and IOM put their signatures on a memorandum of understanding (MOU). The MOU resulted in the official launch of a structured collaboration on the “land-migration nexus”.¹⁰⁰

The UNCCD Secretariat also supports an “intergovernmental action” which was initiated by Senegal and Morocco called the “3S Initiative- Sustainability, Stability, Security”.¹⁰¹ This initiative launched at the 2016 African Action Summit that took place in Marrakesh is aimed at voicing the African concerns to the debate on migration drivers.¹⁰²

The idea of human mobility has also gained much attention in the UNCCD discussions so much so that in the year 2017 at its thirteenth Conference of Parties (COP 13), States that were party to the UNCCD adopted a decision in respect to migration.¹⁰³ The decision invited parties to “promote the positive role that measures

⁹⁵ *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (1998), UNTS, 2161, 447.

⁹⁶ *Ibid.*, at Preamble.

⁹⁷ *Ibid.*, at Article 1.

⁹⁸ *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa*, (1994), 1954 UNTS 3.

⁹⁹ *United Nations Framework Convention on Climate Change: resolution / adopted by the General Assembly*, (1992), 1771 UNTS 107.

¹⁰⁰ IOM (2014), “IOM and UNCCD Launch Partnership to Jointly Address Negative Cycle of Land Degradation”, *Forced Migration*, Press Releases; available at: <https://www.iom.int/news/iom-and-unccd-launch-partnership-jointly-address-negative-cycle-land-degradation-forced> (accessed on 7 February 2020).

¹⁰¹ UNCCD, *Sustainability, Stability, Security (3S Initiative)*; available at: <https://www.unccd.int/actions/sustainability-stability-security-3s-initiative> (accessed on 7 February 2020).

¹⁰² 3S Initiative Official Website; available at: <https://3s-initiative.org/en/home/> (accessed on 7 February 2020).

¹⁰³ *The Positive Role That Measures Taken under the Convention Can Play to Address Desertification/Land Degradation and Drought as One of the Drivers That Causes Migration* (2017), COP, ICCD/COP (13)/L.25; available at: https://www.unccd.int/sites/default/files/sessions/documents/2017-09/ICCD_COP%2813%29_L.25-1716167E.pdf (accessed on 5 February 2020).

taken to implement the Convention can play to address desertification/land degradation and drought as one of the drivers that causes migration”.¹⁰⁴

The UN Special Representative for international migration, Louise Arbourin in her video message at the UNCCD COP 13 Mongolia, in the year 2017 also explored how environmental migration drivers such as desertification, soil erosion and land degradation were instrumental in weakening local livelihoods and becoming instrumental for the migration of people away from their communities.¹⁰⁵

B. International Climate Change Framework: UNFCCC

By the 1980’s, climate change and its effects had started to be discussed and debated on many platforms. The realisation of this issue as a global concern catapulted it into the international arena. It also became clear that for combating the issue of a changing climate through policy and law, it was essential to have a clearer scientific understanding of the issue. The *UNGA resolution 43/53* was one of the earliest resolutions discussing concerns posed towards humankind because of climate change.¹⁰⁶

The year 1988 saw the World Meteorological Organization (WMO) and the United Nations Environment Program (UNEP) under the direction of the UNGA create the IPCC.¹⁰⁷ The IPCC was tasked with the essential job of providing law and policymakers with periodic assessments on the scientific basis of climate change, it’s probable effects and risks and also provide with options for mitigation of its negative effects.¹⁰⁸

The IPCC has been influential in internationalising the concerns of climate change. It did so with its very “First Assessment Report” in the year 1990.¹⁰⁹ This assessment report, among other things, was instrumental in laying the foundations for the UNFCCC. The report also highlighted the need for a political platform for the subject.

¹⁰⁴ Ibid., at para. 1 (a).

¹⁰⁵ Video message of Louise Arbourin; available at: <https://www.youtube.com/watch?v=3asuIyIE9ec>. (accessed on 5 February 2020).

¹⁰⁶ *Protection of global climate for present and future generations of mankind*, (1988), UNGA Resolution, A/RES/43/53.

¹⁰⁷ Nagtzaam, n. 1, p. 234.

¹⁰⁸ Nagtzaam, n. 1, p. 234.

¹⁰⁹ IPCC, *History of the IPCC*; available at: <https://www.ipcc.ch/about/history/#:~:text=In%201990%2C%20the%20First%20IPCC,consequences%20and%20requiring%20international%20cooperation.&text=The%20first%20of%20these%20Special,governments%20under%20the%20Paris%20Agreement> (accessed on 2 September 2020).

By its fourth assessment report, the IPCC clearly concluded “[h]uman influence on the climate system is clear” and that human activities and undertakings were the chief cause.¹¹⁰

The human consequences and subsequently, the human rights challenges, more specifically in the situation of migration emanating from the unfavourable influences of climate change, is what is important for this work.

It is an acknowledged fact that climate change is and will result in serious implications for an extensive range of human rights like the “right to life”, rights to food, water, shelter and health.¹¹¹ Further, its severe effects are set to be disproportionately felt upon coastal communities, indigenous peoples whose lives are symbiotically linked to nature, the poor, old and the disabled. Most affected regions will also be the Asia-Pacific and Africa regions that have the majority of developing countries which are already facing issues like poverty and have lesser adaptive capacities.

At the global platform, the IPCC's “Fourth Assessment Report” also mentions the “potential for population migration” as more and more places become affected due to cyclonic activities and droughts.¹¹²

(i) *The UNFCCC and its Conference of Parties (COP)*

Some of the most pivotal work on the issue of climate change at the international level has been undertaken under the aegis of the UNFCCC, which is the chief international treaty dealing with the subject matter of climate change. The UNFCCC, which was adopted in the year 1992 at the UN Conference on Environment and

¹¹⁰ Pachauri, R.K. and L.A. Meyer (eds.) (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*, Geneva: IPCC; available at: https://www.ipcc.ch/site/assets/uploads/2018/05/SYR_AR5_FINAL_full_wcover.pdf (accessed on 30 July 2020).

¹¹¹ Ibid.; UNEP and Sabin Center for Climate Change Law at Columbia University (2015), *Climate Change and Human Rights*, Nairobi: UNON Publishing Services Section Nairobi; available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/9530/-Climate_Change_and_Human_Rights%3Bhuman-rights-climate-change.pdf.pdf?sequence=2&isAllowed=1 (accessed on 30 July 2020).

¹¹² Pachauri, R.K. and A. Reisinger (eds.) (2007), *Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, Geneva: IPCC; available at: https://www.ipcc.ch/site/assets/uploads/2018/02/ar4_syr_full_report.pdf (accessed on 30 July 2020).

Development (UNCED) known as the “Earth Summit”, has 197 parties including India.

The UNFCCC in Article 1 (2) gives the definition for “Climate Change” to be:

“a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.”¹¹³

The UNFCCC’s Conference of Parties (COP)¹¹⁴ an annual event, the first of which took place in Germany in the year 1995 has been responsible for the legal and policy developments in respect of the area of climate change. The primary function of the COP is to be the platform for the formal meeting of the UNFCCC State parties. They have served as the stage for several vital negotiations of note being the *Paris Agreement*¹¹⁵ and the *Kyoto Protocol*¹¹⁶.

The COP sessions of the UNFCCC have also deliberated upon the climate change and migration angles. It was however only at Cancun during the 16th COP session in the year 2010 that climate change-related displacement was first brought under considerable deliberation. The “Cancun Adaptation Framework”¹¹⁷ emphasised upon the necessity and requirement for an improved comprehension and collaboration “with regard to climate change induced displacement, migration and planned relocation”.¹¹⁸

After Cancun, however, it took an additional two more years before any other tangible progress could be made. The COP 19 of the year 2013 held in Warsaw decided to discuss “climate induced displaced persons” as a segment to the deliberations on loss and damage by adopting the “Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts” (WIM).¹¹⁹

¹¹³ UNFCCC, Article 1(2).

¹¹⁴ Refer to Annexure II for a list of UNFCCC’s COPs held up till year 2020.

¹¹⁵ *Paris Agreement*, (2015), FCCC/CP/2015/L.9/Rev.1; available at: <https://unfccc.int/resource/docs/2015/cop21/eng/109r01.pdf> (accessed 3 September 2020).

¹¹⁶ *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, (1997), UN Doc FCCC/CP/1997/7/Add.1, 37 ILM 22.

¹¹⁷ Framework Convention on Climate Change (2010), *Report of the Conference of the Parties on its sixteenth session (held in Cancun from 29 November to 10 December 2010)*, UNFCCC/CP/2010/7/Add.1, Decision 1/CP.16; available at: <https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf> (accessed on 15 June 2020).

¹¹⁸ *Ibid.*, at para. 14(f).

¹¹⁹ Fornale, Elise and Curtis Doebbler (2017), “UNHCR and Protection and Assistance for the Victims of Climate Change”, *The Geographic Journal*, 183(4): 329-335, p. 330; UNFCCC (2014), *Warsaw*

In the year 2014, an initial work plan of the “Executive Committee” of the WIM meant for a duration of two years was adopted. This work plan contained the “Action Area 6”, that gave the “Executive Committee” to undertake the work to “[e]nhance the understanding of and expertise on how the impacts of climate change are affecting patterns of migration, displacement and human mobility; and the application of such understanding and expertise”.¹²⁰ After this progress, there were many expectations from the next COP which was scheduled to take place in Paris.

COP 21, which was held in the year 2015 has come to the limelight as the COP wherein the landmark *Paris Agreement* was concluded. One hundred eighty-nine countries including India have become parties to the *Paris Agreement* as of the year 2020. In this agreement, the parties to the UNFCCC in light of the “urgent threat of climate change” decided to reinforce and accelerate the steps required to realise reduced carbon emissions.¹²¹ The parties to this agreement also aimed to “strengthen the global response to the threat of climate change”.¹²² The remarkable nature of the agreement is premised on the fact that it built upon the UNFCCC and was able to bring a great many States to take up the ambitious task of combating and adapting to the negative climate change impacts.¹²³ However, in respect of climate change-related to human mobility, it fell short of the expectations.¹²⁴

After COP 19, there had been many expectations that the subsequent COPs would take more concrete steps concerning persons displaced due to the impacts of climate change. COP 21 and the *Paris Agreement* were, however, unable to deliver upon such expectations. This does not mean that the *Paris Agreement* made no mention of this subject. It did, but by only mentioning migrants in its preamble. Further the *Paris Agreement* under Article 4 para 2 required parties to publicly communicate their climate action goals through the intended nationally determined contributions (INDCs). It is of note that some countries like Kiribati and Tuvalu in their INDCs

international mechanism for loss and damage associated with climate, COP, 2/CP.19; available at: <https://unfccc.int/resource/docs/2013/cop19/eng/10a01.pdf#page=6> (accessed on 3 September 2020).

¹²⁰ *Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts* (2014), UNFCCC/SB/2014/4.

¹²¹ *Paris Agreement*, (2015), FCCC/CP/2015/L.9/Rev.1; available at: <https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf> (accessed on 3 September 2020).

¹²² *Ibid.*, at Article 2.

¹²³ *Ibid.*, at Article 3.

¹²⁴ Karasapan, Omer, “Refugees: Displaced from the Paris climate change agreement?”, *Brookings*; available at: <https://www.brookings.edu/blog/future-development/2015/12/07/refugees-displaced-from-the-paris-climate-change-agreement/> (accessed on 8 February 2020).

have mentioned migration as a consequence of climate and environmental change related factors.¹²⁵ Most countries however remain silent on this aspect.

The other important outcome of COP 21 was the mandate for the establishment of a Task Force.¹²⁶ As per this mandate, the WIM operationalized the “Task Force on Displacement” (TFD) which then began its first phase of implementation in the year 2017. The purpose for TFD being set up was with an intention “to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change”.¹²⁷ The TFD has 14 members as of the year 2019.

The relevance of the Task Force within the UNFCCC process is that the UNFCCC negotiations mandated the WIM Executive Committee to establish the Task Force. The Task Force will then make its recommendations to the WIM which then reports back to the UNFCCC negotiations. As of now the mandate of the Task Force is to continue its work on human mobility that was extended by the WIM in 2018, under its “strategic workstream (d)” of its five-year rolling work plan.¹²⁸ The Task Force since April 2019 also began its second phase of implementation.¹²⁹ It has come up with the second phase “Plan of Action” which was approved by WIM in October 2019.¹³⁰

It is now likely that all major work with respect to human mobility and climate change from this point onwards is likely to be conducted by this Task Force.

¹²⁵ INDCs as communicated by Parties; available at: <https://www4.unfccc.int/sites/submissions/INDC/Submission%20Pages/submissions.aspx> (accessed on 5 September 2020).

¹²⁶ *Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, Addendum Part two: Action taken by the Conference of the Parties at its twenty-first session* (2016), UNFCCC/CP/2015/10/Add.1, para. 49; available at: <https://unfccc.int/sites/default/files/resource/docs/2015/cop21/eng/10a01.pdf> (accessed on 11 October 2020).

¹²⁷ Ibid.

¹²⁸ United Nations Climate Change, *Task Force on Displacement*; available at: <https://unfccc.int/wim-excom/sub-groups/TFD#eq-3>. (accessed on 1 September 2020).

¹²⁹ Ibid.

¹³⁰ *Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts*, (2019), UNFCCC, FCCC/SB/2019/5/Add.1; available at: https://unfccc.int/sites/default/files/resource/sb2019_05_add1.pdf (accessed on 7 September 2020).

C. 2030 Sustainable Development Goals (SDGs)

Another development at the global arena has been the unanimous adoption of the Sustainable Development Goals by UN¹³¹ (SDGs 2030) in the year 2015. The SDGs are considered to be a “blueprint” intended for the realisation of a sustainable future for all and leave no one behind in the process. The SDG contains 17 goals to be achieved by 2030.¹³²

IMAGE: 6

THE 17 SDG GOALS¹³³



Goal number 13 “Climate Action” is the goal of dealing directly with climate change and acknowledges the UNFCCC to be the principal intergovernmental platform of an

¹³¹ *Transforming our world: the 2030 Agenda for Sustainable Development* (2015), UNGA A/RES/70/1.

¹³² Ibid.

¹³³ See United Nations; available at: <https://www.un.org/sustainabledevelopment/blog/2015/12/sustainable-development-goals-kick-off-with-start-of-new-year/> (accessed on 7 February 2020).

international nature for making deliberations and negotiations over climate change. Goal 13 in specific contains targets which are aimed to “Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters” in all countries,¹³⁴ making advancements in the field of education in relation to climate change mitigation¹³⁵ in addition with incorporating “climate change measures into national policies” and plans of countries.¹³⁶

SDG’s target 10.7 specifically asks that the signatories of the SDG to “Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies”.

Though placing a strong emphasis on climate change, the SDGs and goal 13, in particular, fail to take up the issue of environmentally induced migration. Though migration, in general, is discussed specifically in the context of Goal 8 and 10 the relation that environment has with migration, however, is not established.

VII. LEGAL CONSIDERATIONS ON ENVIRONMENTALLY INDUCED MIGRATION

An evaluation of both the international migration law and environmental law regimes brings us to the conclusion that there is very less legal protection available for environmentally induced migrants, and more importantly that there is no legal recognition of this category.

The growing concerns relating to climate change and its mostly negative impacts amplify the situation pertaining to environmentally induced migration. Though migration is multi-causal, the situation of climate change is such that it has a high potential of becoming the sole and dominant driver of migration in the future. Such migrations may be both temporary and even permanent in nature.

The legal issues that arise from the situation of environmentally induced migration and migrants are many. Within the context of discussion over the legal issues, the first aspect that gains prominence is some of the legal impediments. One such impediment is that there is no comprehensive universally accepted definition for environmentally induced migrants. The IOM does provide a working definition for environmental

¹³⁴ SDGs 2030, Goal 13.1.

¹³⁵ SDGs 2030, Goal 13.3.

¹³⁶ SDGs 2030, Goal 13.2.

migrants,¹³⁷ but it is not a widely accepted definition. To be able to provide protection, it is crucial to identify the people needing protection from which arises the second legal impediment. There is low clarity on this aspect to help with the application of a framework as there are many scenarios for environmentally induced migrants.

Three main scenarios can, however, be identified: migrants as a result of fast onset disasters, slow-onset disaster¹³⁸ and the case of migrants from small island nations.¹³⁹ The situation of island nations is most worrying as there is a very high likelihood of causing statelessness for such people with the erosion of their islands due to rising sea levels. The Pacific island nations are already facing these problems. Kiribati, for example, has as a response to climate change proposed a scheme for cross-border migration as it has no “sustainable long-term internal migration option”.¹⁴⁰ The goal of ‘migration with dignity’ policy is Kiribati’s aim of forging relationships with expatriate communities in Australia and New Zealand. However, this policy is not of help to those who lack skills and “falls short of equitably ensuring protective migration mechanisms for all”.¹⁴¹ It is in these circumstances, the question of how international law can provide for a protection mechanism for such individuals come to the fore.

If the persons who have been impacted by climate and environmental change were to migrate internally, the internal displacement regime¹⁴² could be invoked. However, when migration is cross-border, especially in cases where an individual’s home country’s assistance capabilities are exhausted there is a considerable lacuna in the law. International Law provides for protection and non-rejection at the border for only certain individuals which do not as yet include persons “fleeing” as a consequence of environmental and climate-related factors. This, in turn, highlights one of the most significant risks associated with environmentally induced migrants in the absence of

¹³⁷ Melde, Susanne (2014), *Migration, Environment and Climate Change: Evidence for Policy (MECLEP) Glossary*, Geneva: IOM, p. 13; available at: <https://www.iom.int/files/live/sites/iom/files/Country/docs/MECLEP-Glossary-EN.pdf> (accessed on 20 November 2020).

¹³⁸ Kälin, Walter and Sanjula Weerasinghe (2017), *Environmental Migrants and Global Governance: Facts, Policies and Practices*, IOM; available at: <https://publications.iom.int/books/environmental-migrants-and-global-governance-facts-policies-and-practices> (accessed on 2 February 2020).

¹³⁹ See discussion on Small Island Nations, pp. 104-106.

¹⁴⁰ McNamara, Karen E (2015), “Cross-border migration with dignity in Kiribati” *Forced Migration Review*, 49:62.

¹⁴¹ Ibid.

¹⁴² *Guiding Principles on Internal Displacement*, (1998), UNHCR, ADM 1.1, PRL 12.1, PR00/98/109.

specific legal protection which is irregular migration. The absence of this protection precludes such migrants from say, Bangladesh or Kiribati from effortlessly appealing for resettlement in another country not even considering those populations “trapped” powerless and incapable of using migration as an adaptive tool. Migration as a consequence and outcome of environmental or climatic changes have in the past been an adaptive measure. The strong border policies today, however, create impediments for such adaptive measures.

VIII. CONCLUSION

Environment acts as a central and decisive player in the context of human mobility. This factor was, however, largely overshadowed by the more dominant economic and political factors in migration literature. Environmental degradation and climate change have led to a refocusing upon environmental drivers of migration. Notwithstanding this new relevance that environment has achieved in migration literature, there is yet not much concrete development, especially in the field of law. Whilst the issue of environmentally induced migration is steadily becoming grave, relevant and less and less an issue of future concern, many uncertainties around environmentally induced migration remain. This is most prominent in the area of nomenclature, deciphering who needs protection based on the difficulty of ascertaining voluntary movement vis-à-vis forced and situation of cross-border migration due to difficulties in data projections.

The lack of legal protections afforded to such migrants is of considerable legal consequence. Though the *New York Declaration* as well as the two Global Compacts on Refugees and Migration address environmental factors as drivers of migration none of these documents provide for specific international protection for such migrants. Hence, the only relief at this point is the degree of protection accorded to such migrants pursuant to the human rights regime. The strengthening border controls and anti-immigration policies, on the other hand, make an already distressing situation worse.

In the area of migration and migrant protection, apart from international legal instruments, the role of International Organisations (IO) is also important. Today, many IOs have even begun to look into the situation of environmentally induced

migrants. The following chapter, therefore, considers the role of IOs in international migration.

CHAPTER V. ENVIRONMENTALLY INDUCED MIGRATION AND ROLE OF INTERNATIONAL ORGANISATION

I. INTRODUCTION

The preceding chapters have discussed the international legal instruments pertaining or having a relevance to migration and migrants. The discussion on the international framework on the protection of migrants is however incomplete without discussing the role and functions of International Organisations (IOs) within the context of migration and migrants. Hence, this chapter discusses this aspect.

It was during the 19th century, specifically the latter half that International Organisations (IOs) in the modern sense came into existence.¹ The decisive move to institutionalise happened with the formation of the League of Nations in the year 1920. Post the League of Nations having been established and the United Nations in the year 1945 there has been an explosion of international institutions which numbered over 200 by the year 1979.²

Before the development of IOs, States acted separately³ and most political issues common to different States were addressed via ad hoc conferences or unilateral diplomatic initiatives.⁴ However, the growing interdependence and increase in agendas of a global nature in the realm of international relations necessitated a move for institutional arrangements.⁵ This need coalesced into the coming up of IOs which

¹ Basu, Rumki (2004), *The United Nations: Structure and Functions of an International Organisation*, New Delhi: Sterling Publishers Private Limited, reprinted 2008, pp. 7-9; El Erian, Abdullah (1968), "The Legal Organization of Inter-National Society" in Max Sorensen (ed.) *Manual of Public International Law*, London: Macmillan, p. 57.

² Thompson, Alexander and Duncan Snidal (2011), "International Organization: Institutions and Order in World Politics", in Francesco Parisi (ed.), *Production of Legal Rules*, Edward Elgar Publishing, p. 311; available at: https://politicalscience.osu.edu/faculty/athompson/pdf/Thompson&Snidal_ParisiChap17.pdf (accessed on 4 September 2020).

³ El Erian, n. 1, p. 57.

⁴ Basu, n. 1, p. 4. See also Shaw, Malcolm N. (2017), *International Law*, Eighth Edition, India: Cambridge University Press, p. 983.

⁵ Basu, n. 1, pp. 8-9.

provided a space for permanent institutional mechanisms.⁶ The IOs of today form the institutional framework for international interactions.⁷

II. INTERNATIONAL ORGANISATIONS (IOS)

The development of IOs may be characterised into three time periods. The Congress of Vienna (1814-15) up till the First World War can roughly be described as the first period. For example, the *Concert of Europe* established after Napoleon's defeat, the 1899 and 1907 conferences convened in Hague are considered as the "ancestors" of modern IOs.⁸ The concrete developments of IOs, however, happened in the course of the latter half of the nineteenth century. The inter-war phase is the second period of IO development which specifically saw the formation of the League of Nations and the ILO. The third and final period is the contemporary time-frame that began with the establishment of the UN at the conclusion of the Second World War.

IOs are intergovernmental entities which have been established through treaty and are generally composed of permanent secretariats, plenary assemblies and executive organs.⁹ Under the auspices of an IO, large number of specialised institutions having varied nomenclatures like commissions, committees, offices, and councils are also established. These are, however, not considered to be IOs in their own right. Today, apart from IOs there exist many Non-Governmental Organisations (NGOs) as well. Some consider IOs to include both intergovernmental organisations (IGOs) and NGOs.¹⁰

The term "international institutions" (II) has also been used to reference IOs.¹¹ Some however distinguish between these two terms.¹² Nevertheless, in this chapter IO and II have been used interchangeably.

⁶ El Erian, n. 1, p. 57.

⁷ Goldstein, Joshua S. (2004), *International Relations*, Fifth Edition, Delhi: Pearson Education, p. 262.

⁸ Mansbach, Richard W. and Kirsten L. Taylor (2014), *Introduction to Global Politics*, Second Edition, London: Routledge p. 319.

⁹ Alvarez, Jose E. (2006), "Centennial Essay: In Honor of the 100th Anniversary of the AJIL and The ASIL: International Organisations: Then and Now", *American Journal of International Law*, 100:324, p.1; Chavan, R.S. (1978), *An Approach to International Law*, New Delhi: Sterling Publishers Private Limited, p. 177.

¹⁰ Goldstein, n. 7, p. 264.

¹¹ See for example Shaw, n. 4, p. 984; Martin, Lisa L. and Beth A. Simmons (2012), "International Organizations and Institutions", in Walter Carlsnaes et al. (eds.) *Handbook of International Relations*, Sage Publication, p. 327; available at: https://scholar.harvard.edu/files/bsimmons/files/ch_13_-_international_os_and_is.pdf (accessed on 5 September 2020).

The international institutions and IOs have a large variety of functions which are continually increasing. Chief amongst such functions is to establish peaceful cooperation amongst the various member States. Additionally, IOs like the UN, for instance, have even come to be recognised as a distinct international law subject with an independent “legal personality”¹³ having rights and obligations under international law and the capacity to enter into treaty obligations and create legally binding obligations.

These various institutions have different aims, functioning and memberships catering to a variety of subject matters including areas of national law.¹⁴ Some also address the subject matter of migration. Many of these institutions are generalist in nature, i.e., to say that they concern themselves with migration in the course of dealing with other tasks and functions while in other instance they specifically deal with the subject matter of migration.

The evolution of international migrations institutions took place so as to be able to face and confront the issues raised by international migration. The institutions have a variety of functions ranging from offering operational support to monitoring and compliance of the large number of legal instruments pertaining to migration and encouraging their enforcement.¹⁵

Amongst the many IOs and institutional mechanisms established, the most significant of them in the context of migration are the UNHCR and the IOM. These two are considered to be the principal migration agencies.

III. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)

Before establishment of the UNHCR in the year 1950, other similar setups to deal with refugee situations had been present. Historically, the High Commissioner for Refugees had been established in the year 1921 by the League of Nations to deal with

¹² Martin, Lisa L. n. 11, p. 326.

¹³ *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion*, (1949), ICJ Reports, 174; See also Gautier Philippe (2000), “The Reparation for Injuries case Revisited: The Personality of the European Union”, in J.A. Frowein et al. (eds.), *Max Planck Yearbook of United Nations Law*, Volume 4, Netherlands: Brill | Nijhoff.

¹⁴ Alvarez, n. 9, p. 2.

¹⁵ Opeskin, Brian et al. (2012). “Conceptualising international migration Law”, in Brian Opeskin et al. (eds.), *Foundations of International Migration Law*, UK: Cambridge University Press, p. 5.

the Russian exodus post the 1917 Revolution. Similar entities had earlier also been set up by the Allies during the 1945–1950 time-frame.

The UNHCR was established by a UNGA Resolution.¹⁶ UNHCR's leading and foremost responsibility and occupation was the tackling of the refugee predicament which came to the forefront as a consequence of the World War in Europe. The work of the UNHCR is underpinned by the RC¹⁷, that came to be finalised in the subsequent year.

The mandate of the UNHCR under the UNHCR Statute¹⁸ is to provide international protection to refugees and also to find lasting resolution to matters regarding refugees by providing them with all necessary help when they willingly wish to go back to their homelands or in other cases helping them assimilate in new places.¹⁹ Article 2 of the UNHCR Statute lays out that the work of the UNHCR is entirely non-political in character and that “it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees”.

At the outset, the mandate of the UNHCR was narrowly constructed and bound by the definition of “refugee” under its Statute which was in concurrence with the definition of the RC. Initially, the UNHCR was also supposed to accomplish its mandate within a three-year time period and then disband. The UNGA or the Economic and Social Council however had the competence to extend the UNHCR's mandate.²⁰ Over time, this flexibility became more visible, and over the years its mandate has been progressively extended.

There have been several such extensions, the first made in the year 1956 was a response to the effects of the Cold War. The UNHCR was mandated to give a response to the Hungarian refugee problem that ensued after the anti-communist revolution was quelled and put to rest by the former Soviet Union. Other instances of broadening the mandate include the situation with respect to the Chinese in Hong

¹⁶ *Refugees and stateless persons*, (1949), UNGA Resolution, 319 (IV).

¹⁷ *Convention Relating to the Status of Refugees*, (1951), 189 UNTS 137.

¹⁸ *Statute of the Office of the United Nations High Commissioner for Refugees*, (1950), UNGA, A/RES/428(V).

¹⁹ *Ibid.*, at Article 1.

²⁰ *Ibid.*, at Article 3.

Kong and Algerians in Morocco.²¹ Today, the mandate of the UNHCR practically covers not only refugees but displaced persons, stateless persons and other groups in comparable circumstances.²²

To meet the necessity of ensuring a removal of the geographical as well as time constraints of the RC, a Protocol to the RC was consented upon during the year 1967. The acceptance of the RC Protocol²³ also effectively situated the UNHCR at a better footing in dealing with massive human displacements taking place resultant of decolonisation, civil wars and internal displacement.²⁴

The UNHCR has operations in more than 120 States around the world. Its main activities are sharply focussed upon the international protection of refugees as mandated under the RC. The UNHCR was even awarded the Nobel Peace Prize in the years 1954 and 1981 for the work it has accomplished.

On the broader field of migration; however, the UNHCR has a relatively narrower portfolio. In respect to stateless and displaced persons, its activities include the upholding and respecting of their human rights.

A. Role of the UNHCR

The UNHCR has recognised that climate change is a serious concern in respect to refugees as well as other persons who might not fall within the contours of a refugee and that the Refugee Compact²⁵ does address this mounting global concern.²⁶

Antonio Guterres as High Commissioner of UNHCR in the year 2007 discussed his concerns over environmental degradation and climate change related movements at the UNHCR's Executive Committee meeting.²⁷ Following the lead of the High

²¹ Gallagher, Dennis (1989), "The Evolution of the International Refugee System", *The International Migration Review*, 23(3): 579-598, p. 582; available at: <https://www.jstor.org/stable/2546429> (accessed on 4 January 2021).

²² Omelaniuk, Irena (2012), "Global migration institutions and processes", in Brian Opeskin et al. (eds.), *Foundations of International Migration Law*, UK: Cambridge University Press, p. 347.

²³ *Protocol Relating to the Status of Refugees*, (1967), 606 UNTS 267.

²⁴ Barnett, Laura (2002), "Global Governance and the Evolution of the International Refugee Regime" *International Journal of Refugee Law*, 14(2):238-262.

²⁵ *Global Compact on Refugees*, (2018), UN doc A/73/12 (Part II).

²⁶ UNHCR; available at: <https://www.unhcr.org/climate-change-and-disasters.html> (accessed on 31 January 2020).

²⁷ *Opening Statement by Mr. António Guterres, United Nations High Commissioner for Refugees, at the Fifty-eighth Session of the Executive Committee of the High Commissioner's Programme (ExCom)* (2007), UNHCR; available at: <https://www.unhcr.org/admin/hcspeeches/4700eff54/opening-statement-mr-antonio-guterres-united-nations-high-commissioner.html> (accessed on 8 September 2020).

Commissioner, UNHCR has come up with publications regarding this area of concern the first published in the year 2008.²⁸

In addressing the environment and migration nexus,²⁹ the UNHCR's role has been majorly in the context of climate change to be a driver of displacement and subsequent requirement that such persons who have undergone displacement as a consequence of natural disasters need to be protected.³⁰ In this respect, it considers and approaches from four principal aspects³¹:

1. To provide legal counsel and directions for improved protection and safeguarding rights of persons who are displaced as a result of disasters and as a consequence of a changing climate.
2. To advance policy coherence and mainstream disaster displacement matters.
3. To fill remaining knowledge gaps over the subject via research which underpin such policy and operational activities.
4. To conduct field-based work and look into both cross-border and internal disaster displacement additionally making certain that the responses to displacement is of a sustainable nature. It also attempts risk reduction work intended to avert, minimise and address displacement.

