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## Hybrid Legal Approaches Towards Climate Change: Concepts, Mechanisms and Implementation

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# HYBRID LEGAL APPROACHES TOWARDS CLIMATE CHANGE: CONCEPTS, MECHANISMS AND IMPLEMENTATION\*

DR. COSMIN CORENDEA\*\*

## I. INTRODUCTION

*Climate change over the 21st century is projected to increase displacement of people. Displacement risk increases when populations that lack the resources for planned migration experience higher exposure to extreme weather events, in both rural and urban areas, particularly in developing countries with low income.*<sup>1</sup>

In the latest Intergovernmental Panel on Climate Change (IPCC) Assessment Report (AR5), Chapter 19 recognizes the emergent risk and key vulnerabilities related to climate change and migration. Emergent risks arise *inter alia*, from indirect, trans-boundary, and long-distance impacts of climate change. Adaptive responses and mitigation measures some-

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\* This article is part of the book “Legal Protection of the Sinking Islands Refugees” by the same author, to be published in 2016.

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1. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE [IPCC], FIFTH ASSESSMENT REPORT (2009), <https://www.ipcc.ch/report/ar5/>.

times increase such risks [19.4, *high confidence*].<sup>2</sup> Human or ecological responses to local impacts of climate change can generate harm in distant places, such as by increasing prices of food commodities on the global market due to local climate impacts, decreasing food security and exacerbating food insecurity [19.4.1]. Climate change will bear significant consequences for human migration flows at particular times and places, creating risks as well as benefits for migrants and for sending and receiving regions and States (*high confidence*) [19.4.2.1].

More concretely, the IPCC AR5 Chapter 29 identifies sea-level rise as one of the slow-on-set climate change triggers for Small Islands, the most affected areas of the globe. Sea-level rise poses one of the most widely recognized climate change threats to low-lying coastal areas on islands and atolls (*high confidence, robust evidence and high agreement*) [29.3.1].<sup>3</sup> It is *virtually certain* that global mean sea-level rise rates are accelerating [WGI 13.2.2.1].<sup>4</sup> Projected increases to the year 2100 superimposed on extreme sea-level events (e.g., swell waves, storm surges, ENSO) (RCP 4.5: 0.35m to 0.70m, WGI 13.5.1, Table 29-1)<sup>5</sup> present severe sea-flood and erosion risks for low-lying coastal areas and atoll islands (*high confidence*). Likewise, there is *high confidence* that wave over-wash of sea water will degrade fresh ground water resources [29.3.2] and that sea surface temperature rise will result in increased coral bleaching and reef degradation [29.3.1.2]. Given the dependence of island communities on coral reef ecosystems for a range of services, including coastal protection, subsistence fisheries and tourism, there is *high confidence* that coral reef ecosystem degradation will negatively impact island communities and livelihoods.

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2. Michael Oppenheimer et al., *Chapter 19. Emergent Risks and Key Vulnerabilities*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE [IPCC] WGII AR5 (2014), [http://ipcc-wg2.gov/AR5/images/uploads/WGIAR5-Chap19\\_FGDall.pdf](http://ipcc-wg2.gov/AR5/images/uploads/WGIAR5-Chap19_FGDall.pdf).

3. *Id.*

4. J.A. Church, P.U. Clark, A. Cazenave, J.M. Gregory, S. Jevrejeva, A. Levermann, M.A. Merrifield, G.A. Milne, R.S. Nerem, P.D. Nunn, A.J. Payne, W.T. Pfeffer, D. Stammer & A.S. Unnikrishnan, *Sea Level Change*, in CLIMATE CHANGE 2013: THE PHYSICAL SCIENCE BASIS. CONTRIBUTION OF WORKING GROUP I TO THE FIFTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (T.F. Stocker, D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex & P.M. Midgley eds., 2013), [http://www.climatechange2013.org/images/report/WG1AR5\\_Chapter13\\_FINAL.pdf](http://www.climatechange2013.org/images/report/WG1AR5_Chapter13_FINAL.pdf).

