
1. Introduction

Benoît Mayer and François Crépeau

This Handbook seeks to provide an overview of the myriad of ideas and debates that have emerged in recent years on climate change, migration and the law. What is often reduced to the simple terms such as ‘climate migration’ or ‘climate refugees’ emerged as a rather complex theme. Climate change affects human mobility in multiple ways, often indirectly, and always within the context of particular societies and communities. It is not always possible to identify specific scenarios of climate migration and, a fortiori, to single out ‘climate migrants’. In turn, these conceptual intricacies make it more difficult to analyse how existing law applies to – and how new laws and policies could relate to – what should perhaps best be called the ‘climate-migration nexus’.

As editors, we were committed to opening up a forum for different voices, even if those could be conflicting, rather than pushing for a particular narrative of our taste. We thus leave it to the readers to weigh multiple arguments through further research. Accordingly, the chapters gathered in this Handbook are written by authors from different backgrounds and perspectives to reflect the multiple on-going discussions on the topic. These chapters develop diverse and sometimes conflicting understandings of, among others, the implications of climate change for human mobility, terminological choices, and views about desirable steps to be taken.

This introduction provides a general background to the chapters that follow. A first section discusses some difficulties in conceptualizing the climate-migration nexus. A second section offers a broad overview of relevant legal developments. A third section examines the political and normative implications of discussions on the climate-migration nexus. A fourth section presents the outlines of this Handbook.¹

I. CONCEPTUAL BACKGROUND

In order to provide a conceptual background, this section briefly recalls the science of climate change (A), our understanding of migration (B), and the way the former impacts the latter (C).

¹ All links to websites were active at the time of writing (December 2016).

A. Climate Change

The world can expect profound changes in the coming decades as we enter into the ‘Anthropocene,’ a new geological epoch dominated by human activities. Industrial societies have increasingly impacted their environment, not only at the local scale, but also by effecting changes in planetary systems such as the chemical composition of the atmosphere and of the oceans. Abundant scientific evidence reviewed and compiled by the Intergovernmental Panel on Climate Change clearly establishes that massive anthropogenic greenhouse gas emissions are causing profound and irrevocable changes in the global environment.² In addition to its specific impacts already observed or predicted, climate change raises the risk of a global civilizational collapse – a risk which should not be disregarded on the sole ground that it cannot be objectively weighted.³

Impacts of climate change are already occurring across the world. They include global warming, changes in weather patterns, ice melting, sea-level rise and ocean acidification. These physical impacts affect food production, health, human settlements, conflicts, economic activities, cultural practices and biodiversity in multiple ways. Climate change is also increasing the frequency and strength of extreme weather events (e.g. tropical storms, floods, heat waves) and it exacerbates gradual processes of environmental degradation (e.g. desertification, land degradation, and coastal erosion). These impacts do not affect all countries and all people in the same way. The IPCC confirmed that ‘[r]isks are unevenly distributed and are generally greater for disadvantaged people and communities in countries at all levels of development’.⁴ It is disheartening that those populations most responsible for excessive greenhouse gas emissions are also those least affected by its adverse impacts.⁵

Yet, attributing any particular physical event or any specific loss and damage to climate change raises multiple difficulties. Often, climate

² See IPCC, *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (2014).

³ See e.g. Paul R. Ehrlich and Anne H. Ehrlich, ‘Can a collapse of global civilization be avoided?’ (2013) 280:1754 *Proceedings of the Royal Society B* 20122845; James Hansen et al., ‘Ice melt, sea level rise and superstorms: evidence from paleoclimate data, climate modeling, and modern observations that 2C global warming could be dangerous’ (2016) 16 *Atmos. Chem. Phys.* 3761.

⁴ IPCC (2014), *supra* note 2, at 13.

⁵ On these and other obstacles to successful moral arguments, see Stephen Gardiner, *A Perfect Moral Storm: The Ethical Tragedy of Climate Change* (Oxford University Press, 2011).

change only means a change in probability or frequency of particular events. Tools recently developed for a ‘probabilistic attribution’ of weather events uneasily fit within the common expectation that attribution could be established in a binary fashion – where *y* would either *be* or *not be* attributed to *x*. Furthermore, the loss and damage suffered by individuals or communities cannot be understood in isolation from the context in which they unfold. How extreme weather events and slow environmental degradation impact people largely depends on factors such as exposure, vulnerability and resilience, which, themselves, are contingent to effective governance, social organization, development and financial resources, among others.

B. Migration

Human mobility, on the other hand, is a phenomenon occurring in every society at every historical time – a ‘normal’ phenomenon, not a pathology. While some migrants flee life-threatening conditions, many others simply adjust to changes in their surroundings, seek a better life elsewhere, or explore new horizons. We are all descendants of migrants, and many of us, academics or students, live or have lived in a country, or region, other than where we first belonged – if we could ever decide where we actually belong. Yet, migration has often been approached with fears, seemingly driven by some deep, often unconscious, fear towards otherness. These representations go well beyond populist, nationalist or far-right political discourses. This is perhaps best exemplified by the highly questionable distinction made in common parlance between ‘migrants’ and ‘expatriates’.

Migration takes multiple forms. While attention is often placed on international migrants, most migrants remain within their country of origin: we only migrate as far as we can afford. Many migrants move on their own volition, although some have little or no choice but to move away from situations of violence, poverty or danger. The UN High Commissioner on Refugees estimates that there are 19.5 million refugees and 32 million internally displaced persons.⁶ These represent only a fraction of an estimated 244 million international migrants, according to an estimate by the UN Department of Economic and Social Affairs.⁷ Internal

⁶ Figure collected from the website of the UN High Commissioner on Refugees on 20 May 2016. The number of refugees include 14.4 million refugees under the UNHCR mandate and 5.1 million Palestinian refugees registered by UNRWA.

⁷ See UN Department of Economic and Social Affairs, International Migration Report 2015, ST/ESA/SER.A/375. International migrants are defined as people living in a country other than their country of birth.

migrants, difficult to define and to count, are obviously in much greater numbers. China alone was reported as having a ‘floating population’ of around 150 million of unregistered internal migrants.⁸

These numbers, however, do not reflect the diverse realities faced by individual migrants – a diversity which challenges any attempts at categorizing migrants. A distinction is often made between voluntary and forced migrants, suggesting that the latter should be allowed to migrate or, at least, should not be forcibly returned to their country or region of origin. This dichotomy is problematic, conceptually because the limit between free will and coercion is difficult to assess, and normatively because of the distinction it suggests between more or less ‘deserving’ migrants. Economic migration often stands as the archetype of ‘voluntary’ migration, even though extreme destitution, famine, and the lack of perspective for a brighter future can surely be a factor of migration as decisive as persecution. Overall, consideration for the human rights of migrants should not be limited to an assessment of a right to enter and stay in a new place. Migrants walk with their rights, but the effective enjoyment of these rights is often impeded by a precarious status at the place of destination.

