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But for Borders: The Protection Gap for Internally Displaced Persons

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BUT FOR BORDERS: THE PROTECTION GAP FOR INTERNALLY
DISPLACED PERSONS

*Anita Sinha**

ABSTRACT

Internal displacement, encapsulating the phenomenon of people who are dislocated from their homes but remain within the border of their countries of origin, was once a forced migratory occurrence interchangeable with cross-border migration. This changed after the Second World War with the promulgation of the 1951 Convention Relating to the Status of Refugees, which was premised on an insistence of making a legal line in the sand based on which side of a border displacement ultimately transpires. Internally displaced persons (IDPs)—in recent history, presently, and in the projected future—far outnumber the number of people displaced outside the border of their home countries. Both rhetorical maneuverings and traditional international legal theories have prevented a robust exploration of normative frameworks that would ensure enhanced protections for the causes and experiences of internal displacement.

This Article places the experiences of IDPs within the context of the politically charged project of labeling migration to inform the international governance of migration insofar as determining which populations forcibly on the move are deserving of international protection. It provides a comprehensive account of existing international, regional, and domestic displacement instruments, and highlights how international climate change and other general migration agreements fall significantly short of adequately addressing the phenomenon of ongoing and growing incidents of internal displacement. This Article offers a vision of forced movement that treats human mobility not as static but instead as occurring on a continuum traversing physical nation-state borders. In doing so, it offers a re-framing of people on the move so that international legal mechanisms are germane to the critical project of extending protection to vulnerable communities regardless of which side of a border they face displacement.

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*You only leave home when home won't let you stay.*¹

INTRODUCTION

Displacement within the border of one's country of origin—internal displacement—is both an ongoing and growing phenomenon,² with people

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¹ Warsan Shire, *Home*, BLESSED THE DAUGHTER RAISED BY A VOICE IN HER HEAD (2022).

² *25 Years of Progress on Internal Displacement*, INTERNAL DISPLACEMENT MONITORING CENTRE 4 (2023), https://api.internal-displacement.org/sites/default/files/publications/documents/IDMC_2023_25_years_of_progress_on_internal_displacement_report.pdf (“The last quarter of a century has brought many achievements, but significant gaps remain as the scale and scope of internal displacement continues to grow.”); *The United Nations Secretary-General's Action Agenda on Internal Displacement: Follow-Up to the Report of the UN Secretary-General's High-Level Panel on Internal Displacement 4* (June 2022) [UN Action Item on Internal Displacement], https://www.un.org/en/content/action-agenda-on-internal-displacement/assets/pdf/Action-Agenda-on-Internal-Displacement_EN.pdf https://www.un.org/en/content/action-agenda-on-internal-displacement/assets/pdf/Action-Agenda-on-Internal-Displacement_EN.pdf (“The number of internally displaced persons (IDPs) has doubled over the last 10 years, with

around the globe increasingly forced to leave their homes due to disasters, violence, conflicts and wars, development projects, and human rights violations.³ In 2022, there was a record 71.1 million internally displaced persons,⁴ or IDPs.⁵ Importantly, the population of those displaced internally face an escalating experience of “protracted displacement,” with “the duration of displacement is now coming to be measured in decades.”⁶ IDPs

women, children and marginalized groups often facing the greatest impacts.”). *See also* Roberta Cohen, *The Global Crisis of Internal Displacement*, BROOKINGS ON THE RECORD (Nov. 11, 1998), <https://www.brookings.edu/on-the-record/the-global-crisis-of-internal-displacement-2/> (naming South Africa’s apartheid regime and the atrocities by Hitler and Stalin as examples of causes for mass internal displacement during the twentieth century; stating that “[d]uring the Cold War, both the United States and Soviet Union contributed to and intensified many of the internal conflicts leading to mass displacement.”).

³ *Internal Displacement Remains One of World’s Biggest Human Rights Challenges—UN Expert*, UNITED NATIONS NEWS (Oct. 24, 2021), <https://news.un.org/en/story/2012/10/424352-internal-displacement-remains-one-worlds-biggest-human-rights-challenges-un>. *See also* David James Cantor, *Divergent dynamics: Disasters and Conflicts as “Drivers” of Internal Displacement*, 48 DISASTERS 1 (2024) (conducting a relative comparison of internal displacement caused by conflicts and disasters).

