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THE LEGAL STATUS OF CLIMATE-DISPLACED PERSONS IN CONTEMPORARY INTERNATIONAL LAW: (RE)THINKING STATEHOOD IN SUBMERGED TERRITORIES

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ABSTRACT: The sustained rise in sea level, a visible consequence of climate change, profoundly challenges the very foundations of classical international law. The gradual but irreversible disappearance of island territories raises a question that until recently was considered purely theoretical: can statehood survive when the territorial element, the material basis of sovereignty, disappears? The answer to this question affects the continuity of the international personality of certain states, as well as the fate of their populations, who face displacement and the possible loss of nationality. In this context, the principle of *uti possidetis iuris*, originally conceived as an instrument for stabilising borders in decolonisation processes, takes on renewed relevance. Its eventual adaptation to the maritime and climatic sphere could offer a basis for preserving the legal identity of states threatened by the submersion of their territory, guaranteeing a certain continuity of their sovereign boundaries and powers. However, its effectiveness is limited if it is not accompanied by a broader reflection on the centrality of the human person in the preservation of the international order. This paper therefore proposes to rethink statehood from a dual perspective: structural, in terms of the survival of the international subject despite the loss of territory; and humanitarian, in terms of the legal status of climate displaced persons, a figure that still lacks full normative recognition. The articulation

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between these two levels—the continuity of the state and the protection of its people—requires a reconstruction of international law in light of climate justice, aimed at preserving the legal status of states and safeguarding the dignity of those who, having lost their land, claim to continue belonging to the international community.

KEYWORDS: Statehood, disappearance of territory, climate-displaced persons, *uti possidetis iuris*, international personality, climate justice, contemporary international law.

EL ESTATUTO DEL DESPLAZADO CLIMÁTICO EN DERECHO INTERNACIONAL CONTEMPORÁNEO: (RE)PENSAR LA ESTATALIDAD EN TERRITORIOS SUMERGIDOS

RESUMEN: El ascenso sostenido del nivel del mar, consecuencia visible del cambio climático, interpela de manera profunda los fundamentos mismos del Derecho Internacional clásico. La desaparición —paulatina pero irreversible— de territorios insulares plantea una cuestión que hasta hace poco se consideraba meramente teórica: ¿puede subsistir la estatalidad cuando el elemento territorial, soporte material de la soberanía, se desvanece? La respuesta a esta interrogante afecta a la continuidad de la personalidad internacional de ciertos Estados, así como también al destino de sus poblaciones, abocadas al desplazamiento y a la posible pérdida de nacionalidad. En este contexto, el principio de *uti possidetis iuris*, concebido originariamente como instrumento de estabilización de fronteras en los procesos de descolonización, adquiere una renovada relevancia. Su eventual adaptación al ámbito marítimo y climático podría ofrecer un punto de apoyo para preservar la identidad jurídica de los Estados amenazados por la sumersión de su territorio, garantizando cierta continuidad de sus límites y competencias soberanas. No obstante, su eficacia resulta limitada si no se acompaña de una reflexión más amplia sobre la centralidad de la persona humana en la preservación del orden internacional. El presente trabajo propone, por tanto, repensar la estatalidad desde una doble perspectiva: estructural, en cuanto a la subsistencia del sujeto internacional pese a la pérdida del territorio; y humanitaria, en lo relativo al estatuto jurídico del desplazado climático, figura aún carente de reconocimiento normativo pleno. La articulación entre ambos planos —la continuidad del Estado y la protección de su pueblo— exige una reconstrucción del Derecho Internacional a la luz de la justicia climática, orientada a conservar la forma jurídica de los Estados, así como a salvaguardar la dignidad de quienes, perdiendo su suelo, reclaman seguir perteneciendo a la comunidad internacional.

PALABRAS CLAVE: Estatalidad, desaparición del territorio, desplazado climático, *uti possidetis iuris*, personalidad internacional, justicia climática, Derecho Internacional contemporáneo.

LE STATUT DU DEPLACE CLIMATIQUE EN DROIT INTERNATIONAL CONTEMPORAIN : (RE)PENSER LA QUALITE D'ÉTAT DANS LES TERRITOIRES SUBMERGES

RÉSUMÉ: L'élévation constante du niveau de la mer, manifestation tangible du changement climatique, met profondément en cause les fondements mêmes du droit international classique. La disparition progressive, mais irréversible, de territoires insulaires soulève une question que l'on croyait jusqu'alors purement théorique: la qualité d'État peut-elle subsister lorsque l'élément territorial, support matériel de la souveraineté, s'efface ? La réponse à cette interrogation engage non seulement la continuité de la personnalité juridique internationale de certains États, mais aussi le destin juridique et humain de leurs populations, exposées au déplacement et à la perte éventuelle de leur nationalité. Dans ce contexte, le principe de uti possidetis iuris, conçu à l'origine comme un instrument de stabilisation des frontières lors des processus de décolonisation, retrouve une pertinence renouvelée. Son éventuelle adaptation au contexte maritime et climatique pourrait offrir

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un fondement à la préservation de l'identité juridique des États menacés par la submersion de leur territoire, en assurant une certaine continuité de leurs limites et de leurs compétences souveraines. Toutefois, son efficacité demeure relative si elle n'est pas accompagnée d'une réflexion plus large sur la centralité de la personne humaine dans l'ordre international. Cet article propose ainsi de repenser la qualité d'État selon une double perspective : structurelle, quant à la survie du sujet international malgré la perte de son territoire ; et humanitaire, quant au statut juridique du déplacé climatique, figure encore dépourvue de reconnaissance normative complète. L'articulation entre ces deux dimensions — la continuité de l'État et la protection de son peuple — appelle une reconstruction du droit international à la lumière de la justice climatique, orientée non seulement vers la conservation des formes juridiques, mais aussi vers la sauvegarde de la dignité de ceux qui, ayant perdu leur sol, revendiquent encore leur appartenance à la communauté internationale.

MOT CLES: Qualité d'État, disparition du territoire, déplacé climatique, *uti possidetis iuris*, personnalité juridique internationale, justice climatique, droit international contemporain.

I. INTRODUCTION

Since its earliest origins, international law has conceived of territory as the physical anchor of sovereignty, the material foundation of the state and the tangible limit of its legal personality. The climate crisis has begun to erode this foundational certainty. Where land recedes in the face of rising seas, the law faces a dilemma that tests its ability to adapt: what happens to the state when the space on which it stands ceases to exist?[2]

Rising sea levels, accompanied by increasingly intense and frequent natural disasters, have made climate change a phenomenon worthy of study, capable of altering the most deeply rooted categories of our international system[3] . What was once perceived as an environmental issue has taken on an existential dimension: the physical disappearance of island territories threa-

[2] See the Judgment of the International Court of Justice in the Preah Vihear Temple case (Cambodia v. Thailand), 1962, in which the Court reaffirmed that territory is an essential element of state sovereignty and that territorial integrity is a basic principle of the international legal order. Similarly, Principle 1 of the Charter of the United Nations (1945) associates the sovereign equality of States with the integrity of their territory and their political independence.

[3] Resolution 76/300 of the United Nations General Assembly (2022) recognises for the first time the human right to a clean, healthy and sustainable environment, establishing a link between environmental degradation and the enjoyment of human rights. This recognition implies that the effects of climate change can reach existential dimensions, as they threaten the physical and legal subsistence of peoples and States.

tens to bring about the extinction of statehood and the severing of the link that binds people to their political identity[4] .

This transformation has a human face. Behind every strip of land that is lost, there are communities forced to move, families abandoning their homes, entire villages seeing their sovereignty dissolved in water. The figure of the climate displaced person symbolises the convergence between the fragility of the planet and the inadequacy of the law. Current regulatory frameworks remain anchored in concepts from the last century: refugees, stateless persons, migrants. None of these categories adequately describes the situation of those fleeing the environmental collapse that affects the territory in which they live[5]. In this regulatory vacuum, millions of people are left suspended between the disappearance of their land and the lack of a legal status that recognises their belonging[6].

The problem also affects the very legal structure of the international community[7]. Climate change compromises the constituent elements of statehood defined in the Montevideo Convention: territory, population and go-

[4] China, the United States, Japan, Russia and Canada are among the most polluting countries, as indicated in the *Climate Selectra* report available at https://tinyurl.com/27e7ft2s. However, the Climate Risk Index report by the Germawatch Observatory identifies Puerto Rico, Myanmar, the Bahamas and Haiti as the countries most affected by climate impact and emphasises the vulnerability of the poorest countries to the effects of climate change; report available at https://tinyurl.com/2xrs9lop

[5] On the inadequacy of traditional regulatory frameworks, see the Convention Relating to the Status of Refugees (Geneva, 1951) and its 1967 Protocol, which do not include environmental degradation among the grounds for persecution; and the Convention relating to the Status of Stateless Persons (1954), which focuses on the absence of formal nationality, not on the loss of the territory of origin. The decision of the Human Rights Committee in the case of Ioane Teitiota v. New Zealand (Communication No. 2728/2016, CCPR/C/127/D/2728/2016, 2020) sets an important precedent: although the Committee did not recognise the applicant as a climate refugee, it established that forced displacement due to climate change could, in certain circumstances, trigger the prohibition of refoulement when there are serious risks to life.

[6] Borrás Pentinat, S., "Movements for global climate justice: rethinking the international climate change scenario", *International Relations,* nº 33, 2016, p. 98.

[7] Convention on the Rights and Duties of States, adopted in Montevideo on 26 December 1933, art. 1. This instrument codified the essential elements of statehood —permanent population, defined territory, government and capacity to enter into relations with other states— becoming a classic reference for determining international personality.

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vernment. When the territory disappears, the other two are weakened and the state risks losing its legal identity[8]. In this context, the principle of *uti possidetis iuris* takes on new relevance. Created to ensure the stability of borders after the decolonisation processes, its spirit can inspire reflection on the continuity of the state in scenarios of territorial disappearance. Applied to the maritime sphere, this principle becomes a tool for preserving legal identity, while symbolising the will to resist the material dissolution of state space[9] .

The preservation of sovereignty, however, only makes sense if it is accompanied by the effective protection of the people who embody that sovereignty[10] . The issue that emerges is not limited to the formal survival of the state, but extends to the dignity of its displaced citizens and their right to continue belonging to a recognised political community[11] . Rethinking statehood in submerged territories involves articulating legal continuity with human justice, so that the law is not reduced to an exercise in formal preserva-

[8] It should be noted that the criteria of the Montevideo Convention have become insufficient in contemporary debates on statehood, and modern doctrine treats them as a classic but limited formulation, as explained in Crawford, J. (2007). "Statehood and recognition", in *The creation of states in international law*, Oxford University Press, 2010, p. 19.

[9] The principle of *uti possidetis iuris,* consolidated in the jurisprudence of the International Court of Justice, has its modern formulation in the case of the Frontier between Burkina Faso and the Republic of Mali (1986, ICJ Reports 1986, p. 554), where the Court defined it as a general principle intended to ensure the stability of borders at the time of independence. In the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (2002, *ICJ Reports 2002,* p. 303), the Court reiterated that its application serves the stability and legal continuity of States. This logic could be analogously projected towards the preservation of the maritime boundaries and international personality of States whose land area is threatened by rising sea levels.

[10] The protection of persons displaced for environmental reasons is based on the Guiding Principles on Internal Displacement (1998) and the General Comments of the Human Rights Committee on the right to life (General Comment No. 36, 2018), which recognise that environmental degradation, climate change and unsustainable development constitute direct threats to human life. Similarly, Advisory Opinion OC-23/17 of the Inter-American Court of Human Rights (Environment and Human Rights, 2017) establishes that States have an obligation to prevent significant environmental damage that may affect the effective enjoyment of human rights, even beyond their borders.

[11] On this point, *see* Muñoz Rodríguez, M. C., "Equality and non-discrimination on the basis of sex, race, religion, disability, age and sexual orientation", en Mariño Menéndez, F. M. and De Faramiñán Gilbert, J. M. (coords.), *Human rights in global society: mechanisms and practical ways to defend them,* CIDEAL, Madrid, 2011, pp. 133-135.

tion, but rather reflects its responsibility to the lives that seek protection in it.

Climate change challenges the international community to reconsider its regulatory architecture. The legal response cannot be limited to merely acknowledging the loss; it must be oriented towards the creation of new spaces of belonging and protection for people. This tests the validity of international law, as well as its ethical and moral legitimacy. Where the sea advances on the land, the law is called upon to sustain the hope of those who, deprived of their land, continue to claim their place in the world[12] .