5. IPCC, *Annex I: Atlas of Global and Regional Climate Projections Supplementary Material RCP4.5* (G.J. Van Oldenborgh, M. Collins, J. Arblaster, J.H. Christensen, J. Marotzke, S.B. Power, M. Rummukainen & T. Zhou eds., 2013) in CLIMATE CHANGE 2013: THE PHYSICAL SCIENCE BASIS. CONTRIBUTION OF WORKING GROUP I TO THE FIFTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (T.F. Stocker, D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex & P.M. Midgley eds., 2013), [http://www.climatechange2013.org/images/report/WG1AR5\\_AISM4.5\\_FINAL.pdf](http://www.climatechange2013.org/images/report/WG1AR5_AISM4.5_FINAL.pdf).

## II. LEGAL CONTEXT

When developing climate change law and applying the hybrid approach in climate change related case studies, in particular to immediate affected areas, a contextual analysis should be considered. Besides supporting science, this approach would contribute to interpreting the available legal tools within their timeline.

*Environmental law* is a rapidly evolving and constantly changing legal field. The most important international environmental agreement before the Kyoto Protocol is indubitably the Declaration of the United Nations Conference on the Human Environment from 1972, also known as the Stockholm Conference.<sup>6</sup> The 26 Principles of the Declaration continue to represent the core of international environmental law and are to be found in other subsequent environmental agreements, including the Agenda 21 adopted by the United Nations Conference on Environment and Development in 1992.<sup>7</sup>

However, the environmental issues which were discussed and addressed in the 1972 Conference are not the same as the ones humankind faces today. In 1972, for example, climate change was not a concern and the extinction of species represented an innovative and controversial topic which created strong legal arguments on both sides. The first Montevideo Programme (1981) and the Rio Agreements (1992) demonstrate the evolution of international environmental law as an overall continuous and growing organism in developing international principles, guidelines and standards. Today, there are over 1,000 environmental documents which address human needs regarding environmental concerns, at national, regional and international levels.<sup>8</sup>

Principles such as the Duty Not to Cause Environmental Harm, underline State responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of

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6. Stockholm Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/CONF.48/14/Rev.1, 3 (1972), available at <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503>.

7. United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, *Agenda 21*, U.N. Doc.A/CONF.151/26/Rev.1, available at <http://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>

8. Cosmin I. Corendea, Human Security in the Pacific: the Climate Refugees of the Sinking Islands (Nov. 5, 2012) (unpublished S.J.D. dissertation, Golden Gate University, School of Law) (on file with Golden Gate University, School of Law, Law Library).

areas beyond the limits of national jurisdiction.<sup>9</sup> Under The Good Neighborliness Principle or *Sic Utere*, States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.<sup>10</sup> These are accepted as rules of customary international law prohibiting all States from using the environment in a manner that causes harm or injury to its own State or to other States.

The Polluter Pays Principle establishes that national authorities should promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution.<sup>11</sup> The Precautionary Principle states that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.<sup>12</sup> These principles are still being evaluated in the context of growing concern for the environment and their potential as sources of future dispute. It is argued that there is no conclusive evidence to establish the principles as rules of customary international law. In the recent United Nations Framework Convention on Climate Change (UNFCCC) talks, it became clear that State responsibility towards climate change represents a 'no-go' topic for discussions. However, the current Loss and Damage initiative might establish some legal reference towards the applicability and functionality of such principles, more than just 'moral obligations.'<sup>13</sup>

*Human rights law* also developed itself and through its regional mechanisms and the United Nations human rights bodies, transformed the initial representative Charter of the United Nations from 1945 into a more applicable, enforceable and interpretably efficient legal instrument. Although it has its well-known gaps, Human Rights Law still represents the

9. United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, *Rio Declaration on Environment and Development*, U.N. Doc.A/CONF.151/26/Rev.1, Principle 2 [hereinafter Rio Declaration].