The UNHCR is also a core member of the TFD mandated by the “Executive Committee” of the “Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts” (WIM).³² While stating that most displacement which take place as a result of climate change occurs internally, displacement resulting in cross-border movements also transpires³³ which may be interwoven with circumstances of violence or conflict.³⁴

²⁸ UNHCR (2008), “Climate change, natural disasters and human displacement: A UNHCR Perspective”, updated edition; available at: <https://www.unhcr.org/4901e81a4.pdf> (accessed on 31 August 2020).

²⁹ UNHCR (2015), *The Environment and Climate Change*; available at: <https://www.unhcr.org/en-in/540854f49> (accessed on 31 January 2020).

³⁰ UNHCR, n. 26; UNHCR, *Climate Change And Disaster Displacement: An Overview Of UNHCR's Role*; available at: <https://www.unhcr.org/en-in/protection/environment/5975e6cf7/climate-change-disaster-displacement-overview-unhcrs-role.html> (accessed on 31 January 2020).

³¹ UNHCR, n. 26.

³² UNHCR, *Key Messages and commitments on Climate change and disaster displacement COP 25 – Madrid, Spain 2 to 13 December 2019*; available at: <https://www.unhcr.org/en-in/protection/environment/5e01e3857/key-messages-for-cop25.html> (accessed on 31 January 2020).

³³ UNHCR, n. 26.

³⁴ UNHCR, *Legal considerations on refugee protection for people fleeing conflict and famine affected countries*; available at: <https://www.refworld.org/pdfid/5906e0824.pdf> (accessed on 31 January 2020).

The UNHCR has, however, categorically maintained that such people displaced across borders solely as a consequence of the effects of climate change however do not come below the definitional contours of the term “refugee”. According to UNHCR such persons may be more accurately termed as “persons displaced in the context of disasters and climate change.”³⁵ UNHCR maintains that its legal mandate precludes any formal involvement in this area. UNHCR does, however, acknowledge that such persons may be in need to some form of international protection, either on a short-term or long-term basis whilst maintaining that they would not come under the sphere of the RC. The UNHCR has in line with this sentiment also produced the “Guidelines on Temporary Protection and Stay Arrangements”³⁶ to inform Government responses to such humanitarian crises and disasters.

IV. INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM)

It was in the year 1951 that the IOM was established then known as the “Provisional Intergovernmental Committee for the Movement of Migrants from Europe” (PICMME).³⁷ The organisation started operations early in the year 1952. In contrast to UNHCR, which is “an entity within the United Nations” system,³⁸ the IOM is an intergovernmental organisation and its members are bound under a Constitution. Recently, however, the UNGA unanimously adopted a resolution in the year 2016 approving to make the IOM a related organisation of the UN.³⁹

The Constitution of the IOM was adopted in the year 1953 and came into effect on 30 November 1954. The IOM Constitution has seen many amendments over the years. One such amendment was made on the 14 November 1989 following which the Organisation was rechristened as IOM which is its present nomenclature.⁴⁰ The IOM has undergone many changes in its name before its present designation. At its earliest,

³⁵ UNHCR, n. 26.

³⁶ UNHCR (2014), *Guidelines on Temporary Protection or Stay Arrangements*; available at: <http://www.refworld.org/docid/52fba2404.html> (accessed on 31 January 2020).

³⁷ IOM; available at: <https://www.iom.int/iom-history> (accessed on 27 January 2020).

³⁸ See PeaceWomen, *Table of United Nations Entities*; available at: <https://www.peacewomen.org/UN/entities> (accessed on 1 December 2020).

³⁹ *Agreement concerning the Relationship between the United Nations and the International Organization for Migration* (2016), UNGA Resolution, A/RES/70/296, Press Release of the IOM; available at: <https://www.iom.int/news/iom-becomes-related-organization-un> (accessed on 27 January 2020).

⁴⁰ IOM; available at: <https://www.iom.int/constitution-and-basic-texts-governing-bodies> (accessed on 27 January 2020).

it was the PICMME after which it came to be known as “Intergovernmental Committee for European Migration” (ICEM) in the year 1952 and later to the “Intergovernmental Committee for Migration” (ICM) in the year 1980 till finally to IOM in the year 1989. The name change reflects the organisation’s transition from only a logistics agency to one of the leading migration agencies.

Unlike the UNHCR, the IOM’s earliest mandate was to help European governments identify resettlement countries for people uprooted due to war, arrange for their transportation and integration in their new homelands.⁴¹ With time the scope of IOM has also increased and today the IOM is an international agency that takes the lead in the advancement of understanding migration issues, uphold the human rights of migrants while also encouraging the economic and social developments through migration. The IOM at present is a 173-member⁴² strong organisation and possesses full juridical personality and has its headquarters in Geneva.

The IOM has two organs, namely the “Council” and “Administration”.⁴³ The Council is considered to be “the highest authority” of the organisation which determines all of the policies of the IOM. Each member state has one representative to the Council having one vote. The administration, on the other hand, is responsible for the running and management of the Organisation. The administration does so in accordance with the Constitution and the policies and decisions of the Council and its subcommittee the “Standing Committee on Programmes and Finance” (SCPF). The Administration is comprised of a Director-General, a Deputy Director General and any staff as may be determined by the Council. The Organization’s highest executive official is the Director-General. Both the Director-General and the Deputy Director General are independently elected by the Council for a five-year term.

Article 1 of the IOM’s Constitution of 1989⁴⁴ lays down the organisation’s mandate. The principal functions of the organisation are to ensure that preparations are made for “organised transfer of migrants”, displaced persons and refugees. It also looks to deliver migration services to States at their behest and is a platform for having discussions and seeing to the effective management of international migration issues.

⁴¹ Pécoud, Antoine (2018), “What do we know about the International Organization for Migration?”, *Journal of Ethnic and Migration Studies*, 44(10): 1621-1638, p. 1624.

⁴² IOM; available at: <https://www.iom.int./members-and-observers> (accessed on 11 January 2021).

⁴³ IOM’s Constitution, Article 5; available at: <https://www.iom.int/constitution> (accessed on 30 March 2020).

⁴⁴ IOM’s Constitution; available at: <https://www.iom.int/constitution> (accessed on 30 March 2020).

TABLE 6:**LIST OF IOM MEMBER AND OBSERVER STATES AS OF 2020⁴⁵****MEMBERS AND OBSERVERS**2
0
2
0**173 Member States**

Afghanistan	Costa Rica	India	Myanmar	Somalia
Albania	Côte d'Ivoire	Iran (Islamic Republic of)	Namibia	South Africa
Algeria	Croatia	Ireland	Nauru	South Sudan
Angola	Cuba	Israel	Netherlands	Spain
Antigua and Barbuda	Cyprus	Italy	Nepal	Sri Lanka
Argentina	Czechia	Jamaica	New Zealand	Sudan
Armenia	Democratic Republic of the Congo	Japan	Nicaragua	Suriname
Australia	Denmark	Jordan	Niger	Sweden
Austria	Djibouti	Kazakhstan	Nigeria	Switzerland
Azerbaijan	Dominica	Kenya	North Macedonia	Tajikistan
Bahamas	Dominican Republic	Kiribati	Norway	Thailand
Bangladesh	Ecuador	Kyrgyzstan	Pakistan	Timor-Leste
Belarus	Egypt	Lao People's Democratic Republic	Palau	Togo
Belgium	El Salvador	Latvia	Panama	Tonga
Belize	Eritrea	Lesotho	Papua New Guinea	Trinidad and Tobago
Benin	Estonia	Liberia	Paraguay	Tunisia
Bolivia (Plurinational State of)	Eswatini	Libya	Peru	Turkey
Bosnia and Herzegovina	Ethiopia	Lithuania	Philippines	Turkmenistan
Botswana	Fiji	Luxembourg	Poland	Tuvalu
Brazil	Finland	Madagascar	Portugal	Uganda
Bulgaria	France	Malawi	Republic of Korea	Ukraine
Burkina Faso	Gabon	Maldives	Republic of Moldova	United Kingdom of Great Britain and Northern Ireland
Burundi	Gambia	Mali	Romania	United Republic of Tanzania
Cabo Verde	Georgia	Malta	Rwanda	United States of America
Cambodia	Germany	Marshall Islands	Saint Kitts and Nevis	Uruguay
Cameroon	Ghana	Mauritania	Saint Lucia	Uzbekistan
Canada	Greece	Mauritius	Saint Vincent and the Grenadines	Vanuatu
Central African Republic	Grenada	Mexico	Samoa	Venezuela
Chad	Guatemala	Micronesia (Federated States of)	Sao Tome and Principe	(Bolivarian Republic of)
Chile	Guinea	Mongolia	Seychelles	Viet Nam
China	Guinea-Bissau	Montenegro	Senegal	Yemen
Colombia	Guyana	Morocco	Serbia	Zambia
Comoros	Haiti	Mozambique	Seychelles	Zimbabwe
Congo	Holy See		Sierra Leone	
Cook Islands	Honduras		Slovakia	
	Hungary		Slovenia	
	Iceland		Solomon Islands	

9 Observer States

Bahrain	Indonesia	Malaysia	Russian Federation	Saudi Arabia
Bhutan	Kuwait	Qatar	San Marino	

On analysis of the mandate, we can see that unlike the UNHCR, which addresses forced migration, the IOM addresses both forced and voluntary migration. Also, it has

⁴⁵Source at IOM; available at: https://www.iom.int/sites/default/files/about-iom/members_observers_en.pdf (accessed on 11 January 2021).

no formal protection mandate. Outside the UN, IOM is the only intergovernmental organisation with an exclusive migration mandate.

One of its foremost contributions in the area of migration includes its “International Dialogue on Migration”⁴⁶ (IDM) which is IOM’s primary platform for policy dialogue on migration. The IOM’s “International Dialogue on Migration” has played ground-breaking part since its inception in the year 2001 by collectively bringing all the stakeholders concerned with migration to a global arena, to engage in open debates and deliberations with respect to the multitude of problems as well as opportunities that migration offers.⁴⁷ The IDM an annual event is open to all IOM member and observer States as well as to IOs, NGOs, migrants, media personnel, the academia and even partners from the private sector.

The IOM has four broad areas of work in the area of migration management which are migration and development, facilitating migration, regulating migration, and addressing forced migration. Apart from these broad areas, it also works for the advancement of international migration law, the protecting and safeguarding of migrants’ rights, migration’s gender and health dimensions and also deals with policy debates.

IOM has numerous other activities that cover: assisting governments and migrants in the area of migrant labour, facilitating reception and integration, advisory services in respect of challenges pertaining to migration, assistance in the quest for practical resolutions to migration issues and also deliver humanitarian assistance to those migrants who are in need of it.⁴⁸

In the year 2007, the IOM Council adopted a resolution stating that the organisations primary goal would be “to facilitate the orderly and humane management of international migration”.⁴⁹ The IOM was also one of the founding members of the Global Migration Group (GMG) which endeavoured to have greater co-operation amongst international organisations dealing with migration.

⁴⁶ See IOM; available at: <https://www.iom.int/international-dialogue-migration> (accessed on 31 January 2020).

⁴⁷ Ibid.

⁴⁸ See IOM; available at: <https://www.iom.int/our-work> (accessed on 31 January 2020).

⁴⁹ IOM Strategy, (2007), *Resolution No. 1150 (XCIII)*; available at: https://governingbodies.iom.int/sites/default/files/council_document/1150%20-%20IOM%20Strategy.pdf (accessed on 4 September 2020).

The IOM's official website also provides for internet resources on Key Migration Terms, UN Documents relevant to migration and migrant rights and humanitarian assistance. It also has a database of Migration laws which consists of instruments regulating migration at international, regional and national levels.⁵⁰ The IOM also provides for international migration data for Labour migrants, refugees, displaced individuals, irregular migrants, trafficking, and resettlement.⁵¹

The IOM which has over 480 country offices and sub-offices worldwide also analyses national migration issues. The IOM's regional offices co-ordinate, plan and support the activities of the Organisation at a regional level. Currently, there are nine Regional Offices.

TABLE 7:

LIST OF IOM'S REGIONAL OFFICES⁵²

IOM'S REGIONAL OFFICES
<ul style="list-style-type: none">• Dakar, Senegal (Central and West Africa)• Pretoria, South Africa (Southern Africa)• Nairobi, Kenya (East Africa and the Horn of Africa)• Cairo, Egypt (the Middle East and North Africa)• San José, Costa Rica (Central and North America and the Caribbean)• Buenos Aires, Argentina (South America)• Bangkok, Thailand (Asia and the Pacific)• Brussels, Belgium (European Economic Area)• Vienna, Austria (South-Eastern Europe, Eastern Europe and Central Asia)

The IOM also produces publications. Its publications section is under the "Migration Policy Research Division" which is a part of the "Department of International Cooperation and Partnerships". The major publications include the "*World Migration Report*", "*National Migration Profiles*" and the "*Migration Research Series*".⁵³ Of its various publications the World Migration Reports which the IOM has been producing since the year 2000 are of significance. These reports have contributed to an increased

⁵⁰ IOM; available at: <https://www.iom.int/migration> (accessed on 31 January 2020).

⁵¹ IOM; available at: <https://www.iom.int/global-migration-trends> (accessed on 31 January 2020).

⁵² IOM, *Regional Offices*; available at: <https://www.iom.int/regional-offices> (accessed on 15 August 2020).

⁵³ IOM; available at: <https://publications.iom.int/about-iom-publications> (accessed on 31 January 2020).

understanding of migration and migration issues around the globe. These reports also contain significant data pertaining to migration.

The IOM may, however, be considered to be disadvantaged only in that its membership though massive is as of now not yet universal and unlike the UNHCR it has no underpinning international treaty and therefore works on an operational mandate from its member States.

A. IOM and Environmentally Induced Migration

The IOM is the only IO that is dealing with environment and migration categorically. Under the Department of Migration Management which is composed of five divisions, one of the division deals with the situation of environment and migration. The division is known as the “Migration, Environment and Climate Change Division”. The IOM also established the “Environmental Migration Portal: Knowledge Platform on People on the Move in a Changing Climate” in the year 2015 within the “Migration, Environment and Climate Change: Evidence for Policy” (MECLEP) project which is an online information and knowledge sharing platform on the migration-environment nexus.⁵⁴

(i) Migration, Environment and Climate Change Division (MECC)

Member states of the IOM as early as the year 2007 had been requesting that IOM work in the field concerning that of migration, environmental and climate change. Accordingly, in the year 2015, a dedicated MECC department was formed to undertake the issues emanating from the interconnections between migration, environment and climate change.

The creation of this division formalised IOM’s engagement with the thematic field of environment and climate change and also making it the first IO to have formed an institutional sector to cover this area. The primary responsibility of the MECC is to “oversee, support and coordinate the development of policy guidance for activities with a migration, environment and climate change dimension”.⁵⁵

⁵⁴ IOM; available at: <https://environmentalmigration.iom.int/about-portal> (accessed on 31 January 2020).

⁵⁵ IOM; available at: <https://www.iom.int/migration-and-climate-change> (accessed on 31 January 2020).

The MECC has three main objectives which are⁵⁶:

1. Prevention of involuntary migration caused because of environmental factors to as much of a degree as is feasible and attainable.
2. In the event of forced migration resulting due to environmental and climate change; IOM must render assistance and protection to the affected populace. It should also endeavour to achieve solutions of a permanent nature to their problems.
3. Facilitation of migration within the contours of climate change adaptation and to help strengthen the resilience of affected communities.

The IOM has also been working on addressing the growing challenge that climate change presents to humanity and been present at UNFCCC Conferences. The IOM's publication "*The Atlas of Environmental Migration*"⁵⁷ which is an illustrated publication mapping the phenomenon of migration which is related to environment and climate change is amongst its significant publications.

V. OTHER RELEVANT INTERNATIONAL MIGRATION INSTITUTIONS

Apart from the UNHCR and the IOM which are, without a doubt the principal international migration agency, there are certain other institutions and bodies which also play an important part on the subject matter of international migration. These include the Organisation for Economic Co-operation and Development (OECD), the World Trade Organisation (WTO) and the UN and its agencies.

A. Organisation for Economic Co-operation and Development (OECD)

During the year 1960, eighteen European nations along with Canada and the United States of America (USA), came together to create an organisation for global development which came to be known as the OECD.⁵⁸ This organisation's primary objective is development centric, and till date its membership is limited. Nevertheless, it has provided significant migration data analysis through its "continuous reporting

⁵⁶ IOM; available at: <https://environmentalmigration.iom.int/iom-and-migration-environment-and-climate-change-mecc> (accessed on 3 March 2020).

⁵⁷ Ionesco, Dina et al. (2017), *The Atlas of Environmental Migration*, UK: IOM.

⁵⁸ *Convention on the Organisation for Economic Co-operation and Development*, (1960), 888 UNTS 179. With the Convention entering into force in 1961 the OECD officially came into existence.

system” (SOPEMI) which has ensured that member states produce annual updates on migration trends as well as law and policy outlooks.⁵⁹

B. World Trade Organisation

The World Trade Organisation is essentially a body that deals with the rules of international trade and also provides for the negotiation of trade agreements for States members. The WTO also deals with the subject area of migration. It does so albeit from the narrow scope of temporary labour migration under the “Mode 4” of the GATS⁶⁰.

C. Global Forum on Migration & Development (GFMD)

The state-led GFMD was created and hosted its first meet in the year 2007. This forum constitutes a government-led, non-binding and informal process which helps to frame the global discussion on development and migration.

The importance of the forum is that it offers governments a multi-stakeholder and flexible platform to deliberate upon the challenges, opportunities and multi-dimensional aspects with regards to migration and development.

The GFMD process lets governments in collaboration with the UN system, civil society, the private sector, and other pertinent stakeholders to analyse and debate over complex migration issues and provide novel solutions and share policy and practices.⁶¹

D. United Nations Organisation

Apart from the UNHCR, there are several other agencies of the UN not least amongst them being the International Labour Organization that looks into migration in some aspect or the other. The UN treaty bodies are also very significant in this respect.

⁵⁹ Omelaniuk, n. 22, p. 345; See also, OECD, *Migration*; available at: <https://www.oecd.org/migration/> (accessed on 5 January 2021); Please note that SOPEMI is the French acronym for continuous reporting system.

⁶⁰ *General Agreement on Trade in Services*, (1869), UNTS 183, 33 I.L.M. 1167.

⁶¹ GFMD; available at: <https://gfmd.org/process/background> (accessed on 2 February 2020).

(i) ***International Labour Organization (ILO)***

ILO is one of the first international institutions established which deals with the subject matter of migrants and their protection. The ILO was established in the year 1919 by the *Peace Treaty of Versailles*.⁶²

The ILO is a specialised agency of the United Nations and has been addressing and managing labour migration issues from the moment of its foundation.⁶³ The ILO is the standard-bearer of “Decent Work for All”,⁶⁴ and it is within this ambit that it deals with the various labour migration issues.⁶⁵ It is significant that the ILO looks into such issues from the perspective of governments, the employers and the workers. This tripartite structure is both a strength and a weakness. It can create an excellent multilateral context, but the necessity of a tripartite consensus is an additional challenge. Prior to the adoption of the ICRMW⁶⁶, it was the only UN agency which had the mandate of dealing with labour migration and migrants.

The ILO implements its mandate primarily through pioneering a range of rights-based international conventions, regulations and standards relating to migration. It is through these treaties and standards, the ILO has endeavoured to set down minimum standards of labour rights which include decent working standards, equal pay, collective bargaining, right to organise and freedom of association. The ILO also offers training and technical co-operation to government officials to ensure that its treaties and principles guide migration policy.

⁶² Opeskin (2012), n. 15, p. 5; Shaw, n. 4, p. 214.

⁶³ Shaw, n. 4, p. 214.

⁶⁴ ILO, *The Decent Work Agenda*, available at: <https://www.ilo.org/asia/decentwork/lang-en/index.htm> (accessed on 2 August 2020).

⁶⁵ ILO, *Promoting Decent Work For Migrant Workers*, available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_344703.pdf (accessed on 2 August 2020); ILO, *Promoting Decent Work For Migrant Workers, Thirteenth Coordination Meeting On International Migration*; available at: https://www.un.org/en/development/desa/population/migration/events/coordination/13/documents/backgrouddocs/GFMD_ILO_Discussion%20Paper_Promoting%20Decent%20Work%20for%20MWs.pdf (accessed on 2 August 2020).

⁶⁶ *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, (1990), 2220 UNTS 3.

(ii) *Office of the High Commissioner for Human Rights (OHCHR)*

The OHCHR established in the year 1993 by the UNGA is the “leading UN entity on human rights”.⁶⁷ It was established for the promotion and coordination of human rights activities. The GA assigned both the High Commissioner and her Office with an exceptional mandate of protecting and promoting the human rights of everyone.⁶⁸

The High Commissioner for Human Rights is the principal human rights official of the UN and spearheads the UN’s human rights efforts. OHCHR’s work includes helping governments fulfil their human rights obligations, supporting the thematic mandates of the Human Rights Council and from the migration specific perspective monitoring compliance with ICRMW and providing secretariat support to the Committee on Migrant Workers.

The OHCHR draws its information from the situations reported by the Human Rights Council and jurisprudence developed from the human rights treaty bodies. It offers practical guidance to policymakers and practitioners about a human rights-based approach to migration and migration management.⁶⁹ The OHCHR also publishes a series of papers that explain the legal context of protection available to migrants in areas such as migrant detention, trafficking, family reunification etc.

(iii) *Global Migration Group*

The Global Migration Group (GMG) was established in the year 2006 as a response to the piecemeal treatment that migration has received under the UN system.⁷⁰ It was established with an attempt to increase the co-operation amongst the various institutions and organisations which dealt with the subject matter of migration.⁷¹ The GMG came to be founded at the behest of the UN Secretary-General.⁷²

The GMG has spearheaded the broader application of international instruments that pertain to migration and adoption of more comprehensive approaches towards international migration. The GMG agencies in year 2010 also jointly published a

⁶⁷ OHCHR, *Who We are: an overview*; available at: <https://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx> (accessed on 22 November 2020).

⁶⁸ OHCHR; available at: <https://www.ohchr.org/EN/pages/home.aspx> (accessed on 2 February 2020).

⁶⁹ Omelaniuk, n. 22, p. 350.

⁷⁰ GMG; available at: <https://globalmigrationgroup.org/what-is-the-gmg> (accessed on 2 August 2020).

⁷¹ Ibid.

⁷² Ibid.

handbook titled “Mainstreaming Migration into Development Planning”.⁷³ This body was the only body within the UN system which met regularly to discuss aspects related to migration and development issues.

In early 2018 the UN Secretary-General decided on the establishment of the *UN Network on Migration* as a successor to the GMG.⁷⁴

(iv) *UN Network on Migration*

In the effort towards the implementation and support of the Migration Compact⁷⁵ the *UN Network on Migration* has been established. Whilst executing its mandate the Network seeks to prioritize the welfare of migrants and protecting their rights.⁷⁶ The Network while upholding the principles of the Migration Compact will be guided by International Law.

Its objectives include collaboration with other UN mechanisms which deal with migration; act as a source of reliable data for informed policy guidance; promote the protection of human rights of migrants, etc.⁷⁷

The principles guiding the Network include accountability, gender-responsiveness, inclusivity and a child-sensitive approach.⁷⁸

(v) *UN Treaty Bodies*

The Treaty Bodies comprise of committees of independent experts which oversee the execution and realization of the nine principal UN Human Rights treaties and one optional protocol.

These Committees activities are in accordance with the provisions of the treaties which created them. They comprise of a group of acknowledged independent experts of great capability in the domain of human rights, who are nominated and elected by

⁷³ GMG (2010), *Mainstreaming Migration into Development Planning. A handbook for policy-makers and practitioners*, IOM; available at: <https://publications.iom.int/system/files/pdf/gmg2010.pdf> (accessed on 7 September 2020).

⁷⁴ GMG, n. 70.

⁷⁵ *Global Compact for Safe, Orderly and Regular Migration*, (2018), UN doc A/RES/73/195.

⁷⁶ United Nations Network on Migration; available at: <https://migrationnetwork.un.org/about#> (accessed on 5 January 2021).

⁷⁷ Ibid.

⁷⁸ Ibid.

State parties for a time period of four years which is renewable.⁷⁹ Amongst its activities, a primary work for these committees is to examine the periodic reports submitted by State parties that describe the work done by them in the realisation of the treaty objectives.⁸⁰ Another significant work is the examination of individual complaints or communications. The HRC, Committee on the Elimination of Discrimination against Women, CERD, Committee against Torture and CESR can receive communications from individuals who profess that their rights which have been enumerated under the five treaties have been violated. Some of the treaty bodies may also adjudicate inter-state complaints. Almost all of these treaty bodies have to an extent addressed issue related to the human rights of migrants. Amongst all the treaty bodies, the Committee against Torture has been the most active in terms of Refugee protection.⁸¹

**TABLE 8:
UNITED NATIONS TREATY BODIES⁸²**

<u>United Nations Treaty Bodies</u>
1. Committee on the Elimination of Racial Discrimination (CERD)
2. Committee on Economic, Social and Cultural Rights (CESCR)
3. Human Rights Committee (HRC)
4. Committee on the Elimination of Discrimination against Women
5. Committee against Torture
6. Committee on the Rights of the Child
7. Committee on Migrant Workers (CMW)
8. Subcommittee on Prevention of Torture (SPT)
9. Committee on the Rights of Persons with Disabilities (CRPD)
10. Committee on Enforced Disappearances (CED)

⁷⁹ OHCHR; available at: <https://www.ohchr.org/EN/HRBodies/Pages/ElectionsofTreatyBodiesMembers.aspx>. (accessed on 16 August 2020); See also *International Convention on the Elimination of All Forms of Racial Discrimination*, (1965), 660 UNTS 195, Article 8; *Review of the composition, organization and administrative arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, (1985), Economic and Social Council Resolution 1985/17; *International Covenant on Civil and Political Rights*, (1966), 999 UNTS 171, Articles 28-39; *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, (1984), 1465 UNTS 85, Articles 17; ICRMW, Article 72.

⁸⁰ Shastri, Seshaiyah, (2013) “The Role of International Organisations in The Protection of Refugees”, in Rafiqul Islam and Jahid Hossain Bhuiyan, (eds.), *An Introduction to International Refugee Law*, Leiden/Boston: Martinus Nijhoff Publishers, p. 257.

⁸¹ Ibid., at p 258.

⁸² OHCHR, *Human Rights Bodies*; available at: <https://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx> (accessed on 22 November 2020).

Recently in the context of environmentally induced migration, an individual communication was brought forth to the HRC.

The Case of Ioane Teitiota of the Island Nation of Kiribati⁸³

The HRC has over the years been a key player in the development of human rights jurisprudence. HRC has dealt with wide variety of human right issues involving individuals also going into the realm of issue of minority rights.⁸⁴ In respect to the cases of migrant rights, a recent landmark ruling of the HRC has gained much attention. This case is in relation to an individual from the island nation of Kiribati and deals with migration pursuant to climate change.

The concise facts in this case were that a national of Kiribati, Ioane Teitiota who had migrated to New Zealand applied for refugee status from the government of New Zealand in 2013 for his family and himself. He cited the need for his protection to be due to a threat to his family's lives as rising sea levels endangered his home. He also claimed that the adverse effects of climate change were already taking place and perceived due to the considerable overcrowding in his home island of Tarawa where internal migration had been taking place due to rising sea levels. Additionally, freshwater was scarce, and crop yields were less due to high levels of crop salinity, making livelihood a matter of grave concern.

When he placed this appeal in front of New Zealand's Immigration and Protection Tribunal in the year 2013, the Tribunal considered a number of testimonies which included the testimony of one John Corcoran a doctoral scholar investigating and exploring the issue of climate change in Kiribati. Corcoran stated that Kiribati was a country which could be characterised "as a society in crisis owing to climate change and population pressure".⁸⁵ Also, the islands that comprised the nation "rose no more than three meters above sea level".⁸⁶ The Tribunal also considered various scholarly articles of the UN entities and experts in the field which were submitted by Ioane. The Tribunal did find the evidence about the carrying capacity of Tarawa to have been worsened as a consequence of sudden and slow-onset environmental occurrence to be credible.

⁸³ *Ioane Teitiota v. New Zealand*, (advance unedited version) (2020), HRC, CCPR/C/127/D/2728/2016.

⁸⁴ *Sandra Lovelace v. Canada* (1981), HRC, No. 24/1977, UN Doc. CCPR/C/13/D/24/1977; *Lubicon Lake Band v. Canada* (1990), HRC, NO. 167/1984, UN Doc. Supp. No. 40 (A/45/40).

⁸⁵ *Ioane Teitiota v. New Zealand*, n. 83, para. 2.4.

⁸⁶ *Ibid.*

The Tribunal on an examination of international human rights observed that “while in many cases the effects of environmental change and natural disasters will not bring affected persons within the scope of the Refugee Convention, no hard and fast rules or presumptions of non-applicability exist. Care must be taken to examine the particular features of the case.”⁸⁷ In this case, however, the Tribunal found that Ioane, however, did not “objectively face a real risk of being persecuted if returned to Kiribati”.⁸⁸ The Tribunal did, however, note that Article 6 of the ICCPR must be interpreted broadly. The Tribunal also did not eliminate the likelihood that a deteriorating environment might open “pathways into the Refugee Convention or protected person jurisdiction”.⁸⁹ Ioane after both the Court of Appeal and the Supreme Court respectively refused his appeals approached the HRC with his communication.

Ioane, in front of the HRC, claimed that his removal to Kiribati from New Zealand violated his “right to life” provided for in the ICCPR.

The HRC, however, upheld the decision of the courts of New Zealand by stating that “sea level rise is likely to render the Republic of Kiribati uninhabitable. However, it notes that the timeframe of 10 to 15 years, as suggested by the author, could allow for intervening acts by the Republic of Kiribati, with the assistance of the international community, to take affirmative measures to protect and, where necessary, relocate its population.”⁹⁰

Though this ruling of the HRC has resulted in a personal loss for Ioane and his family, the ruling is nonetheless of great consequence in the area of environmentally induced migration. This is because the ruling has paved a path for other representations constructed upon grounds of a threat to life due to such environmental and climate changes. The ruling found in favour of New Zealand because they felt that in Ioane’s case, the threat to his life was not strong enough. This decision thus does not detract the significance of the case as in other similarly placed context the threat to life threshold may be found to have been met.

Jane McAdam has stated that the reason for this case being landmark is because the HRC has recognised that failure of taking strong measures over climate issues and

⁸⁷ Ibid., at para. 2.8.

⁸⁸ Ibid., at para. 2.8.

⁸⁹ Ibid., at para. 2.2.