⁴ Gerald Imray, *War, Natural Disasters Left Record 71 Million People Internally Displaced in 2022, Report Says*, AP NEWS (May 11, 2023), <https://apnews.com/article/ukraine-sudan-internally-displaced-a14f4967ef1295277f9b41b3b170b39a>; *Number of Internally Displaced People Hits Record Due to War, Climate Change*, REUTERS (May 11, 2023), <https://www.reuters.com/world/number-internally-displaced-people-hits-record-due-war-climate-change-2023-05-11/>; David James Cantor & Agnes Woolley, *Internal Displacement and Responses at the Global Level: A Review of the Scholarship*, Internal Displacement Research Programme 4 (June 19, 2021), https://sas-space.sas.ac.uk/9356/1/IDRP%20WPS_No.1.pdf (“On average, though, the overall number of estimated new displacements has been much higher over the last five-year period (47 million for 2015-2019) than for the preceding one (32 million for 2010-2014), or the one before that (20.9 million for 2005-2009.”); The International Organization for Migration reported that there were 59.1 million people internally displaced in 2021, a record at the time. UNITED NATIONS NEWS, UNITED NATIONS NEWS, *More Than 59 Million Internally Displaced in 2021* (May 19, 2021), https://news.un.org/en/story/2022/05/1118602?gclid=Cj0KCQjwjbyYBhCdARIsAArC6LILiYnRczMEqMJZC6ll4s63ESOA7NwQ1QURGf6bUNFyfj7ESHngdKUaAvCeEALw_wcB; Children and youth accounting for more than 40 percent of this population. *Id.*

⁵ Some have criticized the terminology of “internally displaced person” and the use of “IDP.” *See* PHIL ORCHARD, PROTECTING THE INTERNALLY DISPLACED: RHETORIC AND REALITY 3 (2019) (“...[T]he term ‘internally displaced person’ reflects a bureaucratic and temporalizing form of response. We know who refugees are and the term has been in use for over 300 years. The term “IDP,” by contrast, reflects the ‘soulless shorthand of bureaucracy’ per UNHCR.”).

⁶ Milica V. Matijević et al., *The Framework on Durable Solutions for Internally Displaced Persons in the Scholarly Literature: A Preliminary Analysis*, 2022 REGIONAL L. REV. 177, 179-180 (2022) (“The rapid resolution of internal displacement situations rarely

comprise of some of the most vulnerable of those forced to leave their home,⁷ as many cannot afford to cross the border of their country of origin.⁸

There is no universal legally binding instrument specifically directed to internal displacement.⁹ Instead, several human rights instruments acknowledge the phenomenon, including populations who are most vulnerable to becoming IDPs.¹⁰ IDPs “are on the run at home,”¹¹ and the protection and aid afforded to them is predominantly at the whim of their home government, which may be the same entity that caused or contributed

takes place....The estimates are that, on average, conflict-induced displacement lasts almost twenty years.”).

⁷ REBECCA HAMLIN, *CROSSING: HOW WE LABEL AND REACT TO PEOPLE ON THE MOVE* 25 (2021) (asserting that IDPs may arguably be in greater need than border crossers whose refugee status is recognized by a receiving state). The Russian invasion of Ukraine, for example, has caused approximately seven million people displaced within Ukraine, more than half of whom are particularly vulnerable women. *How Many Ukrainian Refugees Are There and Where Have They Gone?*, BBC NEWS (July 4, 2022), <https://www.bbc.com/news/world-60555472>. See also Sam Mednick, *With Focus on Refugees, No End in Sight for Ukraine’s Internally Displaced* (June 30, 2022), <https://www.thenewhumanitarian.org/news-feature/2022/06/30/Ukraine-refugee-displacement-IDP-aid>; David James Cantor & Jacob Ochieng Apollo, *Internal Displacement, Internal Migration, and Refugee Flows: Connecting the Dots*, 39 REFUGEE SURVEY Q. 647, 650 (2020) (noting that that IDPs tend to have “lower-than-average education levels,” and that “children also tend to be over-represented in IDP populations.”).

