

Implementing the SDG-13 through the Adoption of Hybrid Law: Addressing Climate-Induced Displacement

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Abstract

The sustainable development goals (SDGs) with their integrated linkage of development and environmental concerns have been hailed as a paradigm shift in the attainment of sustainability. The article attempts to understand the normative framework that underwrites international law and SDG-13 *vis-a-vis* climate change with a special focus on climate-induced displacement. It explores the existing provisions, limitations, and gaps under international law with regard to displacement associated with climate change. More specifically, the analysis assesses the potential of hybrid law in promoting the goals of SDG-13. The hybrid law approach proposed in this article involves the amalgamation of substantive norms from different branches of international law, integration of norms of differing legal status and engagement of state and non-state actors. The analysis explores the concept of hybrid law, surveys the Nansen Protection Agenda and the Global Compact on Migration and analyses their suitability in exploring solutions to climate displacement. The article evaluates how the adoption of the SDGs provides a foundation for the development of a hybrid law in examining solutions to climate displacement under SDG-13.

Keywords

Sustainable Development Goals – International Law – Climate Change – Climate-Induced Displacement – Human Rights – Hybrid Law

1 Introduction: From Sustainable Development to Sustainable Development Goals*

The Sustainable Development Goals (SDGs) encompass 17 aspirational goals and 169 specific targets to achieve by 2030 in an integrated, interdependent and indivisible manner while balancing the economic, social, and environmental dimensions of sustainable development.¹ The idea of SDGs has been the culmination of the international community's efforts to balance the protection of the environment with development.² As a balancing idea, the concept of sustainable development is difficult to be understood, measured and quantified.³

Experts have advocated the development of a quantified and target approach, which would capture the essence of sustainable development in an integrated manner. The target approach would also provide the world community a scale to compare the efforts of states towards the attainment of

* The Special Issue 'International Law for the Sustainable Development Goals' is a research outcome of the 2017–2018 Workshop Series 'International Law for the Sustainable Development Goals' organised by the Department of Transboundary Legal Studies, Faculty of Law, University of Groningen. Mando Rachovitsa and Marlies Hesselman led the organisation of these workshops. The series included 8 workshops which explored the role and relevance of international law to the implementation of the Sustainable Development Goals. The Special Issue includes some of the papers presented at the workshops and papers submitted to an open Call for Papers. More information is available at <https://www.rug.nl/rechten/congressen/il4sdgs/>.

- 1 UNGA Resolution, *Transforming Our World: The 2030 Agenda for Sustainable Development*, UN Doc A/RES/70/1, 21 October 2015, Preamble; See also Ved P. Nanda, 'The Journey from the Millennium Development Goals to the Sustainable Development Goals', *Denver Journal of International Law and Policy*, 44/3: 389–412 (2016), p. 390.
- 2 Brundtland Commission, *Report of the World Commission on Environmental and Development: Our Common Future*, UN Doc A/42/427, 4 August 1987, Part I, Ch. 2.I; UNGA Resolution, *The Future We Want*, UN Doc A/RES/66/288, 11 September 2012, paras. 10, 241–251, and 254.
- 3 Christina Voigt, *Sustainable Development as a Principle of International Law* (Leiden: Nijhoff, 2009); Duncan French, 'Sustainable Development' in Malgosia Fitzmaurice, David M. Ong and Panos Merkouris (eds.), *Research Handbook on International Environmental Law* (Cheltenham, UK, and Northampton, MA, USA: Edward Elgar, 2011), pp. 51–68; Phillipe Sands, Jacqueline Peel, with Adriana Fabra, and Ruth MacKenzie, *Principles of International Environmental Law* (Cambridge: Cambridge University Press, 4th edition, 2018), pp. 215–225; Ed Atkins, 'Deflective Discourse and Sustainable Development' in Beatriz Felipe Pérez, Daniel Iglesias Márquez and Lorena Martínez Hernández (eds.), *Rethinking Sustainable Development in Terms of Justice: Issues of Theory, Law and Governance* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2018), pp. 70–87.

sustainable development.⁴ In 2000, the Millennium Development Goals were adopted which brought pervasive changes in the approaches to development.⁵ In 2012, at the Rio+20, the international community renewed and reiterated the global commitment to sustainable development by strengthening the environment components.⁶ The unprecedented global negotiations, which followed the UN summit, culminated in the adoption of focused sustainable development goals for the period from 2016 to 2030.⁷

The SDGs are aspirational political goals, many of which reiterate the already existing state obligations,⁸ and do not create additional binding commitments for states under international law.⁹ The 2030 Agenda for sustainable development establishes objectives for states to achieve, and there is an expectation of commitment upon the states to strive towards the realization of said objectives. The Agenda recognizes international law as the normative backbone for implementing and achieving the objectives of the SDGs.¹⁰

Against this backdrop, this article attempts to analyze the role of international law in achieving the objective of 'urgent climate action' prescribed under SDG-13 in the context of climate displacement. The article explores the idea of 'hybrid law' as a method of integration to address the complexity of the issue of climate displacement within the fragmented international law. Though SDG-13 does not specifically refer to climate displacement, the declaration

4 Norchika Kanie and Frank Biermann (eds.), *Governance through Goals: Sustainable Development Goals as Governance Innovation* (Cambridge, MA: MIT Press, 2017), p. 5.

5 UNGA Resolution, *United Nations Millennium Declaration*, UN Doc A/RES/55/2, 18 September 2000.

6 *The Future We Want*.

7 Jeffrey D. Sachs, 'Goal-based Development and the SDGs: Implications for Development Finance', *Oxford Review of Economic Policy*, 31/3:268–278 (2015), p. 268.

8 *Transforming Our World: The 2030 Agenda for Sustainable Development*, paras. 18, 19, 31, and 38.

9 Asa Persson, Nina Weitz and Mans Nilson, 'Follow-up and Review of the Sustainable Development Goals: Alignment vs. Internalization', *Review of European, Comparative & International Environmental Law*, 25/1: 59–68 (2016), p. 62; Rakhyun E. Kim, 'The Nexus Between International Law and the Sustainable Development Goals', *Review of European, Comparative, International Environmental Law*, 25/1:15–26 (2016), p. 16; Riccardo Pavoni and Dario Piselli, 'The Sustainable Development Goals and International Environmental Law: Normative Value and Challenges for Implementation', *Veredas do Direito*, 13/26: 13–60 (2016), p 17.

10 *Transforming Our World: The 2030 Agenda for Sustainable Development*, para. 18: "... we reaffirm our commitment to international law and emphasize that the Agenda is to be implemented in a manner that is consistent with the rights and obligations of States under international law."

accompanying the Agenda 2030 identifies refugees, internally displaced persons and migrants among the stakeholders whose needs are reflected in the Agenda.¹¹ The Agenda's core principle of "leaving no one behind," covers migrants and requires data disaggregation by migratory status.¹² Central to the issue of migration, target 10.7 of SDG stresses the need for an orderly, safe, regular and responsible migration and mobility of people through the implementation of well-planned migration policies.¹³ The same is reflected in the Nansen Protection Agenda¹⁴ and the UN Global Compact on Migration (GCM).¹⁵ The goal of SDG-13 can never be realistically met unless effective measures are in place to address climate displacement.

Even though national implementation strategies are significant, this article focuses on the role of international law in the achievement of SDGs. With this in mind, the first part of the article examines the inter-linkage between climate change and SDGs while contextualizing the issue of climate displacement under SDG-13. The article specifically explores the relevant provisions under international climate law, refugee law, and international human rights law to achieve and implement the objectives of SDG-13, given the inevitability of climate displacement in the wake of climate change. It is crucial to understand whether international law as it stands plays a facilitative role in the attainment of the SDGs. Finally, the article, while considering the indivisibility of SDGs, and the unique opportunity it presents to reformulate international law advocates a hybrid law approach to deal with the situations of climate displacement and, more broadly, for the achievement of the specific SDG-13 goals and the realization of sustainable development. The hybrid law approach discussed herein involves the amalgamation of substantive norms from different branches of law, integration of norms of differing legal status and engagement with the role of state and non-state actors. Although the concerns of climate displacement have wide ramifications ranging from human rights violations to state security, the article primarily addressing the protection of individual/group rights of climate displaced rather than analyzing climate displacement from the broader lens of security.

11 *Ibid.*, paras. 23, 25 and 29.

12 *Ibid.*, paras. 48, 57 and 76.

13 *Ibid.*, Goal 10.7

14 The Nansen Initiative, 'Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change', (Vol I and II, December 2015), <https://nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>, accessed 24 May 2019.

15 UNGA Resolution, *New York Declaration for Refugees and Migrants*, UN Doc A/RES/71/1, 3 October 2016.

2 Inter-linkage(s) between the SDGs and Climate Change

Climate change is real, happening, and mostly human-induced.¹⁶ Climate change not only adversely affects human beings, and their socio-economic, civil, political, and cultural rights, but also spells doom for plants, animal, biodiversity, flora-fauna, and causes unnatural events like draughts, aridity, flood, earthquake, sea inundation, etc.¹⁷ The threat and looming impacts posed by climate change and climate action are acknowledged by SDG-13, which commits states to “take urgent action to combat climate change and its impacts.”¹⁸

SDG-13 goals focus on understanding the vulnerability and building resilience in the face of increased disasters.¹⁹ The Goals also target climate change integration into national policies while incorporating equity concerns of the developing nations, vulnerable and marginalized communities, including women.²⁰ The Goals further emphasize on building a participatory system based on education, awareness-raising, human and institutional capacity on climate change mitigation, adaptation, impact reduction, and early warning.²¹

All SDGs are inter-dependent: the realization of one SDG is contingent on the accomplishment of other SDGs, and the achievement of one SDG enables states to make strides towards the achievement of the other SDGs. For instance, integration of climate change measures into national policies to achieve the objectives of SDG-13 can complement the availability and sustainable management of water and sanitation (SDG 6); ensure access to affordable, reliable, sustainable and modern energy for all (SDG 7); and aid the sustainable consumption and production patterns (SDG 12). It is thus imperative that the

16 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) Summary for Policymakers (SPM), pp. 4–5.