10. United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, *Agenda 21*, U.N. Doc.A/CONF.151/26/Rev.1, available at <http://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>

11. Rio Declaration, *supra* note 9, Principle 16.

12. Rio Declaration, *supra* note 9, Principle 15.

13. Anthony Oliver-Smith, Susan L. Cutter, Koko Warner, Cosmin Corendea & Kristina Yuzva, *Addressing Loss and Damage in the Context of Social Vulnerability and Resilience*, 7 UNU-EHS POLICY BRIEF (2012).

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strongest implementing international legal branch with active mechanisms and agreements. This aspect, corroborated with the recent international courts' approach towards applicability, may offer an immediate solution when addressing environmental concerns and where other international law is silent. The courts' open and flexible attitude when proceeding on environmental matters in settling legal disputes according to international law should be positively underlined here.

In the context of climate change, human rights have a defined cause-effect connection: climate change triggers have a direct impact on human rights, initiating or aggravating violation(s) of human rights in place. Some climate change occurrences, such as sea level rise and storms, are direct causes of flooding of territories, population displacement, salinization of fresh water resources, and diminishing habitable and cultivable land. Consequently, various rights are infringed upon, such as the right to self-determination, right to property, right to life, right to work, right to development, and right to culture.<sup>14</sup> Rising surface temperatures lead to a greater occurrence of diseases, impacting the right to health and the right to life.<sup>15</sup> Increasing frequency and intensity of extreme weather events may also affect the right to life, right to health, and the right to housing. Receding coastlines and permafrost melting that cause damage to land, houses and other infrastructure are also undermining the right to an adequate standard of living.<sup>16</sup>

*International refugee law* is silent with regards to climate change. Based on the 1951 Refugee Convention and its 1968 Protocol, with one of the largest implementation mechanisms via the United Nations High Commissioner for Refugees (UNHCR), it seems that international refugee law has reached its limits when defining a refugee person and applying its procedures. Considering Article 1 of the Convention,<sup>17</sup> which does not define a person fleeing his country of nationality due to environmental matters, the climate change approach can reinforce an application for refugee status but it is not regarded as sufficient. The fear of persecution can only be considered if it can be linked to one of the five elements contained in the definition (race, religion, social group, ethnicity, and

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14. Cosmin I. Corendea, *supra* note 8.

15. *Id.*

16. *Id.*

17. 1951 Refugee Convention, art. 1, July 28, 1951, 189 U.N.T.S. 150 (“A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”).

political opinion). However, it cannot be considered in the case of persons fleeing from conflict in the context of the 1951 Convention (outside Africa where the OAU Convention would be applicable). It is important to consider the historical context of the 1951 Convention and its initial purpose and objectives. The Cold War and the relationships between the West and the East (the main actors having been the US and the USSR) shaped the political context of the time, influencing the reasoning behind the Convention. The intention was to protect people fleeing from the East (Europe) and to improve the capacity of the West to protect them from facing any severe repercussions. In the early fifties, the environment, in particular as we know it today, did not represent an issue of concern and the environmentally induced migrants did not need legal protection the way they need it today.

Different legal interpretations have been given to the 1951 Convention trying to establish a connection between the document, its objectives, and the migrants today who are fleeing their own countries due to climate triggers in particular. There is no doubt, however, that the 1951 Convention does not apply in relation to climate change. The Principle of Non-Refoulement,<sup>18</sup> as part of customary international law, could represent a legal argument when the refugee status is rejected to environmental migrants, but it remains to be legally established. The UNHCR is already facing difficulties in addressing the needs of over 51.2 million individuals who were forcibly displaced worldwide due to persecution, conflict or human rights violations<sup>19</sup> including: approximately 16.7 million refugees, 11.7 million of whom are under UNHCR's mandate; around 5 million Palestinians registered by United Nations Relief and Works Agency for Palestine Refugees in the near East (UNRWA); 33.3 million internally displaced persons (IDPs); and 1.2 million asylum-seekers.<sup>20</sup>

With no legal protection under international law, a lack of legal language when addressing climate change, and no mechanisms with a mandate, the number of environmental/climate migrants continues to increase and the gap in international law to address this issue continues to expand. Considering the IPCC AR5 findings and the flows of environmental migrants

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18. *Id.* art. 33 ("No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social or political opinion.").