⁸ Megan Passey, *Displaced and on the Move Again: Decision-Making Among IDPs who Migrate to Europe*, THE LONDON SCH. OF ECON. & POL. SCI. (Feb. 18, 2018), <https://blogs.lse.ac.uk/mec/2018/02/18/displaced-and-on-the-move-again-decision-making-among-idps-who-migrate-to-europe/> (discussing a study conducted by the IOM of Iraqi IDPs finding that migration was something they could not afford).

⁹ International Committee of the Red Cross, *Internally Displaced Persons and International Humanitarian Law*, (Mar. 2022), <https://www.icrc.org/en/document/internally-displaced-persons-and-international-humanitarian-law-factsheet>.

¹⁰ Global Protection Cluster Working Group, *Handbook for the Protection of Internally Displaced Persons* 1 (June 2010), <https://www.unhcr.org/en-us/protection/idps/4c2355229/handbook-protection-internally-displaced-persons.html?query=internally%20displaced>. Including the Universal Declaration of Human Rights and the International Convention on the Protection of all Migrant Workers.

¹¹ The UN High Commissioner for Refugees (UNHCR), *Internally Displaced People*, <https://www.unhcr.org/en-us/internally-displaced-people.html>. See also Ann Deslandes, *Homeless at Home: Inside Mexico’s Neglected Displacement Crisis*, THE NEW HUMANITARIAN (Aug. 25, 2020), <https://www.thenewhumanitarian.org/news-feature/2020/08/25/Mexico-internal-displacement-crisis-conflict>. See also Anne Koch, *On the Run in Their Own Country: Political and Institutional Challenges in the Context of Internal Displacement*, GERMAN INST. FOR INT’L AND SEC. AFFS. (May 2020), https://www.swp-berlin.org/publications/products/research_papers/2020RP05_InternalDisplacement.pdf.

to their displacement in the first instance.¹²

While conflicts and wars historically have been a significant trigger of internal displacement,¹³ environmental-related events have been the leading cause for the past two decades.¹⁴ In fact, the World Bank predicts that internal “climate migration” will displace approximately 216 million people by 2050.¹⁵ Significantly, the Inter-American Commission on Human Rights recently held its first hearing “on how climate catastrophe is driving forced migration across the Americas.”¹⁶

With a vastly disproportionate focus on cross-border migration, the global community has largely ignored the magnitude of developing normative frameworks to extend protections to IDPs.¹⁷ This disparity is despite the fact

¹² See Louise Otis & Jeremy Boulanger-Bonnely, *Shelters of Justice in Displaced Persons Settlements: A Proposal for Rohingya Camps*, 73 UNBLJ 42, 44 (2022); Sarah Miller, *Internal Displacement: An Agenda for Progress*, REFUGEES INT’L (Aug. 10, 2021), <https://www.refugeesinternational.org/reports-briefs/internal-displacement-an-agenda-for-progress/>.

¹³ Civil conflicts such as in Sri Lanka and Turkey were the cause of significant internal displacement, prompting the issue to garner international attention. See *Sri Lanka: A Hidden Displacement Crisis*, INTERNAL DISPLACEMENT MONITORING CENTRE (Oct. 31, 2012), <https://www.internal-displacement.org/sites/default/files/publications/documents/201210-ap-srilanka-overview-en.pdf>; Ana Maria Ibanez, *Forced Displacement in Colombia: Magnitude and Causes*, 4 THE ECONOMICS OF PEACE & SECURITY 48 (2009), <https://www.epsjournal.org.uk/index.php/EPSJ/article/view/89/83>.

¹⁴ See REUTERS, *supra* note 4 (“The bulk of displacements last year [2022]—32.6 million—was due to disasters including floods, droughts and landslides.”). See also Jayesh Rathod, *Legal Protections* here remains a debate among advocates and scholars alike as to the terminology that should be associated with displacement caused by climate change. See Rebecca Hamlin, *‘Migrants’? ‘Refugees’? Terminology Is Contested, Powerful, and Evolving*, MIGRATION POL’Y INST., <https://www.migrationpolicy.org/article/terminology-migrants-refugees-illegal-undocumented-evolving>; Jayesh Rathod, *Legal Protections for Environmental Migrants: Expanding Possibilities and Redefining Success*, AU CENTER FOR LATIN AMERICAN & LATINO STUDIES 5 (2020) (“Given the diffuse factors underlying environmental migration, and its inherently varied nature, stakeholders have had difficulty in building consensus around a singular term to describe persons affected by these forces.... This proliferation of terms reflects not only technical disagreements among experts, but also divergent views about who should ultimately receive legal protection....”).

