13 Climate change and human mobility

The national and international approach to native community relocation in the Arctic

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I Introduction

Climate change, and its consequences for the Arctic—in particular melting ice, stronger storms, growing erosion or thawing permafrost—are causing what some term a humanitarian crisis for the Native communities who have lived in the zone for thousands of years. This is a phenomenon that affects their way of life and traditional means of subsistence and, which in extreme cases—especially for people living in coastal areas—prevents them from continuing to live in their habitual locations. As the territories they inhabit shrink in size, these populations are obliged to abandon their natural habitats for safer zones within the State. The States affected have reacted with long-established humanitarian responses to the extreme environmental events, disaster relief and hazard mitigation, but these strategies are not sufficient to protect the community in the face of a rapid deterioration of the environment, and in some zones this is now no longer a viable solution.

In the case of some Native communities in Alaska, the Intergovernmental Panel on Climate Change (IPCC) Fifth Assessment Report has already alerted the world to this problem stating that "accelerated rates of change in permafrost thaw, loss of coastal sea ice, sea level rise and increased weather intensity are forcing relocation of some Indigenous communities in Alaska (high confidence)." The IPCC specifies that "some Alaskan villages such as Shishmaref, Kivalina, and Newtok have already lost critical infrastructures and services, and are becoming unlivable because of permafrost thaw, storm damage, and coastal erosion."[2] A catastrophic climatic event could submerge all the communities within the next fifteen years.[3] In such cases, protection in their place of residence is not possible and community relocation is the only response that can safeguard them from accelerating climate change impacts.

The United States recognized the problem, as stated in the last US Climate Action Report 2014, under the United Nations Framework Convention on Climate Change (UNFCCC):

> The people, lands, and resources of indigenous communities across the United States face an array of climate change impacts and vulnerabilities

> that threaten many different Native communities' health, well-being, and ways of life. In parts of Alaska, Louisiana, the Pacific Islands, and other coastal locations, climate change impacts (through erosion and inundation) are so severe that some communities are already undergoing relocation from their historical homelands to which their traditions and cultural identities are tied.[4]

This relocation process is particularly complex for indigenous communities who are especially vulnerable to climate change[5] despite the fact that mobility is not new for Arctic peoples.[6]

This human displacement due entirely to climate events has been termed "climigration,"[7] and it is also connected to other environmentally induced displacement caused by desertification, deforestation, natural catastrophes.… Though environment-induced human mobility has occurred throughout history, it is its scale and intensity in recent times that gives new scope to the phenomenon and has made environment degradation a key factor in determining modern migration. The First Assessment Report of the IPCC in 1990 warned that "the gravest effects of climate change may be those on human migration."[8] The worst-case scenario is that some 200 million people will be displaced in 2050.[9]

The problem lies in the term "climate refugees" or "environmental refugees," which dates back to United Nations Environmental Programme (UNEP) and its categorization of this phenomenon. Twenty years later and thanks to evidence-based studies, there is now greater awareness of the nature of this type of displacement. Studies on the subject tend to eliminate the term "refugee" from the discourse in order to present a new paradigm: environment-induced human mobility (displacement, migration or planned relocation) is not only a question of international protection or safety but can be understood as a *strategy of adaptation* to climate change.[10]

In this study, we analyze the national and international approach to Native community relocation in the Arctic. The first section examines how the USA has responded to the process of relocation of the most affected communities (Kivalina, Shishmaref and Newtok) and the problems identified in that process. The second section looks at how international law has approached this phenomenon, from the first legal instruments established to protect populations against arbitrary displacement—especially in the case of indigenous peoples—to its current consideration of the subject as a community-based adaptation strategy within the framework of international environmental law.

II The national approach: governance and institutional challenges for climate-induced relocation in Alaska

Among the indigenous populations that inhabit the Arctic and which are in a process or are in imminent danger of relocation as a consequence of climate change are those that live in Alaska (USA). Some Inuit populations

in Canada are deemed to be at future risk.[11] With regard to the indigenous communities in the Russian North or Arctic Scandinavia, the analyses show that these populations are either not at risk of relocation or that the mobility is due to more complex factors on which climate change does not have a direct effect.[12] Hence, this chapter focuses on the study of the problems observed in the relocation process involving some Native communities in Alaska, in particular the three rural villages identified as most critical to relocate: Kivalina, Newtok and Shishmaref.

These communities spent years drawing attention to changes in the ecosystem and the necessity of relocation, however, only in the last decade did governments finally decide to act.[13] In December 2003, the US Government Accountability Office (GAO) issued the first federal government report to document the impact of flooding and erosion on Alaskan Native communities. According to the report, 86 percent (184) of the 213 Alaskan Native villages were affected to some degree by flooding and erosion, with four imminently threatened.[14] By 2009, that number had risen to thirty-one villages, and twelve communities planning to relocate (Kivalina, Newtok, Shishmaref, Shaktoolik, Allakaket, Golovin, Hughes, Huslia, Koyukuk, Nulato, Teller and Unalakleet).[15]

Although in 2005 the US Congress authorized the relocation of specific communities at full federal expense, the relocations did not occur. Instead, the US Army Corps of Engineers (USACE) used these funds to conduct studies to assess the threat and estimate relocation costs for seven at-risk coastal villages and to carry out an Alaska erosion baseline study to coordinate, plan and prioritize responses to erosion in Alaska Native village communities.[16] The Corps completed the assessment of the seven villages in 2006 and the erosion report in 2009.[17]

With the erosion process gathering pace, the State of Alaska officially formed the Alaska Climate Change Sub-Cabinet charged with:

> building the state's knowledge of the actual and foreseeable effects of climate warming in Alaska, developing appropriate measures and policies to prepare communities in Alaska for the anticipated impacts from climate change, and providing guidance regarding Alaska's participation in regional and national efforts addressing the causes and effects of climate change.[18]

The Alaska Climate Change Sub-Cabinet established the Immediate Action Workgroup (IAWG) in 2007. The IAWG was a collaborative multidisciplinary and intergovernmental workgroup tasked with the responsibility of identifying the immediate needs of the communities imminently threatened by the effects of erosion, flooding, permafrost degradation and other climate change related impacts. The IAWG held numerous meetings with representatives of these communities to develop a strategy to respond to climate change related threats and was instrumental in submitting to

the Alaska State Legislature funding recommendations for these communities so that they could receive the necessary financial resources to respond to the changing environment. The IAWG also issued two reports outlining several recommendations to respond to the needs of the imperiled communities located along Alaska's coast and rivers.[19]

The three communities most affected have undertaken a three-pronged relocation process that involved: (1) identification of a new village site; (2) resident voter approval of the relocation site; and (3) documentation to substantiate the need to relocate and the suitability of the relocation site for the community. Despite the similarity of the steps taken by each community to relocate, only Newtok has begun the relocation process.[20]