II. CLIMATE DISPLACEMENT AND ITS LEGAL CATEGORIES: FROM TERMINOLOGY TO RECOGNITION

Human mobility associated with climate change is one of the most obvious manifestations of the interdependence between environmental crisis and social vulnerability. These displacements are caused both by sudden natural disasters and by gradual processes of environmental degradation — desertification, soil salinisation, or sea level rise— which deteriorate living conditions and generate a silent exodus of entire communities. Although these movements are becoming increasingly frequent and better documented[13], they remain in a legal grey area[14] . International law, shaped by 20th-century

[12] The Preamble to the Paris Agreement (2015) reaffirms that the fight against climate change must be carried out within the framework of sustainable development and poverty eradication, taking into account the obligations of States in the areas of human rights, intergenerational equity and climate justice. In the field of jurisprudence, the Advisory Opinion of the International Court of Justice on the obligations of States in relation to climate change (pending issuance, requested by the General Assembly through Resolution 77/276 of 2023) represents a decisive step towards clarifying international responsibility for damage resulting from climate change and for the protection of peoples threatened by the loss of their territory.

[13] Del Álamo Marchena, E., "Migration and Human Displacement in the Context of Climate Change: Reflections on the Category of Climate Refugees", *Peace & Security - Paix et Sécurité Internationales*, No. 9, 2021, p. 6.

[14] The International Organisation for Migration (IOM) defines environmental migration as the movement of individuals or groups of individuals who, mainly due to sudden or progressive changes in the environment that adversely affect their living conditions, are forced to leave their usual place of residence, either temporarily or permanently (*IOM, Glossary on*

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ISSN 2341-0868, No 14, January-December 2026, xxxx
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paradigms, has not yet managed to adequately translate this new reality of forced mobility into normative categories[15].

For decades, public and academic debate has used the term "climate refugees" to describe those forced to leave their homes for environmental reasons[16]. This term, which has great symbolic resonance, is nevertheless imprecise from a legal perspective. The notion of refugee, enshrined in the 1951 Geneva Convention and its 1967 Protocol[17], is limited to individuals persecuted on grounds of race, religion, nationality, membership of a particular social group or political opinion. Climate change, on the other hand, does not persecute or discriminate; it destroys[18]. Its effects are collective, diffuse and transnational, which prevents them from fitting into traditional refugee scenarios. The term climate refugee conveys a legitimate moral intuition —the need for protection— but its use creates a conceptual ambiguity that hinders the development of coherent legal solutions[19].

For this reason, the most recent doctrine has opted to use the term persons displaced by environmental or climatic factors[20]. This more neutral formulation more accurately reflects the diversity of situations caused by climate change: from temporary displacement within the state itself to irreversible cross-border migration as a result of loss of territory. In the case of climate change, the term "temporary displacement" is used to refer to a range of

Migration, 2021). However, this definition has no binding legal value, which keeps the issue within the realm of *soft law.*

[15] López Ramón, F., "Los refugiados climáticos", *Actualidad Jurídica Ambiental,* nº 68, 2017, pp. 1-3.

[16] El-Hinnawi Essam, E., *Environmental refugees,* UNEP, Nairobi, 1985, p. 4. Available at the United Nations Digital Library: Https://Digitallibrary.Un.Org/Record/121267?Ln=Es.

[17] Verdú Baeza, J., "Refugiados climáticos: ¿Refugiados sin derechos: ?", in Del Valle Gálvez, A., (ed.) *Inmigración y derechos humanos en las fronteras exteriores del sur de Europa*, Ed. Dykinson, Madrid, 2021, pp. 127-128.

[18] Verdú Baeza, J., "Climate Refugees, Human Rights and the Principle of Non-Refoulement", *Peace & Security - Paix et Sécurité Internationales*, No. 11, 2023, p. 4.

[19] Solanes Corella, Á., "Climate displaced persons and refugees. The need for protection due to environmental causes", *Annals of the Francisco Suárez Chair,* nº 55, 2020, p. 435. Available at https://revistaseug.ugr.es/index.php/acfs/article/view/15534/15813

[20] Albert Márquez, J. J., "Environmental Displacement: Uncertainties and Legal Responses to a Potential Humanitarian Conflict," *Electronic Notebooks on Philosophy of Law,* nº 46, 2022, pp. 13-14. Available at https://turia.uv.es/index.php/CEFD/article/view/21389/pdf

situations, ranging from temporary displacement within the state itself to irreversible cross-border migration as a result of loss of territory. Its use also allows the debate to be broadened to other regulatory frameworks, such as international human rights law, statelessness law and international humanitarian law, whose protection logics may converge with the needs of those deprived of their living environment[21].

Terminological recognition has far-reaching legal consequences. In the language of law, naming implies delimiting, and delimiting confers normative existence. The lack of an agreed term that accurately describes the condition of these people reveals the absence of a legal status of their own. This conceptual void translates into a lack of effective regulation. No international treaty specifically addresses the situation of those forced to move for climate reasons, and existing instruments —from the 1951 Convention to the 1954 and 1961 conventions on statelessness[22]— are insufficient to guarantee comprehensive protection. The result is a space of structural vulnerability in which people's fate depends on the discretion of receiving States and the political will to extend evolving interpretations of pre-existing norms[23].

The lack of legal recognition affects both the individual status of displaced persons and the very principle of sovereign equality of States and the idea of shared responsibility for global welfare. Climate change, to which the most industrialised countries largely contribute, displaces populations belonging mainly to the global South. This asymmetry reveals the inadequacy of the Westphalian paradigm, centred on state sovereignty, to respond to cross-border phenomena that demand shared obligations. Climate justice, understood as the equitable distribution of the burdens arising from environmental degradation, should find an effective normative channel in inter-

[21] Conventions on statelessness of 1954 and 1961.

[22] Mcadam, J., "Climate Change Induced Displacement and International Law", *Side Event to the High Commissioner's Dialogue on Protection Challenges,* Palais des Nations, Geneva, 2010, p. 2. Available at https://www.refworld.org/es/ref/inforreu/acnur/2010/es/77723

[23] General Comment No. 36 (2018) of the Human Rights Committee, concerning the right to life (Art. 6 of the International Covenant on Civil and Political Rights), expressly recognises that climate change and environmental degradation constitute threats to human life and give rise to positive obligations on the part of States. This interpretation opens up the possibility of applying an evolutionary reading of the principle of *non-refoulement* to climate displacement.

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
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national law. However, practice shows that states are reluctant to assume legal commitments that limit their margin of sovereignty in migration or environmental matters[24].

The consequences of this situation can be seen on two levels. Firstly, the lack of a specific legal regime deprives millions of people of the international protection that the refugee protection system grants to other categories of displaced persons. Secondly, the lack of collective recognition prolongs the political invisibility of communities threatened by the physical disappearance of their territories. International law, by remaining tied to categories developed for armed conflicts or ideological persecution, shows its inability to integrate the transformations resulting from an environmental crisis that transcends borders and calls into question the classic foundations of statehood[25].

Given this reality, recognising climate displacement as an autonomous legal phenomenon is emerging as a theoretical and moral imperative. As things stand, we cannot limit ourselves to offering humanitarian assistance, but must redefine the scope of international responsibility in promoting human rights and protecting those affected. This approach requires rethinking the notions of refuge, asylum and international protection, and promoting the creation of instruments that jointly address human mobility and the loss of territory[26].

[24] The principle of common but differentiated responsibilities, enshrined in Article 3.1 of the United Nations Framework Convention on Climate Change (1992) and reaffirmed in Article 2.2 of the Paris Agreement (2015), recognises that all States share the obligation to protect the climate system, albeit with burdens proportional to their capacities and historical contributions. Its limited practical applicability reflects the tensions between environmental equity and national sovereignty.

[25] The Report of the Special Rapporteur on the human rights of internally displaced persons, A/HRC/47/37 (2021), warns that contemporary international law does not provide a coherent framework for protecting climate-displaced persons, recommending the adoption of a specific instrument that combines humanitarian and environmental approaches.

[26] Along these lines, the Geneva Declaration on Human Mobility in the Context of Climate Change (2022), signed by more than 100 states and international organisations, calls for the recognition of climate displacement as an autonomous legal phenomenon and for the development of international protection mechanisms inspired by the principles of solidarity, equity and international cooperation.

1. From "climate refugees" to "displaced persons": terminological precision and legal consequences

In international law, the language used is much more than a mere vehicle of communication; it constitutes a real space in which social phenomena require specific regulation and intervention. Naming a reality implies recognising it, placing it within a framework of meaning and, ultimately, giving it normative legitimacy[27]. For this reason, the terminological issue surrounding climate displacement, beyond a semantic dispute, is an essential part of the legal construction of the phenomenon.

Since the end of the 20th century, the term climate refugee has become widely used in public discourse, promoted by the media, non-governmental organisations and some academic forums[28]. Its evocative power lies in parallel with the figure of the political refugee: both evoke vulnerability, forced displacement and the need for international protection. However, this analogy, although effective from a communicative point of view, presents serious legal difficulties. The 1951 Geneva Convention and its 1967 Protocol[29] precisely define the conditions that confer refugee status, linking it to individualised persecution for specific reasons and the impossibility of obtaining protection from the State of origin. Climate change, on the other hand, does not respond to the logic of persecution or the intentionality of an identifiable human actor. It is a global phenomenon with diffuse effects and shared responsibility, affecting entire communities rather than specific individuals[30].

This substantial difference explains why people displaced by environmen-

[27] See Cassesse, A., *International Law in a Divided World, Oxford University Press,* 1986, p. 17. In the same vein, Koskenniemi, M., *From Apology to Utopia,* Cambridge University Press, 2005.

[28] The first systematic mention of "climate change refugees" is attributed to El-Hinnawi, E., *Environmental Refugees,* United Nations Environment Programme (UNEP), 1985, who defined as such people forced to leave their habitat due to serious environmental changes. The term was subsequently popularised by the International Organisation for Migration (IOM) in its reports in the 1990s and by UN Environment at the Rio+10 Summit (Johannesburg, 2002).

[29] Convention Relating to the Status of Refugees (1951), Art. 1.A(2), and New York Protocol (1967). The UNHCR Executive Committee, in its Conclusion No. 39 (1985), reiterated that the concept of refugee does not include persons displaced by natural or ecological disasters, although it recognised the need to provide humanitarian assistance to these groups.

[30] Foster, M., *International Refugee Law and Socio-Economic Rights*, Cambridge University Press, 2007, pp. 45-49.

Peace & Security – Paix et Securité Internationales
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tal causes do not fit into the traditional legal frameworks of asylum or refuge. Nor does their situation fully fit into the categories of instruments on statelessness or internal displacement. They thus find themselves in a grey area of international law, recognised as persons in need of protection but without a specific legal status to guarantee it. This conceptual ambiguity has a direct impact on the effectiveness of protection mechanisms, as the lack of a normative definition makes it impossible to invoke clear rights and demand precise responsibilities from States[31].

Specialised doctrine has warned of this shortcoming and proposed various terminological alternatives that seek to describe reality without forcing existing legal categories. Among these, the expression "environmentally or climatically displaced person" has gained ground, gradually being adopted by international organisations such as the International Organisation for Migration (IOM)[32] and by scientific literature on human mobility and climate change. Unlike the term refugee, this designation avoids presupposing a pre-established legal regime and merely states a fact: displacement caused, directly or indirectly, by changes in the natural environment. Its use allows for the construction of a common language between different disciplines —law, environmental sciences, international relations— and opens up the possibility of articulating new frameworks for protection without relying on the limitations of the 1951 Convention[33].

However, the adoption of a more precise term does not in itself resolve

[31] The Inter-American Court of Human Rights, in its Advisory Opinion OC-21/14 (Rights and guarantees of children in the context of migration and/or in need of international protection), affirmed that States must guarantee the effective protection of displaced persons, even when they do not fully fit into conventional categories of refugees, invoking the pro persona principle and the evolutionary interpretation of human rights treaties.

[32] The IOM, in its *Glossary on Migration* (2021), defines "environmental migration" as the movement of persons or groups motivated, in part or in whole, by sudden or progressive changes in the environment that adversely affect their living conditions. Although this definition is not binding, it has been widely accepted as a reference by international doctrine and agencies.