¹⁵ UN Action Item on Internal Displacement, *supra* note 2, at 4.

¹⁶ Nina Lakhani, *People Displaced by Climate Crisis to Testify in First-of-Its-Kind Hearing in the US*, THE GUARDIAN (Feb. 29, 2024), <https://www.theguardian.com/environment/2024/feb/29/hearing-forced-migration-climate-change-us-central-america>.

¹⁷ See Jamie Draper, *Justice and Internal Displacement*, 71 POL SCI. 314, 314 (2023) (“Th[e] narrow focus on refugee movement has obscured the normative significance of internal displacement.”); see also Donald Kaberuka & Federica Mogherini, *Internal Displacement Remains an Invisible Crisis in Plain Sight*, REUTERS (Sept. 29, 2021),

that IDPs “...since the time adequate global records began to be constructed, have consistently outnumbered by a factor of two the world’s refugees.”¹⁸ A report to the United Nations High Commissioner for Refugees (UNHCR) in conjunction with the 70th anniversary of the Convention Relating to the Status of Refugees (the 1951 Refugee Convention) characterized IDPs as “the invisible majority of the world’s displaced people.”¹⁹ The report’s authors supported this depiction in part with statistics comparing media attention given to refugees and internal displacement: “Between 2015 and 2019, the New York Times published 5,204 articles containing the word ‘refugee,’ but only 136 featuring the terms ‘internally displaced.’”²⁰

IDPs are barely part of the discourse concerning international migration governance largely because they are displaced inside the border of their country of origin.²¹ The place of their displacement is pertinent insofar as IDPs theoretically have access to protection from their home country government. Internal displacement also triggers state sovereignty concerns, namely the potential infringement upon states’ rights vis-à-vis its citizens if the international community intervenes to provide protection to IDPs.

Another reason that IDPs are rendered invisible is in the context of categorizing migrants, a politically charged project, particularly in distinguishing between forced and voluntary migration,²² affecting what

<https://news.trust.org/item/20210929185141-39oxd>.

¹⁸ ORCHARD, *supra* note 5, at 1.

¹⁹ Bina Desai et al., *On This Side of the Border: The Global Challenge of Internal Displacement: Scale, Impacts and Solutions* 3 (June 2021), https://www.unhcr.org/people-forced-to-flee-book/wp-content/uploads/sites/137/2021/10/Bina-Desai-et-al_On-this-side-of-the-border-The-global-challenge-of-internal-displacement-scale-impacts-and-solutions.pdf.

²⁰ *Id.* The authors conclude: “For IDPs, this lack of attention translates into a lack of assistance.” *Id.*

²¹ See generally, ABIGAIL G.H. MANZELLA, *MIGRATING FICTIONS: GENDER, RACE, AND CITIZENSHIP IN U.S. INTERNAL DISPLACEMENTS* 5 (2018) (Providing an investigation of events of mass displacement in the twentieth century—the Great Migration, the Dust Bowl, Japanese-American internment, the Braceros Program, and Hurricane Katrina—to “fill in the gap left between international and national law by studying patterns of mass movements that are downplayed because a national boundary is not crossed.”). There is a growing number of migration scholars calling for the abolition of borders altogether. See, e.g., KANISHKA CHOWDHURY, *BORDER RULES: AN ABOLITIONIST REFUSAL* 223-246 (2023); GRACIE MAE BRADLEY & LUKE DE NORONHA, *AGAINST BORDERS: THE CASE FOR ABOLITION* (2022); Angelica Chazaro, *The End of Deportation*, 68 *UCLA L. Rev.* 1040 (2021); Kevin R. Johnson, *Open Borders?*, 51 *UCLA L. Rev.* 193 (2003).