Kivalina[21] residents first noted coastal erosion in the 1950s, and voted to begin a relocation process in 1992. The community has held five elections related to relocation issues. A special election in 2000 resulted in a majority of voters wishing to move to Kiniktuuraq—located one mile south of the current community site—but there have been disagreements over the new relocation site between Kivalina residents and government agencies and contractors, which has further slowed the relocation. Their experience offers an example of a tribal community attempting to pro-actively adapt to climate change while being constrained by existing policies—policies that, by their design, have largely channeled assistance and funding towards remaining on the existing settlement rather than relocating.[22]

In the case of Shishmaref,[23] local efforts to relocate the village have been ongoing since the 1970s. During the aftermath of the 1973 storm, extensive planning by local residents and meetings between government representatives and local leaders occurred. These plans did not produce any results and a decision was made by the community to relocate to the mainland, to Nunatuk, six miles south of the existing community. However, in August 1974, the community reversed its position and decided not to relocate but to focus on reinforcing the beachfront to protect the community for another twenty years. During August 1974, 50,000 sandbags were placed along the worst hit areas of Shishmaref protecting homes and retail infrastructures. The protection worked for twenty-four years, however as a result of the 1997 storm, the State of Alaska declared Shishmaref a disaster area and requested federal assistance in relocating thirteen residential homes to higher and more protected areas in the newly plotted residential site on the old airport. Shishmaref residents were unanimous in their refusal to move to Kotzebue because the long-standing difficulties in their relation with the people there would make integration into the community problematic. By the same token, villagers considered Nome to be vice-ridden, exposing people to alcoholism and health problems, in addition to an eventual loss of language and cultural disintegration. The fundamental issues for the people of Shishmaref are continuity of culture as a discrete village on their own land and local control over

resettlement decision-making. The villagers of Shishmaref have now officially voted to relocate and have chosen a resettlement site. However, the villagers' plans have been frustrated because it is not clear which agencies are responsible and there is no systematic state or federal strategy for resettlement.[24]

The inhabitants of Newtok[25] voted three times, most recently in August 2003, to relocate to Nelson Island (nine miles from Newtok). The village obtained a title to their preferred relocation site, which they named Mertarvik (in Yup'ik it means "getting water from the spring"), through a land-exchange agreement negotiated with the US Fish and Wildlife Service. In 2006, the Newtok Planning Group, an ad hoc intergovernmental and multidisciplinary working group dedicated to Newtok's relocation and led by the Newtok Traditional Council, began a strategic relocation planning process.[26] Through their efforts, several pioneer infrastructures have been built, including a barge landing, six homes and the foundation for an emergency evacuation center. In 2010, the Alaska Department of Commerce, Community, and Economic Development successfully secured funding from the Federal Coastal Impact Assistance Program for the creation of the Mertarvik Strategic Management Plan. In January 2011, Agnew::Beck Consulting, in partnership with PDC Engineers and USKH Inc., were hired to spearhead the effort. The primary goal of the project is to develop a Strategic Management Plan (SMP) that outlines the community's vision, guiding principles, strategies and timelines for relocation. The process is occurring very slowly, but it is moving forward.[27]

Following recommendations of IAWG, the State of Alaska adopted two programs: the *Alaska Community Coastal Protection Project* designed to increase community resilience of Kivalina and Shishmaref;[28] and the *Alaska Climate Change Mitigation Program* adopted to assist impacted communities in the development of a planned approach to shoreline protection, building relocation and/or eventual relocation of the village (Community Relocation Plans).[29]

From the studies carried out by state agencies and researchers, it can be deduced from the three cases that field analyses have been made by independent experts on the ecological dangers to the zone; state agencies have been involved in the process; the Native communities have been informed of the situation, they have given their consent to relocation and have directly participated in the process. However, the three cases suffer from the same problem: the principal constraint is the lack of a comprehensive governance framework to relocate entire communities. National, state, local and tribal government agencies lack the legal authority and the technical, organizational and financial capacity to implement relocation processes for communities forcibly displaced by climate change.[30] Yet no agency has complete responsibility to relocate the entire public and private infrastructure of a community and rebuild livelihoods in a new location to protect them from climate change induced hazards.[31] Furthermore, few policies and protocols

exist to legally move the process forward.[32] Instead, there are multiple agencies with different authorities, norms and responsibilities.[33] The IPCC's Fifth Assessment Report (2014) also drew attention to how the high costs and limitations of government mechanisms are significant barriers to the actual relocation of these communities.[34] Even in the case of Newtok, which has worked for approximately a generation to relocate and has received substantial support from numerous government agencies, statutory and institutional barriers have caused significant delays in the relocation process.[35]

Moreover, the US Global Change Research in the Third National Climate Assessment considers that these shortcomings, to the extent that they hinder any relocation that is absolutely essential, "are causing loss of community and culture, health impacts, and economic decline, further exacerbating tribal impoverishment"[36] In addition, the decision to relocate discourages public investment in improving the living standards of these populations, which makes their situation worse.[37] The IPCC's Fifth Assessment Report (2014) considers that,

> it is now well-documented that the many climate-related impacts on Arctic communities are causing significant psychological and mental distress and anxiety among residents [...] For example, changes in the physical environment (e.g., through thawing permafrost and erosion) that may lead to forced or voluntary relocation of residents out of their villages or loss of traditional subsistence species are causing mental health impacts among Indigenous and other vulnerable, isolated populations [...] Special concern has been expressed by many communities about the unusually high and increasing numbers of suicides in the Arctic, especially among Indigenous youth."[38]

To avoid this situation especially in forthcoming relocations of the rest of the communities affected, scholars have called for measures to be adopted internally as a first step; new federal and state statutes to create what they call "an adaptive governance framework for relocation"[39] (standardized mechanisms or criteria to determine whether and when populations need to be relocated due to environmental change,[40] steps to implement relocation, new governance institutions and funding[41] new post-disaster and hazard mitigation statutory framework...).[42] There thus seems to be some urgency to regulate a specific and holistic framework for climate change induced relocation in Alaska, that covers all the phases in the process and which, leaving some margin of appreciation for each community to regulate its own particular situation, could establish the operational guidance on the matter.

Second, there has also been a call for international action. Scholars consider that no human rights document exists in the USA or internationally that protects communities forced to relocate because of climate

change. Protocols to guide community relocation should arguably be rooted in a human rights framework that asserts and protects communities' rights to self-determination, and helps prevent communities from being forced to disband or move from one at-risk location to another.[43] The next section analyzes whether these rights are recognized and what international actions have been undertaken in this respect.

III The international approach: planned relocation as an adaptation strategy to climate change

International institutions first analyzed the causal relation between environmental degradation and human movements in 1985, with the United Nations Environmental Programme (UNEP), which began to use the concept of "environmental refugee."[44] Since then, the limited international response has been characterized by the lack of institutions to take responsibility for the issue, and legal instruments that can clarify the regulatory status of environmentally induced displaced people.