C. The Climate-Migration Nexus

The impacts of climate change and responses to these impacts affect human mobility in a myriad of ways. Extreme weather events and slow-onset environmental changes push people away from affected regions. A particular case regards a few low-lying small island developing States, such as the Maldives, Kiribati and Tuvalu, whose entire territory is threatened by sea-level rise, droughts and extreme weather events. In other countries, while mass displacements are most likely to take place over relatively short distances and usually within the State, an international migration of wealthier urbanites could ensue through a domino effect. In some cases, an increasing stress on environmental resources will make it more difficult for certain populations to ‘invest’ in migration (including seasonal economic migration) and may actually reduce migration flows. The impacts of climate change, measures taken in response to them, and the displacements induced or impeded by these impacts and measures may also escalate tensions and conflicts, which, in turn, may trigger displacements. Response measures that seek to mitigate climate change or adapt to its impacts may also have diverse implications, ranging from development-induced

⁸ Kam Wing Chan, ‘China: internal migration’ in Immanuel Ness and Peter Bellwood (eds.), *The Encyclopedia of Global Human Migration* (Blackwell, 2010).

displacement and resettlement, to diverse economic incentives ('push' or 'pull' factors) generated by a transition towards a green economy.

Identifying these possible causal scenarios does not make it possible to recognize individual 'climate migrants'. Certainly not everyone fleeing an extreme weather event can be called a 'climate migrant', for instance, even if climate change can be demonstrated to have increased the likelihood of some extreme weather event. Great difficulties are faced when trying to disentangle the signal of climate change from the influence of other factors, including more frequently than not poverty and local environmental degradation not related to climate change. An influential British governmental report concluded in 2011 that, although environmental factors are effecting changes in human mobility, 'the range and complexity of the interactions between [economic, social and political drivers] means that it will rarely be possible to distinguish individuals for whom environmental factors are the sole driver'.⁹

In addition, there is no obvious need to single out 'climate migrants' from a legal perspective. Recognizing that climate change impacts (and responses to these impacts) generate changes in patterns of human mobility does not necessarily imply the existence of migrants of a unique sort, with protection needs different from those of other migrants, who should be targeted by particular laws or policies. It appears rather that climate change is exacerbating pre-existing protection gaps, as well as shedding light on the shortcomings of existing protection mechanisms. Narrow instruments for the protection of refugees certainly do not protect all individuals in need of protection – whether they are called 'climate refugees', 'economic refugees', or 'survival migration'¹⁰ – as, one could argue, they should. Likewise, while most people displaced by extreme weather events, slow environmental changes or violence are generally considered within the concept of 'internally displaced persons'¹¹ and are in any case the holders of universal rights, their effective protection is often impeded by a lack of resources in developing or least-developed States. The need for further international cooperation in the protection of the human rights of all is not new, but it is increasingly pressing as climate change starts to impact the planet's most vulnerable populations.

⁹ Foresight, *Migration and Global Environmental Change: Future Challenges and Opportunities*, final research report, 2011.

¹⁰ See Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (Cornell University Press, 2013).

¹¹ See Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2 (1998); African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009).

II. OVERVIEW OF THE RELEVANT LAWS

Legal debates on the climate-migration nexus extend to different fields of law. This section surveys the main developments in environmental and climate law (A); in refugee, migration and human rights law (B); and more specifically regarding the climate-migration nexus (C).

A. Environmental and Climate Law

International environmental law developed progressively following the famous 1941 arbitral award in the *Trail Smelter* case between the United States and Canada. In this award, it was found that a State should prevent the use of its territory in manners that are evidenced to cause serious transboundary consequences.¹² The growing realization of the limits and dangers associated with a rapid economic growth based on technological advance led to the organization of the United Nations on the Human Environment conference, held in Stockholm in June 1972, where the UN Environment Programme (UNEP) was established. The ‘Stockholm Declaration,’ adopted at this occasion, recognizes that: ‘The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments.’¹³

International environmental law has flourished in the last decades with the adoption of multiple legal instruments on matters such as biodiversity, desertification, chemical and wastes, fresh water resources, marine pollution, forests and wetlands, air pollution and the protection of the ozone layer, as well as procedures relating to information, consultation and impact assessment. Overall, environmental protection was recognized as an important concern at all levels of governance. The framework of a sustainable development identifies environmental protection as one of three pillars, along with economic development and social protection.

Concerns for the global environment were triggered by scientific findings of the impacts of industrial civilization on planetary systems. The 1985 Vienna Convention for the Protection of the Ozone Layer and its protocols, in particular the 1987 Montreal Protocol, established a successful

¹² *Trail Smelter* case (*United States v Canada*), award of 11 March 1941, III UNRIAA 1938, at 1965.

¹³ Declaration of the United Nations Conference on the Human Environment (16 June 1972), para. 2.

international cooperation to phase out the production of ozone-depleting substances. The Intergovernmental Panel on Climate Change was set up in 1988 by UNEP and the World Meteorological Organization in order to assess scientific information. Its first assessment report, published in 2001, provided the basis to initiate international negotiations on an instrument to address climate change. At the 1992 'Earth Summit' in Rio de Janeiro, 154 States signed the UN Framework Convention on Climate Change which had been adopted by the International Negotiating Committee.¹⁴ Arduous negotiations led further to the adoption of the Kyoto Protocol in 1997,¹⁵ its 'Doha' Amendment in 2011,¹⁶ and the Paris Agreement in 2015.¹⁷ The Conference of the Parties for the UN Framework Convention on Climate Change have also been the occasion for the discussion and adoption of multiple decisions.¹⁸

International cooperation on climate change has initially focused almost exclusively on climate change mitigation – efforts to reduce sources and enhance sinks of greenhouse gases. Thus, the 'ultimate objective' of the UN Framework Convention on Climate Change (UNFCCC) was defined as the 'stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system'.¹⁹ The Kyoto Protocol defined more specific obligations for developed States, in particular through the adoption of 'quantified emission limitation and reduction commitments' in its Annex B for a first commitment period extending from 2008 to 2012.²⁰ The Doha

¹⁴ United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992, entered into force on 21 March 1994, 1771 UNTS 107. As of mid-2016, the parties to the UNFCCC comprise 196 States and one regional entity (the European Union).

