

**UNHCR AND CLIMATE CHANGE, DISASTERS, AND DISPLACEMENT**

**Guy S Goodwin-Gill and Jane McAdam**

**2017**



**UNHCR**

**United Nations High Commissioner for Refugees**  
Haut Commissariat des Nations Unies pour les réfugiés

## Table of Contents

A	Introduction .....	3
B	Background.....	5
1	<i>Strengthening emergency humanitarian assistance by the UN</i> .....	5
2	<i>UNHCR's role in the GPC</i> .....	8
3	<i>UNHCR's role in the field</i> .....	9
C	Policy developments: UNHCR on climate change and disaster-related displacement ....	10
1	<i>Environmental displacement (1990s)</i> .....	10
2	<i>Displacement in the context of climate change and disasters (2000s)</i> .....	11
3	<i>The 2011 pilot proposal</i> .....	14
4	<i>The December 2011 Ministerial meeting and the creation of the Nansen Initiative</i> ....	18
5	<i>Other significant international developments</i> .....	19
D	UNHCR's mandate.....	20
E	2017 UNHCR Mapping Report and interviews .....	22
F	General findings .....	25
1	<i>UNHCR's role</i> .....	25
2	<i>UNHCR's 'added value' in providing protection in the context of climate change and disasters</i> .....	26
3	<i>Protection information and planning</i> .....	28
G	Challenges and opportunities for UNHCR.....	29
1	<i>Slow-onset drivers</i> .....	30
2	<i>Internal displacement</i> .....	30
3	<i>Cross-border displacement</i> .....	31
4	<i>Prevention, preparedness, and solutions</i> .....	33
5	<i>The way ahead</i> .....	33

UNHCR disclaims any liability or responsibility arising from the use of this report. The responsibility for opinions expressed in this report rests solely with its authors, and publication does not constitute an endorsement by UNHCR of the opinions expressed therein.

The authors and UNHCR extend their gratitude to the Government of Switzerland, whose funding made this report possible.

## A Introduction

In a recent talk, the Envoy of the Platform on Disaster Displacement, Achim Steiner, considered the question of a protection agenda for people displaced by the impacts of climate change and disasters.<sup>1</sup> There is no doubt, he said, that their numbers will increase, for the risks of disaster displacement have doubled since 1970<sup>2</sup> and numerous legal gaps remain to be filled. The drivers of displacement are multi-causal, to the point perhaps at which disaggregation gets in the way of a necessary focus on needs, and new legal and institutional challenges are emerging. While a number of international initiatives have touched on these issues – such as the Sustainable Development Goals, the Sendai Framework for Disaster Risk Reduction, the World Humanitarian Summit, the New York Declaration for Refugees and Migrants, and, most notably, the Nansen Initiative on Disaster-Induced Cross-Border Displacement and its successor, the Platform on Disaster Displacement – more is required, both with regard to the capacity to anticipate displacement, and to determine what kind of ‘protection’ is called for, by whom, and where. Neither the Global Compact on Refugees nor the Global Compact on Safe, Orderly and Regular Migration is likely to provide the answers, but there remains considerable scope for institutional, rights-based developments.

The links between climate change, disasters, and other causes of displacement are now undisputed. As UNHCR’s new five-year strategic plan notes, conflict is not the only driver of displacement. In addition to serious human rights abuses and poor governance, people are ‘on the move because of acute poverty, the collapse of traditional livelihoods in a context of globalization and rapid urbanization, the effects of climate change, natural disasters, and environmental degradation which often exacerbate competition over scarce resources. Often these various factors overlap or reinforce others.’<sup>3</sup>

The inter-linkages between such factors were highlighted by UNHCR’s Assistant High Commissioner for Protection at the Global Consultation for the Nansen Initiative on Disaster-Induced Cross-Border Displacement in October 2015. He explained that people increasingly leave their homes ‘as a result of the interaction between environmental degradation, natural hazards, and climate change and the effects of rapid urbanisation, water insufficiency, and food and energy insecurity’, exacerbated by ‘[d]esertification, drought, flooding, and the growing severity of disasters’.<sup>4</sup> People who move in such circumstances ‘are often doubly vulnerable due to the locations and the conditions in which they live as well as the risk they face of repeated displacement.’<sup>5</sup>

---

<sup>1</sup> Presentation at the Refugee Studies Centre 35<sup>th</sup> Anniversary Conference (Oxford, 17 March 2017). Achim Steiner was formerly Executive Director of the United Nations Environmental Programme (UNEP). He is now Director of the Oxford Martin School (<http://www.oxfordmartin.ox.ac.uk/>) and Envoy of the Chair of the Platform on Disaster Displacement (<http://disasterdisplacement.org/>).

<sup>2</sup> The Internal Displacement Monitoring Centre (IDMC) prepares annual estimates of people evacuated or forced to flee owing to rapid-onset hazards, but little information is available regarding the duration of displacement, rates of return, post-flight migration patterns, or adaptation. Also, there are *no* global estimates of those displaced by slow-onset hazards, whether or not linked to other triggers, such as drought, environmental degradation and resource conflicts. See IDMC, *Global Report on Internal Displacement 2016* (2016) 14–31, 36, 65–66, 79.

<sup>3</sup> UNHCR, *UNHCR’s Strategic Directions 2017–2021* (UNHCR, 16 January 2017) 7.

<sup>4</sup> Volker Türk, ‘Keynote Address’, The Nansen Initiative, *Global Consultation Conference Report: Geneva, 12–13 October 2015* (December 2015) 67. On the role of food insecurity, see UNHCR, ‘Legal Considerations on Refugee Protection for People Fleeing Conflict and Famine Affected Countries’ (5 April 2017) <http://www.refworld.org/docid/5906e0824.html>.

<sup>5</sup> *Ibid.*, 68.

The drivers of displacement today are profound and complex, and this will continue into the future. Climate change can both contribute to conflicts that cause displacement, and can exacerbate existing displacement situations.<sup>6</sup> In addressing displacement in these contexts, protection needs must always be front and centre.

Nevertheless, it is clear that some States and key stakeholders (including some UNHCR staff) have concerns regarding UNHCR's engagement, which largely reflect those expressed earlier in regard to the internally displaced. These include: (a) the 'sovereignty issue', and the apprehension that the UN and its partner organizations will interfere in the domestic affairs of the State concerned;<sup>7</sup> (b) the 'core mandate issue', and the argument that activities related to disaster displacement will detract from UNHCR's first responsibility to provide international protection and to seek solutions for refugees forcibly displaced across borders; (c) the related 'resources issue', which fears that funding will either not be forthcoming, or that it will be diverted from core activities; and (d) the general suspicion of anything that looks like 'mission creep'.

This report looks closely at these concerns in 'historical' perspective, for many of them have been examined time and again, but seeks also to situate them in an already rich body of practice. It notes the extent to which UNHCR's involvement with disaster displacement has been welcomed, and that the protection dimensions to humanitarian assistance do not themselves appear to be in question. The report considers UNHCR's role within the UN system overall, especially in the Inter-Agency Standing Committee (IASC), the Advisory Group on Climate Change and Human Mobility, and the Global Protection Cluster. It examines the nature of 'protection', and briefly considers the 'mandate' question.

The purpose of this report is to provide recommendations to UNHCR on its future institutional strategy on displacement in the context of disasters and climate change, identifying key areas of focus for the short, medium, and long term. The recommendations have been informed by an extensive review of the academic and institutional literature, 40 interviews with UNHCR staff and other relevant stakeholders, and an analysis of UNHCR's engagement in this area over the past decade-and-a-half.

At the outset, it is relevant to note that UNHCR's new strategic plan indicates two clear areas for engagement on this issue. First, UNHCR will 'contribute to advancing legal, policy and practical solutions for the protection of people displaced by the effects of climate change and natural disasters, in recognition of the acute humanitarian needs associated with displacement of this kind, and its relationship to conflict and instability'.<sup>8</sup> Secondly, UNHCR will 'contribute to any inter-agency response to emergencies resulting from natural disasters, with a particular focus on providing protection leadership, where the three criteria of field presence, a government request and inter-agency agreement are met'.<sup>9</sup> The present report endorses and elaborates on these to provide tailored recommendations on an agency-wide approach to addressing climate change, disasters, and displacement now and into the future.

---

<sup>6</sup> Volker Türk, 'A Minor Miracle: A New Global Compact on Refugees' (Launch Address, Grand Challenge on Refugees & Migrants, UNSW Sydney, 18 November 2016).

<sup>7</sup> The General Assembly regularly emphasizes or re-emphasizes that 'that protection of and assistance to internally displaced persons are primarily the responsibility of States', but also commonly adds, 'in appropriate cooperation with the international community'. See, for example, UNGA res 71/172, 'Office of the United Nations High Commissioner for Refugees' (19 December 2016) para 12.

<sup>8</sup> UNHCR, *UNHCR's Strategic Directions 2017–2021* (UNHCR, 16 January 2017) 18.

<sup>9</sup> *Ibid*, 21.

## B Background<sup>10</sup>

In January 2005, the High Commissioner for Refugees found a particularly sympathetic response to his request that States suspend all forced returns to areas affected by the 2004 Boxing Day tsunami, namely India, Indonesia, the Maldives, Somalia, and Sri Lanka. The humanitarian need was obvious, and States were likely swayed by the apparently short-term nature of the request. However, such assumptions cannot be taken for granted in every situation where the sudden impacts of a disaster, or the longer-term impacts of climate change, force people to move.

It may be wondered why UNHCR, an organization generally associated with refugees, should have a role in climate change and disaster-related displacement, most of which is expected to take place internally;<sup>11</sup> and why, if it happens to be able to provide assistance because of its global reach and access to resources, it should also engage in ‘protection’. In fact, a considerable body of practice confirms that the two are inextricably linked, not in a directly contingent way, but consequential on overarching institutional responsibilities.

### 1 *Strengthening emergency humanitarian assistance by the UN*

2005 was the same year in which the UN Secretary-General reported on the need to strengthen the coordination of UN emergency humanitarian assistance. His report identified ‘significant capacity gaps’ in, among others, shelter and camp management and protection. It recognized that the protection of civilians is primarily the responsibility of States, but also that ‘the humanitarian system must work to fill protection gaps’,<sup>12</sup> and that ‘[p]artnerships within the system may be necessary to overcome those gaps in assistance – such as protection and camp management in situations involving internally displaced persons – that do not enjoy leadership from any one agency.’<sup>13</sup> These goals were intended to be achieved, in part, through the IASC, chaired by the Emergency Relief Coordinator (ERC). Set up to be the primary mechanism for coordinating the UN’s humanitarian assistance activities, the IASC involves both UN and non-UN actors,<sup>14</sup> comprising UN operational agencies (UNDP, UNICEF, UNHCR, WFP, FAO,

---

<sup>10</sup> This section draws in part on UNHCR, ‘UNHCR Institutional Strategy: Climate Change and Disaster Displacement’ (internal document, September 2016); Jane McAdam, ‘From the Nansen Initiative to the Platform on Disaster Displacement: Shaping International Approaches to Climate Change, Disasters and Displacement’ (2016) 39 *UNSW Law Journal* 1512; Jane McAdam, ‘Creating New Norms on Climate Change, Natural Disasters and Displacement: International Developments 2010–13’ (2014) 29(2) *Refugee* 11.

<sup>11</sup> UK Government Office for Science, *Foresight: Migration and Global Environmental Change: Future Challenges and Opportunities* (UK Government Office for Science 2011) 37; Asian Development Bank, *Addressing Climate Change and Migration in Asia and the Pacific: Final Report* (Asian Development Bank, 2012) viii, 4; Nansen Initiative on Disaster-Induced Cross-Border Displacement, *Agenda for the Protection of Cross-Border Displaced Persons in the context of Disasters and Climate Change* (October 2015) 9 <https://www.nanseninitiative.org/global-consultations/>.

<sup>12</sup> UN Secretary-General, *Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations: Report of the Secretary-General*, UN Doc A/60/87-E/2005/78 (23 June 2005) para 28. In his 1997 report, *Renewing the United Nations: A Programme for Reform: Report of the Secretary-General*, UN Doc A/51/950 (14 July 1997) 2, the Secretary-General had also made a number of proposals intended to promote ‘greater unity of purpose, coherence of efforts, and agility in responding to the many challenges [the UN] faces’ (2). Human rights, in particular, was identified as the one issue cutting across the other substantive areas of peace and security, economic and social affairs, development cooperation, and humanitarian affairs. See also UNGA res 52/152, ‘Renewing the United Nations: A Programme for Reform’ (12 November 1997) (A); (19 December 1997) (B).

<sup>13</sup> *Strengthening of the Coordination of Emergency Humanitarian Assistance* (n 12) para 37; see also paras 53–58.

<sup>14</sup> UNGA res 46/182, ‘Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations’ (19 December 1991) Annex, para 38.

