



(IN)SUFFICIENCY OF INTERNATIONAL LAW TO TACKLE “ENVIRONMENTAL MIGRATIONS”

Professor Vasilka Sancin, PhD.

Faculty of Law, University of Ljubljana

OUTLINE

- Reality of environmental migrations
- Migrations/displacements within the country or across the border – statistics
- Evolution of climate law
- Normative gap in international legal system to deal with environmental migrations
- Case studies: Tuvalu, Somalia and Bangladesh
- Conclusions

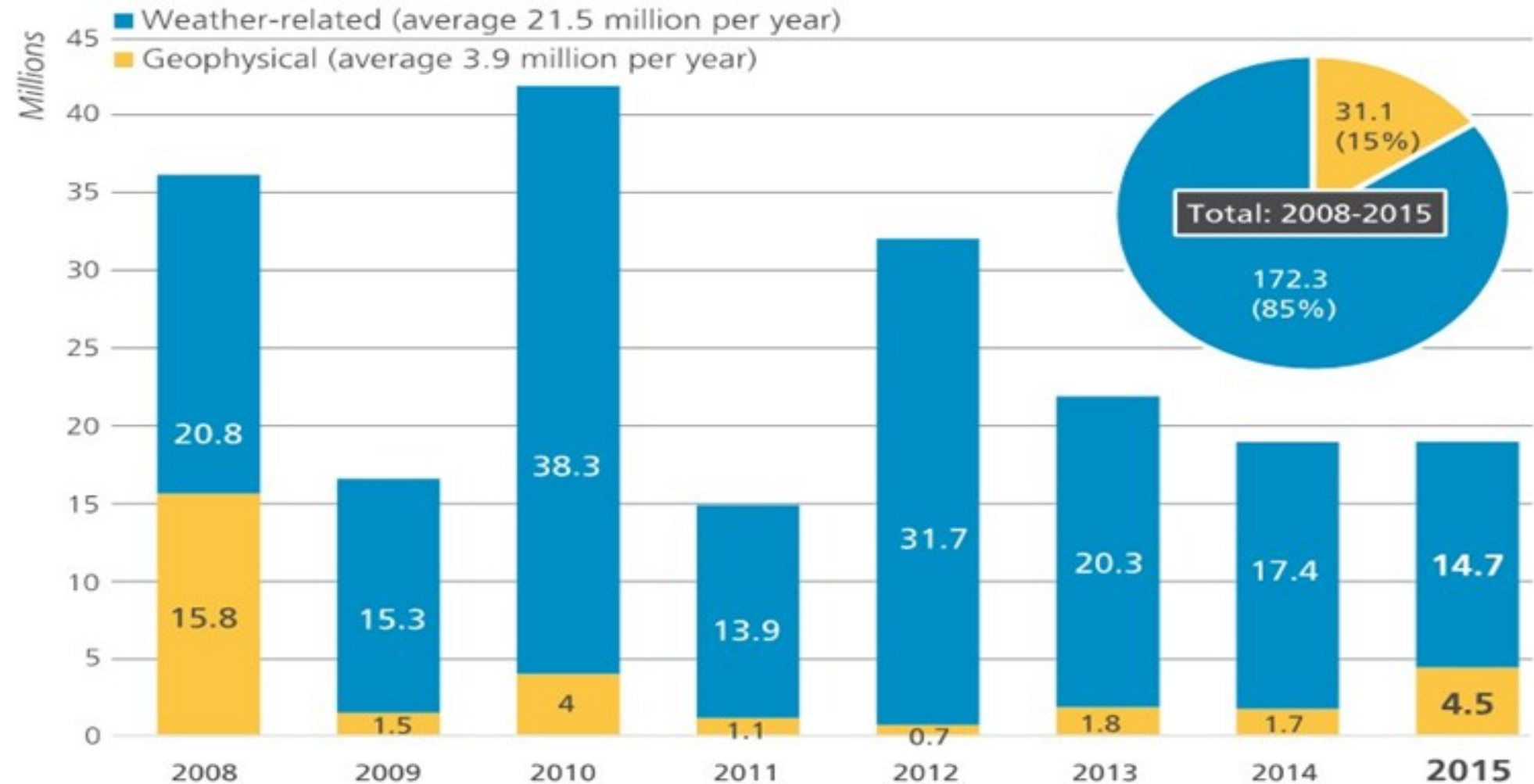
ENVIRONMENTAL MIGRATION

- Every year, millions of people are displaced by disasters caused by natural hazards such as floods, tropical storms, earthquakes, landslides, droughts, salt water intrusion, glacial melting and melting permafrost
- Report of the International Panel on Climate Change (2007) indicates that by 2080 between:
 - 1.1 and 3.2 billion people will be experiencing water scarcity,
 - 200-600 million hunger and
 - 2-7 million people per year coastal flooding.
- Most affected groups of population are:
 - marginalized sectors of society,
 - groups dependent on agriculture,
 - populations in least developed countries,
 - low-lying islands and coastal areas,
 - groups of people that are often the least able to move out of harm's way.