¹⁵ Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted in Kyoto on 11 December 1997, entered into force on 16 February 2005, 2303 UNTS 162. As of mid-2016, the parties to the UNFCCC comprised 191 States and a regional entity (the European Union).

¹⁶ Doha Amendment to the Kyoto Protocol, adopted in Doha on 8 December 2012, not yet entered into force. As of 1 June 2016, the Doha Amendment had been ratified by 65 parties.

¹⁷ Paris Agreement, adopted in Paris on 12 December 2015, not yet entered into force. The Paris Agreement was signed by 177 States at a ceremony held in New York on 22 April 2016.

¹⁸ See for instance the 'Cancún Pledges' endorsed in decision 1/CP.16, 'The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention' (10–11 December 2010), paras 36 and 49.

¹⁹ UNFCCC, art. 2.

²⁰ Kyoto Protocol, art. 3 and Annex B.

Amendment added a column in Annex B for a second commitment period, from 2013 to 2020. Under the Paris Agreement, all parties are to adopt and communicate ‘nationally determined contributions to the global response to climate change,’ including objectives for domestic mitigation measures.²¹

Despite these efforts to mitigate climate change, climate change impacts have become more tangible. The importance of climate change adaptation was progressively recognized, in particular in the 2007 Bali Action Plan,²² the 2010 Cancún Agreements,²³ and the Paris Agreement.²⁴ While most of the climate finance has focused on climate change mitigation, some efforts have been made to promote financial support to the developing States most severely affected by the impacts of climate change.²⁵ Claims for a more systematic support – or ‘compensation’ – to the most vulnerable nations, long resisted by industrial nations, led to the establishment of the Warsaw international mechanism for loss and damage associated with climate change impacts in 2013,²⁶ although little concrete measures have yet been taken.²⁷

B. Refugee, Migration and Human Rights Law

Discourses on ‘climate refugees’ have played an instrumental role in ensuring the policy relevance of debates on the impact of climate change on human mobility. The 1951 Convention relating to the Status of Refugees and its 1967 Protocol provide a relatively narrow definition of a refugee, as a person outside his country of origin, to which he is unable to return ‘owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion’.²⁸ The Refugee Convention does not protect all foreigners in need of protection, and was arguably not intended to do so. In a seminal article, James Hathaway argued that international refugee law ‘in fact rejects the goal of comprehensive protection for all involuntary migrants’, creating a

²¹ Paris Agreement, arts 3 and 4.2.

²² Decision 1/CP.13, Bali Action Plan (14–15 December 2007), para. 1(c).

²³ Decision 1/CP.16, *supra* note 18, paras 11–35.

²⁴ In particular Paris Agreement, art. 7.

²⁵ See e.g. UNFCCC, art. 4.4; Kyoto Protocol, art. 12.8; Paris Agreement, art. 9.4.

²⁶ Decision 2/CP.19, ‘Warsaw international mechanism for loss and damage associated with climate change impacts’ (23 November 2013).

²⁷ A two-year workplan was adopted in 2014, but focused mostly on research and advocacy. A review of the Warsaw International Mechanism should take place at the 22nd Conference of the Parties in November 2016.

²⁸ Convention relating to the Status of Refugees, 28 July 1951, art. 1(A)(2).

regime where most people in need of international protection ‘must accept whatever emergency assistance is voluntary provided for them through official or nongovernmental initiatives’.²⁹ Incremental improvements through complementary or subsidiary protection regimes established in many countries do not fundamentally change the exceptional character of international protection in the current practice of international relations. While pledging international protection, many developed countries have devised non-entrée strategies aimed at preventing asylum-seekers claiming a refugee status, for instance through imposing sanctions to the transporters of non-authorized migrants, investing substantial resources in border control and surveillance, and establishing partnerships with ‘buffer’ countries.

International migrants who do not qualify as refugees face more frequent discriminative or abusive treatments. Specific international human rights instruments have been adopted in the last decades to protect categories of individuals who had historically been subjected to abuses. In the case of international migrants, the development of such protection has been impeded by a lack of support from developed States. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, adopted in 1990 by the UN General Assembly, only entered into force in 2003, after the slowest ratification process for any international human rights treaty. Its 48 parties³⁰ include mostly countries of net emigration, such as Mexico and the Philippines, and none of the major States of emigration in Northern America, Europe, the Persian Gulf and Oceania. Likewise, a few conventions adopted under the International Labour Organisation seek to protect the rights of migrant workers, but their impact is also limited by a patchy ratification record.³¹ Migrants remain the only category of individuals whose human rights protection is defined in relation to their activity – as workers – as if one’s inalienable rights could be conditioned to one’s contribution to the host State’s economy.

It remains however that general international human rights law applies to each and every individual, regardless of their status as migrants. While nationality may be a condition for an individual to enter or stay in a

²⁹ James Hathaway, ‘A reconsideration of the underlying premise of refugee law’ (190) 31 *Harvard International Law Journal* 129, 132–3.

³⁰ As of 22 May 2016.

³¹ See, in particular, the 1949 ILO Convention No. 97 concerning Migration for Employment (49 ratifications) and the 1975 ILO Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (23 ratifications).

country and to participate in electoral processes, all other human rights extend to everyone within a State's jurisdiction. Migration status should not be the condition for the enjoyment of human rights. Distinctions on the basis of national origin or 'other status' are expressly prohibited under the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Political Rights.³² Human rights also apply, naturally, to internally displaced persons, and the Guiding Principles on Internal Displacement adopted by the Human Rights Council in 1998 provide an authoritative interpretation synthesis of the relevant obligations of States.³³ This document has inspired numerous domestic laws and policies as well as a regional instrument, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, adopted in Kampala in 2009.³⁴

The effective implementation of human rights is often limited, sometimes by a lack of willingness of the competent national authorities, but probably more often by a lack of capacity in developing or less-developed States. International assistance and cooperation, encouraged by international human rights instruments in particular as a way to foster an effective protection of social, economic and cultural rights,³⁵ have remained insufficient. International negotiations have tried to foster more cooperation, first by setting financial objectives of official development assistance,³⁶ then by raising aspirations through the adoption of 'Millennium Development Goals' in 2000³⁷ and of 'Sustainable Development Goals' in 2015.³⁸ Through the Sustainable Development Goals, States committed, on the one hand, to 'take urgent action to combat climate change and its impacts'³⁹ and, on the other hand, to 'cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights

³² 1966 International Covenant on Civil and Political Rights, art. 2(1); International Covenant on Economic, Social and Political Rights, art. 2(2).