⁹⁰ Ibid., at para. 9.12.

that “at some point in the future it could well be that governments will, under international human rights law, be prohibited from sending people to places where their life is at risk or where they would face inhuman or degrading treatment”.⁹¹

Also, out of the 18 members of the HRC, two gave dissenting opinions which provides for important analysis of the provision of Right to Life. Committee member Duncan Laki Muhumuza for instance categorically pointed out that “even if deaths are not occurring with regularity on account of the conditions (as articulated by the Tribunal), it should not mean that the threshold has not been reached.”⁹²

VI. CONCLUSION

There exist several international organisations and institutions that deal with migration. But only a few deals specifically with environmentally induced migration. The proliferation of numerous IOs has the positive aspect of allowing for the development of effective networks and significant expertise in the subject matter of the IO. However, a negative aspect of such proliferation is that at times it may lead to overlaps and conflicts.

The UNHCR and IOM are amongst the most pre-eminent organisations having a mandate on the subject of migration. The UNHCR, however, deals more specifically with the category of refugees whilst the IOM has a broader ambit.

The UNHCR today does to an extent concern itself with people who do not fall within the ambit of refugees. It has recently even taken up the issue of people displaced by environmental and climate changes. The UNHCR has, however, categorically maintained that though such people might warrant international obligation, they do not fall under the protection framework envisioned under the *RC*. This thus precludes the UNHCR from having any formal engagement with this category of migrants. The IOM, on the other hand, is one of the organisations that has taken up the cause of environmentally induced migrants in particular and has been present at the UNFCCC conferences.

⁹¹ Lyons, Kate (2020), “Climate refugees can’t be returned home, says landmark UN human rights ruling”, *The Guardian*; available at: <https://www.theguardian.com/world/2020/jan/20/climate-refugees-cant-be-returned-home-says-landmark-un-human-rights-ruling> (accessed on 22 January 2020).

⁹² Individual opinion of Committee member Duncan Laki Muhumuza (dissenting), *Ioane Teitiota v. New Zealand*, (advance unedited version) (2020), HRC, CCPR/C/127/D/2728/2016, Annex 2, para. 5.

Thus far, the international legal framework with respect to safeguarding, upholding and protecting the rights of migrants and environmentally induced migrants in particular has been examined and analysed. The next chapter explores the position of migrants and environmentally induced migrants within the Indian context.

CHAPTER VI. ENVIRONMENTALLY INDUCED MIGRATION: INDIAN LAW AND POLICY

I. INTRODUCTION

The previous chapters have discussed migration and migrants from the international law perspective. This chapter examines the domestic legal framework impacting migration. The chapter additionally focusses on the environment and migration nexus in the Indian context.

In the words of Maulana Abul Kalam Azad “It was India’s historic destiny that many human races and cultures should flow to her, finding a home in her hospitable soil, and that many a caravan should find rest here....”¹

Generally, countries of the Global South which include India, is seen as a source country of migrants. In the year 2019, India ranked amongst the ten leading countries in terms of country of origin of international migrants with a “17.5 million” diaspora.² However, what is generally overlooked is that India is also a host nation for migrants and an attractive destination country. In fact, India in the year 2019 has been host to “5.1 million international migrants”³ and has ranked amongst the twenty countries to have hosted a substantial number of international migrants.

II. INDIA AND MIGRATION

The phenomenon of migration provokes a host of discussions amongst people. The public discourse over this area is also generally emotionally charged. The most widely discussed aspect of migration has been linked with security risks posed by migrant populations. The world today is witnessing a widespread anti-immigrant wave which has found a resonance in India as well.

¹ Azad, Maulana Abul Kalam (1940), *Congress Presidential Address*. Quoted in Ramachandra Guha (2008), *India After Gandhi: The History of The World’s Largest Democracy*, India: Picador, p. 25.

² UNDESA, *The International Migrant Stock 2019*; available at: <https://www.un.org/en/development/desa/population/migration/data/estimates2/estimatesgraphs.asp?3g3> (accessed on 28 December 2019).

³ UNDESA, *The International Migrant Stock 2019*; available at: <https://www.un.org/en/development/desa/population/migration/data/estimates2/estimatesgraphs.asp?2g2> (accessed on 28 December 2019).

India has historically seen the migration of people for centuries and continues to see large migrant population. The noted historian William Dalrymple has remarked that India “is the story of migration...its cultural richness comes from that multiple layering”.⁴

Most contemporary migration into India is from the countries which are in close proximity to India like Nepal, Bangladesh, Sri Lanka, Pakistan and to a lesser degree Myanmar and China.⁵

India has seen and continues to see both overt and covert forms of migration. The country has witnessed some of the world’s biggest incidents of involuntary and voluntary migrations.⁶

Contemporary India has witnessed two major cross-border population movements. One was the population movement which took place with the partition of India in 1947. The second large-scale migration happened in the year 1971 during East-Pakistan’s (now known as Bangladesh) liberation war.⁷

A. Partition of India 1947

The 1947 partition of India which culminated in the formation of two sovereign nations India and Pakistan became inevitable after the seven years of political crusading by the Muslim League spearheaded by Muhammed Ali Jinnah.⁸ The partition made on religious lines has come to be regarded as a momentous incident of the 20th Century.

The partition was violent and bloody. It resulted in an excess of “17 million” people being forced out.⁹ The 1947 partition thus was “one of the largest and most rapid migration in human history”.¹⁰

⁴ Express News Service (2019), ‘India is the story of migration...its cultural richness comes from that multiple layering: William Dalrymple’, *The Indian Express*, 27 December 2019; available at: <https://indianexpress.com/article/india/william-dalrymple-adda-migrants-cao-east-india-company-british-rule-6186591/> (accessed on 29 December 2019).

⁵ UNDESA, *International Migrant Stock:2019 Country Profile India, Population Division*; available at: <https://www.un.org/en/development/desa/population/migration/data/estimates2/countryprofiles.asp> (accessed on 28 December 2019).

⁶ Tumbe, Chinmay (2018), *India Moving: A History of Migration, India*: Penguin Random House India, pp. 7-8.

⁷ Datta, Pranati (2004), “Push-Pull Factors of Undocumented Migration from Bangladesh to West Bengal: A Perception Study”, *The Qualitative Report*, 9 (2):335-358, p. 337.

⁸ Tumbe, n. 6, pp. 150-151.

⁹ Tumbe, n. 6, p. 146.

Many areas along the western frontier were witness to migrations with Punjab at the epicentre of these mass migrations.¹¹ The Eastern frontier also witnessed the displacement of people, but in comparison to the Western frontier the migrations at this end were more “unbalanced and prolonged”.¹² It was unbalanced as by the year 1951 India received over 2.5 million migrants while sending 7,00,000 migrants across the Eastern border.¹³ The migrants who came over to India settled mostly in West Bengal and parts of present-day Assam.¹⁴

B. 1971 Migration from Bangladesh

After the mass migration due to the 1947 partition of India, north-east India noticed a peak afresh in migration as a result of the war to liberate East Pakistan (Bangladesh).

During the course of the East Pakistan’s independence war, the eastern border of India saw lakhs of refugees both Hindu and Muslim come across the border.¹⁵ In the month of April 1971 itself, India received on a daily basis about 60,000 refugees.¹⁶ By May the average exceeded 1 Lakh.¹⁷ The Indian states of Assam, West Bengal, Tripura and Meghalaya were the primary states who were taking in these refugees.¹⁸

C. Contemporary Migration Discourse in India

India currently also sustains considerable immigration, internal migration and emigration.¹⁹ The present-day, migration debate in India is primarily premised on the dialectic of “illegal migrants”. This debate has featured fear of “illegal migrants” especially in the context of border states of the country.²⁰ In the backdrop of before-

¹⁰ Bharadwaj, Prashant and Kevin Quirolo (2016), “The Partition and its Aftermath: Empirical Investigations”, in Latika Chaudhary et al. (eds.) *A New Economic History of Colonial India*, Routledge, pp. 233, 240; Quoted in Tumbe, n. 6, p. 146.

¹¹ Tumbe, n. 6, p. 156; See also Guha, n. 1, pp. 84-94.

¹² Tumbe, n. 6, p. 157.

¹³ Tumbe, n. 6, p. 157.

¹⁴ Tumbe, n. 6, p. 157.

¹⁵ Roy, Anupama (2010), *Mapping Citizenship in India*, New Delhi: Oxford University Press, p. 95.

¹⁶ Tumbe, n. 6, p. 161.

¹⁷ Tumbe, n. 6, p. 161.

¹⁸ Tumbe, n. 6, p. 161.

¹⁹ Tumbe, n. 6, p. 8.

²⁰ See Borah, Jayashree (2019), “Memory and Identity: Narratives of Migration in Assam”, in Sonia Mehta and Anna Sengrung (eds.), *North East India: Exploring Philosophy, Culture & Environment*, New Delhi: Krishi Sanskriti Publications; Roy, Rumi (2019), “Identity and Migration in a Globalised World: Politicization of Conflicts in Bodoland”, in Sonia Mehta and Anna Sengrung (eds.), *North East India: Exploring Philosophy, Culture & Environment*, New Delhi: Krishi Sanskriti Publications; See also Hazarika, Sanjoy (2000), *Rites of Passage: Border Crossings, Imagined Homelands, India’s East and Bangladesh*, New Delhi: Penguin Books.

mentioned sentiments, the questions over citizenship and nationality stand out and have led to the development of models of citizenship. Such models were introduced so as to block access to avenues of citizenship legally. The domestic legal framework of India has similarly also undergone various changes as a reaction to the illegal migrant debate.

India's overarching focus over the issue of migration has pertained to security and economic concerns and problems of demographic changes associated with border states of Tripura and Assam. However, recently dimensions of religion has also found a place in the debate over migrant population in India.²¹ The most recent *Citizenship Amendment Act* of 2019 has introduced a fast-track process through which citizenship can be provided to people from Hindu, Buddhist, Jain, Sikh, Christian and Parsi religious community from India's neighbouring countries. This has initiated the debate over the non-inclusion of other religious communities.²²

It must be said that India too mostly understands the phenomenon of migration from a socio-economic and political vantage.

III. DOMESTIC LEGAL FRAMEWORK IMPACTING MIGRANTS

The immigration laws of a country govern the situation of cross-border movement of people to a destination country of which they are not citizens of for a variety of purposes like permanent settlement, migrant worker, etc. These laws are more often than not related to nationality and citizenship laws of the State. This is because that is how a distinction is meted out between non-citizens and citizens. The field of nationality and citizenship is of great complexity wherein diverse number of problems and issues exist. Though both these terms have a distinct meaning, they are more often than not used synonymously. To a large extent, the consequences of nationality and citizenship have merged in the domestic law of some states. In the Indian context, the *Constitution of India*²³ refers solely to the term 'citizen' in Articles 5-11.

²¹ *The Citizenship (Amendment) Act*, 2019.

²² Editorial (2019), "Undoing harms: about criticism on Citizenship Amendment Act", *The Hindu*, 23 December 2019; available at: <https://www.thehindu.com/opinion/editorial/undoing-harms-about-criticism-on-citizenship-amendment-act/article30374417.ece> (accessed on 15 November 2020); See also Tharoor, Shashi (2020), *The Battle of Belonging. On Nationalism, Patriotism, and What it Means to be Indian*, New Delhi: Aleph Book Company, pp. 258-259.

²³ *Constitution of India*, 1950.

Immigration may be through legal channels for reasons such as seeking temporary employment to even seeking naturalisation. Immigration may also be irregular when it takes place in violation of countries' immigration laws. Migrants immigrating through the usage of clandestine channels without valid documents or who remain beyond their permitted period of stay are generally categorised as undocumented migrants who in India are legally referred to as "illegal migrants".²⁴

The *Constitution of India*, *The Foreigners Act*²⁵ and *The Citizenship Act* are the primary legal instruments dealing with immigration in India and which as a result have a bearing upon migrant rights in India. It is striking also to observe that the inflow of migrants into India has resulted in amendments to *The Citizenship Act*.

A. Constitution of India

The concepts of citizenship and nationality are subjects that continue to enthrall everyone, including politicians, bureaucrats, academicians and the general public. The legal status of a person in various countries is of immense interest and riddled with difficulties and variations. There is no single or universal model on which basis countries determine a person's nationality or citizenship. There exist two principal models, namely *ius sanguinis* and *ius soli* which may be used to decide upon the citizenship of a person.

Countries decide citizenship based either on the principle of *ius sanguinis*, meaning citizenship based on blood or descent or on the principle of *ius soli* which is citizenship based on the birth and birthplace of a person. Some may even choose a combination of both.

Conferment of citizenship through the model of *ius soli* commonly referred to as birth right citizenship is considered to be the best amongst the models as it is premised upon a natural principle and makes no discrimination based on an individual's antecedents. Citizenship via this model is simply conferred due to the natural process of being born in a particular country. Proponents for the reduction of statelessness are strong advocates of conferment of citizenship through the *ius soli* model.²⁶ However,

²⁴ *The Citizenship Act*, 1955, Section 2(1)(b).

²⁵ *The Foreigners Act*, 1946.

²⁶ Conklin, William E. (2014), *Statelessness: The Enigma of an International Community*, UK: Hart Publishing Ltd., pp. 12, 18.

many countries have moved away from the *ius soli* mode of conferment of citizenship. India is one of them.

The Indian Constitution, which is the world's lengthiest Constitution with over 400 Articles, is considered to be the supreme law of the land. In India its Supreme Court (SC) has the power to proclaim any law made by the Parliament or state legislatures to be *ultra vires* if found to be in contravention of the provisions of the Constitution.

The Indian Constitution amongst providing for the fundamental rights of citizens, the structure and powers and duties of government institutions also provides for provisions concerning citizenship and nationality. The partition of India and resultant large-scale migration of persons from Pakistan to India and vice-versa raised the importance of the provisions of citizenship during the Constituent Assembly Debates.²⁷ Nehru proceeded to make the statement that the provisions which related to citizenship had "probably received far more thought and consideration ...than any other article contained in this Constitution."²⁸ The Constituent Assembly also debated over questions of recognizing nationality on ethnic parameters or citizenship over non-racial parameters.²⁹

The idea of citizenship was of consequence at the time of making the constitution.³⁰ It was important because certain rights and privileges were sought to be conferred upon those who were entitled to Indian Citizenship to the exclusion of aliens.³¹ Certain fundamental rights like Articles 15, 16, 18(2), 19 and 29 are available to citizens alone.³² Also, only citizens are eligible for the offices of the President and Vice-president, Governor of a State, Judges of the Supreme Court and the High Courts, Advocate-General and Attorney-General.³³ The rights of becoming a member of parliament or the state legislature is also restricted to citizens.³⁴ Though India has two levels of government namely the central government and the state governments there

²⁷ Jayal, Niraja Gopal (2013), *Citizenship And Its Discontents: An Indian History*, Ranikhet: Permanent Black, pp. 56-57.

²⁸ Nehru, Jawaharlal, *Constituent Assembly Debates*, Volume 9, p. 398. Quoted in Jayal, n. 27, p. 57.

²⁹ Tharoor, n. 22, p. 260.

³⁰ For further reading on citizenship and political participation see Khosla, Madhav (2020), *India's Founding Moment: The Constitution of a Most Surprising Democracy*, Cambridge, Massachusetts: Harvard University Press, pp. 133-136.

³¹ Basu, Durga Das (2001), *Introduction to the Constitution of India*, Nineteenth Edition, India: Wadhwa and Company, Law Publishers, reprinted 2003, p. 74.

³² Singh, Mahendra P. (2000), *V.N. Shukla's Constitution of India*, Eleventh Edition, Lucknow: Eastern Book Company, p. 13.

³³ Constitution of India, Articles 58 (1)(a), 66(3)(a), 157, 124 (3), 217 (2), 165, 76 (2).

³⁴ *Ibid.*, at Article 84, Article 191(d).

exists “only single citizenship”.³⁵ There is no separate state citizenship as is the case in USA.

The constitutional provisions regarding citizenship have been set forth in Part II of the Constitution in Articles 5 to 11.³⁶ Articles 5-9 came “into force at once”, while the two other Articles 10 and 11 come into force on the twenty sixth January, 1950.³⁷ The effect of these articles is clearly defining and demarcating between people who are Indian citizens and those who are not, i.e., non-citizens/aliens. The provisions in Part II sets forth the determination of the status of persons as Indian citizens “at the commencement of the Constitution”.³⁸ Article 10 lays down the provision for their continuance as citizens, which is subject to the provisions of any law the legislature may enact.

Article 5 provides for citizenship on the basis of domicile. It states that “every person who has his domicile in the territory of India” at the commencement of the constitution and who fulfilled any one of the following three conditions would be a citizen of India:

- “(a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement”.³⁹

The term ‘domicile’ is a complex legal concept and has not been defined in the Constitution, but it is clear that Article 5 clearly distinguishes between ‘domicile’ and ‘residence’. Many cases have attempted to enumerate the elements of ‘domicile’. One crucial element is the intention of a person to make a place his permanent home.⁴⁰

The partition of India into two sovereign States of Pakistan and India had resulted in large scale migration of people from Pakistan. Article 5 did not provide for citizenship to people migrating from Pakistan as such territories had ceased to be part of Indian territory post-independence. It was for such people that Article 6 of the Constitution became significant. Article 6 provided for citizenship by migration. As per this

³⁵ Jain, M.P. (2003), *Indian Constitutional Law*, Fifth Edition, India: LexisNexis Butterworths Wadhwa, reprinted 2008, p. 792.

³⁶ See Annexure III: Citizenship Provisions in Indian Constitution.

³⁷ Constitution of India, Article 394.

³⁸ Constitution of India, Articles 5-8.

³⁹ Constitution of India, Article 5.

⁴⁰ *Central Bank of India v. Ram Narain*, 1955 AIR SC 36; *Louis De Raedt v. Union of India*, 1991 AIR SC 1886; *Kedar Pandey v. Narain Bikram Sah*, 1966 AIR SC 160.

provision, an individual would be eligible to be an Indian citizen if “he or either of his parents or any of his grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted)”.⁴¹ Additionally, the individual would also have to fulfil either of the two following provisions:

- a) The individual has migrated to India prior to 19th July, 1948 and that “he has been ordinarily resident in the territory of India since the date of his migration”.⁴²
- b) In a situation when the individual has migrated on or after 19th July, 1948 that “he has been registered as a citizen of India”.⁴³

Article 6 envisages migration as moving into India from outside and that such migration must have taken place before the “commencement of the Constitution”.⁴⁴ Article 7 lays down the provision for the termination of citizenship of those person or persons who are Indian citizens as per Articles 5 or 6 if they have migrated to Pakistan after 1st March 1947. If thereafter such person or persons were to come back to India “under a permit for resettlement or permanent return”, they could register themselves in the same manner as those persons migrating from Pakistan after 19th July 1948. The situation of people migrating to Pakistan after 26th January, 1950, however, is determined by the Indian Citizenship Act.⁴⁵

Article 8 provides citizenship to those who themselves “or either of whose parents or any of whose grandparents” were born in pre-independent India but is ordinarily residing in any country outside India. Such persons are “deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefore to such diplomatic or consular representative, whether before or after the commencement of this Constitution”. The Constitution in Article 9 sets forth that no person will be considered to be an Indian citizen under Articles 5, 6 and 8 if they have “voluntarily acquired the citizenship of any foreign State”.

⁴¹ Constitution of India, Article 6 (a).

⁴² Ibid., at Article 6 (b)(i).

⁴³ Ibid., at Article 6(b) (ii).

⁴⁴ Jain, n. 35, p. 794; *Shanno Devi v. Mangal Sain*, 1961 AIR SC 58.

⁴⁵ Jain, n. 35, p. 795.

Additionally, the Constitution in Article 10 discusses matters over the “continuance of the rights of citizenship”. It provides that every person “who is or is deemed to be” an Indian citizen within the context of Articles 5-9, will continue to be a citizen. The continuation of citizenship is however subject to the provisions of any legislations that may be made by Parliament. The termination of citizenship can only be done through a law expressly made under Article 11 of the Constitution.⁴⁶

In the Supreme Court (SC) case of *State Trading Corporation of India v CTO*⁴⁷ the SC held that citizenship as per the provisions of the Constitution inheres only in natural persons and not in juristic corporations.⁴⁸

The Constitutional provisions are not exhaustive and deal primarily with the conferment of “citizenship at the commencement of the Constitution”. Over time Articles 5-10 have become more of historical interest.⁴⁹ A reading of the constitutional provision shows the Indian Constitution under Article 5 conferred citizenship based on *ius soli* tempered by *ius sanguinis*. However, citizenship was based predominantly on the *ius soli* regime.⁵⁰ The move towards the *ius sanguinis* regime is reflected in the statutory law in particular through the amendments to *The Citizenship Act, 1955*.⁵¹

B. Citizenship Act of India

The Constitution under Article 11 authorises the Parliament of India to make laws relating to and affecting the gaining and termination of citizenship following the Constitution’s commencement. It is consequent to this Article that the Citizenship Act of India 1955 was promulgated. It may be noted that the entry 17 in List I of the Constitution of India which states “citizenship, naturalisation and aliens”⁵² Parliament may make laws regarding this subject matter. *The Citizenship Act* was enacted five years after the creation of the Republic of India.

It is *The Citizenship Act* which is the principal legislation which deals with all areas of citizenship in India, its acquisition and termination, naturalisation etc. The

⁴⁶ *Ebrahim Vazir Mavat v. State of Bombay*, 1954 AIR SC 229.

⁴⁷ *The State Trading Corporation of India Ltd. & Others v. The Commercial Tax Officer, Visakhapatnam And Others*, 1963 AIR SC 1811.

⁴⁸ *Ibid.*

⁴⁹ Singh, n. 32, p. 13.

⁵⁰ Jayal, n. 27, p 57.

⁵¹ *The Citizenship Act, 1955*.

⁵² Constitution of India, Entry 17, List I Schedule VII.

Constitution and this Act comprises the core law in respect of the acquisition of citizenship in India. *The Citizenship Act* has expounded five grounds upon which citizenship could be acquired in India. These grounds are citizenship by birth, by descent and registration, naturalisation and by “incorporation of territory”.⁵³

At the outset as per the Citizenship Act, birth right citizenship was accorded to all persons who had been born in Indian territory after the “commencement of the Constitution” unless excluded.⁵⁴ Subsequent amendments to the Act have however diluted this means of acquisition of Indian Citizenship.⁵⁵ *The Citizenship Act, 1955* has seen many changes through the many amendments the Act has undergone⁵⁶ the most recent being in 2019.

C. Citizenship Amendment Act of 1986

The first and one of the pivotal changes made to The Citizenship Act was done through the Citizenship Amendment Act of 1986.⁵⁷ This amendment took place in the backdrop of debates over suspected alarmingly large illegal migrant population coming in due to in-migration from Bangladesh⁵⁸ and the Assam Agitation (1979-1985).

The determination of who is a foreigner may be gleaned from the *Foreigners Act* of 1946.⁵⁹ This Act is a remnant of colonial legislation and the primary law regulating the entry, exit and presence of foreigners within the borders of India. Section 2 of the Act defines who is considered to be a “Foreigner”. The provision simply defines foreigners as people who are not citizens of India.

As early as in the year 1950 the Immigrants (Expulsion from Assam) Act came into force with the intent of dealing with the influx of migrants from erstwhile East

⁵³ Basu, n. 31, p. 76; An example of incorporation was the incorporation of the territories of Goa, Daman and Diu under the *Goa, Daman and Diu (Citizenship) Order, 1962*. *The Citizenship (Amendment) Act, 1986* also introduced a sixth category of acquisition of citizenship specifically for state of Assam.

⁵⁴ Basu, n. 31, p. 76; Roy, n. 15, p 37.

⁵⁵ Jayal, n. 27, p. 57.

⁵⁶ See the Citizenship (Amendment) Acts of 1986, 1992, 2003, 2005, 2015.

⁵⁷ *The Citizenship (Amendment) Act, 1986*.

⁵⁸ Jayal, n. 27, p. 63-64; Baruah, Sanjib (1999), *India Against Itself: Assam and the Politics of Nationality*, Noida: Oxford University Press, p. 139.

⁵⁹ The Foreigners Act, n. 25.

Pakistan to Assam after the partition. Section 2 of the Act provided for such measure.⁶⁰ This Act was, however, repealed in 1957.⁶¹

The subsequent peak in the migration prior to, during and after the war in East Pakistan and subsequent independence of Bangladesh lead to more concerns of Assam being swamped with foreigners.⁶² This, in turn, resulted in the six yearlong Assam Agitation (1979-1985)⁶³ against ‘illegal’ migrants from Bangladesh and its resolution through a Memorandum of Settlement known as the *Assam Accord* of 1985.⁶⁴

The Citizenship Act came to be also amended, and a sixth category of citizenship was also inserted into *The Citizenship Act* via its 1986 amendment, which applied specifically to the situation prevalent in the state of Assam.⁶⁵ Section 6 A so introduced via this amendment set forth, 24 March, 1971 to be the date of citizenship determination in the State of Assam.⁶⁶ Under this category citizenship would be extended to individuals who were of Indian origin and had been “ordinarily resident in Assam” and had migrated into Assam prior to 1 January 1966 from the “specified territory”⁶⁷ including “such of those” who appeared on 1967 electoral rolls for the general election.⁶⁸ The provision also envisages citizenship to those of Indian origin who migrated from “the specified territory” and into Assam on or after 1 January 1966 but prior to 25 March 1971.⁶⁹ This second group would be conferred citizenship after

⁶⁰ Section 2, *Migrants (Expulsion from Assam) Act*, 1950. This section provides: “Power to order expulsion of certain migrants. If the Central Government is of opinion that any person or class of persons, having been ordinarily resident in any place outside India, has or have, whether before or after the commencement of this Act, come into Assam and that the stay of such person or class of persons in Assam is detrimental to the interests of the general public of India or of any section thereof or of any Scheduled Tribe in Assam, the Central Government may by order--

(a) direct such person or class of persons to remove himself or themselves from India or Assam within such time and by such route as may be specified in the order; and

(b) give such further directions in regard to his or their removal from India or Assam as it may consider necessary or expedient; Provided that nothing in this section shall apply to any person who on account of civil disturbances or the fear of such disturbances in any area now forming part of Pakistan has been displaced from or has left his place of residence in such area and who has been subsequently residing in Assam.”

⁶¹ Baruah, n. 58, p. 119.

⁶² Jayal, n. 27, p. 64.

⁶³ For detailed account of the Assam Agitation see Baruah, n. 58, pp. 124-143.

⁶⁴ *The Assam Accord*, 1985.

⁶⁵ *The Citizenship Act*, 1955, Section 6 A; Baruah, n. 58, p. 139.

⁶⁶ Roy, n. 15, p. 96.

⁶⁷ *The Citizenship Act*, 1955, Section 6 A (1)(c); Specified Territory refers to territories included in Bangladesh immediately before the commencement of *The Citizenship (Amendment) Act*, 1986.

⁶⁸ *The Citizenship Act*, 1955, Section 6 A (2).

⁶⁹ *The Citizenship Act*, 1955, Section 6 A (3), 6 A (4) and 6 A (5).

a passage of ten years since detection as a foreigner upon registration.⁷⁰ During the ten-year period such persons were deemed to have same rights and obligations as an Indian citizen but without voting rights.⁷¹

Thus, with the 1986 Amendment of *The Citizenship Act*, this Act along with *The Foreigners Act*, also encapsulated the idea of foreigner determination within its purview. These legislations, however, do not look into any other aspects but the area of controlled entry and departure of foreign nationals or the removal of illegal migrants.

The 1986 Amendment also made another significant amendment in respect of Section 3 of the Citizenship Act. By this amendment, it provided that any individual who was born in Indian territory between 26 January, 1950 and prior to 1 July, 1987 would be considered to be an Indian citizen by virtue of being born in India. Further, any individual born on Indian soil on or after 1 July, 1987 and “either of whose parents is a citizen of India at the time of his birth” would be a citizen of India by birth.⁷²

It is also significant to note that concerns over migration and debate over illegal migrants coming in from Bangladesh were overarching in the domain of security. So much so that the SC in the *Sarbananda Sonowal v. Union of India & Anr.* case stated that “there can be no manner of doubt that the State of Assam is facing ‘external aggression and internal disturbance’ on account of large scale illegal migration of Bangladeshi nationals.”⁷³

D. Citizenship Amendment Act of 2003

Within the contours and ambit of migration and the idea of “illegal migrant” in particular, the 2003 amendment made two notable changes. Firstly, the amendment provided for a definition of the term “illegal migrant” through an amendment in Section 2 of the Citizenship Act, 1955.⁷⁴ The Act defined an illegal migrant as:

“a foreigner who has entered into India- (i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or

⁷⁰ Roy, n. 15, p. 96.

⁷¹ *The Citizenship Act*, 1955, Section 6 A (4).

⁷² *The Citizenship (Amendment) Act*, 1986, Section 2.

⁷³ *Sarbananda Sonowal v. Union Of India & Anr*, 2005 AIR SC 2920, at para. 38.

⁷⁴ *The Citizenship (Amendment) Act*, 2003, Section 2.

(ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time.”⁷⁵

The second notable amendment was again pertaining to Section 3 of *The Citizenship Act, 1955* pertaining to birth right citizenship. The Amendment Act of 2003, substituted Section 3 with the following provision:

“3. Citizenship by birth. - (1) Except as provided in sub- section (2), every person born in India-

- (a) on or after the 26th day of January, 1950, but before the 1st day of July, 1987;
- (b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth;
- (c) on or after the commencement of the Citizenship (Amendment) Act, 2003, where-
 - (i) both of his parents are citizens of India; or
 - (ii) one of whose parents is a citizen of India and *the other is not an illegal migrant at the time of his birth*, shall be a citizen of India by birth.

(2) A person shall not be a citizen of India by virtue of this section if at the time of his birth-

- (a) either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or
- (b) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy”.⁷⁶ (*emphasis added*)

Thus, with the 2003 amendment, every person who was born in India on or after 03.12.2004 (date of commencement of the Citizenship (Amendment) Act, 2003) shall be an Indian citizen provided both of his/her parents are Indian citizens or one of whose parents is an Indian citizen and the other is not an “illegal migrant” during the time of his/ her birth.

E. Citizenship Amendment Act of 2019

The most recent amendment Act of 2019 seeks to provide citizenship to Hindus, Buddhists, Sikh, Jain, Parsi and Christians who have migrated into India from the countries neighbouring it namely that of Bangladesh, Afghanistan and Pakistan. The Amendment Act has also inserted a proviso to Section 2(1)(b) of the Citizenship Act, 1955 which defined the term “illegal migrant”. The proviso reads:

⁷⁵ Ibid.

⁷⁶ *The Citizenship (Amendment) Act, 2003*, Section 3; This Act also made “illegal migrants” ineligible for citizenship through registration or naturalisation.

“Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act;”

⁷⁷

On a bare reading of the constitutional provisions regarding citizenship in India we can say that amid the situation of partition the Indian conception of citizenship was inclusive.⁷⁸ In the intervening years and the promulgation of *The Citizenship Act* in the year 1955 and further amendments made to this Act; however, the notion of determining who is legally a citizen of India has come into play.

It can be seen that with the successive amendments to *The Citizenship Act*, the principle of *ius soli* has narrowed considerably. The first amendment of 1986 made it necessary that a person would have birth right citizenship if at least one parent was an Indian citizen at the time of his birth. This amendment thus focussed upon descent and lineage. The 2003 amendment included additional qualifications to the provision on citizenship by birth. It provided that citizenship by birth would be granted to a person on the condition that *both* his/her parents were citizens of India. In case only a single parent happened to be an Indian citizen, then in such a circumstance the other remaining parent had to necessarily not be an “illegal migrant” during the time of his/her birth.