WHO, UN-HABITAT, and OCHA), and one non-UN agency, IOM. The ‘Principals’ include the ERC, as Chair, the executive heads of seven UN agencies (UNDP, UNHCR, FAO, WHO, WFP, UNFPA, and UNICEF) and IOM as ‘full members’, plus nine ‘standing invitees’.<sup>15</sup>

In August 2005, an ERC-commissioned ‘humanitarian response review’ examined complex (man-made) emergencies and natural disasters, preparedness and response capacities, and at protection in relation to the latter.<sup>16</sup> It found ‘a conspicuous lack of recognition of a generally accepted definition of the meaning and requirements of protection’.<sup>17</sup> While protection can certainly be seen as covering, for example, physical presence, bilateral and multilateral diplomacy, training, education, data collection, dissemination, advocacy, and access, at the ground level, it commonly comes down to issues of rights.<sup>18</sup>

The review concluded that the major weaknesses in situations of internal displacement were due to the absence of accountability and leadership. The impact of the ERC and of its field-level counterparts, the Humanitarian Coordinators, was ‘in practice minimized by the lack of operational accountability among UN agencies for addressing IDP needs’.<sup>19</sup> What was needed was ‘a more explicit model where, sector operational accountability [would] be clearly identified at the level of a designated organization, following standards to be agreed upon. Responsibilities to be covered ... [we]re: (a) planning and strategy development, (b) standard-setting, (c) implementation and monitoring, (d) advocacy.’<sup>20</sup> The review recommended that the ERC consult with the IASC Principals and major stakeholders to agree on designating operational accountability for the various sectors and cross-cutting areas to respond to the protection and care of IDPs.<sup>21</sup>

In resolution 60/124 of 15 December 2005, the UN General Assembly took note of the Secretary-General’s Report and reaffirmed ‘the principles of neutrality, humanity, impartiality and independence for the provision of humanitarian assistance.’ It also encouraged the ERC to strengthen coordination, and called on relevant UN and other organizations to work with OCHA ‘to enhance the coordination, effectiveness and efficiency of humanitarian assistance’.<sup>22</sup>

Some two months’ earlier, the UNHCR Executive Committee had also taken account of both the review and the work of the IASC. It encouraged UNHCR ‘to continue to explore the feasibility of taking on coordination responsibilities for clusters related’ to IDPs and ‘in support

---

<sup>15</sup> In addition, the ICRC, IFRC, OHCHR, UNFPA, the Special Rapporteur on the Human Rights of IDPs, and the World Bank are ‘standing invitees’, and the NGO consortia ICVA, InterAction, and the Steering Committee for Humanitarian Response (SCHR) also attend. For further information, see [www.interagencystandingcommittee.org](http://www.interagencystandingcommittee.org).

<sup>16</sup> See *Humanitarian Response Review: An Independent Report commissioned by the United Nations Emergency Relief Coordinator and Under-Secretary-General for Humanitarian Affairs, Office for the Coordination of Humanitarian Affairs* (August 2005). The report was prepared by Costanza Adinolfi, David S Bassiouni, Halvor Fossum Lauritzsen, and Howard Roy Williams.

<sup>17</sup> *Ibid.*, section 4.2, 30–31.

<sup>18</sup> cf *Strengthening of the Coordination of Emergency Humanitarian Assistance* (n 12) 31.

<sup>19</sup> *Humanitarian Response Review* (n 16) para 2.7.2.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.* See also Annex VIII, 95, ‘Lead Agency and Clustering Chart’, suggesting general responsibilities of a collaborative rather than directive character.

<sup>22</sup> UNGA res 60/124, ‘Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations’ (15 December 2005) para 8. The General Assembly specifically emphasized the need for a strengthened role for the senior UN resident official responsible for coordination, and for strengthened support to UN resident/humanitarian coordinators and to UN country teams; paras 9–11.

of United Nations humanitarian coordinators’, and looked forward to working out, together with UNHCR, how it might respond to these new commitments without prejudice to its ‘core mandate’.<sup>23</sup> The General Assembly subsequently adopted much the same language in resolution 60/128 on ‘assistance to refugees, returnees and displaced persons in Africa’.<sup>24</sup>

Meanwhile, in September 2005, the IASC Principals assigned responsibility to UNHCR in three areas: (a) the protection of conflict-generated IDPs; (b) the provision of emergency shelter; and (c) the coordination and management of IDP camps. UNHCR also had a role in other clusters, including shared responsibility with OHCHR and UNICEF in the Global Protection Cluster (GPC) for ensuring the protection of people displaced by disasters.<sup>25</sup>

Given its centrality in humanitarian action, achieving protection as practice and outcome depends on *shared* responsibility.<sup>26</sup> What it requires in a situation of internal displacement may not always be apparent, while the means for its promotion may appear far removed from those available for the protection of refugees. First, if UNHCR is present, it is by consent of the State, rather than on the strength of a universal mandate established and consistently endorsed by the General Assembly. Secondly, the State, as General Assembly resolutions repeatedly recall, remains primarily responsible for those displaced within its borders, and even if bound by international obligations to protect, it does not necessarily follow that UNHCR has the necessary legal standing to act on behalf of the displaced. In fact, the nature and the need of protection are commonly evident at the operational level, as are the modalities of providing protection while also providing humanitarian assistance.

It is therefore not surprising that a 2016 review by the GPC of six country operations<sup>27</sup> drew attention to the need to prevent and mitigate violations of the rights of ‘persons of concern’.<sup>28</sup> It emphasized the need to ensure non-discriminatory access to services; improve social cohesiveness and resilience; save lives and attenuate suffering; promote respect for international law, international human rights law, and international humanitarian law, as appropriate; strengthen the capacity of both governmental institutions and community-based actors; enhance child protection; assist survivors of sexual and gender-based violence (SGBV) and take measures to prevent and reduce the risks of its occurrence; systematically identify protection risks; address shelter, property, and land issues; and take actions on mines. Clearly, protection will depend on context, and those displaced by the impacts of disasters or climate change will have different needs and face different risks. Nevertheless, a rights-based approach at all phases of displacement (including through to its resolution) is essential for successful, lasting outcomes.

---

<sup>23</sup> UNHCR Executive Committee, General Conclusion on International Protection No 102 (LVI) (2005) para (x); UNHCR Executive Committee, Report of the 56<sup>th</sup> Session of the Executive Committee of the High Commissioner’s Programme, UN Doc A/AC.96/1021 (7 October 2005) para 20.

<sup>24</sup> UNGA res 60/128, ‘Assistance to Refugees, Returnees and Displaced Persons in Africa’ (16 December 2005) paras 16, 26.

<sup>25</sup> See, among others, UNHCR Executive Committee, ‘UNHCR’s Role in Support of an Enhanced Humanitarian Response to Situations of Internal Displacement: Policy Framework and Implementation Strategy’, UN Doc EC/58/SC/CRP.18 (5 June 2007) para 8; Informal Consultative Meeting of the Executive Committee, ‘The Protection of Internally Displaced Persons and the Role of UNHCR’ (27 February 2007) paras 12–13.

<sup>26</sup> Global Protection Cluster, *The Centrality of Protection in Humanitarian Action: A Review of Field and Global Clusters in 2016* (2016). The centrality of protection ‘means more than protection mainstreaming. It includes ensuring that leadership, coordination, and engagement in protection and all sectors is more strategic, aligned and directed toward a stronger response’ (4).

<sup>27</sup> Iraq, South Sudan, Whole of Syria, Nigeria, Ukraine, and Yemen.

<sup>28</sup> On the meaning and scope of this notion, see ‘UNHCR’s mandate’ (Part D) below.

The IASC's 2016 policy on protection emphasizes these objectives, within a framework of legal responsibility and multi-sectoral activity.<sup>29</sup> The strategic framework for 2016–19,<sup>30</sup> endorsed by the ERC, also underlines the need for timely, high quality, and relevant protection in what is both a political and a developmental environment.

## 2 UNHCR's role in the GPC

UNHCR field offices have commonly provided assistance and protection to those displaced by the impacts of disasters, working with governments and supplying necessary material resources. This has occurred regardless of whether the GPC has been formally activated or not.<sup>31</sup> Examples include UNHCR's engagement in the Philippines following the 2009 typhoons and in Pakistan after the 2010 floods. In addition, UNHCR operations have at times extended to people displaced across international borders as a result of sudden- and slow-onset impacts of climate change and disasters, such as in Haiti and the Dominican Republic following the 2010 earthquake,<sup>32</sup> and in the combination of persecution, conflict, drought, and famine which resulted in large movements from Somalia to Kenya in 2011–12.

When the GPC is formally activated, the three protection-mandated agencies – UNHCR, UNICEF, and OHCHR<sup>33</sup> – consult closely with the Humanitarian Coordinator/Resident Coordinator and agree which should take the lead. In 2016, UNHCR led 25 'conflict operations', UNICEF led two disaster operations (Nepal and Malawi), and OHCHR led one operation (Liberia). UNHCR also leads the protection clusters in Ethiopia and Myanmar, both of which began as 'conflict' but are now mixed conflict/disaster situations. Following the 2010 floods in Pakistan, UNHCR led the inter-agency cluster on protection, and also on camp coordination and management and emergency shelter.<sup>34</sup>

Since 1999, UNHCR has engaged in more than 40 operations for those displaced internally by disasters, at least 35 of which have been outside the 'cluster model'. For example, the GPC was not activated following the 2016 earthquake in Ecuador, but UNHCR led protection activities during the emergency phase, alongside government counterparts – a useful reminder of the *complementarity* of UNHCR's contribution and that of the UN at large. Following the

---

<sup>29</sup> Inter-Agency Standing Committee Policy on Protection in Humanitarian Action (October 2016) [https://interagencystandingcommittee.org/system/files/iasc\\_policy\\_on\\_protection\\_in\\_humanitarian\\_action\\_0.pdf](https://interagencystandingcommittee.org/system/files/iasc_policy_on_protection_in_humanitarian_action_0.pdf)

<sup>30</sup> Global Protection Cluster, 'Strategic Framework 2016–19' [http://www.globalprotectioncluster.org/assets/files/about\\_us/GPC\\_strategy/gpcstrategicframework.pdf](http://www.globalprotectioncluster.org/assets/files/about_us/GPC_strategy/gpcstrategicframework.pdf).

<sup>31</sup> UNHCR, *Mapping of UNHCR Activities: Climate Change and Disaster Displacement* (internal document, May 2017) 7. It should also be noted that while UNHCR provided protection and/or assistance of disaster IDPs in at least 43 situations, this only involved UNHCR's leadership of an officially activated Protection Cluster in eight situations (the majority occurring during the 2011 pilot phase, discussed in Part C.3 below).

<sup>32</sup> Significantly, UNHCR's presence in both Haiti and the Dominican Republic facilitated admission and assistance to those displaced by the earthquake and generally contributed to a broad spectrum of protection activities.

<sup>33</sup> OHCHR's recent report, *Promotion and Protection of the Human Rights of Migrants in the context of Large Movements* (2016) UN Doc A/HCR/33/67, provides a timely reminder of the necessity to ensure that human rights are at the centre of the response to large movements, that the particular needs of individuals and groups should be identified, and that due account should be taken of the drivers of movement, including climate change, while doing more to address them. See also HRC res 32/14, 'Protection of the Human rights of Migrants: Strengthening the Promotion and Protection of the Human Rights of Migrants, including in Large Movements' (1 July 2016).

<sup>34</sup> UNHCR (n 31) 18; see also Appendix D (Table of UNHCR Operations in Disaster Situations (1999–2016)).



emergency phase, UNHCR's continuing work with UNICEF and UN Women helped to build capacity and mainstream protection with local State and non-governmental actors.<sup>35</sup>

### 3 *UNHCR's role in the field*

UNHCR's extensive involvement with disaster displacement is set out in the 2017 Mapping Report, examined in more detail below. The following examples offer a brief 'protection perceptive' on the common features and differences that have arisen, depending on context and circumstance.

When the earthquake struck Haiti in 2010, UNHCR was not present and OHCHR led the protection cluster. However, UNHCR undertook monitoring in order to strengthen its role outside Haiti, for example, across the border in the Dominican Republic and in other countries where family reunion or complementary pathways to protection, such as humanitarian visas, were available. In-country, UNHCR assisted IDPs in finding solutions, including return and access to livelihoods, and assisted UNICEF and the Haitian government to address potential statelessness issues (through birth registration), the risk of trafficking, and the promotion of family reunion. UNHCR also took steps to provide protection against secondary involuntary displacement and to combat SGBV.

UNHCR was already present in Pakistan on the occasion of major floods in 2010, and the protection cluster had been activated. The challenges in providing humanitarian assistance were to identify and assist the vulnerable; ensure fair and non-discriminatory access to resources and to registration; provide protection against SGBV and trafficking; advise and assist on land and property disputes, where possible; and, in due course, to promote and assist voluntary, sustainable returns. To these ends, UNHCR undertook monitoring and assessments, including 'rapid protection assessments' with vulnerable families; coordinated GPC initiatives, for example, on SGBV; and, through its training and capacity-building with national authorities, had a positive impact on the processes of regulation.

When the typhoons hit the Philippines in 2009, the government requested international assistance and the GPC was activated, with UNHCR taking the lead. UNHCR already had a long history of involvement with the Philippines government (stemming from the time of the Indo-China refugee crisis in the 1970s and 1980s, and thereafter with regard to contingency planning for emergencies, training, and IDP returns). UNHCR's efforts following the typhoons concentrated on advocacy and capacity-building with the national authorities, other cluster participants, and civil society, while dealing with protection concerns that included: the risk of SGBV, particularly because of over-crowding in evacuation centres;<sup>36</sup> unequal access to relief; unaccompanied and separated children; identification of and assistance to those with special needs; the loss of identity and other documents; and the loss of land and housing, especially for 'irregular dwellers'. Indigenous peoples and the urban poor were particularly vulnerable by reason of their living in high-risk areas. In addition, various 'structural problems' were apparent in assistance delivery, owing to the disaster's disproportionate impact and the absence of a clear protection focus in national relief and recovery strategies.

---

<sup>35</sup> Ibid.

<sup>36</sup> Many of the evacuation centres were in schools which needed to be returned to academic purposes; the risk of 'premature closure' in turn increased the risk of secondary displacement.