³³ Guiding Principles on Internal Displacement (1998), E/CN.4/1998/53/Add.2.

³⁴ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, adopted on 22 October 2009 in Kampala, entered into force on 6 December 2012.

³⁵ International Covenant on Economic, Social and Political Rights, art. 2(2).

³⁶ See e.g. *International Development Strategy for the Second United Nations Development Decade*, UNGA Res 2626 (XXV), 24 October 1970, para. 43, on the objective of an official development assistance reaching 0.7 per cent of the gross domestic product of each donor State.

³⁷ *United Nations Millennium Declaration*, UNGA Res 55/2, 8 September 2000.

³⁸ *Transforming our world: the 2030 Agenda for Sustainable Development*, UNGA Res. 70/1, 2015.

³⁹ *Ibid.*, goal 13.

and the humane treatment of migrants regardless of migration status, of refugees and of displaced persons'.⁴⁰

C. Relevant Provisions on the Climate-Migration Nexus

A few instruments have a direct relevance to the climate-migration nexus. Within the climate regime, two decisions of the Conference of the Parties to the UN Framework Convention on Climate Change have touched upon the consequences of climate change for human mobility. First, in order to enhance action on adaptation, article 14(f) of the Cancún Agreements (2010) calls Parties to take '[m]easures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels'.⁴¹ Secondly, a decision on approaches to address loss and damage associated with climate change impacts adopted in Doha in 2012 acknowledges the need for further work to 'enhance the understanding of . . . how impacts of climate change are affecting patterns of migration, displacement and human mobility'.⁴² These measures recognize the importance of migration as both a form of adaptation and something of relevance to approaches to address loss and damage.

Climate migration has been touched upon by a variety of recent international documents. For instance, the Sendai Framework for Disaster Risk Reduction, applicable from 2015 to 2030, identifies climate change along with other factors that exacerbate disaster risks.⁴³ This Framework also notes the need to promote preparedness for disaster-induced displacement.⁴⁴ Likewise, through the 2015 Suva Declaration on Climate Change, the Summit of the Leaders of the Pacific Islands Development Forum stated that 'climate change is already resulting in forced displacement of island populations and the loss of land and territorial integrity'.⁴⁵

⁴⁰ Ibid., para. 29 and target 10.7.

⁴¹ Decision 1/CP.16, *supra* note 18, para. 14(f).

⁴² Decision 3/CP.18, 'Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change to enhance adaptive capacity' (8 December 2012), para. 7(a)(vi).

⁴³ Sendai Framework for Disaster Risk Reduction 2015–2030, adopted at the Third UN World Conference, held in Sendai, Japan, on 18 March 2015, para. 4.

⁴⁴ Ibid., para. 33(h).

⁴⁵ Suva Declaration on Climate Change, adopted at the Third Annual Summit of the Pacific Islands Development Forum held in Suva, Fiji, from 2 to 4 September 2015, para. 7.

By contrast, climate or environmental factors of migration are clearly not the focus of the international refugee regime. As noted above, it stems from the provision of the 1951 Convention relating to the Status of Refugees that this instrument does not protect people unable to return to their country of origin on grounds other than a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.⁴⁶ The UN High Commissioner on Refugee's criteria for determining refugee status justly interprets this definition as excluding 'such persons as victims of famine or natural disaster, unless they also have well-founded fear of persecution for one of the reasons stated'.⁴⁷ Domestic tribunals deciding on asylum claims have consistently rejected arguments founded on the environmental or economic impacts of climate change.⁴⁸

Nevertheless, two Scandinavian countries provide for subsidiary protection to those unable to return to their country of origin because of an environmental disaster.⁴⁹ Other States regularly provide ad hoc temporary protection in similar circumstances.⁵⁰ The Guiding Principles on Internal Displacement applies, among others, to people 'forced or obliged to flee or leave their homes or places of habitual residence . . . as a result or in order to avoid the effects of . . . natural or human-made disasters'.⁵¹ More specifically, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa adopted in Kampala in 2009 requires State Parties to 'take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change'.⁵² The actual implementation of provisions for the protection of internally displaced persons remains however very incomplete.⁵³

⁴⁶ Convention relating to the Status of Refugees, art. 1(A)(2).

⁴⁷ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (2011), HCR/1P/4/ENG/REV. 3, para. 39.

⁴⁸ See for instance the decision of the Supreme Court of New Zealand: *Ioane Teitiota vs. Ministry of Business, Innovation and Employment*, SC 7/2015, [2015] NZSC 107, 20 July 2015.

⁴⁹ Sweden's Aliens Act, Ch. 4, s. 2, para. 3 (SFS 2005:716); Finland's Aliens Act (Act No. 301/2004, 30 April 2004), s. 88a(1).

⁵⁰ See for instance the US Temporary Protected Status, 8 U.S.C. § 1254a(b).

⁵¹ Guiding Principles on Internal Displacement, para. 2.

⁵² African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa adopted in Kampala in 2009, article 5.4.

⁵³ See Phil Orchard, 'Implementing a global internally displaced persons protection regime' in Alexander Betts and Phil Orchard (eds.), *Implementation*

III. THE CHANGES NEEDED

The exploration of climate change, migration and the law in this introduction – and in this Handbook – cannot limit itself to a description of existing law. Much in the current debates is not about the law as it exists (*lex lata*), but about what the law ought to be (*lex ferenda*). This section provides an overview of different argumentative discourses involving the climate-migration nexus (A) which leads to a more specific discussion of possible reforms in international migration governance (B).

A. Coexisting Agendas

The climate-migration nexus has been invoked by different argumentative discourses taking place in various forums. Without providing a full picture of the argumentative battlefield or of the alternative framings of the theme,⁵⁴ three main agendas can be identified. They promote, respectively, the protection of migrants, the protection of the environment, and our protection from perceived security threats.

The first agenda regards the protection of migrants or other populations of concern. Migration and refugee law scholars and advocates involved in debates relating to the climate-migration nexus are often concerned that existing tools for the protection of migrants (refugees, ‘economic’ migrants, internal migrants, etc.) are insufficient and that mechanisms for the protection of human rights often fail to provide an effective protection to populations, especially in the developing world. Climate change is, in this perspective, a crisis exacerbating the shortcomings of protection institutions – possibly an eye-opening crisis. Arguments for the protection of ‘climate refugees,’ however, are largely the adaptation of previous arguments for the protection of ‘economic refugees,’ and they could be made in more general terms, more consistently so, through concepts such as ‘crisis migration’ or ‘survival migration.’⁵⁵ In this perspective, the climate-migration nexus is largely

and World Politics: How International Norms Change Practice (Oxford University Press, 2014) 105.