[33] See the Agenda for the Protection of People Displaced across Borders in the Context of Disasters and Climate Change (Nansen Initiative, 2015), which proposes a cooperative and non-contentious approach based on the complementarity between international refugee law and human rights law. This instrument inspired the creation of the Platform on Disaster Displacement (PDD, 2016).

the regulatory gap. The concept of a displaced person remains broad and heterogeneous. It includes situations as diverse as temporary migration due to sudden disasters, the planned relocation of coastal populations in the face of rising sea levels, and the permanent exodus of communities whose land has become uninhabitable. Each of these scenarios raises specific legal issues: jurisdiction, state responsibility, continuity of nationality, and access to rights in the receiving state[34]. The challenge for international law is to translate this plurality into distinct normative categories without sacrificing the unity of the principle of protection.

Terminological precision also takes on an ethical dimension. The word "refugee" arouses empathy and political commitment; its use has sometimes served to highlight the humanitarian urgency of the phenomenon and to call for international solidarity[35]. However, abuse of the term can dilute its legal meaning and generate frustration among those seeking protection that is not recognised by the current regulatory framework. In contrast, the expression "climate-displaced person" presents itself as a more honest and operational starting point for constructing legal solutions adapted to contemporary reality[36].

This change in language heralds a more profound shift in the way we conceive of the relationship between the environment, human mobility and international law[37]. Consider how traditional legal categories were based on

[34] The International Law Commission (ILC), in its Project on the Protection of Persons in the Event of Disasters (2016), adopted a series of articles which, although focused on humanitarian assistance, recognise the duty of States to cooperate and protect persons affected by natural disasters, setting a significant precedent for the development of future norms on climate displacement.

[35] In the political sphere, the Global Compact on Refugees (2018) and the Global Compact for Safe, Orderly and Regular Migration (2018) introduce, for the first time, explicit references to climate-induced migration. In particular, the second instrument (paragraph 18.l) urges States to "develop strategies and practices that address displacement resulting from natural disasters, environmental degradation and climate change".

[36] The Human Rights Committee, in the case of Ioane Teitiota v. New Zealand (Communication No. 2728/2016, CCPR/C/127/D/2728/2016, 2020), recognised that environmental degradation and climate change can jeopardise the right to life within the meaning of Article 6 of the International Covenant on Civil and Political Rights, establishing that *non-refoulement* could apply if return exposes the applicant to conditions incompatible with human dignity.

[37] Human Rights Council Resolution 48/13 (2021), which recognises the human right to a

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an anthropocentric view of territory and sovereignty, where the state was the centre of attribution of rights and obligations. Climate change has altered this balance, introducing an element of structural uncertainty that forces us to rethink the limits of legal protection and recognise the interdependence between ecosystems and human communities[38]. In this sense, the terminological discussion is the first step in a broader reflection on the need to articulate an international law capable of responding to the displacement caused by the degradation of the planet.

2. The international regulatory vacuum in the face of mobility induced by environmental factors

Human mobility caused by environmental degradation simultaneously affects refugee law, international human rights law and statelessness law, but none of these systems offers adequate or consistent responses[39]. Regulatory dispersion, the absence of a common definition and the lack of political will to move towards binding commitments have created a patchwork of fragmented instruments that, taken together, reveal a structural legal gap.

The first obstacle stems from the international refugee regime itself. The 1951 Convention relating to the Status of Refugees and its 1967 Protocol[40] were conceived in a historical context marked by political persecution and

clean, healthy and sustainable environment, has consolidated the normative link between environmental protection and the effective enjoyment of human rights, serving as a basis for the future classification of climate displacement as an indirect violation of such rights.

[38] The Advisory Opinion of the International Court of Justice requested by the General Assembly through Resolution 77/276 (2023) on the obligations of States with regard to climate change, currently in preparation, is shaping up to be a milestone in redefining the relationship between sovereignty, international responsibility and the protection of communities affected by the loss of their habitat. This process reflects the progressive constitutionalisation of international environmental and humanitarian law in the face of global phenomena.

[39] Mcadam, J., *Climate Change, Forced Migration, and International Law,* Oxford University Press, 2012, pp. 3-9.

[40] Convention Relating to the Status of Refugees (1951), art. 1(A)(2), and New York Protocol (1967). Both texts limit refugee status to individual persecution, explicitly excluding natural disasters and environmental effects. See also Conclusion No. 39 (XXXVI), UNHCR Executive Committee, 1985, which recognises the need for humanitarian protection, albeit outside the refugee regime.

displacement resulting from ideological conflicts. Their definitions focus on the existence of a persecuting agent, the individualised nature of the harm and the impossibility of receiving protection from the State of origin. None of these elements are present in displacements caused by climatic phenomena, where the danger does not come from a persecuting agent, but from a diffuse global environmental process. Although some doctrinal and jurisprudential sectors have defended an evolutionary interpretation of the term "persecution", the truth is that international practice continues to show enormous reluctance to expand the material scope of the Convention[41]. National asylum authorities continue to interpret its provisions restrictively, which almost systematically excludes those who are displaced for environmental reasons.

The second limitation appears in the legal regime of statelessness. The 1954 and 1961 Conventions[42] regulate the situation of those who lack nationality and provide mechanisms for reducing and preventing this condition. However, their logic is based on an assumption that is very different from that of climate displacement. Statelessness is a consequence of state decisions —for example, the arbitrary withdrawal of nationality or the succession of states without adequate legal provision— while climate change generates a type of vulnerability that can lead to the loss of nationality due to the physical disappearance of territory or the dissolution of statehood. International law has not yet determined how to act in cases where nationality formally persists, but the territory and government become unviable[43]. The gap is evident:

[41] Directive 2011/95/EU of the European Parliament and of the Council (Qualification Directive) establishes in Article 9 that persecution must come from a human actor, which excludes environmental risks. In some cases, such as *Ioane Teitiota v. New Zealand* (Human Rights Committee, CCPR/C/127/D/2728/2016), attempts have been made to apply an evolving interpretation of the principle of *non-refoulement,* but without changing the traditional definition of refugee.

[42] Convention relating to the Status of Stateless Persons (1954), arts. 1 and 27; and Convention on the Reduction of Statelessness (1961), arts. 1 and 8. Both instruments focus on the legal loss or denial of nationality, not on its material unviability.

[43] Kälin, W. and Schrepfer, N., *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches,* UNHCR, 2012, p. 25, who warn that the physical disappearance of a state territory could lead to "*de facto* statelessness" not provided for in current treaties. Similarly, Rayfuse, R., "International Law and Disappearing States: Maritime Zones and the Criteria for Statehood"*,* in *Environmental Policy and Law*, vol. 41, 2011, pp. 281-

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2026.i14.xxxx

the statelessness regime protects against the legal deprivation of nationality, not against the material impossibility of exercising it.

Neither international humanitarian law nor the law of the sea offers tools adapted to this new reality. The former is geared towards armed conflicts and displacement resulting from violence, not processes of environmental degradation; the latter regulates the use and delimitation of marine spaces, but not the legal situation of those who lose their land due to rising sea levels[44]. The practice of international human rights protection and promotion bodies has made tentative progress in recognising obligations arising from climate change, as in the case *of Teitiota v. New Zealand*[45] before the Human Rights Committee, which linked the return of people to uninhabitable areas to the principle of non-refoulement. However, these rulings, although symbolically relevant, lack sufficient normative force to create an autonomous category of protection.

The inadequacy of existing legal frameworks has led to recourse to political solutions and soft cooperation, such as the 2012 Nansen Initiative or the Platform on Disaster Displacement[46], which promote adaptation measures and bilateral resettlement agreements. However, their non-binding nature limits their effectiveness and leaves the protection of displaced persons to the discretion of States. This model, based on goodwill and voluntary coopera-

285.

[44] The United Nations Convention on the Law of the Sea (1982) does not provide for the loss of sovereignty due to the submersion of land, nor does it regulate the status of populations displaced for this reason. Some authors, such as Barnes, R., "Rising Sea Levels: Statehood and the Law of the Sea", *International and Comparative Law Quarterly,* vol. 60, 2011, pp. 203-223, have proposed reinterpreting maritime zones as the basis for the legal continuity of island states.

[45] Human Rights Committee, Ioane Teitiota v. New Zealand (Communication No. 2728/2016, CCPR/C/127/D/2728/2016, 2020). The Committee considered that the applicant's return to Kiribati could violate his right to life (art. 6 ICCPR) if environmental degradation reached levels incompatible with a dignified existence, thus recognising a possible obligation of non-refoulement in extreme climate contexts.

[46] The Nansen Initiative (2012-2015) culminated in the adoption of the Agenda for the Protection of Persons Displaced across Borders in the Context of Disasters and Climate Change (2015), subsequently institutionalised through the Platform on Disaster Displacement (PDD, 2016). Both promote inter-state cooperation and the development of flexible regional frameworks, such as New Zealand's *Pacific Access Category* or the free mobility agreements in the Caribbean Community (CARICOM).

tion, has allowed for pragmatic progress, but it is no substitute for legal codification. In order to fulfil its regulatory and protective function, international law needs to give binding force to the rules governing the protection of those who can no longer find refuge in their own country for climate reasons[47] .

The regulatory vacuum is due to the lack of treaties on the subject, as well as the persistence of a rigid conception of state sovereignty. Displacement induced by climate change puts pressure on the classic logic of border control, based on the absolute discretion of the state to admit or reject people into its territory. Recognising a right to protection for those who cross borders for environmental reasons would necessarily imply limiting that sovereignty. This is perhaps the main political obstacle to the creation of a binding regime: the fear of states that climate responsibility will translate into reception obligations or international liability for environmental damage[48].

It is clear that this legal loophole is, therefore, the manifestation of a deeper crisis in contemporary international law. The regulatory architecture inherited from the 20th century was designed to manage relatively stable inter-state relations and displacement phenomena linked to violence or persecution. However, the current reality requires a law that is more permeable to environmental complexity, capable of articulating principles of prevention, cooperation and solidarity[49]. Climate mobility is a direct consequence of collective damage caused by humanity as a whole; ignoring it is tantamount to perpetuating a vacuum that undermines the very legitimacy of the international human rights system[50].

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[47] The Geneva Declaration on Human Mobility in the Context of Climate Change (2022) reaffirms the commitment of States to strengthen resettlement and adaptation mechanisms, but its non-binding nature prevents enforcement before international bodies.

[48] In this regard, Human Rights Council Resolution 26/9 (2014), which establishes the mandate of the Intergovernmental Working Group on Business and Human Rights, shows how States are reluctant to accept direct obligations in the area of environmental and climate responsibility. The resistance to incorporating the notion of "extraterritorial climate responsibility" reflects the tension between sovereignty and global justice.

[49] The International Law Commission (ILC), in its Project on the Protection of Persons in the Event of Disasters (2016), adopted the principle of international solidarity (art. 8) and the duty of cooperation (art. 7), affirming that States have a shared responsibility to protect persons affected by natural disasters, which lays the foundation for a more inclusive regulatory approach.

[50] United Nations General Assembly Resolution 76/300 (2022), which recognises the right to

Peace & Security – Paix et Securité Internationales
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3. Towards the legal recognition of climate displacement

Climate change-induced mobility invites international law to rethink its conceptual architecture and normative scope. Displacement caused by environmental degradation goes beyond traditional protection schemes, designed for scenarios of persecution or conflict, and calls into question the adequacy of the sovereign paradigm on which the international system was built. Legally recognising climate displacement means reconstructing the contemporary meaning of international protection: it is not a question of mechanically extending pre-existing categories, but of renewing the understanding of shared responsibility in the face of a global phenomenon that transforms physical borders into moral boundaries[51].

A possible line of development has been opened up through the evolutionary interpretation of existing treaties, especially the 1951 Convention relating to the Status of Refugees and universal human rights instruments. In *Teitiota v. New Zealand*[52] (Human Rights Committee, Communication No. 2728/2016), the supervisory body of the International Covenant on Civil and Political Rights held that returning a person to a State where climate change threatened their life could violate Article 6 of the Covenant. Although the Committee concluded that, in the specific case, the risk did not yet reach the required threshold, it recognised that "the effects of climate change and environmental degradation may expose individuals to a violation of their protected rights" and that "States cannot deport a person to a place where survival is compromised by such factors". This reasoning, pioneering in its scope, did not create an autonomous legal category, but it did introduce into international normative discourse the idea that extreme environmental damage can give rise to non-refoulement obligations and, therefore, duties of

a clean, healthy and sustainable environment as a universal human right, reflects a paradigm shift that can serve as a legal basis for claiming protection for people displaced by environmental degradation. Its lack of binding effect, however, shows the limits of soft law in the face of the magnitude of the phenomenon.