There has been indiscriminate use of the term "environmental refugees" or "climate refugees," yet Article 1.A.2 of the 1951 United Nations Convention relating to the Status of Refugees states that the refugee must be outside the country of origin or habitual residence, be lacking in any protection from that State and manifest a well-founded fear of being persecuted for any of the five reasons specified in the Convention (race, religion, nationality, membership of a particular social group or political opinion).[45] Only when environmental degradation is used as a discriminatory policy by the State or when the State prevents assistance or protection from being provided to the victims of environmental disasters with the aim of marginalizing this population for any of the five reasons—noting the importance of individual threat—and when this leads to populations moving across borders, could the 1951 Refugee Convention be cited as a legal instrument for protection.[46] In our case these circumstances do not apply. The response of the State could be ineffectual or uncoordinated but it is not discriminatory or negligent. And above all, the people affected do not need to cross an international border in order to get access to protection.

In fact, the relocation process in Alaska is planned within the State's borders and that means that the State bears the primary responsibility to ensure citizens' well-being. This responsibility is conditioned by international obligations. This international framework lacks a legal instrument that specifically guarantees the right to be relocated as a consequence of climate change. Beyond the fact that the right to be relocated could derive from the general duty to protect, there are certain legal obligations that can be deduced in terms of those normative instruments that were conceived to avoid forced or involuntary displacement within the State: the Guiding Principles on Internal Displacement (IDP Guidelines) is not legally binding but reflects and is consistent with international law;[47] and

from others which establish specific rights for indigenous communities: the United Nations Declaration on the Rights of Indigenous Peoples (DRIPS)—signed by the United States on December 16, 2010[48]—and the International Labour Organization (ILO) Convention 169 which is legally binding but to which the USA is not a signatory.[49]

Five principal obligations can be deduced:

First, the right not to be subjected to arbitrary displacement (deduced from Article 12 International Covenant on Civil and Political Rights and in particular for our case: principle 6.2 and 7.2 IDP Guidelines; Article 10 DRIPS and Article 16.1 ILO Convention 169).[50]

Second, relocation is considered an option but only in exceptional circumstances, adopted in cases of emergency, as a last resort to guarantee the survival of the population (principle 6.2.2 IDP Guidelines; Article 16.1 ILO Convention 169).[51]

Third, all relocations must satisfy certain conditions: a free, prior and informed consent of the indigenous peoples and an agreement on just and fair compensation (Article 7.3 c) IDP Guidelines; Article 10 DRIPS; Article 16 ILO Convention 169).[52]

Fourth, in terms of carrying out the relocation, this must occur in a manner that does not violate other human rights (in particular the right to life, dignity, liberty and security); in a way that minimizes the adverse effects of displacement (principle 8 IDP Guidelines); and it must involve the persons to be relocated in the decision-making process, as well as in the planning and management of the actual movements (principle 7.3.d IDP Guidelines).

Finally, relocation includes the right of return to the original lands when the circumstances that forced the relocation cease to apply, and if this is not viable, the State must provide the group affected with lands of quality and legal status at least equal to that of the lands previously occupied by them, as well as any compensation, not for the relocation as such but for the damage that could have been incurred as a result of the relocation (Article 16.4 ILO Convention 169; Article 19 DRIPS).[53]

The relocation processes that affect the Arctic indigenous populations clearly comply with these obligations. Studies have shown that relocation is the only viable option; the populations have been consulted and have even voted on whether to relocate and where; they have set up institutions—especially efficient in Newtok—that involve communities in the decision-making process and management. The only issue absent in these processes is possible compensation. We believe it is unnecessary to establish a human rights instrument that addresses climate-induced population displacement that ensures the right to relocate as a community, as well collective rights to make decisions regarding where and how a community will relocate.[54] There already exist several instruments that guarantee these rights but the potentiality of the instrument proposed must go further in order to set up a specific "action strategy on

planned relocation," not only to enshrine rights that we consider to be guaranteed in practice.

Given the direct causal relationship between the environmental consequences of climate change and the need to relocate the Native communities in Alaska, it is important to analyze how the International Environmental Law regulates this issue.

Neither the United Nations Framework Convention on Climate Change (UNFCCC) nor its Kyoto Protocol mention population displacements resulting from climate change. However, with the creation in 2007 of the subsidiary body under the Convention, the "Ad hoc Working Group on Long-Term Cooperative Action under the Convention (AWG-LCA)," a change of attitude has emerged thanks to the efforts of the Inter-Agency Standing Committee (IASC) to raise awareness. As of the Copenhagen Climate Change Conference, the terminology begins to reflect an understanding that human mobility is a continuous adaptation, and with the Tianjin Climate Change Conference a distinction is drawn between the different levels of mobility (regional, national, international), types of displacement (forced, planned, taking the form of a relocation) and types of measures to be adopted (coordination, cooperation or investigation).[55] Paragraph 14 of the Cancun Agreements recognizes *planned relocation as a strategy of adaptation*, which confirms this growing awareness of the issue.

The reference to climate change-induced human mobility appears in the second section of the Cancun Agreements (Paragraph 14.f), in which it:

> invites all Parties to enhance action on adaptation under the Cancun Adaptation Framework, taking into account their common but differentiated responsibilities and respective capabilities, and specific national and regional development priorities, objectives and circumstances, by undertaking, inter alia, the following: f): Measures to enhance understanding, coordination and cooperation with regard to climate change-induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels.

As a result, climate change-related human mobility ceases to be analyzed as the potential reason for international protection in order to define it as a formula or strategy of adaptation to climate variability. In this context, the planned relocation of Native communities would be a measure for reducing vulnerability and building the resilience of those affected.

From this perspective, planned relocations would be related to: (1) the need to carry out vulnerability and adaptation assessments, including assessment of financial needs of adaptation options; (2) disaster risk reduction strategies (taking into consideration the Hyogo Framework for

Action); and (3) capacity-building for adaptation. Governments must be capable of understanding and foreseeing these changes, formulating legislative and programmatic solutions, applying suitable measures that fit needs and specific circumstances, and supervising and assessing their efficacy. The requirements in terms of creating capacity will differ between countries depending on the form of the environmentally induced migration or relocation that exists in a particular geographic region.

In addition, Paragraph 14.f requires the implementation of an "obligation of understanding, coordination and cooperation," multilevel—national, regional, international—which being defined under the "principle of common but differentiated responsibilities," is conceived in such a way that it is the developed countries that provide adequate, predictable and sustainable financial resources, technology and capacity-building to support the implementation of adaptation action (included planned relocation) in developing countries (paragraph 18, Cancun Agreements). The measures adopted for this issue will be supervised by the Adaptation Committee (paragraph 20 Cancun, Agreements) and will be financed by the Green Climate Fund (paragraph 20, Cancun Agreements). The main advantages laid down in Paragraph 14.f) are of benefit to relocated communities in developing countries, but not to Native communities in the USA.

In fact, the least developed and developing countries are managing environmentally induced migration and planned relocation through National Adaptation Programmes for Action (NAPAs) and National Adaptation Programmes (NAPs).[56] In preparing the NAPAs, countries are to synthesize available information, undertake a participatory assessment of vulnerability, identify key adaptation measures and criteria for prioritizing activities, and select a prioritized short list of activities. An analysis of the NAPAs presented show us that some adaptation activities proposed include assistance for relocation of communities.[57] Developed countries are not called on to present such reports, so the United States is not required to undertake an analysis concerning the relocation of Native communities in Alaska that could be reviewed by the Adaptation Committee. But it is recommended that they do so in their national communications and the mention made in the Sixth National Communication of the United States of America under the UNFCCC is a good example. Nevertheless, there is not a real accountability process for these measures.