The Citizenship Act which had been a conspicuous exposition of the concept of *ius soli* has during the passage of time and with the process of subsequent amendments witnessed the concept of *ius sanguinis* gain equivocality over the principle of *ius soli*.⁷⁹

Of note is also the fact that these amendments to *The Citizenship Act* may result in the creation of statelessness through the operation of law itself. For example, it may prevent a child gain citizenship at birth if the child’s parent/parents happened to be an illegal migrant or stateless.

⁷⁷ *The Citizenship (Amendment) Act*, 2019, Section 2.

⁷⁸ See Valerian Rodrigues (2008), “Citizenship and The Indian Constitution”, in Rajeev Bhargava (ed.), *The Politics and Ethics of the Indian Constitution*, India: Oxford University Press.

⁷⁹ Roy, n. 15, p. 138.

F. International Law Obligations

The Indian State is party to various International Treaties, especially Human Rights Instruments that obligate that India must preserve the basic human rights of migrants like their rights to “life and liberty” for example. India has in particular ratified the ICCPR⁸⁰, ICESCR⁸¹, CRC⁸² and CEDAW⁸³.

Interestingly, however India has made a reservation in regards to Article 13 of the ICCPR that concerns itself with the mode for expulsion of “an alien lawfully in the territory of a State Party”⁸⁴ by reserving its right to apply its laws on foreigners.⁸⁵ Also, India is not a party to the ICRMW⁸⁶ that is an important convention that provides for the protecting and safeguarding of migrant workers and their family’s human rights. India is also not a party to the RC or the RC Protocol.

India is however a party to the UNFCCC⁸⁷ that deals with working with the concerns and problems that climate change poses.

IV. ENVIRONMENTALLY INDUCED MIGRATION AND INDIAN POSITION

The developing countries of the Third World are most vulnerable to the unprecedented “ecological upheavals” confronting humankind today.⁸⁸

The detrimental effects of climate change, in particular, is being felt worldwide, raising this subject to an issue of consequence at the global level. It is also acknowledged that the unfavourable effects of climate change will not be evenly spread, thus they are in all likelihood apt to be felt unevenly across the Globe. Areas which are highly susceptible to these effects are the developing countries who already

⁸⁰ *International Covenant on Civil and Political Rights*, (1966), 999 UNTS 171.

⁸¹ *International Covenant on Economic, Social and Cultural Rights*, (1966), 993 UNTS 3.

⁸² *Convention on the Rights of the Child*, (1989), 1577 UNTS 3.

⁸³ *Convention on the Elimination of All Forms of Discrimination Against Women*, (1979), 1249 UNTS 13.

⁸⁴ ICCPR, Article 13.

⁸⁵ Chetail, Vincent (2012), “Sources of International Migration Law”, in Brian Opeskin et al. (eds.), *Foundations of International Migration Law*, UK: Cambridge University Press, p. 70.

⁸⁶ *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, (1990), 2220 UNTS 3.

⁸⁷ *United Nations Framework Convention on Climate Change: resolution / adopted by the General Assembly*, (1992), 1771 UNTS 107.

⁸⁸ Desai, Bharat H. (1990), “Managing Ecological Upheavals: A Third World Perspective”, *Social Science & Medicine*, 30(10):1065-72.

are confronted with the problems of poverty and have large populations and small island nations.

Developing countries are among the ones who are most vulnerable to the changes in environment and climate due to their comparatively lower adaptive capacities.⁸⁹ Such countries economy is also mostly agrarian and their geographic locations, are pre-disposed to natural disasters. The Asia- Pacific region stands to most momentously suffer from the negative impacts of environmental and climatic changes.⁹⁰ The region is susceptible to increased sea levels, temperature, rainfall, more intense cyclone activity etc.

A World Bank Report makes an estimation that the sub-Saharan Africa, Latin America and Southeast Asian regions would give rise to “143 million” environmentally induced migrants by the year 2050.⁹¹ Another report published by the Asian Development Bank in the year 2017⁹² also underscored the repercussions that is likely to accrue from climate change in the region. The report showcased the region’s susceptibility to rising sea levels, floods etc. It significantly also concerns itself with the migration and climate change dynamic in the Asia region.⁹³

⁸⁹ Ibid; See also UN Meetings Coverage and Press Releases (2019), “Unprecedented Impacts of Climate Change Disproportionately Burdening Developing Countries, Delegate Stresses, as Second Committee Concludes General Debate”, GA/EF/3516; available at: <https://www.un.org/press/en/2019/gaef3516.doc.htm> (accessed on 5 January 2021).

⁹⁰ Hugo, G (2010), “Climate Change-Induced Mobility and the Existing Migration Regime in Asia and the Pacific” in Jane McAdam (ed.), *Climate Change and Displacement: Multidisciplinary Perspectives*, Oxford and Portland, Oregon: Hart Publishing, p. 17.

⁹¹ Kanta, Kumari Rigaud et al. (2018), *Groundswell: Preparing for Internal Climate Migration*, World Bank, p. 110; available at: <https://openknowledge.worldbank.org/handle/10986/29461> (accessed on 15 February 2020).

⁹² Asian Development Bank (2017), *A Region at Risk the Human Dimensions of Climate Change in Asia and The Pacific*, ADB; available at: <https://www.adb.org/sites/default/files/publication/325251/region-risk-climate-change.pdf> (accessed on 15 February 2020).

⁹³ Ibid., at pp. 81-82.

IMAGE: 7

ASIA-PACIFIC MAP DETAILING IMPACTS OF CLIMATE CHANGE ON THE REGION.⁹⁴



The above map shows how the densely populated cities on the Asian coastline are exposed to rising seas, storm surges and river flooding. The map visualises areas that due to climate change will be prone to the increasing frequency of cyclones, desertification, increasing monsoon precipitations etc.⁹⁵

The years 2018 and 2019 saw “Large-scale displacement triggered by climate and weather-related hazards” across the Globe in particular in the Philippines, China and India.⁹⁶ In South-Asia, most displacements of people were an outcome of disasters due to sudden-onset hazards in the year 2018.⁹⁷

Even in the absence of data projection over the migration and environment linkages in the Asian region, we need to consider the situation because climate change creates an influence on the environmental drivers of migrations. The region’s susceptibility to climate change makes it pertinent and important to consider environmentally induced migration seriously.

The 2018 IPCC’s special report entitled “Impacts of 1.5°C of Global Warming on Natural and Human Systems” shows India’s vulnerability and how India has a strong

⁹⁴IOM; available at: <https://environmentalmigration.iom.int/maps> (accessed on 28 December 2019).

⁹⁵ Ibid.

⁹⁶ IOM (2020), *World Migration Report 2020*, Geneva: IOM, p. 2; available at: https://www.un.org/sites/un2.un.org/files/wmr_2020.pdf (accessed on 27 August 2020).

⁹⁷ Ibid., at p. 79.

likelihood of facing the negative force of climate change in the upcoming years.⁹⁸ This high likelihood of severe heatwaves and coastal flooding⁹⁹ both of which are potential migration drivers are concerning.

India is no less likely to be impacted by the situation, especially considering the geographical contours which are spread over a variety of ecological zones, an extensive coastline raises concerns of experiencing significant climate change impacts. Additionally, due to India's large population, which is primarily dependent upon an agrarian economy, poverty and social inequities makes the situation challenging. Due to such a situation, the adaptive capability of the country will also be under tremendous strain.

For India, human mobility in the context of environment manifests itself in two ways. First, being the internal migration of people due to natural hazards and slow-onset issues like desertification and loss of coastal land. As per the Internal Displacement Monitoring Centre (IDMC), India has one of the highest levels of displacement in South Asia which can be associated to disasters majority of which is due to flooding and monsoon rains.¹⁰⁰ The Mid-year figures of the IDMC for the year 2019 showed that in the first half of 2019 itself there have been 2,171,000 new displacements due to disasters.¹⁰¹ These displacements were triggered due to weather-related disasters, *Cyclone Fani* being one of the primary causes.¹⁰² The islands of India are also in a situation of crisis. It has been projected that in future India's Andaman and Nicobar Islands may no longer be habitable due to sea-level rise.¹⁰³ Majuli a river island in

⁹⁸ Hoegh-Guldberg, O. et al. (eds.) (2018), *Impacts of 1.5°C of Global Warming on Natural and Human Systems*, IPCC; available at: https://www.ipcc.ch/site/assets/uploads/sites/2/2019/02/SR15_Chapter3_Low_Res.pdf (accessed on 22 June 2020).

⁹⁹ Ibid., at pp. 242, 256, 263.

¹⁰⁰ IDMC; available at: <https://www.internal-displacement.org/countries/india> (accessed on 17 February 2020); Sharalaya, Nandan (2018), "Taking India's Climate Migrants Seriously", *The Diplomat*; available at: <https://thediplomat.com/2018/08/taking-indias-climate-migrants-seriously/> (accessed on 8 December 2019).

¹⁰¹ IDMC (2019), *Mid-year Figures: Internal displacement From January to June, 2019*, IDMC, p. 4; available at: https://www.internal-displacement.org/sites/default/files/publications/documents/2019-mid-year-figures_for%20website%20upload.pdf (accessed on 17 February 2020).

¹⁰² Ibid., at p. 9.

¹⁰³ Press Trust of India (2019), "Andaman and Nicobar Islands might not be inhabitable in future due to rise in sea level: IPCC author", *The Indian Express*, 25 September 2019; available at: <https://indianexpress.com/article/india/andaman-and-nicobar-islands-might-not-be-inhabitable-in-future-due-to-rise-in-sea-level-ipcc-author/#:~:text=Andaman%20and%20Nicobar%20Islands%20in,on%20climate%20change%20on%20Wednesday.&text=He%20further%20said%20the%20focus,adaptation%20and%20building%20climate%20resilience.> (accessed on 19 August 2020).

Brahmaputra river in the state of Assam has for long been vulnerable to land erosion due to floods. It is a disappearing island speculated to be undergoing an accelerated erosion process due to climate change and severe weather patterns.¹⁰⁴ Once known as the largest “mid-river deltaic island in the world, with an area of 1,256 sq km, it has now shrunk to less than half its size”.¹⁰⁵ Even the population living in the Sundarbans are being affected by the rising sea-levels.¹⁰⁶

The second concern would be of international migration that is to say playing host to environmentally induced migrants from neighbouring lands. India is an attractive host nation which is already home to a number of international migrants originating from the countries neighbouring India mainly because of its comparative welfare and employment prospects. Most international migration in South-Asia takes place from countries within the region across major migration corridors which include Bangladesh-India and Nepal-India corridors.¹⁰⁷

Studies have shown that the Asian region is prone to climate change’s negative and harmful impacts. South Asia witnessed early monsoon season in the year 2020, an influence of climate change.¹⁰⁸ This resulted in occurrence of both floods and landslides in Parts of India (Assam and Meghalaya), Bhutan, Nepal and Bangladesh.¹⁰⁹ Therefore, there is a high potential for environmentally induced migrants from neighbouring countries to migrate to India. For example, environmentally induced migration from Bangladesh is a distinct possibility with many Bangladeshis increasingly turning to out-migration as a coping strategy.¹¹⁰

¹⁰⁴ Lost with Purpose (2020), *Majuli, India’s Disappearing Island*; available at: <https://www.lostwithpurpose.com/majuli/> (accessed on 5 September 2020).

¹⁰⁵ DTE (2016), “Disappearing Majuli, India’s first river island district”, *Down To Earth*; available at: <https://www.downtoearth.org.in/news/environment/disappearing-majuli-india-s-first-river-island-district-54610#:~:text=According%20to%20an%20article%20on,away%20due%20to%20massive%20erosion.&text=Locals%20also%20claim%20that%20the,the%20flow%20of%20the%20river> (accessed on 5 September 2020).

¹⁰⁶ Faleiro, Sonia (2020), “Asia’s Biggest Climate Migration”, *MIT Technology Review*; available at: <https://www.technologyreview.com/2020/11/19/1012216/sundarbans-amphan-climate-change-migration/> (accessed on 21 November 2020).

¹⁰⁷ IOM (2020), *World Migration Report 2020*, Geneva: IOM, p. 77; available at: https://www.un.org/sites/un2.un.org/files/wmr_2020.pdf (accessed on 27 August 2020).

¹⁰⁸ The Third Pole (2020), *Early monsoon floods show climate change impact in South Asia*; available at: <https://www.thethirdpole.net/2020/06/29/early-monsoon-south-asia/> (accessed on 15 July 2020).

¹⁰⁹ Ibid.

¹¹⁰ Panda, Architesh (2010), “Climate Refugees: Implications for India”, *Economic and Political Weekly*, 45(20): 76-79; Houque, T and J. Ferdauapsh (2015), “Riverbank Erosion, Population Migration and Rural Vulnerability in Bangladesh (A Case Study on Kazipur Upazila at Sirajgonj District)”, *Environment and Ecology Research*, 3(5):125 - 131; Islam, M.R. and M. Hasan (2016),

According to the IDMC’s mid-year report Bangladesh is next to India in terms of displacements due to disasters.¹¹¹ Further, a recent study by ActionAid stated that “Bangladesh could see a seven-fold increase in displacement and distress migration by 2050”.¹¹²

IMAGE: 8

INDO-BANGLADESH BORDER (DAWKI-JAFLONG)



With this very possible and likely scenario of future environmental migrants from neighbouring countries, it would be in the national interest to look into law and policy

“Climate-Induced Human Displacement: A Case Study of Cyclone Aila in the South-West Coastal Region of Bangladesh”, *Natural Hazards*, 81(2): 1051–1071; See also Hazarika, n. 20, p. 4.

¹¹¹ IDMC (2019), n. 101.

¹¹² Singh, Harjeet et al. (2020), *Costs of Climate Inaction: Displacement And Distress Migration*, ActionAid, p. 10; available at: <https://actionaid.org/sites/default/files/publications/ActionAid%20CANSAs%20-%20South%20Asia%20Climate%20Migration%20-%20Dec%202020%20-Final.pdf> (accessed on 2 January 2021).

matters to manage this situation. Also, when discussing these matters, it must be borne in mind that in cases of migration resulting as a consequence of environmental and climate change, the people moving are not responsible for the situation. They are migrating as a way to adapt to deteriorating environmental conditions.

However, migration due to environmental factors does not seem to figure on India's policy agenda. Migration for India is seemingly confined to political and economic conditions.¹¹³ Even the website of the Ministry of Home affairs that discusses the census when discussing migrants, it is primarily economic migrants that feature and the environment is not factored in.¹¹⁴ When it comes to the issue of the environment, India addresses it in terms of sustainable development. Such unconcern to this issue is most likely because India considers other issues such as poverty alleviation and sustainable development to be of utmost concern. India's priority is economic growth. In the realm of Climate Change as well "*The National Action Plan on Climate Change*", 2008 (NAPCC) does not in either of its eight missions geared towards addressing climate change touch upon the subject matter of climate change-induced displacement.¹¹⁵ India does have in place certain policy framework that addresses displacement of persons taking place as a result of development projects¹¹⁶ and a "National Disaster Management Plan".¹¹⁷ These nevertheless do not in any way concretely deal with the subject of environmentally induced migration.

The primary actions in respect to climate change from India's perspective have been how best to mitigate Climate Change effects.

In the most recent UNFCCC COP 25 hosted in Spain highlights this facet.¹¹⁸ The Union Minister for "Environment, Forest and Climate Change, Information & Broadcasting and Heavy Industries & Public Enterprises" Mr. Prakash Javadekar

¹¹³ Jayaram, Dhanasree (2016), "India at the Centre of Debate Surrounding 'Environmental' Migration in South Asia", *Article written as a part of the adelphi-MARG project Climate Diplomacy, supported by the German Federal Foreign Office*; available at: <http://stsfor.org/content/india-centre-debate-surrounding-environmental-migration-south-asia> (accessed on 30 December 2019).

¹¹⁴ Office of the Registrar General & Census Commissioner, India; available at: http://censusindia.gov.in/Census_And_You/migrations.aspx. (accessed on 28 December 2020); See also India Centre for Migration (ICM), Ministry of External Affairs Government of India; available at: <https://mea.gov.in/icm.htm> (accessed on 28 December 2020).

¹¹⁵ *National Action Plan on Climate Change*, 2008.

¹¹⁶ *National Rehabilitation and Resettlement Policy*, 2007.

¹¹⁷ *National Disaster Management Plan*, 2016; See also, Panda, Architesh (2020), "Climate Change, Displacement, and Managed Retreat in Coastal India", Migration Policy Institute; available at: <https://www.migrationpolicy.org/article/climate-change-displacement-managed-retreat-india> (accessed on 28 December 2020).

¹¹⁸ Chaudhry, Rajinder (Chief Editor) (2020), "India at UNFCCC COP 25", *Yojana*, 64(1):7-9.

while delivering India's statement at COP 25 emphasised upon India's move of reducing emissions. In the statement, he also highlighted that "India prioritises adaptation as an integral part of climate actions" and as such is working towards urban forests, agroforestry and water conservation.¹¹⁹ He emphasised that India has taken up the aim of restoring 26 million degraded lands by 2030. These are very noble goals, and it is heartening to see that India has taken up the challenge at contending with the harmful effects of climate change. In the statement made by Mr Javadekar, he acknowledges that "Climate change is real" highlighting India's official stance on the situation of climate change.¹²⁰ However, the associations and interconnections amongst the growing numbers of droughts, climate disasters, flooding, and troubles in the area of agricultural practices and their subsequent corresponding effects on population movement have not been drawn. Human mobility and its relationship with environment also did not figure in the "intended nationally determined contributions" (INDC) which India has submitted.¹²¹

The potential of cross-border population movement may amplify the situation of migration resulting because of environmental and climate change. The cross-border migration is possible not only from Bangladesh but due to the susceptibility of the Asian region migration from other neighbouring countries like the Maldives or Sri Lanka cannot be discounted.

V. CONCLUSION

The Indian state has had a remarkable history with the migration of people. Historically the Indian subcontinent has stood witness to many migrant people over various periods. Modern India itself has been witness to two large scale migrations.

Migration of people into India has also influenced the domestic legal regime. The most significant examples are the Amendments that have been made to *The Citizenship Act, 1955*. The political and social dynamics over the concerns of "illegal migration" has been a foreground for these legal changes.

¹¹⁹ Ibid., at p. 7.

¹²⁰ Ibid.

¹²¹ See INDCs as communicated by the Parties; available at: <https://www4.unfccc.int/sites/submissions/INDC/Submission%20Pages/submissions.aspx> (accessed on 15 July 2020).

Migration in the Indian context, is also viewed pre-dominantly from economic, political and security dimensions. For years the academic and public discourse in India has been dominated by the situation of “illegal migrants” from neighbouring States. This circumstance has led to calls for more robust border controls due to concerns over security and demographic changes. The highest court of the land has also considered the “illegal migration” from Bangladesh to be a matter of “external aggression”.

The linkages between environment and migration thus have not found much ground in India irrespective of the fact that India and the Asia-Pacific region in general is most vulnerable to the changes in environment and climate.

With the growing concerns over a degrading environment and climate change, India has been at the forefront in tackling these challenges. However, the bearing and effects of the environmental and climate changes over the migratory movements of people on the other hand has not been an issue of focus or consideration. The situation of environmentally induced migration plays very little concern in the Indian imagination.

Having discussed the situation of Indian law and policy in regard to migration and environmentally induced migration in particular the next and final chapter concludes the entire work and provides a summary of findings and recommendations.

CHAPTER VII. CONCLUSIONS

“Migration is often misperceived as the failure to adapt to a changing environment. It is, however, one of the main coping and survival mechanisms that is available to those affected by environmental degradation and climate change.”

– Sylvia Lopez-Ekra
International Organization for Migration Ghana Chief of Mission.

Migration is a response to the needs of an individual or group of individuals for better economic opportunities, to escape political conflicts or persecution and environmental factors as well.

Human mobility in general and migration in particular, has created considerable interest in various academic disciplines as well as amongst the general public. Today, with the world beholding a gradual rise in the movement of individuals and groups both internal and over and beyond international borders, regions and continents, the challenges and problems posed by migration have also witnessed a steep rise.

During the entire year of 2020, the unprecedented global impact of Covid-19 pandemic especially on human lives and livelihoods has added another dimension to the migration debate. This was because human mobility was curtailed by restrictions placed on the movement of people both inside the boundaries of a State and across State borders. Many of the global challenges including migration have been exacerbated by the pandemic. The present-day challenges involving large-scale environmental degradation and rising climate change concerns have also brought to the fore-front the concerns over environmentally induced migrants. All these challenges, in turn, call for better policy, legal and institutional responses to address the global challenge.

This research work has comprehensively studied and examined the modern international law on migration, more particularly concerning area of environmentally induced migration. The study has examined relevant aspects of International Refugee, Environmental and Human Rights Law. The study has also explored the crucial functions of the International Organisations (IOs) within the field of migration.

The introductory chapter of the work provided a review of literature over the area of study undertaken. It also served as the chapter where the research questions and hypothesis were postulated.

Chapter II then endeavoured to understand the phenomenon of human migration, its causes and classifications. The movement of people has taken place throughout human history. The earliest human migration was set into motion when *Homo erectus* began to move out of Africa into and across Eurasia about 2 million years ago. The motivations for such early migrations were environment-related factors like droughts; a search for freshwater sources or better hunting grounds. The transition from a hunter-gatherer society to an agrarian and sedentary life patterns however heralded the inclusion of economic, political and social factors as migration drivers. Migration has, thus, entailed a means for better job opportunities or removing oneself from political turmoil and war. These developments have brought studies of migration from different perspectives leading to a growth in migration literature. Most migration literature however gave prominence to the economic and political factors of migration and the importance of environmental factors receded to the background.

Migration has been variously classified. The classification of migration has chiefly been done in two ways i.e., descriptive classification and interpretative classification. Under the descriptive classification migration has most broadly been classified into geographical or distance-based classification, classification based on duration of migration, causal classification or motive-based migration, demographic-economic classification and political and legal classifications. The causal classification or motive based migration which include categories such as voluntary and forced migration is one of the most common means of classifying migratory movements.

Under interpretative classification fall the various theories of migration that attempt to identify the causes and effects of migration and explain migratory flows. These various theories of migration have also concentrated over the economic and to an extent political factors of migration. Environmental factors have largely not been adequately looked into. However, the progressively deteriorating environmental conditions and effects of climate change have rekindled the significance of environment as a migration driver.

This chapter has also looked into the historical ambit of migration under international law in an attempt to answer the first research question: “What is the historical trajectory of international migration under international law?”. We have seen that international migration was one of the first areas of reflection under international law. This is established through the writings of eminent scholars like Francisco de Vittoria, Hugo Grotius, Emer de Vattel, Pufendorf and Christian von Wolff. The founding scholars of international law emphasized sovereignty did not coincide with notions of control over migration at the same time. That is to say they both were not “concomitant” factors. This narrative is in stark contrast to the present-day narrative that States have always had unbridled autonomy to restrict the movement of people. It has been seen how both sovereignty and hospitality in fact coexisted as two main characteristics of the law of nations and complete discretionary power of a State in the context of migration was not acknowledged.

It seems early international law scholars also gave consequence to humanitarian assistance. Contrary to today’s State-centric paradigm international relations were conducted on the basis of humanitarian values and not solely on State power. In fact, though the viewpoint of sovereign authority started to gain favour with the rise of nation-states; the 17th Century Westphalian conceptualisation of nation-states with borders did not simultaneously coincide with strict migration controls. It was only sometime in the late 19th Century that stricter immigration controls started to come into prominence. A gradual decline of the freedom of movement has thus been witnessed, though, the conceptualisation of Human Rights has to a certain extent given new ground to the idea of freedom movement.

Chapter III has sought to explore and analyse the current international law on migration and pertinent aspects of international human rights law. The chapter is an answer to the second research question of the study: “Do contemporary international migration law and human rights law address the environmentally induced migration and migrants?”

Louis Varlez has been credited with coining the expression “international migration law” in 1927. The issue of migration has meaningfully evolved in consonance with the development of international law. There exist today various international conventions, standards, mechanisms and institutions that deal with the concerns of migrants and the

phenomenon of migration itself. Such legal instruments have collectively come to comprise the international legal regime on migration. At present, there exist seven multilateral treaties which represent the core instruments in international migration law. These instruments are namely the RC¹ and the RC Protocol², Convention 97³, Convention 143⁴, ICRMW⁵, Protocol against Trafficking⁶ and the Protocol against Smuggling of Migrants⁷.

However, these treaties deal with only three categories of migrants - “refugees”, “migrant workers” and “smuggled and trafficked migrants”. There is no international legal instrument that deals with other types or categories of migrants. Contemporary international migration law does not at present recognise environmentally induced migrants to be a subject of international treaty law. Thus, in the case of such category of migrants, the only recourse to realise rights for their challenges and issues stem from other multilateral agreements drafted for general purposes like the Human Rights treaties. This category of migrants can for their protection invoke the basic rights which have been enshrined in the human rights instruments primarily that of the UDHR⁸, ICCPR⁹ and ICESCR¹⁰. Of particular note are the “right to life and liberty”, “right not to be subjected to torture” and a “right against arbitrary arrest, detention or expulsion”.

Although there is no binding international legal instrument which deals with environmentally induced migrants it is of interest to note that the environmental impact on migration has been a topic of discussion within the United Nations. In fact, a few UNGA Resolutions have highlighted and specifically described the environment as a driver of migration. There have also been a few recent developments

¹ *Convention Relating to the Status of Refugees*, (1951), 189 UNTS 137.

² *Protocol Relating to the Status of Refugees*, (1967), 606 UNTS 267.

³ *Convention concerning Migration for Employment (Revised 1949) (No. 97)*, (1949).

⁴ *Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975(Supplementary Provisions) (No. 143)*, (1975), Geneva, 60th ILC session.

⁵ *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, (1990), 2220 UNTS 3.

⁶ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, (2000), 2237 UNTS 319.

⁷ *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime*, (2000), 2241 UNTS 507.

⁸ *Universal Declaration of Human Rights*, (1948), UNGA Resolution, 217 A (III).

⁹ *International Covenant on Civil and Political Rights*, (1966), 999 UNTS 171.

¹⁰ *International Covenant on Economic, Social and Cultural Rights*, (1966), 993 UNTS 3.

with regards to environmentally induced migration with the adoption of the *New York Declaration*¹¹ and the Refugee Compact and Migration Compact. The *New York Declaration* addresses disaster-displacement of people within the backdrop of climate change. The Migration Compact on the other hand identified climate change to be a driver of migration for the first time. The Refugee Compact also acknowledges how sudden-onset natural disasters and environmental degradation may lead to external forced displacement. However, none of them categorizes environmentally induced migrants as a distinct category in need of protection and realisation of rights.

A comprehensive understanding of environmentally induced migration, its nomenclature and classification was undertaken in Chapter IV. In an attempt to answer the third research question: “Is the international environmental law framework relevant for environmentally induced migration and migrants?” an examination of international environment law to that effect was also carried out.

There is an overwhelming consensus that there is increasing environmental and climate change taking place which is impacting our living environment. Amongst the variety of impacts of environmental and climatic changes, migration is an important one. It has been seen that historically environmental factors have impacted human mobility. However, increased environmental degradation and climate change has brought in a new urgency and gravity to the environment-migration nexus. The literature over the environmental dimensions of migration is relatively new but fast evolving. It has been seen that the environment-migration relationship is of a very complex nature. The variety of terminologies used to describe this relationship envisages the many different ways in which this relationship has come to be conceptualised. What is clear however, is that environment is a key migration driver. It induces migration either directly or influences migration indirectly through other existing migration drivers.

With respect to the question of international environmental law having any applicability within the context of environmentally induced migration, the answer is that it is indeed applicable. Environmental law principles like, “common but differentiated responsibility”, “precautionary principle”, “cooperation” and “responsibility towards future generations” contained in the *Rio Declaration on*

¹¹ *New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly, (2016), UNGA Resolution, A/RES/71/1.*

*Environment and Development*¹² assumes importance for they envision respecting and safeguarding of the environment and sustainable development. More concretely the UNCCD¹³ and UNFCCC¹⁴ are significant with respect of environmentally induced migration. The UNCCD is important in the context of slow-onset environmental changes. The issue of human mobility has garnered much attention at the UNCCD Conference of Parties. During its thirteenth Conference of Parties, it has even adopted a decision on migration. There has also been collaboration with the IOM on the concept of “land-migration nexus”.

The UNFCCC on the other hand has done pivotal work in the area of climate change. The UNFCCC’s COP which has been instrumental in the legal and policy developments in the area of climate change has more recently also begun to look into the aspects of migration occurring in consequence to impacts of climate change. It is through these COP’s that many developments have taken place like the establishment of a Task Force mandated in COP 21 to address displacements happening as a result of the negative impacts of climate change. Nonetheless, even in the field of international environmental law like international migration law no concrete legal measures are present to adequately and responsibly manage the situation of environmentally induced migration.

To have an exhaustive and complete understanding of the international framework on the protection of migrants it is imperative to understand the role, if any, of the International Organisations. To this end and to satisfactorily answer the fourth research question: “What role do international organisations and other institutional mechanisms play concerning migration generally and environmentally induced migration/migrants in particular?” Chapter V examines the role played by IOs. The chapter has discussed some of the important IOs in the field of migration.

IOs have a large variety of functions which are continually increasing and have different aims, functioning and memberships catering to a variety of subject matters. Some deal with many subject areas while others specialise in only one subject matter. A considerable number of IOs also happen to address the subject of migration either

¹² *Rio Declaration on Environment and Development*, (1992), UN Doc. A/CONF.151/26 (vol. I), 31 ILM 874.

¹³ *United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa*, (1994), 1954 UNTS 3.

¹⁴ *United Nations Framework Convention on Climate Change: resolution / adopted by the General Assembly*, (1992), 1771 UNTS 107.

in the course of dealing with other functions or specifically. Pre-eminent amongst them are the UN and its agencies like the UNHCR and the ILO, IOM, OECD, GFMD and the WTO.

These IOs and institutional mechanism work on various aspects of migration. For instance, the UNHCR has the mandate of providing international protection to refugees. It's work in other areas of migration is however limited. The IOM on the other hand takes the lead in upholding the human rights of migrants as well as encourages economic and social developments through migration. Then there is the ILO which predominantly deals with issues relating to that of labour migration and works towards upholding rights of migrant workers.

Most of these IOs however either do not concern themselves with the situation of environmentally induced migration or do so in a very limited manner. The UNHCR for example has in recent times shown concern over this area but still precludes itself from any sort of formal engagement. On the other hand, the IOM has dedicated one of its divisions under the Department of Migration Management to the case of environment and migration. The division is known as the "Migration, Environment and Climate Change Division". The IOM also established the "Environmental Migration Portal: Knowledge Platform on People on the Move in a Changing Climate" in the year 2015. Therefore, amongst the various IOs dealing with migration it can be seen that it is only the IOM which has made concrete advancements in regards to the environment-migration dynamic.

Chapters II to V have thus made an extensive examination and analysis of international migration generally and environmentally induced migration in specific under international law; both its historical genesis and the contemporary legal framework.