19. UNHCR Global Trends 2013, <http://www.unhcr.org/5399a14f9.html>.

20. INTERNAL DISPLACEMENT MONITORING CENTRE [IDMC] OF THE NORWEGIAN REFUGEE COUNCIL [NRC], <http://www.nrc.no/?aid=9169951#.VuDVvuazn6t>.

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challenging regional legislations to act (e.g., the Boat Refugees case,<sup>21</sup> *Siegeo Alesana v. New Zealand*<sup>22</sup>) the urgency of *legally* addressing this category of migrants is unquestionable, and a hybrid approach, inclusive and instrumental, represents an arguable solution.<sup>23</sup>

*Climate-related laws*, often addressed as climate change law, have taken shape domestically in many countries around the world, in particular in less developed countries and those most affected by climate change. According to a study conducted by Globe International, at the end of 2013, there were 487 climate change-related laws or policies of equivalent status in the 66 studied countries.<sup>24</sup> The 20 Annex 1 countries in the sample (also known as developed countries) had passed 194 climate laws, compared with 293 laws in the 46 non-Annex 1 countries,<sup>25</sup> and 58% of the identified laws were legal acts passed by parliament, while 40% were executive orders or policies. (The remaining 2% had both executive and legislative features but could not be classified.) This study argues that the motivations of acts, either legislative or executive, consist of several dimensions in which the legislative approaches of countries differ. Across the 66 countries, there is a rich diversity of approaches in terms of legislative focus, ambition and institutional arrangements.<sup>26</sup> Some laws address several different objectives (for example, a single law covering carbon pricing, energy efficiency and renewable energy), while others focus narrowly on a particular sector. Some laws contain firm commitments of a statutory nature, while others are more aspirational. The study makes no normative judgments about these choices or indeed the merit of individual pieces of legislation. What must be noted, how-

21. *Europe's African Refugee Crisis: Is the Boat Really Full?*, SPIEGEL ONLINE INTERNATIONAL (Apr. 15, 2014), <http://www.spiegel.de/international/europe/european-refugee-crisis-worrens-in-mediterranean-a-964304.html>.

22. *Climate Change Part of Refugee Ruling*, RADIO NEW ZEALAND (Aug. 4, 2014), <http://www.radionz.co.nz/news/national/251293/climate-change-part-of-refugee-ruling> (discussing how a family claiming refugee status because of rising sea levels around their Pacific Island home have won an appeal to stay in New Zealand).

23. MIGRATION, ENVIRONMENT AND CLIMATE CHANGE: ASSESSING THE EVIDENCE, 19 (F. Laczkó & C. Aghazarm eds., International Organization for Migration 2009), available at [http://publications.iom.int/bookstore/free/migration\\_and\\_environment.pdf](http://publications.iom.int/bookstore/free/migration_and_environment.pdf) (providing the IOM working definition that “[e]nvironmental migrants are persons or groups of persons who, for reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to have to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their territory or abroad”).

24. MICHAL NACHMANY, SAM FANKHAUSER, TERRY TOWNSEND, MURRAY COLLINS, TUCKER LANDESMAN, ADAM MATTHEWS, CAROLINA PAVESE, KATHARINA RIETIG, PHILIP SCHLEIFER & JOANA SETZER, THE GLOBE CLIMATE LEGISLATION STUDY FOURTH EDITION, INTRODUCTION AND SUMMARY, (2014), available at <http://www.globeinternational.org/pdfviewer>.

25. *Id.*

26. *Id.*



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ever, is that the cumulative environmental ambition contained in the 487 laws is not yet sufficient to stabilize climate change at a level that is consistent with the agreed objectives of the U.N. Framework Convention on Climate Change.