17 IPCC, *Climate Change 2014: Mitigation of Climate Change, Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* Summary for Policymakers (SPM) (Cambridge, New York: Cambridge University Press, 2014), p. 6; See also A. Barrie Pittock, *Climate Change: The Science, Impacts and Solutions* (New York: Routledge, 2nd edition, 2013), p. 12; Colleen Murphy, Paolo Gardoni and Robert McKim (eds.), *Climate Change and Its Impacts: Risks and Inequalities* (Springer International Publishing AG: Springer Nature, 2018), pp. 3–11.

18 *Transforming Our World: The 2030 Agenda for Sustainable Development*, Goal 13.

19 *Ibid.*, Goal 13.1.

20 *Ibid.*, Goal 13.2, 13.a, and 13.b.

21 *Ibid.*, Goal 13.3.

global community undertakes efforts to eliminate human displacement in the wake of climate change by envisaging a robust and decisive climate policy.

2.1 *Climate Change and Climate-Induced Displacement*

Although it is not easy to directly attribute human displacement to climate change, the link between climate change and increased displacement is generally acknowledged.²² Reports and studies warn that climate change with its extreme weather impacts, sea level rise and coastal erosion is projected to increase the displacement of populations.²³ The fifth assessment report of the Intergovernmental Panel on Climate Change (IPCC) identified in detail the multiple reasons and scenarios for climate displacement, such as loss of housing (due to flooding or mudslides in mountains), loss of living resources (e.g. water, energy, and food supply), loss of social and cultural resources, and loss of cultural property, neighbourhood or community networks (mainly because of a devastating flood).²⁴ The UN High Commissioner for Refugees

22 Sarah Opitz Stapleton *et al.*, *Climate Change, Migration and Displacement: The Need for A Risk-informed and Coherent Approach*, Overseas Development Institute and United Nations Development Programme, 2017, p. 12, <https://www.odi.org/sites/odi.org.uk/files/resource-documents/11874.pdf>, accessed 24 May 2019; *Climate Change, Migration, and Displacement: The Underestimated Disaster* (Green Peace, 2017), p. 6; Robert McLeman, 'Climate-Related Migration and its Linkages to Vulnerability, Adaptation, and Socio-Economic Inequality: Evidence from Recent Examples' in Benoît Mayer and François Crépeau (eds.), *Research Handbook on Climate Change, Migration and the Law* (Cheltenham: Edward Elgar, 2017), pp. 29–48; UNHCR, *UNHCR's Strategic Directions 2017–2021*, 16 January 2017, p. 7, <http://www.unhcr.org/5894558d4.pdf>, accessed 24 May 2019; Robert McLeman and François Gemenne, 'Environmental Migration Research: Evolution and the Current State of the Science' in Robert McLeman and François Gemenne, *Routledge Handbook on Environmental Displacement and Migration* (New York: Routledge, 2018), pp. 3–16.

23 Foresight, *Migration and Global Environmental Change: Future Challenges and Opportunities*, Final Project Report: The Government Office for Science, London, 2011, p. 11; W. Neil Adger *et al.*, 'Human Security' in Christopher B. Field *et al.*, (eds.), *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge/New York: Cambridge University Press, 2014), pp. 755–791 and 767; Susan F. Martin, 'Environmental Change and Human Mobility: Trends, Law and Policy', *Comparative Population Studies*, 42: 187–218 (2017), p. 188; Kanta Kumari Rigaud *et al.*, *Groundswell: Preparing for Internal Climate Migration* (Washington, D.C.: World Bank, 2018), p. xix.

24 Adger *et al.*, 'Human Security', pp. 767–769; Valérie Masson-Delmotte *et al.*, IPCC, 2018: *Summary for Policymakers. In: Global warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of*

(UNHCR) also highlighted main climate-related displacement scenarios, such as weather-induced displacement precipitated by hurricanes and flooding, increased disaster threats in high-risk zones, gradual environmental deterioration, slow onset disasters and the submersion of low-lying island states.²⁵ The UNHCR identified which scenarios directly capture the SDG-13.1 goals of strengthening the resilience and adaptive capacities for bracing against disasters.

Different projections are made for climate displacement. The discourse on climate displacement pendulates between the alarming projections made by the maximalists and the conservative predictions propounded by the minimalists.²⁶ Illustrative of the maximalists' projections, El-Hinnawi²⁷ and Myers,²⁸ predictions ranging from 150 million to 200 million by 2050 dominated the early face of climate displacement discourse. Minimalists who acknowledge the complex interlinkage between climate change and displacement highlighted the lack of empirical evidence to support the maximalist claims and criticized the estimates as being grossly inflated.²⁹ The minimalists' position is gaining momentum in the international policy discourses with the IPCC

climate change, sustainable development, and efforts to eradicate poverty (Geneva, Switzerland: World Meteorological Organization), pp. 9–13 and 26.

- 25 Antonio Guterres, *Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective*, UNHCR, 2008, pp. 4–5, <http://www.unhcr.org/4901e81a4.pdf>, accessed 24 May 2019; see also Walter Kälin and Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches*, UNHCR Legal and Protection Policy Research Series, 2012, pp. 13–15; Marine Franck, 'UNHCR's Perspectives and Activities on Displacement in the Context of Climate Change' in McLeman and Gemenne, *Routledge Handbook on Environmental Displacement and Migration*, pp. 403–407; Elizabeth Ferris, 'Governance and Climate Change-induced Mobility: International and Regional Frameworks' in Dimitra Manou et. al. *Climate Change, Migration and Human Rights: Law and Policy Perspectives* (London and New York: Routledge, 1st edition, 2017), pp. 14–15 and 19–23.
- 26 Fanny Thornton, 'Climate Change, Displacement and International Law: Between Crisis and Ambiguity', *Australian Year Book of International Law*, 30/5: 147–160 (2012), p. 150.
- 27 Essam El-Hinnawi, *Environmental Refugees*, Nairobi: United Nations Environment Programme, 1985, p. 4.
- 28 Norman Myers, 'Environmental Refugees', *Population and Environment*, 19/2: 167–182 (1997), p. 168.
- 29 Carol Farbotko and Heather Lazrus, 'The First Climate Refugees? Contesting Global Narratives of Climate Change in Tuvalu', *Global Environmental Change*, 22/2: 382–390 (2012), p. 384; Karen Elizabeth McNamara and Christopher Gibson, 'We Do Not Want to Leave Our Land: Pacific Ambassadors at the United Nations Resist the Category of "Climate Refugees"', *Geoforum*, 40/3: 475–483 (2009).

fifth assessment report specifically noting that numbers on climate displacement are not supported by scientific findings.³⁰ Venturing into eliciting a consensus on the topic is not only adventurous but also blurs between multiple stakeholders who bring heterogeneous perspectives, multifarious methodologies, and prodigal paradigms topped with disparate definitions for climate displacement.³¹ A recent Environmental Justice Foundation report suggested the number of displaced people to be in the range of hundreds of million people by 2100.³² Similarly, a recent report published by the World Bank, focusing on Sub-Saharan Africa, South Asia, and Latin America, warns that climate change would force approximately 143 million people to migrate within their countries by 2050.³³ However, the alarming predictions made by the Environmental Justice Foundation and the World Bank cannot be taken as an authentication of the claim made by Hinnawi and Myers since the estimates depend on the methodology, purpose, and definition followed in each study. Notwithstanding the differing outlook, there is a growing realization that climate displacement is taking place on a large scale and the world community needs to address the issue effectively.

SDG-13 goals do not specifically refer to climate displacement. Other SDGs including SDGs 8, 10 and 17, which explicitly regulate the need of migration policies in general fall short of linking climate displacement to climate change.³⁴

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- 30 Ottmar Edenhofer *et al.* (eds.), *IPCC, 2014: Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge, United Kingdom and New York, USA: Cambridge University Press, 2014), pp. 20, 288, and 299.
- 31 Francois Gemenne, 'Why the Numbers Don't Add Up: A Review of Estimates and Predictions of People Displaced by Environmental Changes', *Global Environmental Change*, 21/1: 41–49 (2011), p. 43; Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford: Oxford University Press, 1st edition, 2012), pp. 26–27; Fanny Thornton, *Climate Change and People on the Move: International Law and Justice* (Oxford: Oxford University Press, 2018), pp. 14–17.
- 32 *Beyond Borders: Our Changing Climate-its Role in Conflict and Displacement*, Environmental Justice Foundation, 2017, p.14, <https://ejfoundation.org/resources/downloads/BeyondBorders-2.pdf>, accessed 24 May 2019.
- 33 Rigaud *et al.*, *Groundswell: Preparing for Internal Climate Migration*, p. xix.
- 34 Emily Wilkinson, Lisa Schipper, Catherine Simonet and Zaneta Kubik, *Climate Change, Migration and the 2030 Agenda for Sustainable Development*, Swiss Agency for Development and Cooperation SDC, December 2016, p.7, <https://www.odi.org/sites/odi.org.uk/files/resource-documents/11144.pdf>, accessed 24 May 2019; See *Transforming Our World: The 2030 Agenda for Sustainable Development*, Goal 8.8: refers to migrant workers in the context of the protection of labour rights and promotion of safe and secure working environments for all workers. Goal 10.7: specifically mentions the need to facilitate orderly,

However, climate displacement is now clearly acknowledged under SDG-13 by the Inter-Agency and Expert Group on SDG Indicators (IAEG-SDGs) which developed specific indicators to assess the progress made against each target. With regard to the SDG-13.1 target of strengthening the resilience and adaptive capacity to climate-related hazards, the indicators developed include the ‘number of deaths and missing persons relocated or evacuated due to disasters per 100,000 people.’³⁵ The terminology ‘relocated or evacuated due to disaster’ can logically include climate-induced displaced populations.³⁶ The absence of specific reference to climate displacement should not to be understood as an intentional omission. SDG-13 only parleys climate change impact in general terms and does not address specific climate change impact in the form of sea level rise, the threat to food security and access to water.