Chapter VI has looked into the situation of migrants and environmentally induced migrants within the Indian context. This chapter thereby has endeavoured to answer the fifth research question: "What is India's legal and policy framework for migration, migrant rights and environmentally induced migrants?".

During the examination of migration within the Indian context it has been seen that India has witnessed a number of migrations for centuries. It has witnessed some of the world's biggest incidents of international migration, like the 1947 migration in

consequence of the partition of India as well as the migrations resultant of the 1971 liberation war of East Pakistan. Contemporarily India continues to witness both overt and covert forms of migration especially from its neighbouring nations of Nepal, Bangladesh, Sri Lanka and Pakistan. India has in the year 2019 been host to 5.1 million international migrants.¹⁵

It has been seen how the migration of people to India has to an extent also influenced the domestic legal regime. The political and social dynamics over concerns of illegal migration has been an important factor for these legal changes. This is evidenced by the amendments made to *The Citizenship Act, 1955*. The case of environmentally induced migration conversely has not garnered much attention in the Indian context.

This is intriguing as India in particular and the Asia-Pacific region in general are most vulnerable to environmental and climate change. Domestically, in accordance to the IDMC, India witnesses some of the highest levels of displacement in South Asia which can be associated to environmental disasters. In connection to international migration as well India's neighbours are also highly susceptible to migration due to environmental factors. For example, environmentally induced migration from Bangladesh is a distinct possibility.

India is amongst the fore-runners who have acknowledged that climate change is real and has taken measures to deal with its adverse impacts. However, the relationship of human mobility due to climate change does not figure prominently in the Indian conceptualisation.

From the discussion in all the Chapters of this study on international law and migration with special reference to the position of environmentally induced migration the following observations could be deduced:

1. In the field of international law migration is an important subject matter. It is an area which has witnessed a lot of engagement right from the very beginning amongst the founding scholars of international law.
2. Migration is intrinsically linked with the freedom of movement of individuals and communities. Taking cognizance of the writings of the early international

¹⁵ UNDESA, *The International Migrant Stock* 2019; available at: <https://www.un.org/en/development/desa/population/migration/data/estimates2/estimatesgraphs.asp?2g> 2 (accessed on 28 December 2019).

law scholars leads us to understand that contrary to the widespread belief in the notion of a sovereign State having unalloyed power over the movement of persons inside and over its borders; sovereignty in truth was not “concomitant” with notions of controlling migration flows. Scholars of international law like Grotius and Vitoria wrote that the idea of absolute discretionary power of the State over the area of migration was not acknowledged and that both ideas of sovereignty and hospitality co-existed for many centuries as the leading attributes of international law. A departure from hospitality and a move towards state discretion came about with the 1648 *Treaty of Westphalia*¹⁶. Gradually, a solidification of the concept of Westphalian sovereignty has led to a decline in the notion of freedom of movement. So much so, that the contemporary world acknowledges a State’s uncontested right in the imposition of border controls and immigration regulations.

3. Most of the early international law scholars also gave weightage to the ideas of humanitarian assistance and recognised refugee like situations to be a just cause for migration and admittance of such migrants into foreign territory.
4. It is well established that human migration may be traced back to the beginnings of history itself. In fact, it can be traced back to pre-history era. The phenomenon of migration has come to be classified in varied ways contingent upon the motivation for migration, the duration and the forced or voluntary nature of migration. Much of migration literature consists of theories that have sought to analyse this phenomenon and find the rationale for the reasons and perpetuation of migration. However, these theories are dominated by perspectives of labour and economics. Most factor migration to be a result of voluntary motivations, i.e., to move for economic gains. When the migration is forced; it has been primarily attributed to political factors.
5. It has been witnessed that while the international regime on migration is not an organised area; nevertheless, it does provide a protection regime for migrants. Following the dominant understanding of migration occurring due to economic or political factors alone; protection and acknowledgement in the legal field are also extended primarily to economic and political migrants only.

¹⁶ *Treaty of Westphalia*, (1648), 1 Parry 271.

Accordingly, the normative framework of international migration at the universal level focuses upon only three categories of migrants: “refugees”, “migrant workers” and “smuggled and trafficked migrants”.

6. Refugees are a class of migrants who have today been conferred with a very well-defined and structured protection scheme under the *RC*, and the *RC Protocol*. Moreover, the *UNHCR* is an institutional mechanism which is solely dedicated to providing for adequate protection for individuals falling under the definitional contours of the refugee expression. The legal protection extended to this class of migrants who come under the definition of ‘refugee’ has coalesced itself into a distinct legal regime distinguishing itself from the international regime on migration.
7. As the core treaties of international migration law deal specifically with only three categories of migrants, the legal protection of other migrants is not addressed sufficiently. The situation of environmentally induced migrants falls in this category of other migrants who as yet have not been identified as a specific group requiring legal protection under international law. The human rights treaties which have been drafted for a general-purpose therefore have great significance upon the protection of migrants. The *UDHR*, *ICCPR* and *ICESCR*, in particular, are important instruments as they envisage rights for everyone and may be thus inferred to deal with rights of migrants too. The core-principle of non-discrimination enshrined in these instruments is of the utmost relevance for migrants. In the case of environmentally induced migrants, it appears that these international human rights instruments play the most significant role for their protection.
8. The issue of environmental and climate change is fundamentally linked with migration. Most early migrations, in fact, took place due to environmental factors. Awareness about environmentally-induced migration/migrants had been raised almost two decades back. However, there has been next to no concrete endeavours made to deal with such a scenario at either a legal or policy level. Most discussions over this issue have been spent contesting over whether such a situation is a ‘myth’ or ‘reality’. Even migration theories have traditionally undermined or neglected the influence of the environment on migration. This situation has undergone a marked change which may be attributable to rising climate change concerns that have brought about the

rediscovery of the environment as a determining factor in migration. This subject is, therefore of present-day importance and not a futuristic prospect.

9. It is generally perceived that migration linked to environmental factors predominantly lead to internal migration. However, there is increasing indications that environmental and climatic change are important migration drivers that lead to both internal and cross-border migration.¹⁷ Also, the situation of small island nations which are the most susceptible to the influences of climate change is quite dire as they do not possess enough adaptive capacity for internal migration. The various incidents of individuals from the Pacific Islands seeking refuge in neighbouring countries like New Zealand is a testament to this fact.
10. From the perspective of the “intended nationally determined contributions” (INDCs) submitted by parties under the *Paris Agreement*¹⁸, notably Small Island Nations, are already suffering from environmental and climate change induced migration. These nations mentioned migration in the context of environmental changes in their INDCs. Ironically, other States have mostly remained silent in this aspect.
11. The situation of environmentally induced migration is riddled with numerous challenges. One of the main concerns pertains to lack of consensus as regards the terminology and the definitions that can be used to ascribe status to such migrants. Further, the emphasis over traditional migration drivers that have long dominated the scene, the dearth of adequate data and the inherent multi-causal nature of the phenomenon of migration itself makes the situation more complicated.
12. The framework of International Environmental Law contained in the 1992 UNFCCC and the 1994 UNCCD has to some extent sought to discuss the environment and migration inter-linkages. The recent UNFCCC COP’s in Warsaw and Paris have made some measure of headway over this issue. The *New York Declaration* a political declaration and the Migration Compact are

¹⁷ IOM (2014), *IOM Outlook on Migration, Environment and Climate Change*, Geneva: IOM, p. 40, available at: https://publications.iom.int/system/files/pdf/mecc_outlook.pdf (accessed on 8 December 2019).

¹⁸ *Paris Agreement*, (2015), FCCC/CP/2015/L.9/Rev.1; available at: <https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf> (accessed 3 September 2020).

other landmark developments that give recognition to the environment as a factor of migration. However, both these instruments are not legally binding.

13. In the post-UN Charter (1945) period, the world has witnessed a proliferation of IOs. Many of these IOs have the mandate for migration either generally or exclusively. The UNHCR and the IOM are the pre-dominant IOs in this regard. From an examination of the work done by the IOs, we have seen that the IOM is one IO which has taken up a mandate to deal with the situation of environmentally-induced migration. The UNHCR too, has acknowledged that the environment does play a role in human mobility. Still, it has also categorically maintained that people migrating as a consequence of environmental factors however might not be ascribed refugee status as they do not fall within the ambit of the refugee definition as provided for by the *RC*. Nevertheless, as yet there is no authoritative IO or II responsible for governing environmentally induced migration.
14. In the Indian context as well, there have been many large human migratory movements. As is commonly perceived, in India too, migration is predominantly viewed from an economic and political lens. Recently, religion has also entered as a new element in the debates over migration subsequent to the passing of the *Citizenship Amendment Act* of 2019. The primary focus of India, in addressing the challenge of migration, has been from the perspective of security and demographic changes. The environment does not seem to be associated with migratory movements of people, and environmentally induced migration is not a priority concern. This is a notable feature especially since India also suffers from a large exodus of people and displacements due to natural disasters every year. This has been in recent years greatly induced by vagaries and impacts of changing global climate. The Indian Government has acknowledged that climate change is real. As a corollary, it has appreciatively committed itself towards alleviating the impact of climate change. Despite all of this, the environment-migration nexus has not yet been duly taken into consideration. This may be due to the overwhelming concern that India has on challenges of extreme poverty and human misery amidst priorities of development. Therefore, such issues of environmentally induced migrants are invariably side-lined.

From the above analysis and observations, it would be appropriate to conclude that:

- a) The entrenchment of the concept of Westphalian nation-state system and sovereignty led to the gradual decline in freedom of movement and rise in immigration controls.
- b) The current international legal framework is inadequate in dealing with environmentally induced migration and migrants.

Migrants are very much susceptible to human rights violation ranging from the refusal or denial of political and civil rights to arbitrary and groundless detention and a dearth of due process. Migrants, especially those in an irregular position are liable to be more at-risk to human rights violations, suffer from ill-treatment and discrimination.

In the context of environmentally induced migrants, we can see that current process, structure and content of the corpus of International Law does not adequately deal with concerns arising from environmentally induced migration. The most relevant protection available to such migrants could be from the international human rights law regime. This, coupled with the growing anti-migrant rhetoric in recent years, place environmentally induced migrants in a very precarious position. As seen during unprecedented Covid-19 pandemic in the year 2020 a new level of vulnerability has been added for environmentally induced migrants. Covid-19 intersects with environmentally induced migrants as the pandemic has spread in many areas that are environmentally fragile.¹⁹ There is also a considerable risk of setback on the dialogues over migration in general.²⁰

The adoption of the *New York Declaration* and the *Migration Compact* though relevant are inadequate to manage the scope and complications of the challenge. Though in a landmark move, these instruments have acknowledged the role of the environment as a migration driver, they have not categorically recognised such migrants as a distinct class needing adequate human rights protection.

Some scholars have argued that such migrants should be encompassed within the protective umbrella of the RC. It is, without a doubt, an excellent idea to do so as the

¹⁹ Ionesco, Diana and Mariam Traore Chazalnoël (2020), “More than a health crisis? Assessing the impacts of COVID-19 on climate migration”, *Environmental Migration Portal*; available at: <https://environmentalmigration.iom.int/blogs/more-health-crisis-assessing-impacts-covid-19-climate-migration> (accessed on 6 November 2020).

²⁰ Ibid.

refugee regime provides a robust protective framework. However, the definition of ‘refugee’ as it stands today cannot encompass such migrants unless and until the definition itself is widened. Though the environment has come to be recognised as one of the migration drivers, the UNHRC has taken great pains to emphasise that such migrants do not come under the ambit of the RC. This sentiment has been carried forward in the most recent *Refugee Compact* as well.

For environmentally induced migrants to avail the benefits bestowed upon refugees, a change in the refugee definition is necessary. Moreover, for this, it requires a generation of a political will to include such migrants within the refugee fold. However, such a political will is difficult to come by. Additionally, it will not be a prudent move in the face of the burgeoning public sentiment against migrants in general. More so, the complicated situation of environmentally induced migration and its multifaceted dimensions would be better dealt with separately.

It is important now to move away from arguments ‘for’ and ‘against’ bringing such migrants within the refugee connotation. It is instead essential for us to first and foremost recognise unequivocally that the environment is an important factor of migration at par with economic and political factors.

In real terms, human migration is multi-causal. However, we need to acknowledge that environmental factors, especially placed in the context of climate change, are progressively becoming a more determinant factor of migration. Hence, it is incumbent upon us to legally and categorically recognise environmentally induced migrants as a class that needs protection. This recognition would be best achieved through a binding international legal instrument, but pending that a resolute declaration recognising these migrants would be a beneficial step forward. The non-consensus over the terminology for such migrants should not detract us from recognising them in some form or the other.

The major legal impediment that lies in this situation is in the difficulty of providing relief and protection when there exists a difficulty in identifying such migrants. A way forward to resolve this dilemma would be to first recognise that people moving due to environmental factors can be of different ilk, and legal protection for them must suit their differing needs. Three scenarios can be principally envisaged: (i) migration due to slow-onset (ii) fast on-set and (iii) case of the island nations. In the case of the

latter, the prevailing situation is grim. Thus, there is need for immediate and concrete legal and policy decisions to be taken at the international level.

Till the time we could provide some measure of legal protection for such groups, there will be a continued concern that such migrants would become irregular migrants using clandestine methods to gain entry into other countries while fleeing “environmental persecution”. Alongside this, there is an ethical connotation involved in such cases. The fact that the most affected people will be the poor and those who have been least responsible for the prevailing environmental and climate crisis, inevitably impinges upon the ideas of justice and ethics.

Until the time we distinctly recognise the category of environmentally induced migrants in international law, the human rights of “right to life” and prohibition against torture assumes an enormous significance. To this end, the human rights regime must be adequately strengthened for effective protection of environmentally induced migrants and all migrants in general. The Ioane Teitiota case from Kiribati which had been brought before the HRC though proved to be a personal loss for Ioane but has also significantly opened up the path for bringing in claims under Article 6 of the ICCPR. The case has opened up a discussion on a broader application of Article 6 of the ICCPR. Environmentally induced migrants may now claim that they not be forced to leave the host country and go back to their home country, which might no longer be environmentally sustainable.

In furtherance of justice for such environmentally induced migrants, it is also important that we combine both international migration law and mainstream international environmental law to be able to deal with this scenario holistically. There needs to be a cognisance that both these two fields intersect when it comes to environment-related migration concerns.

In the Indian context as well, greater awareness needs to be generated over the bearing that environmental and climate change have upon human mobility and subsequent concerns over both internal and international migration.

The situation of environmentally induced migrants is very different from other categories of migrants as they are moving as a consequence of environmental factors that are, in most cases, not under their control. They are victims of the environment; one may even say ‘persecuted’ by environmental concerns. In the interest of justice

and equity, it will thus not be right to send such migrants back to a place which is no longer environmentally sound for living a life of dignity.

It may be observed that international law has from time to time evolved in the face of addressing global challenges. For illustration, human rights had been a political concern of many from the 18th century revolutions up to the start of the Second World War. However, not until the world witnessed the horrors of the Second World War did human rights become part of the international legal and political agenda, rising into prominence and acceptance during the Nuremberg Trials. In contemporary times, a similar concern is evident in relation to environmentally induced migrants which fall short of being recognised by the international legal community. We must take positive measures for legal recognition before a crisis the likes of which necessitated human rights acceptance within international law occurs.

In summation, apart from the legal and policy measures, there is a pressing requirement to provide for a satisfactory protection regime to environmentally induced migrants. It is also essential for us to strengthen the adaptive measures of States to combat such environmental and climate change. There is also a need for a well-developed financial measure to be able to deal with this situation and adequate provisions for humanitarian aid. In fact, we need to remember that most environmentally induced migrants migrate as an adaptive measure but many people living in a worsening environment do not have a capacity to migrate and in turn, become “trapped” populations.

The quest for innovative global responses to the human migrations including environmentally induced migration, necessitates global supervisory entity such as the Trusteeship Council of the UN (UNTC) that suspended its work in 1994 when the last “trust territory” that of Palau gained independence. A scholarly idea has already been mooted 21 years ago by Desai (originally on 15 January 1999 at Legal Department of the World Bank, Washington DC) to revive the UNTC with a ‘new mandate for the environment and the global commons’²¹. A revived UNTC could provide an

²¹ Desai, Bharat H. (2018), “On the Revival of the UN Trusteeship Council with a New Mandate for the Environment & the Global Commons”, *Environmental Policy & Law*, 48(6):333-343; See also, Desai, Bharat H. (2016), “On the Revival of the UN Trusteeship Council with a New Mandate for the Environment & the Global Commons”, *Yearbook of International Environmental Law*, Oxford: OUP, 27:3-27 (published online: 25 September 2018); Desai, Bharat H. (2020), *Our planet needs trusteeship to meet challenges*, 02 December 2020; available at: <https://epaper.tribuneindia.com/c/56724901> (accessed on 24 December 2020).

appropriate high-level forum to address the needs of the global environmentally induced migration too.

The simmering global environmental and climate changes have led to many complex challenges, and human mobility is one of them. Ultimately, we all must learn to respect our living environment and work towards its betterment and not its degradation. As Gandhi pertinently observed: “the world has enough for everyone’s needs, but not anyone’s greed”. This provides us a talisman to hold as a beacon, as a pathway, for our better common environmental future.

BIBLIOGRAPHY

(The Primary Sources have been pre-fixed with *)

Adamo, Susana B. and Haydea Izazola (2010), “Human Migration and the Environment”, *Population and Environment*, 32 (2/3): 105-108

Adlakha, Nidhi (2020), “No country for climate refugees”, *The Hindu*, 28 February 2020; available at: <https://www.thehindu.com/opinion/columns/how-the-climate-crisis-is-uprooting-more-people-than-war/article30942108.ece> (accessed on 4 January 2021).

Advisory Group on Climate Change and Human Mobility (2014), “Human mobility in the context of climate change: Recommendations from the Advisory Group on Climate Change and Human Mobility COP 20 Lima, Peru”; available at: <https://www.iom.int/files/live/sites/iom/files/pbn/docs/Human-Mobility-in-the-context-of-Climate-Change.pdf> (accessed on 15 February 2020).

**African Charter on Human and Peoples’ Rights (“Banjul Charter”)*, (1981), Organization of African Unity (OAU), CAB/LEG/67/3 rev. 5, 21 I.L.M. 58.

**Agreement concerning the Relationship between the United Nations and the International Organization for Migration* (2016), UNGA Resolution, A/RES/70/296, Press Release of the IOM; available at: <https://www.iom.int/news/iom-becomes-related-organization-un> (accessed on 27 January 2020).

Albert, Simon et al. (2016) “Interactions between sea-level rise and wave exposure on reef island dynamics in the Solomon Islands”, *Environmental Research Letters*, 11(5):1-9.

Aleinikoff, T. A. (2003), “International Legal Norms and Migration: A Report”, in T. A. Aleinikoff and Vincent Chetail (eds), *Migration and International Legal Norms*, The Hague: TMC Asser Press.

Aleinikoff, T.A. and Vincent Chetail (eds.) (2003), *Migration and International Legal Norms*, The Hague: TMC. Asser Press.

Alvarez, Jose E. (2006), “Centennial Essay: In Honor of the 100th Anniversary of the AJIL and The ASIL: International Organisations: Then and Now”, *American Journal of International Law*, 100:324.

**American Convention on Human Rights, “Pact of San Jose”*, Costa Rica (1969), Organization of American States (OAS).

**Arab Charter on Human Rights*, (1994), League of Arab States.

Arendt, Hannah (1962), *On Revolution*, New York: Penguin Books.

Asian Development Bank (2017), *A Region at Risk the Human Dimensions of Climate Change in Asia and The Pacific*, ADB; available at: <https://www.adb.org/sites/default/files/publication/325251/region-risk-climate-change.pdf> (accessed on 15 February 2020).

Audi, Robert (ed.) (1995), *The Cambridge Dictionary of Philosophy*, New York: Cambridge University Press.

Awad, Ibrahim and Usha Natarajan (2018), “Migration Myths and the Global South”, *The Cairo Review of Global Affairs*; available at: <https://www.thecaireview.com/essays/migration-myths-and-the-global-south/> (accessed on 18 August 2020).

Barnett, Laura (2002), “Global Governance and the Evolution of the International Refugee Regime” *International Journal of Refugee Law*, 14(2):238-262.

Baruah, Sanjib (1999), *India Against Itself: Assam and the Politics of Nationality*, Noida: Oxford University Press.

Basu, Durga Das (2001), *Introduction to the Constitution of India*, Nineteenth Edition, India: Wadhwa and Company, Law Publishers, reprinted 2003.

Basu, Rumki (2004), *The United Nations: Structure and Functions of an International Organisation*, New Delhi: Sterling Publishers Private Limited, reprinted 2008.

Bederman, David. J. (2004), *International Law in Antiquity*. UK/USA: Cambridge University Press.

Bettini, Giovanni (2015) “What Can and Should We Expect from COP21 on Climate Migration?”, *Connecting the Spots Notes on Migration and Environment from A Geographical Perspective*; available at: <http://www.transre.org/en/blog/what-can-and-should-we-expect-cop21-climate-migration/> (accessed on 10 July 2018).

Black, R. (2001), “Environmental refugees—myth or reality?”, *New Issues in Refugee Research (Working Paper No. 34)*, Geneva: UNHCR.

Blake, M. (2001), “Distributive Justice, State Coercion, and Autonomy”, *Philosophy & Public Affairs*, 30(3):257-96.

Borah, Jayashree (2019), “Memory and Identity: Narratives of Migration in Assam”, in Sonia Mehta and Anna Sengrung (eds.), *North East India: Exploring Philosophy, Culture & Environment*, New Delhi: Krishi Sanskriti Publications.

Boyd, M. (1989), “Family and Personal Networks in International Migration: Recent Developments and New Agendas”, *International Migration Review*, 23(3): 638-670.

Brown, Oli (2008), *Migration and Climate Change*, Geneva: International Organization for Migration; available at: <https://olibrown.org/wp-content/uploads/2019/01/2008-Migration-and-Climate-Change-IOM.pdf> (accessed on 10 September 2020).

Burkett, Maxine (2011), “In Search of Refuge: Pacific Islands, Climate-Induced Migration, and the Legal Frontier”, *AsiaPacific Issues*, 98, Honolulu: East-West Center; available at: <https://environmentalmigration.iom.int/search-refuge-pacific-islands-climate-induced-migration-and-legal-frontier> (accessed on 5 February 2020).

Cabato, Regine (2020), “Taal volcano eruption forces thousands to seek safer ground in the Philippines”, *The Washington Post*; available at: https://www.washingtonpost.com/world/asia_pacific/taal-volcano-eruption-forces-thousands-to-seek-safer-ground-in-the-philippines/2020/01/13/4e2680f8-35cd-11ea-a1ff-c48c1d59a4a1_story.html (accessed on 5 February 2020).

Cairo Declaration on Population and Development, (1994), International Conference of Parliamentarians on Population and Development; available at: https://www.unfpa.org/sites/default/files/event-pdf/Cairo_Declaration_English.pdf (accessed on 1 September 2020).

Caney, S. (2009), “Cosmopolitan Justice and Equalizing Opportunities”, *Metaphilosophy*, 32(1-2):113-34.

Carens, Joseph (1987), “Aliens and Citizens: The Case for Open Borders” *Rev. Politics*, 49(2): 251-73.

Carrington, Damian (2017), “Climate change: global reshuffle of wildlife will have huge impacts on humanity”, *The Guardian*; available at: <https://www.theguardian.com/environment/2017/mar/30/climate-change-global-reshuffle-of-wildlife-will-have-huge-impacts-on-humanity> (accessed on 15 February 2020).

Carson, Rachel (1962), *Silent Spring*, Boston: Houghton Mifflin, reprinted 2002.

Cartwright, Mark (2016), “Phoenician Colonization”, *Ancient History Encyclopedia*; available at: https://www.ancient.eu/Phoenician_Colonization/ (accessed on 22 November 2020).

Castles, S. (2002), “Environmental change and forced migration: making sense of the debate”, *New Issues in Refugee Research (Working Paper No. 70)*, Geneva: UNHCR.

Chamberlain, M. D. (1983), “The Mass Migration of Refugees and International Law”, *The Fletcher Forum*, 7: 93-108; available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/forwa7&div=10&id=&page=> (accessed on 22 January 2018).

**Charter of the United Nations*, (1945), 1 UNTS XVI.

Chatty, Dawn (2013), “Forced Migration”, *Wiley Online Library*; available at: <https://doi.org/10.1002/9781444351071.wbeghm236> (accessed on 22 November 2020).

Chaudhry, Rajinder (Chief Editor) (2020), “India at UNFCCC COP 25”, *Yojana*, 64(1):7-9.

Chaudhuri, Sarbajit (2004), “International Migration of Skilled and Unskilled Labour, Welfare and Skilled-Unskilled Wage Inequality: A Simple Model.” *Journal of Economic Integration*, 19(4): 726–741; available at: <https://www.jstor.org/stable/23000720> (accessed on 21 November 2020).

Chavan, R.S. (1978), *An Approach to International Law*, New Delhi: Sterling Publishers Private Limited.

Chazalnoel, Mariam Traore and Daria Mokhnacheva (2014), “Environmental Migration: Human Rights and Legal Issues”, *Insights on Law & Society*, 14(3):26-28; available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/insilaso14&div=30&id=&page=> (accessed on 9 October 2018).

Chen, Joyce J. et al. (2019), “Temporary and permanent migrant selection: Theory and evidence of ability-search cost dynamics”, *Review of Development Economics*; available at: <https://doi.org/10.1111/rode.12617> (accessed on 22 November 2020).

Chetail, Vincent (2012), “Sources of International Migration Law”, in Brian Opeskin et.al (eds.), *Foundations of International Migration Law*, UK: Cambridge University Press.

Chetail, Vincent (2014), “The transnational movement of persons under general international law – Mapping the customary law foundations of international migration law”, in Vincent Chetail & Celine. Bauloz, (eds), *Research Handbook on International Law and Migration*, Cheltenham: Edward Elgar Publishing.

Chetail, Vincent (2016), “Sovereignty and Migration in the Doctrine of the Law of Nations: An Intellectual History of Hospitality from Vitoria to Vattel”, *European Journal of International Law*, 27(4):901-922.

Chimni, B.S (2018). “Global Compact on Refugees: One Step Forward, Two Steps Back”, *International Journal of Refugee Law*, 30(4):630-634.

Cholewinski, R. Perruchoud and E. MacDonald (eds.) (2007), *International Migration Law, Developing Paradigms and Key Challenges*, The Hague: TMC. Asser Press.

Cohen, Robin (ed.) (1995), *The Cambridge Survey of World Migration*, Great Britain: Cambridge University Press.

Cole, P. (2000), *Philosophies of Exclusion: Liberal Political Theory and Immigration*, Edinburgh: Edinburgh University Press.

Committee on Migration, Refugees and Population (2008), “Environmentally induced migration and displacement: a 21st century challenge”, *Parliamentary Assembly Council of Europe*, Doc. 11785; available at: <https://www.refworld.org/pdfid/49997bbb0.pdf> (accessed on 2 September 2020).

Committee on the Elimination of Racial Discrimination (2004), *General Recommendation no. 30: Discrimination against Non-Citizens*, 64thsess, UN Doc. CERD/C/64/Misc.11/rev.3.

**Conference on Security and Cooperation in Europe Final Act*, (1975), Helsinki; available at: <https://www.osce.org/files/f/documents/5/c/39501.pdf> (accessed on 1 September 2020).

Conklin, William E. (2014), *Statelessness: The Enigma of an International Community*, UK: Hart Publishing Ltd.

**Constitution of India*, 1950.

Contribution to The Sixteenth Coordination Meeting on International Migration. United Nations Environment Programme, (2018), Population Division Department of Economic and Social Affairs United Nations Secretariat, UN/POP/MIG-16CM/2018/8; available at: <https://www.un.org/en/development/desa/population/migration/events/coordination/16/documents/papers/8.%20UNEP.pdf> (accessed on 8 June 2020).

**Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, (1984), 1465 UNTS 85.

**Convention concerning Decent Work for Domestic Workers (No. 189)*, (2011), Geneva, 100th ILC session.

**Convention concerning Migration for Employment (Revised 1949) (No. 97)*, (1949).

**Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975(Supplementary Provisions) (No. 143)*, (1975), Geneva, 60th ILC session.

**Convention Governing the Specific Aspects of Refugee Problems in Africa*, (1969), 1001 UNTS 45.

**Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (1998), UNTS, 2161, 447.

**Convention on Certain Questions Relating to the Conflict of Nationality Laws*, (1930), 179 League of Nations Treaty Series 89, No. 4137.

**Convention on the Elimination of All Forms of Discrimination Against Women*, (1979), 1249 UNTS 13.

**Convention on the Organisation for Economic Co-operation and Development*, (1960), 888 UNTS 179.

**Convention on the Reduction of Statelessness*, (1961), 989 UNTS 175.

**Convention on the Rights of the Child*, (1989), 1577 UNTS 3.

**Convention Relating to the Status of Refugees*, (1951), 189 UNTS 137.

**Convention Relating to the Status of Stateless Persons*, (1954), 360 UNTS 117.

Daniel, John Franklin et al. (1948), "The Dorian Invasion: The Setting." *American Journal of Archaeology*, 52(1): 107–110; available at: <https://www.jstor.org/stable/500556> (accessed on 21 Nov. 2020).

Datta, Pranati (2004) “Push-Pull Factors of Undocumented Migration from Bangladesh to West Bengal: A Perception Study”, *The Qualitative Report*, 9 (2):335-358.

De Vattel, Emer (1916), *Law of Nations or the Principles of Natural Law*, Translated by Charles D. Fenwick, Washington: Carnegie Institution of Washington; available at: <https://home.heinonline.org/> (accessed on 11 October 2019).

**Declaration of States Parties to the 1951 Convention and or Its 1967 Protocol relating to the Status of Refugees*, (2002), UNHCR/MMSP/2001/09.

**Declaration on Territorial Asylum*, (1967), UNGA Resolution, A/RES/2312(XXII).

**Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live*, (1985), UNGA Resolution, A/RES/40/144.

Dembour, Marie-Benedicte and Tobias Kelly (eds.) (2011), *Are Human Rights for Migrants? Critical Reflections on the Status of Irregular Migrants in Europe and the United States*, USA: Routledge.

Desai, Bharat H. (1990), “Managing Ecological Upheavals: A Third World Perspective”, *Social Science & Medicine*, 30(10):1065-72.

Desai, Bharat H. (1992), “Threats to the World Eco-System: A Role for the Social Scientists”, *Social Science & Medicine*, 35(4): 589-96.

Desai, Bharat H. (2003), *Institutionalizing International Environmental Law*, New York: Transnational Publisher.

Desai, Bharat H. (2016), “On the Revival of the UN Trusteeship Council with a New Mandate for the Environment & the Global Commons”, *Yearbook of International Environmental Law*, Oxford: OUP, 27:3-27.

Desai, Bharat H. (2018), “On the Revival of the UN Trusteeship Council with a New Mandate for the Environment & the Global Commons”, *Environmental Policy & Law*, 48(6):333-343.

Desai, Bharat H. (2020), *Our planet needs trusteeship to meet challenges*, 02 December 2020; available at: <https://epaper.tribuneindia.com/c/56724901> (accessed on 24 December 2020).