### III. CONCEPTS

#### PROGRESSIVE INTERPRETATION OF LAW

*The Living Tree Doctrine* originated in Canada and represents a doctrine of constitutional interpretation stating that a constitution is organic and must be read in a broad and progressive manner so as to adapt it to the changing times.<sup>27</sup>

*Policy-oriented jurisprudence* provides guidance to scholar, adviser or decision maker for directing attention to the relevant features of particular contexts for purposes of inquiry and affective intervention.<sup>28</sup> Developed by Lasswell and McDougal and continued by Wiessner and Willard,<sup>29</sup> this type of jurisprudence starts with the delimitation of a problem as characterized by a discrepancy between predicted and desired future decisions regarding conflicting claims on any issue in society.

It suggests that the problem at hand needs to be defined precisely and comprehensively in its relevant context, using all available reservoirs of knowledge.<sup>30</sup> Authoritative and controlling responses to conflicting claims are analyzed as the relevant decisions of the past in light of their conditioning factors, including the predispositions of decision-makers and environmental elements.<sup>31</sup> Moreover, what is to be decided is not necessarily what should be decided. Accordingly, the approach recommends solution(s) to the problem(s) of concern that reflect the common interest of the community. Such policy-oriented solutions need to maximize the access by all, to all the values humans desire. This is the distinctive social interventionist feature of the approach.<sup>32</sup>

The policy-oriented jurisprudence corroborated with the founding Living Tree Doctrine are the initial reasoning behind the progressive interpreta-

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27. Bradley W. Miller, *Beguiled by Metaphors: The 'Living Tree' and Originalist Constitutional Interpretation in Canada*, 22 CAN. J. L. & JURISPRUDENCE 331 (2009).

28. S. Wiessner & A.R. Willard, *Policy-Oriented Jurisprudence*, 44 GERMAN Y.B. INT'L L. 96, 97, 101, 107-112 (2001).

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

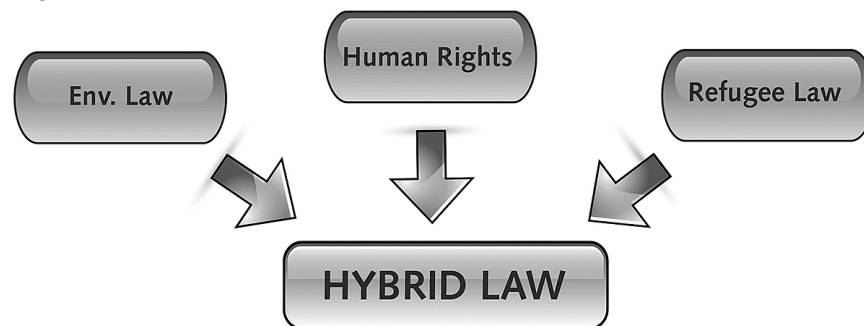
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tion of law, which in legal practice could be mirrored in both the margins of appreciation<sup>33</sup> and statute of limitations<sup>34</sup> the international mechanisms (courts) have when admitting and analyzing a case study. The current tendency of the international courts is to prove their ‘adaptive capacities’ in regards to interpretation of international law. In the recent Palau attempt to ask for an advisory opinion to the International Court of Justice on matters related to climate change,<sup>35</sup> the International Court of Justice never denied rendering its opinion when asked by the United Nations General Assembly and proved its determination in shaping new international law in many cases.<sup>36</sup> However, there is no advisory opinion on climate change yet.

## INTERNATIONAL HYBRID LAW

*International hybrid law* represents a legal research tool which concurrently, indivisibly, interdependently, and interrelatedly examines a climate change case study from three perspectives: environmental law, human rights and refugee (migration) law. Hence, the research is simplified, using a single lens as a replacement for a three way analysis (see figure 1).

Figure 1



33. Case of Handyside v. the United Kingdom, App. No. 5493/72 Eur. Ct. H.R. (1976) (elaborating on the margin of appreciation doctrine).

34. In its judgment of 11 March 2014, the European Court of Human Rights challenged existing statutes of limitation in Europe. The Court granted an asbestos liability claim brought forward by a Swiss claimant who argued that a particular ten year long stop limitation period under Swiss federal law is null and void. The claimant successfully raised the argument that – due to long incubation or latency periods of asbestos-related diseases – the ten year long-stop is in violation of the European Convention on Human Rights (“ECHR”). *Howald Moor and Others v. Switzerland*, App. No. 52067/10 Eur. Ct. H.R. (2014).