3 The Implementation of the SDGs: Interplay of Domestic and International Law

The SDGs are solemn commitments on the part of the international community to harmoniously integrate social, economic, and environmental dimensions of sustainable development. However, as pointed out by Rakhyn, the aspirational SDGs do not operate in a normative vacuum. The interconnected goals and targets are grounded within an intertwined legal framework.³⁷

safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies. Goal 17.18: envisages capacity-building support to developing countries, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts.

35 Report of the Inter-Agency and Expert Group, *Sustainable Development Goal Indicators*, E/CN.3/2016/2/Rev.1, annex IV, 19 February 2016, <https://undocs.org/E/CN.3/2016/2/Rev.1>, accessed 24 May 2019.

36 Chris Barnett and Rachel Eager, ‘New Frontiers for Evaluation in a Fast-Changing World’ in Rob D. van den Berg, Indran Naidoo, and Susan D. Tamondong (eds.), *Evaluation For Agenda 2030: Providing Evidence on Progress and Sustainability* (Exeter, UK: IDEAS, 2017), pp. 297–307; Jessica Hagen-Zanker, *Migration and the 2030 Agenda for Sustainable Development: Executive Summary*, Overseas Development Institute Briefing Paper, September 2017, p. 7.

37 Kim, ‘The Nexus between International Law and the Sustainable Development Goals’, p. 17.

The implementation of the SDGs could be looked at from two perspectives. First, through the national commitments in which states embrace the universal agenda through domestic legal and policy steps. Since SDGs provide little direction to states to implement these goals within their legal orders, certain flexibility is available to states when applying the SDGs by identifying priorities and modifying them to local needs. Localization of development is a welcome strategy. However, often the domestic implementation differs considerably lacking proper direction and vision, and in many cases, the interdependency and the holistic nature of SDGs are not captured in the policy process. For instance, when it comes to climate displacement, the positions and policies of countries differ considerably from acknowledging it as a security issue³⁸ to that of adaptation.³⁹ The successful implementation of the SDGs requires integrated and collective action.⁴⁰ There is, thus, an essential normative function, which can be provided by international law in the implementation of SDGs and this is the perspective from which the implementation of the SDGs will be looked at in the following analysis.

4 International Law and the Implementation of SDG-13 in Connection to Climate-induced Displacement

The SDGs explicitly underscore the role of international law by stating that they should be consistent with international law and must contribute to the full implementation of the outcomes of sustainable development.⁴¹ The

38 The Maldives consider climate displacement as a security threat, See Zahid Shahab Ahmed, *Regionalism and Regional Security in South Asia: The Role of SAARC* (New York: Routledge, 2016), p. 98 (National Action Plan on Climate Change of India is conspicuous by its absence to even mention the term security).

39 Frank Biermann and Ingrid Boas, 'Climate Change and Human Migration: Towards a Global Governance System to Protect Climate Refugees' in Jürgen Scheffran *et al.*, (eds.), *Climate Change, Human Security and Violent Conflict: Challenges for Societal Stability* (Verlag Berlin Heidelberg, Germany: Springer, 2012), pp. 291–300; National Adaptation Program of Maldives refers to displacement and relocation as an active adaptation strategy, see National Adaptation Program of Action, Ministry of Environment, Energy and Water, Republic of Maldives, 2007, <http://unfccc.int/resource/docs/napa/mdvoi.pdf>, accessed 24 May 2019.

40 UNDP, *Guidelines to Support Countries Reporting on the Sustainable Development Goals*, United Nations Development Groups, 2017, p. 22, <http://sdgactioncampaign.org/wp-content/uploads/2017/04/guidelines-to-support-country-reporting-on-sdgs-1.pdf>, accessed 24 May 2019.

41 *Transforming Our World: The 2030 Agenda for Sustainable Development*, paras. 10, 18, 19, 23 and 35; See Louis J. Kotze and Duncan French, 'The Anthropocentric Ontology of

statement not only reflects the commitment of states to promote development goals but also indicates the role of international law in achieving SDGs.⁴²

To address the question of climate displacement and the rights of climate displaced populations one would intuitively refer to international climate law and refugee law. The international community primarily addresses climate change and its adverse impacts, including climate displacement, through the following legal instruments: the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol⁴³ and the Paris Agreement.⁴⁴

4.1 *Climate Displacement under the United Nations Framework Convention on Climate Change and the Paris Agreement*

Several provisions of SDG-13 are directly taken from UNFCCC obligations. The UNFCCC provides for state parties to formulate and implement measures to facilitate adequate adaptation⁴⁵ and to cooperate in preparing for adaptation to the impacts of climate change.⁴⁶ The Convention requires developed countries to assist the developing countries, which are very often in an invidious position *vis-a-vis* the effects of climate change.⁴⁷ The UNFCCC urges all state parties to mainstream climate change considerations into their policies and actions related to social, economic, and environmental sectors.⁴⁸ The UNFCCC is the 'primary' forum for negotiating a global response to climate change, but other international instruments can also be used in a complementary fashion when implementing SDG-13 since the terminology 'primary' does not mean 'exclusively.'

The UNFCCC and Kyoto Protocol lack specific treaty language and targeted obligations concerning climate adaptation, in general, and climate-induced

International Environmental Law and the Sustainable Development Goals: Towards an Ecocentric Rule of Law in the Anthropocene', *Global Journal of Comparative Law*, 7/1: 5–36 (2018), p. 24.

42 May Miller-Dawkins, *Global Goals and International Agreements: Lessons for the Design of the Sustainable Development Goals*, Overseas Development Institute Working Paper 402, November 2014, p. 3, <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9295.pdf>, accessed 24 May 2019.

43 Kyoto Protocol to the Framework Convention on Climate Change, 3rd session, agenda item 5, 2303 UNTS 162, U.N. Doc. FCCC/CP/1997/L.7/Add. 1, 37 I.L.M. 32 (1997) [hereinafter Kyoto Protocol].

44 UNFCCC, Draft decision-/CP.21, Adoption of the Paris Agreement, 12 December 2015, FCCC/CP/2015/L.9/Rev. 1, Annex, article 2 [hereinafter Paris Agreement].

45 The UNFCCC 1992, article 4(1) (b); The Kyoto Protocol, article 10(b).

46 *Ibid.*, article 4(1) (e).

47 *Ibid.*, article 4(4); The Kyoto Protocol, article 12(8).

48 The UNFCCC 1992, article 4(1) (f).

displacement, in particular.⁴⁹ However, the Paris Agreement and its associated earlier Conference of the Parties (COP) decisions have attempted to highlight the issue of climate displacement albeit in a narrow manner. The Ad Hoc Working Group on Long-Term Cooperative Action created under the Bali Action Plan⁵⁰ brought climate displacement as part of the adaptation at COP16 in Cancun.⁵¹ The report of the Ad Hoc Working Group on Long-Term Cooperative Action at COP16 asked state parties to enhance the adaptation action under the Copenhagen Adaptation Framework and to undertake measures to foster the understanding, coordination, and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels.⁵² The COP18 in Doha gave a new dimension in the direction of climate displacement by linking human mobility with loss-and-damage⁵³ and by identifying human mobility as non-economic loss.⁵⁴ The COP19 in Warsaw took the formal implementation of the loss-and-damage mechanism forward and included programs to “enhance the understanding of and expertise on how the impacts of climate change are affecting patterns of migration, displacement, and human mobility.”⁵⁵ Yet these steps taken at the level of COPs are at a preliminary stage

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- 49 For climate-induced displacement and climate regime, see David Hodgkinson *et al.*, ‘Copenhagen, Climate Change “Refugee” and the Need for a Global Agreement’, *Public Policy*, 4/2: 159–178 (2009); see also Christine Gibb and James Ford, ‘Should the United Nations Framework Convention on Climate Change Recognize Climate Migrants?’, *Environmental Research Letters*, 7/4: 1–9 (2012); Daniel Bodansky, Jutta Brunnee and Lavanya Rajamani, *International Climate Change Law* (Oxford: Oxford University Press, 2017), pp. 325–327.
- 50 UNFCCC, Decision 1/CP.13, ‘Bali Action Plan’, para 2 (hereby established and known as the Ad Hoc Working Group on Long-term Cooperative Action under the Convention).
- 51 UNFCCC, 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’, FCCC/CP/2010/7/Add. 1, 15 March 2011.
- 52 *Ibid.*, para 14(f).
- 53 UNFCCC, 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’, FCCC/CP/2012/8/Add.1, 28 February 2013, para. 26.
- 54 UNFCCC, ‘Non-economic Losses in the Context of the Work Programme on Loss and Damage’, Technical paper’, FCCC/TP/2013/2, 9 October 2013.
- 55 UNFCCC, Decision 2/CP. 19, ‘Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts’, FCCC/CP/ 2013/10/Add.1, 31 January 2014, pp. 6–8; See Olivia Serdeczny, *What Does It Mean to “Address Displacement” Under the UNFCCC?: An Analysis of the Negotiations Process and the Role of Research*, Discussion Paper/German

and do not provide an explicit reference or a specific protective programme on climate displacement.

Following the COPs negotiations, the Paris Agreement also makes no explicit reference to climate-related displacement in its operative part. However, the accompanying COP decision recognizes the issue of climate displacement and calls upon the Executive Committee of the Warsaw International Mechanism to establish a task force to complement and develop recommendations for integrated approaches to avert, minimize and address displacement caused by climate change.⁵⁶ The Paris Agreement's preamble also acknowledges the rights of migrants, which the state parties should respect, promote and consider when taking actions to address climate change.⁵⁷ Nonetheless, the Paris Agreement, while considering the issue of averting and minimizing climate displacement, does not specify and identify the rights of migrants or any specific legal protection regarding either prevention or support of climate displacement.