Doherty, Ben and Eleanor Ainge Roy (2017), “World Bank: let climate-threatened Pacific islanders migrate to Australia or NZ” , *The Guardian*; available at: <https://www.theguardian.com/environment/2017/may/08/australia-and-nz-should-allow-open-migration-for-pacific-islanders-threatened-by-climate-says-report> (accessed on 10 February 2020).

DTE (2016), “Disappearing Majuli, India’s first river island district”, *Down To Earth*; available at: <https://www.downtoearth.org.in/news/environment/disappearing-majuli-india-s-first-river-island-district-54610#:~:text=According%20to%20an%20article%20on,away%20due%20to%20ma>

ssive%20erosion.&text=Locals%20also%20claim%20that%20the,the%20flow%20of%20the%20river (accessed on 5 September 2020).

Earth Observatory NASA (2010), *How is Today's Warming Different from the Past?*; available at: <https://earthobservatory.nasa.gov/features/GlobalWarming/page3.php> (accessed on 15 February 2020).

Editorial (2019), "Undoing harms: about criticism on Citizenship Amendment Act", *The Hindu*, 23 December 2019; available at: <https://www.thehindu.com/opinion/editorial/undoing-harms-about-criticism-on-citizenship-amendment-act/article30374417.ece> (accessed on 15 November 2020)

El Erian, Abdullah (1968), "The Legal Organization of Inter-National Society" in Max Sorensen (ed.) *Manual of Public International Law*, London: Macmillan.

**European Convention on the Legal Status of Migrant Workers*, (1977), COE, ETS No.093.

**European Social Charter*, (1961), COE, ETS 35.

Express News Service (2019), 'India is the story of migration...its cultural richness comes from that multiple layering: William Dalrymple', *The Indian Express*, 27 December 2019; available at: <https://indianexpress.com/article/india/william-dalrymple-adda-migrants-cao-east-india-company-british-rule-6186591/> (accessed on 29 December 2019).

Faleiro, Sonia (2020), "Asia's Biggest Climate Migration", *MIT Technology Review*; available at: <https://www.technologyreview.com/2020/11/19/1012216/sundarbans-amphan-climate-change-migration/> (accessed on 21 November 2020).

Fisher, Peter, et al. (1997), "Should I Stay or Should I Go?" in Thomas Hammer et al. (eds.), *International Migration, Immobility and Development: Multidisciplinary Perspectives*, New York: Berg Publishers.

Foresight (2011) "Migration and Global Environmental Change: Future Challenges and Opportunities. Final Project Report", *The Government Office for Science, London*; available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/287717/11-1116-migration-and-global-environmental-change.pdf. (accessed on 20 June 2020).

Fornale, Elise and Curtis Doebbler (2017), "UNHCR and protection and assistance for the victims of climate change", *The Geographical Journal*, 183(4):329–335.

Foster, Michelle (2015), "Research Handbook on International Law and Migration", *International Journal of Refugee Law*, 27(2):392–394.

Fountain, Henry (2020) "Climate Change Affected Australia's Wildfires, Scientists Confirm", *The New York Times*, 04 March 2020; available at: <https://www.nytimes.com/2020/03/04/climate/australia-wildfires-climate-change.html> (accessed on 14 June 2020).

*Framework Convention on Climate Change (2010), *Report of the Conference of the Parties on its sixteenth session (held in Cancun from 29 November to 10 December 2010)*, UNFCCC/CP/2010/7/Add.1, Decision 1/CP.16; available at: <https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf> (accessed on 15 June 2020).

Frelick, Bill (2020), “It is time to change the definition of refugee”, *Aljazeera*, 26 January 2020; available at: <https://www.aljazeera.com/indepth/opinion/time-change-definition-refugee-200126095857235.html> (accessed on 5 February 2020).

Gallagher, Dennis (1989), “The Evolution of the International Refugee System”, *The International Migration Review*, 23(3): 579-598; available at: <https://www.jstor.org/stable/2546429> (accessed on 4 January 2021).

Garland, Robert et al. (2020), “How has Migration Changed the World?” in Matt Elton (ed.) *BBC World Histories*, Issue 23, UK: Immediate Media Company Bristol Limited.

Gautier Philippe (2000), “The Reparation for Injuries case Revisited: The Personality of the European Union”, in J.A. Frowein et al. (eds.), *Max Planck Yearbook of United Nations Law*, Volume 4, Netherlands: Brill | Nijhoff.

Gemenne, François and Pauline Brücker (2015), “From the Guiding Principles on Internal Displacement to the Nansen Initiative: What the Governance of Environmental Migration Can Learn from the Governance of Internal Displacement”, *International Journal of Refugee Law*, 27(2):245–263.

**General Agreement on Trade in Services*, (1869), UNTS 183, 33 I.L.M. 1167.

**General Assembly Resolution 428 (V)*, (1950).

**Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Fourth Geneva Convention), (1949), 75 UNTS 287.

Ghosh, Amitav (2016), *The Great Derangement. Climate Change and The Unthinkable*, Gurgaon, Haryana: Penguin Books.

Ghosh, Pallab (2020), “Climate change boosted Australia bushfire risk by at least 30%”, *BBC*, 4 March 2020; available at: <https://www.bbc.com/news/science-environment-51742646> (accessed on 14 June 2020).

Gibbens, Sarah (2018), “2018’s deadly hurricane season, visualized”, *National Geographic*, 20 December 2018; available at: <https://www.nationalgeographic.com/environment/2018/12/hurricane-season-explained-maps-photos/> (accessed on 15 February 2020).

Gibbens, Sarah (2019), “Hurricane Katrina, Explained”, *National Geographic*; available at: <https://www.nationalgeographic.com/environment/natural-disasters/reference/hurricane-katrina/> (accessed on 1 September 2020).

**Global Compact for Safe, Orderly and Regular Migration*, (2018), UN doc A/RES/73/195.

**Global Compact on Refugees*, (2018), UN doc A/73/12 (Part II).

GMG (2010), *Mainstreaming Migration into Development Planning. A handbook for policy-makers and practitioners*, IOM; available at: <https://publications.iom.int/system/files/pdf/gmg2010.pdf> (accessed on 7 September 2020).

**Goa, Daman and Diu (Citizenship) Order*, 1962.

Gold, Steven J. and Stephanie J. Nawyn (eds.) (2013), *Routledge international Handbook of Migration Studies*, London/New York: Taylor and Francis Books.

Goldstein, Joshua S. (2004), *International Relations*, Fifth Edition, Delhi: Pearson Education.

Gordenker, L. (1989), “Early warning of refugee incidents” in Gil Loescher and Laila Monahan (eds.) *Refugees and International Relations*, Oxford: Oxford University Press.

Grant, Stephanie (2011), “The Recognition of Migrants’ Rights Within the UN Human Rights system: The First 60 years”, in Marie-Benedicte Dembour and Tobias Kelly (eds.), *Are Human Rights for Migrants? Critical Reflections on the Status of Irregular Migrants in Europe and the United States*, USA: Routledge.

Grey, Colin (2017), *Justice and Authority in Immigration Law*, USA: Hart Publishing.

Grotius, Hugo (1609), *The Freedom of the Seas, or the Right Which Belongs to the Dutch to take part in the East Indian Trade*, Translated by Ralph Van Deman Magoffin, Introduction by James Brown Scott, Director of the Carnegie Endowment for International Peace, New York: Oxford University Press, 1916; available at: https://oll.libertyfund.org/titles/552#Grotius_0049_279 (accessed on 24 January 2019).

Grotius, Hugo (1625), *The Rights of War and Peace*, Richard Tuck(ed) from the Edition by Jean Barbeyrac (2005) Indianapolis: Liberty Fund; available at: https://oll.libertyfund.org/titles/1947#Grotius_0138.02_100 (accessed on 24 January 2019).

Guha, Ramachandra (2008), *India After Gandhi: The History of The World’s Largest Democracy*, India: Picador.

**Guiding Principles on Internal Displacement*, (1998), UNHCR, ADM 1.1, PRL 12.1, PR00/98/109.

Harari, Yuval Noah (2011), *Sapiens: A Brief History of Humankind*, London: Vintage Books.

Harris, J. R. and Michael P. Todaro (1970), “Migration, unemployment, and development: A two-sector analysis.” *American Economic Review*, 60: 126-142.

Hastrup, Kirsten and Karen Fog Olwig (eds.) (2012), *Climate Change and Human Mobility: Global Challenges to the Social Sciences*, Cambridge: Cambridge University Press.

Hazarika, Sanjoy (2000), *Rites of Passage: Border Crossings, Imagined Homelands, India's East and Bangladesh*, New Delhi: Penguin Books.

Hoegh-Guldberg, O. et al. (eds.) (2018), *Impacts of 1.5°C of Global Warming on Natural and Human Systems*, IPCC; available at: https://www.ipcc.ch/site/assets/uploads/sites/2/2019/02/SR15_Chapter3_Low_Res.pdf (accessed on 22 June 2020).

Houque, T and J. Ferdauapsh (2015), "Riverbank Erosion, Population Migration and Rural Vulnerability in Bangladesh (A Case Study on Kazipur Upazila at Sirajgonj District)", *Environment and Ecology Research*, 3(5):125 – 131.

Hugo, G (2010), "Climate Change-Induced Mobility and the Existing Migration Regime in Asia and the Pacific" in Jane McAdam (ed.), *Climate Change and Displacement: Multidisciplinary Perspectives*, Oxford and Portland, Oregon: Hart Publishing.

**Humanitarian assistance to victims of natural disasters and similar emergency*, (1988), UNGA Resolution, A/RES/43/131.

Humphries, Beth (2002), "Fair Immigration Controls- or None at All?", in Steven Cohen et al. (eds.) *From Immigration Controls to Welfare Controls*, London and New York: Routledge; available at: https://books.google.co.in/books?id=eORQAwAAQBAJ&pg=PA218&lpg=PA218&dq=immigration+control+a+twentieth+century+phenomenon&source=bl&ots=zBjCCoWTd9&sig=ACfU3U38j8FBICnAn3_7_OtxjaMEcDh_fw&hl=en&sa=X&ved=2ahUKewigv7e1y7HqAhW_zzgGHUZrBJMQ6AEwCXoECAoQAQ#v=onepage&q=immigration%20control%20a%20twentieth%20century%20phenomenon&f=false (accessed on 3 September 2020).

Huntington, Ellsworth (1919), *The Red Man's Continent: A Chronicle of Aboriginal America*, Hard Press, reprinted 2006.

IDMC (2019), *Mid-year Figures: Internal displacement From January to June, 2019*, IDMC; available at: https://www.internal-displacement.org/sites/default/files/publications/documents/2019-mid-year-figures_for%20website%20upload.pdf (accessed on 17 February 2020).

ILO (2006), *ILO's Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach*, Geneva: International Labour Office; available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_178672.pdf (accessed on 5 January 2021).

ILO, *About the ILO*; available at: <https://www.ilo.org/global/about-the-ilo/lang-en/index.htm> (accessed on 5 February 2020).

ILO, *Promoting Decent Work For Migrant Workers*, available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_344703.pdf (accessed on 2 August 2020).

ILO, *Promoting Decent Work For Migrant Workers, Thirteenth Coordination Meeting On International Migration*; available at: https://www.un.org/en/development/desa/population/migration/events/coordination/13/documents/backgrounddocs/GFMD_ILO_Discussion%20Paper_Promoting%20Decent%20Work%20for%20MWS.pdf (accessed on 2 August 2020).

ILO, *The Decent Work Agenda*, available at: <https://www.ilo.org/asia/decentwork/lang--en/index.htm> (accessed on 2 August 2020).

Intergovernmental Panel on Climate Change (2007), “Summary for Policymakers” in Parry, M.L. et al. (eds.), *Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge, UK: Cambridge University Press; available at: <https://www.ipcc.ch/site/assets/uploads/2018/02/ar4-wg2-spm-1.pdf> (accessed on 12 December 2017).

**International Convention for the Protection of All Persons from Enforced Disappearance*, (2006), 2716 UNTS 3.

**International Convention on the Elimination of All Forms of Racial Discrimination*, (1965), 660 UNTS 195.

**International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, (1990), 2220 UNTS 3.

**International Convention on the Suppression and Punishment of the Crime of Apartheid*, (1973), UNGA Resolution A/RES/3068(XXVIII).

**International Covenant on Civil and Political Rights*, (1966), 999 UNTS 171.

**International Covenant on Economic, Social and Cultural Rights*, (1966), 993 UNTS 3.

IOM (2014), “IOM and UNCCD Launch Partnership to Jointly Address Negative Cycle of Land Degradation”, *Forced Migration*, Press Releases; available at: <https://www.iom.int/news/iom-and-unccd-launch-partnership-jointly-address-negative-cycle-land-degradation-forced> (accessed on 7 February 2020).

IOM (2014), *IOM Outlook on Migration, Environment and Climate Change*, Geneva: IOM; available at: https://publications.iom.int/system/files/pdf/mecc_outlook.pdf (accessed on 8 December 2019).

IOM (2019), *International Migration Law. Glossary on Migration*, Geneva: IOM; available at: https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf (accessed on 18 October 2019).

IOM (2020), *World Migration Report 2020*, Geneva: IOM; available at: https://www.un.org/sites/un2.un.org/files/wmr_2020.pdf (accessed on 27 August 2020).

IOM Strategy, (2007), *Resolution No. 1150 (XCIII)*; available at: https://governingbodies.iom.int/sites/default/files/council_document/1150%20-%20IOM%20Strategy.pdf (accessed on 4 September 2020).

IOM, *Regional Offices*; available at: <https://www.iom.int/regional-offices> (accessed on 15 August 2020).

IOM's Constitution; available at: <https://www.iom.int/constitution> (accessed on 30 March 2020).

Ionesco, Diana and Mariam Traore Chazalnoël (2020), "More than a health crisis? Assessing the impacts of COVID-19 on climate migration", *Environmental Migration Portal*; available at: <https://environmentalmigration.iom.int/blogs/more-health-crisis-assessing-impacts-covid-19-climate-migration> (accessed on 6 November 2020).

Ionesco, Dina (2019), "Let's Talk About Climate Migrants, Not Climate Refugees", Goal 13: Climate Action; available at: <https://www.un.org/sustainabledevelopment/blog/2019/06/lets-talk-about-climate-migrants-not-climate-refugees/> (accessed on 22 December 2020).

Ionesco, Dina et al. (2017), *The Atlas of Environmental Migration*, UK: IOM.

IPCC, *History of the IPCC*; available at: <https://www.ipcc.ch/about/history/#:~:text=In%201990%2C%20the%20First%20IPCC,consequences%20and%20requiring%20international%20cooperation.&text=The%20first%20of%20these%20Special,governments%20under%20the%20Paris%20Agreement> (accessed on 2 September 2020).

IPCC, World Meteorological Organization and United Nations Environment Programme (1992), *Climate Change: The 1990 and 1992 IPCC Assessments*, Canada: IPCC; available at: https://www.ipcc.ch/site/assets/uploads/2018/05/ipcc_90_92_assessments_far_full_report.pdf (accessed on 2 September 2020).

Islam, M.R. and M. Hasan (2016), "Climate-Induced Human Displacement: A Case Study of Cyclone Aila in the South-West Coastal Region of Bangladesh", *Natural Hazards*, 81(2): 1051–1071.

Islam, Rafiqul (2013), "Climate Refugees and International refugee Law", in Rafiqul Islam and Jahid Hossain Bhuiyan, (eds.), *An Introduction to International Refugee Law*, Leiden/Boston: Martinus Nijhoff Publishers.

Ivanov, Dimitry V. and Damir K. Bekyashev (2016), *Environmental Migration in International Law*, UK: Cambridge Scholars Publishing.

Jain, M.P. (2003), *Indian Constitutional Law*, Fifth Edition, India: LexisNexis Butterworths Wadhwa, reprinted 2008.

Jayal, Niraja Gopal (2013), *Citizenship And Its Discontents: An Indian History*, Ranikhet: Permanent Black.

Jayaram, Dhanasree (2016), “India at the Centre of Debate Surrounding 'Environmental' Migration in South Asia”, *Article written as a part of the adelphi-MARG project Climate Diplomacy, supported by the German Federal Foreign Office*; available at: <http://stsfor.org/content/india-centre-debate-surrounding-environmental-migration-south-asia> (accessed on 30 December 2019).

Jeremy Lennard (ed.) (2015), “Global Estimates 2015: People Displaced by Natural Hazard-Induced Disasters”, *IDMC*; available at: <https://www.internal-displacement.org/sites/default/files/inline-files/20150713-global-estimates-2015-en-v1.pdf>. (accessed on 19 February 2019).

Jet Propulsion Laboratory NASA (2018), *Ramp-Up in Antarctic Ice Loss Speeds Sea Level Rise*; available at: <https://www.jpl.nasa.gov/news/news.php?feature=7159>. (accessed on 14 February 2020).

Kälin, Walter (2012), “From the Nansen Principles to the Nansen Initiative”, *Forced Migration Review* 41:48.

Kälin, Walter (2017), “Human rights, migration and cross-border displacement in the context of adverse effects of climate change”, *Statement by the Envoy at the occasion of the Intersessional panel discussion on human rights, climate change, migrants and persons displaced across international borders, Human Rights Council*; available at: <https://disasterdisplacement.org/staff-member/human-rights-migration-and-cross-border-displacement-in-the-context-of-adverse-effects-of-climate-change> (accessed on 5 February 2020).

Kälin, Walter and Sanjula Weerasinghe (2017), *Environmental Migrants and Global Governance: Facts, Policies and Practices*, IOM; available at: <https://publications.iom.int/books/environmental-migrants-and-global-governance-facts-policies-and-practices> (accessed on 2 February 2020).

Kanta, Kumari Rigaud et al. (2018), *Groundswell: Preparing for Internal Climate Migration*, World Bank; available at: <https://openknowledge.worldbank.org/handle/10986/29461> (accessed on 15 February 2020).

Karasapan, Omer, “Refugees: Displaced from the Paris climate change agreement?”, *Brookings*; available at: <https://www.brookings.edu/blog/future-development/2015/12/07/refugees-displaced-from-the-paris-climate-change-agreement/> (accessed on 8 February 2020).

Karpestam, Peter and Fredrik N.G. Anderson (2013), “Economic Perspectives on Migration”, in Steven J. Gold and Stephanie J. Nawyn (eds.), *Routledge international Handbook of Migration Studies*, London/New York: Taylor and Francis Books.

Kelman, Ilan (2015), “Difficult decisions: Migration from Small Island Developing States under climate change”, *Earth's Future*; available at:

<https://agupubs.onlinelibrary.wiley.com/doi/full/10.1002/2014EF000278%4010.1002/%28ISSN%292328-4277.MIGRATION1> (accessed on 22 January 2020).

Kerwin, Jonathan (2013), *Globalisation and National Security*. New York: Routledge.

Kesby, Alison (2012), *The Right to Have Rights: Citizenship, Humanity, and International Law*, New York: Oxford University Press.

Khadria, Binod et al. (eds) (2009), *India Migration Report 2009: Past, Present and the Future Outlook*, New Delhi: International Migration and Diaspora Studies Project, Jawaharlal Nehru University.

Khosla, Madhav (2020), *India's Founding Moment: The Constitution of a Most Surprising Democracy*, Cambridge, Massachusetts: Harvard University Press.

Klepp, Silja (2017), "Climate Change and Migration"; available at: <https://oxfordre.com/climatescience/view/10.1093/acrefore/9780190228620.001.0001/acrefore-9780190228620-e-42> (accessed on 30 December 2019).

Koser, Khalid (2010), "Introduction: International Migration and Global Governance", *Global Governance*, 16(3):301-315. available at: <https://www.jstor.org/stable/29764947> (accessed on 15 December 2017).

Krissman, F. (2005), "Sin Coyote Nipatrón: Why The "Migrant Network" Fails to Explain International Migration?", *International Migration Review*, 39(1):4-44; available at: <https://www.jstor.org/stable/27645475> (accessed on 8 November 2020).

**Kyoto Protocol to the United Nations Framework Convention on Climate Change*, (1997), UN Doc FCCC/CP/1997/7/Add.1, 37 ILM 22.

Lahav, Gallya (2003), "Migration and Security: The Role of Non-State Actors and Civil Liberties in Liberal Democracies", *HUWU Paper*; available at: https://www.un.org/en/development/desa/population/events/pdf/2/ITT_COOR2_CH16_Lahav.pdf (accessed on 1 September 2020).

Lamarr, Kheinkor (2018), "Jurisprudence of Minority Rights: The Changing Contours of Minority Rights", *RAIS Conference Proceedings*; available at: <http://rais.education/wp-content/uploads/2017/10/015March.pdf> (accessed on 1 September 2020).

Lamarr, Kheinkor (2020), "Climate Change and Migration: Human Rights Challenges", in Chiradeep Basak et al. (eds.) *In Pursuit of Climate Resilience*, Assam: National Law University and Judicial Academy, Assam.

Lee, Everett S. (1966), "A Theory of Migration", *Demography*, 3(1):47-57; available at: <https://www.jstor.org/stable/2060063> (accessed on 17 October 2019).

Lee, H.F. et al. (2008), "Climatic change and Chinese population growth dynamics over the last millennium", *Climatic Change*, 88:131-156; available at: <https://doi.org/10.1007/s10584-007-9329-1> (accessed on 1 February 2020).

Lewis, W. Arthur (1954). "Economic Development with Unlimited Supplies of Labor", *The Manchester School of Economic and Social Studies*, 22: 139-191.

Livi-Bacci, Massimo (2012), *A Short History of Migration*, Translated by Carl Ipsen, Cambridge: Polity Press.

Lost with Purpose (2020), *Majuli, India's Disappearing Island*; available at: <https://www.lostwithpurpose.com/majuli/> (accessed on 5 September 2020).

Lutz, H. (2010), "Gender in the migratory process", *Journal of Ethnic and Migration Studies*, 36(10): 1647-1663.

Lyons, Kate (2020), "Climate refugees can't be returned home, says landmark UN human rights ruling", *The Guardian*; available at: <https://www.theguardian.com/world/2020/jan/20/climate-refugees-cant-be-returned-home-says-landmark-un-human-rights-ruling> (accessed on 22 January 2020).

Mabogunje, A. (1970), "Systems Approach to a Theory of Rural-Urban Migration", *Geographical Analysis*, 2(1):1-18.

Mackova, Lucie and Kysucan, Lubor (2016), "The History and Politics of Human Mobility", *Development, Environment and Foresight*, 2(1):23-34.

Mansbach, Richard W. and Kirsten L. Taylor (2014), *Introduction to Global Politics*, Second Edition, London: Routledge.

Mark, Joshua J. (2018), "Huns", *Ancient History Encyclopedia*; available at: <https://www.ancient.eu/Huns/> (accessed on 22 November 2020).

Mark, Joshua J. (2020), "European Colonization of the Americas", *Ancient History Encyclopedia*; available at: https://www.ancient.eu/European_Colonization_of_the_Americas/ (accessed on 22 November 2020).

Martin, Lisa L. and Beth A. Simmons (2012), "International Organizations and Institutions", in Walter Carlsnaes et al. (eds.) *Handbook of International Relations*, Sage Publication; available at: https://scholar.harvard.edu/files/bsimmons/files/ch_13_-_international_os_and_is.pdf (accessed on 5 September 2020).

Martin, Susan (2005), "The Legal and Normative Framework of International Migration", *Paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration*, Global Commission on International Migration; available at: https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/tp/TP9.pdf (accessed on 14 November 2019).

Massey, Douglas S. (1990), "Social Structure, Household Strategies, and the Cumulative Causation of Migration", *Population Index*, 56(1): 3-26.

Massey, Douglas S. et al. (1993), “Theories of International Migration: A Review and Appraisal”, *Population and Development Review*, 19 (3): 431-466; available at: <https://www.jstor.org/stable/2938462> (accessed on 28 March 2019).

Mayall, Peter et al. (2017), “Migrating Huns and modified heads: Eigenshape analysis comparing intentionally modified crania from Hungary and Georgia in the Migration Period of Europe”, *PLOS ONE*, 12(2): e0171064; available at: <https://doi.org/10.1371/journal.pone.0171064> (accessed on 22 November 2020).

McAdam, Jane (2011), “Swimming Against the Tide: Why a Climate Change Displacement Treaty is not an answer”, *International Journal of Refugee Law*, 23(1): 2-27.

McAdam, Jane (2014), “Creating New Norms on Climate Change, Natural Disasters and Displacement: International Developments 2010–2013”, *Refuge: Canada’s Journal on Refugees*, 29(2): 11-26.

McAdam, Jane (2019), “The Global Compacts on Refugees and Migration: A New Era for International Protection?”, *International Journal of Refugee Law*, 30(4):571-574.

McAdam, Jane (ed.) (2010), *Climate Change and Displacement: Multidisciplinary Perspectives*, Oxford and Portland, Oregon: Hart Publishing.

McLeman, Robert A. (2014), *Climate and Human Migration: Past Experiences, Future Challenges*, USA: Cambridge University Press.

McLeman, Robert. et al. (eds.) (2016), *Environmental Migration and Social Inequality*, New York: Springer.

McMichael, Celia et al. (2012), “An Ill Wind? Climate Change, Migration, and Health”, *Environmental Health Perspectives*, 120(5):646-654; available at: <http://www.jstor.org/stable/41548660> (accessed on 15 December 2017).

McNamara, Karen E (2015), “Cross-border migration with dignity in Kiribati” *Forced Migration Review*, 49:62.

McNeill, William H. (1984), “Human Migration in Historical Perspective”, *Population and Development Review*, 10(1):1-18.

Melde, Susanne (2014), Migration, Environment and Climate Change: Evidence for Policy (MECLEP) Glossary, Geneva: IOM; available at: <https://www.iom.int/files/live/sites/iom/files/Country/docs/MECLEP-Glossary-EN.pdf> (accessed on 20 November 2020).

**Migrants (Expulsion from Assam) Act*, 1950.

Migration Data Portal (2020), “Child and young migrants”, *Types of Migration*; available at: <https://migrationdataportal.org/themes/child-and-young-migrants> (accessed on 22 November 2020).

Migration Data Portal (2020), “Family Migration”, *Types of Migration*; available at: <https://migrationdataportal.org/themes/family-migration> (accessed on 22 November 2020).

**Migration for Employment Recommendation (Revised)* (ILO Convention No. R86), 1949.

Miller, D. (2016), *Strangers in our Midst: The Political Philosophy of Immigration*, Cambridge, MA: Harvard University Press.

Mills, Jennifer (2020), “Australian bushfires a glimpse of our future”, *Gulf news*; available at: <https://gulfnews.com/opinion/op-eds/australian-bushfires-a-glimpse-of-our-future-1.68834444> (accessed on 5 February 2020).

Mimura, Nobuo (2013), “Sea-level Rise Caused by Climate Change and Its Implications for Society”, *Proceedings of The Japan Academy, Series B Physical and Biology Sciences*, 89(7): 281–301.

Moellendorf, D. (2002), *Cosmopolitan Justice*, Boulder, CO: Westview.

Moore, Rob (2019), “IPCC Report: Sea Level Rise Is a Present and Future Danger”, *NRDC*, 25 September 2019; available at: <https://www.nrdc.org/experts/rob-moore/new-ipcc-report-sea-level-rise-challenges-are-growing> (accessed on 9 June 2020).

Morokvasic, Mirjana (1984), “Birds of Passage Are Also Women...”, *The International Migration Review*, 18(4):886–907; available at: <https://www.jstor.org/stable/2546066> (accessed on 22 November 2020).

Myers, Norman (1993), “Environmental Refugees in a Globally Warmed World”, *BioScience*, 43(11):752-761; available at: <https://www.jstor.org/stable/1312319> (accessed on 15 December 2017).

Myers, Norman (1997), “Environmental Refugees”, *Population and Environment*, 19(2):167-182; available at: <https://www.jstor.org/stable/27503569> (accessed on 28 October 2020).

Myers, Norman (2002), “Environmental Refugees: A Growing Phenomenon of the 21st Century”, *Philosophical Transactions of the Royal Society*, 357(1420):609-613; available at: <https://www.jstor.org/stable/3066769> (accessed on 28 October 2020).

Nafziger, James A.R. (1983), “The General Admission of Aliens under International Law”, *American Journal of International Law*, 77 (4): 804-847.

Nagtzaam, Gerry, et al. (2020), *International Environmental Law A Case Study Analysis*, UK: Routledge.

**National Action Plan on Climate Change*, 2008.

**National Disaster Management Plan*, 2016.

National Oceanic and Atmospheric Administration (2019), *July 2019 was hottest month on record for the planet*, 15 August 2019; available at: <https://www.noaa.gov/news/july-2019-was-hottest-month-on-record-for-planet> (accessed on 1 September 2020).

**National Rehabilitation and Resettlement Policy*, 2007.

Nehru, Jawaharlal (2004), *The Discovery of India*, New Delhi: Penguin Books.

**New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly*, (2016), UNGA Resolution, A/RES/71/1.

*Norwegian Refugee Council/Internal Displacement Monitoring Centre (2011), *The Nansen Conference: Climate Change and Displacement in the 21st Century*, Norwegian Refugee Council, available at: <https://www.unhcr.org/protection/environment/4ea969729/nansen-conference-climate-change-displacement-21st-century-oslo-6-7-june.html> (accessed on 12 October 2018).

Nunez, Christina (2019), “Causes and Effects of Climate Change”, *National Geographic*; available at: <https://www.nationalgeographic.com/environment/global-warming/global-warming-overview/> (accessed on 15 February 2020).

Nunez, Christina, “Sea level rise, explained”, *National Geographic*; available at: <https://www.nationalgeographic.com/environment/global-warming/sea-level-rise/> (accessed on 15 February 2020).

OHCHR, *Differentiation Between Migrants and Refugees*; available at: <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/MigrantsAndRefugees.pdf> (accessed on 17 February 2020).

OHCHR, *Fact Sheet No.2 (Rev.1), The International Bill of Human Rights*; available at: <https://www.ohchr.org/documents/publications/factsheet2rev.1en.pdf> (accessed on 1 December, 2020).

OHCHR, *Human Rights Bodies*; available at: <https://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx> (accessed on 22 November 2020).

OHCHR, *Who We are: an overview*; available at: <https://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx> (accessed on 22 November 2020).

Omelandiuk, Irena (2012), “Global migration institutions and processes”, in Brian Opeskin et al. (eds.), *Foundations of International Migration Law*, UK: Cambridge University Press.

**Opening Statement by Mr. António Guterres, United Nations High Commissioner for Refugees, at the Fifty-eighth Session of the Executive Committee of the High Commissioner’s Programme (ExCom)* (2007), UNHCR; available at: <https://www.unhcr.org/admin/hcspeeches/4700eff54/opening-statement-mr-antonio-guterres-united-nations-high-commissioner.html> (accessed on 8 September 2020).

Opeskin, Brian (2009), “The Influence of International Law on the International Movement of Persons”, *United Nations Development Programme Human Development Reports Research Paper 2009/18*; available at: http://hdr.undp.org/sites/default/files/hdrp_2009_18.pdf (accessed on 14 November 2019).

Opeskin, Brian et al. (2012). “Conceptualising international migration Law”, in Brian Opeskin et al. (eds.), *Foundations of International Migration Law*, UK: Cambridge University Press.