UNHCR had to determine the personal scope, or reach, of its assistance activities. To this end, it decided to focus on anyone ‘affected’ by the typhoons, whether displaced or not; and it adopted ‘a general rights framework ... using need and vulnerability as sole criteria for prioritization’.<sup>37</sup> The ‘displacement lens’ alone was seen to be insufficient as an indicator of protection needs.

As GPC leader, UNHCR saw its role as being to clarify what protection is, which protection concerns might arise in a disaster setting, and what kind of responses were both possible and permissible from a protection perspective.<sup>38</sup> Given the self-evident fact that the Philippines remains at risk of similar disasters, UNHCR’s record of engagement with national authorities means that it is well-placed to contribute to mainstreaming protection through the development of doctrine and standards for relief, planned relocation, and assistance.<sup>39</sup>

As the ‘End of Mission’ report noted, the government’s ‘attitudes towards protection are cautiously positive although jealous of national prerogatives’.<sup>40</sup> A later internal UNHCR post-operation review noted that protection clusters need to be activated extremely quickly, and that decision-making with regard to leadership ‘must enable the almost immediate deployment of an agency with the adequate capacity for such a task’.<sup>41</sup> In addition, together with well-grounded analysis of the nature of the existing protection regime, if any, and of actual and potential protection needs, a clear exit strategy is required. The ‘primary responsibility’ of the State, moreover, demands that the international contribution be oriented towards capacity-building in national and local government institutions.

## **C Policy developments: UNHCR on climate change and disaster-related displacement**

### ***1 Environmental displacement (1990s)***

From a policy perspective, UNHCR’s concerted engagement with climate change and disaster-related displacement began in 2007, although some work was done in the 1990s on environmental displacement.<sup>42</sup> A 1991 report by an Executive Committee Working Group on Solutions and Protection identified a number of categories of displaced people, including those ‘forced to leave or prevented from returning because of man-made disasters’, and those ‘forced to leave or prevented from returning because of natural or ecological disasters or extreme

---

<sup>37</sup> Josep Zapater (Senior Protection Officer, UNHCR), ‘End of Mission Report: Typhoon Situation in the Philippines, 7 October–9 November 2009’ (internal UNHCR document, 24 November 2009).

<sup>38</sup> For earlier affirmations of its *droit de regard* role in relation to cluster partners, see UNHCR Executive Committee, ‘UNHCR’s Role’ (n 25) para 37; Informal Consultative Meeting (n 25) para 32.

<sup>39</sup> At the Executive Committee in 2011, the Philippines expressed gratitude to UNHCR ‘for its support in dealing with humanitarian protection challenges linked inter alia to conflict, climate change and natural disasters’: Summary Record of the 651<sup>st</sup> Meeting, UN Doc A/AC.96/SR.651 (30 December 2011) para 52. UNHCR continues to provide support to the Philippines on protection in disaster situations. For instance, in April 2017 the UNHCR Bangkok regional office, together with the Philippines Department of Social Welfare and Development, held a workshop for authorities on ‘Protection in Preparedness and Response’.

<sup>40</sup> Zapater (n 37) para 25.

<sup>41</sup> ‘Note on the Engagement of UNHCR in the Typhoon Response in the Philippines’ (internal UNHCR document, no date, unsigned).

<sup>42</sup> This was discussed in 1990–91 in a UNHCR Executive Committee Working Group on Solutions and Protection: for an overview, see Nina Hall, *Displacement, Development, and Climate Change: International Organizations Moving beyond Their Mandates* (Routledge 2016) 55–56. Perusal of Executive Committee records from this period, however, show that the linked terms of ‘environment’ and ‘displacement’ were most commonly raised in relation to the environmental impact of refugee camps on host communities.

poverty'.<sup>43</sup> The Working Group identified key features of such displacement, including that most disaster-related displacement would be internal; some would result from 'long-term, cumulative and cyclical processes' (not just sudden occurrences); States' coping capacity would be dependent in part on their level of development; States have a responsibility to implement national disaster preparedness management programmes to plan for, and mitigate the effects of, disasters; and greater coordination was needed between agencies to respond systematically and promptly to victims of disasters.<sup>44</sup> It also noted that while UNHCR's competence 'does not normally extend to those persons displaced inside their own countries as a result of natural or ecological disaster or extreme poverty', there would be some people with protection needs whose reasons for flight had been exacerbated by disasters.<sup>45</sup> These features re-emerged in discussions over a decade later about displacement in the context of disasters and climate change, although ostensibly without any recollection of this earlier analysis.

## 2 *Displacement in the context of climate change and disasters (2000s)*

The strong personal conviction of High Commissioner António Guterres (2005–15) in large part drove UNHCR's engagement with the issue. His opening statement to the Executive Committee in 2007 was the first to mention environmental degradation and climate change as drivers of displacement.<sup>46</sup> He subsequently called on States to address contemporary circumstances in which there are 'more and more people forced to move because of extreme deprivation, environmental degradation and climate change',<sup>47</sup> arguing that UNHCR had a 'duty to alert states to these problems and help find answers to the new challenges they represent'.<sup>48</sup> He said that this was 'in line with [its] statutory responsibility for the progressive development of international law in areas of [its] concern',<sup>49</sup> and its role as the UN agency 'with responsibilities and expertise in the area of forced displacement'.<sup>50</sup>

In 2008, the High Commissioner created an internal task force on climate change to ensure that UNHCR adopted a consistent approach, monitored relevant developments, and provided input

---

<sup>43</sup> See Report of the Working Group on Solutions and Protection, 42<sup>nd</sup> Session of the Executive Committee of the High Commissioner's Programme, UN Doc EC/SCP/64 (12 August 1991) para 8.

<sup>44</sup> Ibid, paras 32–33, 35.

<sup>45</sup> Ibid, para 35.

<sup>46</sup> Key Executive Committee discussions occurred in 2007 and 2011, beginning with the Opening Statement by Mr António Guterres, United Nations High Commissioner for Refugees, 58<sup>th</sup> Session of the Executive Committee of the High Commissioner's Programme (Geneva, 1 October 2007) <http://www.unhcr.org/en-us/admin/hcspeeches/4700eff54/opening-statement-mr-antonio-guterres-united-nations-high-commissioner.html> in which he listed environmental degradation and climate change among reasons for flight.

<sup>47</sup> Statement by Mr António Guterres, United Nations High Commissioner for Refugees, to the Third Committee of the United Nations General Assembly, 62<sup>nd</sup> Session (New York, 8 November 2007) <http://www.unhcr.org/en-au/admin/hcspeeches/476132d84/statement-mr-antonio-guterres-united-nations-high-commissioner-refugees.html>.

<sup>48</sup> Ibid.

<sup>49</sup> José Riera, 'Challenges relating to Climate Change Induced Displacement' (Remarks by Senior Adviser to the Director of International Protection, UNHCR) at 'Millions of People without Protection: Climate Change Induced Displacement in Developing Countries' Conference, Berlin, 29 January 2013, 6 [http://www.dgvn.de/fileadmin/user\\_upload/BILDER/bilder\\_veranstaltungen/2013/Tagung\\_Klimaflucht\\_29-1/Riera\\_Vortrag\\_Jose\\_Riera.pdf](http://www.dgvn.de/fileadmin/user_upload/BILDER/bilder_veranstaltungen/2013/Tagung_Klimaflucht_29-1/Riera_Vortrag_Jose_Riera.pdf).

<sup>50</sup> António Guterres, 'Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective' (23 October 2008) 1 <http://www.unhcr.org/4901e81a4.html>. See also remarks of UNHCR staff in Nina Hall, 'Climate Change and Organizational Change in UNHCR' in Michelle Leighton, Xiaomeng Shen, and Koko Warner (eds), *Climate Change and Migration: Rethinking Policies for Adaptation and Disaster Risk Reduction* (United Nations University 2011) 106, 111, who stated that the High Commissioner had signalled his intention in internal meetings to shift UNHCR from a 'refugee' agency to a 'forced migration' agency.

into the IASC Task Force on climate change. Through the latter, UNHCR co-led the sub-group on migration and displacement, helping to develop a common humanitarian advocacy strategy on the issue, and preparing joint submissions to the annual United Nations Framework Convention on Climate Change (UNFCCC) Conference of the Parties (COPs).

UNHCR's first policy paper on climate change and displacement was published in 2008 (and revised in 2009) and identified three areas of engagement for the agency: operations management, protection strategies, and advocacy.<sup>51</sup> Other policy papers began to be produced in-house and commissioned from external experts, and UNHCR issued updates of its own involvement with these issues.<sup>52</sup>

In the meantime, the UN's initiatives to strengthen the coordination of humanitarian assistance also led to UNHCR's closer involvement with the full spectrum of protection needs in situations of internal displacement.<sup>53</sup>

In 2010, UNHCR's Background Paper to the High Commissioner's Dialogue on Protection Challenges placed disasters and climate change on the agenda as new drivers of displacement.<sup>54</sup> For the first time, it also directed attention towards possible normative responses, suggesting that 'additional tools might be required to translate the needs of the displaced into tangible forms of protection'.<sup>55</sup> A side event on climate change and displacement was convened during the Dialogue and was well attended by State representatives and others, including the High Commissioner.<sup>56</sup> However, there remained some internal debate within UNHCR about how heavily involved the agency should become in the issue.<sup>57</sup>

As noted above, UNHCR was, in practical terms, already actively (and generally successfully) engaged in contributing to the assistance and protection needs of those displaced by disasters on the ground. Yet, there were concerns that the GPC was not working as well as it should. Although it was assumed that protection required a presumptive lead in disasters at the field level, clusters were not always activated, either promptly or at all. The issues were set out simply and clearly in a 22 September 2010 letter from the Permanent Representative of Australia to the High Commissioner:

- There was broad agreement that a protection gap existed in natural disaster situations and that UNHCR was well placed to fill it where no clear leadership was present and

---

<sup>51</sup> UNHCR, 'Climate Change, Natural Disasters and Human Displacement: A UNHCR perspective' (UNHCR 2009) <http://www.unhcr.org/protection/environment/4901e81a4/unhcr-policy-paper-climate-change-natural-disasters-human-displacement.html>.

<sup>52</sup> See eg UNHCR, 'UNHCR, The Environment and Climate Change: An Overview' (UNHCR 2014) [http://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR-theEnvironmentandClimate\\_Change-final.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR-theEnvironmentandClimate_Change-final.pdf); UNHCR, 'UNHCR, The Environment and Climate Change: An Overview' (UNHCR updated version 2015) <http://www.unhcr.org/540854f49.pdf>; UNHCR, 'UNHCR Quick Guide: Climate Change and Disaster Displacement' (May 2017); UNHCR, 'Climate Change and Disaster Displacement: An Overview of UNHCR's Role' (2017).

<sup>53</sup> See the discussion on the GPC below.

<sup>54</sup> UNHCR, 'Protection Gaps and Responses' (Background paper, 30 November 2010) 2 <http://www.unhcr.org/4cebeeee9.html>.

<sup>55</sup> Ibid.

<sup>56</sup> UNHCR, 'Side Event to High Commissioner's Dialogue on Protection Challenges 2010: Climate Change and Displacement' (8 December 2010) <http://www.unhcr.org/4cff4c709.html>.

<sup>57</sup> Hall (n 50) 111 explains that as at mid-2010, the planning was still in its formative stages. While there were suggestions that the meeting could examine how protection gaps might be filled, and that disasters might be one feature, nothing had been decided at that point in time.

where the affected State specifically requested assistance. This was a job UNHCR was already doing, and formalizing the existing arrangements would facilitate a more predictable, prompt, and prepared protection response in natural disaster situations;

- Further clarification was nevertheless required from UNHCR before States could give their support to UNHCR assuming a formal protection role;
- Some were concerned that formalizing UNHCR's protection role in natural disaster situations could adversely affect its core capacity. Some also were of the view that UNHCR should focus on fulfilling its existing mandate;
- States were very keen on further information and analysis about the impact of a formal protection role on UNHCR's capacity to fulfil its core mandate, and on its financial and human resources;
- It was felt that UNHCR should map out more clearly its operational relationship with partner organizations, including OHCHR, OCHA, and UNICEF;
- Some States thought that the proposal should be considered in the context of a larger debate on resourcing for natural disasters and climate change, particularly given the difficulty of predicting the future scope and scale of UNHCR's engagement. Moreover, the UNHCR proposal should not detract from building States' own disaster risk reduction, management, and response capacity, and the protection capacity of other organizations;
- Finally, there was no appetite to revisit UNHCR's mandate.<sup>58</sup>

In his reply of 27 September 2010, the High Commissioner sought to allay these concerns, emphasizing the primacy of UNHCR's mandated activities, the steps taken to protect resources for those purposes, and the need to raise new funds for disaster situations.<sup>59</sup> He also underlined UNHCR's investment in recruitment, training and partnerships, so as to be able to respond simultaneously to mandate and IDP challenges; and stressed the 'value-added' for refugees which came from UNHCR's engagement in broader humanitarian activities undertaken at the request of the State.

In the lead-up to the Ministerial meeting in December 2011 to commemorate the 60<sup>th</sup> anniversary of the Refugee Convention, UNHCR sought to renew States' interest in normative developments.<sup>60</sup> It wanted States to agree to the development of a global guiding framework on cross-border displacement for situations not covered by the Refugee Convention, including in the context of climate change and disasters. This was given impetus by a number of

---

<sup>58</sup> Drawn from letter on file internally with UNHCR. See also UNHCR Division of International Protection, 'UNHCR's Leadership of the Protection Cluster in Natural Disasters' (24 June 2010) for a summary of the background, UNHCR's experience and role to date, and proposals for leadership and implementation.