⁵⁴ See Hedda Ransan-Cooper et al., ‘Being(s) framed: The means and ends of framing environmental migrants’ (2015) 35 *Global Environmental Change* 106; Benoît Mayer, “‘Environmental Migration’ as Advocacy: Is It Going to Work?” (2014) 29 *Refuge: Canada’s Journal on Refugees* 27.

⁵⁵ See Susan Martin, Sanjula Weerasinghe and Abbie Taylor, *Humanitarian Crises and Migration: Causes, Consequences and Responses* (Routledge 2014); Betts, *supra* note 10.

an opportunity to promote reforms in migration governance to a higher political visibility.

A second agenda promotes environmental protection, in particular climate change mitigation. In the discourses of scholars or non-governmental organizations (NGOs) concerned with environmental protection or climate change mitigation, the nations of low-lying small island States are depicted as the canary in the coalmine – the early sign of an impending crisis. Alarmist predictions are communicated by engaged scholars or NGOs about large numbers of ‘climate refugees’ as a dangerous harm for the world’s international security.⁵⁶ These discourses, connecting to powerful emotions such as fear, have had a great political impact, with ‘climate refugees’ being repeatedly mentioned as a reason for cutting greenhouse gas emissions.⁵⁷ They provide however a simplistic account of the relation between climate change and human mobility, and often play on the dangerous fears associated with international migration.

A third agenda focuses precisely on these fears and depicts the climate-migration nexus as a threat to ‘our’ security. Building on the anguished reception of international migration in Western societies, discourses developed by military institutions or security pundits incline to the development of control technologies supposed to protect ‘us’ against ‘climate refugees’. The ‘solutions’ include walls, military investments, and transregional partnerships to ‘manage’ international migrants.⁵⁸ Such discourses are likely to impede the protection of migrants by constructing identities and interests in stark opposition. Yet, they are likely to be particularly influential in political processes, as reflected by the omnipresence of migration in the first debates held by the UN Security Council on climate change and its implications for international peace and security.⁵⁹

⁵⁶ See e.g. Christian Aid, *Human Tide: The Real Migration Crisis* (2007), at <https://www.christianaid.org.uk/Images/human-tide.pdf>.

⁵⁷ See for instance *Remarks by US President Obama at United Nations Secretary General Ban Ki-Moon’s Climate Change Summit* (New York, 2009), stating that ‘On shrinking islands, families are already being forced to flee their homes as climate refugees.’

⁵⁸ See in particular Gregory White, *Climate Change and Migration: Security and Borders in a Warming World* (Oxford University Press, 2011).

⁵⁹ See UN Department of Public Information, SC/9000, *Security Council Holds First-ever Debate on Impact of Climate Change on Peace, Security, Hearing over 50 Speakers* (2007); UN, Department of Public Information, SC/10332, *Security Council, in Statement, Says ‘Contextual Information’ on Possible Security Implications of Climate Change Important When Climate Impacts Drive Conflict* (2011).

Not all these agendas propose a legal reform. The third agenda, depicting ‘climate migration’ as a threat to security, is more likely to influence domestic policies and investments regarding border control and the military than any legal reform, although some action by the Security Council cannot be completely excluded.⁶⁰ Likewise, the second agenda, invoking the consequences of climate change on human mobility as a ground for more ambitious mitigation measures, does not propose any legal reform which would deal specifically with the climate-migration nexus. Most (relatively) specific legal reform proposals relate to the first agenda – the protection of migrants and other populations of concern. One needs however to keep in mind that these legal reform proposals take place in a broader political context characterized by coexisting political discourses on the climate-migration nexus.

B. Towards New Protection Instruments?

Proposals for new instruments for the protection of ‘climate refugees’ have played an important role in initiating legal debates on the relation between climate change and migration. Some scholars supported civil society advocacy in favour of a new international instrument for the protection of people displaced as a result of climate change.⁶¹ This agenda faces conceptual challenges because, as noted above, it is rarely, if ever, possible to attribute an individual migrant to climate change. Difficulties in attributing a physical event to climate change add to the fact that individuals are never displaced as a mechanical consequence of a physical event – a variety of economic, political, social or demographic factors determine the exposure, vulnerability and resilience of individuals and societies facing physical hazards. Moreover, climate change affects very different forms of human mobility: forced or voluntary, internal or cross-border, temporary or permanent, individual or collective migrations do not pose the same protection challenges and they could require different measures. In turn, from a protection perspective, the cause of these unfulfilled protection needs is of no direct relevance: people fleeing a famine, for instance, need protection notwithstanding the possible relation between this famine and climate change.

⁶⁰ See Shirley Scott and Charlotte Ku (eds.), *Climate Change and the UN Security Council* (forthcoming).

⁶¹ See e.g. Frank Biermann and Ingrid Boas, ‘Preparing for a warming world: towards a global governance system to protect climate refugees’ (2010) 10 *Global Environmental Politics* 60; Bonnie Docherty and Tyler Giannini, ‘Confronting a rising tide: a proposal for a convention on climate change refugees’ (2009) 33 *Harvard Environmental Law Review* 349.

Other questions regard the legitimacy of ascribing specific protection obligations to the States most affected by the impacts of climate change. Most migrants are likely to remain in the country of origin or, if they cross an international border, in the same region. The main challenge to the protection of migrants in the developing world is arguably a lack of resources rather than a lack of awareness. If this is so, putting pressure on developing States for them to offer a better protection to a category of migrants risks diverting protection resources from other populations of concern. While migrants are generally more visible to outsiders, the most vulnerable populations are often less able to migrate through lack of financial or other resources: international advocacy for the protection of the displaced could come at the expense of the protection of those displaced ‘sur place,’ affected by changing circumstances but unable to move. It is profoundly disturbing to notice that a focus on the displaced, diverting protection resources from other vulnerable populations, could foster the perceived interests of many developed States – the strategy of containing migrants in the developing world⁶² – instead of genuinely seeking to promote the human rights and welfare of the populations concerned.