Pachauri, R.K. and A. Reisinger (eds.) (2007), *Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, Geneva: IPCC; available at: https://www.ipcc.ch/site/assets/uploads/2018/02/ar4_syr_full_report.pdf (accessed on 30 July 2020).

Pachauri, R.K. and L.A. Meyer (eds.) (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*, Geneva: IPCC; available at: https://www.ipcc.ch/site/assets/uploads/2018/05/SYR_AR5_FINAL_full_wcover.pdf (accessed on 30 July 2020).

Pachauri, R.K. et al. (eds.) (2015), *Climate Change 2014, Synthesis Report*, Geneva: IPCC; available at: https://www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf (accessed on 15 February 2020).

Palloni, A. et al. (2001), “Social Capital and International Migration: A Test Using Information on Family Networks”, *American Journal of Sociology*, 106(5):1262-1298.

Panda, Architesh (2010), “Climate Refugees: Implications for India”, *Economic and Political Weekly*, 45(20): 76-79.

Panda, Architesh (2020), “Climate Change, Displacement, and Managed Retreat in Coastal India”, Migration Policy Institute; available at: <https://www.migrationpolicy.org/article/climate-change-displacement-managed-retreat-india> (accessed on 28 December 2020).

**Paris Agreement*, (2015), FCCC/CP/2015/L.9/Rev.1; available at: <https://unfccc.int/resource/docs/2015/cop21/eng/109r01.pdf> (accessed 3 September 2020).

Paul Procter (editor-in-chief) (1996), *Cambridge International Dictionary of English*, India: Cambridge University Press.

PeaceWomen, *Table of United Nations Entities*; available at: <https://www.peacewomen.org/UN/entities> (accessed on 1 December 2020).

Peasron, Nakiya and Camille Niaufre (2013), “Desertification And Drought Related Migrations In The Sahel – The Cases Of Mali And Burkina Faso”, *The State of Environmental Migration*, 3:79-98, Institute for Sustainable Development and

International Relations (IDDRI) / International Organization for Migration (IOM): Sciences Po Press; available at: https://publications.iom.int/system/files/pdf/state_environmental_migration_2013.pdf (accessed on 3 February 2020).

Pécoud, Antoine (2018), “What do we know about the International Organization for Migration?”, *Journal of Ethnic and Migration Studies*, 44(10): 1621-1638.

Perruchoud, Richard (2012), “State Sovereignty and Freedom of Movement” in Brian Opeskin et al. (eds.), *Foundations of International Migration Law*, UK: Cambridge University Press.

Pessar, P.R. (1999), “The Role of Gender, Households, and Social Networks in the Migration Process: A Review and Appraisal”, in C. Hirschman et al. (eds.), *The Handbook of International Migration: The American Experience*, New York: Russell Sage Foundation.

Piché, Victor (2013), “Contemporary Migration Theories as Reflected in their Founding Texts”, Translated by Catriona Dutreuilh, *Population* 2013/1, 68:141-164.

Plender, Richard (1972), *International Migration Law*, Leiden: A. W. Sijthoff.

Poon, Linda (2016), “How Climate Change Will Affect Animal Migration, in One Map”, *City Lab*, 24 August 2016; available at: <https://www.citylab.com/environment/2016/08/how-climate-change-will-impact-animal-migration-in-one-stunning-map/496961/> (accessed on 15 February 2020).

Poot, Jacques et al. (2016), “The gravity model of migration: the successful comeback of an ageing superstar in regional science,” *Investigaciones Regionales-Journal of Regional Research*, 36:63-86.

Pörtner, Hans-Otto et al. (eds.) (2019), *IPCC Special Report on the Ocean and Cryosphere in a Changing Climate*, IPCC; available at: https://www.ipcc.ch/site/assets/uploads/sites/3/2019/12/SROCC_FullReport_FINAL.pdf (accessed on 9 June 2020).

Press Trust of India (2019), “Andaman and Nicobar Islands might not be inhabitable in future due to rise in sea level: IPCC author”, *The Indian Express*, 25 September 2019; available at: <https://indianexpress.com/article/india/andaman-and-nicobar-islands-might-not-be-inhabitable-in-future-due-to-rise-in-sea-level-ipcc-author/#:~:text=Andaman%20and%20Nicobar%20Islands%20in,on%20climate%20change%20on%20Wednesday.&text=He%20further%20said%20the%20focus,adaptati on%20and%20building%20climate%20resilience.> (accessed on 19 August 2020).

**Protection of global climate for present and future generations of mankind*, (1988), UNGA Resolution, A/RES/43/53.

**Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto*, (1963), Council of Europe (COE), ETS 46.

**Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime*, (2000), 2241 UNTS 507.

**Protocol Relating to Military Obligations in Certain Cases of Double Nationality*, (1935), 178 League of Nations Treaty Series 227, No. 4117.

**Protocol Relating to the Status of Refugees*, (1967), 606 UNTS 267.

**Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, (2000), 2237 UNTS 319.

Rajan, S. Chella (2008): “Blue Alert. Climate Migrants in South Asia: Estimates and Solutions”, *A Report by Greenpeace India Society*; available at: <https://www.tellus.org/pub/rajan-blue-alert-report.pdf> (accessed on 10 October 2018).

Ranis, Gustav and J.C.H. Fei (1961), “A Theory of economic development”, *American Economic Review*, 51: 533-565.

Rao, P.S. (2007), “Role of Soft Law in the Development of International Law: Some Random Notes” in *Asian-African Legal Consultative Organisation, Fifty Years of AALCO: Commemorative Essays in International Law*, New Delhi: AALCO, 62-91.

Ravenstein, E.G. (1889), “The Laws of Migration”, *Journal of the Royal Statistical Society*, 52(2):241-305; available at: <https://www.jstor.org/stable/2979333> (accessed on 17 October 2019).

Rawls, John (2002), *The Law of Peoples: With, the Idea of Public Reason Revisited*, UK: Harvard University Press.

**Recommendation concerning Migrant Workers (ILO Convention No. R151)*, 1975.

Rees, P (2001), “Internal Migration (Rural–Urban): Industrialized Countries”, *International Encyclopedia of the Social & Behavioral Sciences*; available at: <https://doi.org/10.1016/B0-08-043076-7/02199-9> (accessed on 22 November 2020).

**Refugees and Stateless Persons*, (1949), UNGA Resolution, 319 (IV).

Reinhardt, Karoline (2012), “No Migration in a Realistic Utopia? Rawls’s The Law of Peoples and the Topic of Migration”, in Goran Collste (ed.), *Proceedings from the 49th Societas Ethica Annual Conference*, Romania: Lucian Blaga University Sibiu; available at: <https://ep.liu.se/ecp/097/015/ecp12097015.pdf> (accessed on 12 December 2020).

Renaud, Fabrice et al. (2007), “Control, adapt or flee: how to face environmental migration?”, *UNU-EHS Interdisciplinary Security Connections*, No. 5, available at: <https://collections.unu.edu/eserv/UNU:1859/pdf3973.pdf> (accessed on 30 December 2019).

**Report of the Conference of the Parties on its eighteenth session, held in Doha from 26 November to 8 December 2012 Addendum Part Two: Action taken by the*

Conference of the Parties at its eighteenth session (2012), FCCC/CP/2012/8/Add.1, Decision 3/CP.18; available at: <https://unfccc.int/resource/docs/2012/cop18/eng/08a01.pdf> (accessed 12 June 2020).

**Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010 Addendum Part Two: Action taken by the Conference of the Parties at its sixteenth session*, (2010), FCCC/CP/2010/7/Add.1; available at: <https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf> (accessed on 15 August 2019).

**Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, Addendum Part two: Action taken by the Conference of the Parties at its twenty-first session* (2016), UNFCCC/CP/2015/10/Add.1; available at: <https://unfccc.int/sites/default/files/resource/docs/2015/cop21/eng/10a01.pdf> (accessed on 11 October 2020).

**Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts* (2014), UNFCCC/SB/2014/4.

**Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts*, (2019), UNFCCC, FCCC/SB/2019/5/Add.1; available at: https://unfccc.int/sites/default/files/resource/sb2019_05_add1.pdf (accessed on 7 September 2020).

**Report of the International Conference on Population and Development* (1995), A/CONF.171/13/Rev.1; available at: https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/icpd_en.pdf (accessed on 25 September 2020).

**Report of the United Nations High Commissioner for Refugees*, (1985), Supplement No.12 (A/40/12); available at: <https://www.unhcr.org/afr/excom/unhcrannual/3ae68c340/report-united-nations-high-commissioner-refugees.html> (accessed on 4 January 2021).

**Report on the Twenty-eighth Session of the Executive Committee of the High Commissions Programme*, (1977), UN doc A/AC.96/549/.

Report to the European Council on Climate Change and International Security (2008), *Population and Development Review*, 34(3):587-593; available at: <http://www.jstor.org/stable/25434726> (accessed on 15 December 2017).

**Review of the composition, organization and administrative arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, (1985), Economic and Social Council Resolution 1985/17.

Richardson, Benjamin J. (2010), "Climate Change and Displacement: Multidisciplinary Perspectives, 2010, edited by J. McAdam.", *Transnational Legal Theory* 1(4): 645-650.

**Rio Declaration on Environment and Development*, (1992), UN Doc. A/CONF.151/26 (vol. I), 31 ILM 874.

Robert A. (2014), *Climate and Human Migration: Past Experiences, Future Challenges*, USA: Cambridge University Press.

Roberts, J.M. (1981), *The Pelican History of the World*, Great Britain: Penguin Books.

Rogers, A. (2008), "Demographic Modeling of the Geography of Migration and Population: A Multiregional Perspective", *Geographical Analysis*, 40: 276-296.

Rogers, Paul (2017), "Climate Change, Migration and Security", *Briefings, Migration and Sustainable Security*, Oxford Research Group; available at: <https://www.oxfordresearchgroup.org.uk/climate-change-migration-and-security> (accessed on 9 September 2020).

Roy, Anupama (2010), *Mapping Citizenship in India*, New Delhi: Oxford University Press.

Roy, Rumi (2019), "Identity and Migration in a Globalised World: Politicization of Conflicts in Bodoland", in Sonia Mehta and Anna Sengrung (eds.), *North East India: Exploring Philosophy, Culture & Environment*, New Delhi: Krishi Sanskriti Publications.

Sandmel, Samuel et al. (eds.) (1976), *The New English Bible with The Apocrypha Oxford Study Edition*, New York: Oxford University Press.

Sassen, Saskia (1988), *The Mobility of Labor and Capital: A Study in International Investment and Labor Flow*, UK: Cambridge University Press.

Sassen, Saskia (2001), *The Global City: New York, London, Tokyo*, New Jersey: Princeton University Press.

Serhan, Yasmeeen (2016), "The Vote on the Future of a Native Alaskan Community", *The Atlantic*, 18 August 2016; available at: <https://www.theatlantic.com/news/archive/2016/08/alaskas-eroding-island/496421/> (accessed on 15 February 2020).

Serna, Joseph (2020), "Deadly fires in Australia have made climate change converts, as in California", *Los Angeles Times*, 13 February 2020; available at: <https://www.latimes.com/environment/story/2020-02-13/australian-on-climate-change-bushfires-and-the-new-normal> (accessed on 14 February 2020).

Shachar A. (2009), *The Birth-right Lottery: Citizenship and Global Inequality*, Cambridge, MA: Harvard University Press.

Shah, Sonia (2020), *The Next Great Migration: The Story of Movement on a Changing Planet*, New Delhi: Bloomsbury Publishing.

Sharalaya, Nandan (2018), “Taking India’s Climate Migrants Seriously”, *The Diplomat*; available at: <https://thediplomat.com/2018/08/taking-indias-climate-migrants-seriously/> (accessed on 8 December 2019).

Sharma, R.S. (2005), *India’s Ancient Past*, New Delhi: Oxford University Press.

Shastri, Seshaiyah, (2013) “The Role of International Organisations in The Protection of Refugees”, in Rafiqul Islam and Jahid Hossain Bhuiyan, (eds.), *An Introduction to International Refugee Law*, Leiden/Boston: Martinus Nijhoff Publishers.

Shaw, Malcolm N. (2017), *International Law*, Eighth Edition, India: Cambridge University Press.

Shelton, Dianah L (2008), “Soft Law”, in David Armstrong et al. (eds.), *Routledge Handbook of International Law*, Abingdon: Routledge, GWU Legal Studies Research Paper No. 322. GWU Law School Public Law Research Paper No. 322; available at: <https://ssrn.com/abstract=1003387> (accessed on 14 January 2020).

Simmons, Alan (1987), “Explaining migration: Theory at the Crossroads”, in J. Duchene (ed.) *Explanations in the Social Science: The search for causes in Demography*, Louvain-la-Neuve, Belgium: Université catholique de Louvain, Institut de Demographie.

Singer, Peter (1975), *Animal Liberation*, New York: New York Review of Books, reprinted 1990.

Singh, Harjeet et al. (2020), *Costs of Climate Inaction: Displacement And Distress Migration*, ActionAid; available at: <https://actionaid.org/sites/default/files/publications/ActionAid%20CANSAs%20-%20South%20Asia%20Climate%20Migration%20-%20Dec%202020%20-Final.pdf> (accessed on 2 January 2021).

Singh, Mahendra P. (2000), *V.N. Shukla’s Constitution of India*, Eleventh Edition, Lucknow: Eastern Book Company.

Sjaastad, Larry A. (1962), “The Costs and Returns of Human Migration”, *Journal of Political Economy*, 70(5) Part 2: Investment in Human Beings:80–93; available at: <https://www.jstor.org/stable/1829105> (accessed on 17 January 2019).

Sohn, L.B. and T. Buergenthal (eds.) (1992), *The Movement of Persons Across Borders, Studies in Transnational Legal Policy No. 23*, Washington DC: The American Society of International Law.

Solomon, S.D. et al. (eds.) (2007), “Climate Change 2007: The Physical Science Basis”, *Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge, United Kingdom and New York, NY, USA: Cambridge University Press; available at: https://www.ipcc.ch/site/assets/uploads/2018/05/ar4_wg1_full_report-1.pdf (accessed on 7 September 2020).

Song, Sarah (2018), “Political Theories of Migration”, *Annual Review of Political Science*, 21:385-402.

Sorensen, Max (1968) (ed.), *Manual of Public International Law*, London: Macmillan.

Stark, Oded (1991), *The Migration of Labor*, Oxford: Basil Blackwell Publishing Ltd.

Stark, Oded and D. Bloom (1985), “The New Economics of Labor Migration”, *The American Economic Review*, 75(2):173-178.

**Statute of the International Court of Justice*, (1948), 33 UNTS 993.

**Statute of the Office of the United Nations High Commissioner for Refugees*, (1950), UNGA, A/RES/428(V).

Stern, Nicholas (2006), *The Stern Review on the Economics of Climate Change*, UK: Cambridge University Press.

Swain, Ashok (1996), “Environmental migration and conflict dynamics: focus on developing regions”, *Third World Quarterly*, 17(5): 959-973; available at: <https://www.jstor.org/stable/3993239> (accessed on 15 December 2017).

Tallmeister, Julia (2013), “Is Immigration a Threat to Security?”, E-International Relations; available at: <https://www.e-ir.info/2013/08/24/is-immigration-a-threat-to-security/> (accessed on 4 July 2020).

Thapar, Romila (2002), *The Penguin History of Early India: From the Origins to AD 1300*, New Delhi: Penguin Books.

Tharoor, Shashi (2020), *The Battle of Belonging. On Nationalism, Patriotism, and What it Means to be Indian*, New Delhi: Aleph Book Company.

**The Assam Accord*, 1985.

**The Citizenship (Amendment) Act*, 1986.

**The Citizenship (Amendment) Act*, 2003.

**The Citizenship (Amendment) Act*, 2019.

**The Citizenship Act*, 1955.

**The Foreigners Act*, 1946.

**The Positive Role That Measures Taken under the Convention Can Play to Address Desertification/Land Degradation and Drought as One of the Drivers That Causes Migration* (2017), COP, ICCD/COP (13)/L.25; available at: https://www.unccd.int/sites/default/files/sessions/documents/2017-09/ICCD_COP%2813%29_L.25-1716167E.pdf (accessed on 5 February 2020).

The Third Pole (2020), *Early monsoon floods show climate change impact in South Asia*; available at: <https://www.thethirdpole.net/2020/06/29/early-monsoon-south-asia/> (accessed on 15 July 2020).

Thiagarajan, Kamala (2020), “Vaan Island in India’s Gulf of Mannar has been rapidly disappearing into the Laccadive Sea. But a team of marine biologists is working to save it” *Future Planet*, *BBC*; available at: <https://www.bbc.com/future/article/20200131-the-divers-trying-to-save-indias-vaan-island-from-sinking> (accessed on 5 February 2020).

Thompson, Alexander and Duncan Snidal (2011), “International Organization: Institutions and Order in World Politics”, in Francesco Parisi (ed.), *Production of Legal Rules*, Edward Elgar Publishing; available at: https://politicalscience.osu.edu/faculty/athompson/pdf/Thompson&Snidal_ParisiChap17.pdf (accessed on 4 September 2020).

Todaro, Michael P. (1969), “A Model of Labor Migration and Urban Unemployment in Less Developed Countries”, *The American Economic Review*, 59(1):138–148; available at: <https://www.jstor.org/stable/1811100> (accessed on 17 January 2019).

Torelli, Stefano M. (2017), “Climate Driven Migration in Africa” *European Council on Foreign Relations*; available at: https://www.ecfr.eu/article/commentary_climate_driven_migration_in_africa (accessed on 5 February 2020).

Toscano, Julia (2015), “Climate Change Displacement and Forced Migration: An International Crisis”, *Arizona Journal of Environmental Law and Policy*, 6: 457-490; available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/arijel6&div=5&id=&page=> (accessed on 15 December 2017).

**Transforming our world: the 2030 Agenda for Sustainable Development* (2015), UNGA A/RES/70/1.

**Treaty of Westphalia*, (1648), 1 Parry 271.

Tumbe, Chinmay (2018), *India Moving: A History of Migration*, India: Penguin Random House India.

Türk, Volker (2018), “The Promise and Potential of the Global Compact on Refugees”, *International Journal of Refugee Law*, 30(4): 575-583.

**UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees*, (1950), UNGA Resolution, A/RES/428(V).

UN High Commissioner for Refugees (1990), *The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary by Dr. Paul Weis*; available at: <https://www.refworld.org/docid/53e1dd114.html> (accessed on 14 February 2020).

*UN Human Rights Committee (1986), *CCPR General Comment No. 15: The Position of Aliens Under the Covenant*, 27thsess; available at: <https://www.refworld.org/docid/45139acfc.html> (accessed on 30 December 2020).

UN Meetings Coverage and Press Releases (2019), “Unprecedented Impacts of Climate Change Disproportionately Burdening Developing Countries, Delegate Stresses, as Second Committee Concludes General Debate”, GA/EF/3516; available

at: <https://www.un.org/press/en/2019/gaef3516.doc.htm> (accessed on 5 January 2021).

*UN Population Fund (UNFPA) (1995), *Report of the International Conference on Population and Development*, Cairo, 5-13 September 1994, A/CONF.171/13/Rev.1, (ICPD), Ch X.

UNCCD, *Sustainability, Stability, Security (3S Initiative)*; available at: <https://www.unccd.int/actions/sustainability-stability-security-3s-initiative> (accessed on 7 February 2020).

UNEP (2007), *Global Environment Outlook GEO4, Environment for Development*, Malta: UNEP; available at: <https://www.unenvironment.org/resources/global-environment-outlook-4> (accessed on 5 January 2021).

UNEP and Sabin Center for Climate Change Law at Columbia University (2015), *Climate Change and Human Rights*, Nairobi: UNON Publishing Services Section Nairobi; available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/9530/-Climate_Change_and_Human_Rightshuman-rights-climate-change.pdf.pdf?sequence=2&isAllowed=1 (accessed on 30 July 2020).

UNEP Atlas of Our Changing Environment, in Mark Notaras and Obijiofor Aginam, “Sucking Dry an African Giant Peace & Security: Africa, Conflict, Climate Change, Desertification, Peace, Our World,” *United Nations University*; available at: <https://ourworld.unu.edu/en/sucking-dry-an-african-giant> (accessed on 5 February 2020).

*UNFCCC (2011), “Report of the Conference of the Parties: The Cancun Agreements, Outcome of the work of the Ad Hoc Working Group on the Long-term Cooperative Action under the Convention”, FCCC/CP/2010/7/Add.1, Part Two: Action taken by the Conference of the Parties at its sixteenth session; available at: <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf#page=4> (accessed on 15 February 2020).

UNFCCC (2014), *Warsaw international mechanism for loss and damage associated with climate change*, COP, 2/CP.19; available at: <https://unfccc.int/resource/docs/2013/cop19/eng/10a01.pdf#page=6> (accessed on 3 September 2020).

UNHCR (2008), “Climate change, natural disasters and human displacement: A UNHCR Perspective”, updated edition; available at: <https://www.unhcr.org/4901e81a4.pdf> (accessed on 31 August 2020).

UNHCR (2014), *Guidelines on Temporary Protection or Stay Arrangements*; available at: <http://www.refworld.org/docid/52fba2404.html> (accessed on 31 January 2020).

UNHCR (2015), “Migrant Definition”, *Emergency Handbook*; available at: <https://emergency.unhcr.org/entry/44937/migrant-definition> (accessed on 5 February 2020).

UNHCR (2015), *The Environment and Climate Change*; available at: <https://www.unhcr.org/en-in/540854f49> (accessed on 31 January 2020).

UNHCR, *Climate Change And Disaster Displacement: An Overview Of UNHCR's Role*; available at: <https://www.unhcr.org/en-in/protection/environment/5975e6cf7/climate-change-disaster-displacement-overview-unhcrs-role.html> (accessed on 31 January 2020).

UNHCR, *Key Messages and commitments on Climate change and disaster displacement COP 25 – Madrid, Spain 2 to 13 December 2019*; available at: <https://www.unhcr.org/en-in/protection/environment/5e01e3857/key-messages-for-cop25.html> (accessed on 31 January 2020).

UNHCR, *Legal considerations on refugee protection for people fleeing conflict and famine affected countries*; available at: <https://www.refworld.org/pdfid/5906e0824.pdf> (accessed on 31 January 2020).

UNHCR, *The New York Declaration for Refugees and Migrants Answers to Frequently Asked Questions*; available at: <https://www.globalcompactrefugees.org/sites/default/files/2019-12/New%20York%20Declaration-%20Frequently%20Asked%20Questions%20%282017%29.pdf> (accessed on 2 December 2019).

United Nations Climate Change (2017), “Climate Change Is A Key Driver of Migration and Food Insecurity”, United Nations Climate Change, 16 October 2017; available at: <https://unfccc.int/news/climate-change-is-a-key-driver-of-migration-and-food-insecurity#:~:text=Climate%20change%20is%20having%20far,and%20cities%20around%20the%20world> (accessed on 1 September 2020).

United Nations Climate Change, *Task Force on Displacement*; available at: <https://unfccc.int/wim-excom/sub-groups/TFD#eq-3>. (accessed on 1 September 2020).

**United Nations Convention against Transnational Organized Crime*, (2000), 225 UNTS 209.

**United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa*, (1994), 1954 UNTS 3.

**United Nations Framework Convention on Climate Change: resolution / adopted by the General Assembly*, (1992), 1771 UNTS 107.

United Nations University Institute for Environment and Human Security (2017), *Pacific Islanders Faced with Climate-Induced Migration*; available at: <https://ehs.unu.edu/blog/articles/pacific-islanders-faced-with-climate-induced-migration.html>. (accessed on 5 February 2020).

**Universal Declaration of Human Rights*, (1948), UNGA Resolution, 217 A (III).

Upadhyay, et al., (2015), “Conceptualizing and contextualizing research and policy for links between climate change and migration”, *International Journal of Climate Change Strategies & Management*, 7(3):394–417.

Valerian Rodrigues (2008), “Citizenship and The Indian Constitution”, in Rajeev Bhargava (ed.), *The Politics and Ethics of the Indian Constitution*, India: Oxford University Press.

Video message of Louise Arbourin; available at: <https://www.youtube.com/watch?v=3asuIyIE9ec>. (accessed on 5 February 2020).

**Vienna Convention on the Law of Treaties*, (1969), 1155 UNTS 331.

Virally, Michel (1968), “The Sources of International Law”, in Max Sorensen (ed.) *Manual of Public International Law*, London: Macmillan.

Waldock, Sir Humphrey (ed.) (1963), *J.L. Brierly The Law of Nations: An Introduction to The International Law of Peace*, Sixth Edition, New York and Oxford: Oxford University Press.

Wallace, Rebecca M. M. (2014), “The principle of non-refoulement in international refugee law” in Vincent Chetail & Celine. Bauloz, (eds.), *Research Handbook on International Law and Migration*, Cheltenham: Edward Elgar Publishing.

Wallerstein, Immanuel (1974), *The Modern World System, Capitalist Agriculture and The Origins of the European World Economy in The Sixteenth Century*, New York: Academic Press.

Walzer, M. (1983), *Spheres of Justice: A Defence of Pluralism and Equality*, New York: Basic Books.

Webersik, Christian (2012), “Climate-induced migration and conflict: what are the links?”, in Kirsten Hastrup and Karen Fog Olwig (eds.), *Climate Change and Human Mobility Global Challenges to the Social Sciences*, Cambridge: Cambridge University press.

Wehmeier, Sally (Chief Editor) (2005), *Oxford Advanced Learner’s Dictionary*, India: Oxford University Press.

Weissbrodt, David and Justin Rhodes (2014), “United Nations treaty bodies and migrant workers” in Vincent Chetail & Celine. Bauloz, (eds), *Research Handbook on International Law and Migration*, Cheltenham: Edward Elgar Publishing.

Welch, Craig (2017), “Half of All Species Are on the Move - And We're Feeling It”, *National Geographic*, 27 April 2017; available at: <https://www.nationalgeographic.com/news/2017/04/climate-change-species-migration-disease/> (accessed on 15 February 2020).

Wells, H.G. (1965), *A short History of the World*, Great Britain: Penguin Books.

White, Gregory (2011), *Climate Change and Migration: Security and Borders in a Warming World*, New York: Oxford University Press.

White, Gregory (2012) “The “Securitization” of Climate-Induced Migration” in Kavita R. Khroy (ed.) *Global Migration Challenges in the Twenty-First Century*, USA: Palgrave Macmillan.

Will Ross, *Lake Chad: Can the vanishing lake be saved?*, BBC News; available at: <https://www.bbc.com/news/world-africa-43500314> (accessed on 5 February 2020).

Wolters, Claire, “Climate 101: Wildfires”, *National Geographic*; available at: <https://www.nationalgeographic.com/environment/natural-disasters/wildfires/> (accessed on 15 February 2020).

Wood, Charles H. (1982), “Equilibrium and Historical-Structural Perspectives on Migration”, *International Migration Review*, 16(2):298-319; available at: <https://www.jstor.org/stable/2545100> (accessed on 7 November 2019).

World Bank (2013), *Turn Down the Heat: Climate Extremes, Regional Impacts, and the Case for Resilience*, A report for the World Bank by the Potsdam Institute for Climate Impact Research and Climate Analytics, Washington, DC: World Bank; available at: https://www.worldbank.org/content/dam/Worldbank/document/Full_Report_Vol_2_Turn_Down_The_Heat_%20Climate_Extremes_Regional_Impacts_Case_for_Resilience_Print%20version_FINAL.pdf (accessed on 18 July 2020).

Worrall, Simon (2016), “During Last Mass Migration, Europeans Were the Immigrants”, *National Geographic*; available at: <https://www.nationalgeographic.com/news/2016/04/160424-refugee-migration-immigration-history-eastern-europe-jews-ngbooktalk/#:~:text=During%20Last%20Mass%20Migration%2C%20Europeans%20Were%20the%20Immigrants&text=An%20immigrant%20family%20on%20Ellis,migrants%20returned%20to%20their%20homelands> (accessed on 22 November 2020).

Official Websites Consulted

3S Initiative: <https://3s-initiative.org/en/home/>

Environmental Migration Portal: <https://environmentalmigration.iom.int/>

Global Forum on migration & Development: <https://www.gfmd.org/>

Global Migration Group: <https://globalmigrationgroup.org/>

Internal Displacement Monitoring Centre (IDMC): <https://www.internal-displacement.org/>

International Labour Organization: <https://www.ilo.org>

International Organization for Migration: <https://www.iom.int>

Migration Data Portal: <https://migrationdataportal.org>

NASA’s Global Climate Change: <https://climate.nasa.gov/evidence/>

Office of the Registrar General & Census Commissioner, India:
<https://censusindia.gov.in/>

The Intergovernmental Panel on Climate Change: <https://www.ipcc.ch/>

UNFCCC-INDC:

<https://www4.unfccc.int/sites/submissions/INDC/Submission%20Pages/submissions.aspx>

United Nations Department of Economic and Social Affairs:
<https://www.un.org/en/development/desa/population/migration/index.asp>

United Nations High Commissioner for Refugees: <https://www.unhcr.org/>

United Nations Human Rights Office of The High Commissioner:
<https://www.ohchr.org/EN/pages/home.aspx>

United Nations Network on Migration: <https://migrationnetwork.un.org/>

United Nations Treaty Collection: <https://treaties.un.org/>

**ANNEXURE I: LIST OF IMPORTANT UNGA RESOLUTIONS ON
MIGRATION**

SERIAL NO	GA RESOLUTION	TITLE	SALIENT POINTS
1.	A/RES/47/4 16 Oct. 1992	Observer status for the International Organization for Migration in the General Assembly	<ul style="list-style-type: none"> • Granted observer status to the International organization for Migration
2.	A/RES/48/113 23 March 1994	Convening of a United Nations conference for the Comprehensive consideration and review of the problems of refugees, returnees, displaced persons and migrants	<ul style="list-style-type: none"> • The resolution took note of the proposal to convene a United Nations conference for the comprehensive consideration and review of the problems of refugees, returnees, displaced persons and migrants.