<sup>59</sup> Letter on file internally with UNHCR.

<sup>60</sup> UNHCR, Intergovernmental Event at the Ministerial Level of Member States of the United Nations on the Occasion of the 60th Anniversary of the 1951 Convention relating to the Status of Refugees and the 50th Anniversary of the 1961 Convention on the Reduction of Statelessness (7–8 December 2011), *Background Note for the Roundtables*, UN Doc HCR/MINCOMMS/2011/08 (18 November 2011) 4. UNHCR also undertook some early normative work on statelessness and climate change-related displacement, but there is now a general consensus that this is not a fruitful area to pursue, given that there are so many variables involved (such as unsettled questions in international law as to when a State would cease to exist) and the other areas where UNHCR could better invest its energy. That said, there are useful lessons that could be adapted from the statelessness context, such as where births are not registered, registries are destroyed (eg through flooding), women cannot pass on nationality, and so on, which may become problematic in disaster situations or where people move and cannot pass on their nationality to their children. For example, in the aftermath of the Haitian earthquake in 2010, UNHCR had a role to play in preventing statelessness in Haiti and neighbouring States in which people of Haitian descent were living undocumented and without birth registration, thus hindering their access to basic rights.

developments in 2010–11,<sup>61</sup> including the adoption in December 2010 of paragraph 14(f) of the Cancún Adaptation Framework, pursuant to which States were invited to ‘enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at national, regional and international levels’.<sup>62</sup>

In February 2011, UNHCR organized an Expert Meeting on Climate Change and Displacement in Bellagio. Arguably, one of its strategic purposes was to equip UNHCR with a sound and contemporary expert evidence base to provide some endorsement for its end-of-year objective. Participants broadly agreed that:

There is a need to develop a global guiding framework or instrument to apply to situations of external displacement other than those covered by the 1951 Convention, especially displacement resulting from sudden-onset disasters. States, together with UNHCR and other international organizations, are encouraged to explore this further. Consideration would need to be given to whether any such framework or instrument ought also to cover other contemporary forms of external displacement.<sup>63</sup>

Further:

Given the magnitude of the issues involved, there is a need for a collaborative approach based on principles of international cooperation and burden- and responsibility-sharing. UNHCR’s expertise on the protection dimensions of displacement makes it a particularly valuable actor.<sup>64</sup>

These findings provided important stimuli for the Nansen Conference on Climate Change and Displacement in the 21<sup>st</sup> Century, which was held in Oslo in June 2011 and strongly supported by UNHCR.<sup>65</sup> Its outcome – the Nansen Principles – reflected many of the key messages from UNHCR’s Bellagio expert meeting, including the idea of a global guiding framework.<sup>66</sup> They also emphasized States’ responsibility to ensure that adequate legislation, institutions, and resources were put in place, especially with respect to disaster risk reduction (DRR) strategies.<sup>67</sup>

### **3      *The 2011 pilot proposal***

On 26 October 2010, the High Commissioner wrote to the ERC regarding the gap in predictable leadership of the protection cluster at the country level, and suggesting parameters for UNHCR’s future involvement. These would require two critical pre-conditions: (a) the clear consent of the State concerned; and (b) a request by the Humanitarian Coordinator, following

---

<sup>61</sup> For a detailed analysis, see McAdam 2014 (n 10) and the literature cited there.

<sup>62</sup> Decision 1/CP.16, The Cancún Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention, UN Doc FCCC/CP/2010/7/Add.1 (15 March 2011) para 14(f), <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf#page=4> See.

<sup>63</sup> UNHCR, ‘Summary of Deliberations on Climate Change and Displacement’ (Bellagio Expert Meeting, 22–25 February 2011) 1 <http://www.unhcr.org/4da2b5e19.pdf>.

<sup>64</sup> *Ibid.*, 2.

<sup>65</sup> In UNHCR’s view, it ‘fed directly’ into that forum: Riera (n 49) 5.

<sup>66</sup> UNHCR (n 63) 1–2.

<sup>67</sup> Nansen Principles, the recommendations stemming from the Nansen Conference on Climate Change and Displacement in the 21<sup>st</sup> Century (Oslo, 6–7 June 2011) Principles II, V, VI [https://www.regjeringen.no/globalassets/upload/ud/vedlegg/hum/nansen\\_prinsipper.pdf](https://www.regjeringen.no/globalassets/upload/ud/vedlegg/hum/nansen_prinsipper.pdf).

close consultations with the government and the humanitarian country team. Where a protection coordination mechanism already existed and was led by another agency, then UNHCR would support that agency as lead (as it had done in Haiti). If no such mechanism existed and no other agency was prepared to take the lead, however, then it would be UNHCR's duty to fill the gap. The ERC confirmed her agreement by letter dated 15 November 2010, suggesting that, as a general rule, UNHCR be designated the protection cluster lead in disaster situations unless the consent of the State concerned was not forthcoming. She confirmed that OHCHR and UNICEF were on side, and suggested that the arrangement be piloted for 12 months. The High Commissioner agreed by letter of 7 December 2010, and the proposal was considered and adopted by the IASC Principals meeting on 15 December 2010.<sup>68</sup>

In January 2011, notice of the proposed pilot was circulated to members of the UNHCR Executive Committee. The High Commissioner gave assurances regarding core mandate responsibility, and stated his expectation that UNHCR's protection leadership in disasters could help to keep asylum space open and improve refugee protection.<sup>69</sup>

Many States welcomed the proposal at the Informal Consultative Meeting, approving the suggestion for a post-pilot review and evaluation and reiterating the call for inter-agency consultation. UNHCR prepared for the issue to be debated at the June Standing Committee, but found that earlier expressions of support began to evaporate.<sup>70</sup> A number of delegations recognized the need for strategies to deal with evolving forms of displacement, but others now urged prudence, suggesting that UNHCR focus instead on ensuring more effective implementation of existing tools. Although almost half the delegates expressed in-principle support for UNHCR's leadership role, many had reservations about the desirability of permitting UNHCR to assume additional responsibilities and activities.<sup>71</sup> Support for UNHCR's leadership role continued, but with some reservations as to its desirability. The promise of an evaluation appeared to inspire a call for more 'empirical evidence' on which to assess resource-related and other implications. The majority of States finally appeared unconvinced by the information provided so far; some focused on mandate responsibilities, while others called for further independent evaluation, 'as well as discussion amongst agencies

---

<sup>68</sup> Letters on file internally with UNHCR.

<sup>69</sup> Letter of 17 January 2011 from the High Commissioner to the Chair of the Executive Committee. The Executive Committee itself was briefed at an Informal Consultative Meeting on 2 February 2011. UNHCR also responded in detail to questions raised by the US Assistant Secretary of State for Population, Refugees and Migration, dealing with inter-agency relations, resource implications, funding and disaster risk reduction (a matter which UNHCR emphasized fell squarely within the mandates of other agencies). A number of other government concerns were raised by the African Group in the form of certain 'understandings', namely: (a) that the consent of the State concerned would be required not only before, but also during the entire operation, which the State could terminate at any time; (b) the area of operations would be determined by the State, in consultation with UNHCR; (c) any UNHCR operation in natural disaster situations would be financed through voluntary contributions and not have any impact on its core mandate programmes; (d) durable solutions programmes will not be applicable in the case of natural disasters; (e) one key UNHCR objective will be to assist in building the national capacity of the country concerned, so that it may be able to deal with such situations in the future; and (f) all UNHCR operations will be conducted in full coordination and cooperation with the State concerned.

<sup>70</sup> UNHCR Executive Committee, Report of the 51<sup>st</sup> Meeting of the Standing Committee (21–23 June 2011), UN Doc A/AC.96/1104 (20 September 2011). See generally UNHCR Executive Committee, 'UNHCR's Role in Support of an Enhanced Humanitarian Response for the Protection of Persons Affected by Natural Disasters' (6 June 2011), UN Doc EC/62/SC/CRP.19, para 4 and sources cited there; UNHCR Executive Committee, 'Questions and Answers on UNHCR's Protection Cluster Coordination Role in Natural Disasters' (23 February 2011), UN Doc EC/62/SC/INF./1; Bryan Deschamp, Michelle Azorbo, and Sebastian Lohse, *Earth, Wind and Fire: A Review of UNHCR's Role in Recent Natural Disasters*, UNHCR PDES/2010/06 (June 2010).

<sup>71</sup> UNHCR Executive Committee, 'UNHCR's Role' (n 70) para 31.

and States, including at the level of the General Assembly, before assigning these overall protection coordination responsibilities to UNHCR'.<sup>72</sup>

Thus, even though the proposal sought to do little more than formalize the role that UNHCR had assumed in practice in seven disasters between 2004 and 2011,<sup>73</sup> '[t]here was a clear call for postponement of any designation of responsibility as lead agency for protection in situations of natural disaster until outstanding questions were answered'.<sup>74</sup>

Notwithstanding this, the discussions at the time are still remarkable for the extent of State support for UNHCR's continuing involvement with displacement linked to climate change and disasters. Indeed, the nature of States' objections suggested that the most fruitful way forward was greater dialogue with States about the issue, and more experience with inter-agency cooperation in meeting the needs of those displaced by disasters. At the full Executive Committee meeting in October 2011, the High Commissioner confirmed that UNHCR would continue to work to protect those displaced in such circumstances on a case-by-case basis.<sup>75</sup> States accepted that there was a protection leadership gap, that displacement was an issue, and that UNHCR had a role to play.

For example, Norway called attention to the scale of the famine in the Horn of Africa, to the increasing number of those displaced by natural hazards, and to the lack of an appropriate protection framework.<sup>76</sup> Spain also referred to the Horn of Africa and the intensifying conflict to which the effects of climate change and economic crises were contributing.<sup>77</sup> Germany noted that the humanitarian system needed to adapt to address issues 'such as climate change, new patterns of natural disasters, flood and water insecurity, and armed conflicts'.<sup>78</sup> Morocco supported 'revitalizing' dialogues on protection challenges;<sup>79</sup> the Netherlands again welcomed the pilot project proposal;<sup>80</sup> and China and Namibia supported strengthening the emergency response system and coordination with other agencies.<sup>81</sup> Mexico emphasized that the international dialogue on the *protection* of those displaced by disasters should be pursued with all humanitarian agencies, in order to develop effective global responses,<sup>82</sup> while from a non-State perspective, HIAS and ECOWAS supported UNHCR's leadership on disaster displacement.<sup>83</sup> France, picking up a point made in that year's 'Note on International Protection',<sup>84</sup> expressed interest in the idea of developing a 'global guiding framework on

---

<sup>72</sup> Report of the 51<sup>st</sup> Meeting (n 70) paras 30–33.

<sup>73</sup> UNHCR Executive Committee, 'UNHCR's Role' (n 70) para 9.

<sup>74</sup> Report of the 51<sup>st</sup> Meeting (n 70) para 32.

<sup>75</sup> UNHCR Executive Committee, Summary Record of the 648<sup>th</sup> Meeting, UN Doc A/AC.96/SR.648 (3 October 2011) para 15. See also UNHCR Executive Committee, Summary Record of the 649<sup>th</sup> Meeting, UN Doc A/AC.96/SR.649 (3 October 2011) para 25, noting that the protection issues were comparable to those in disaster situations.

<sup>76</sup> UN Doc A/AC.96/SR.649 (n 75) paras 2, 5; see also the remarks of Djibouti, para 8.

<sup>77</sup> UN Doc A/AC.96/SR.651 (n 39) para 40. See also Costa Rica, para 44 and Chad, para 80.

<sup>78</sup> UN Doc A/AC.96/SR. 649 (n 75) paras 9–10.

<sup>79</sup> *Ibid.*, para 57.

<sup>80</sup> *Ibid.*, para 103.

<sup>81</sup> UN Doc A/AC.96/SR.651 (n 39) paras 20, 24.

<sup>82</sup> UNHCR Executive Committee, Summary Record of the 652<sup>nd</sup> Meeting, UN Doc A/AC.96/SR.652 (5 October 2011) para 9. See also UNHCR Executive Committee, Summary Record of the 654<sup>th</sup> Meeting, UN Doc A/AC.96/SR.654 (6 October 2011) para 5 (Ireland); cf UNHCR's reference in 2007 to its '*droit de regard*' (n 38).

<sup>83</sup> UNHCR Executive Committee, Summary Record of the 653<sup>rd</sup> Meeting, UN Doc A/AC.96/SR.653 (5 October 2011) paras 13, 19.

<sup>84</sup> UNHCR Executive Committee, Summary Record of the 1068<sup>th</sup> Meeting, UN Doc A/AC.96/1068 (28 June 2011) para 16.



climate change related displacement and other major international trends'.<sup>85</sup> Only the Russian Federation and India sounded a note of caution, the former arguing that the international protection regime should continue to be regulated by the 1951 Convention and its 1967 Protocol and that UNHCR's mandate should not be changed;<sup>86</sup> and the latter, that noting that care was required 'to keep asylum issues and migration issues, including causal factors such as climate change, quite separate'.<sup>87</sup>

The High Commissioner concluded by again stressing that it was important to acknowledge that there were gaps in the protection regime relating to new forms of displacement caused by multiple factors. While the 'traditional' concerns were again apparent, no State objected to UNHCR's protection role as such. Thus, although a number of concerns in 2011 may have slowed progress, UNHCR was nevertheless able to keep the issues live; play an increasingly active role in responding to protection needs;<sup>88</sup> and engage in progressive development through its contribution to State-led initiatives outside the framework of the Executive Committee.