An extension of international protection would also face formidable political obstacles. The implementation of the 1951 Convention relating to the Status of Refugees remains incomplete in many countries, for instance in those who are pursuing a non-entrée strategy incompatible with the object and purpose of the Convention. Beyond, political trends in most developed States seem clearly unfavourable. Scapegoating foreigners and calling for always more border surveillance, despite their excessive costs and their limited effectiveness in containing desperate migrants, has long been an easy populist tactic for unscrupulous politicians, but the current presidential campaign in the United States is bringing xenophobic demagogy to new extremes. In these circumstances, a review of the 1951 Convention relating to the status of refugees would more likely lead to a much lower level of international protection rather than to an extension of international protection.

Although these political obstacles certainly exclude any international binding instrument for the time being, advocacy could push for domestic laws or policies. In this sense, the governments of Switzerland and Norway launched in 2012 the ‘Nansen Initiative’ on disaster-induced cross-border displacement as a series of regional consultations with governmental and

⁶² On the strategy of containing migrants in the developing world, see B.S. Chimni, ‘The birth of a “discipline”’: from refugee to forced migration studies’ (2009) 22 *Journal of Refugee Studies* 11.

non-governmental stakeholders. The Initiative led to the presentation of a ‘protection agenda,’ endorsed by 109 government delegations, in October 2015. On the one hand, this outcome document identifies and discusses States’ best practices in ‘protecting cross-border displaced persons’ and in ‘managing disaster displacement risk in the country of origin’. On the other hand, it identifies some ‘priority areas for future action’, in particular ‘enhancing the use of humanitarian protection measures’ and ‘strengthening the management of disaster displacement risk in the country of origin’.⁶³ At the end of 2015, a Platform on Disaster Displacement was established to succeed to the Nansen Initiative and promote its protection agenda. Of importance to some populations, this protection agenda relates to displacements triggered by any disaster, whether or not related to climate change, thus using the political momentum for reform generated by climate change to address a more general shortcoming in international human rights protection.

Attempts to bend the trajectory of States’ actions are often based on compromises. Ambitious proposals about an extension of international protection through a new treaty can initiate an important debate, but they face formidable political obstacles. The Nansen Initiative, on the other hand, is narrow and modest in its proposals. States can simply ignore it at will. The experience of the Guiding Principles on Internal Displacement suggests however that such an instrument, being promoted through persistent advocacy, could progressively induce national commitments and, perhaps, induce some real changes in States’ practice. As a long journey always starts with a first step, the Protection Agenda of the Nansen Initiative could initiate a progressive improvement of the protection offered to migrants in the context of climate change.

IV. OUTLINES

The contributions to this Handbook are organized in three parts. A first cluster of chapters offer a multidisciplinary discussion of the climate-migration nexus (A). A second part contains chapters which analyse the laws and institutions relevant to this climate-migration nexus (B). The third and last segment turns to prospective developments (C).

⁶³ The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change* (October 2015), volume I, at 10.

A. Perspectives on the Climate-Migration Nexus

The three chapters of this section provide complementary perspectives on the climate-migration nexus.

Robert McLeman opens with a synthetic overview, replete with illustrations, of the empirical literature. This chapter shows how relatively common climate-related phenomena such as floods, droughts, and extreme weather events influence migration and mobility patterns in vulnerable populations. It draws on evidence that anthropogenic climate change will exacerbate existing environmental risks in many parts of the world and thus increase the frequency and scale of environmental migration. Three recent examples of environmental migration – drought-related migration in the Sahel, flood-related migration in Bangladesh, and hurricane-related migration in Central America – are used to illustrate the complexity of interactions between climate and migration and the diversity of possible outcomes. Climate change does not affect migration patterns in simple push-pull fashion; rather, migration outcomes are mediated by intervening economic, social, and political forces that affect the ability of exposed populations to adapt to climate-related threats to homes and livelihoods.

Calum T.M. Nicholson offers a much more sceptical, even critical perspective on the linkage between climate change and migration. His chapter intends to reveal a technocratic turn in academic research. It situates the literature on climate migration within a more general trend – the proliferation of new explanatory concepts which are (wrongly) assumed to have an inherent utility. ‘Climate-induced migration’ appears as an example of this trend, as a term which gained significant currency in the past decade by linking two grand themes of contemporary concern, although, on close examination, it remains conceptually incoherent. This chapter outlines the surface pattern and underlying structure of that incoherence. It also argues that, far from suffering problems peculiar to this field, the pattern and structure of the incoherence is typical of a larger technocratic trend. It finally suggests an alternative approach to research, transcending the problem of this incoherence by holding that the resolution of our predicament lies not in thinking different things (i.e. in new thematic categories), but in thinking differently.

Finally, *Carol Farbotko*’s chapter offers a more pragmatic, if hardly less critical perspective, by reviewing the social, cultural and political processes through which ideas about ‘climate migration’ are produced and contested. This chapter examines ideas about climate migration, as well as the mobilities that such ideas purport to describe and govern, as performative and praxiographic. It examines a range of sometimes-contradictory socio-ecological relations that are creating the conditions by which the realities

of particular populations – at the same time vulnerable and bureaucratic, mobile and governing – are experienced and understood. It concludes by observing that when the everyday lives and voiced concerns of migrants are apprehended, a more nuanced representation of the complex context of governance is possible. On the spectrum away from ‘misrepresentation’ and towards ‘representation,’ however, it is not just complexity but also agency which must be taken into account.

B. Existing Laws and Institutions

The second part of the book gathers analyses of the many fields of laws addressing the climate-migration nexus and multiple institutions approaching these questions from alternative angles.

Christel Cournil’s chapter explains why people displaced in the context of climate change are unlikely to qualify as refugees under existing laws, or to be protected by existing institutions. Her chapter examines in particular the 1951 Geneva Convention relating to the Status of Refugees in the light of climate change, showing that this treaty does not cover environmental factors of migration, although it may provide ground for arguments by analogy for a protection of other forced migrants. The Geneva Convention was adopted in a different context, with little awareness of environmental factors of migration. The protection of refugees is by and large an individual protection, whereas environmental changes often affect societies in a more diffuse way. Overall, the international regime for the protection of refugees is based on the notion of ‘persecution,’ which, for lack of intent to harm, does not straightforwardly apply to environmental factors of migration. Lastly, the international protection of refugees only concerns people who cross international borders, whereas environmental factors are more likely to force people to migrate within the borders of their country of origin.