²² Marta Bivand Erdal & Ceri Oeppen, *Forced to Leave? The Discursive and Analytical Significance of Describing Migration as Forced and Voluntary*, in *ASPIRATION, DESIRE AND THE DRIVERS OF MIGRATION* (Francis L. Collins, Jørgen Carling eds., 2019).

rights are accessible to which people on the move. Part I of this Article discusses how the labeling of migration informs international migration governance. The insistence of labeling migration, based on valuations of what instigates migration and how the movement is executed, contributes significantly to the erasure of the plight of IDPs. Part II hones in on the phenomenon of internal displacement by addressing definitional concerns, what this Article refers to as “the fiction of state protection,” and the multitude of ways populations become IDPs.

Part III provides a comprehensive overview of international and regional displacement instruments and in doing so demonstrates that the majority of climate and migration agreements barely address internal displacement, if at all. It also addresses agreements specifically on internal displacement created since the United Nations Guiding Principles on Internally Displaced Persons was presented to the UN Commission on Human Rights just over twenty-five years ago.²³

Part IV takes on the task of envisioning conceptual frameworks to extend international protection for the persistent and emergent problem of internal displacement. Here, the Article explores justifications for extending refugee protection to IDPs, including the reality that a significant number of IDPs ultimately migrate across their home countries’ borders,²⁴ rendering them to be what I call “eventual refugees.”²⁵ Part IV concludes with a critical examination of the concept of state sovereignty, and calls for a centering of coercion and precarity in the determination of which displaced populations warrant the attention of the international human rights community.

²³ Francis M. Deng, *Guiding Principles on Internal Displacement*, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998) [hereinafter the UNGP].

²⁴ Chloe Sydney, *Stuck in the Middle: Seeking Durable Solutions in Post-Peace Agreement Colombia*, INTERNAL DISPLACEMENT MONITORING CENTRE 5 (Mar. 2019) (“The relationship between internal displacement, cross-border movements and durable solutions is poorly understood, but it is clear that many refugees start their journeys as internally displaced people.”); Megan Passey, *Displaced and on the Move Again: Decision-Making Among IDPs who Migrate to Europe*, THE LONDON SCH. OF ECON. & POL. SCI. (Feb. 18, 2018), <https://blogs.lse.ac.uk/mec/2018/02/18/displaced-and-on-the-move-again-decision-making-among-idps-who-migrate-to-europe/>

²⁵ CHLOE SYDNEY, *The Displacement Continuum: The Relationship Between Internal Displacement and Cross-Border Movement in Seven Countries*, INTERNAL DISPLACEMENT MONITORING CENTRE 5 (2020), <https://www.internal-displacement.org/sites/default/files/publications/documents/202006-cross-border-report.pdf>. *But see* Cantor & Apollo, *supra* note 7, at 651-655 (describing how internal displacement and external refugee flows are distinct).

I. LABELING MIGRATION AND INTERNATIONAL MIGRATION GOVERNANCE

The legal, political, and rhetorical practice of labeling migration²⁶ is critical context for the absence of a normative framework to protect the growing phenomenon of internal displacement. Generally, the project of labeling people who have left their home is one of group and ranking: “[m]igration categories tend to create the assumption, first, that the people within them are all the same, and, second, that the categories themselves are distinct, and there is an implicit hierarchy in the categorization of migration.”²⁷ Race, class, and gender inherently influence determinations of which category migrants should be placed.²⁸ While migrants’ experience may be fluid—the voluntary nature of their movement and/or their vulnerability shifts over time—the category in which they are placed often remains fixed.²⁹ Decisions with respect to international migration governance nonetheless rely significantly on migrant categories.³⁰

A. Migrant Categorization

Migrant categorization constitutes the practice of conferring labels to human mobility based on manner of entry,³¹ or in the case of IDPs the lack thereof due to the absence of a border crossing.³² Categorizations also

²⁶ CHOWDHURY, *supra* note 21, at 2 (asserting that “the dialectic of border rules” involves the labeling of bordered subjects).