[51] See Biermann, F. and Boas, I., "Protecting Climate Refugees: The Case for a Global Protocol", *Environment,* vol. 50, nº 6, 2008, pp. 8-17.

[52] Human Rights Committee, Ioane Teitiota v. New Zealand, Communication No. 2728/2016, CCPR/C/127/D/2728/2016, decision of 7 January 2020. This case is the first ruling in which a UN human rights body expressly recognises the relationship between climate change and the right to life, establishing an emerging legal standard for future climate litigation.

protection[53].

Another area of progress can be found in the regionalisation processes of international refugee law, which have demonstrated a remarkable capacity to adapt concepts to specific historical and social contexts. The 1969 Organisation of African Unity Convention and the 1984 Cartagena Declaration[54] broadened the definitions of refugee to include cases of widespread violence, internal conflicts and other serious disturbances of public order. This same momentum could serve as a model for incorporating climate displacement as a cause for protection. Regional experience —based on interpretative flexibility, solidarity among states, and proximity to impacts— provides fertile ground for testing normative solutions before their eventual universal consolidation[55].

At the global level, the codification of a specific legal regime on climate displacement is emerging as a necessary and ambitious option. An international treaty dedicated to this issue should articulate a coherent set of principles: prevention, assistance, resettlement and financial cooperation. Such an instrument would have to recognise the relationship between environmental degradation and structural inequality, establishing differentiated obligations according to the historical contribution of states to climate change. Its adoption would, however, require a political consensus that still seems distant, as it would imply admitting legal responsibility linked to accumulated ecological

[53] General Comment No. 36 (2018) of the Human Rights Committee on the right to life had already anticipated this interpretation, stating that States must take measures to protect life from the foreseeable effects of climate change and environmental degradation. See also Human Rights Council Resolution 48/13 (2021), which recognises the human right to a clean, healthy and sustainable environment as the basis for broader protection against environmental displacement.

[54] OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969), Art. 1(2); and Cartagena Declaration on Refugees (1984), Third Conclusion, which broadens the definition of refugee to include those fleeing "widespread violence, foreign aggression, internal conflicts or massive violations of human rights". Both instruments exemplify how regional law can evolve in a flexible and supportive manner.

[55] In *practice,* the 2009 Kampala Declaration (African Union) on internally displaced persons and refugees recognised the relationship between natural disasters and human mobility, consolidating a regional regulatory framework that could serve as a reference for the universal codification of climate displacement.

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2026.i14.xxxx

debt[56].

Legal reflection can also be based on the expansion of the principle of common but differentiated responsibility, which has inspired international environmental law since the 1992 Rio Declaration[57]. This principle, transferred to the field of human mobility, allows international cooperation to be conceived not as a voluntary gesture, but as the legal expression of mandatory solidarity. From this perspective, the states that contributed most to polluting emissions would have a reinforced duty to support the resettlement, adaptation and assistance of displaced populations. The interconnection between environmental responsibility and humanitarian responsibility would thus constitute the ethical and normative core of a future global governance of climate displacement[58].

Here, the issue takes on a more complex dimension when environmental degradation affects not only individuals or groups, but entire political communities threatened with territorial disappearance. Some Pacific Island states, such as Kiribati, Tuvalu and the Maldives, have begun to call for international recognition of their legal personality beyond the physical loss of territory[59]. Such claims herald an unprecedented debate on the continuity of the state and the preservation of nationality in the absence of land, where human mobility is confused with the very survival of statehood. Climate displacement

[56] See Docherty, B. and Giannini, T., "Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees", *Harvard Environmental Law Review,* vol. 33 , 2009, pp. 349-403.

[57] Principle 7 of the Rio Declaration on Environment and Development (1992): "States shall cooperate in a spirit of global solidarity to conserve, protect and restore the health and integrity of the Earth's ecosystem". This principle, which forms the basis of Article 3.1 of the United Nations Framework Convention on Climate Change (1992) and Article 2.2 of the Paris Agreement (2015), introduces the notion of "common but differentiated responsibilities", which could be extended to the field of migration.

[58] Rajamani, L., *Differentiated Responsibilities and Burden Sharing in International Environmental Law,* Oxford University Press, 2006, argues that this principle can be transferred to other areas of international law, generating distributive and assistance obligations in the face of global damage, such as climate displacement.

[59] In 2019, the Government of Tuvalu submitted a proposal to the UN General Assembly to preserve its maritime borders and international personality despite the possible physical loss of territory, appealing to the legal continuity of the State. *See* A/74/PV.6 (2019). Similarly, the Government of Kiribati acquired land in Fiji (2014) as part of a Migration *with* D*ign*ity plan, a pioneer in the preventive management of climate displacement.

thus ceases to be an exclusively humanitarian phenomenon and becomes a structural problem of the international legal order, challenging the notion of sovereignty, the criteria for recognition and the legitimacy of the territory-based system[60].

The recognition of climate displacement, in all its dimensions, requires a convergence between refugee law, international environmental law and international human rights law. The articulation of these three areas does not seek a simple normative expansion, but rather a reformulation of the ethical meaning of international law itself. The protection of those displaced by climate change represents a test of coherence for the international community: it tests its ability to translate the principles of dignity, justice and solidarity into legal obligations. Where the earth sinks, the response of the law will reveal the true extent of its humanity[61].

III. THE CRISIS OF STATEHOOD IN THE FACE OF THE DISAPPEARANCE OF TERRITORY: SOVEREIGNTY, IDENTITY AND STATELESSNESS

The possibility of a state physically disappearing as a result of climate change raises an ontological question for the post-Westphalian international legal system[62]. Statehood —that political form that embodies international personality and the capacity for collective representation— is threatened not by conquest or political dissolution, but by the progressive action of nature and, ultimately, by the accumulated responsibility of humanity.

Since the Montevideo Convention of 1933, territory has been conside-

[60] The debate on state continuity in cases of territorial disappearance has been addressed by the International Law Commission in its 2021 preparatory discussions on the draft articles on the "Protection of persons affected by sea-level rise". See A/CN.4/749 (2021), *First Issues Paper by the Co-Chairs of the Study Group on Sea-Level Rise in Relation to International Law.*

[61] The Advisory Opinion requested from the International Court of Justice by the General Assembly through Resolution 77/276 (2023) on the obligations of States in relation to climate change represents a turning point for the legal recognition of climate displacement. Its future issuance could define international standards of due diligence and cooperation in the prevention, assistance and protection of affected populations.

[62] Carrillo Salcedo, J. A., "Human Rights and International Law", *Isegoría,* nº 22, 2000, p. 4. Available at https://tinyurl.com/2ft7uhco

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2026.i14.xxxx

red an essential element of the state, alongside population, government and the capacity to enter into relations with other states[63]. This conception has consolidated the idea that the existence of territory constitutes the indispensable material basis of sovereignty. Without territory there is no jurisdiction, without jurisdiction there is no legal order, and without a legal order international personality vanishes. The physical disappearance of the space over which a state exercises its authority was never imagined by the drafters of the Convention; its loss was associated with annexation, cession or political dissolution, not with the literal sinking of the ground that sustains it. However, the climate crisis has altered this fundamental assumption: territory can now disappear without war, without treaty and without human decision, eroding the very foundations of positive international law[64].

If the existence of the state depends on territory, its loss should, by definition, imply the extinction of statehood. But if this syllogism is accepted, millions of people would be deprived not only of their homes, but also of their legal membership in a recognised international community. International law therefore faces a dilemma of legitimacy: either it maintains the classical interpretation of the territorial element and consents to the legal extinction of the states concerned, or it reinterprets its fundamental categories in order to preserve the continuity of statehood in situations of physical disappearance of territory[65]. This dilemma, rather than being a problem of spatial delimitation, reflects a crisis of meaning surrounding the very concept of sovereignty.

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[63] Convention on the Rights and Duties of States, adopted in Montevideo on 26 December 1933, art. 1. The text codifies the essential elements of statehood —permanent population, defined territory, government and capacity to enter into relations with other states— becoming the doctrinal reference for determining the existence of a state.

[64] The United Nations Convention on the Law of the Sea (1982) does not provide for the eventual physical disappearance of land territory. However, the Study of the Working Group of the International Law Commission on Sea Level Rise in Relation to International Law (A/CN.4/749, 2021) identifies this omission as an urgent legal vacuum, which it calls the "crisis of international territoriality".

[65] Contemporary doctrine debates the possibility of recognising "statehood without territory". See Burkett, M., "The Nation Ex-Situ: On Climate Change, Deterritorialised Nationhood and the Post-Climate Era", *Climate Law,* vol. 2, nº 3, 2011, pp. 345-374, who proposes recognising the continuity of displaced island states through the principle of self-determination and the preservation of their membership in the UN.

The disappearance of territory also has consequences that transcend the institutional dimension. Insofar as the state is the main guarantor of its citizens' rights, its extinction poses a direct threat to the validity of those rights. The loss of nationality, the lack of international representation and the impossibility of exercising authority over a specific territory expose the affected populations to a situation of extreme vulnerability. Statelessness ceases to be a residual phenomenon and becomes a structural possibility. In this context, the protection of the human person and the preservation of collective political identity merge into a single legal and ethical imperative[66].

The history of international law offers examples of the disintegration or succession of states, but none of them correspond to the characteristics of climate-induced deterritorialisation. Processes of political dissolution, such as those that followed the collapse of the Soviet Union or Yugoslavia, took place within institutional frameworks and with physical continuity of sovereignty over specific spaces. In contrast, the gradual disappearance of a territory due to natural causes places the legal system before an unprecedented situation: the loss of a constituent element of the state without a successor or a legal act of transfer. In this conceptual vacuum, the law is forced to imagine formulas for continuity that guarantee the survival of the legal identity of the state and the protection of its citizens[67].

The principle of *uti possidetis iuris* may offer a point of reference in this reflection. Historically, it served to ensure border stability during decolonisation processes and to avoid territorial disputes arising from the transition between legal systems. In the current context, invoking it takes on a different meaning: rather than establishing borders, it allows us to consider the symbolic preservation of sovereignty when physical space disappears. Freezing ma-

[66] In the field of human rights, the Human Rights Committee, in its General Comment No. 15 (1986) on the right to nationality, emphasises that the arbitrary loss of nationality violates Article 24.3 of the International Covenant on Civil and Political Rights. However, the Committee has not yet addressed the case where the loss results from the disappearance of the State.

[67] The International Law Commission (ILC) has begun to study this issue in the context of its Study on Sea Level Rise in Relation to International Law (2019-2023). In its First Report (A/CN.4/740, 2020), it was expressly recognised that the disappearance of a State's territory raises unprecedented problems concerning the continuity of international personality, the preservation of nationality and the protection of the human rights of the populations concerned.

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2026.i14.xxxx

ritime baselines or recognising exclusive economic zones as legal extensions of territory are attempts to provide continuity to the international personality of the state in the face of the physical erosion of its soil. Although these solutions are limited in scope, they express a willingness to resist legally in the face of the vacuum left by territorial disappearance[68].

The crisis of climate statehood therefore forces us to rethink the relationship between sovereignty and humanity. The state, conceived for centuries as a territorial entity, is confronted with the need to redefine itself as a political community of belonging, sustained more by the will of its people than by the permanence of its geography. Sovereignty, understood as responsibility rather than dominion, becomes the principle capable of reconciling the continuity of the state with the protection of its population. Against this backdrop, international law faces an unprecedented task: to preserve statehood without territory and guarantee citizenship without soil, without renouncing the values of justice, equity and cooperation that constitute the ultimate reason for its existence[69].

1. The disappearance of territory as a challenge to classical international law

Within the Westphalian conception of the state, territory represents, *ad intra*, a delimited physical space, as well as, *ad extra*, the material projection of political authority, the sphere of validity of the internal legal order and the indispensable prerequisite for external independence. Sovereignty, juris-

[68] The proposal to "freeze" maritime baselines in the face of sea level rise has been endorsed by the 2021 Declaration of Small Island Developing States (SIDS) and by General Assembly Resolution 77/125 (2022), which urges the international community to consider preserving maritime areas declared under the Law of the Sea, even if geographical features change. See also *Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain),* ICJ, Judgment of 2001, para. 185, where the Court stated that maritime delimitations must take into account equity and legal stability, principles that can be invoked in contexts of territorial disappearance.