35. Jaspreet Kindra, *Island Nation Takes on the World’s Polluters*, IRIN HUMANITARIAN NEWS AND ANALYSIS, [m.irinnews.org/Report/99578/Island-nation-takes-on-the-world-s-polluters#.U\\_cTm7kazCQ](http://m.irinnews.org/Report/99578/Island-nation-takes-on-the-world-s-polluters#.U_cTm7kazCQ).

36. Wiessner & Willard, *supra* note 28.

In most cases, when the phenomenon of climate change is legally analyzed, there is a cause found in environmental law, like the violation of environmental principles or other environmental law elements.

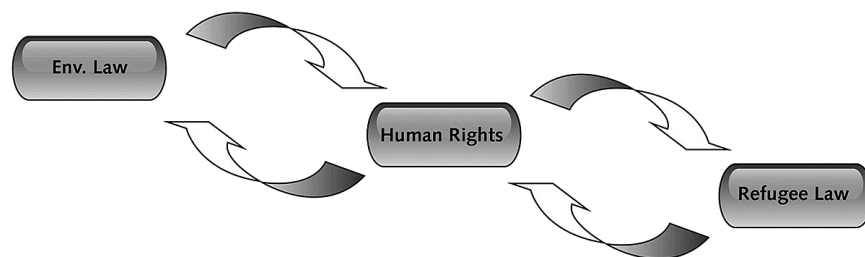
Consequently, the main effects of the 'legal' climate change are mostly to be found in human rights law, due to its unavoidable first impact upon the target society.

Secondary, as a subsidiary effect, there is refugee (migration) law, because of the same strong impact, but mostly as a human alternative to this impact, regardless of the type of response: immediate, intermediate or long-term (*see figure 2*).

For example, when a society is affected by a climate change type of event, human rights are the first to be affected (violations of the right to life, clean environment, right to work, etc.). Soon after the impact, as the process in most of the cases is not reversible, the people of the respective societies try to find alternatives to improve their affected human rights by adapting or migrating.

Some societies choose an instinctive and rapid response, which is migration (over 30%).<sup>37</sup> This does not mean that migration represents a failure of adaptation, only that people tend to react on immediate solutions to an oppressive situation.

Figure 2



There are two main advantages of using international hybrid law when analyzing a climate related case study. The first is that, in addition to a basic and clearer picture, if used concurrently under the umbrella of international law, the case study benefits from all principles and rights emerging from all three branches, regardless of the source. Thus, if the case requires an influential argument, it could be easily found in one of

37. Cosmin I. Coredea, *supra* note 8.

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the three branches and used accordingly, not necessarily considering the power (soft vs. binding) of the law. The same theory of using all three branches of law within the same analyses with the hybrid law principles applies in the case of the signatory (or not) states of interest (e.g., the principles of environmental law do have a stronger resonance in international law compared with the right to a clean environment from human rights law).

The second main argument is the increased protection of the case using a human-oriented approach. The analyzed case is guarded simultaneously by three combined branches of international law and therefore, human security increases exponentially. One of the results of such protection is represented by the climate refugees/migrants, who are not recognized under refugee/migration law, but gain more protection from the human rights law and yet, environmental law. Nevertheless, where refugee law does not apply, such as in the case of the climate migrants, there are principles under the 1951 Convention which could easily be used under hybrid law (e.g.: the Principle of 'Non-refoulement,' which could be extracted from refugee law and be valid in the case of climate induced migrants, although the 1951 Convention does not apply).

Initially, the hybrid law research tool was intended to be used in the case of the Pacific Islands only, but since 2007 it demonstrated that it could be easily applied to other geographical regions affected by climate change, like South Asia, Northern Africa or the Arctic.<sup>3839</sup> The perspectives of the hybrid law could go deeper to the core of international law, at abstract and philosophical levels, if the research tool would be regarded as a concept of international law, naturally by the progressive interpretation of law.<sup>40</sup> The concept could reverse the causality/effects rapport (e.g., What if the main cause identified by the hybrid law in the field of environment law could become the effect (or subsidiary effect) of human rights or refugee law violations, in a reverse analysis? Could climate change be considered an effect of these violations?).