²⁷ Alison Crosby, *People on the Move: Challenging Migration on NGOs, Migrants and Sex Work Categorization*, 50 DEVELOPMENT 44, 45 (2007), <https://doi.org/10.1057/palgrave.development.1100424>.

²⁸ *Id.* Additionally, and relatedly, privilege also plays a factor: “The privileged who move enjoy access to the more fluid categories: ‘tourists,’ ‘travellers,’ ‘ex-pats.’” *Id.*

²⁹ Leila Hadj Abdou & Federica Zardo, *Migration Categories and the Politics of Labeling* 34, in RESEARCH HANDBOOK ON THE SOCIOLOGY OF MIGRATION (Giuseppe Sciortino & Peter J. Kivisto, eds.) (2024). *See also* MANZELLA, *supra* note 21, at 1 (“...[C]all[ing attention to the ways in which seemingly fixed terms, particularly “internal migrant,” “refugee,” and “citizen,” develop in relation to governmental practices and manipulations.”).

³⁰ Relatedly, scholars have taken issue with the “siloeed” approach with respect to forced migration. RAWAN ARAR & DAVID SCOTT FITZGERALD, *THE REFUGEE SYSTEM: A SOCIOLOGICAL APPROACH* 7-9 (2022) (noting six characteristics of the siloeed approach: “...the tendency to be ahistorical; the failure to explain—or purposefully neglect—the causes of displacement beyond generic gestures to ‘root causes;’ ...the use of an exclusively legal definition of refugees to define the scope conditions of research and governance; ...ignoring those who do not move, sometimes because they have been killed;” a focus on so-called ‘durable solutions’ of return...; and the study of a single isolated stage of displacement....”

³¹ Shanthi Robertson, *Status-Making: Rethinking Migrant Categorization*, 55 J. OF SOCIOLOGY 219, 220 (2019).

³² *See* Crosby, *supra* note 27, at 45 (describing migrant categorization as reliance upon

represent a determination of what caused the migration,³³ with the two broad classifications of “voluntary” and “involuntary” having significant implications in the form of “subsequent rights, entitlements, and vulnerabilities.”³⁴ Inherent in the exercise of migrant categorization are valuations with respect to who is deserving of protection.³⁵

1. Definitions and Assumptions

The categorizations of voluntary and involuntary migration leads to the creation of “the migrant/refugee binary”³⁶—namely, migrants being deemed voluntarily seeking economic or other opportunities, and refugees as being involuntarily on the move fleeing violence, persecution, and/or environmental events. The migrant/refugee binary has been reinforced by

where people on the move end up).

³³ *Id.*

³⁴ See Robertson, *supra* note 31, at 220; see also Valeria Ottonelli & Tiziana Torresi, *Voluntariness and Migration: A Restatement*, 37 ETHICS & INT’L AFFAIRS 406, 406 (2023) (“...[S]erious normative implications for the migrants’ rights and the receiving states’ obligations toward them are thought to follow from the determination of the voluntariness of migration.”); Susan Martin, *Forced Migration, the Refugee Regime, and the Responsibility to Protect*, 2 GLOBAL RESPONSIBILITY TO PROTECT 38, 42 (2010) (“Policy makers within and outside of the United Nations have used a classification system that places forced migrants into specific boxes, with the assumption that standards, mandates and programs will follow the designated classification.”).

³⁵ See Lamis Abdelaaty & Rebecca Hamlin, *The Politics of the Migrant/Refugee Binary*, 20 J. OF IMMIGRANT & REFUGEE STUDS. 233, 233 (2022) (“While law is central to the construction and perpetuation of these categorical distinctions, these terms also have colloquial meanings and usages that differ in interesting ways from their strict legal definitions, and which are closely linked to concepts of legitimacy and deservingness.”). See also Sophia DenUyl, *The Particular Harms of the “Good Immigrant” versus “Bad Immigrant” Construction on Black Immigrants in the United States*, 36 GEO. IMMIG. L.J. 755 (2022) (noting that the construction of “good” versus “bad” immigrants in U.S. immigration discourse significantly impacts policy and public perception, particularly affecting black immigrants and exacerbating racial disparities within the immigration system.); Nora Ratzmann & Nina Sahraoui, *Conceptualising the Role of Deservingness in Migrants’ Access to Social Services*, 20 SOCIAL POL’Y & SOC’Y 440 (2021) (discussing how the concept of “deservingness” reflects a broader discourse on entitlement and belonging within host societies); Elizabeth Keyes, *Beyond Saints and Sinners: Discretion and the Need for New Narratives in the U.S. Immigration System*, 26 GEO. IMMIGR. L.J. 207 (2012).

