

RESOLUTION 6/2018

COMMITTEE ON INTERNATIONAL LAW AND SEA LEVEL RISE

The 78th Conference of the International Law Association, held in Sydney, Australia, 19–24 August 2018:

HAVING CONSIDERED the two reports of the Committee on International Law and Sea Level Rise (2016 and 2018) covering, inter alia, the issue of displacement of persons in the context of sea level rise and the identification of emerging principles of international law relating to the protection of persons displaced in the context of sea level rise;

TAKING NOTE of the findings documented in the Fifth Assessment Report of the Intergovernmental Panel on Climate Change in 2014, predicting an increase of sea levels ranging between 26 cm and 98 cm above 1990 levels by 2100;

RECOGNISING the need for an effective response to the urgent threats posed by sea level rise;

CONCERNED by the impacts that sea level rise already has on low-lying islands and coastal areas, which are often densely populated;

RECOGNISING that sea level rise will jeopardise further the habitability of such areas in the decades to come, creating a potentially large number of persons displaced from areas affected by sea level rise;

RECOGNISING ALSO that some of the affected populations may be forced to leave their homes to find assistance and protection abroad;

RECALLING the Malé Declaration on Global Warming and Sea Level Rise adopted by the Small States Conference on Sea Level Rise, held at Malé, Maldives, from 14 to 18 November 1989, in which the participants declared their intent to work, collaborate and seek international co-operation to protect the low-lying small coastal and island States from the dangers posed by climate change, global warming and sea level rise;

RECALLING ALSO General Assembly Resolution 44/206 of 22 December 1989 on the possible adverse effects of sea level rise on islands and coastal areas, in which UN Member States urged the international community to provide effective and timely support to States affected by sea level rise, particularly developing States, in their efforts to develop and implement strategies to protect themselves and their vulnerable natural marine ecosystems from the particular threats of sea level rise caused by climate change;

RECALLING ALSO General Assembly Resolution 70/1 of 25 September 2015 on the 2030 Agenda for Sustainable Development highlighting that increases in global temperature, sea level rise, ocean acidification and other climate change impacts are seriously affecting coastal areas and low-lying coastal States, including many least developed States and small island developing States;

CONVINCED that the treatment of persons displaced in the context of sea level rise should be based on and guided by international legal principles;

MINDFUL of the fact that such principles can be derived from a multitude of existing legal provisions and frameworks;

RECOGNISING the recent efforts of the international community to develop further a comprehensive legal and policy framework for the protection of people displaced in the face of climate change, including through the adoption of the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (Protection Agenda), endorsed by 109 governmental delegations during a global intergovernmental consultation on 12–13 October 2015 in Geneva; and the Global Compact on Migration to be adopted in December 2018;

ADOPTS the Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise annexed to this Resolution;

REQUESTS the Secretary-General of the International Law Association to forward this Resolution, along with the Declaration of Principles annexed to it, to the UN Secretary-General, the UNFCCC Secretariat, the Chair of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts and its Task Force on Displacement, the Special Representative of the UN Secretary-General for International Migration, the Co-Facilitators to lead the intergovernmental consultations and negotiations on issues related to the Global Compact for Safe, Orderly and Regular Migration, the Director of the International Organization for Migration, the UN High Commissioner for Refugees, and the Platform on Disaster Displacement for their consideration;

RECOMMENDS to the Executive Council to extend the mandate of the Committee on International Law and Sea Level Rise in order for the Committee to continue its work on the remaining aspects of its mandate.

Annex

SYDNEY DECLARATION OF PRINCIPLES ON THE PROTECTION OF PERSONS DISPLACED IN THE CONTEXT OF SEA LEVEL RISE

Purpose

The purpose of the present Declaration of Principles is to provide guidance to States in averting, mitigating, and addressing displacement of persons occurring in the context of sea level rise, based on and derived from relevant international legal provisions, principles, and frameworks.

Scope

The present Declaration of Principles applies to all forms of human mobility arising in the context of sea level rise.