The US government has been criticized for not providing these Native populations in Alaska with the necessary financial assistance despite being a developed country. In the case of Kivalina, the community's efforts to obtain relocation costs through US courts failed in 2009 (the community brought an action to recover damages from global warning caused by many of the largest emitters of greenhouse gases in the USA).[58] And we must also consider that most Native US populations face adverse socioeconomic factors such as poverty and lack of resources, so they are already in a more vulnerable situation.[59] This has led some scholars to denounce

that indigenous populations have no access to the Green Climate Fund and have called for the creation of an Adaptation Fund through the UNFCCC available to non-State actors and other vulnerable populations regardless of whether they reside in a developed country or not.[60] We do not believe this proposal will prosper. It is difficult enough to raise sufficient voluntary contributions for the Green Climate Fund never mind the setting up of another fund in competition with it, and to which populations in developed countries can accede. Which developed country would pay for the relocation of populations in a world economic powerhouse like the United States?

While it is true that the relocation of these populations is plagued with deficiencies, we believe that the United States could finance it. It is more urgent to create an "action strategy on planned relocation," as an operational guidance, that could be endorsed and reviewed by the Adaptation Committee. We consider it would be more efficient if there were an action strategy as an implementation of the international obligation inferred from Paragraph 14.f Cancun Agreement that could be endorsed by the Adaptation Committee and if competences were designed for it in this area in order to monitor the actions of the States affected. In other words, a flexible and accountable mechanism with an operational guidance that would take into account the basic rights of populations. The Committee has not been assigned this function so far but might request authorization to do so in any future restructuring of the future Paris Climate Agreement.[61] The Arctic Council (where indigenous peoples' organizations have been granted Permanent Participant status) could request it during the current negotiation process.

Despite an official acknowledgement of this formula as an adaptation response, planned relocation continues to be neglected and undeveloped (both technically and theoretically).[62] Some initiatives have been developed for cross-border displacement in the context of natural hazards and climate change,[63] but they do not create legal obligation for States.

Given the lack of political will to establish a legally binding treaty addressing environment-related cross-border displacement or planned relocation, we propose that this "action strategy on relocation" as an operational guidance be designed under the auspices of the UNFCCC. We must bear in mind that although the Cancun Agreements do not amount to an international treaty, but are a decision taken by the Conference of Parties (COP), it contains a road map for the development of UNFCCC obligations, and as such, the States can use it as guidance to design their actions. It is a flexible action framework which functions despite not being legally binding in the sense of classic international law. This action strategy could be designed within this framework to define States' obligations in the case of a planned relocation not only in terms of protectable rights (right to relocation as an exceptional measure, collective rights, free, prior and informed consent, living

standards…) but also an operational guidance by which the States inform on whether they possess standardized mechanisms or criteria to determine whether and when populations need to be relocated; whether they have carried out scientific studies to identify climate-related risks and vulnerabilities; whether there exists an adequate post-disaster and hazard mitigation statutory framework; whether evacuation plans have been arbitrated; whether the governance framework and funding mechanisms are adequate (planned relocation should be integrated into national plans and laws relating to land acquisition, climate change adaptation and national action plans); whether there is an operational relocation framework, with clear steps to implement relocation; and whether a community-based and community-guided process has been arbitrated.[64] This would be monitored by the Adaptation Committee regardless of whether these are processes taking place in lesser developed countries or not. It is not sufficient for the affected States to only create an adaptive governance framework for relocation under domestic law, long-term monitoring and evaluation of the objectives and strategies by the Adaptation Committee is also necessary.

The experience of Shishmaref, Kivalina, and in particular Newtok, will be of great value when drawing up this action strategy on planned relocation. The Adaptation Committee could make use of an inventory of good practices for forthcoming relocations in other regions of Alaska, and even in similar processes that take place in other countries across the world.

IV Conclusions

The Arctic region is particularly vulnerable to the effects of climate change. The phenomenon is affecting the biodiversity of the Arctic, while endangering the living conditions of the region's inhabitants. Accelerated rates of change in permafrost thaw, loss of coastal sea ice, rising sea levels, and more severe weather are forcing the relocation of some Native communities in Alaska. For these villages, protection in place is not possible and community relocation is the only response that can shield them from the impact of accelerating climate change.

According to US government reports, 184 of the 213 Alaska Native villages are affected to some degree by flooding and erosion, with twelve communities planning to relocate (Kivalina, Newtok, Shishmaref, Shaktoolik, Allakaket, Golovin, Hughes, Huslia, Koyukuk, Nulato, Teller and Unalakleet). The communities most affected (Kivalina, Shishmaref and Newtok) have launched a three-pronged relocation process that involved: identification of a new village site; resident voter approval of the relocation site; and documentation to substantiate the need to relocate and the suitability of the relocation site for the community. Despite the similarity of the steps taken by each community to relocate, only Newtok has begun the relocation process.

Of the studies carried out, both by state agencies and researchers, one can conclude that in the three cases independent experts have made an in situ analysis of the ecological dangers threatening the zone; the state agencies have been involved in the process; the Native communities have been informed of the situation, have given their consent to relocation and have directly participated in the process. However, the three cases suffer from the same problem: the principal constraint is the lack of a comprehensive governance framework to relocate entire communities. National, state, local and tribal government agencies lack the legal authority and the technical, organizational and financial capacity to implement relocation processes for communities forcibly displaced by climate change. These problems are slowing down relocations which are urgent and which are causing loss of community and culture, health impacts and economic decline, which further exacerbates tribal impoverishment.

To avoid this situation, especially in terms of the forthcoming relocations of the rest of the communities affected, scholars have called for measures to be adopted internally—new federal and state statutes to create what they call "an adaptive governance framework for relocation." It would appear to be urgent that laws be adopted that enable a legal and holistic treatment specific to climate change-induced relocation in Alaska which tackles all the phases of the process and which, while providing scope for each community to regulate its own situation according to its individual needs, can establish operational guidance on the matter.

The response of international institutions has been poor and uncoordinated. Certain basic obligations have been recognized—especially in relation to indigenous populations—but only indirectly and by means of an international Convention signed by only twenty-two States and a few instruments, none of which are legally-binding (ILO Convention 169, IDP Guidelines and DRIPS). Nevertheless, States tend to assume these obligations in their own national laws. These obligations relate to: the right not to be arbitrarily displaced; the right to be relocated as a last resort; the right to be relocated with the prior, free and informed consent of the indigenous people and an agreement on just and fair compensation; the right to be relocated in a manner that does not violate other human rights; the right to be involved in the decision-making process and management of the movement; the right to be returned to the lands when the circumstances that forced the displacement have ceased to exist, and if not possible, the right to have lands of quality and legal status at least equal to that of the lands previously occupied by them, and compensation.