The climate change regime has addressed climate displacement mainly from the prism of view of adaptation.⁵⁸ Two views are prevalent in the displacement-adaptation discourse: the first considers displacement as a result of the inability to adapt and the second treats displacement as an important adaptive strategy in the wake of climate change.⁵⁹ The latter supports that expanding and encouraging avenues for movement can reduce the vulnerability of an area and the concerned populations since, in many cases, migration may be the only available option. However, whether migration can act as a positive strategy of adaptation depends on multiple factors including risk perceptions, socioeconomic conditions, and the nature of climate change. The situation is place and context specific and it is subject to different perceptions in the

Development Institute, Bonn, December 2017, pp. 10–11, http://climateanalytics.org/files/dp_12.2017.pdf accessed 24 May 2019.

56 The Paris Agreement, para. 50.

57 The Paris Agreement, preambular recital 11.

58 Koko Warner, *Climate Change Induced Displacement: Adaptation Policy in the Context of the UNFCCC Climate Negotiations*, Division of International Protection United Nations High Commissioner for Refugees (UNHCR), Geneva: Switzerland, May 2011, pp. 4–5; See also Adelle Thomas and Lisa Benjamin, 'Policies and Mechanisms to Address Climate-Induced Migration and Displacement in Pacific and Caribbean Small Island Developing States', *International Journal of Climate Change Strategies and Management*, 10/1: 86–104 (2018).

59 Tamer Afifi *et al.*, 'Human Mobility in Response to Rainfall Variability: Opportunities for Migration as a Successful Adaptation Strategy in Eight Case Studies', *Migration and Development*, 5/2: 254–274 (2016), p. 254; Martina Grecequet *et al.*, 'Climate Vulnerability and Human Migration in Global Perspective', *Sustainability*, 9/5: 720–730.

countries of origin and destination respectively.⁶⁰ For instance, the migration of marginalized communities suffering from climate change to their more developed neighboring countries can be an adaptation strategy for the country of origin. The same cannot be said from the point of view of the country of destination, if migration brings in resource conflict and tension concerning a given area. Migration may be one aspect of the adaptation strategy but by looking at the issue of climate displacement only through the prism of adaptation is an oversimplification which discounts the complexities of displacement.⁶¹

4.2 *International Refugee Law, International Human Rights Law and Climate-induced Displacement*

Under international law, the refugee regime formally began with the adoption of the 1951 UN Convention Relating to the Status of Refugees.⁶² The 1951 Refugee Convention defines a refugee as:

Any person who is owing to 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.⁶³

This definition is restrictive⁶⁴ and the grounds mentioned therein do not cover climate displacement. However, there are several regional instruments

60 Francois Gemenne and Julia Blocher, 'How Can Migration Serve Adaptation to Climate Change? Challenges to Fleshing out a Policy Ideal', *Geographical Journal*, 183/4: 336–347 (2017); Koko Warner, 'Global Environmental Change and Migration: Governance Challenges', *Global Environmental Change*, 20: 402–413 (2010).

61 Gibb and Ford, 'Should the United Nations Framework Convention on Climate Change Recognize Climate Migrants?', p. 4; see, for more detail, Stellina Jolly and Nafees Ahmad, 'Climate Refugees under International Climate Law and International Refugee Law: Towards Addressing the Protection Gaps and Exploring the Legal Alternatives for Climate Justice', *ISIL Year Book International Human and Refugee Law*, 14: 216–248 (2014–15).

62 1951 UN Convention relating to the Status of Refugees, adopted 28 July 1951, by the U.N. Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under UNGA Res. 429 (V) (14 December 1950), 189 UNTS 150 (entered into force 22 April 1954) [hereinafter Refugee Convention].

63 Refugee Convention, article 1A (2).

64 Christopher R. Rossi, 'The Nomos of Climate Change and the Sociological Refugee in a Sinking Century', *George Washington International Law Review*, 50/3: 613–652 (2018), pp. 643–47; Zi En Chow, 'Evaluating the Current International Legal Framework Governing the Status of Refugees in Light of Contemporary Refugee Crises: Making the Case for Granting Refugee Status to Persons Fleeing Generalized Violence', *Singapore Academy of*

relating to refugees that have been adopted,⁶⁵ which provide protection against discrimination and persecution on the additional grounds including ‘other events or circumstances seriously disturbing public order’.⁶⁶ The phrase “events seriously disturbing public order” envisaged in the Organization of African Unity (OAU) Convention has been construed widely to confer refugee status to people fleeing from drought or famine.⁶⁷ On the other hand, the phrase “other circumstances seriously disturbed public order” found under the Cartagena Declaration has been interpreted narrowly as referring to the situations of peace, security, the stability of the society and the normal functioning of the institutions of the state.⁶⁸ Although the regional instruments cover a relatively wider category of grounds, it is still unclear whether the category of “other events or circumstances seriously disturbing public order” could include climate change as a situation of disturbing public order. Additionally, the abovementioned instruments are limited in their application to individuals who cross international borders, thus, excluding internally displaced persons. The Guiding Principles on Internal Displacement adopted by the UNSR,⁶⁹ concern people who have been forced to flee as a result of the *human-made* within

Law Journal, 30/1: 28–69 (2018), p. 36; Christel Cournil, ‘The Inadequacy of International Refugee Law in Response to Environmental Migration’ in Mayer and Crépeau, *Research Handbook on Climate Change, Migration and the Law*, pp 85–107.

65 Such instruments in point are: Organization of African Unity (OAU) 1969, Convention Governing the Specific Aspects of Refugee Problems in Africa, 1001 UNTS 45 [hereinafter OAU Convention]; African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 23 October 2009 (entered into force 6 December 2012); Cartagena Declaration on Refugees, and Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984 [hereinafter Cartagena Declaration].

66 OAU Convention, article 1(2).

67 Olutunji S. Oyelade, ‘A Critique of the Rights of Refugees under the OAU Convention Governing Specific Aspects of Refugees’ Problems in Africa’, *ISIL Year Book International Human and Refugee Law*, 6: 201–232 (2006), p. 213.

68 United Nations High Commissioner for Refugees, *Summary Conclusions on the interpretation of the extended refugee definition in the 1984 Cartagena Declaration on Refugees*, Montevideo, Uruguay, 15–16 October 2013, paras. 24–27, <http://www.unhcr.org/protection/expert/53bd4doc9/summary-conclusions-interpretation-extended-refugee-definition-1984-cartagena.html>, accessed 24 May 2019.

69 United Nations Commission on Human Rights, *Guiding Principles on Internal Displacement*, UN Doc E/CN.4/1998/53/Add.2, 11 February 1998; see also David James Cantor, ‘The IDP in International Law? Developments, Debates, Prospects’, *International Journal of Refugee Law*, 30/2: 191–217 (2018).

their national borders.⁷⁰ However, the Guiding Principles are limited in scope as they are restrictive in excluding displaced individuals who cross an international border.⁷¹

In the climate displacement discourse, some scholars perceive climate displaced people as “climate migrants” because they are forced to flee and adapt in the absence of any protection.⁷² On the other hand, other scholars opine that the Refugee Convention definition can be interpreted to include environmental refugees,⁷³ although it also needs to be noted that such an expansion of the refugee definition might result in a potential dilution of the current protection accorded to refugees.⁷⁴ In addition to the instruments mentioned above, there are several regional human rights treaties and declarations, which incorporate a few provisions relating to refugees and asylum seekers.⁷⁵ The human rights legal framework can give rise to general obligations which can, in

70 Francis Tom Temprosa, ‘Guiding Principles on Internal Displacement: Expression of Lex Lata or De Lega Ferenda - Status in International Law and Implication on the Law on International Peace and Security’, *Arizona Journal of International & Comparative Law*, 35/2: 257–286 (2018), pp. 261–268; Walter Kalin, ‘Internal Displacement’ in Elena Fiddian-Qasmiyeh *et al.* (eds.), *The Oxford Handbook of Refugees and Forced Migration Studies* (Oxford: Oxford University Press, 2016), pp. 163–175.

71 Nafees Ahmad, ‘Internally Displaced Persons and International Refugee Law: Protection Gaps, Challenges and Implementation in Practice’, *The King’s Student Law Review*, 8/2: 94–117 (2017), p. 99.

72 Francois Gemenne, ‘One Good Reason to Speak of Climate Refugees’, *Forced Migration Review*, 6/1: 22–24 (2015). See also Stellina Jolly and Nafees Ahmad, *Climate Refugees in South Asia Protection Under International Legal Standards and State Practices in South Asia* (Springer International Publishing AG: Springer Nature, 2019).

73 Sumudu Atapattu, ‘Climate Change, Human Rights, and Forced Migration: Implication for International Law’, *Wisconsin International Law Journal*, 27/3: 607–636 (2009–2010), p. 625; Nina Höing and Jona Razzaque, ‘Unacknowledged and Unwanted? “Environmental Refugees” in Search of Legal Status’, *Journal of Global Ethics*, 8/1: 19–40 (2012), p. 28; UNHCR, ‘Legal Considerations on Refugee Protection for People Fleeing Conflict and Famine Affected Countries’, p. 510.

74 Jill I. Goldenziel, ‘Displaced: A Proposal for an International Agreement to Protect Refugees, Migrants, and States’, *Berkeley Journal of International Law*, 35/1: 47–89 (2017), pp. 65–69, 89; Rossi, ‘The Nomos of Climate Change and the Sociological Refugee in a Sinking Century’, p. 651.