In November 2011, the High Commissioner addressed the UN Security Council. He explained that increasing numbers of people were 'being forced to flee due to reasons that are not covered by the 1951 Refugee Convention',<sup>89</sup> describing climate change as 'the defining challenge of our times ... which is adding to the scale and complexity of human displacement'.<sup>90</sup> He argued that the international community should 'formulate and adopt a set of principles, specifically designed to reinforce the protection of and to find solutions for people who have been forced to leave their own country as a result of catastrophic environmental events, and who may not qualify for refugee status under international law'.<sup>91</sup>

---

<sup>85</sup> UN Doc A/AC.96/SR.654 (n 82) para 4. Ms Ingres (France) asked whether the IDP and refugee protection instruments were sufficient to address those new forms of displacement. A discussion on global protection challenges seemed all the more important if UNHCR were to become more involved in protection efforts in disasters. Topics that would repay further study included how to react to growing numbers of cases, what status and protection to offer to those displaced as a result of climate change, and what responsibility States should bear.

<sup>86</sup> UN Doc A/AC.96/SR.649 (n 75) para 60.

<sup>87</sup> UN Doc A/AC.96/SR.652 (n 82) para 5. See also Report of the 51<sup>st</sup> Meeting of the Standing Committee (n 70) paras 30–34.

<sup>88</sup> For example, in April 2014, OCHA and UNHCR issued a joint note on mixed displacement situations and coordination in practice, setting out respective institutional accountabilities and roles; this was clarified further in September 2016.

<sup>89</sup> António Guterres, 'Maintenance of International Peace and Security: New Challenges to International Peace and Security and Conflict Prevention' (statement by the UN High Commissioner for Refugees, United Nations Security Council Briefing, New York, 23 November 2011) 2 <http://www.unhcr.org/4ee21edc9.html>.

<sup>90</sup> *Ibid.*, 3. He did note, however, that climate change is not an independent variable but rather interacts with and reinforces 'other global imbalances'.

<sup>91</sup> *Ibid.*, 5–6.

#### 4 *The December 2011 Ministerial meeting and the creation of the Nansen Initiative*

At UNHCR's Ministerial meeting in December 2011, there was no consensus on the development of a global guiding framework on cross-border displacement, including in relation to the impacts of climate change. Only five States lent their formal support to the idea: Costa Rica, Germany, Mexico, Norway, and Switzerland.<sup>92</sup> Noting that a more coherent international approach was required to meet the protection needs of people displaced across borders on account of disasters (including in the context of climate change), and referring to the Nansen Principles, they pledged 'to cooperate with interested states and other relevant actors, including UNHCR, with the aim of obtaining a better understanding of such cross border movements at relevant regional and sub-regional levels, identifying best practices and developing consensus on how best to assist and protect the affected people.'<sup>93</sup>

To implement this pledge, in October 2012 Norway and Switzerland created a new inter-governmental process – the Nansen Initiative on Disaster-Induced Cross-Border Displacement. It marked the most significant institutional development on climate change, disasters, and human mobility up to that point in time. As a State-led, bottom-up consultative process, it sought 'to build consensus on the development of a protection agenda addressing the needs of people displaced across international borders by natural disasters, including the effects of climate change.'<sup>94</sup> This was developed via a series of sub-regional consultations, civil society meetings, and expert meetings. Pursuant to an EU grant held by UNHCR to support Nansen Initiative activities, UNHCR co-organized (with the Brookings Institution and Georgetown University) an expert meeting to develop protection guidelines on internal planned relocations, held in Sanremo in March 2014.<sup>95</sup> This was followed in mid-2015 by a more focused meeting in Bellagio, at which guidance was drafted and subsequently disseminated to States.<sup>96</sup> UNHCR also commissioned a special issue of *Forced Migration Review* on disasters and displacement in a changing climate,<sup>97</sup> and held side events on the Nansen Initiative at each Executive Committee meeting between 2012–16 (with the exception of 2015, which coincided with the Nansen Initiative's own Global Consultation). In December 2015, UNHCR's High Commissioner's Dialogue on Protection Challenges had a core thematic session on 'Addressing "New" Root Causes: Environmental Degradation, Natural Hazards, Climate Change, Food Security, Water Scarcity and Urbanization'.

To ensure that the lessons from the Nansen Initiative process were incorporated into relevant international processes, UNHCR convened and coordinated an inter-agency Advisory Group on Climate Change and Human Mobility from October 2013.<sup>98</sup> That group provided joint

---

<sup>92</sup> Costa Rica pledged its support after the meeting.

<sup>93</sup> UNHCR, *Pledges 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons (Geneva, Palais des Nations, 7–8 December 2011)* (UNHCR 2012) 101 (Norway); see also 77 (Germany), 95 (Mexico), 117 (Switzerland).

<sup>94</sup> The Nansen Initiative, 'Towards a Protection Agenda for Disaster-Induced Cross-Border Displacement: Information Note' (20 October 2013) 1.

<sup>95</sup> A number of interviewees expressed surprise at UNHCR's focus on planned relocations. There was an overall sense that this was more opportunistic (in terms of available funding) than strategic (in terms of UNHCR's expertise).

<sup>96</sup> Brookings Institution, Georgetown University, and UNHCR, *Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation* (7 October 2015) <http://www.unhcr.org/protection/environment/562f798d9/planned-relocation-guidance-october-2015.html>. In 2017, operational guidance on certain aspects will be released.

<sup>97</sup> (2015) 49 *Forced Migration Review* <http://www.fmreview.org/climatechange-disasters.html>.

<sup>98</sup> Composed of UNHCR, IOM, the United Nations University Institute for Environment and Human Security (UNU-EHS), UNDP, NRC, IDMC, Refugees International, the University of Liège, and the Arab Network for

submissions to the UNFCCC and gave technical support to UNFCCC parties in the lead-up to the Paris climate change negotiations. It also provided a forum for disseminating research and publications, and holding high-level side events at key global meetings.

At the Global Consultation in October 2015, the Nansen Initiative presented its outcome document, the Agenda for the Protection of Cross-Border Displaced Persons in the context of Disasters and Climate Change. This non-binding document, endorsed by 109 States, outlines the normative gaps in addressing displacement, migration, and planned relocation in the context of disasters and climate change, and suggests concrete steps that States can take at the national, regional, and international levels to address them. Rather than calling for a global guiding framework or a new treaty, the Protection Agenda adopts a ‘toolkit’ approach that identifies effective practices which States can incorporate into their own laws and policies. Many of its recommendations are being spearheaded by its successor body, the Platform on Disaster Displacement, established in 2016.<sup>99</sup>

## 5 *Other significant international developments*

Other significant developments over this period included the incorporation of important language on human mobility in the Sendai Framework for Disaster Risk Reduction 2015–2030,<sup>100</sup> the 2030 Agenda for Sustainable Development,<sup>101</sup> and the 2015 Paris Outcome on climate change.<sup>102</sup> The Agenda for Humanity, annexed to the UN Secretary-General’s report for the 2016 World Humanitarian Summit, called on States to:

Adopt an appropriate international framework, national legislation and regional cooperation frameworks by 2025 to ensure countries in disaster-prone regions are prepared to receive and protect those displaced across borders without refugee status.<sup>103</sup>

The Secretary-General’s report for the 19 September 2016 high-level meeting on large movements of refugees and migrants in New York further underscored the displacement risks posed by the impacts of disasters and climate change, noting the need for strengthened international cooperation and protection, and more attention to root causes.<sup>104</sup>

What began as three separate areas of work – addressing policy gaps related to ‘climate change refugees’, addressing gaps in operational responses to disaster IDPs, and addressing the impact of climate change on persons of concern – has gradually converged and become far more

---

Environment and Development (RAED). Many interviewees described this as a very constructive, collaborative process. Interested organizations spoke with one voice, and this was regarded as very effective in putting forward clear, united messages and policy suggestions. This group succeeded an earlier IASC group (2008–11), which was followed by a ‘network approach’ (via email and biannual seminars) which was ad hoc and largely ineffective.

<sup>99</sup> See further McAdam 2016 (n 10); <http://disasterdisplacement.org/>.

<sup>100</sup> Sendai Framework for Disaster Risk Reduction 2015–2030, UN Doc A/RES/69/283 (23 June 2015) <http://www.preventionweb.net/files/resolutions/N1516716.pdf>.

<sup>101</sup> Transforming Our World: The 2030 Agenda for Sustainable Development, UN Doc A/RES/70/1 (25 September 2015) [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E).

<sup>102</sup> UNFCCC, Decision 1/CP.21, Adoption of the Paris Agreement, UN Doc FCCC/CP/2015/10/Add.1 (29 January 2016).

<sup>103</sup> UN Secretary-General, *One Humanity: Shared Responsibility* (Report of the Secretary-General for the World Humanitarian Summit), UN Doc A/70/709 (2 February 2016) Annex, viii.

<sup>104</sup> UN Secretary-General, *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants* (Report of the Secretary-General), UN Doc A/70/59 (21 April 2016), paras 3, 18, 27, 47, 93, 119.

nuanced.<sup>105</sup> There has been an increasing degree of organizational interest and diversity of activities.

Over the past five years, there have been significant attitudinal changes among States in terms of their awareness of the impact of disasters and climate change on displacement, their willingness to engage with it, and their acceptance of UNHCR's role in both operational and standard-setting areas.<sup>106</sup> This may be explained by the considerable evidence-based and conceptual thinking developed by the Nansen Initiative and other processes in which UNHCR was closely involved, as well as by UNHCR having actively demonstrated its operational response capacity by responding to a number of disaster-related displacement situations.<sup>107</sup> UNHCR continues its work as an important partner of the Platform on Disaster Displacement, taking the lead on a number of activities. It is also closely involved with the Task Force on displacement related to the adverse impacts of climate change, established at the Paris climate change negotiations under the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts.

In hindsight, it can be argued that UNHCR's early work on climate change, disasters, and displacement was visionary, if premature, in creating a global roadmap for action.

#### **D UNHCR's mandate**

UNHCR's 'mandate' is determined first by its Statute, adopted by the General Assembly in December 1950. However, in light of its status as a subsidiary organ of the General Assembly, it is also determined by such instructions or policy directives as it receives from that body and/or the Economic and Social Council (ECOSOC).<sup>108</sup> References to UNHCR's 'core mandate' commonly imply the functions set out in paragraph 1 of the Statute ('providing international protection' to refugees, and 'seeking permanent solutions' for the problem of refugees). These functions necessarily have significance historically and because they are 'integrated' into the international *legal* regime of refugee protection (including the 1951 Convention and its 1967 Protocol relating to the Status of Refugees, and numerous regional counterparts), but they also need to be understood in context and in the light of UNHCR's role as the UN refugee *and protection* agency.

The relationship between UNHCR's refugee responsibilities and its broader humanitarian role has always been one of dynamic tension, with the institutional responsibilities endorsed by States not necessarily being perfectly matched by, or coterminous with, their international legal obligations.<sup>109</sup> This tension has sometimes underlain discussion regarding the personal scope of UNHCR's mandate. Already in 1973, the General Assembly requested the High

---

<sup>105</sup> UNHCR (n 31) 14.

<sup>106</sup> See eg 'Conference Statement and Official Delegations Supporting the Protection Agenda' (13 October 2015) in The Nansen Initiative, *Global Consultation Conference Report: Geneva, 12–13 October 2015* (Geneva, December 2015) 59–60, which (at 60) welcomes 'an institutional arrangement strengthening the coordination and cooperation between UNHCR, IOM and other relevant organizations.'

<sup>107</sup> See UNHCR (n 31), Appendix D (Table of UNHCR Operations in Disaster Situations (1999–2016)).

<sup>108</sup> See Statute of the Office of the United Nations High Commissioner for Refugees, UNGA res 428 (V) (14 December 1950) para 3: 'The High Commissioner shall follow policy directives given him by the General Assembly or the Economic and Social Council.' See also para 9: 'The High Commissioner shall engage in such additional activities, including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal.'

<sup>109</sup> This is most evident, perhaps, in the 'gap' between the State's protection obligations and UNHCR's role and responsibility to seek solutions.

Commissioner ‘to continue his assistance *and protection* activities in favour of refugees within his mandate as well as for those to whom he extends his good offices or is called upon to assist in accordance with relevant resolutions of the General Assembly’.<sup>110</sup> In 1977, the High Commissioner asked the Executive Committee to clarify the distinction between refugees and displaced persons.<sup>111</sup> Although no formal advice was forthcoming, a broad understanding of UNHCR’s protection responsibilities continued to be reflected in General Assembly resolutions.<sup>112</sup>

UNHCR’s competence and responsibilities have broadened considerably since it was established, moving from the Statute, through good offices and assistance, to protection and solutions. The class of beneficiaries has likewise moved from those defined in the Statute, through those outside competence assisted on a good offices basis, to those defined in relevant resolutions of the General Assembly and directives of the Executive Committee, arriving finally at a general class of persons whose protection is of concern to the international community, namely, refugees in the sense of the UNHCR Statute and the 1951 Convention and its 1967 Protocol, other refugees as covered by regional treaties and arrangements, certain groups of ‘externally’ displaced persons, IDPs, stateless persons, and others ‘of concern’ to UNHCR and for whom the General Assembly or States may request appropriate interventions.