The relocation processes in Alaska have, by and large, complied with these obligations. However, we believe that there are significant shortcomings that should be resolved by adopting an international instrument to facilitate planned relocation, but within the framework of UNFCCC. We consider that political will is lacking to adopt an international treaty as it is

understood in classic international law. As a consequence, the most viable way is to utilize the implementation of legal obligations framed in paragraph 14.f of the Cancun Agreements that consider planned relocation to be an adaptation strategy.

The "action strategy on planned relocation," as an operational guidance, that could be endorsed and reviewed by the Adaptation Committee (through National Adaptation Plans), and designed to define States' obligations ahead of a planned relocation, not only in relation to protectable rights (the right to relocation as an exceptional measure, collective rights, free, prior and informed consent, living standards…) but also an operational guidance by which the States inform on whether they possess standardized mechanisms or criteria to determine whether and when populations need to be relocated; whether they have carried out scientific studies to identify climate-related risks and vulnerabilities; whether an adequate post-disaster and hazard mitigation statutory framework exists; whether evacuation plans have been arbitrated; whether the governance framework and funding mechanisms are adequate (planned relocation should be integrated into national plans and laws relating to land acquisition, climate change adaptation and national action plans); whether there is an operational relocation framework, with clear steps to implement relocation; and whether a community-based and community-guided process has been arbitrated. This would be monitored by the Adaptation Committee regardless of whether these are processes taking place in lesser developed countries or not.

Notes

1 Tenured Professor of Public International Law and International Relations, University of Huelva, CIM, CEI CamBio (Spain). The author has received support of the International Campus of Excellence for Environment, Biodiversity and Global Change: CEI CamBio.

2 IPCC's Fifth Assessment Report:

> In habitats across the Arctic, climate changes are affecting these livelihoods through decreased sea ice thickness and extent, less predictable weather, severe storms, sea level rise, changing seasonal melt/freeze-up of rivers and lakes, changes in snow type and timing, increasing shrub growth, permafrost thaw, and storm-related erosion, which, in turn, are causing such severe loss of land in some regions that a number of Alaskan coastal villages are having to relocate entire communities.
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> (Climate Change 2014: Impacts, Adaptation, and Vulnerability (WGII AR5), 1583, 1590)

3 Robin Bronen, "Alaskan Communities' Rights and Resilience," *Force Migration Review* 31 (2008), 30.

4 *United States Climate Action Report 2014*, First Biennial Report of the United States of America, Sixth National Communication of the United States of America under the United Nations Framework Convention on Climate Change (2014), 157.

5 As Section 28.2.4, "Health and Well-being of Arctic Residents," of the Intergovernmental Panel on Climate Change (IPCC) Fifth Assessment Report, states:

> Indigenous communities are especially vulnerable to climate change because of their strong dependence on the environment for food, culture, and way of life; their political and economic marginalization; the social, health, and poverty disparities; and community locations along exposed ocean, lake, or river shorelines. (Ford and Furgal, 2009; Galloway-McLean, 2010; Larsen et al., 2010; Cochran et al., 2013).
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> (IPCC: WGII-AR5, 1581, accessed May 6, 2016, http://ipcc-wg2.gov/AR5/images/uploads/WGIIAR5-Chap28_FINAL.pdf)

6 According to Elizabeth Ferris, "Migration for livelihoods—whether hunting or reindeer herding—has been central to indigenous ways of life for centuries." Elizabeth Ferris: *A Complex Constellation: Displacement, Climate Change and Arctic People*, Brookings-LSE, Project on Internal Displacement, 2013, 25. This migratory lifestyle changed during the late nineteenth and early twentieth centuries primarily because the US Department of the Interior's Bureau of Education began to develop a formal educational system for the Alaska Native community. The majority of scholars agree that the settlement of the Alaska Native population into permanent communities has affected their ability to adapt to their changing environment. Robin Bronen, *Climate-Induced Displacement of Alaska Natives Communities*, Brookings-LSE, Project on Internal Displacement, 2013, 5.

7 A term coined by Robin Bronen and which is defined as "a specific type of permanent population displacement that occurs when community relocation is required to protect residents from climate-induced biophysical changes that alter ecosystems, damage or destroy public infrastructure, and repeatedly endanger human lives." See Robin Bronen and F. Stuart Chapin III, "Adaptive Governance and Institutional Strategies for Climate-Induced Community Relocations in Alaska", *PNAS*, vol. 110 (2013), 9320.

8 The IPCC Fifth Assessment Report states:

> "Environmental refugees," people displaced by degradation of land, flooding or drought, are becoming a much more significant factor in many developing countries. Even a modest rise in global sea levels could produce tens of millions of such refugees. Population movements from blighted agricultural regions could result in areas where crop productivity may be cut by prolonged drought or temperature stress on vulnerable crops.
>
> ("Human Settlement; The Energy, Transport and Industrial Sectors; Human Health; Air Quality; and Changes in Ultraviolet-B Radiation," in WJ. McG. Tegart, G.W. Sheldon D.C. Griffiths (eds), *Climate Change: The IPCC Impacts Assessment*. Canberra: Australian Government Publishing Service, 1990, 5–10)

9 Frank Laczko and Christine Aghazarm, *Migration, Environment and Climate Change: Assessing the Evidence*, International Organization for Migration, (Geneva: IOM, 2009), 5. Regarding this figure, Susan Martin points out how environmental scholars usually highlight the most alarmist forecasts while migration experts are more skeptical both in terms of numbers and analysis of the situation. Susan F. Martin, "Climate Change, Migration and Governance," *Global Governance* 16 (2010) 397–98.

10 "The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention": Decision 1/CP. 16 (2011). The Parties to the UNFCCC at COP 16 did not provide an official definition of relocation.

11 In the case of Canada, sea level rise, coastal erosion, permafrost thaw and more active slope processes threaten Inuit cultural sites and limit the potential for new development. Critical infrastructure within these communities will need to be made more resilient to the changing. Physical interventions are being considered in vulnerable communities across the Arctic to protect the infrastructure (moving buildings, raising buildings and installing engineering structures) to provide protection from wave action and permafrost thaw. In extreme situations, the relocation of communities may be inevitable. James D. Ford et al., "Climate Change Policy Responses for Canada's Inuit Population: The Importance of and Opportunities for Adaptation," *Global Environmental Change* 20 (2010): 187. According to Feltmate and Thistlethwaite, communities of Kashechewan and Attawapiskat (Ontario), Tuktoyatuk (Northwest Territories) and Peguis First Nation (Manitoba), may require community relocation with the consent of the aboriginal groups, including their choice of alternative locations. To facilitate community redesign and relocation, the development of an aboriginal climate infrastructure assessment is a necessary first step. This assessment can help evaluate potential infrastructure weakness and inform decision-making about redesigns and potential relocations. Aboriginal groups can invoke the assessment voluntarily to explore redesign or relocation options. See Blair Feltmate and Jason Thistlethwaite, *Climate Change Adaptation: A Priorities Plan for Canada*, University of Waterloo/Intact Financial Corporation, (2012), 14.