75 For instance, American Declaration on the Rights and Duties of Man, article 27, OAS GA Res. XXX, OAS Doc. OEA/Ser.LV/II.82 doc. 6 rev. 1 (1948); African [Banjul] Charter on Human and Peoples’ Rights, article 12, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982); Arab Charter on Human Rights, article 28, 22 May 2004, *reprinted in* 12 International Human Rights Report 893 (2005); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 3, 10 December 1984, 1665

turn, be helpful to complement the implementation of SDG-13. Climate change affects a bundle of human rights including the rights to life, livelihood, health, housing, food, water, culture, education, and rights related to migration and self-determination.⁷⁶ In summary, it can be said that none of the abovementioned treaties or declarations – both international as well as regional- impose specific obligations and they are not adequate in their present form to address the vulnerabilities of climate displacement which can seriously impede the implementation of SDG-13.

Meanwhile, several proposals have been mooted to provide for legal protection to climate-displaced populations either under the current refugee framework or the climate law framework.⁷⁷ However, these proposals varying in their scope, purpose and institutional mechanisms, are premised on a system that is field-specific and fails to capture the hydra-headed nature of the challenges that climate displacement throws up, especially in the fields of human rights, development, asylum, migration, and the environment. Therefore, it is argued that the gaps in international law with regard to climate displacement need to be filled by developing and recasting the existing norms of different branches from international law in a coherent, consistent and composite manner. Certain states supported by international organizations have attempted to evolve a holistic approach beyond the confines of a subject-specific approach by employing a hybrid integration of international legal norms in an inclusive

UNTS 85, entered into force 26 June 1987; and Convention on the Rights of the Child, article 22, 20 November 1989, 1577 UNTS 3, entered into force 2 September 1990.

76 Siobhan McInerney-Lankford, 'Climate Change Human Rights and Migration: A Legal Analysis of Challenges and Opportunities' in Mayer and Crépeau, *Research Handbook on Climate Change, Migration and the Law*, pp. 131–168; Murphy, Gardoni and McKim, *Climate Change and Its Impacts*, pp. 3–11.

77 Bonnie Docherty and Tyler Giannini, 'Confronting A Rising Tide: A Proposal For a Convention on Climate Refugees', *Harvard Environmental Law Review*, 33/2: 349–403 (2009); Frank Biermann and Ingrid Boas, 'Protecting Climate Refugees: The Case for a Global Protocol', *Environment: Science and Policy for Sustainable Development*, 50/6: 8–17 (2008); Benoit Mayer, 'The International Legal Challenges of Climate-Induced Migration: Proposal for an International Legal Framework', *Colorado Journal of International Environmental Law & Policy*, 22/3: 357–416 (2011); Angela Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law', *Law and Policy*, 30/4: 502–529 (2008); Katrina Miriam Wyman, 'Responses to Climate Migration', *Harvard Environmental Law Review*, 37/1: 167–216 (2013); Sarah Deardorff Miller, 'The Mobility Convention's Contribution to Addressing Socioeconomic Issues in Protracted Refugee Situations', *Columbia Journal of Transnational Law*, 56: 303–312 (2018).

and complementary manner.⁷⁸ The principle of sustainable development and the SDGs provide solid foundations and overarching guidelines to evolve and crystallize a coherent response to the mammoth crisis.⁷⁹

5 Challenges and Opportunities for International Law in Steering SDG-13 through the Adoption of Hybrid Law

The SDGs gave humanity an idea of an integrated vision for sustainable development. An international law with clear objectives, which are complementary to the SDGs can significantly foster the realization of the SDGs. Current international law is fragmented and ill-equipped to address the imminent climate displacement crisis. This fragmentation is greatly attributed to the lack of synergy between norms and principles.⁸⁰ The SDGs are complementary in the sense that the process of realization of one SDG enables states to make strides towards the achievement of other SDGs. Therefore, states, while considering the fragmented nature of international law instruments, develop the integration of legal norms through the hybrid approach to effectively achieve the targets of SDG-13, particularly in relation to climate displacement.

5.1 *Hybrid Law in International Law*

The concept of hybrid law, as such, has not been defined in international law, but its understanding and notions are slowly evolving across different branches of international law. The dynamic growth of new and specialized fields of international law has led to its fragmentation characterized by erratic blocks

78 Cosmin Coredea, 'Hybrid Legal Approaches towards Climate Change: Concepts, Mechanisms and Implementations', *Annual Survey of International and Comparative Law*, 21/1: 29–42 (2016).

79 Benoit Mayer, Sustainable Development Law on Environmental Migration: The Story of an Obelisk, a Bag of Marbles, and a Tapestry', *Environmental Law Review*, 14/2: 111–133 (2012); Patrick Taran *et al.*, 'The Sustainable Development Goals and Migrants/Migration: Relevant SDGs, Implementation Actions, Realization Measurement Indicators and Rationals for Inclusion', 23 February 2016, http://www.un.org/en/development/desa/population/migration/events/coordination/14/documents/backgrounddocs/GMPA_14CM.pdf, accessed 24 May 2019.

80 Report of the Study Group of the International Law Commission on Fragmentation of International Law, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, UN Doc A/CN.4/L.682 and Add.1 and Corr. 1. New York: International Law Commission, 2006; Martti Koskeniemi, 'Hegemonic regimes' in Margaret A. Young (ed.) *Regime Interaction in International Law: Facing Fragmentation* (Cambridge: Cambridge University Press, 2012), pp. 305–320.

and elements unable to address a complex problem which spans through multiple branches of international law. In such a situation, the challenge is to identify and adopt the tools and techniques which are apt to address the problem. Hybrid law, based on an 'integrated approach' to international law in general seems to be the best normative response to the Gordian knot of climate displacement.

The hybrid law approach advanced in this article enables states to borrow the best practices and principles from existing branches of international law instead of creating a new one. Thus, for issues concerning climate refugees who normatively traverse across human rights, refugee law, and environmental norms, hybrid law provides the flexibility to determine the composition of a new eclectic legal regime that will serve their needs appropriately. Moreover, it also has the potential to broaden the base of international law by involving states and non-state actors, and by bringing in more democratic legitimacy to international law's functioning. The proposed hybrid law is people-centered and takes a rights-oriented approach.

This analysis below expounds the concept of hybrid law and attempts to explain existing hybrid law regimes under international environmental law and labor law. The discussion goes on to locate hybrid laws relevant to climate displacement in the Nansen Protection Agenda and the UN Global Compact on Migration. The significance of the SDGs in developing a corpus of hybrid law is also evaluated.

5.2 *The Concept of Hybrid Law*

The concept of hybrid law is not completely alien to either international law or legal systems in general. The hybridization of legal norms has been considered a feature of constitutional development in many jurisdictions especially after the Second World War and continues to this day as a response to modernization and social adaptation.⁸¹ The hybridization at international law has followed various forms, including:

- integration of substantive norms from different branches;
- amalgamation of norms of differing legal status; and
- assimilation of the role of state and non-state actors.

International environmental law illustrates sufficient references to the adoption of hybrid norms especially in integrating the role of state and non-state actors and integrating 'hard' and 'soft' norms (the latter being 'hard' by intent

81 John McEldowney, 'Hybridization: A Study in Comparative Constitutional Law', *Penn State International Law Review*, 28/3: 327–355 (2010), p. 328.

but 'soft' in implementation).⁸² In terms of climate change, the concept of common but differentiated responsibilities and respective capabilities enunciated under the UNFCCC and the Paris Agreement with varied obligations and a tiered implementation mechanism represents an amalgamation of soft and hard law.⁸³ The hybridization of soft and hard law provided a fundamental role in achieving consensus between developing and developed nations.⁸⁴

Other examples of hybrid approaches under international law focus on the legal process that formally recognizes the authority of both states and non-state actors. By way of illustration, non-state actors support ILO conventions and employ them as the basis for voluntary transnational regulation creating hybrid labor laws.⁸⁵ The concept of sustainable development itself has been considered as a domain experimenting with new models of hybrid governance.⁸⁶ Lugaresi has referred to the term sustainable development as a hybrid goal which attempts to balance economic and environmental parameters.⁸⁷ The Paris Agreement also exhibits a transition from a centralized top-down model of governance to a hybrid decentralized bottom-up approach based on the national mitigation targets with the top-down model of monitoring.⁸⁸ The following section explores the existing hybrid mechanisms, if any, in relation to climate displacement and discusses the possible avenues for incorporating and evolving such mechanisms.

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- 82 Veerle Heyvaert, *Hybrid Norms in International Law*, LSE Law, Society and Economy Working Papers 6/2009, London School of Economics and Political Science, 2009.
- 83 Lavanya Rajamani, 'The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations', *Journal of International Environmental Law*, 28/2: 337–358 (2016).
- 84 See generally, Kenneth W. Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance', *International Organization*, 54/3: 421–456 (2000); Armin Schäfer, 'Resolving Deadlock: Why International Organizations Introduce Soft Law', *European Law Journal*, 12/2: 194–208 (2006).
- 85 Niklas Bruun, 'New Developments in Labour Law – Towards a Hybrid Type of Labour Law', *Scandinavian Studies in Law*, 58: 63–74 (2013).
- 86 Karin Bäckstrand, 'Democratizing Global Environmental Governance? Stakeholder Democracy after the World Summit on Sustainable Development', *European Journal of International Relations*, 12/4: 467–498 (2006).
- 87 Nicola Lugaresi, 'The Unbearable Tiredness of Sustainable Development (at Different Levels Lately)' in Robert V. Percival, Jolene Lin and William Piermattei (eds.), *Global Environmental Law at Crossroads* (IUCN: Edward Elgar, 2014), p. 196.
- 88 See generally, Lavanya Rajamani, 'The Devilish Details: Key Legal Issues in the 2015 Climate Negotiations', *The Modern Law Review*, 78/5: 826–853 (2015), p. 853; Lavanya Rajamani, 'Ambitions and Differentiation in the 2015 Paris Agreement: Interpretative possibilities and Underlying Politics', *International and Comparative Law Quarterly*, 65/2: 493–514 (2016).