³⁶ HAMLIN, *supra* note 7, at 14. See also Heaven Crawley & Dimitris Skleparis, *Refugees, Migrants, Neither, Both: Categorical Fetishism and the Politics of Bounding in Europe’s ‘Migration Crisis,’* 44 J. OF ETHNIC AND MIGRATION STUDS. 48, 49 (2018), <https://doi.org/10.1080/1369183X.2017.1348224>. (“The use of the categories ‘migrant’ and ‘refugee’ to differentiate between the experiences of those on the move and the legitimacy or otherwise of their claims to international protection is reflected in the opening quotations, both of which refer to ‘real refugees’ despite their sources being located at opposite ends of the political spectrum.”).

the UNHCR's position that "refugees are not migrants" and thus its mandate is not to "be a migration organization."³⁷ The agency's position, however, belies the category of "migrants" as a general umbrella term to refer to anyone living outside their "place of usual residence."³⁸

The insistence of the migrant/refugee binary has been criticized as ahistorical, as critical refugee studies (CRS) scholars have argued that the migrant/refugee binary obscures power imbalances originating from colonialism and neocolonialism.³⁹ Specifically, the CRS perspective contends that the migrant/refugee binary focuses the attention on internal explanations for why people leave countries in the Global South, including war, corruption, and poverty, rather than external forces such as post-colonialism, globalism, and the failures of neoliberalism.⁴⁰ CRS scholars also have argued that the migrant/refugee binary is an antiquated framework "in a world that seems to have abandoned the notion of protecting vulnerable border crossers."⁴¹ Nonetheless, the crossing of an international border, however, is precisely the definitional distinction between refugees/asylum seekers and IDPs.⁴²

³⁷ *Refugee Protection and International Migration*, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, <https://www.unhcr.org/4a24ef0ca2.pdf>. See also HAMLIN, *supra* note 7, at 93 (arguing that the UNCHR is heavily invested in maintaining the binary to reassure the people of the Global North that public sympathy towards refugees is not synonymous with open borders).

³⁸ The United Nations International Organization of Migrants (IOM), *Who is a Migrant?*, <https://www.iom.int/who-migrant-0>. See also Adam Taylor, *Is it Time to Ditch the Word "Migrant?"*, THE WASH. POST (Aug. 24, 2015), <https://www.washingtonpost.com/news/worldviews/wp/2015/08/24/is-it-time-to-ditch-the-word-migrant/> (presenting the argument that migrants as an umbrella term "strips suffering people of voice" and that it should be substituted with using "refugee").

³⁹ HAMLIN, *supra* note 7, at 14.

⁴⁰ *Id.* Hamlin also argues that academic accounts of the history of the concept of refugees ignore the role of colonialism and thereby portray early international law as far more humanitarian and cosmopolitan than is actually accurate. *Id.* at 48. See also Lamis Abdelaaty & Rebecca Hamlin, *The Politics of the Migrant/Refugee Binary*, 20 J. OF IMMIGR. & REFUGEE STUDS. 233 (2022).

⁴¹ HAMLIN, *supra* note 7, at 33. See also LAMIS ELMY ABDELAATY, DISCRIMINATION AND DELEGATION: EXPLAINING STATE RESPONSES TO REFUGEES 6 (2021) ("A compelling argument can be made that voluntary and forced migration are not dichotomous, but rather lie on a continuum. In practice, of course, most forced and voluntary migrants have mixed motives for crossing borders. Moreover, elements of coercion and volition are often implicated in both forced and voluntary migration.").