12 With regard to the indigenous groups of the Russian North, studies carried out on the Nenets, the Dolgan and Nganasan of the Taimyr Peninsula and the Chukotka-Chukchi and Siberian Yupik illustrate that they are moving for reasons that are more complex than climate change. The Viliui Sakha are not yet in need of relocating due to climate change effects, but considering the current trend of permafrost degradation and increasing precipitation and overall climatic softening, it is possible that they will need to move in the future. Susan A. Crate, *Climate Change and Human Mobility in Indigenous Communities of the Russian North*, Brookings-LSE, Project on Internal Displacement, 2013.

Regarding the indigenous communities in Arctic Scandinavia, the analysis of the environmental and social influences of climate change on Saami migration suggests that climate change itself will have limited impact on migration and is not likely to directly cause displacement. See Ilan Kelman and Marius Warg Naess, *Climate Change and Displacement for Indigenous Communities in Arctic Scandinavia*, Brookings-LSE, Project on Internal Displacement, 2013.

13 The Newtok Traditional Council commissioned the oldest report, which was complete in 1984 and evaluated the Ninglick River's erosion impact on the community. According to the report, the relocation of Newtok is considered an "alternative solution," less expensive than trying to hold back the Ninglick River. Woodward-Clyde Consultants, *Ninglick River Erosion Assessment*, November 29, 1984, 24, accessed May 6, 2016, www.commerce.alaska.gov/web/portals/4/pub/ninglick_river_erosion_assessment_addendum_november_29,_1984.pdf.

14 The Government Accountability Office (GAO): (1) determined the extent to which Alaska Native villages are affected by flooding and erosion; (2) identified federal and Alaska state programs that provide assistance for flooding and erosion and assessed the extent to which federal assistance has been provided to Alaska Native villages; (3) determined the status of efforts, including cost estimates, to respond to flooding and erosion in select villages seriously affected by flooding and erosion; and (4) identified alternatives that Congress may wish to consider when providing assistance for flooding and erosion of Alaska Native villages. GAO, *Alaska Native Villages: Most Are Affected by Flooding and Erosion, but Few Qualify for Federal Assistance* (Washington, DC: Government Accountability Office, 2003), 2.

15 GAO, *Alaska Native Villages: Limited Progress Has Been Made on Relocating Villages Threatened by Flooding and Erosion* (Washington, DC: Government Accountability Office, 2009).

16 In 2005, Congress enacted Section 117 of the Energy and Water Development Appropriations Act of 2005, which authorized the USACE to relocate specific communities at full federal expense (Energy and Water Development Appropriations Act of 2005, Pub. L. No. 108–447, §117, 118 Stat. 2935, 2944–45, 2004). Despite this authority, no community was relocated between 2003 and 2009 when Section 117 authorized these actions. This legislation also appropriated specific funding for the erosion assessments; see Bronen, *Climate-Induced Displacement of Alaska Natives Communities*, 6.

17 USACE, *Alaska Village Erosion Technical Assistance Program: An Examination of Erosion Issues in the Communities of Bethel, Dillingham, Kaktovik, Kivalina, Newtok, Shishmaref, and Unalakleet*, US Army Corps of Engineers, (Alaska District, 2006). In the examination, the Corps estimated that the village of Kivalina, as well as Newtok and Shishmaref, would be lost to erosion in ten to fifteen years, estimating the cost of relocation at US$80 million to US$200 million for each village. *Study Findings and Technical Report, Alaska Baseline Erosion Assessment.* US Army Corps of Engineers Alaska District (2009).

18 Administrative Order No. 238 from the Office of the Governor of Alaska. September 14, 2007, accessed May 6, 2016, www.gov.state.ak.us/admin-orders/238.html.

19 IAWG, *Recommendations Report to the Governor's Subcabinet on Climate Change, Alaska Subcabinet on Climate Change*, Immediate Action Workgroup, Juneau, Alaska, (2008). IAWG, *Recommendations Report to the Governor's Subcabinet on Climate Change, Alaska Subcabinet on Climate Change*, Immediate Action Workgroup, Juneau, Alaska, (2009). The last meeting of the IAWG occurred in March 2011 because the Workgroup failed to receive authorization from Governor Parnell or the Subcabinet on Climate Change to continue its work. According to Bronen, the dismantling of the Immediate Action Workgroup creates a tremendous gap for communities faced with climate related threats. Bronen, *Climate-Induced Displacement of Alaska Natives Communities*, 7–18.

20 Bronen and Chapin III, "Adaptive Governance and Institutional Strategies for Climate-Induced Community Relocations in Alaska," 9321. The authors analyze the differences in the relocation process of the three villages.

21 The Village of Kivalina is an Inupiaq Eskimo federally recognized indigenous tribe located on the tip of a thin, six-mile-long barrier reef island in the Chukchi Sea, 128 km above the Arctic Circle. Storm surges and flooding threaten the community as a result of diminished Arctic sea ice and the delay in freezing of the ocean. Between 2002 and 2007, six extreme weather events threatened Kivalina. The state and federal government issued three disaster declarations. Between 2006 and 2009, government agencies spent $15.5 million on erosion-control projects that have failed to protect the community. Bronen and Chapin III, "Adaptive Governance and Institutional Strategies for Climate-Induced Community Relocations in Alaska," 9321–22.

22 Julie Koppel Maldonado et al.: "The Impact of Climate Change on Tribal Communities in the US: Displacement, Relocation, and Human Rights," *Climate Change* 120 (2013): 603; Glenn Gray and Associates, "Situation Assessment: Kivalina Consensus Building Project," July 2010, accessed May 6, 2016, www.relocate-ak.org/wordpress/wp-content/uploads/2012/09/Situation_Assessment_Final_July_20105.pdf.

23 Inhabited for over 4,000 years, the town of Shishmaref is located on a barrier island in the Chukchi Sea, off the western coast of Alaska. Shishmaref depends on the ice surrounding the island for protection, food and water. In recent

decades, Shishmaref has lost 40 percent of the ice that protects it from storm surges reaching the island, and already more than ten homes have had to be evacuated. The Army Corps of Engineers estimated relocation costs to be $100–$200 million. Tribes and Climate Change (2011): "Climate Change: Realities of Relocation for Alaska Native Villages," accessed May 6, 2016, http://www4.nau.edu/tribalclimatechange/tribes/ak_inupiaq_AkRelocation.asp.

24 Elizabeth Marino, "Immanent Threats, Impossible Moves, and Unlikely Prestige: Understanding the Struggle for Local Control as a Means towards Sustainability," in *Linking Environmental Change, Migration and Social Vulnerability*, edited by Anthony Oliver-Smith and Xiaomeng Shen. *UNU-EHS, Munich Re Foundation* (2009), 46.

25 Newtok is a Yup'ik Eskimo village located along the Ninglick River near the Bering Sea in western Alaska. No roads lead to or from the village, which is surrounded by one of the largest river deltas in the world. Wave action and thermal degradation of the permafrost-rich riverbank are causing accelerated rates of erosion. In 2003, the GAO identified Newtok as "an imminently threatened village." Six extreme weather events between 1989 and 2006 exacerbated the rate of erosion. FEMA declared a disaster in five of these events. The State of Alaska spent about $1.5 million to control the erosion between 1983–1989. Despite these efforts, the erosion of the Ninglick River is projected to reach the school, the largest structure in the community, by about 2017. USACE 2008. Bronen and Chapin III, "Adaptive Governance and Institutional Strategies for Climate-Induced Community Relocations in Alaska," 607.