[69] The idea of sovereignty as responsibility was initially formulated in the report of the International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (2001), and consolidated at the United Nations World Summit (Outcome Document, A/RES/60/1, 2005). Although conceived to prevent mass atrocities, this principle can be reinterpreted for situations in which sovereignty must be exercised as a duty to protect against existential environmental threats.

diction and international personality have historically rested on the existence of a defined and controlled territorial space. The erosion of this principle, caused by rising sea levels and the irreversible loss of land, constitutes an unprecedented disturbance in the general theory of the state and in the very structure of international law[70].

The 1933 Montevideo Convention codified, in its famous Article 1, the constituent elements of the state: permanent population, defined territory, government, and capacity to enter into relations with other states[71]. Although its wording was the result of a political compromise, not a treaty establishing the state, its doctrinal influence has been decisive. According to this formulation, territory is a necessary condition for the exercise of sovereignty and for the identification of the State in the international community. Its disappearance would therefore make it impossible to fulfil one of the essential requirements of statehood and would therefore lead to the legal extinction of the State[72].

However, the literal wording of the Montevideo text does not exhaust the complexity of the issue. The history of international law shows that the personality of the State does not depend exclusively on the physical integrity of its territory, but also on its continued recognition by the other subjects that make up the international community. There are precedents of states that, after losing part of their territory or seeing their sovereign space occupied, retained their legal personality thanks to international recognition and the persistence of their legitimate government. The governments in exile during the Second World War, recognised by the Allies, or the case of Kuwait during the Iraqi occupation of 1990, demonstrate that the existence of a State is not automatically extinguished by the temporary loss of control over territory[73].

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[70] Crawford, J., *The Creation of States in International Law,* Oxford University Press, 2007, p. 46.

[71] Convention on the Rights and Duties of States, Montevideo, 26 December 1933, art. 1. The Convention was adopted at the Seventh International Conference of American States. Although its legal value is that of a regional treaty, it has been generally recognised as an expression of customary law with regard to the elements of statehood.

[72] The International Law Commission (ILC), in its First Report on Sea Level Rise in Relation to International Law (A/CN.4/740, 2020), identifies territory as an "essential but dynamic element" of the State, the disappearance of which may require a "re-examination of the classical criteria of State existence and continuity".

[73] During Iraq's occupation of Kuwait (1990-1991), UN Security Council Resolution 662

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2026.i14.xxxx

In all these cases, the international community chose to preserve the legal fiction of state continuity as an act of resistance in the face of force or anomie.

The climate phenomenon, however, presents an essential difference. The disappearance of territory is not due to aggression by another state or an internationally unlawful act, but to a natural process aggravated by human activity, whose effects are global and diffuse. There is no identifiable aggressor and no possible material *restitution*. The loss of territory is not temporary, but permanent. Faced with this reality, the classical doctrine of international recognition proves insufficient. Maintaining the legal personality of a state whose territory has disappeared would require a radical reinterpretation of the foundations of statehood. The international community would have to decide whether the existence of the state is defined by its territory or by its people; whether sovereignty is measured by the possession of space or by the continuity of political identity.

The physical disappearance of territory also calls into question the relationship between international law and geographical space. For centuries, the international legal order has operated on the premise of spatial stability: rules apply within defined geographical boundaries and state powers are distributed according to the delimitation of borders. Climate deterritorialisation breaks with this logic and forces us to imagine forms of sovereignty detached from the land, floating sovereignties or those projected onto residual spaces —such as exclusive economic zones or emerging reefs— that can serve as a basis for legal continuity. The very idea of a border loses its traditional function and becomes a symbolic notion, anchored in memory and international recognition rather than physical geography[74].

From the perspective of positive law, there is still no uniform answer. Several studies have proposed the preservation of the international perso-

(1990) declared the annexation of Kuwaiti territory "null and void", reaffirming the legal continuity of Kuwait as a sovereign State. On the case of governments in exile, see Talmon, S., *Recognition of Governments in International Law: With Particular Reference to Governments in Exile,* Oxford University Press, 2001.

[74] The 2021 Declaration of Small Island Developing States (SIDS) proposes maintaining current maritime boundaries despite rising sea levels in order to preserve sovereignty and exclusive economic rights. See also Rayfuse, R., "International Law and Disappearing States: Utilising Maritime Entitlements to Overcome the Statehood Dilemma", *University of New South Wales Law Journal,* vol. 38, 2015, pp. 291-321.

nality of the state on the basis of the principle of functional effectiveness: as long as there is an organised population, a recognised government and an international community willing to maintain diplomatic relations, the state could continue to exist, even if its territory has been lost[75]. Others, however, argue that the physical disappearance of the territory implies the inevitable extinction of the state, and that any attempt to preserve its personality would amount to a legal fiction without material basis. Between these two positions lies a middle ground, in which the law could allow for formulas of conditional or transitional continuity, with the aim of protecting the rights of the affected populations and facilitating their resettlement in dignified conditions[76].

Beyond the theoretical debate, this problem reveals a fundamental issue: the inability of classical international law to integrate phenomena that alter the material assumptions on which it was built. Statehood was conceived as a territorial institution because the physical world was perceived as immutable; the disappearance of territory due to climate change forces us to assume that nature can also dissolve law if it does not adapt to its transformations. In this sense, climatic deterritorialisation represents not only a legal crisis, but also an epistemological crisis: it forces us to rethink the relationship between space, power and legitimacy in the international system[77].

Contemporary international law thus finds itself at a crossroads. It can either remain faithful to inherited categories and accept the legal disappearance of states that lose their territory, or reformulate its principles to pre-

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[75] See Klepp, S. and Herbeck, J., "The Politics of Environmental Migration and Displacement in the Global South", *Journal of Human Rights and the Environment,* 2016, pp. 54-73. The authors argue that international recognition and institutional continuity could replace territoriality as a criterion of state effectiveness, giving rise to a "functional" concept of sovereignty.

[76] The Nansen Initiative Protection Agenda (2015) and the Platform on Disaster Displacement (PDD, 2016) have suggested the possibility of creating international collective resettlement agreements that maintain state recognition of displaced communities, preserving their legal and cultural identity.

[77] See Koskenniemi, M., "What Use for Sovereignty Today?", *Asian Journal of International Law,* vol. 1, 2011, pp. 61-70, where the author argues that sovereignty, rather than a spatial attribute, constitutes a discursive practice of legitimacy. The loss of territory highlights the constructed —rather than natural— nature of the fundamental categories of international law.

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2026.i14.xxxx

serve its continuity through new criteria for recognition[78]. In both cases, the debate goes beyond the technical sphere and takes on an ethical dimension. Preserving the international personality and status of island states that will disappear under the sea is seen as a manifestation of inter-statal solidarity and respect for the collective dignity of their peoples. For statehood, understood in its deepest sense, is not solely and exclusively a question of geography, but rather of belonging and identity.

2. Uti possidetis iuris and continuity of international personality in submerged territories

The origin of *the uti possidetis iuris* principle dates back to 19th century Latin American practice, when the newly independent republics of the former Iberian colonial empires sought to preserve the borders inherited from colonial administration in order to avoid territorial conflicts[79]. Subsequently, the principle was incorporated into the jurisprudence of the International Court of Justice, which recognised it as an instrument designed to guarantee border stability and legal certainty in decolonisation processes. Its best-known formulation —"maintain what you possess by right"— expresses a profound aspiration of international law: to preserve the existing order in the face of the fractures that accompany political or historical changes[80].

Uti possidetis iuris was conceived, in essence, as a transitional mechanism, a stability clause applicable to times of uncertainty. Its function was not to perpetuate colonial injustices or to fix borders in an immutable manner, but

[78] The Geneva Declaration on Human Mobility in the Context of Climate Change (2022) has emphasised that the preservation of the state and cultural identity of island peoples is a duty of international solidarity.

[79] See Suárez, F., *De Legibus ac Deo Legislatore,* 1612, book II, chapter XIX, where the seed of the idea of "legitimate possession" as the legal basis of sovereignty, a distant precursor of *uti possidetis,* can be found. In the American context, see the Declaration of Lima (1848), in which the South American republics agreed to maintain colonial borders as a principle of regional stability.

[80] Border Dispute between Burkina Faso and Mali, ICJ, Judgment of 22 December 1986, *Recueil 1986,* p. 554, para. 20: "The principle of *uti possidetis iuris* is intended to ensure respect for the frontiers existing at the time of independence, in order to avoid the instability that accompanies changes in sovereignty".

to offer a legal starting point that would avoid a vacuum or armed dispute. In its judgment on the Burkina Faso/Mali case (1986), the International Court of Justice emphasised that the principle pursued a higher objective than the mere maintenance of borders: to preserve newly acquired independence and ensure the stability of the international system[81]. Since then, *uti possidetis iuris* has been applied in various contexts —from Latin America and Africa to the Balkans— always with the aim of averting the legal chaos that often accompanies the formation or succession of states.

The question that arises today is whether this principle, created to regulate the legal effects of decolonisation, can be extended to a phenomenon of a completely different nature: the physical disappearance of state territory as a result of climate change. If *uti possidetis iuris* has historically served to preserve legal continuity in the face of political transformations, could it now be applied to preserve legal identity in the face of geographical transformations?

The answer requires a creative reinterpretation of the principle, not in its literal sense, but in its spirit. The goal of stability that inspires it allows us to consider its application to island states threatened by submersion. In this context, *uti possidetis iuris* would cease to be a rule of delimitation and become a principle of preservation of international personality: a tool to prevent the legal dissolution of states whose territory has disappeared, ensuring that their maritime rights, boundaries and sovereignty continue to be recognised by the international community. In this regard, it is necessary to take into account Article 121.3 of the 1982 United Nations Convention on the Law of the Sea, which introduces the category of rocks to refer to those portions of land completely surrounded by water that cannot "sustain human life or an economic life of their own". This provision states that rocks do not give rise to an exclusive economic zone or continental shelf. Therefore, if a strict interpretation is applied, in cases where an island loses its habitability, it would become a rock and lose all rights to an exclusive economic zone and continental shelf[82].

[81] *Ibid.,* para. 23: the Court emphasises that the principle is not a "frozen rule" but an instrument of stability. See also The Land and Maritime Boundary between Cameroon and Nigeria (2002), *Recueil 2002,* p. 303, para. 19, where the Court reaffirms its general value as a customary principle applicable *erga omnes.*

[82] Jiménez García-Carriazo, Á. and Sundararajan, S. N.,"Transfiguring islands to rocks: Examining the effects of sea level rise in light of Article 121 of UNCLOS", *Chinese (Taiwan)*

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2026.i14.xxxx

In recent years, some Pacific States —such as Tuvalu, Kiribati and the Marshall Islands— have promoted the idea of "freezing" the maritime baselines and exclusive economic zones recognised by the United Nations Convention on the Law of the Sea (UNCLOS)[83]. This initiative aims to prevent the loss of land territory from also implying the loss of sovereign rights over marine resources[84]. The proposal, supported in various regional and multilateral forums[85], is inspired precisely by the logic of *uti possidetis iuris:* setting borders at a given moment in time to preserve legal continuity in the face of the destabilising effects of structural change[86]. It is also worth mentioning Judge Jesús' position that the baselines established in accordance with the 1982 United Nations Convention on the Law of the Sea should be considered permanent, regardless of sea level fluctuations, so that a future rise in sea level would not result in the loss of ocean space or corresponding changes in the attribution of jurisdiction over maritime zones and resources[87]. Although there is no universal consensus on its validity, this practice represents a step towards the establishment of a new customary principle, derived from the need to adapt the law to climatic realities[88].

The application of *uti possidetis iuris* to submerged territories is not without controversy. Some authors warn that extending the principle to a physical area that has disappeared could create a legal fiction contrary to the principle of effectiveness, a cornerstone of international law. Maintaining sovereign rights over spaces that no longer exist materially could be consi-

Yearbook of International Law and Affairs, vol. 41, 2024, p. 322.

[83] United Nations Convention on the Law of the Sea (1982), arts. 5-7 and 121. In 2021, Tuvalu and Kiribati submitted joint proposals to the UN General Assembly for the permanent establishment of maritime baselines. See A/76/PV.24 (2021).

[84] Rayfuse, R., "Sea level rise and maritime zones: Preserving the maritime entitlements of "disappearing" states", in Gerrard, M. B. y Wannier, G. E. (Eds.), *Threatened island nations: Legal implications of rising seas and a changing climate*, Cambridge University Press, 2013, p. 175.