DISPLACEMENT DUE TO DISASTERS 2008 – 2015

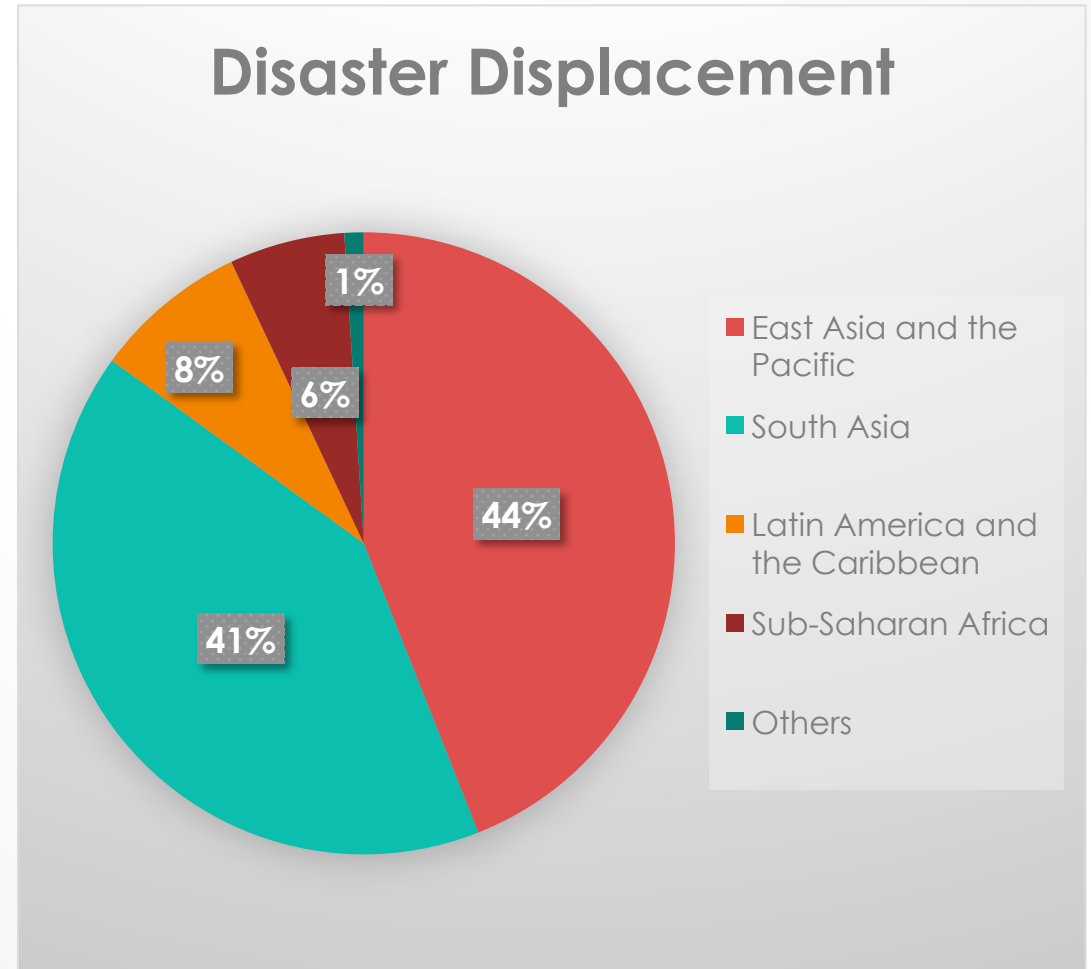
- over 210 million displacements have been recorded, an average of 25.4 million people per year
- The highest number of displacements were recorded in 2010 – 42.4 million (38.3 million were weather related displacements, 4 million were geophysical related displacements). On the other hand, during 2011 only 15 million people were displaced due to disasters.
- Asia was the most affected continent due to floods storms, earthquakes, volcanic eruptions