5.3 *Locating and Developing Hybrid Law in the Context of Climate Displacement*

No specific formula for the adoption of hybrid mechanisms exists. This entails that the adoption of hybrid mechanisms can be based on varied processes and procedures operating at different levels. As far as climate migration/displacement is concerned the concept of hybrid law has not been debated much, except in the context of the Pacific Island States.⁸⁹ The hybrid law approach advocated in the context of climate displacement represents an amalgamation of multiple branches of international law consisting of perspectives from the environment, human rights, and refugee law, but it is still in an embryonic stage.⁹⁰

While borrowing essential elements of hybrid law developed in the Pacific Islands states' context, this article argues for a rights-oriented approach coupled with a reformative and progressive interpretation of existing law. The following section looks at some of the developments in hybrid laws relevant to the context of climate displacement.

5.4 *Hybrid Law Developments under the Nansen Protection Agenda, the UN Compact for Safe, Orderly and Regular Migration and the Paris Agreement*

In locating hybrid laws dealing with climate displacement, the Nansen Protection Agenda, which explicitly refers to the complementarity with the SDGs, is significant.⁹¹ The Nansen Protection Agenda for the Cross-Border Displaced Persons in the Context of Disasters and Climate Change, was developed through a bottom-up approach and suggests policy steps that states can take

89 Corendea, 'Hybrid Legal Approaches towards Climate Change', p. 11.

90 *Ibid.*, p. 9.

91 The Nansen Initiative, Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, Final Draft, 6 October 2015, [hereinafter Nansen Initiative or Nansen Protection Agenda]; Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change: October 2015, *International Journal of Refugee Law*, 28/1: 156–162 (2016); Patrycja Magdalena Zgoła, 'The Nansen Initiative and the Migrants in Countries in Crisis Initiative: New Frameworks for more Effective Migrants Protection' in Giovanni Carlo Bruno, Fulvio Maria Palombino, Valentina Rossi (eds.), *Migration and the Environment: Some Reflections on Current Legal Issues and Possible Ways Forward* (Rome: CNR Edizioni, 2017), pp. 147–166; Susan F. Martin, 'New Models of International Agreement for Refugee Protection', *Journal on Migration and Human Security*, 4/3: 60–75 (2016), pp. 66–68.

at the national, regional and international levels.⁹² The Protection Agenda is illustrative of a hybrid approach which instead of evolving new legal norms looks for integrating existing legal principles from various branches of international law. The claim is that all the provisions of the Protection Agenda are restatements of existing human rights, refugee, and humanitarian principles.⁹³ The Agenda specifically refers to the linkages with UNFCCC and the UN 2030 Agenda for Sustainable Development.⁹⁴

The Protection Agenda incorporates the humanitarian principle of protection for cross-border disaster-displaced persons including the grant of refugee status, relaxed visa rules and rules on stay and non-return of cross-border disaster-displaced persons.⁹⁵ Building on human rights principles, the Protection Agenda emphasizes the rights of displaced populations to be treated with due respect for their safety, dignity, and human rights based on the cooperation between states.⁹⁶ The Protection Agenda evokes the core principle of *non-refoulement* which forbids returning a person to a country where his or her life is threatened and further recommends that states refrain from returning citizens of a country affected by an environmental disaster to their country of origin. Albeit not elaborately, the Protection Agenda does contain elements from international environmental law and embodies obligations and standards for the states to manage disaster risk in the country (e.g. taking measures of climate adaptation and disaster risk management programs, by enhancing the resilience and adaptive capacity of peoples).⁹⁷

Further, the Protection Agenda leaves enough hooks for further refinement and evolution of a hybrid mechanism. The Agenda recommends the continuation of dialogue, cooperation, and coordination among states, international organizations and agencies, and other relevant actors to develop best practices for the protection of the displaced population. The Agenda recognizes “the 2030 Agenda for Sustainable Development which contains a commitment to cooperate internationally to ensure the humane treatment of displaced persons, and to build the resilience of those in vulnerable situations to climate-related extreme events and other disasters.”⁹⁸ This clearly shows the indivisible

92 Jane McAdam, ‘From the Nansen Initiative to the Platform on Disaster Displacement: Shaping International Approaches to Climate Change, Disasters and Displacement’, *University of New South Wales Law Journal*, 39/4: 1518–1546 (2016).

93 The Nansen Initiative, Final Draft, Executive Summary, pp. I–VI.

94 *Ibid.*, pp. 2, 5, 19–20, 28.

95 *Ibid.*, pp. 11–12.

96 *Ibid.*, pp. 20–21 and 29.

97 *Ibid.*, pp. 28–30.

98 *Ibid.*, pp. 19–20.

inert-linkage with the Nansen Agenda and the SDGs as well as the need for mutually reinforcing norms.

5.4.1 Hybrid Law Development under the Global Compact on Migration
Another normative initiative which incorporates hybrid mechanisms is the recently adopted UN Compact for Safe, Orderly and Regular Migration, a non-legally binding, cooperative framework that builds on the commitments agreed upon by the UN Member States in the New York Declaration for Refugees and Migrants.⁹⁹ The Global Compact on Migration is premised on a set of cross-cutting, interdependent and people-centered guiding principles and it is based on international cooperation, national sovereignty, rule of law, sustainable development and human rights.¹⁰⁰ The interlinkages between the Compact on Migration and the SDGs are noteworthy. The negotiations leading to the adoption of the Global Compact on Migration clearly acknowledged the deriving principles from the 2030 Agenda for Sustainable Development. The objective of the Compact for Safe, Orderly and Regular Migration resonates the spirit of target 10.7 of the 2030 Agenda, by emphasizing the availability and flexibility of pathways for regular migration.¹⁰¹ In terms of implementing the Compact, UN agencies have already adopted the SDGs as the core framework and acknowledge the opportunity for increasing legal avenues for migration, tied to the 2030 SDGs.¹⁰²

5.4.2 Hybrid Law Development under the UNFCCC and the Paris Agreement

The synergy and cooperation for hybrid law can also be facilitated by implementing the UNFCCC's legal mandate to seek the cooperation of international governmental and non-governmental organizations.¹⁰³ The hybrid law

99 *New York Declaration for Refugees and Migrants*, annex II.

100 'Global Compact for Safe, Orderly and Regular Migration', A/CONF.231/3, 30 July 2018, paras. 1–3, 6, 7, and 15; see also Michele Klein Solomon and Suzanne Sheldon, 'The Global Compact for Migration: From the Sustainable Development Goals to a Comprehensive Agreement on Safe, Orderly and Regular Migration', *International Journal of Refugee Law*, (advance access): 1–7 (2019), doi:10.1093/ijrl/eey065; Elspeth Guild, 'The UN Global Compact for Safe, Orderly and Regular Migration: What Place for Human Rights?', *International Journal of Refugee Law*, (advance access): 1–3 (2019), doi:10.1093/ijrl/eey049.

101 'Global Compact for Safe, Orderly and Regular Migration', para. 23.

102 *Ibid.*, paras. 6, 39 and 42; See also Nicholas R. Micinski, 'Implementing the Global Compact for Migration: The Role of States, UN Agencies, and Civil Society', Friedrich Ebert Stiftung, June 2018, <http://library.fes.de/pdf-files/iez/14547.pdf>, accessed 24 May 2019.

103 The UNFCCC, article 7 (2).

approach could be developed under the Paris Agreement and the SDGs can provide impetus to this. The implementation of the Nationally Determined Contributions (NDCs) constitutes the core of the Paris Agreement. Since the NDCs are envisaged to be progressive periodical commitments, the SDGs can encourage countries to develop more comprehensive ambitions, and to align their policies as well as activities with the SDGs. The Stockholm Environment Institute analysis demonstrates that many NDCs contain activities that can specifically contribute to achieving the SDGs.¹⁰⁴ Connecting the thematic implementation of the Paris Agreement and the SDGs agenda through NDCs has the potential to foster the agenda and signals that an effective climate change response is crucial for human development. A sustainable development perspective is indispensable for a climate policy with a human face.¹⁰⁵ The Paris Agreement provides the ground to develop a hybrid law approach to address climate displacement. It specifically refers to the need to involve non-state actors.¹⁰⁶ The involvement and participation of state and non-state actors are an example of this hybrid approach. Moreover, the loss-and-damage mechanism envisaged under the climate regime, which identifies climate displacement as non-economic loss,¹⁰⁷ could evolve modalities for international hybrid fund

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- 104 Clara Brandi *et al.*, *The Case for Connecting the Implementation of the Paris Climate Agreement and the 2030 Agenda for Sustainable Development*, German Development Institute, Briefing Paper 21/2017, 2017; see also Eliza Northrop *et al.*, *Examining the Alignment between the Intended Nationally Determined Contributions and Sustainable Development Goals*, Working Paper, Washington, DC: World Resources Institute, 2016, pp. 1–56; Tara Shine, *Integrating Climate Action into National Development Planning: Coherent Implementation of the Paris Agreement and Agenda 2030 A Guide to Support Implementation of the Paris Agreement-Part Three*, Swedish International Development Cooperation Agency, 2017, pp. 1–25; Philip Antwi-Agyei *et al.*, ‘Alignment between Nationally Determined Contributions and the Sustainable Development Goals for West Africa’, *Climate Policy*, 18/10: 1296–1312 (2018).
- 105 Marie-Claire Cordonier Segger, ‘Advancing the Paris Agreement on Climate Change for Sustainable Development’, *Cambridge Journal of International and Comparative Law*, 5/2: 202–237 (2016), pp. 18 and 226.
- 106 Adoption of the Paris Agreement, Draft decision -/CP.21, preambular recital 15, paras. 100, 118–122, 134–137; the Paris Agreement, article 16(8); see also Harro van Asselt, ‘The Role of Non-State Actors in Reviewing Ambition, Implementation, and Compliance under the Paris Agreement’, *Climate Law*, 6/(1–2): 91–108 (2016); Thomas Hale, ‘“All Hands on Deck”: The Paris Agreement and Nonstate Climate Action’, *Global Environmental Politics*, 16/3: 12–22 (2016).
- 107 The UNFCCC, ‘Non-economic Losses in the Context of the Work Programme on Loss and Damage’, para. 46; see Jonathan Gewirtzman *et al.*, ‘Financing Loss and Damage:

mechanisms with differing contributions from states and non-state actors,¹⁰⁸ based on the principle of common but differentiated responsibilities.