[85] Freestone, D. and Schofield, C., "Sea level rise and archipelagic states: A preliminary risk assessment", *Ocean Yearbook Online*, vol. 35, nº 1, 2021, p. 348.

[86] Grote, S. J., *Disappearing island states in international law*, Brill, 2015, p. 214.

[87] Jiménez García-Carriazo, Á. and Sundararajan, S. N., "Transfiguring islands to rocks... *op. cit.*, p. 333.

[88] The Declaration of Small Island States in the Pacific on the Maintenance of Maritime Rights in the Face of Rising Sea Levels (August 2021) and General Assembly Resolution 77/125 (2022) have recognised this practice as emerging.

dered an artificial extension of sovereignty. Others argue, on the contrary, that the very evolution of international law shows that effectiveness is not limited to territorial control, but can be understood as institutional continuity and international recognition. From this perspective, what is preserved is not the territory itself, but the legal identity of the state and the protection of its people, objectives that confer legitimacy on the application of the principle in a new context.

The *uti possidetis iuris*, (re)configured as a principle of continuity, is also aligned with the logic of preventing statelessness and with the principle of stability in international relations. If the loss of territory automatically implied the extinction of the State, its citizens would become collectively stateless, with no legal link to the international community. Preserving the personality of the state, even if only symbolically or functionally, is therefore an indirect way of protecting its population from legal exclusion[89]. In this sense, the reinterpretation of *uti possidetis iuris* provides a framework for integrating the human dimension into territorial stability, transcending its original formulation focused on the delimitation of borders.

The value of the principle therefore lies in its ability to adapt to the circumstances of the moment. In the 19th century, it ensured peace after the fragmentation of colonial empires; in the 21st century, it could serve to ensure the legal continuity of states in the face of the fragmentation of the planet. Its function, therefore, is not to perpetuate boundaries, but to offer certainty in the midst of a context of loss. For the fidelity of international law to its own spirit ultimately depends on its ability to protect political and legal memory, beyond the lines drawn on a map.

3. Displaced peoples, nationality and the risk of statelessness

The physical disappearance of a state territory poses both an institutional or cartographic problem and a risk to the legal bond that links people to their state of origin or provenance. Where the land vanishes, the political and legal bond with its people also becomes blurred. International law, which has his-

[89] The Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961) provide useful frameworks for avoiding legal vulnerability, although they do not address collective statelessness.

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2026.i14.xxxx

torically conceived nationality as an attribute derived from state sovereignty, is thus faced with an unprecedented question: how to preserve the legal identity of communities whose territorial base disappears, without depriving their members of the protection and rights that emanate from that belonging[90].

Nationality has been defined by the International Court of Justice in the Nottebohm case (1955) as a legal link that expresses a social fact of effective connection between the individual and the state[91]. This criterion of effectiveness has served to resolve disputes over diplomatic protection, but its meaning becomes complicated when the state ceases to exist physically. The disappearance of the territory and the eventual dissolution of its institutions could lead to a massive loss of nationality, rendering entire communities stateless. The 1954 and 1961 Conventions on the status and reduction of statelessness offer prevention mechanisms in cases of state succession or arbitrary deprivation of nationality, but do not contemplate the hypothesis of state extinction due to natural causes. Positive international law therefore lacks a specific response to this scenario, in which the people survive the state[92].

Climate statelessness, if I may use the expression, emerges as a new form of dispossession. This is not a voluntary loss of nationality, nor is it arbitrary deprivation by a government, but rather a structural disappearance of the legal link caused by the dissolution of the state. The individuals who made up that political community will not have ceased to be persons or to share a collective identity, but they will lack an institutional framework that recognises them as citizens and represents them before the international community. The absence of this link will place them in a legal limbo: without a state to

[90] See Weis, P., *Nationality and Statelessness in International Law,* Sijthoff & Noordhoff, 1979, p. 4, where the author defines nationality as "the legal and political status that links the individual to the State, constituting the starting point for international protection".

[91] ICJ, *Nottebohm* Case (Liechtenstein v. Guatemala), Judgment of 6 April 1955, *Recueil 1955,* p. 23, in which the Court defined nationality as a "legal bond expressing a social fact of effective connection, of existence, of interests and feelings, together with a reciprocity of rights and duties".

[92] Convention relating to the Status of Stateless Persons (1954) and Convention on the Reduction of Statelessness (1961). Neither expressly contemplates the hypothesis of the physical disappearance of the State. The International Law Commission (ILC) has recognised this gap in its First Report on Sea Level Rise in relation to International Law (A/CN.4/740, 2020), noting the need to develop principles for the protection of populations of States affected by territorial submersion.

protect them, without guaranteed right of residence and without automatic recognition by other countries. In this context, statelessness will become a form of collective vulnerability that goes beyond the traditional scope of international protection[93].

Legal doctrine has begun to explore different strategies to avoid this situation. One of them consists of promoting the formal continuity of nationality even after the disappearance of the territory, allowing the affected states to retain their legal personality as ex situ entities. This formula —anchored in the idea that sovereignty is also an expression of political identity— would allow for the maintenance of citizenship and, with it, access to fundamental rights such as education, health, and international representation[94]. Some Pacific island governments have initiated talks with neighbouring states to ensure the relocation of their populations without loss of nationality, and even to negotiate the possibility of exercising governmental functions from abroad. These initiatives, still in their infancy, point towards the creation of a new legal category: the stateless state, or, more precisely, the displaced state, which would retain its legal existence through continued recognition by the international community.

Another strategy proposes the creation of international resettlement mechanisms that integrate the principle of preserving collective identity. This would not only involve taking in displaced individuals, but also keeping the community alive as a cultural and political unit. The protection of the affected peoples cannot be limited to humanitarian assistance: it also involves the transmission of their language, customs and historical memory. Resettlement, understood as social reconstruction and not just physical relocation, would become a form of restorative justice in the face of the loss of ancestral land. This approach, inspired by the notion of collective cultural rights and the

[93] On the idea of *ex situ* continuity, see Burkett, M., "The Nation Ex-Situ: On Climate Change, Deterritorialised Nationhood and the Post-Climate Era", *Climate Law,* vol. 2, nº 3, 2011, pp. 345-374, who proposes a model of a "displaced nation" that retains its legal sovereignty through international recognition and the continuity of its population and government in exile.

[94] In 2014, the Government of Kiribati acquired land in Fiji to ensure the resettlement of its population in the event of the disappearance of its territory, as part of the *Migration with Dignity* plan. See Mcnamara, K. E. and Farbotko, C., "Resisting a 'Doomed' Fate: An Analysis of the Pacific Climate Migration Discourse", *Australian Geographer,* vol. 48, 2017, pp. 17-26.

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2026.i14.xxxx

jurisprudence of human rights bodies, extends protection beyond the individual to embrace the community as a subject of law[95].

The risk of mass statelessness also raises a profound tension between the principle of sovereignty and international human rights obligations. If the state disappears, the international community cannot invoke respect for sovereignty to justify inaction. Human rights are inherent to the individual and subsist regardless of the existence of a particular state. In this sense, territorial disappearance does not exempt all States from their duty to protect. On the contrary, the loss of statehood reinforces the collective responsibility to ensure the legal continuity and dignity of the affected populations. The recognition of an international protection status for communities displaced by climate change thus appears as a natural extension of the *erga omnes* obligations that structure the contemporary international order[96].

Beyond the establishment of a legal framework for application, the issue also has ethical and moral dimensions. Nationality, in addition to being a legal bond, is an expression of belonging and a form of identity. Losing it is, in many cases, equivalent to losing the possibility of defining oneself in the world. Guaranteeing its continuity is, therefore, an act of moral reparation and historical justice in the face of a phenomenon that, although natural in its manifestation, is the result of accumulated human decisions. The international community cannot allow the physical disappearance of a State to also lead to the dissolution of the identity of its people[97].

The future of international law will therefore depend largely on its ability to recognise this new reality and act accordingly. The protection of nationality and the prevention of statelessness in contexts of climate displacement

[95] Advisory Opinion OC-23/17 of the Inter-American Court of Human Rights (Environment and Human Rights, 2017) established that States have an obligation to prevent significant environmental damage that may affect the rights of peoples, even beyond their borders, reinforcing the idea of collective and transnational protection of affected communities.

[96] The notion of *erga omnes* obligations was formulated by the ICJ in the case *Barcelona Traction, Light and Power Company, Limited (*Belgium v. Spain), Judgment of 1970, *Recueil 1970,* p. 32, para. 33. Today, protection against statelessness and environmental degradation is considered an obligation of general interest to the international community.

[97] In this regard, the Geneva Declaration on Human Mobility in the Context of Climate Change (2022) calls on States to preserve the cultural identity and social cohesion of displaced peoples, emphasising that the loss of territory cannot equate to the loss of their collective personality.

require a combination of imaginative legislative techniques, political will and humanistic sensitivity. It is not only a question of preserving the existence of legal categories, but also of ensuring that the idea of community remains alive behind them. For as long as a people retains its sense of belonging and the international community recognises its legitimacy, sovereignty, even without territory, will continue to have meaning.

IV. INTERNATIONAL LEGAL MECHANISMS AND RESPONSES TO CLIMATE-INDUCED FORCED MOBILITY

The magnitude of human displacement associated with climate change has highlighted a major tension in contemporary international law: that between the global nature of the phenomenon and the fragmentation of the legal responses available[98]. Mobility induced by environmental factors has gone from being an exceptional contingency to a structural manifestation of the planet's ecological imbalance. Addressing this issue therefore requires a comprehensive rethinking of regulatory instruments, competent institutions and the very concept of international cooperation. As things stand, the international community faces the task of transforming a reality of widespread suffering into a coherent legal regime capable of guaranteeing rights, assigning responsibilities and translating the principles of climate justice and human solidarity into effective obligations.

The current legal framework offers partial, insufficient and, at times, contradictory responses. The 1951 Convention relating to the Status of Refugees, the 1954 and 1961 Conventions on Statelessness, international human rights law and international humanitarian law provide fragments of protection, but none of them were designed for displacement caused by environmental degradation[99]. The result is a fragmented regime that depends on the

[98] See Biermann, F. and Boas, I., "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees", *Global Environmental Politics,* vol. 10, nº 1, 2010, pp. 60-88.

[99] Convention Relating to the Status of Refugees (1951), Convention Relating to the Status of Stateless Persons (1954), Convention on the Reduction of Statelessness (1961), International Covenant on Civil and Political Rights (1966) and Geneva Convention (1949). None of these instruments was designed to address environmentally induced displacement, al-

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2026.i14.xxxx

broad interpretation of pre-existing instruments or the political discretion of States. In response to this structural gap, various initiatives have emerged over the last two decades aimed at gradually filling the absence of a binding regulatory framework. Some have taken the form of intergovernmental cooperation platforms, while others have been articulated through declarations of principles, *soft law* agreements or regional protection commitments. They all share the same purpose: to adapt international law to the reality of climate mobility without fracturing state sovereignty or weakening the principle of non-refoulement[100].

The development of these mechanisms has been conditioned by a constant tension between pragmatism and normativity. On the one hand, states seek operational responses that do not entail new legal obligations; on the other, international organisations and civil society call for a more ambitious framework that explicitly recognises the right to protection of persons displaced by climate causes[101]. In this middle ground, a nascent climate mobility law has taken shape, characterised by the coexistence of flexible instruments, evolving interpretations and political commitments. Although it is not yet possible to speak of a consolidated international regime, we can observe the emergence of a body of practices and principles that, over time, could become customary in nature.

The cornerstone of this emerging regime is the idea of "cooperation without coercion": a model that replaces legal obligation with political commitment and voluntary reciprocity. This approach, while limited, has allowed for the creation of spaces for dialogue and the articulation of concrete measures for prevention, adaptation and resettlement. The Nansen Initiative (2012-2015) and its continuation in the Platform on Disaster Displacement are notable examples of this new climate diplomacy, based on the conver-

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though some supervisory bodies have extended their interpretation to such contexts.

[100] See Mcadam, J., *Climate Change, Forced Migration, and International Law,* Oxford University Press, 2012, pp. 124-133.