ANNUAL NEW DISPLACEMENTS, 2008 TO 2015, BY HAZARD CATEGORY



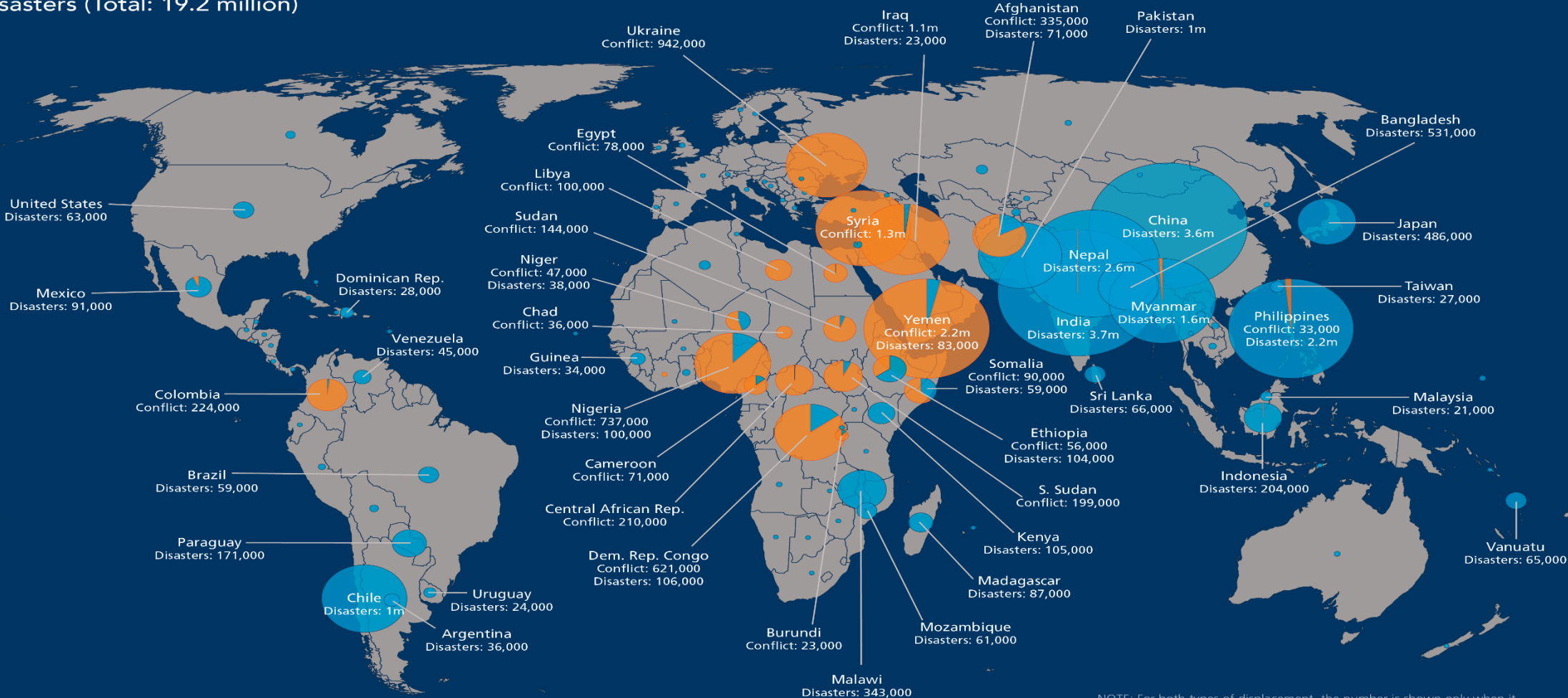
DISPLACEMENT IN 2015

- 19.2 million new displacements related to disasters in 113 countries, which is more than twice the number who fled conflict and violence
- Most common causes of disaster displacement were floods, storms, earthquakes, volcanic eruptions, wildfires, landslides and extreme temperature



New displacements associated with conflict and disasters in 2015

- Conflict and violence (Total: 8.6 million)
- Disasters (Total: 19.2 million)



NOTE: For both types of displacement, the number is shown only when it exceeds 20,000. The size of the pie charts is fixed for estimates of 5,000 or less. In a few cases, the same person may be displaced more than once.