Finally, corresponding to hybrid law, a hybrid implementation mechanism can also be formed through the cooperation of international environmental bodies,¹⁰⁹ human rights bodies,¹¹⁰ and the UNHCR. This would, without undermining the importance of these bodies under their respective regimes, facilitate the formation of a coherent and uniform position. However, these international institutions operate in a relative isolation and pursue differing interests. Therefore, it is suggested that the governance through the lens of the SDGs as a matter of strategy to prioritize, motivate and provide direction, could help the reform or rearrangement of existing relevant institutions so as to enhance their coordination and cooperation in an integrated manner.¹¹¹

However, one of the major challenges of hybrid law will be on the implementation strategies and adoption of effective enforcement mechanisms. In the case of the Nansen Protection Agenda, the implementation might adopt the strengthening mould for contemporary international 'soft' or 'hard' legal structure. The protection programme could also grow into an individual stand-alone protection system advancing global obligations contrary to the current cumbersome shape. Moreover, the possibilities of integrating this protection mechanism into the municipal and regional legal frameworks on disaster-induced displacement are great considering the increasing concerns

Reviewing Options under the Warsaw International Mechanism', *Climate Policy*, 18:8: 1076–1086 (2018).

108 Thomas Hale, 'The Role of Sub-state and Non-state Actors in International Climate Processes', The Royal Institute of International Affairs, 2018, pp. 1–17, <https://www.geg.ox.ac.uk/sites/geg.bsg.ox.ac.uk/files/2018-12/Non-state%20actors%20climate%20synthesis%20-%20Tom%20Hale.pdf>, accessed 24 May 2019;

109 Such bodies may include United Nations Environmental Programme, United Nations Commission on Sustainable Development, etc. for more details, see generally Patricia Birnie, Alan Boyle, and Catherine Redgwell, *International Law and the Environment* (Oxford; New York: Oxford University Press, 3rd edition, 2009), pp. 58–83, 100–102.

110 Such bodies may include UN Charter Bodies (Human Rights Council and Universal Periodic Review) and UN Treaty Bodies (Committee on Migrants Workers, Human Rights Committee, and Committee on Enforced Disappearance, etc.); for more detail see generally, Steven Wheatley, 'Introduction to Human Rights Institutions: Legitimacy and Authority' in Gerd Oberleitner (ed.), *International Human Rights Institutions, Tribunals, and Courts* (Singapore: Springer, 2018), pp. 1–22; Adam McBeth, Justice Nolan, and Simon Rice, *The International Law of Human Rights* (South Melbourne, Victoria: Oxford University Press, 2017), pp. 89–120.

111 Norchika Kanie *et al.*, 'Introduction: Global Governance through Goal Setting' in Kanie and Biermann, *Governance through Goals*, pp. 1–28.

of states, global and regional organizations, NGOs and other stakeholders in post-Nansen development. The question arises in the operationalization of hybrid law: whether a regional rather than a universal approach is more effective. Practically speaking there are solid arguments for building on a regional approach. The climate displacement in the initial phase is expected to be domestic and regional.¹¹² A regional approach could account for local imperatives and aspirations. The first step towards building a hybrid international law approach to climate change migration is to envisage cooperative mechanisms at the regional level built on the foundation of negotiation, dialogue, cooperation, personal and community narrative. In this regard, the Protection Agenda and the UN Global Compact have given due importance to the development of policy and practices at the regional level. These instruments note that regional or sub-regional organizations, such as African Union, Pacific Islands Forum, [and SAARC], can play a more pragmatic and engaging role in developing strong multi-stakeholder partnerships with the aim to create a coherent and integrated response.

Noenetheless, since climate change is a cross-cutting problem which requires a multi-level engagement and involves taking into account the considerations of all stakeholders, a strong coordination and integration at all levels - domestic (including all the levels of the government), regional and international - will be crucial for creating a clear roadmap for the evolution and implementation of hybrid laws towards the realization of the SDG-13 target of climate displacement.¹¹³ The adoption of the SDGs is a momentous opportunity for the evolution of hybrid law and it constitutes a structural, guiding principle for international law in multiple ways. The following sub-section highlights the relevance of the SDGs in building the hybrid law.

5.5 *The SDGs as the Foundation of Hybrid Law*

Although the concept of hybrid law has not been substantially debated in theory, hybrid laws are at the various stages of development - some of which are in an embryonic stage. The SDGs represent a form of hybrid law integrating the role of states and non-state actors.¹¹⁴ The SDGs also indicate the integration of norms of different legal status from different branches of international law including the UN Charter, international human rights treaties, and major UN

112 Mayer, 'Environmental Migration: Prospects for a Regional Governance in the Asia-Pacific Region', pp. 96–97.

113 Katherine Lofts *et al.*, 'Brief on Sustainable Development Goal 13 on Taking Action on Climate Change and Its Impacts: Contributions of International Law, Policy, and Governance', *McGill Journal of Sustainable Development Law*, 13/1: 183–192 (2017), p. 191.

114 *Transforming Our World: The 2030 Agenda for Sustainable Development*, para. 28.

conferences and summits on sustainable development.¹¹⁵ Since the proposed hybrid law is based on the ‘integrated approach’ to international law, the SDGs represent an integrated framework balancing the three dimensions of sustainable development¹¹⁶ and respect for human rights with a particular focus on the poorest and most vulnerable.¹¹⁷ The SDGs, thus, integrate norms from different branches, amalgamate norms of different legal status, and require the role of state and non-state actors in the implementation. The adoption of SDGs with its universality, indivisibility and hybrid nature provides an impetus for the systematic evolutionary process of hybrid laws in a number of ways.

The principle of sustainable development, as an overarching principle of the SDGs, enjoys universal acceptance and it has already ingrained the three regimes of climate change, human rights, and refugee law in the current development framework. Sustainable development could form the binding principle and an overarching arch through which the hybridization of norms of different branches flows for a number of reasons.

Firstly, the concept of sustainable development is based on the interconnectedness and balancing of multiple pillars of law and society, including economic, social and developmental concerns.¹¹⁸ International courts and tribunals have increasingly given due regard to the concept of sustainable development and sought to utilize it both as an aid to interpretation and as a means of integration to contextualize their decisions within the broader normative framework.¹¹⁹ This integration and balancing of legal norms forms the basis of hybrid law. The usefulness and reliability of the concept of sustainable development and the mutually reinforcing nature of goals concerning development, environment and human rights have been reiterated in the provisions of the UNFCCC and the Paris Agreement,¹²⁰ along with several other treaties across

115 *Ibid.*, paras. 10–13.

116 *Ibid.*, preamble and paras. 2, 5, 13, 17, 18, and 55.

117 *Ibid.*, paras. 2 and 74.

118 Jihoon Lee, ‘Sustainable Development’, *Yearbook of International Environmental Law*, 24/1: 367–372 (2014), p. 368.

119 See, *Case Concerning the Gabchikovo-Nagyymaros Project (Hungary/Slovakia)*, Judgment, 1997 ICJ Reports, p. 7, para. 140; *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58AB/R, Report of the Appellate Body adopted on 6 November 1998, DSR 1998: VII, 2755, paras. 129, 131 and 153; *Arbitration Regarding the Iron Rhine (‘IJzeren Rijn’) Railway between the Kingdom of Belgium and the Kingdom of the Netherlands*, Award 2005, PCA, paras. 58–60; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, para. 80.

120 Paris Agreement, articles 2(1), 4(1), 6, 7(1), 8(1), and 10(5); see also, Francesco Sindico, ‘Paris, Climate Change, and Sustainable Development’, *Climate Law*, 6/1–2: 130–141 (2016), pp. 135–140.

different branches of international law.¹²¹ The Paris Agreement looks for compatibility with human rights obligations; the right to development; the rights of indigenous peoples, children, and others in vulnerable situations; gender equality and empowerment; and inter-generational equity.¹²² These are indeed the bedrock of sustainable development. Moreover, the norm of sustainable development also creates for states an obligation – a relative obligation of conduct or of means¹²³ – to strive to achieve sustainable development, which, in turn, helps in promoting and building the normativity of hybrid law to ensure a higher degree of compliance in achieving the targets of the complex issue of climate displacement.

Further, the application of sustainable development could be instrumental in resolving the complexity arising out of the general application of hybrid law. The provisions incorporated under different branches of international law carry distinct normative value. When all these branches are brought together, they form a hybrid law. It is certainly a difficult task to identify the normativity of each principle/rule in their application. For instance, the customary obligation of *non-refoulement*, if applied in the case of climate displacement, creates an obligation not to send the refugees back to the country where their life might be in danger. Therefore, the host state is obliged to give them shelter and other basic humanitarian provisions until and unless other ‘durable solutions’ are found.¹²⁴ This situation may, in turn, however, create resource burden on the host state¹²⁵ and there are no corresponding provisions to either share or reduce this burden. More importantly, the 1951 Refugee Convention and other

121 A reference to sustainable development, according to one analysis, has been found in more than 300 conventions, 112 out of them are multilateral treaties, roughly 30 of which are aimed at universal participation, see generally Virginie Barral, ‘Sustainable development in International Law: Nature and Operation of an Evolutive Legal Norm’, *European Journal of International Law*, 23:2: 377–400 (2012), p. 384.