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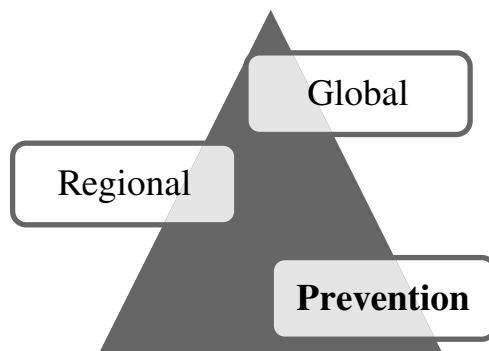
38. P. CROWLEY, PETITION TO THE INTER AMERICAN COMMISSION ON HUMAN RIGHTS FOR DANGEROUS IMPACTS ON CLIMATE CHANGE (2005).

39. SUSAN J. HASSOL, IMPACTS OF A WARMING ARCTIC: ARCTIC CLIMATE IMPACT ASSESSMENT (Cambridge Univ. Press 2004).

40. Cosmin I. Corendea, *supra* note 8.

## IV. POST-2015

Figure 3



Due to the nature of environmental issues people face, their resilience is constantly improving and the legal frameworks which govern planning, use and management of the environment should also adapt accordingly. The law, as observed in the Globe Report mentioned above, starts in the most affected and vulnerable communities to adapt to current situations and be applicable and enforceable in order to serve the immediate needs of those respective societies. It should act as a precautionary measure preventing the impacts of climate change at local levels. However, it usually starts by regulating adaptation or migration measures at regional or international levels with little relevance to the households affected by climate change (*see figure 3*). Due to this limitation and more, the hybrid concept in general, could, *inter alia*, be extended to considering regulatory mechanisms. It is clear that the UNHCR, as the main humanitarian actor, cannot solve the migration problem by itself. Therefore, a hybrid mechanism formed by the environmental body of the United Nations, the human rights body and the UNHCR, under the direct supervision of the Secretary-General, would represent a sustainable and efficient solution. Such a new instrument would facilitate the redirection of three separate bodies' actions as one direct act, a single interpretation and adaptation of the affected countries by climate change. Nevertheless, the General Assembly decisions would support its activities with decisions aimed to address strictly the problem of the communities affected by climate change.<sup>41</sup>

The research agenda should, however, consider the law when addressing climate change issues. Unfortunately, the research conducted so far is

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41. *Id.*

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quite modest on legal findings and it negatively impacts the knowledge transfer to the legislators. Law needs (good) science, which should be used in a legal conclusive manner when shaping international law.

At policy level, the litigation and legal angle could improve significantly after 2015, yet only if the legal design of the agenda within the United Nations Framework Convention on Climate Change would address immediate legal requests for expanding adaptation duties, define the gap between adaptation and damage(s), and explore options in other fora (e.g., migration/refugees). In the medium term, the outcome of COP 21, the Paris Agreement, selects tools or particular types of damage and ensures that a “baseline approach“ is considered, parameters (triggers) are assessed in order to avoid individual baselines, and that there is no circumventing mitigation and/or adaptation. With the Paris mandate, policy makers should start addressing the long-term and sensitive issues of compensation/finance at the various levels (nation state, community, individual).<sup>42</sup>

As the formal U.N. negotiations on climate change move beyond the Paris Agreement, with a post-2020 framework scheduled to be implemented, it is progressively clearer that a human-centered approach is essential as a last effort to address climate change.

The hybrid approach in general, and the international hybrid law, in particular, could help developing innovative areas mandated in the Paris Agreement, such as new climate change domestic legislation growth, progressive involvement of non-state actors, loss and damage, but mainly to focus on the interface between climate change and human rights (including indigenous peoples, local communities and migrants).

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42. Oliver-Smith et al., *supra* note 13.