MOST AFFECTED STATES

1. India (3.7 mil.)
2. China (3.6 mil.)
3. Nepal (2.6 mil.)
4. Philippines (2.2 mil.)
5. Myanmar (1.6 mil.)
6. Chile (1 mil.)
7. Pakistan (1 mil.)
8. Bangladesh (531,100)
9. Japan (486,100)
10. Malawi (343,000)

LARGEST DISASTERS

- Nepal (Gorkha earthquake and aftershocks) – April – 2,623,000
- India (Andhra Pradesh and Tamil Nadu floods) – November – 1,081,000
- Myanmar (Monsoon floods/Cyclone Komen) – July – 1,617,000
- India (Monsoon floods/Cyclone Komen) – July – 1,200,000
- China (Typhoon Chan-Hom) – July – 1,100,000
- Chile (Illapel earthquake and tsunami) – September – 1 mil.

COUNTRIES WITH MOST NEW DISPLACEMENTS ASSOCIATED WITH DISASTERS IN 2015 RELATIVE TO POPULATION (PER 100,000 INHABITANTS)

1. Tuvalu (54,800)
2. Vanuatu (41,700)
3. Nepal (9,200)
4. Micronesia (6,500)
5. Chile (5,800)



DISPLACEMENT IN 2016 (JANUARY – AUGUST)

- Top 10 events forced 7.04 mil. people to displace from their habitual residences
- Most affected countries:
 1. China – 3.53 mil.
 2. India – 1.13 mil.
 3. Indonesia – 946,000
 4. Bangladesh – 513,000
 5. Sri Lanka – 500,000

Main causes of migration:

1. Yangtze river basin floods (China – 1,990,000)
2. Heavy rainy season in Indonesia (946,000)
3. Bihar Monsoon floods (India – 642,000)
4. Flooding and landslides in the northern provinces of China (557,000)
5. Cyclone Roanu (Bangladesh – 513,000)
6. Typhoon Nepartak (China – 507,000)
7. Assam monsoon flood (India – 490,000)



UNHCR AND THE ENVIRONMENTAL MIGRATION

- The majority of the 65.3 million people of concern to UNHCR are situated in 'climate change hotspots' around the world. They face the risk of secondary or repeated displacement due to natural hazards and the effects of climate change
- UNHCR supports an approach that focuses on the integration of effective practices by States and (sub-) regional organizations into their own normative frameworks and practices in accordance with their specific situations and challenges

UNHCR played a major role in protection of the populations affected by:

- droughts in Somalia (2011-2012)
- floods in Pakistan (2010 and 2012)
- storms and flooding in Myanmar in 2013
- typhoons in the Philippines (Washi/Sendong in 2011/2012 and Haiyan/ Yolanda in 2013)

In 2015 UNHCR assisted:

- cyclone and flood victims in Myanmar's Rakhine and Kachin states
- assisted victims of the earthquake in Nepal
- relocated 50,000 flood-affected refugees in Ethiopia



INTERNAL DISPLACEMENTS/MIGRATIONS

- majority of people displaced by disasters and impacts of climate change remain within their countries
- primary responsibility of States; international community (at the request of the States) provides support and humanitarian assistance
- Applicable international law:
 - human rights law
 - regional treaties (e.g. African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention))
 - soft law (e.g. Guiding Principles on Internal Displacement)
 - Since 2007: International Law Commission's topic - *Protection of persons in the event of disasters*

INTERNATIONAL NORMATIVE FRAMEWORK for climate change

- 1988 and 1989 - UN General Assembly resolutions
- 1990 – IPCC and World Climate Conference call for a global treaty
- 1992 – UN Framework Convention on Climate Change (UNFCCC) at Rio Earth Summit
- 1997 – Kyoto protocol to the UNFCCC
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- 2012 – Rio+20 conference: The Future We Want report
- 2015 – Paris Climate Agreement – to enter into force on 4 November 2016

NORMATIVE GAP IN INTERNATIONAL LEGAL SYSTEM TO DEAL WITH ENVIRONMENTAL MIGRATIONS

- Refugee law: 1951 refugee Convention and its 1967 Protocol + IHL law
 - applies only if people fleeing a combination of factors, including those falling within the 'refugee definition'
 - fails to address pre-emptive or planned migration due to slow on set climate change impacts
- Human Rights law: complimentary protection + non-refoulement
 - fails to address pre-emptive or planned migration due to slow on set climate change impacts
- UNFCCC + customary 'no harm rule' – legal basis for reparations
 - Adoption of an additional protocol or new convention to deal specifically with environmental migrations?
 - Regional approach under the umbrella framework of the UNFCCC