122 Cordonier Segger, ‘Advancing the Paris Agreement on Climate Change for Sustainable Development’, p. 220.

123 Barral, ‘Sustainable development in International Law: Nature and Operation of an Evolutive Legal Norm’, p. 385.

124 Other durable solutions include: voluntary repatriation, local integration, and resettlement; see generally Demetrios G. Papademetriou and Susan Fratzke, *Beyond Care and Maintenance: Building Hope and Opportunity for Refugee*, Washington, DC: Migration Policy Institute, November 2016; Katy Long, ‘Rethinking Durable’ Solutions’ in Fiddian-Qasmiyeh *et al.*, *The Oxford Handbook of Refugee and Forced Migration Studies*, pp. 475–487.

125 1951 Refugee Convention, preamble recital 4 also recognizes that “the grant of asylum may place unduly heavy burdens on certain countries...; see further, Claire Inder, ‘The Origins of “Burden Sharing” in the Contemporary Refugee Protection Regime’, *International Journal of Refugee Law*, 29/4: 523–554 (2017), p. 523.

traditional durable solutions are criticized for their failure to accommodate the concerns of the contemporary refugee/migration crisis.¹²⁶ Mechanism of loss-and-damage and the provisions related to transfer of technology coupled with financial resources are present under the climate legal framework, but unfortunately, they are couched in relatively soft language. Therefore, if the integration of the principle of *non-refoulement* (a 'hard' law obligation) and other obligations ('soft' good faith obligation) of burden-sharing are applied concurrently, in practice, it may be difficult to implement the hybrid law. Since the proposed hybrid law is based on the co-existence of integrated norms premised on the overarching principle of sustainable development, the SDGs could serve as a 'coordinating and synthesizing framework'¹²⁷ for resolving the potential implementation hurdles in hybrid law and 'orchestrating' international agreements and institutions.¹²⁸

5.6 *Hybrid Law: Human-Centric Approach and Inclusive Development*

In order to stir SDG-13 in the context of climate displacement, it is important to emphasize that the decision to migrate is not only based on environmental reasons but also dictated by human rights violations such as non-accessibility to healthcare systems and unjustified governmental limitations. In this complex scenario, hybrid law helps with capturing the complexity of the situation and helps in developing all-inclusive norms to address the climate interrelated and convoluted migration crisis. The fundamental understanding of hybrid law is that it should be based on the human-centric paradigm. The Nansen Protection Agenda and the Global Compact are representative of a human-centered solution to climate displacement.

When the climate change regime moves on to implementation the relevance of the human-centered approach is essential as the last effort to address climate change. Hybrid law can provide the victims of climate displacement structured and strengthened protection through the transposition of norms. For instance, even if the definition under the Refugee Convention is not widened to include the climate displaced population, human right-centred principles can be applied to protect climate displaced populations. In this regard,

126 Katy Long, 'Rethinking Durable Solutions', pp. 476 and 487; Cathrine Brun and Anita H. Fabos, 'Mobilizing Home for Long-Term Displacement: A Critical Reflection on the Durable Solutions', *Journal of Human Rights Practice*, 9/2: 177–183 (2017), p. 177.

127 David Griggs *et al.*, 'An Integrated Framework for Sustainable Development Goals', *Ecology and Society*, 19/4: 49 (2014).

128 Arild Underdal and Rakhym E. Kim, 'The Sustainable Development Goals and Multilateral Agreements' in Kanie and Biermann, *Governance through Goals*, pp. 241–258 (the concept of orchestration has been explained as 'efforts at arranging different elements of a system in harmony with each other so as to enhance their collective performance').

the SDGs, which were negotiated with a wide-scale participation involving the responsibility and participation of states and non-state actors in the SDGs implementation, arguably provide political legitimacy for hybrid law's approach on inclusive participation. The development of the Nansen Protection agenda and the Global Compact on Migration is indicative of this inclusive process since they both have been developed with a bottom-up consultation process.

The SDGs with their emphasis on 'leaving no one behind' provide an opportunity for international law to reform by emphasizing local development objectives through a bottom-up approach. Unlike the initial development of international law which was Euro-centric and largely shaped without the proper support and engagement of the third world countries,¹²⁹ an integrated and universal vision of the SDGs provides a golden opportunity to develop and reformulate international law with the voluntary and active participation of developing nations. It will significantly strengthen and integrate the SDGs idea of 'leaving no one behind' including the most vulnerable and marginalized societies. Moreover, this is extremely relevant in the context of the Refugee Convention, which has not been acceded to by any of the South Asian Countries except Afghanistan.¹³⁰ They have consistently criticized the inability of the substantive and procedural content of the Refugee Convention to accommodate the critical concerns of developing nations. In this regard, hybrid law can be the best response for two reasons. First, states might be unwilling to amend the Refugee Convention 1951 in order to incorporate climate migrants within the definition of a refugee under article 1A (2) since this may endanger the objectives of the Convention.¹³¹ Second, the flexible nature of hybrid law allows the perspectives of developing nations to be taken into account.

129 Ram P. Anand, *Studies in International Law and History: An Asian Perspective* (Leiden, Boston and New Delhi: Martinus Nijhoff and Lancer's Book, 2004), pp. xiii, 146 and 165–66; Adil Najam, 'Developing Countries and Global Environmental Governance: From Contestation to Participation to Engagement', *International Environmental Agreements: Politics, Law and Economics* (Springer), 5/3: 303–321 (2005), p. 305.

130 Bhupinder S. Chimni, *International Refugee Law: A Reader* (New Delhi: Sage Publications, 2000); Narayan Sharma, 'Refugee Situation in South Asia: Need of a Regional Mechanism', *Kathmandu Law Review*, 1/1: 103–122 (2008), pp. 110–113; Zahid Shahab Ahmed, 'The Role of SAARC and EU in Managing Refugees in South Asia and Beyond: Potential for North-South Cooperation', *Global Policy*, 9/1: 76–84 (2018), p. 79.

131 Rossi, 'The Nomos of Climate Change and the Sociological Refugee in a Sinking Century', p. 651; Goldenziel, 'Displaced: A Proposal for an International Agreement to Protect Refugees, Migrants, and States', pp. 65–69, 89; Jane McAdam, 'The Enduring Relevance of the 1951 Refugee Convention', *International Journal of Refugee Law*, 29/1: 1–9 (2017).

The idea of hybrid international law is in a nascent stage but hybridization is a gradual organic process. Thorough research and analysis are required to understand, integrate and adapt the cross-linkages between different fields of law, norms of differing legal status and the interplay of state and non-state actors. Given the complexity and urgency of the climate scenario, express guidance concerning hybridization should be sought through negotiation, dialogue, conversation, and cooperation between states and institutions. The adoption of the SDGs as an overarching framework in the formulation of hybrid law will assist the formulation of interconnected norms which are adaptive, robust and sustainable. It cannot be claimed with certainty that the development of hybrid law is *the* answer to climate displacement. However, the experience emerging out of the critical component of the hybridization process offers much.¹³² On a global scale, this will be a reminder that the climate change regime and sustainable development do not operate in parallel but are complementary to one another in building a resilient society.

6. Conclusion

The complexity of climate change transcends the local, national, regional and global boundaries impacting the existence of societies and nations. The vulnerability and dynamic interplay of socio-economic factors will lead to the displacement of populations affecting their lands, livelihoods, and nations. Displacement can range from temporary to permanent, sudden to slow movement and from internal to cross-border movement. Current international law is inadequate to cover the magnitude and extent of the global crisis. Climate change is a shared responsibility and no one should be left behind. The essence of 'no one should be left behind' has been captured by the integrated, indivisible and universal SDGs and has been accorded a place of prominence in SDG-13.

With the adoption of the SDGs the international community aims to shape coordinated global planning and development with due regard to all the dimensions of sustainable development. The idea of the SDGs attempts to construct a harmonious existence of environmental and developmental concerns. Couched in soft law obligations, the SDGs are primarily addressed to states so as to be implemented at the national and international level. The challenge for

132 William Boyd, 'Climate Change, Fragmentation, and The Challenges of Global Environmental Law: Elements of a Post-Copenhagen Assemblage', *University of Pennsylvania Journal of International Law*, 32:2: 457-550 (2010), p. 513.

the international community is to translate these goals and targets into practice by envisaging a comprehensive legal framework and policy measures. The existence of appropriate legal norms is relevant at all stages of the SDG implementation. The SDGs can be seen as an integrated, indivisible and universal call for establishing a symbiotic relationship between the SDGs and the evolving body of international law. In the context of climate displacement, there is a conspicuous absence of adequate legal protective mechanisms both at the international and national levels. Unless effective legal measures are undertaken, climate displacement has the potential to snowball into a full-blown humanitarian crisis not only affecting the achievement of SDG-13 but also impacting the performance of other SDGs. A reformulation of international law is needed on order to address and protect the rights of climate-induced displaced populations. The dominant narrative of existing international law is couched in exclusivity and betrays the lack of synergy between different branches of international law. The adoption of the SDGs is a momentous opportunity as it can inaugurate new, structural and guiding principles for international law. The SDGs are grounded in international law and this provides an opportunity for international law to reform by encouraging the participation of developing nations, broadening the normative base of international law to include non-state actors and emphasizing local development objectives through a bottom-up approach. The integrated idea of the SDGs assists the adoption of innovative hybrid integration of legal norms by states and non-state actors to redefine international responsibilities and to address climate-induced migration by way of also achieving the goals and objectives laid down in the 2030 agenda. The hybrid law approach will immensely assist the lawmakers and interpreters to move beyond the subject silos and to assess the climate situation from the perspectives of international environmental law, international human rights law, and international refugee law in an integrated manner. International law can act as a normative tool in the implementation of the SDGs and the SDGs have the potential to become a guiding norm for the development and evolution of international law in filling existing gaps, promoting the hybrid development of norms across legal regimes and, more generally, advancing and further specifying the concept of sustainable development as a legal principle.¹³³

133 Pavoni and Piselli, 'The Sustainable Development Goals and International Environmental Law', pp. 44–45.