Apart from purely humanitarian considerations, this evolution is evidence of awareness by the international community that protection commonly needs to be addressed in situations of humanitarian crisis, no less than assistance, and that the lack of protection itself is a defining issue of international concern. That ‘deficit’ may occur as a matter of law, or it may be evident from the facts. It may be due to fear of persecution or human rights violations, to some man-made disaster, such as conflict or violence, or it may be incidental to disasters resulting from natural hazards. The 1986 Report of the Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees, for example, avoided definitional problems, concentrating instead on ‘coerced movements’, where the element of compulsion ‘was to be understood in a wide sense covering a variety of natural, political and socio-economic causes or factors which directly or indirectly force people to flee’.<sup>113</sup>

As noted above, the 1991 Executive Committee Working Group on Solutions and Protection, referred to above,<sup>114</sup> specifically discussed the question of protection for people displaced by

---

<sup>110</sup> UNGA res 3143 (XXVIII) (14 December 1973) para 2 (emphasis added).

<sup>111</sup> For the High Commissioner’s statement to the Executive Committee, see Report of the 28<sup>th</sup> Session of the UNHCR Executive Committee, UN Doc A/AC.96/549 (19 October 1977) Annexe, and for a summary of the views of States, see paras 21, 26. The High Commissioner’s opening statement is summarized at paras 9–16; his query regarding the distinction between refugees and displaced persons is summarized at para 14.

<sup>112</sup> For example, UNGA res 32/68 (8 December 1977) noted ‘the outstanding work ... performed ... in providing international *protection* and material assistance to refugees and displaced persons’ (emphasis added), while UNGA res 35/41 (25 November 1980) para 1 referred to UNHCR’s responsibilities ‘for *protecting* and assisting refugees and displaced persons throughout the world’ (emphasis added).

<sup>113</sup> ‘International Co-operation to Avert New Glows of Refugees: Note by the Secretary-General’, UN Doc A/41/324 (13 May 1986) para 26. The Note also considers natural disasters and *force majeure* as a cause of refugee flows, including ‘heavy floods, prolonged drought, soil erosion and desertification, which can either threaten directly the life and security of a people or can pose such a threat indirectly by causing a severe deterioration in the economic situation, particularly the food and health situation’ (para 42). It recommended that States, individually and collectively and with relevant international organizations, make provision and take appropriate measures to avert refugee flows that may be caused by natural disaster (para 66(g)).

<sup>114</sup> See n 43. The Report was ‘accepted with appreciation’ by the Sub-Committee of the Whole on International Protection, which recommended further discussions: Report of the Sub-Committee, UN Doc A/AC.96/781 (9 October 1991) paras 2–18.

disasters, and a discussion paper on ‘persons of concern’ submitted to an inter-sessional meeting of the Executive Committee in April 1992 noted the disjuncture between the ‘obligation’ of the international community to provide protection, and the discretionary responses of States.<sup>115</sup> While it was generally recognized that the protection issues had to be dealt with, it was not clear how to proceed.<sup>116</sup> To a large extent, the ‘academic’ debate has now been overtaken by UNHCR’s operational engagement with displacement situations having a multitude of ‘causes’, and by its contributions to strengthening coordination of the UN humanitarian response system.

The ‘mandate’, ‘core mandate’, and ‘sovereignty’ objections can thus be seen as interlinked. Those displaced internally by disasters are, of course, citizens still within their own country who are entitled to the protection of their rights and well-being by their own State. The State’s options and actions may be configured and determined by international law and obligation, but the State itself remains primarily responsible.<sup>117</sup> That is one reason why the contribution and cooperation of the international community is appropriately seen as *complementary* to the efforts of the State, and why capacity-building and training, with a view to enabling and strengthening national institutions, are critical in any future strategy. The concerns expressed regarding mandate and State sovereignty are useful reminders of the role of international agencies as ‘enablers’, even if protection itself remains a matter of international concern.

## **E 2017 UNHCR Mapping Report and interviews**

An internal mapping report of UNHCR’s work on climate change and disaster-related displacement, prepared in December 2016 to assist with the present study, highlights the extent of UNHCR’s engagement in this area. Activities span all areas of the organization, from the High Commissioner to field offices, and range from advocacy, to legal/policy development, to operations. The mapping report identified five key areas of UNHCR’s activities to date:<sup>118</sup>

1. Operationally, the agency undertakes **effective practices** both to prevent and to address internal and cross-border disaster displacement.
2. On legal support and development, UNHCR has extensive experience working to develop and support new **national legislation, international and regional norms, and guidance**, to better protect the rights of people displaced in the context of disasters and climate change.
3. On a policy level, the agency has further undertaken activities to **promote policy coherence** and ensure that issues of disaster displacement are effectively mainstreamed across other relevant policy arenas.
4. To fill conceptual and knowledge gaps that underpin this operational and policy work, UNHCR has also undertaken and commissioned significant **research and data collection**.

---

<sup>115</sup> ‘Protection of Persons of Concern to UNHCR who fall outside the 1951 Convention: A Discussion Note’, UN Doc EC/SCP/1992/CRP.5 (April 1992). The African Group and the Latin America Group also submitted a paper on the scope, respectively, of the OAU Convention and the Cartagena Declaration: UN Doc EC/SCP/1992/CRP.6 (1992).

<sup>116</sup> Report of the 13–14 April Meeting, UN Doc EC/SCP/71 (7 July 1992) paras 31–44.

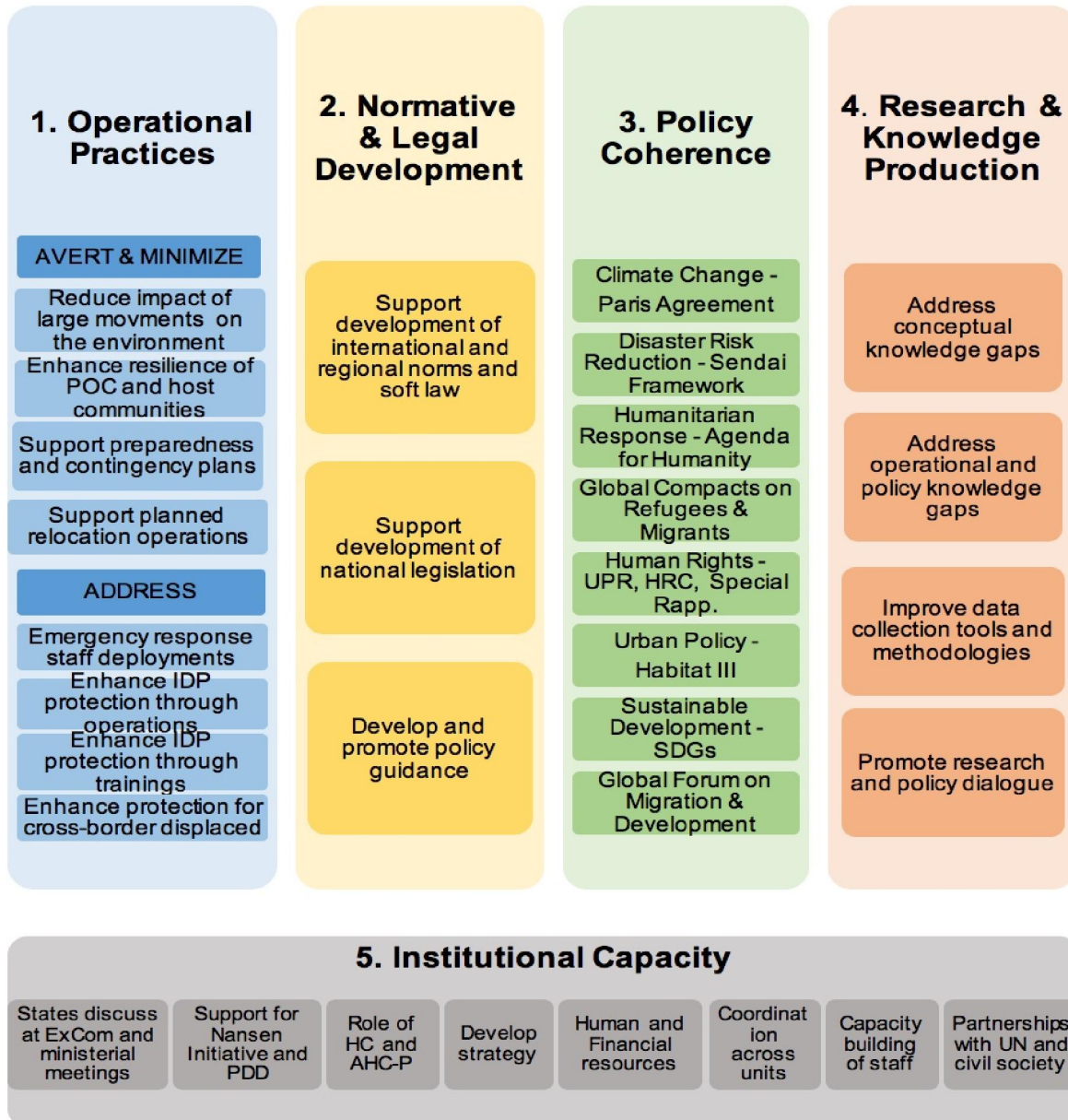
<sup>117</sup> Cf UNGA res 71/172, ‘Office of the United Nations High Commissioner for Refugees’ (19 December 2016) para 12. See also International Law Commission, Report of the International Law Commission, 68<sup>th</sup> Session, UN Doc A/71/10 (2016) Ch IV, ‘Protection of Persons in the event of Disasters’, Draft articles and Commentary, draft art 5.

<sup>118</sup> A ‘matrix’ of activities provides a very detailed picture: *ibid*, 14–35.



5. And finally, UNHCR has made efforts to bolster the agency’s **institutional capacity** to undertake activities in the preceding four key areas in an effective and strategic manner, consistent with its role and mandate.<sup>119</sup>

The following infographic summarizes these areas.<sup>120</sup>



While the mapping report revealed a considerable number of activities, it was apparent that they had been undertaken in an ad hoc and largely disconnected manner, with no systematic institutional strategy to provide direction and coherence. This was emphasized by a number of interviewees who expressed surprise at the range and breath of these activities, noting that they had been previously unaware of them. Additionally, many of the documented activities were originally undertaken for purposes that were not perceived as being related to climate change

<sup>119</sup> Ibid, 2–3.

<sup>120</sup> UNHCR, ‘Climate Change and Disaster Displacement: An Overview of UNHCR’s Role’ (n 52) 3.

or disasters; it was only in hindsight that they could be characterized as such. Consequently, lessons learned in the field have not been systematically gathered or fed back through to those involved in legal/policy processes, and there is no organizational ‘culture’ of protection in this area.

Our interviews showed that while individual staff recognized that people could be displaced for multiple reasons, and that displacement drivers were often tightly interconnected (eg conflict, drought, resource scarcity, and so on), this does not appear to be widely understood across UNHCR as a whole. Some staff believed that climate change and disaster-related displacement must inevitably become part of UNHCR’s work; others regarded it as a distinct concept that had little to do with what they perceived as UNHCR’s ‘core’ work on conflict. A strategic plan would enable staff to undertake more deliberate work in this area, with a clear sense that this is part of UNHCR’s mission rather than something interesting but peripheral to their main role.

*Operationally*, UNHCR’s activities to date can be broadly classified as follows:

1. Undertaking disaster risk reduction and preparedness measures in relation to UNHCR’s own planning of camps/settlements, to avoid secondary displacement and/or avoidable adverse impacts on the local environment;
2. Building the resilience of persons of concern to UNHCR (and local populations) to avoid secondary displacement;
3. Responding to protection and assistance needs in the aftermath of a disaster, in both refugee and IDP contexts;<sup>121</sup>
4. Assisting with planned relocations after a disaster, as well as to prevent future displacement.

Most operational engagement has been ‘opportunistic’ rather than strategic, in the sense that UNHCR was already on the ground and requested by the host State to assist. The nature of UNHCR’s involvement has varied from situation to situation – from providing ‘protection’ through to material assistance with provisions. While involvement based on physical presence makes sense, it still requires additional resources, which may be considerable. Assisting in a disaster context should not require the redeployment of existing staff and resources; rather, trained emergency teams should be deployed and a dedicated budget allocated. As with other displacement situations, UNHCR’s protection role must extend beyond the initial emergency phase.

*Normatively*, UNHCR’s activities to date can be broadly classified as follows:

1. Promoting legal developments at the national, regional, and international levels to address protection gaps for people displaced in the context of climate change and disasters;<sup>122</sup>

---

<sup>121</sup> There are at least 45 known situations where this has occurred, 43 of which involved IDPs: *ibid*, 4.

<sup>122</sup> Eg promoting the Guiding Principles on IDPs, which extend to disaster situations; ensuring that the 2014 Brazil Declaration recognizes climate change and disaster-related displacement; playing a key role in the Nansen Initiative on Disaster-Induced Cross-Border Displacement and the Platform on Disaster Displacement; developing guidance on planned relocations (with Brookings and Georgetown University); supporting the development of national legislation in the Americas: *ibid*, 6. This may also occur in the context of the UNFCCC, given that States have to draft national instruments and policies explaining how they will implement the Paris Agreement. This could be an opportunity to provide input on how they will prepare for and respond to displacement.



2. Promoting policy coherence and providing leadership on protection norms (including addressing the scope/limits of refugee law at the international and regional levels);<sup>123</sup>
3. Expanding the knowledge base through research (typically commissioned or collaborative);<sup>124</sup>
4. Explaining the interconnectedness of drivers of displacement, and promoting clarity of terminology (eg why the term ‘climate change refugee’ is inaccurate).<sup>125</sup>

*Institutionally*, initial leadership on this issue was provided by the former High Commissioner, António Guterres, who consistently drew attention to climate change as a ‘megatrend’ that would have significant impacts on future displacement. The current Assistant High Commissioner, Volker Türk, continues to champion the issue, in particular by highlighting the interconnectedness between conflict, climate change, and other drivers (and thus the importance of UNHCR’s engagement). However, as noted above, it remains to be integrated across the organization as a whole, and while there is general interest in it, staff generally regard the issue as peripheral to ‘core’ activities.