SOFT LAW approaches

- The Sendai Framework for Disaster Risk Reduction (2015-2030)
- 2012 Nansen Initiative
 - 2015 Agenda for the Protection of Cross-Border Displaced Persons
- 2016 Platform on Disaster Displacements

THE SENDAI FRAMEWORK FOR DISASTER RISK REDUCTION (2015-2030)

4 priorities for action:

1. Understanding disaster risk
2. Strengthening disaster risk governance to manage disaster risk
3. Investing in disaster risk reduction for resilience
4. Enhancing disaster preparedness for effective response and to “Build Back Better” in recovery, rehabilitation and reconstruction

Seven global targets of the Sendai Framework:

- Substantially reduce global disaster mortality by 2030
- Substantially reduce the number of affected people globally by 2030
- Reduce direct disaster economic loss in relation to global gross domestic product (GDP) by 2030
- Substantially reduce disaster damage to critical infrastructure and disruption of basic services, among them health and educational facilities, including through developing their resilience by 2030.
- Substantially increase the number of countries with national and local disaster risk reduction strategies by 2020.
- Substantially enhance international cooperation to developing countries through adequate and sustainable support to complement their national actions for implementation of this Framework by 2030
- Substantially increase the availability of and access to multi-hazard early warning systems and disaster risk information and assessments to the people by 2030

THE NANSEN INITIATIVE

- was a state-led, bottom-up consultative process intended to identify effective practices and build consensus on key principles and elements to address the protection and assistance needs of persons displaced across borders in the context of disasters, including the adverse effects of climate change
- The Nansen Initiative does not seek to develop new legal standards, but rather to build consensus among states on the elements of a protection agenda, which may include standards of treatment. Its outcomes may be taken up at domestic, regional and global levels and lead to new laws, soft law instruments or binding agreements
- *The Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*

THE AGENDA FOR THE PROTECTION OF CROSS-BORDER DISPLACED PERSONS IN CONTEXT OF DISASTERS AND CLIMATE CHANGE

- Conceptualizes a comprehensive approach to disaster displacement that primarily focuses on protecting cross-border disaster-displaced persons
- Compiles a broad set of effective practices that could be used by States and other actors to ensure more effective future responses to cross-border disaster-displacement
- Highlights the need to bring together and link multiple policies and action areas to address cross-border disaster-displacement and its root causes, and calls for the increased collaboration of actors in these fields
- Identifies three priority areas for enhanced action by States, (sub-)regional organizations, the international community as well as civil society, local communities, and affected populations to address existing gaps.

PLATFORM ON DISASTER DISPLACEMENT (PDD)

- a process led by 18 states and chaired by Germany with Bangladesh as vice-chair, was launched as successor to the Nansen Initiative
- Its purpose is to address the protection needs of people displaced across borders in the context of disasters and climate change, through promoting the implementation of the Nansen Initiative Protection Agenda
- 3 pillars: the Steering Group, the Advisory Committee, the Coordination Unit

STRATEGIC PRIORITIES OF THE PDD

- Address knowledge and data gaps
- Enhance the use of identified effective practices
- Promote policy coherence and mainstreaming of human mobility challenges in, and across, relevant policy and action areas
- Promote policy and normative development in gap areas

CASE STUDIES

- Tuvalu
 - migration likely to be planned and gradual in response to slow onset disasters
 - likely to involve full scale relocation of entire communities – generally an option of last resort
 - locally-led migration within the region as a preference
 - regional approach under the UNFCCC umbrella seems the best approach
 - possibly refugee law and human rights law in case of sudden onset climate events
- Somalia
 - many interlinked factors, including climate change
 - if combined with an armed conflict : refugee protection – not applicable to planned migration
 - UNFCCC relevant for adaptation measures
- Bangladesh
 - people wish to move to locations well beyond the region
 - New specific convention? unrealistic at the moment
 - UNFCCC + HR law

CONCLUSIONS

- Choosing a combination of approaches may prove the most effective way of filling the protection gaps
- The strongest legal basis to deal with pre-emptive and planned migration is through the UNFCCC framework
- Additional international protection is needed!
 - Possible teleological interpretation of existing law? Potential for claims for reparations before domestic and international courts
 - New sui generis convention? Resource intensive, difficult to negotiate, possibly duplicative of work or objectives of other treaties or bodies
 - New codification at regional level seems attainable

THANK YOU
FOR YOUR
ATTENTION