3.	A/RES/49/127 7 February 1995	Resolution on International migration and development	<ul style="list-style-type: none"> • The Resolution reaffirms the continuing validity of principles which have been set-forth in the instruments regarding the international protection of human rights, particularly the UDHR, The International Covenants on Human Rights, ICERD and CRC. • Requested that a report on international migration and development, including aspects related to objectives and modalities for the convening of a United Nations conference on international migration and development, to be submitted to the Economic and Social Council at its substantive session of 1995 for discussion. • Decided to include in the provisional agenda of its fiftieth session an item entitled "International migration and development, including the convening of a United Nations conference on international migration and development".
4.	A/RES/50/123 23 February 1996	Resolution on International migration and development	<ul style="list-style-type: none"> • The resolution urged Member States and the United Nations system to strengthen international cooperation in the area of international migration and development in order to address the root causes of migration, especially those related to poverty. • Called upon all relevant organs, organizations and programmes of the United Nations system and other intergovernmental, regional and sub

			regional organizations to address the issue of international migration and development.
5.	A/RES/50/168 16 February 1996	Violence against women migrant workers	<ul style="list-style-type: none"> • The resolution stressed that the promotion of the human rights of women constitutes an integral part of human rights activities of the United Nations. • Was concerned at the continuing reports of grave abuses and acts of violence committed against the persons of women migrant workers by some employers in some host countries. • The resolution determined to prevent and eliminate all forms of violence against women and girls and called upon States Members of the United Nations to adopt measures for the effective implementation of the Declaration on the Elimination of Violence against Women including applying them to women migrant. • The resolution recommended that the issue of violence against women migrant workers be included in the agenda of the inter-agency meeting that precedes the regular session of the Commission on the Status of Women
6.	A/RES/51/148	Cooperation	<ul style="list-style-type: none"> • Affirmed the need to strengthen the already existing co-operation

	4 February 1997	between the United Nations and the International Organization for Migration	between the UN and IOM in matters of common interest.
7.	A/RES/52/189 4 February 1998	International migration and development	<ul style="list-style-type: none"> • The Resolution reaffirms the continuing validity of principles which have been set-forth in the instruments regarding the international protection of human rights, particularly the UDHR, The International Covenants on Human Rights, ICERD, CEDAW and CRC. • Called upon the international community to seek to make the option of remaining in one's country viable for all people. To this end efforts were to be made to achieve sustainable economic and social development, ensuring a better economic balance between developed and developing countries, should be strengthened.
8.	A/RES/53/137 1 March 1999	International Convention on the Protection of the	<ul style="list-style-type: none"> • The Resolution reaffirms the permanent validity of principles and norms which have been set-forth in the basic instruments regarding the international protection of human rights, particularly the UDHR, The

		Rights of All Migrant Workers and Members of Their Families	<p>International Covenants on Human Rights, ICERD, CEDAW and CRC.</p> <ul style="list-style-type: none"> • Resolution stated that the UNGA was aware of the situation of migrant workers and members of their families and the marked increase in migratory movements that has occurred, especially in certain parts of the world. • It welcomed the signature or ratification of or accession to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by some Member States. • The resolution also expressed its deep concern at the growing manifestations of racism, xenophobia and other forms of discrimination and inhuman or degrading treatment directed against migrant workers in different parts of the world.
9.	A/RES/54/138 10 February 2000	Violence against women migrant workers	<ul style="list-style-type: none"> • The resolution realized that the movement of a significant number of women migrant workers may be facilitated and made possible through fraudulent or irregular documentation and arranged marriages and that, by the nature of their status and movement, women migrant workers are more vulnerable to abuse and exploitation.

			<ul style="list-style-type: none"> • It underlined the important role of relevant United Nations treaty bodies in monitoring the implementation of human rights conventions and the relevant special procedures, within their respective mandates, in addressing the problem of violence against women migrant workers and in protecting and promoting their rights and welfare. • Welcomes the appointment of a Special Rapporteur on the human rights of migrants and encouraged Governments to give serious consideration to inviting the Special Rapporteur to visit their countries so as to enable him or her to fulfil the mandate effectively.
10.	A/RES/54/158 8 February 2000	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	<ul style="list-style-type: none"> • This Resolution also once more reaffirmed the permanent validity of principles and norms which have been set-forth in the basic instruments regarding the international protection of human rights, particularly the UDHR, The International Covenants on Human Rights, ICERD, CEDAW and CRC. • Showcased awareness of the situation of migrant workers and members of their families and the marked increase in migratory movements that has occurred, especially in certain parts of the world. • Resolution once again expressed its deep concern at the growing

			<p>manifestations of racism, xenophobia and other forms of discrimination and inhuman or degrading treatment directed against migrant workers in different parts of the world.</p>
11.	A/RES/54/166 24 February 2000	Protection of migrants	<ul style="list-style-type: none"> • Resolution considered that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin. • Requested all Member States, in conformity with their respective constitutional systems, effectively to promote and protect the human rights of all migrants, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party, which may include the International Covenants on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights

			<p>of the Child and other applicable international human rights instruments.</p> <ul style="list-style-type: none"> • Strongly condemned all forms of racial discrimination and xenophobia with regard to access to employment, vocational training, housing, schooling, health services and social services, as well as services intended for use by the public. • Called upon all States to review and, where necessary, revise immigration policies with a view to eliminating all discriminatory policies and practices against migrants. • Reiterated the need for all States to protect fully the universally recognized human rights of migrants, especially women and children, regardless of their legal status, and to provide humane treatment.
12.	A/RES/54/212 1 February 2000	International migration and development	<ul style="list-style-type: none"> • The Resolution reaffirms the continuing validity of principles which have been set-forth in the instruments regarding the international protection of human rights, particularly the UDHR, The International Covenants on Human Rights, ICERD, CEDAW and CRC. • Noted that the need for the relevant United Nations organizations and other international organizations to enhance their technical support to developing countries to ensure that migration contributes to

			development.
13.	A/RES/55/88 21 February 2001	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	<ul style="list-style-type: none"> • This Resolution also once more reaffirmed the permanent validity of principles and norms which have been set-forth in the basic instruments regarding the international protection of human rights, particularly the UDHR, The International Covenants on Human Rights, ICERD, CEDAW and CRC. • It reiterated that, there is a need to make further efforts to improve the situation and to guarantee respect for the human rights and dignity of all migrant workers and members of their families. • The resolution again expressed its deep concern at the growing manifestations of racism, xenophobia and other forms of discrimination. • It welcomed the work of the Special Rapporteur on the human rights of migrants in relation to the Convention, and encourages her to continue in this endeavour.
14.	A/RES/55/92 26 February 2001	Protection of migrants	<ul style="list-style-type: none"> • Resolution considered that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin.

			<ul style="list-style-type: none"> • It has borne in mind the situation of vulnerability in which migrants frequently find themselves, owing, inter alia, to their absence from their States of origin and to the difficulties they encounter because of differences of language, custom and culture, as well as the economic and social difficulties and obstacles for the return to their States of origin of migrants who are non-documented or in an irregular situation. • This resolution also showed its deep concern at the manifestations of violence, racism, xenophobia and other forms of discrimination. • Reiterates the need for all States to protect fully the universally • Recognized human rights of migrants, especially women and children, regardless of their legal status. • Urged all States to adopt effective measures to put an end to the arbitrary arrest and detention of migrants, including by individuals or groups. • Called upon all States to protect the human rights of migrant children, in particular unaccompanied migrant children, ensuring that the best interests of the children are the paramount consideration, and encourages the relevant United Nations bodies, within the framework of their respective
--	--	--	--

			mandates, to pay special attention to the conditions of migrant children in all States and, where necessary, to put forward recommendations for strengthening their protection.
15.	A/RES/55/93 28 February 2001	Resolution on the International Migrants Day	<ul style="list-style-type: none"> • Resolution considered that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin. • Takes account of the large and increasing number of migrants in the world.
16.	A/RES/56/131 1 February 2002	Violence against women migrant workers	<ul style="list-style-type: none"> • Expressed deep concern at the continuing reports of grave abuses and acts of violence committed against women migrant workers. • Invited governments to identify the causes of undocumented migration and its economic, social and demographic impact, as well as its implications for the formulation and application of social, economic and migration policies, including those relating to women migrant workers. • Encouraged the Committee on the Elimination of Discrimination against Women to consider developing a general recommendation on the situation of women migrant workers.

17.	A/RES/56/170 28 February 2002	Protection of migrants	<ul style="list-style-type: none"> • Resolution considered that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin. • Recognized that the migrants frequently make positive contributions including through their eventual integration into their host society. • Underlined the importance of the creation of conditions that foster greater harmony between migrant workers and the rest of the society of the States in which they reside. • Once again reiterated the need for all States parties to protect fully the universally recognized human rights of migrants, especially women and children, regardless of their legal status.
18.	A/RES/57/201 16 January 2003	International Convention on the Protection of the Rights of All Migrant Workers and Members of	<ul style="list-style-type: none"> • The resolution stated that it was guided by the basic instruments regarding the international protection of human rights, in particular the UDHR, the International Covenants on Human Rights, ICERD, CEDAW, CRC and reaffirmed the obligation of States to promote and protect human rights and fundamental freedoms. • Called upon all Member States that have not yet ratified the ICRMW to

		Their Families	consider urgently signing and ratifying or acceding to it as a matter of priority.
19.	A/RES/57/218 27 February 2003	Protection of migrants	<ul style="list-style-type: none"> • Reaffirmed that the UDHR proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin. • Requested all Member States, in conformity with their respective constitutional systems, effectively to promote and protect the human rights of all migrants, in conformity with the Universal Declaration of Human Rights. • Strongly condemned all forms of racial discrimination and xenophobia with regard to access to employment, vocational training, housing, schooling, health services and social services, as well as services intended for use by the public. • Reaffirms the responsibility of Governments to safeguard and protect the rights of migrants against illegal or violent acts. • Urges all States to adopt effective measures to put an end to the arbitrary arrest and detention of migrants, including by individuals or groups.

20.	A/RES/59/241 28 February 2005	International migration and development	<ul style="list-style-type: none"> • Resolution took note of the establishment of the Global Commission on International Migration. • Called upon relevant bodies to continue to address the issue of international migration and development, with a view towards integrating migration issues, including a gender perspective and cultural diversity, in a more coherent way within the broader context of the implementation of agreed economic and social development goals and respect for all human rights.
21.	A/RES/59/262 3 March 2005	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	<ul style="list-style-type: none"> • Resolution stated that it was guided by the basic instruments regarding the international protection of human rights, in particular the Universal Declaration of Human Rights and other relevant human rights instruments, and reaffirming the obligation of States to promote and protect human rights and fundamental freedoms. • Welcomed the increasing number of signatures, ratifications or accessions to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and called upon States parties to undertake the necessary measures for the implementation of the Convention. • Welcomed the establishment of the Committee on the Protection of the

			<p>Rights of All Migrant Workers and Members of Their Families.</p> <ul style="list-style-type: none"> • Invited that the Committee took into account the work done by other human rights treaty bodies and special procedures of the Commission on Human Rights to promote and protect the human rights of migrant workers.
22.	A/RES/60/139 7 February 2006	Violence against women migrant workers	<ul style="list-style-type: none"> • Recognized the increasing feminization of international migration, which requires greater gender sensitivity in all policies and efforts related to the subject of international migration. • Acknowledges the economic benefits that accrue to both the country of origin and the country of destination from the employment of women migrant workers. • Recognized the importance of exploring the link between migration and trafficking. • Called upon all Governments to incorporate a gender perspective in all policies on international migration.
23.	A/RES/60/169 7 March 2006	Protection of migrants	<ul style="list-style-type: none"> • Reaffirmed the UDHR which proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin.

			<ul style="list-style-type: none"> • Requests States effectively to promote and protect the human rights and fundamental freedoms of all migrants, regardless of their immigration status. • Requests all States, international organizations and relevant stakeholders to take into account in their policies and initiatives on migration issues the global character of the migratory phenomenon. • Expressed concern about the legislation and the measures adopted by some States that restrict the human rights and fundamental freedoms of migrants. • Called upon States to promote and protect all human rights of migrant children, given their vulnerability, in particular unaccompanied migrant children, ensuring that the best interests of the children are a primary consideration. • Urged all States to adopt effective measures to put an end to the arbitrary arrest and detention of migrant.
24.	A/RES/61/165 23 February 2007	Protection of migrants	<ul style="list-style-type: none"> • Reaffirmed the Universal Declaration of Human Rights. • Also reaffirmed that everyone has the right to freedom of movement and residence within the borders of each State, and to leave any country,

			<p>including his own, and return to his country.</p> <ul style="list-style-type: none"> • Requested that States effectively promote and protect the human rights and fundamental freedoms of all migrants, regardless of their immigration status. • Requests all States, international organizations and relevant stakeholders to take into account in their policies and initiatives on migration issues the global character of the migratory phenomenon. • Once again expressed concern about legislation and measures adopted by some States that may restrict the human rights and fundamental freedoms of migrants.
25.	A/RES/61/208 6 March 2007	International migration and development	<ul style="list-style-type: none"> • Took note with interest of the establishment of the Global Migration Group. • It once again called for the issue of international migration and development to be addressed with a view to integrating migration issues, including a gender perspective and cultural diversity.
26.	A/RES/62/132 31 January 2008	Violence against women migrant workers	<ul style="list-style-type: none"> • Called upon all Governments to incorporate a human rights and gender perspective in legislation and policies on international migration and on labour and employment and to adopt or strengthen measures to protect the human rights of women migrant workers,

			regardless of their immigration status,
27.	A/RES/62/156 7 March 2008	Protection of migrants	<ul style="list-style-type: none"> • Reaffirmed the UDHR and that everyone has the right to freedom of movement and residence within the borders of each State, and to leave any country, including his own, and return to his country. • Calls upon States to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status. • Emphasized the global character of the migratory phenomenon. • Underlined the right of migrants to return to their country of citizenship.
28.	A/RES/62/270 30 June 2008	Global Forum on Migration and Development	<ul style="list-style-type: none"> • Stressed the need to promote a comprehensive and coherent discussion on all aspects of the phenomenon of migration, taking into account its importance on the global agenda. • Recalling the important contribution provided by migrants and migration to development, as well as the interrelationship between migration and development, and the importance of including the perspective of the human rights of migrants as a priority matter in relevant debates and discussions that are held in the United Nations system.
29.	A/RES/63/184	Protection of	<ul style="list-style-type: none"> • On the sixtieth anniversary of the UDHR once again reaffirms the

	17 March 2009	migrants	<p>Declaration.</p> <ul style="list-style-type: none"> • Reaffirms the right to freedom of movement and residence within the borders of each State. • Underlined the importance of the Human Rights Council in promoting respect for the protection of the human rights and fundamental freedoms of all, including migrants. • Emphasized the global character of the migratory phenomenon. • Was concerned about the large and growing number of migrants, especially women and children, who place themselves in a vulnerable situation by attempting to cross international borders without the required travel documents, and recognizing the obligation of States to respect the human rights of those migrants. • Stressed that penalties and the treatment given to irregular migrants should be commensurate with their infraction. • Recognized the importance of having a comprehensive and balanced approach to international migration. • Called upon States to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status.
--	---------------	----------	--

			<ul style="list-style-type: none"> • It also called upon States to ensure that their laws and policies, including in the areas of counter-terrorism and combating transnational organized crime such as trafficking in persons and smuggling of migrants, fully respect the human rights of migrants. • Expressed concern about legislation and measures adopted by some States that may restrict the human rights and fundamental freedoms of migrants. • The resolution reaffirmed that, States when exercising their sovereign right to enact and implement migratory and border security measures, have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants. • Was appreciative of the measures adopted by some States to reduce detention periods for irregular migrants in the application of domestic regulations and laws regarding irregular migration. • Called upon all States to respect the human rights and the inherent dignity of migrants and to put an end to arbitrary arrest and detention.
30.	A/RES/65/190	Trafficking in	<ul style="list-style-type: none"> • Seriously concerned that an increasing number of women and girls are

	11 March 2011	women and girls	<p>being trafficked, including to developed countries, as well as within and between regions and States, and that men and boys are also victims of trafficking, including for sexual exploitation.</p> <ul style="list-style-type: none"> • Recognizing that certain efforts against trafficking in persons lack the gender and age sensitivity needed to address effectively the situation of women and girl.
31.	A/RES/68/4 21 January 2014	Declaration of the High-level Dialogue on International Migration and Development	<ul style="list-style-type: none"> • Recognizes that international migration is a multidimensional reality of major relevance for the development of countries of origin, transit and destination. • Recognizes that international migration is a cross-cutting phenomenon that should be addressed in a coherent, comprehensive and balanced manner, integrating development with due regard for social, economic and environmental dimensions and respecting human rights. • Reaffirm the need to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status, especially those of women and children. • Recognize that women and girls account for almost half of all international migrants at the global level.

			<ul style="list-style-type: none"> • Acknowledged the complexity of migratory flows and that international migration movement also occur within the same geographical regions, and in this context call for a better understanding of migration patterns across and within regions. • Recognize the need to consider the role that environmental factors may play in migration
32.	A/RES/69/167 12 February 2015	Protection of migrants	<ul style="list-style-type: none"> • Reaffirmed the Universal Declaration of Human Rights and right to freedom of movement. • Emphasized the multidimensional character of the migratory phenomenon. • Acknowledged the complexity of migratory flows and that international migration movement also occur within the same geographical regions. • Called upon States to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status. • Strongly condemned the acts, manifestations and expressions of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them.

			<ul style="list-style-type: none"> • States are to ensure that their laws and policies including in the areas of counter-terrorism and combating transnational organized crime fully respect the human rights of migrants. • Urges all States to adopt effective measures to prevent and punish any form of illegal deprivation of liberty of migrants by individuals or groups.
33.	A/RES/69/187 11 February 2015	Migrant children and adolescents	<ul style="list-style-type: none"> • Recognizing the serious humanitarian situation in some regions related to mass migration of accompanied and unaccompanied children, including adolescents, defined as those less than 18 years of age. • Concerned by the fact that migrant children, including adolescents, in particular those in an irregular situation, may be exposed to serious human rights violations. • Calls upon countries of origin, transit and destination to facilitate family reunification as an important objective in order to promote the welfare and the best interest of migrant children. • Underlines that children, including adolescents, should not be subject to arbitrary arrest or detention based solely on their migration status and that the deprivation of liberty of migrant children and adolescents should be a measure of last resort.

34.	A/RES/69/229 4 February 2015	International migration and development	<ul style="list-style-type: none"> • Reaffirmed the UDHR. • Recognizes that international migration is a multidimensional reality, a cross-cutting phenomenon which should be addressed in a coherent, comprehensive and balanced manner, integrating development with due regard for social, economic and environmental dimensions and respecting human rights. • Recognizes the need to consider the role that environmental factors may play in migration.
35.	A/RES/70/1 21 October 2015	Transforming our world: the 2030 Agenda for Sustainable Development	<ul style="list-style-type: none"> • Recognize that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development. • Recognizing that the dignity of the human person is fundamental. • People who are vulnerable must be empowered. Those whose needs are reflected in the Agenda include all children, youth, persons with disabilities (of whom more than 80 per cent live in poverty), people living with HIV/AIDS, older persons, indigenous peoples, refugees and internally displaced persons and migrants. • Recognized the positive contribution of migrants for inclusive growth and sustainable development.

			<ul style="list-style-type: none"> • To cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants regardless of migration status, of refugees and of displaced persons.
36.	A/RES/70/296 5 August 2016	Agreement concerning the Relationship between the United Nations and the International Organization for Migration	<ul style="list-style-type: none"> • Brings the International Organization for Migration, into a closer legal and working relationship with the United Nations as a related organization.
37.	A/RES/71/1 3 October 2016	New York Declaration for Refugees and Migrants	<ul style="list-style-type: none"> • We are witnessing in today's world an unprecedented level of human mobility. • Acknowledges that people move as a response to the adverse effects of climate change, natural disasters (some of which may be linked to climate change), or other environmental factors. • Reaffirmed the UN Charter and UDHR.

			<ul style="list-style-type: none">• Though their treatment is governed by separate legal frameworks, refugees and migrants have the same universal human rights and fundamental freedoms• No one State can manage such movements on its own. Neighbouring or transit countries, mostly developing countries, are disproportionately affected.• We declare our profound solidarity with, and support for, the millions of people in different parts of the world who, for reasons beyond their control, are forced to uproot themselves and their families from their homes.• Has been acknowledged that poverty, underdevelopment, lack of opportunities, poor governance and environmental factors are among the drivers of migration.
--	--	--	---

ANNEXURE II: LIST OF UNFCCC COPS TILL 2020.

SESSION	LOCATION AND YEAR	REMARKS
COP 1	Berlin, Germany, 1995	The first COP. Parties agreed to what would come to be known as the Berlin Mandate, which allows parties to make specific commitments as the parties felt the mechanisms under the UNFCCC were inadequate.
COP 2	Geneva, Switzerland, 1996	Endorsement of the IPCC's Second assessment report.
COP 3	Kyoto, Japan, 1997	Adoption of the Kyoto Protocol.
COP 4	Buenos Aires, Argentina, 1998	Adoption of the Buenos Aires Plan of Action.
COP 5	Bonn, Germany, 1999	A continuation of negotiation efforts with a focus on “the adoption of the guidelines for the preparation of national communications by [developed] countries, capacity building, transfer of technology and flexible mechanisms.” However, no major conclusions were reached.
COP 6	The Hague, Netherlands, 2000	Negotiations faltered, and parties agreed to meet

		again.
COP 6-2	Bonn, Germany, 2001	Consensus reached on what were called the Bonn Agreements.
COP 7	Marrakech, Morocco, 2001	The detailed rules for the implementation of the Kyoto Protocol were adopted and called the Marrakesh Accords. The Special Climate Change Fund (SCCF) and The Least Developed Countries Fund were established.
COP 8	New Delhi, India, 2002	Parties adopted the Delhi Ministerial Declaration
COP 9	Milan, Italy, 2003	New emissions reporting guidelines based on IPCC recommendations were adopted.
COP 10	Buenos Aires, Argentina, 2004	Parties began discussing adaptation options.
COP 11	Montreal, Canada, 2005	The annual meeting between the parties (COP) was supplemented by the first annual Meeting of the Parties to the Kyoto Protocol (CMP)
COP 12	Nairobi, Kenya, 2006	Financial mechanisms were reviewed, and further decisions were made about the Special Climate Change Fund.

COP 13	Bali, Indonesia, 2007	Agreement of Bali Action Plan to negotiate GHG mitigation actions after the Kyoto Protocol expired in 2012.
COP 14	Poznan, Poland, 2008	Negotiations on the financing mechanism to help poor countries adapt to the effects of climate change.
COP 15	Copenhagen, Denmark, 2009	<p>Failure to reach agreement on binding commitments after the Kyoto Protocol commitment period ended in 2012.</p> <p>During the final hours of the summit, leaders from the United States, Brazil, China, Indonesia, India and South Africa agreed to what would be called the Copenhagen Accord which recognized the need to limit the global temperature rise to 2°C based on the science of climate change.</p>
COP 16	Cancun, Mexico, 2010	Parties officially adopted major tenets of the Copenhagen Accord including limiting global warming to 2°C.
COP 17	Durban, South Africa, 2011	Parties agreed to the Durban Platform for

		Enhanced Action which is framework to establish a new international emissions reduction protocol.
COP 18	Doha, Qatar, 2012	Parties agreed to extend the expiring Kyoto Protocol, creating a second commitment phase that would begin on January 1, 2013 and end December 31, 2020.
COP 19	Warsaw, Poland, 2013	A non-binding agreement was reached among countries to set up a system tackling the "loss and damage" issue, although details of how to set up the mechanism were not discussed.
COP 20	Lima, Peru, 2014	Lima Call for Climate Action.
COP 21	Paris, France, 2015	Adoption of the Paris Agreement.
COP 22	Marrakech, Morocco, 2016	Preparations for the entry into force of the Paris Agreement and the first session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement.
COP 23	Bonn, Germany, 2017	Determination to oversee and accelerate the completion of the work

		programme under the Paris Agreement
COP 24	Katowice, Poland, 2018	The COP-24 finalized a “rulebook” to operationalise 2015 Paris Agreement
COP 25	Madrid, Spain, 2019	There were no arguments over whether climate change was real or man-made.

ANNEXURE III: CITIZENSHIP PROVISIONS IN INDIAN CONSTITUTION.

Part II of The Constitution- Citizenship

Article 5: Citizenship at the Commencement of the Constitution

At the commencement of this Constitution, every person who has his domicile in the territory of India and –

- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

Article 6: Rights of Citizenship of Certain Persons Who Have Migrated to India From Pakistan

Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if –

- (a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and
- (b)(i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or
- (ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

Article 7: Rights of Citizenship of Certain Migrants to Pakistan

Notwithstanding anything in articles 5 and 6, a person who has after the first day of March 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of Article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

Article 8: Rights of Citizenship of Certain Persons of Indian Origin Residing Outside India

Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

Article 9: Persons Voluntarily Acquiring Citizenship of A Foreign State Not To Be Citizens

No person shall be a citizen of India by virtue of article 5 or be deemed to be a citizen of India by virtue of article 6 or article 8 if he has voluntarily acquired the citizenship of any foreign State.

Article 10: Continuance of The Rights of Citizenship

Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

Article 11: Parliament to Regulate The Right Of Citizenship By Law

Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

ANNEXURE IV: NANSEN PRINCIPLES

Building upon Nansen's legacy, the following principles were recommended to guide responses to some of the urgent and complex challenges raised by displacement in the context of climate change and other environmental hazards.

Principle I: Responses to climate and environmentally-related displacement need to be informed by adequate knowledge and guided by the fundamental principles of humanity, human dignity, human rights and international cooperation.

Principle II: States have a primary duty to protect their populations and give particular attention to the special needs of the people most vulnerable to and most affected by climate change and other environmental hazards, including the displaced, hosting communities and those at risk of displacement. The development of legislation, policies and institutions as well as the investment of adequate resources are key in this regard.

Principle III: The leadership and engagement of local governments and communities, civil society, and the private sector, are needed to address effectively the challenges posed by climate change, including those linked to human mobility.

Principle IV: When national capacity is limited, regional frameworks and international cooperation should support action at national level and contribute to building national capacity, underpinning development plans, preventing displacement, assisting and protecting people and communities affected by such displacement, and finding durable solutions.

Principle V: Prevention and resilience need to be further strengthened at all levels, particularly through adequate resources. International, regional, and local actors have a shared responsibility to implement the principles enshrined in the Hyogo Framework for Action 2005-2015: Building Resilience of Nations and Communities to Disaster.

Principle VI: Building local and national capacity to prepare for and respond to disasters is fundamental. At the same time, the international disaster response system needs to be reinforced. The development of multihazard early warning systems linking local and global levels is critical.

Principle VII: The existing norms of international law should be fully utilized, and normative gaps addressed. VIII. The Guiding Principles on Internal Displacement provide a sound legal framework to address protection concerns arising from climate- and other environmentally-related internal displacement. States are encouraged to ensure the adequate implementation and operationalization of these principles through national legislation, policies and institutions.

Principle IX: A more coherent and consistent approach at the international level is needed to meet the protection needs of people displaced externally owing to sudden-onset disasters. States, working in conjunction with UNHCR and other relevant stakeholders, could develop a guiding framework or instrument in this regard.

Principle X: National and international policies and responses, including planned relocation, need to be implemented on the basis of non-discrimination, consent, empowerment, participation and partnerships with those directly affected, with due sensitivity to age, gender and diversity aspects. The voices of the displaced or those threatened with displacement, loss of home or livelihood must be heard and taken into account, without neglecting those who may choose to remain.

ANNEXURE V: 1992 RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT

Principle 1

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

Principle 2

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 3

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Principle 4

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Principle 5

All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

Principle 6

The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.

Principle 7

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

Principle 8

To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.

Principle 9

States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.

Principle 10

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Principle 11

States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

Principle 12

States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

Principle 13

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

Principle 14

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

Principle 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Principle 16

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

Principle 17

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

Principle 18

States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.

Principle 19

States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

Principle 20

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

Principle 21

The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.

Principle 22

Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

Principle 23

The environment and natural resources of people under oppression, domination and occupation shall be protected.

Principle 24

Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.

Principle 25

Peace, development and environmental protection are interdependent and indivisible.

Principle 26

States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.

Principle 27

States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.

* * * * *

ANNEXURE VI: PHOTOGRAPHIC REPRESENTATION OF ENVIRONMENTAL AND CLIMATE CHANGE



IMAGE 1: THE DISAPPEARING SNOW-CAP OF MOUNT KILIMANJARO, FROM SPACE.¹



IMAGE: REPUBLIC OF MALDIVES: VULNERABLE TO SEA LEVEL RISE.²

¹NASA's Global Climate Change website; available at: <https://climate.nasa.gov/evidence/> (accessed on 14 February 2020).

² Ibid.

DROUGHT SHRINKS SOUTHERN AFRICA'S LAKE KARIBA (WORLD'S LARGEST RESERVOIR BY VOLUME). THE LAKE IN IMAGE 1 IS LARGER THAN IMAGE 2.³



IMAGE 1: TAKEN IN DEC 2, 2018



IMAGE 2: TAKEN IN DEC 1, 2019

³ NASA's Earth Observatory; available at: <https://climate.nasa.gov/images-of-change?id=704#704-drought-shrinks-southern-africas-lake-kariba> (accessed on 5 December 2019).

Below images showcase the decline of Okjökull (melting glacier) atop Ok volcano in west-central Iceland. A 1901 geological map estimated that Okjökull spanned about 15 square miles (38 square kilometers). In 1978 aerial photography showed the glacier had shrunk to about 1 square mile (3 square kilometers). Now, less than half a square mile (less than 1 square kilometer) remains.⁴

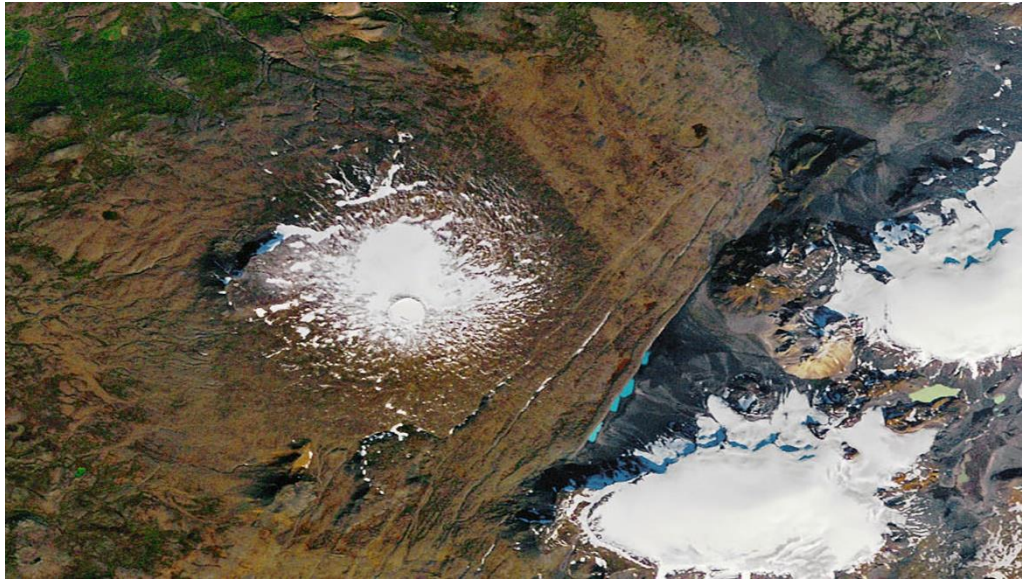


IMAGE 1: 1986



IMAGE 2: 2019

⁴ NASA's Earth Observatory; available at: <https://climate.nasa.gov/images-of-change?id=699#699-icelands-ok-glacier-melts-away> (accessed on 5 December 2019).

The Greenland Ice-sheets have begun to thin. Partial Melting will Result in 1 m rise in sea level and complete melt will result in 5-7 m rise in sea level. Below is a visualization by NASA's Global Climate Change website of the effect of this melting on Coastal Regions if there were a rise in 1m, 3m, and a rise in about 6m for South East-Asia. Land that would be covered in water is shaded red.⁵



IMAGE 1: 0 m Sea Level Rise



IMAGE 2: 1m Sea Level Rise



IMAGE 3: 3m Sea Level Rise



IMAGE 3: 6m Sea Level Rise

⁵ NASA's Global Climate Change website; available at: <https://climate.nasa.gov/interactives/climate-time-machine> (accessed on 3 March 2020).