By contrast, *Elizabeth Ferris’s* chapter discusses the relevance of the Guiding Principles on Internal Displacement to the climate-migration nexus. These principles, presented to the UN Human Rights Commission in 1998 and endorsed by the Global Summit in 2005, provide a widely-accepted normative framework for protecting the rights of internally displaced persons (IDPs). Given the definition of IDPs in the Guiding Principles, those displaced by the effects of climate change could be considered as IDPs and the Guiding Principles should be applied to them. This chapter documents how the Guiding Principles have been used to uphold the rights of those displaced by sudden-onset disasters and then turns to the more difficult issue of their relevance to those displaced by other forms of environmental changes which can be associated with

climate change, in particular in the case of communities affected by a loss of livelihood. While Ferris argues that the Guiding Principles are and should be the primary normative framework in upholding the rights of those displaced internally by the effects of climate change, she notes that further elaboration is needed with regard to durable solutions and accountability.

Siobhán McInerney-Lankford then investigates the potential relevance of international human rights law to climate change and migration. She suggests that existing international law provides multiple entry-points to respond to the plight of individuals displaced either internally or through international borders as a result of climate change. The principle of equality and non-discrimination is of a particular relevance because, in many cases, the populations most affected by climate change – those who have no choice but to migrate – are already populations subjected to multiple discriminations patterns. In this perspective, McInerney-Lankford explores the significance of the obligation of States to respect, protect and fulfil the human rights of climate migrants, showing that, despite important challenges (e.g. the ill-established extraterritorial application of human rights), international human rights law does provide at least general principles to approach climate migration and, perhaps, guide further legal developments.

Ademola Oluborode Jegede provides complementary insights on the particular significance of the climate-migration nexus for the rights of Indigenous peoples. Throughout the world but perhaps more so in Africa, Indigenous populations are affected by the adverse effects of climate change as well as, often, of response measures. Yet, international human rights instruments developed under the aegis of the United Nations are inadequate to tackle the challenge. The instruments in question make no specific link between climate change and migration and they often fail to define concrete obligation of international agencies and to establish appropriate remedy mechanisms. Jegede's chapter highlights in particular, in the context of Africa, the key relevance of provisions of the Kampala Convention of the African Union which can serve as important normative lessons to any global instrument addressing the link between climate change and the rights of Indigenous peoples.

This is followed by *Maxine Burkett's* chapter, which presents an overview of relevant developments in international climate change law and beyond. As Burkett notes, the Intergovernmental Panel on Climate Change once called human migration the 'Greatest single impact of climate change.' Yet, the last quarter century of climate change law- and policy-making has not fostered robust governance of the emerging phenomenon. In fact, it was not until two decades after the IPCC's initial statement that the Parties to

the United Nations Framework Convention on Climate Change addressed this form of migration formally through the 2010 Cancún Agreements. While climate change will mostly spur internal displacement, cross-border migration presents some of the most confounding challenges for migration and displacement management.

Sébastien Jodoin, Kathryn Hansen and Caylee Hong examine more specifically the issues related to internal displacement and forced eviction induced by response measures to climate change (e.g. mitigation or adaptation projects). Jodoin, Hansen and Hong review the risks of displacement associated with three diverse types of responses to climate change: first, displacement due to the Site C Clean Energy Project, a dam and hydro-electric generating station in northern British Columbia (BC), Canada; second, forced evictions in the Cherangani Hills, Kenya resulting from the implementation of REDD+ initiatives; and third, planned relocation programmes in the Republic of Maldives (Maldives) developed to adapt to extreme weather events like tsunamis. They discuss the legal parameters of forced evictions in international human rights law. They submit that a rights-based approach may assist in creating responses to climate change that are rooted in international human rights norms.

Benoît Mayer's chapter approaches the climate-migration nexus from the perspective of the international law on State responsibility. It submits that States have a customary international law obligation to pay reparation for the injury caused to other States by their internationally wrongful acts. Such responsibility could arise not only when a State fails to comply with its obligations under climate agreements, but also when it infringes norms of general international law such as the no-harm principle, and they could give rise to secondary obligations to make reparation, typically through compensation. Mayer highlights however that this does not lend support to the imposition of specific obligations on the developing States affected by climate change to adopt particular policies on 'climate migration' beyond the general standards defined by international human rights law. Measures allowing for the resettlement of foreign citizens as a form of reparation, on the other hand, appear unlikely to provide an effective protection to the human rights of the individuals concerned.

Erika Pires Ramos and Fernanda de Salles Cavedon-Capdeville's chapter turns to a more pragmatic review of legal and institutional developments relevant to the climate-migration nexus in the particular context of Latin America. This continent is particularly exposed to climate change due to its geographical and environmental configuration, socioeconomic vulnerabilities and population groups which strongly depend on the environment, as indigenous peoples and other traditional communities. The impacts of disasters and climate change are an important cause of

internal and cross-border displacement. These impacts tend to increase, intensifying human mobility in the region. In this context, this chapter aims to identify, on the one hand, the lack of specific norms and guidelines on environmental migration at the regional and sub-regional levels, and on the other hand, the inclusion of this topic in the role of some regional organizations. Thus, coordination between existing normative and institutional frameworks on migration, disasters and climate change and the adjustment of policies and governance structures on regional and sub-regional level emerges as a possible strategy to face the challenges presented by environmental migration in Latin America. In this sense, good practices and national experiences could give a relevant contribution to the building process of protection standards, policies and regional cooperation in this topic.

The next three chapters present more specific institutional perspectives. Thus, *Gervais Appave*, *Alice Sironi*, *Mariam Traore Chazalmoël*, *Dina Ionesco* and *Daria Mokhnacheva's* chapter develops a reflection on the role of the International Organisation for Migration (IOM). Even before it became a United Nations specialized agency in 2016, the IOM had been working on migration and displacement in connection with environmental and climate changes at the legal, policy and operational levels since the early 1990s. The extensive and comprehensive nature of IOM's work on climate and environmental migration and displacement, spanning 25 years, has given IOM a global leading voice on policy and legal questions related to climate migration and displacement. IOM's three institutional objectives are: (1) to prevent forms of forced migration linked to environmental and climate change; (2) to assist, protect and reduce vulnerabilities of migrants; and (3) to facilitate migration as an adaptation strategy. In carrying out activities aimed at achieving these objectives, the IOM supports both migrants and its Member States facing increasing challenges in developing solutions to climate migration and displacement, including in the search for appropriate legal solutions.

Sophia Kagan, *Meredith Byrne* and *Michelle Leighton* then present the perspective of the International Labour Organisation (ILO). This chapter puts a particular emphasis on the protection of the rights of migrant workers, which has long been a key concern of this organization. Kagan, Byrne and Leighton show that many workers are already seeking decent work and income security abroad due to poor economic opportunities at home, conflict or disaster. While the consequences of environmental degradation on labour markets are well-researched – particularly as they relate to core economic sectors such as agriculture and tourism – much less is known on how climate variability or other environmental change in the future will affect workers and drive some to migrate in search of new

livelihoods. Given the vulnerability of these new migrants, the ILO's role in making regular and well-managed labour migration a positive experience for all and fostering greater awareness of the positive contributions that migrant workers make to host countries will, they submit, become increasingly important.