26 The Newtok Planning Group, formed in 2006 by federal, state, regional and village partners, has helped to accelerate the relocation process that the village proactively initiated in 1994. The Newtok Planning Group is unique in Alaska in its multidisciplinary and multijurisdictional structure. The group consists of about twenty-five state, federal and tribal governmental and non-governmental agencies that all voluntarily collaborate to facilitate Newtok's relocation. No similar planning group was implemented to respond to the relocation efforts of Kivalina and Shishmaref. Bronen and Chapin III, "Adaptive Governance and Institutional Strategies for Climate-Induced Community Relocations in Alaska," 9322.

27 *Mertarvik: Nunaullemteggun ikayuqulluta tamamta, assirluta aknirtenritellerkamtenun, nuggtarllemtenun ciunerkamteni: A Community that Builds Together for the Safe and Healthy Future of Newtok.* Relocation Report: Newtok to Mertarvik, August 2011, accessed May 6, 2016, www.commerce.alaska.gov/web/portals/4/pub/mertarvik_relocation_report_final.pdf. Robin Bronen, "Climate-Induced Community Relocations: Creating and Adaptive Governance Framework Based in Human Rights Doctrine," *NYU Review of Law and Social Change* 35 (2011): 373–92.

28 Community resilience is increased through three measures: establishing collaborative organizational structures similar to the Newtok Planning Group; providing a full-time community coordinator (two years); and hiring a contractor to develop a strategic management plan for each community, see "Alaska Community Coastal Protection Project," accessed May 6, 2016, www.commerce.alaska.gov/web/dcra/PlanningLandManagement/AlaskaCommunityCoastalProtectionProject.aspx.

29 See, Alaska Climate Change Impact Mitigation Program (ACCIMP), accessed May 6, 2016, www.commerce.alaska.gov/web/dcra/PlanningLandManagement/ACCIMP.aspx. The Sixth National Communication of the United States of America under the United Nations Framework Convention on Climate Change, submitted in 2014, mentioned this program on page 169. "*United States Climate Action Report 2014*, First Biennial Report of the United States of America, Sixth

National Communication of the United States of America under the United Nations Framework Convention on Climate Change," (2014).

30 T.M.B. Bennett et al., "Indigenous Peoples, Lands, and Resources," *Climate Change Impacts in the United States: The Third National Climate Assessment*, edited by J.M. Melillo, Terese (T.C.) Richmond and G.W. Yohe, *U.S. Global Change Research Program* (2014), 307.

31 Bronen and Chapin III, "Adaptive Governance and Institutional Strategies for Climate-Induced Community Relocations in Alaska," 9320.

32 The suitability of the current post-disaster and hazard mitigation statutory framework has been criticized. The limitations of the Federal Emergency Management Agency (FEMA) are highlighted in GAO (2009). Private contractors also come in for criticism as they are unaccountable to the public. Christine Shearer, "The Political Ecology of Climate Adaptation Assistance: Alaska Natives, Displacement, and Relocation," *Journal of Political Ecology*, vol. 19 (2012): 179.

33 Shearer, "The Political Ecology of Climate Adaptation Assistance: Alaska Natives, Displacement, and Relocation," 177.

34 *IPCC's Fifth Assessment Report*, "Climate Change 2014: Impacts, Adaptation, and Vulnerability," 1590.

35 Bronen, "Climate-Induced Community Relocations," 373–92.

36 T.M.B. Bennett et al., "Indigenous Peoples, Lands, and Resources." According to Maldonado et al.: "Forced relocation is compounded by the current lack of governance mechanisms or budgets to support the communities, which intensifies community impoverishment, negative economic and health impacts, and loss of place, social networks, and culture," Maldonado et al., "The Impact of Climate Change on Tribal Communities in the US," 603.

37 In the years following the decision to relocate, Newtok has seen broad disinvestment from federal and state agencies. This disinvestment was driven by a desire not to waste funds improving and maintaining infrastructure in the existing village when the community intends to move. However, many agencies have since reassessed this policy as evidence suggests that disinvestment has led to poor living conditions and serious public health issues. *Mertarvik, Relocation* Report: Newtok to Mertarvik, 2. This has also occurred in Shishmaref. According to Elizabeth Marino: receiving government aid for housing projects is nearly impossible in the aftermath of the vote for relocation, and residents say that this has caused the out-migration of younger, working-age adults to Nome or Anchorage. Marino, "Immanent Threats, Impossible Moves, and Unlikely Prestige," 46.

38 IPCC WGII AR5: 1583.

39 Bronen, "Climate-Induced Community Relocations," 392–406. Christine Shearer has proposed that relocation policies assist Alaska Natives, and argues that such policies should be merged with existing ones addressing risk mitigation and disasters management. In her opinion, disasters management that prioritizes risk mitigation is arguably a bridge to climate change adaptation. Shearer, "The Political Ecology of Climate Adaptation Assistance," 174.

40 In Alaska, government agencies have proposed using the following indicators: (1) risk to life or safety during storm or flood events; (2) loss of critical infrastructure; (3) threats to public health; and (4) loss of 10 percent or more of residential dwellings. Bronen, "Choice and Necessity: Relocation in the Arctic and South Pacific," *Force Migration Review* 45 (2014): 19.

41 For the key components of governance of climate change adaptation, see Bronen and Chapin III, "Adaptive Governance and Institutional Strategies for Climate-Induced Community Relocations in Alaska," 9323ff.

42 The Federal Emergency Management Agency has several disaster preparedness and recovery programs, but villages often fail to qualify for them, generally

because they may lack approved disaster mitigation plans or have not been declared federal disaster areas, GAO 2009.

43 Maldonado et al., "The Impact of Climate Change on Tribal Communities in the US," 603. Bronen, "Climate-Induced Community Relocations," 394–96.

44 For El-Hinnawi an "environmental refugee" refers to people "who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life." Likewise, "environmental disruption" would be "any physical, chemical and/or biological changes in the ecosystem (or the resource base) that render it, temporarily or permanently, unsuitable to support human life." At this time, experts were still trying to call public attention to the problem. The UNEP's Executive Director states, in the preface to this work, that before solutions can be found, the international community needs to recognize that displaced people actually exist. Essam El-Hinnawi, *Environmental Refugees* (Nairobi: United Nations Environmental Programme, 1985), i and 4.

45 Adopted on July 28, 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly Resolution 429 (V) of December 14, 1950. Entry into force: April 22, 1954, in accordance with Article 43. UNTS: No 2545, Vol. 189, 137 (hereinafter 1951 Refugee Convention).