A sharpened, consolidated approach to the issue of climate change, disasters, displacement and its protection dimensions – institutionally, normatively, and operationally – will help to change organizational perceptions and create more systematic and consistent responses. First, liaison and coordination between the normative and operational arms of UNHCR needs to be enhanced, such that information and good practice flows both ways, each informing the other. Secondly, in both operational and normative work, collaboration and coordination with other agencies will remain critically important, as States themselves have emphasized. Thirdly, a set of clear strategic priorities will assist UNHCR to shape its internal and external interventions, and to define its requests for, and allocation of, resources.

## **F General findings**

### **1 UNHCR’s role**

It is clear that UNHCR is already engaged with displacement in the context of climate change and disasters, both normatively (through the development of law and policy) and operationally (through protection and assistance in the field). However, this remains to be institutionalized and mainstreamed. Notwithstanding periodic efforts to map UNHCR’s activities in this area over time, there is a lack of institutional memory (which is also why data collection and systematic record-keeping are imperative moving forward).

UNHCR’s engagement on climate change and disaster-related displacement has been predominantly *externally* focused. *Within* UNHCR, it is not generally acknowledged as an area of expertise or experience, and is not yet part of the organizational culture. On the whole, there is very little awareness of what UNHCR is doing in this area. Those working in operations tend to see it as self-evident that UNHCR should (and does) provide protection and assistance in the aftermath of a disaster at the request of a host government. They consider that it would be unconscionable not to provide humanitarian support in such cases, especially where host communities had generously supported refugees and/or IDPs. Some of those working in the legal/standard-setting area are more cautious about UNHCR’s work in this area, particularly in

---

<sup>123</sup> For examples, see *ibid*, 7–8.

<sup>124</sup> For examples, see *ibid*, 8–10.

<sup>125</sup> This has been largely carried out in the context of international meetings; more could be done to promote awareness and understanding among the general public.

developing global legal norms and policy in view of the organization's 'mandate'. However, in part, that view seems to be linked with concerns about lack of capacity and resources, rather than with the mandate in a formal sense.

Overwhelmingly, those we interviewed believed that UNHCR must play a role in this area – both normatively and operationally, and with respect to both internal and cross-border displacement. On the latter, there is no other agency with a relevant mandate. On the former, there is already clear operational engagement and overlap with existing populations of concern. Indeed, evidence suggests that refugees and IDPs tend to live in disaster-prone areas and climate change hot spots, with camps situated on land that was not previously considered suitable for human settlement. Likewise, refugees and IDPs in urban areas tend to settle in the poorer parts, including in informal settlements that lack adequate shelter, infrastructure, and basic services. In all these situations, refugees and IDPs face a heightened risk of further displacement.<sup>126</sup> UNHCR is therefore in a unique position to document and better understand how such factors bear on displacement and protection, creating an evidence base for policy development.<sup>127</sup>

UNHCR's core strength is protection. This provides the obvious – and indisputable – entry point for its work in this area. Many concrete protection concerns in disasters are the same as in conflict situations,<sup>128</sup> and many of the same populations are affected.

## ***2 UNHCR's 'added value' in providing protection in the context of climate change and disasters***

UNHCR's vast experience with providing international protection to refugees and asylum seekers gives it added value in the climate change/disaster displacement context. Aside from key refugee law concepts such as *non-refoulement* and asylum, UNHCR is only too conscious of the protection needs likely to emerge in *any* displacement situation, and this practical knowledge provides it with the essential normative framework within which to structure its contribution to humanitarian relief.

Although each displacement scenario will differ in detail and impact, the basic elements of protection required are relatively straightforward. Self-evidently, displaced people need a safe place of refuge. Beyond this, their (overlapping) protection needs will likely require the following, as UNHCR's experience confirms:

---

<sup>126</sup> See generally UNHCR, 'UNHCR, Displacement and Disaster Risk Reduction' (Policy Note for Sendai, UNHCR 2016).

<sup>127</sup> For example, unlike locals, refugees cannot turn to their embassies for assistance or be evacuated home in the aftermath of a disaster. They may not be alert to particular geographical/environmental risks or aware of local coping strategies. If they do not have sufficient local language skills or networks, they may not be able to access risk and prevention information.

<sup>128</sup> For example, family separation; increased risk of sexual and gender-based violence; loss of personal documentation; increased vulnerability; concerns about housing, land, and property rights; forced relocations; forced returns; unequal access to assistance; effect of pre-existing discrimination; lack of systems to identify people with special needs; limited information and consultation with affected communities; lack of attention to the conditions necessary to enable durable solutions: UNHCR, 'Recurrent Protection Concerns in Situations of Natural Disaster' (internal UNHCR DIP document, January 2011). See also Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, 'Protection of Internally Displaced Persons in Situations of Natural Disasters', UN Doc A/HRC/10/13/Add.1 (5 March 2009) paras 2, 9 <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.13.Add.1.pdf>.

- an overall human rights framework;
- non-discriminatory access to services and assistance;
- identification of the most vulnerable and at risk;
- protection of children, whether accompanied, unaccompanied, or separated, including access to education and decision-making in accordance with the ‘best interests of the child’ principle;
- protection of those at risk of trafficking, exploitation, or SGBV;
- registration of births and deaths;
- assistance with recovery or replacement of identity and other critical documents;
- access to livelihood opportunities;
- family reunion;
- access to representation, consultation, and communication.

UNHCR’s experience also demonstrates that, within the overarching protection framework, capacity-building (both before and after disasters) is essential in order to strengthen national and civil society institutions, while also meeting States’ concerns regarding ‘intervention’.

While ‘temporary protection’ has been posited as a useful response in certain situations of cross-border displacement,<sup>129</sup> its potential requires further investigation and refinement. In particular – and this is a common problem also in refugee discourse – the ‘temporary’ label is potentially misleading, even as it appears key to generating responsive reception policies on the part of some States. Experience demonstrates that protection needs are potentially *indefinite*, which is to say that the end point is not clearly identifiable in advance. The impact of sudden-onset disasters, such as hydro-meteorological events, may prove relatively short-term when considered through the lens of humanitarian assistance, but much longer-term when viewed from the perspectives of DRR and the promotion of resilience, adaptation, and development. Similarly, the effects of slow-onset environmental degradation may be less dramatic in the short-term, but may ultimately have a longer-term, even permanent, impact on the viability of habitats. With these varying perspectives in mind, the notion of temporary protection needs to be linked into longer-term strategies, with due regard also to the critical differences between internal and cross-border displacement.<sup>130</sup>

The key is to find ways in which UNHCR’s expertise can add value to, and complement, the roles of other actors so as to enhance protection for affected communities and promote a rights-based approach. There is no point in duplicating activities or in putting resources into building strengths that exist in other organizations. While some initial upskilling will be required in order to develop a more nuanced understanding of the relevant issues within the organization, it is not proposed that UNHCR staff move into DRR, development, or climate change adaptation, for example. Strong partnerships and collaborations with expert agencies in those fields will be crucial to ensuring that a holistic approach is brought to bear,<sup>131</sup> with UNHCR’s expertise remaining protection, broadly considered.

---

<sup>129</sup> See eg Nansen Initiative (n 11) para 46ff.

<sup>130</sup> The distinction between ‘sudden’- and ‘slow’-onset does not itself determine institutional competence, but may bear on activities, the allocation of functional responsibilities, and ‘hand-over’.

<sup>131</sup> For instance, the dominant food security paradigm in Somalia means that trucking in water is viewed as a ‘solution’, when this will never be a long-term solution to drought and displacement. A more holistic and protection-centred approach is required to shed light on the full range of relevant issues.

While the relevant entry point for UNHCR is the human rights and protection consequences, not the causes, of displacement, some analysis will, however, be needed to identify the differences/similarities between displacement in the context of climate change and disasters, and displacement from persecution or conflict. While a considerable body of work has already been compiled by academics, the Nansen Initiative, the Platform on Disaster Displacement, and others, UNHCR could better utilize and disaggregate its own data to provide insights into these questions. By doing so, it could help to create standard indicators for the information gathered which would greatly facilitate data collection and comparative analysis.<sup>132</sup>

### **3 Protection information and planning**

Actively tackling the challenges of information-gathering and analysis is critical to successful humanitarian action. UNHCR once led the field in this area (and in refugee status determination it remains an important actor through the materials comprehensively collected in Refworld). However, research, analysis, and policy development necessarily go further, and if UNHCR's response (and that of the UN at large) are to be predictable, effective, and accountable, investment is required once more in the collection and analysis of information for operational and protection purposes. Here, partnership and cooperation will be essential, but outsourcing has its limits: rapid, coherent, and reliable responses to, or in anticipation of, humanitarian crises demand in-house resources and expertise.<sup>133</sup> Data collection needs to be standardized as far as possible, with a view to recording information relating to displacement in the context of climate change and disasters (or the risk thereof).<sup>134</sup> To that should be added an analytical capacity reporting directly to the Assistant High Commissioner for Protection and the Assistant High Commissioner for Operations, either with or without policy proposals. This area is ripe for closer collaboration with existing initiatives (such as 4Mi, RMMS, IGAD, DPSM, and JIPS), but UNHCR needs also to be a *centre* for data collection, research, and analysis if it is to be able to fulfil its protection responsibilities and to develop coherent strategies over the short, medium, and long term.

The importance of planning and preparedness in the context of climate change and disasters was stressed by interviewees over and over again. It was noted that displacement could be averted in certain circumstances if disaster early warning systems were established, DRR and adaptation were carried out, and people were not allowed to live in environmentally-vulnerable areas. Evidence shows that the human and financial costs of responding to the aftermath of disasters will be far greater than investing in preparatory measures now. Most of this work falls into the domain of DRR experts and development actors, but the links with humanitarian assistance are clear: failure to prepare now could result in increased displacement in the future. For this reason, UNHCR needs to be actively engaged in discussions and policy development in this area. Its protection know-how – both on the ground and in normative terms – is crucial to devising well-attuned operational, legal, and policy responses, including by helping to inform the work of development actors and those engaged in DRR.

---

<sup>132</sup> Currently, part of the difficulty with data collection is that very different methodologies and characterizations are used which means that it is challenging to piece together disparate data from different sources (eg States, other organizations, researchers, and so on). Could there be a possible donor role for insurance companies on this?

<sup>133</sup> OHCHR's recent report (n 33) 22 also stresses the critical importance of improving data collection, including on smuggling, the impact of detention on those on the move, and the exclusion or denial of basic services, such as education, to children.

<sup>134</sup> UNHCR (n 31) 28. Significantly, the JIPS profiling exercise in Hargeisa in 2011–12 found that 19 per cent of IDPs from Somaliland were mainly displaced by disasters such as floods and drought, which are factors highly relevant to both protection needs and solutions planning: 30.

UNHCR has always been more of a reactive organization than a proactive one. However, addressing the current and predicted impacts of climate change and disasters on displacement – and trying to avert displacement where possible through planning and prevention – requires a longer-term approach that draws on the shared expertise of many different actors. UNHCR must therefore move its thinking beyond existing humanitarian paradigms to anticipate what displacement might look like in 25 years' time, and the kinds of responses that will be required to address it. For instance, consideration could be given to how new models for addressing displacement, such as the Comprehensive Refugee Response Framework, could be further developed and operationalized. As this approach shows, there are already some good links between the UN's humanitarian and development actors. These could, however, be strengthened, including by building new partnerships with the UN's scientific agencies, such as the UN Environment Programme.

UNHCR also has a very important role to play in ensuring that appropriate terminology and concepts are used to describe people displaced by the impacts of climate change and disasters. It has already done a lot of work in international fora to explain why the term 'climate refugee' label is inappropriate, but on the flipside it also needs to draw attention to people who are displaced – and who have protection needs – whom States might simply dismiss as 'evacuees', 'slum dwellers', 'disaster victims', or 'squatters'.

Finally, it is widely recognized that UNHCR has been an important contributor to the Nansen Initiative and the Platform on Disaster Displacement. A number of recommendations in this report build on work undertaken by UNHCR in those and other fora. However, it is important that UNHCR's strategic agenda on climate change, disasters, and displacement is not driven solely by these entities' work plans, but instead by a well-conceived independent set of recommendations.

## **G Challenges and opportunities for UNHCR**

UNHCR's continued engagement with climate change, disasters, and displacement presents both challenges and opportunities, which may be heightened if recommendations for a more integrated, whole-of-agency approach are adopted.

These include:

- Creating cultural change within UNHCR to accept climate change, disasters, and displacement as an integral part of the agency's work;
- Overcoming perceptions of UNHCR's limited mandate;
- Fostering in-house expertise and mainstreaming it across the agency;
- Delineating leadership/cooperation with other agencies (especially on the ground –clear lines of authority and responsibility are needed in order to deliver the best outcomes);
- Fostering streamlining rather than proliferation among international agencies;
- Articulating a clear vision – in-house, to States, to other actors, and publicly;
- Channelling global policies to country/field office level (and vice versa);
- Creating and maintaining adequate feedback loops;
- Achieving buy-in and support from States;
- Creating strong, functional partnerships with other organizations, including through secondments and cross-posting, both for standard-setting and operations;

- Ensuring adequate resources are available for data collection, analysis, policy development, legal/technical advice, and operational responses;
- Developing rigorous training materials/courses for staff, government officials, and other actors (eg to sensitize development actors to protection concerns);
- Focusing on the similarities, rather than the distinctions, between different ‘categories’ of forced migrants.