Finally, *Alex Randall* presents the questioning of an advocate engaged in advocacy for refugee and migrants working on climate change. More specifically, this chapter engages a discussion of the treatment of climate migration in the media in the United Kingdom. Randall analysed hundreds of newspaper stories about climate-linked migration to examine which people and institutions have become key sources for journalists. The results reveal that a relatively small group of people dominate media coverage as sources. Further, this lack of diversity in sources is created by the very narrow focus the UK media takes when covering climate-linked migration. Press coverage over the past decade has focused on a small number of high-profile cases of climate-linked migration. Through this survey, Randall makes the case that to improve the wider public's understanding of the issue academics and civil society groups must engage with journalists and write to encourage a more nuanced understanding of the issue, and a wider array of sources in their writing.

C. Ways Forward?

The third and last part of the Handbook gathers chapters which reflect on steps which could or should be taken to address the climate-migration nexus. The first chapters develop a rather theoretical reflection on the ethical dimensions, political processes, and relevant terminology. Following ones turn to more concrete steps which could be made through either legal or institutional innovations carried out at different scales.

First of all, *Katrina M. Wyman* provides a broad, synthetic overview of the thriving literature interested in defining our ethical duties towards climate migrants. This chapter discusses more specifically the responses that have been given to three questions: (1) What is the ethical basis on which countries are obligated to assist climate migrants from other states? (2) what is the scope of the rights that climate migrants enjoy to resettle elsewhere, in particular is the right an individual or a collective right to resettle? and (3) how should obligations to climate migrants be allocated among countries? Wyman concludes by emphasizing that the existing literature is focused on the obligations owed to, and the rights enjoyed by, migrants from the small island states that are existentially threatened by climate change. The focus of the literature should be broadened to consider the responsibilities that states owe to migrants in other situations.

Chloé Anne Vlassopoulos's chapter turns to a socio-political analysis of the agenda-setting process at work in relation to the climate-migration nexus. Vlassopoulos retraces the emergence of climate migration as a global issue. She examines in particular the role played by different actors, ranging from scholars from environmental and migration studies, to operational institutions such as the IOM and the UN High Commissioner for Refugees. Vlassopoulos thus analyses how migration was constructed, in the context of environmental disturbances and then climate change, as both a political issue and the cause of political issues, or even as a possible solution to issues raised by climate change. This chapter also discusses the re-interpretation of climate migration in the context of the workstream on loss and damage and highlights the difficulty of promoting the role for climate change institutions without disempowering migration institutions.

This is followed by a thought-provoking chapter where *François Gemenne* defends a terminology rejected by most in the field: 'climate refugees.' Gemenne duly recognizes that there are plenty of reasons, and not just legal reasons, to avoid using the term 'climate refugee'. Without denying that these reasons exist, his chapter argues that there are also at least two good reasons to use the term 'refugee' – not in the legal sense, of course, but in the sense to which people relate when using that term, as a reflection of the plight of the individuals in question. This is not just a matter of semantics, Gemenne contends: we should talk of 'climate refugees' because climate change is a form of political persecution, and because the term 'migrant' has sadly become a life-threatening label, in a world marred by populism and xenophobia.

Following chapters turn to more concrete steps which could be made to address the climate-migration nexus. *Frank Biermann* and *Ingrid Boas* reflect on the possibility of a global governance system to protect climate migrants. A new governance system is required, they argue, because the current institutions, organizations and funding mechanisms, including new soft law initiatives, are not sufficiently equipped to deal with the looming crisis of climate-induced migration. The two scholars advance a blueprint for global governance architecture on the protection and voluntary resettlement of climate migrants. Key elements of their proposal are a new legal instrument that builds on the responsibility of the international community and is specifically tailored for the needs of climate migrants – a Protocol on Recognition, Protection and Resettlement of Climate Migrants to the United Nations Framework Convention on Climate Change – as well as a separate funding mechanism, a Climate Migrant Protection and Resettlement Fund.

Alternatively, *Ilona Millar* and *Kylie Wilson* explore the possibility of a more limited – and perhaps more likely – institutional change under the United Nations Framework Convention on Climate Change. They

consider the possibility that the Climate Change Displacement Facility, announced at the Paris Summit in 2015, become an operational institution under the Warsaw International Mechanism on Loss and Damage Associated with Climate Change Impacts. Millar and Wilson argue that such proposals provide a politically feasible, short- to medium-term international response to an issue that is unable to garner traction in other legal fora. This chapter also explores the potential mandate, functions and sources of funding for such a facility, and other relevant arrangements.

Last but not least, *Susan F. Martin's* chapter reviews proposals towards an extension of complementary protection to individuals displaced across international borders by the effects of climate change and other environmental drivers. In particular, this chapter discusses the outcomes of the Nansen Initiative, an intergovernmental initiative that sought to promote the development of a protection agenda through a series of consultation conducted from 2012 to 2016 under the leadership of Walter Kälin. In terms of process, Martin emphasizes certain parallels between this initiative and the developments which led to the adoption of the Guiding Principles on internal displacement. Her chapter then recounts the origins and outcomes of the Nansen Initiative's Agenda for Protection and its successor, the Platform on Disaster Displacement and discusses the Nansen Initiative's recommendations on humanitarian admissions and deferral of deportation, a centrepiece of its protection agenda. Its conclusions outline the strengths and weaknesses in this approach to protection as well as next steps in this process.

A synthetic Afterword by *James C. Hathaway* concludes the Handbook, but much, much more remains to be researched, thought, and written on the climate-migration nexus and what laws, domestically, regionally or internationally, do, could do and should do about it. As editors, we saw this volume as an opportunity to bring together many voices rather than forcing our own perspectives. As expected, the outcome is somewhat cacophonous. Methodological, empirical, ontological and ethical inconsistencies can be found between the contributions, many authors taking for granted assumptions that others persuasively rebut. It was precisely to bring evidence of these inconsistencies that we believe a Research Handbook could be useful – as a cross-section of evolving debates on a fast-developing field of academic research. By taking stock of existing debates on what the law does, could do, or should do in relation to the climate-migration nexus, we hope that the twenty following chapters will serve as the foundation for further research and, most importantly, help spur genuine progress in law and governance for the benefit of all.