[101] General Assembly Resolution 76/300 (2022) recognises the human right to a clean, healthy and sustainable environment, introducing a normative link between environmental degradation and human rights. Similarly, the Human Rights Committee, in its decision Ioane Teitiota v. New Zealand (2020), reaffirms the possible application of the principle of non-refoulement in cases of extreme climate threat.

gence of interests rather than the creation of duties[102]. Such forms of "soft" governance have proven useful in promoting regional protection practices, although their effectiveness depends on the willingness of participating states and the ability of international organisations to coordinate efforts without a binding mandate.

Climate displacement has also led to a process of reinterpretation of traditional legal categories. Various doctrinal proposals advocate an evolutionary interpretation of the concept of refugee, inspired by the dynamism of international human rights law and the principle of effectiveness[103]. This school of thought maintains that persecution can take new forms in contexts of extreme environmental degradation, when the lack of means of subsistence, water scarcity or the uninhabitability of the territory constitute direct threats to human life and dignity. The interpretative expansion seeks to complement the 1951 framework by progressively incorporating grounds for protection based on vulnerability rather than mere persecutory intent.

At the same time, the regional dimension of the phenomenon has gained relevance as a space for regulatory innovation. Latin America, Africa and Southeast Asia have begun to explore cooperation frameworks adapted to their geographical and social contexts. The experiences of the African Union, the Cartagena Declaration and ASEAN strategies show that the regional response can be more agile and contextualised than the multilateral one, as it is based on cultural proximity, territorial solidarity and a shared understanding of climate risk[104]. These developments suggest that the regionalisation of protection can serve as a laboratory for future global codification.

The debate on response mechanisms also extends to ethical and political

[102] The Nansen Initiative (2012-2015) culminated in the Agenda for the Protection of People Displaced across Borders in the Context of Disasters and Climate Change (2015), which laid the groundwork for the creation of the Platform on Disaster Displacement (PDD). See Kälin, W. and Schrepfer, N., *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches,* UNHCR, 2012.

[103] Directive 2011/95/EU (Qualification Directive) and the New York Declaration for Refugees and Migrants (2016) open the door to a more flexible interpretation of the causes of international protection.

[104] OAU Convention (1969) and Cartagena Declaration (1984): both broaden the definition of refugee to include structural causes of displacement. In 2021, the African Union recognised climate change as a factor in human mobility in its Agenda 2063. See also the ASEAN *Declaration on Environmental Protection* (2019).

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2026.i14.xxxx

grounds. Climate mobility calls into question the foundations of migration control as an exclusive attribute of sovereignty. If the cause of displacement is a global phenomenon in which all States participate to some extent, borders cease to be boundaries of responsibility and become spaces of shared obligation. In this sense, the recognition of climate mobility as a legal phenomenon implies a paradigm shift: from the logic of containment to the logic of shared responsibility. International cooperation ceases to be a concession and becomes a concrete manifestation of the principle of intergenerational equity and solidarity among peoples[105] .

The construction of a legal regime for protection against climate displacement does not depend solely on the creation of new treaties, but on the consolidation of a common practice sustained over time. International custom, nourished by the repetition of consistent state behaviour and the conviction of its legal binding force (*opinio juris)*, could perhaps constitute the most realistic instrument for giving normative force to protection and resettlement commitments. In this regard, the progress achieved through non-binding agreements, General Assembly resolutions and pronouncements by human rights bodies is beginning to lay the foundations for an emerging body of law, which is still scattered but has great potential for development in the coming years.

1. The Nansen Initiative and the Global Compact for Safe, Orderly and Regular Migration

In recent years, the international community's response to climate displacement has found fertile ground for experimentation in the field of intergovernmental cooperation without legal coercion. In the absence of a binding framework and given the resistance of states to reform existing instruments, initiatives have emerged that, without creating formal obligations, seek to establish common principles, guidelines and practices. These include the Nansen Initiative and the Global Compact for Safe, Orderly and Regular Migration, two processes which, although different in nature and scope, share

[105] The principle of intergenerational equity is derived from the Rio Declaration on Environment and Development (1992), principle 3, and from Advisory Opinion OC-23/17 of the Inter-American Court of Human Rights (2017), which recognises the duty of States to protect the rights of future generations from the effects of climate change.

the same logic: replacing the paradigm of regulatory imposition with that of voluntary cooperation, guided by values of shared responsibility and climate justice[106].

The Nansen Initiative, launched in 2012 by the governments of Norway and Switzerland, was the first systematic attempt to articulate a specific international response to displacement caused by natural disasters and the effects of climate change[107]. Its objective was not to draft a new treaty, but to build a political and operational framework that would facilitate cooperation between states, international organisations and civil society. Through regional consultations in Asia, Africa, the Pacific and Latin America, the initiative identified the main legal and humanitarian challenges related to cross-border displacement and proposed a set of good practices. This process culminated in 2015 with the Agenda for the Protection of People Displaced across Borders in the Context of Disasters and Climate Change, a document that has become a leading doctrinal and policy reference[108].

The Nansen Agenda is based on three fundamental pillars. First, the prevention and reduction of the risk of displacement through policies for adaptation to climate change and sustainable land management. Second, protection during displacement, promoting temporary admission and non-refoulement of persons affected by environmental disasters. And finally, the search for durable solutions through resettlement, planned migration or international cooperation in reconstruction. Although it is not legally binding, the Agenda has influenced the practices of many states, which have incorporated its recommendations into their migration and risk management policies. The creation in 2016 of the Platform on Disaster Displacement institutionalised this effort, consolidating a permanent space for dialogue and technical coor-

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[106] See Kälin, W., "Conceptualising Climate-Induced Displacement", *Climate Change and Displacement,* Hart Publishing, 2010, pp. 81-103.

[107] The Nansen Initiative was launched at the Oslo Conference on Climate Change and Displacement (June 2012), under the auspices of Norway and Switzerland. See the founding document: *The Nansen Initiative: Towards a Protection Agenda for Cross-Border Displaced Persons in the Context of Disasters and Climate Change,* 2012.

[108] Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, adopted in Geneva in October 2015. Available at: https://disaster-displacement.org/the-platform/the-nansen-initiative

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2026.i14.xxxx

dination under the auspices of the United Nations[109].

The legal value of the Nansen Initiative lies precisely in its ability to produce indirect normative effects. By establishing standards of behaviour that are reiterated and accepted by States, it contributes to the formation of a common practice that is likely to become customary over time. Furthermore, its carefully calibrated language has introduced a series of concepts into international discourse that are now essential for understanding climate mobility: "prevention of displacement", "temporary humanitarian admission", "complementary protection" and "planned relocation"[110]. In this way, the initiative has fulfilled an educational and catalytic function, broadening the legal horizon of what is possible within the margins of *soft law*.

In line with this work, the adoption of the Global Compact for Safe, Orderly and Regular Migration, approved by the United Nations General Assembly in Marrakesh in December 2018, represented a further step towards the institutionalisation of global cooperation on migration[111]. Although it is not a binding legal instrument, its political scope is significant. The Compact is based on an essential premise: migration, in all its forms, is an inherent reality of the human condition that requires collective management. Among its 23 objectives, the document explicitly recognises the need to address displacement linked to natural disasters, environmental degradation and climate change, urging States to develop mitigation, adaptation and protection strategies[112].

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[109] The Platform on Disaster Displacement (PDD) was launched in 2016 at the Geneva Conference on Disasters and Climate Change, with the support of UNHCR, IOM and UNDP. Its mandate is to implement the recommendations of the Nansen Agenda and coordinate resettlement and planned migration policies.

[110] Concepts such as *planned relocation* and *temporary protection* have been adopted by the Office of the United Nations High Commissioner for Refugees (UNHCR) and the IOM in their programmes on migration and natural disasters. See UNHCR, "Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters", 2020.

[111] United Nations General Assembly, Global Compact for Safe, Orderly and Regular Migration, A/RES/73/195, adopted on 19 December 2018 (Marrakesh, 10-11 December 2018).

[112] Objective 2 of the Compact urges States to "minimise the adverse and structural factors that compel people to leave their country of origin", including natural disasters, climate change and environmental degradation. See also Objective 5, on regular migration pathways, and Objective 23, on international cooperation.

The Global Compact incorporates a comprehensive view of the phenomenon of migration, combining a human rights perspective with that of development cooperation. In the area of climate change, it promotes the use of regular migration channels as a tool for adaptation and resilience, preventing environmentally induced mobility from being treated exclusively through the prism of emergency. It also proposes the creation of temporary admission mechanisms and labour migration programmes to facilitate the resettlement of affected populations. Its non-binding nature has drawn criticism from those who believe it reinforces state discretion, but it has also allowed a significant majority of United Nations members to sign up, giving it undeniable political legitimacy[113].

Both the Nansen Initiative and the Global Compact reflect a paradigm shift in international governance: the transition from imposed norms to cooperation guided by conviction. In a context in which states are reluctant to take on new legal obligations, these platforms act as spaces for progressive consensus and the generation of new standards. Their effectiveness depends less on coercion than on the moral and political authority they manage to project. In them, international law is expressed as a system of norms, based on a common language of responsibility and empathy[114].

2. Towards a redefinition of the concept of refugee and its extension to environmentally displaced persons

The concept of "refugee", initially formulated in the 1951 Convention Relating to the Status of Refugees and expanded by its 1967 Protocol, was conceived to protect those fleeing political persecution in the context of

[113] In the debate on the adoption of the Compact (A/73/PV.65, 2018), 152 States voted in favour, 5 against and 12 abstained. Its broad political support reflects a global consensus on the need for cooperative governance of migration. See Chetail, V., *The Global Compact for Safe, Orderly and Regular Migration: a kaleidoscope of international law,* Cambridge University Press, 2020.

[114] In terms of international law theory, the Compact and the Nansen Initiative illustrate the transition from *hard law* to *soft law* as a process of progressive legitimisation. See Abbott, K. and Snidal, D., *Hard and Soft Law in International Governance,* Cambridge University Press, 2003, which explains how regulatory flexibility can increase the effectiveness and acceptance of international norms.

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2026.i14.xxxx

post-war Europe. The figure of the refugee thus embodies the international community's ethical and legal commitment to protecting individuals from the abuse of state power. However, the transformations of the 21st century —including the climate emergency— have radically changed the forms of displacement and the factors that drive it. Persecution no longer always takes the form of political repression or armed conflict; it can also take the form of environmental degradation, resource scarcity or the uninhabitability of territory[115].

Climate change acts as a multiplier of vulnerabilities. It does not in itself create social inequalities or political crises, but it exacerbates them to the point of making life unviable in certain places. Millions of people are forced to leave their homes not by choice but by necessity, without their situation fitting into the traditional categories of refuge[116]. There has been intense debate in legal circles as to whether these people can be granted refugee status by virtue of an evolving interpretation of existing law. This debate pits two opposing views against each other: a restrictive view, which maintains the intangibility of the 1951 definition, and an expansive view, which advocates a functional interpretation geared towards protection.

The first camp argues that the 1951 Convention reflects a delicate historical balance between sovereignty and humanity, and that modifying its scope could weaken the protection of those who suffer political persecution in the strict sense. From this perspective, climate displacement, as it does not result from the intentional action of a persecuting agent, should be addressed through specific instruments and not through the expansion of the refugee regime. Proponents of this position appeal to the principle of legal certainty and warn of the risk that conceptual inflation of the term "refugee" could dilute its legal and symbolic value.

The second position, which is evolutionary in nature, is based on a different premise: the ultimate purpose of the Convention is not to define static categories, but to ensure the effective protection of persons in danger. Consequently, the interpretation of its provisions must be adapted to chan-

[115] See Goodwin-Gill, G. and Mcadam, J., *The Refugee in International Law,* 4th ed., Oxford University Press, 2021, pp. 55–59.

[116] According to the UNHCR report Global Trends 2023, more than 110 million people were forcibly displaced, with a growing proportion displaced for reasons related to environmental disasters and degradation.

ges in reality. This reading, inspired by the principle of effectiveness (*ut res magis valeat quam pereat)*, allows us to consider that the threat to life or physical integrity resulting from climate change may constitute a form of indirect persecution, especially when combined with factors of discrimination, structural poverty or state negligence. In such cases, climate displacement is not a purely natural phenomenon, but the result of inadequate public policies or an unequal distribution of environmental responsibilities.

Some human rights protection bodies have begun to open up this interpretative avenue[117]. The Human Rights Committee's Teitiota v. New Zealand case set a significant precedent by recognising that returning a person to a country where the effects of climate change threaten their life could violate Article 6 of the International Covenant on Civil and Political Rights. Although the Committee did not equate climate displacement with refugee status, its reasoning underscored the existence of a duty of non-refoulement when an individual's survival is compromised by extreme environmental conditions. If consolidated, this approach could serve as a basis for extending the principle of international protection beyond situations of traditional persecution.