Definitions

For the purposes of the present Declaration of Principles, the following definitions shall apply:

- (a) ‘disaster’ means a serious disruption of the functioning of a community or a society at any scale, due to climatic events interacting with conditions of exposure, vulnerability, and capacity, leading to human, material, economic, and/or environmental losses and impacts;
- (b) ‘displacement’ means the movement within a State and/or across international borders of persons who are forced or obliged to leave their homes or places of habitual residence due to sudden-onset natural hazards and/or slower, cumulative pressures occurring in the context of sea level rise;
- (c) ‘evacuation’ means the rapid movement of persons away from the immediate threat or impact of a disaster to a place of shelter, in order to ensure their security, safety, and well-being;
- (d) ‘human mobility’ means all relevant forms of the movement of persons in the context of sea level rise, including displacement, evacuation, migration, and planned relocation;
- (e) ‘migration’ means predominantly voluntary cross-border movement, which, in the context of disaster- and climate change-related impacts, is more likely to occur in anticipation of future harm;
- (f) ‘planned relocation’ means a planned process in which persons voluntarily move or are forced to move away from their homes or places of temporary residence, are settled in a new location within their own or another State, and are provided with the conditions for rebuilding their lives. Planned relocation is carried out under the authority of the State and is undertaken to protect persons from risks and impacts related to disasters and environmental change in the context of sea level rise;
- (g) ‘sea level rise’ means the sole or combined and cumulative impacts of the effects of climate change and subsidence or land uplift on the change of the sea level in a given location.

Principle 1 – The Primary Duty and Responsibility of States to Protect and Assist Affected Persons

States have the primary duty and responsibility to provide protection and assistance to persons with habitual residence in territories under their jurisdiction who are affected by sea level rise.

Principle 2 – The Duty to Respect the Human Rights of Affected Persons

States of origin, transit, and destination have a duty to respect, on a non-discriminatory basis, the human rights of persons under their jurisdiction who move in the context of sea level rise, including:

- (a) their right to liberty of movement and freedom to choose their residence;
- (b) the freedom to leave and return to their own country;
- (c) their right to be protected against *refoulement*;
- (d) their right to be informed and consulted, and to participate in decisions affecting them;
- (e) the cultural and land rights of indigenous peoples and local communities.

Principle 3 – The Duty to Take Positive Action

1. States have a duty to use the best practicable means at their disposal, in accordance with their respective capabilities and resources and their international human rights obligations, as well as other relevant international standards and frameworks, to take appropriate and effective measures, including those referred to in Principles 5–9, to:

- (a) reduce disaster risks and adapt to the adverse effects of climate change in order to protect the lives and ensure the safety of persons with habitual residence on low-lying areas at risk of sea level rise under their jurisdiction;
- (b) prevent displacement of such persons; and
- (c) protect and assist them in the event of displacement.

2. In order to avert, mitigate, and address displacement in the context of sea level rise, and to protect and assist persons displaced in this context, States should, in particular:

- (a) adopt adequate normative frameworks and operational measures to implement them;
- (b) assign powers and responsibilities to competent authorities and institutions or, where they do not exist, create such authorities and institutions endowed with appropriate powers and responsibilities; and
- (c) provide adequate resources to such authorities and institutions.

Principle 4 – The Duty to Cooperate

1. States shall enhance international cooperation among themselves and with relevant international organisations and agencies to assist States affected by sea level rise to prevent, avoid, and respond to disaster- and climate change-related risks, including the risk of displacement. Affected States should call on the international community when they require assistance.

2. Cooperation in this context may include:

- (a) efforts at bilateral, regional and/or sub-regional levels to strengthen and coordinate measures to:
 - i. reduce disaster risk, enhance adaptation to climate change, and build resilience of affected communities living in low-lying areas at risk of sea level rise;
 - ii. assist, in accordance with elementary humanitarian considerations, in the evacuation of persons where necessary to save lives, including across borders;

- iii. facilitate cross-border migration in anticipation of, or in reaction to, irreversible environmental degradation or sudden-onset disasters linked to sea level rise;
 - iv. enhance the humanitarian response in situations of internal displacement; and
 - v. support recovery, including durable solutions, for internally displaced persons;
- (b) efforts to ensure that persons moving across borders are admitted and received with respect for their safety, dignity, and human rights, including the creation or harmonisation of more predictable domestic or regional legal frameworks, and that durable solutions to displacement are found; and
- (c) technical and financial support by the international community and donor States and their multilateral and bilateral financing mechanisms to support affected States and regions.