## 1 *Slow-onset drivers*

Some interviewees identified challenges for UNHCR where there is no triggering disaster but the drivers of displacement are slower-onset in nature. For instance, if people move in the context of heat stress, gradual erosion, or recurrent flooding, because of food insecurity, lack of livelihoods, and so on, then does that count as ‘displacement’? This kind of movement may often appear more akin to ‘migration’, even though it may not be truly voluntary.<sup>135</sup> Conceptually, how such movement is characterized has both legal and operational ramifications.

From UNHCR’s perspective, a focus on protection needs,<sup>136</sup> rather than how or why people move, would seem to be the key entry point for involvement. Of course, UNHCR needs to be attuned to the interaction between slow-onset factors, such as drought or creeping temperatures, and more traditional drivers of movement, in order to understand when and why people may move, possible predictors of future displacement, and the kinds of durable solutions that are most appropriate and sustainable.

Another point of intervention/analysis for UNHCR could be how impacts are felt differentially by particular groups. In many cases, environmental drivers will be interlinked with more ‘traditional’ ones that unquestionably give UNHCR a ‘mandate’: for example, displacement from Somalia to Kenya in 2011–12 was linked to drought, famine, and conflict. That said, there may be situations where slow-onset drivers pose significant normative and operational challenges for UNHCR.

## 2 *Internal displacement*

When it comes to internal displacement, the analysis is comparatively straightforward. The Guiding Principles on Internal Displacement clearly encompass displacement by disasters, and elaborate standards for protection before, during, and after displacement.<sup>137</sup> Such protection is also reflected in the Kampala Convention on the protection of IDPs.<sup>138</sup> Operationally, leadership on protection in disaster situations at the country level is determined on a case-by-case basis by the three protection-mandated agencies, UNHCR, OHCHR, and UNICEF.

<sup>135</sup> In many cases, there is in fact a ‘tipping point’, when underlying slow-onset factors are exacerbated by a triggering event. Displacement may indicate that normal coping strategies have been overwhelmed.

<sup>136</sup> See the example of UNHCR in the Philippines, briefly described at text to n 32 above.

<sup>137</sup> Guiding Principles on Internal Displacement, UN Doc E/CN.4/1998/53/Add.2 (11 February 1998). For discussion of internal displacement in the context of disasters and climate change, see Nansen Initiative (n 11) paras 99–105, 123–24. The challenge lies in strengthening the normative and operational implementation of these instruments: see Walter Kälin, ‘Conceptualising Climate-Induced Displacement’ in Jane McAdam (ed), *Climate Change and Displacement: Multidisciplinary Perspectives* (Hart Publishing 2010) 94; see also Walter Kälin and Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches*, UNHCR Legal and Protection Policy Research Series, PPLA/2012/01 (UNHCR 2012).

<sup>138</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, entered into force 6 December 2012, art 1(k).

UNHCR thus has clear authority to act in certain situations. It is also important to bear in mind that internal displacement can turn into cross-border displacement if not adequately addressed. This might provide an important point of leverage with donors with respect to funding UNHCR's activities on climate change and disaster-related displacement.

### 3 *Cross-border displacement*

Where international borders are crossed, the question of whether and what legal protection is required becomes less straightforward. A number of interviewees believed that there was considerable work to be done on the conceptual and normative issues, including by refining the analysis of the circumstances in which refugee law will apply. For instance, drivers of displacement are typically multi-causal, and conflict, persecution and disasters can be inter-linked. Persecution can occur in disaster situations, and people who flee across a border in the aftermath of a disaster may include Convention refugees (persecuted for reasons unrelated to the disaster). There is also a need to better articulate the role of human rights law, and to articulate (and constantly enrich) a clearer conceptualization of the phenomenon that UNHCR (and others) are seeking to address.<sup>139</sup>

In some cases, refugee law may be applicable (under international or regional instruments). Under international refugee law, if a government were to withhold humanitarian assistance from people displaced by the impacts of a disaster, sideline the recovery needs of marginalized groups, or target individuals for engaging in disaster-relief work,<sup>140</sup> for example, then such people may qualify as refugees based on a standard analysis under the Refugee Convention.<sup>141</sup>

Regional refugee law may provide additional avenues for protection for people displaced across borders in the context of climate change and disasters, although much remains to be formally tested.<sup>142</sup> In Africa, the OAU Convention provides protection where a person is compelled to leave on account of *inter alia* 'events seriously disturbing public order in either part or the whole of his country of origin or nationality',<sup>143</sup> while in Latin America, the Cartagena Declaration extends to 'persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order'.<sup>144</sup> In Europe, protection could potentially be forthcoming under the Temporary Protection Directive or the Qualification Directive.<sup>145</sup>

---

<sup>139</sup> Some interviewees suggested that using refugee law as a starting point can hinder progressive thinking. In our view, it is very important to clarify its scope, but it should not be used to constrain conceptual/normative developments.

<sup>140</sup> In *Refugee Appeal No 76374* (28 October 2009), the New Zealand Refugee Status Appeals Authority found that the applicant was a refugee because she had been targeted for coordinating disaster relief after Cyclone Nargis in Myanmar.

<sup>141</sup> See *AF (Kiribati)* [2013] NZIPT 800413, paras 55–70. See also Jane McAdam, 'The Emerging New Zealand Jurisprudence on Climate Change, Disasters and Displacement' (2015) 3 *Migration Studies* 131.

<sup>142</sup> See eg UNHCR (n 63) para 9.

<sup>143</sup> Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, entered into force 20 January 1974, 1001 UNTS 45, art 1(2).

<sup>144</sup> Cartagena Declaration on Refugees (adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama, 22 November 1984), in *Annual Report of the Inter-American Commission on Human Rights*, OAS Doc. OEA/Ser.L/V/II.66/doc. 10, rev 1, 1984–85, para III(3).

<sup>145</sup> See Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press 2012) ch 4; Vikram Kolmannskog and Finn Myrstad, 'Environmental Displacement in European Asylum Law' (2009) 11 *European Journal of Migration and Law* 313.

While it is possible to interpret elements of the African and Latin American refugee definitions as applying in situations where disasters or climate change impacts lead to a breakdown of public order,<sup>146</sup> the predominant view among relevant States is that such an interpretation is not supported.<sup>147</sup> Although African States have typically permitted people fleeing disasters to remain at least temporarily, they have generally refrained from characterizing this as a legal obligation.<sup>148</sup> However, where there are inter-linkages between displacement drivers, such as disasters, conflict, widespread violence and/or a breakdown of national government systems, the OAU Convention may be relevant. This was recognized when people fled Somalia in 2011–12 on account of conflict, drought, and a lack of protection and assistance.<sup>149</sup> Likewise, some Central and South American States recognized Haitians applying for asylum following the 2010 earthquake as refugees under the Cartagena Declaration definition because of the breakdown in law and order generated by the earthquake.<sup>150</sup>

In other cases, progressive development of the principle of *non-refoulement* under human rights law – in particular, the right not to be returned to a real risk of inhuman or degrading treatment, or arbitrary deprivation of life – may be required. Collaboration with OHCHR to develop a rigorous and coherent approach to this would be strongly encouraged. The most effective approach to ensuring that national protection is available to people displaced across borders by the impacts of disasters and climate change would be to support national governments to adopt legislation providing for protection (at least on a temporary basis).<sup>151</sup> Such an approach accords with UNHCR’s traditional functions of providing technical support to governments and more generally with its complementary role.

Additionally, there may be opportunities to enhance protection beyond the traditional frameworks of refugee and immigration law. For example, pursuant to the UNFCCC, States must adopt national instruments and policies explaining how they will implement the Paris Agreement on climate change.<sup>152</sup> Under the Sendai Framework, States must adopt national policies on DRR (by 2020). These provide opportunities for UNHCR to cooperate with other

---

<sup>146</sup> For more detailed analysis, see Jane McAdam, Bruce Burson, Walter Kälin, and Sanjula Weerasinghe, *International Law and Sea-Level Rise: Forced Migration and Human Rights* (Fridtjof Nansen Institute and Andrew & Renata Kaldor Centre for International Refugee Law, FNI Report 1/2016) paras 85–91 <http://www.kaldorcentre.unsw.edu.au/sites/default/files/FNI-R0116.pdf>.

<sup>147</sup> Tamara Wood, *Protection and Disasters in the Horn of Africa: Norms and Practice for Addressing Cross-border Displacement in Disaster Contexts: Article I(2) of the 1969 African Convention* (Report prepared for the Nansen Initiative Consultation, Nairobi, 21–23 May 2014) 23–29 <https://www.nanseninitiative.org/greater-horn-africa-consultation-intergovernmental/>; David J Cantor, *Law, Policy, and Practice concerning the Humanitarian Protection of Aliens on a Temporary Basis in the Context of Disasters, States of the Regional Conference on Migration and Others in the Americas* (Background Study for the Regional Workshop on Temporary Protection Status and/or Humanitarian Visas in Situations of Disasters, San José, 10–11 February 2015) 23–31 <https://www.nanseninitiative.org/central-america-consultations-intergovernmental/>; Kälin and Schrepfer (n 137) 34.

<sup>148</sup> McAdam (n 145) 48; Wood (n 147) 25.

<sup>149</sup> Wood (n 147) 23, 25.

<sup>150</sup> Cantor (n 147) 26.

<sup>151</sup> See emerging good practices in Central America: *Protection for Persons Moving across Borders in the Context of Disasters: A Guide to Effective Practices for RCM Member Countries* (2016). Swedish law previously provided protection to people fleeing environmental disasters (Aliens Act 2005:716, ch 4, section 2), but this (along with other aspects of asylum law) was suspended in July 2016 for a three-year period, to be reviewed again in July 2018: Lag (2016:752) om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige.

<sup>152</sup> UNHCR is seeking funding under the Green Climate Fund to conduct pilot studies in Tanzania, Rwanda, Cameroon, and Niger to build resilience for refugees and host communities. UNHCR will also see how such actions might feed into each State’s National Adaptation Plans of Action.



competent agencies and to make recommendations and (if requested) provide assistance with the framing and drafting of provisions to prevent, prepare for, and respond to displacement.

#### **4      *Prevention, preparedness, and solutions***

As noted above, it would be inappropriate and unwise for UNHCR extend its work into development activities or DRR per se, with the exception of its own camp planning/management.<sup>153</sup> In that context, UNHCR does need to be alert to such matters, as well as to the possible impacts of climate change in hindering refugees' future self-reliance (eg because of resource scarcity, limited carrying capacity of the land, and so on).<sup>154</sup> UNHCR needs to be engaged in conversations with the relevant actors to ensure that protection concerns are factored into planning decisions. Importantly, many interventions will benefit both populations of concern and host communities alike.

However, UNHCR is not best placed to spearhead discussions on 'migration as adaptation', livelihoods, or resilience; its role should be limited to displacement and protection concerns. That is why UNHCR should be part of policy discussions about possible future displacement (eg from small island States), even if the risk is ultimately mitigated by DRR, development, the creation of migration/mobility schemes, and other interventions. UNHCR's expertise can also contribute to accurately understanding the nature of movement,<sup>155</sup> the protection concerns that may become acute at particular points in time, and the relevant legal obligations.

UNHCR's experience with durable solutions may also be pertinent. Its recent exploration of so-called additional pathways to protection for refugees (eg through labour visas, educational opportunities, enhanced family reunion, and so on) resonates with policy approaches discussed in the context of climate change and disaster-related mobility. Further creative thinking about the kinds of durable solutions required if return is impossible may also be relevant to traditional refugee contexts, such as where the impacts of climate change prevent voluntary return.<sup>156</sup> However, as a number of States have indicated, caution will be needed to delineate UNHCR's role and that of other organizations, such as IOM and the ILO, given that certain interventions may stray into the area of migration and/or concern access to and standards of employment. For this reason, close coordination with interested organizations will be required to ensure synergies and complementarity, rather than overlap or duplication.

#### **5      *The way ahead***

UNHCR will face many challenges in the years to come, and it will need to approach climate change and disasters as part of the broad context of global displacement in the twenty-first century.

---

<sup>153</sup> UNHCR already uses satellite imagery and other technical assessments to assist in identifying appropriate sites: see UNHCR, *Global Strategy for Settlement and Shelter: A UNHCR Strategy 2014–2018* (UNHCR 2014). It has done disaster risk screening exercises for camps in Kenya and Uganda, and has others planned for Ethiopia and Rwanda.

<sup>154</sup> Such problems may be exacerbated where camps attract members of the local community because of the services provided there.

<sup>155</sup> For instance, there are common misunderstandings in other sectors that development and poverty eradication will reduce movement, whereas they are likely to create more migration: see eg Hein de Haas, 'Turning the Tide? Why Development Will Not Stop Migration' (2007) 38 *Development and Change* 819.

<sup>156</sup> Note that UNHCR has issued requests to States to suspend forced returns to disaster-affected areas, eg: UNHCR, 'Request for the Suspension of Forced Returns to Areas Affected by the Tsunami' (Information Note, update of 12 January 2005) <http://www.refworld.org/docid/41e653294.html>.

Recent experience has shown only too well how the drivers of displacement are interconnected, but equally, how critically important it is to ensure that protection is central to both national and international responses. This is UNHCR's 'value-added', where its experience and expertise have much to offer, notwithstanding resource and related constraints, and where its credibility and authority will allow it to develop pro-active and innovative initiatives – the way ahead will surely demand both principled and practical action, if the displaced are to find solutions commensurate with their needs and entitlements.