46 See also Walter Kälin, "Conceptualising Climate-Induced Displacement," in *Climate Change and Displacement: Multidisciplinary Perspectives*, edited by Jane McAdam (Oxford and Portland, OR: Hart Publishing, 2010), 88. The scholars who have analyzed the case of Alaska take the same position. See *inter alia*, Robin Bronen, "Forced Migration of Alaskan Indigenous Communities due to Climate Change: Creating a Human Right Response," (2009), accessed May 6, 2016, www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/events/docs/abstract.pdf.

47 Guiding Principles on Internal Displacement: E/CN.4/1998/53/Add.2, February 11, 1998.

> For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or *natural or human-made disasters*, and who have not crossed an internationally recognized State border. [Italics added].

48 Resolution adopted by the General Assembly A/61/295, September 13, 2007.

49 Treaty adopted in Geneva, 76th ILC session (June 27, 1989). Entry into force: September 5, 1991. Twenty-two ratifications. The first attempt to codify international obligations of States in respect of indigenous and tribal populations was the ILO Indigenous and Tribal Populations Convention No. 107. Although since the adoption of Convention No. 169, Convention No. 107 is no longer open for ratification, it is still in force for eighteen States. The USA is not a signatory.

50 Article 12 ICCPR: liberty of movement and right to choose residence. Subject to the provisions of Article 12, paragraph 3, the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement. Human Rights Committee, General Comment 27 (Article 12), UN Doc CCPR/C/21/Rev.1/Add.9 (1999), paragraph 7. Article 6.2 IDP Guidelines establishes that the prohibition includes displacement in cases of disasters. And principle 9 establishes that special efforts must be made

in the case of indigenous peoples because of their attachment to or dependency on their lands. Article 10 DRIPS: "Indigenous peoples shall not be forcibly removed from their lands or territories." Article 16.1 ILO Convention 169: "the peoples concerned shall not be removed from the lands which they occupy."

51 Article 16.1 ILO Convention169: considers relocation as an exceptional measure. Principle 6.2.2 and 7.2 IDP Guidelines considers this possibility if the safety and health of those affected requires their evacuation. And only after the authorities have ensured that all feasible alternatives have been explored.

52 Take into consideration, in accordance with ILO Convention 169, that the prior free and informed consent is not a *sine qua non* requirement. Article 16.2 of the Indigenous and Tribal Peoples Convention establishes:

> Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

Whatever the case, they must be consulted and consent must be obtained in good faith. The prior and free consultation is to be considered a general principle of international law, and is therefore binding even on States that are not party to the ILO Convention 169. IHR Court: *Kichwa Indigenous People of Sarayaku* v. *Ecuador*. Inter-American Court of Human Rights, Merits and reparations. Judgment of June 27, 2012. Series C No. 245. ("*Sarayaku*"). In contrast, the DRIPS consider that consultation and cooperation are insufficient in terms of getting this consent, and what matters is that consent be informed and freely given. There is no justification for negating the true will of the community. And on compensation, Article 16.5 ILO Convention 169 states: "Persons thus relocated shall be fully compensated for any resulting loss or injury."

53 Soledad Torrecuadrada, "Los derechos indígenas sobre sus territorios y los recursos que se encuentran en ellos." *Cursos de Derechos Humanos de Donostia-San Sebastián, vol. XII: Derechos económicos, sociales y culturales en tiempos de crisis* (Pamplona: Thomson Reuters Aranzadi, 2012), 309–42.

54 This Proposal was formulated by Bronen, "Choice and Necessity, 20.

55 Koko Warner, "Climate Change Induced Displacement: Adaptation Policy in the Context of the UNFCCC Climate Negotiations," *UNHCR*. Legal and Protection Policy Research Series, Division of International Protection (May 2011).

56 Some Plans address the role of the planned relocation as an adaptive strategy, particularly in the context of rising sea levels (Sao Tome and Principle; Samoa; the Solomon Islands; the Maldives; or Tuvalu): See Koko Warner et al., *Integrating Human Mobility Issues within National Adaptation Plans*, UNU-EHS Publication Series, Policy Brief No. 9, (June 2014), 21.

57 Susan F. Martin, "Climate Change, Migration and Adaptation," *Climate Change and Migration*, The German Marshall Fund of the United States, (June 2010).

58 See Kivalina complaint: http://files.ali-cle.org/thumbs/datastorage/skoobesruoc/source/CN085_Locke-Kivalina%20Complaint_thumb.pdf, accessed May 6, 2016. Neither was the "Petition to the Inter-American Commission of Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts or Omissions of the United States" admitted when submitted by Sheila Watt-Cloutier, with the Support of the Circumpolar Conference, on behalf of All Inuit of the Arctic Regions of the United States and Canada, December 7, 2005. See www.inuitcircumpolar.com/uploads/3/0/5/4/30542564/finalpetitionicc.pdf, accessed May 6, 2016.

59 Bennett et al., "Indigenous Peoples, Lands, and Resources," Chapter 12.

60 Shearer, "The political ecology of climate adaptation assistance: Alaska Natives, displacement, and relocation," 179.

61 Nations concluded the Geneva Climate Change Talks by successfully preparing the negotiating text for the 2015 agreement. The agreement is set to be reached in Paris at the end of 2015 and will come into effect in 2020.

62 Mariya Gromilova, "Revisiting Planned Relocation as a Climate Change Adaptation Strategy: The Added Value of a Human Rights-Based Approach," *Utrecht Law Review* 10.1 (2014): 78.

63 Paragraph 14(f) does not, however, say how exactly climate change-induced displacement should be addressed. This is why UNHCR took the initiative to bring together a group of experts in February 2011 to discuss options for addressing climate-related displacement, internal as well as across borders. The June 2011 Nansen Conference was the next step which should have led to States making a commitment to address the issue at the December 2011 UNHCR Ministerial Meeting to commemorate the Sixtieth and Fiftieth Anniversaries of the UN Refugee and Statelessness Conventions respectively. However, the Ministerial Communiqué adopted on this occasion did not contain any direct reference to cross-border movements triggered by climate-related and other natural disasters. This was no accident but rather the expression of a lack of willingness by a majority of governments, whether for reasons of sovereignty, competing priorities or the lead role of UNHCR in the process. On October 2012 a State-driven approach, the Nansen Initiative, was launched. The Ten Nansen Principles reflect the outcome of the Nansen Conference on Climate Change and Displacement hosted by the government of Norway in Oslo in June 2011. To find out more on the Nansen Initiative, see Walter Kälin (2012): "From the Nansen Principles to the Nansen Initiative," *Force Migration Review*, 41, 2012. Specifically on planned relocation, UNHCR, together with the Brookings Institution and Georgetown University's Institute for the Study of International Migration, organized a consultation on "Planned Relocation, Disasters and Climate Change: Consolidating Good Practices and Preparing for the Future," on March 12–14, 2014, San Remo, Italy: UNHCR, 2014.

64 According to Ten Nansen Principles (X):

> National and international policies and responses, including planned relocation, need to be implemented on the basis of non-discrimination, consent, empowerment, participation and partnerships with those directly affected, with due sensitivity to age, gender and diversity aspects. The voices of the displaced or those threatened with displacement, loss of home or livelihood must be heard and taken into account, without neglecting those who may choose to remain.

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