Principle 5 – Evacuation of Affected Persons

1. States affected by sea level rise shall take all necessary measures to facilitate, without discrimination, the evacuation of persons facing a serious and imminent risk linked to the effects of sea level rise and provide support to those unable to evacuate themselves.
2. Where evacuations are not voluntary, they shall only be undertaken if they are provided for by law and are necessary to protect the life and health of affected persons, and if less intrusive measures would be insufficient to avert the harmful consequences of the threat. Competent authorities should ensure that evacuation orders are enforced only for as long as strictly necessary to fulfil such purpose.
3. Evacuations, whether voluntary or forced, shall be carried out with full respect for the life, dignity, liberty, and security of evacuees.

Principle 6 – Planned Relocations of Affected Persons

1. States affected by sea level rise shall only undertake planned relocations (whether within their territories or across international borders) when so requested by affected persons and communities, or when conducted with their full, free, and informed consent.
2. Where, despite the provision of adequate information and consultation, such consent cannot be obtained, planned relocations must only be undertaken as a measure of last resort to safeguard the lives and safety of those affected. They must be based on national law and implemented in accordance with relevant international legal standards.
3. Planned relocations shall be implemented in ways that safeguard the human rights and dignity of those who move, including the principle of family unity, as well as the human rights and dignity of those who receive relocated persons.
4. Given their significance for indigenous peoples, States undertaking planned relocation shall respect and protect their rights to self-determination, culture, identity, land, and resources.
5. Persons affected by a planned relocation, including those who receive relocated persons, must be informed, consulted, allowed, and enabled to participate in all relevant decision-making processes.
6. At a minimum, persons' pre-relocation living standards must be restored post-relocation.

Principle 7 – Migration of Affected Persons

1. States should recognise that temporary, circular, or permanent migration across borders can be an important means for persons to adapt to climate change and cope with the adverse effects of sea level rise.
2. Both States of origin and destination should review existing domestic laws, as well as bilateral and regional migration arrangements, and consider new laws and agreements, to facilitate migration as an adaptation measure, in accordance with applicable international human rights law as well as international labour law.
3. Both States of origin and destination should cooperate to ensure that the full range of rights and protections afforded to migrants by international law is respected, including the right to liberty of movement and the freedom to choose one's place of residence.

Principle 8 – Internal Displacement of Affected Persons

States shall protect and assist persons displaced within their territory in the context of sea level rise and associated hazards and establish conditions for, as well as provide the means which allow internally displaced persons to find, durable solutions, in accordance with the UN Guiding Principles on Internal Displacement.

Principle 9 – Cross-Border Displacement of Affected Persons

1. States should admit persons displaced across borders in the context of disasters linked to sea level rise if they are personally and seriously at risk of, or already affected by, a disaster, or if their State of origin is unable to protect and assist them due to the disaster (even if temporarily). States should ensure that they have adequate laws and policies in place to facilitate this protection.
2. States of refuge should not return persons to territories where they face a serious risk to their life or safety or serious hardship, in particular due to the fact that they cannot access necessary humanitarian assistance or protection. In all cases, States must observe the prohibition on forcible return to situations of persecution or other forms of serious harm, as provided for by applicable international law.
3. States that have admitted cross-border disaster-displaced persons should cooperate with States of origin to find durable solutions for such persons. This may include return where possible, or permanent admission and stay in the host State.
4. States ready to admit cross-border disaster-displaced persons should strive to harmonise their practices regarding the admission and protection of cross-border disaster-displaced persons at the regional and/or sub-regional levels.