The doctrinal evolution towards an expanded notion of refuge is supported by international human rights law, which conceives the protection of life and human dignity as obligations *erga omnes*. From this perspective, climate displacement reveals a structural omission on the part of the international community: the failure to recognise that environmental vulnerability can give rise to duties of protection that are as imperative as those arising from political violence. In this sense, redefining the concept of refugee would not imply a break with the 1951 system, but rather its updating in accordance with the principle of dynamic interpretation of treaties, enshrined in the 1969 Vienna Convention[118].

Regional experiences in Africa and Latin America illustrate the viabili-

[117] Human Rights Committee, Ioane Teitiota v. New Zealand, Communication No. 2728/2016, CCPR/C/127/D/2728/2016, 7 January 2020. The Committee recognised that climate change can threaten the right to life and that non-refoulement applies when the very existence of the individual is at risk.

[118] Vienna Convention on the Law of Treaties (1969), Art. 31.3(c). According to the ICJ (Advisory Opinion on the Namibia case, 1971, *Recueil 1971,* p. 31), the interpretation of treaties must be evolutionary when it comes to instruments intended to regulate permanent or dynamic situations, such as human rights.

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2026.i14.xxxx

ty of this evolution. The 1969 Convention of the Organisation of African Unity and the 1984 Cartagena Declaration broadened the notion of refugee to include cases of generalised violence, internal conflicts and serious disturbances of public order[119]. These expansions, inspired by specific historical contexts, demonstrate that the concept of refugee can be adapted to new realities without losing its coherence. The inclusion of climate displacement in this expanded framework would not distort the concept, but rather make it more faithful to its original purpose: to offer protection to those who lack effective protection.

Beyond the political and legal debate, the redefinition of the concept of refugee has a moral dimension. Legal categories are not mere technical instruments; they express the hierarchy of values of a community. The refusal to recognise those fleeing environmental destruction as refugees is, in a sense, tantamount to declaring their suffering legally invisible. Broadening the concept, on the other hand, implies accepting that international protection cannot depend on the form that the threat takes, but rather on the severity of the harm and the absence of alternatives. This approach does not seek to erase the differences between persecution and environmental disaster, but rather to affirm a deeper principle: that international law must place human vulnerability at the centre of its system of legitimacy.

The process of conceptual (re)definition is still in its early stages, but its direction seems clear. International practice and the evolution of global legal awareness point towards a convergence between the refugee regime and that of climate-displaced persons, articulated around a common principle of protection and a renewed conception of solidarity. If international law is to remain relevant, it must recognise climate mobility not as an anomaly, but as one of the most dramatic expressions of human interdependence on a changing planet[120].

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[119] OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969), Art. 1.2; and Cartagena Declaration on Refugees (1984), Third Conclusion. Both extensions are considered paradigmatic examples of evolutionary and contextual interpretation of the concept of refugee.

[120] The Report of the United Nations Special Rapporteur on human rights and climate change, A/HRC/53/33 (2023), concludes that climate mobility is "one of the most tangible manifestations of the contemporary human rights crisis", urging States to adopt coordinated international protection measures.

3. Regional cooperation as a model for global response

The global nature of climate change coexists with the regional nature of its consequences. Although the mechanisms that cause the phenomenon are universal, its impacts manifest themselves with varying intensity depending on geography, level of development and institutional capacity of states. This asymmetry makes regions strategic spaces for the articulation of legal and political responses to climate mobility. Where universal multilateralism is slow to advance, regional frameworks offer flexibility, proximity and a contextual understanding of risk. Regional cooperation is therefore emerging as a regulatory laboratory capable of testing solutions that, over time, could inspire codification processes on a global scale[121].

The experiences of Africa and Latin America are particularly revealing precedents. On the African continent, the 1969 Convention of the Organisation of African Unity on Specific Aspects of Refugee Problems introduced an expanded definition of refugee which, in addition to the traditional causes set out in the 1951 Convention, includes "any person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order, is compelled to leave his place of residence"[122]. Although this formulation does not explicitly mention environmental disasters, its conceptual breadth has allowed African states to extend protection to situations of forced displacement caused by extreme drought, desertification or soil degradation. In *practice,* the African framework has shown that broadening the grounds for refuge can coexist with respect for sovereignty, provided that it is based on principles of regional solidarity and shared responsibility.

Latin America has followed a similar path with the 1984 Cartagena Declaration on Refugees, adopted in the context of the Central American conflicts, but reinterpreted in recent years in light of new humanitarian challenges[123]. The Declaration, which is not binding but has inspired national legislation and

[121] See Betts, A., "The Normative Terrain of the Global Refugee Regime", *Ethics & International Affairs,* vol. 29, nº 4, 2015, pp. 363-375.

[122] The Kampala Convention on Internally Displaced Persons in Africa (2009) reinforces this spirit of solidarity, expressly recognising natural disasters and the effects of climate change as causes of internal displacement (Art. 5.4).

[123] Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (Cartagena de Indias, 1984), Third Conclusion.

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2026.i14.xxxx

judicial decisions, broadened the concept of refugee to include those fleeing "circumstances that have seriously disrupted public order". This open-ended clause has made it possible to incorporate environmental degradation as a relevant factor in risk assessment. The Brasilia Declaration on International Protection (2014) and the Brazil Action Plan (2014–2024) consolidated this development by expressly urging Latin American states to develop complementary protection mechanisms for displacement caused by natural disasters and climate change[124].

In the Asia-Pacific region, where some of the states most vulnerable to sea level rise are concentrated, regional cooperation has taken more pragmatic forms. Organisations such as ASEAN and the Pacific Islands Forum have promoted resilience and adaptation strategies, prioritising humanitarian assistance, planned relocation and temporary protection for displaced persons[125] . These initiatives, although lacking formal legal status, are based on community values of reciprocity and mutual care, deeply rooted in the political traditions of the region. Their importance lies in having made climate mobility a matter of common concern and in having introduced the notion of "cooperative sovereignty" into regional political discourse: a concept that redefines sovereignty not as exclusive power, but as a shared capacity for protection.

Europe, for its part, has taken a more fragmented approach. The European Union has progressively incorporated the climate dimension into its asylum and migration policy, particularly through the European Pact on Migration and Asylum (2020) and its instruments for cooperation with third countries. Although there is still no explicit recognition of climate displacement as an autonomous cause for protection, the case law of the European Court of Human Rights and the policies of the European Commission have begun to consider the effects of natural disasters in assessing the principle of non-refoulement[126]. The European experience reveals the difficulties of

[124] Brasilia Declaration on International Protection and Brazil Action Plan (2014-2024), adopted on the 30th anniversary of the Cartagena Declaration. Both documents urge States to strengthen protection against environmental displacement through cooperation and resettlement mechanisms.

[125] ASEAN Agreement on Disaster Management and Emergency Response (AADMER), signed in 2005, and the Bangkok Declaration on Migration and Development (2016), which integrate climate-induced mobility into their humanitarian cooperation strategies.

[126] See ECHR, Case D. v. United Kingdom (2017), Decision of inadmissibility, where the

articulating a common consensus in contexts where internal political pressure conditions the adoption of broader commitments.

Regional cooperation brings three virtues to international law that explain its potential as a model for global response. First, adaptability, understood as the ability to adjust legal instruments to the cultural, geographical and socio-economic particularities of each region. Secondly, proximity, which allows direct links to be established between the states concerned and facilitates the adoption of coordinated prevention, resettlement and assistance measures. And thirdly, progressiveness, as regional experiences serve as intermediate stages towards the formation of universal norms, feeding into the development of custom and the consolidation of general principles of law.

The evolution of international law shows that major regulatory changes tend to take shape in regional practice before acquiring a global dimension. This was the case with the codification of human rights, the protection of refugees and the recognition of international crimes. Climate mobility does not seem to be the exception. Regional responses, by integrating territorial solidarity and shared experience of risk, constitute the seed of future global governance of environmental displacement. Regional cooperation does not replace universal multilateralism, but complements and prepares for it: it acts as a bridge between local urgency and the legal abstraction of the international system.

In this sense, the consolidation of regional protection frameworks can be seen as a form of orderly legal pluralism, in which different normative traditions converge towards a common goal: to ensure that no person displaced by climate change is left outside the protection of the law. Each regional experience contributes a fragment of this emerging architecture: Africa, definitional breadth; Latin America, interpretive creativity; the Pacific, cultural cooperation; Europe, institutional integration. From the interaction of all these models, a new international consensus could emerge over time that transforms climate solidarity into legal norm.

Court recognised that returning a person to an environmentally degraded environment could raise issues under Article 3 of the European Convention on Human Rights. See also European Commission Communication COM (2020) 609 final, New Pact on Migration and Asylum.

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2026.i14.xxxx

V. CONCLUSIONS

Climate displacement challenges the assumptions on which classical international law has built its foundations: the territoriality of the state, the stability of borders, the centrality of sovereignty, and the exceptional nature of displacement. The progressive loss of territory, the crisis of statehood, and the vulnerability of displaced populations constitute a reality that positive law has not yet fully translated into normative categories. This vacuum gives rise to the need for a doctrinal reconstruction that restores the international system's capacity to respond to the new faces of human fragility.

The analysis carried out leads to the conclusion that climate change-induced mobility is no longer a marginal or transitory phenomenon, but has become a structural process that challenges the international community as a whole. People and communities displaced by environmental degradation embody a vulnerability that is globally produced and unevenly borne. They encapsulate the contradictions of the international order: the gap between the universality of proclaimed rights and the selectivity of effective protections. Addressing this contradiction requires a paradigm shift: moving from an international law of borders to an international law of belonging.

The study of the phenomenon shows that existing legal frameworks — the 1951 Convention relating to the Status of Refugees, instruments on statelessness, and international humanitarian law— are insufficient to address the complexity of climate mobility. Their material scope, designed for other forms of displacement, does not cover those fleeing environmental devastation or peoples who are seeing their territory disappear. Hence the urgency of moving towards legal recognition of climate displacement that integrates the protection of individuals with the preservation of statehood. This recognition can be achieved in several ways: through the evolutionary interpretation of existing treaties, the consolidation of regional and international cooperation frameworks, the development of a specific legal regime, or the extension of the principle of common but differentiated responsibilities. All of these converge on the same horizon: articulating an international response based on solidarity, equity, and climatic justice.

The physical disappearance of island territories also raises a crisis of legitimacy for the international system. The law, which for centuries linked the existence of the state to the possession of a defined territorial space, must

adapt to a world in which geography no longer guarantees sovereignty. The reinterpretation of *uti possidetis iuris* as a principle of continuity and the possibility of preserving the international personality of states without territory express this search for coherence between legal stability and the changing reality of the planet. Sovereignty is no longer understood as dominion over land but as responsibility towards a people. The moral validity of international law is at stake in this transformation: its ability to accompany communities that, despite losing their land, refuse to lose their identity.

The human dimension of the climate crisis requires that the protection of people be placed at the centre of any legal response. The risk of mass statelessness and the dissolution of the link between citizenship and territory force us to rethink the very meaning of nationality. Preserving it beyond physical borders means affirming that international law protects not only States, but also the bonds that give meaning to belonging. The continuity of the legal and political identity of displaced peoples is therefore an imperative of justice and an expression of inter-state solidarity in its most advanced form.

The experiences analysed —from the Nansen Initiative and the Global Compact for Safe, Orderly and Regular Migration to the regional frameworks in Africa, Latin America and the Pacific— confirm that cooperation can be an instrument of transformation even in the absence of legal coercion. They show the emergence of an international law of climate mobility in the making, based on the convergence of practices, the reiteration of commitments and the consolidation of a common normative consciousness. Custom, fuelled by repetition and conviction, can turn voluntary cooperation into the norm and solidarity into an obligation.

The future of international law will depend on its ability to integrate these dynamics and turn them into effective guarantees. In the face of the climate crisis, the law cannot limit itself to managing losses; it must anticipate solutions. Climate mobility, the disappearance of territory and the vulnerability of displaced peoples are, above all, a test of the moral maturity of the international legal order. To the extent that the community of states recognises these phenomena as a shared duty —and not someone else's misfortune— international law will be able to reaffirm itself as an instrument of justice and humanity.

Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 14, January-December 2026, xxxx
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