⁴² See ABDELAATY, *supra* note 41, at 6 ("Definitions distinguish refugees from internally displaced persons (IDPs) and voluntary migrants. Refugee status requires that an international border be crossed, thereby excluding individuals who flee their homes but remain within the territory of their country. Whereas the movement of refugees and asylum-seekers is conceptualized as flight from persecution or conflict, voluntary migration is

2. Why Labeling Matters

The labels attributed to migration directly affect what rights are available to which displaced populations. The landmark international human rights instrument drafted in the aftermath of World War II, the 1951 Convention Relating to the Status of Refugees (“the Refugee Convention”), sets forth key definitions, the rights of refugees, and the obligations of states.⁴³ Critical among these is the definition of “refugee” itself, identified as a person seeking protection outside their country of origin, given a well-founded fear of persecution on account of “race, religion, nationality,” or “membership of a particular social group or political opinion.”⁴⁴

The 1967 Protocol Relating to the Status of Refugees updated the 1951 Refugee Convention, removing some temporal and geographic restrictions that effectively extended the Convention’s protection beyond Eastern European refugees displaced during the Second World War.⁴⁵ Subsequently, “[i]n the decades that have followed, the signatories to these two instruments have carefully distinguished ‘refugee’ flows from other types of cross-border mobility, characterizing the latter as economic or voluntary migration, and not deserving of the heightened protection offered to refugees.”⁴⁶ As such, the notion of a migrant/refugee binary is premised on the fact that there is a legally definition of a “refugee” as a distinct and exceptional category of border crossers under international law, as well as the domestic law of receiving states.⁴⁷ This binary creates a conceptual dichotomy of border

assumed to arise from economic motives.”).

⁴³ See Anita Sinha, *Transnational Migration Deterrence: A Framework for Accountability*, 63 BOSTON COLLEGE L. REV. 1296 (2022).

⁴⁴ *Id.*

⁴⁵ *Id.* See also DAVID SCOTT FITZGERALD, REFUGEE BEYOND REACH: HOW RICH DEMOCRACIES REPEL ASYLUM SEEKERS 44 (2019) (“An underappreciated explanation for the increase in remote control of asylum seekers is that it grew out of the 1967 Protocol that stripped away the 1951 Convention’s geographic and temporal limitations on who is considered a refugee.”).

⁴⁶ Rathod, *supra* note 14, at 8; see also Shanthi Robertson, *Status-Making: Rethinking Migrant Categorization*, 55 J. OF SOCIOLOGY 219, 220 (2019) (“In the migration studies literature, the idea of ‘migrant status’ is usually used primarily to distinguish between differing legal statuses, most often to make distinctions between forced and voluntary migrants or between documented and undocumented migrants.”).

⁴⁷ HAMLIN, *supra* note 7, at 9. Some have argued that the definition of refugees is itself outdated and is in need of change. See, e.g., Bill Frelick, *It Is Time to Change the Definition of Refugee*, HUM. RTS. WATCH (Jan. 28, 2020). <https://www.hrw.org/news/2020/01/28/it-time-change-definition-refugee>; Eunice Collins, *The Case for Reforming the Definition of ‘Refugee’ in the 1951 UN Convention Relating to the Status of Refugees*, 6 BRISTOL L. REV. 92, 107 (2019); Andrew I. Schoenholtz, *The New Refugees and the Old Treaty: Persecutors*

crossers that ultimately determines “who should be let in.”⁴⁸

The project of labeling migration feeds into rhetorical choices that perpetuate restrictive migration policies.⁴⁹ Namely, assertions that waves of new arrivals are “just migrants” or not “real refugees” serve to justify harsher deterrence measures to prevent people from claiming protective status and emphasizes the manner in which refugees are the exception to the rule of state sovereign control of borders.⁵⁰ Rendering legal distinctions based on imposed assumptions of why people leave their homes also leads to dehumanizing and dangerous language, including describing migration as arriving in “swarms,”⁵¹ bombarding receiving states via an “invasion,”⁵² and depicting the plight of people on the move as coming in “caravans.”⁵³

Distinguishing migrants from refugees, and the rhetoric that comes with it, justifies “the dubious ethics of border control.”⁵⁴ Specifically, in recent decades powerful actors of the Global North, predominantly destination states for migrants, have imposed severe restrictions on the mobility of border crossers.⁵⁵ Some scholars have characterized modern border control practices premised on such categorization as effectively abandoning the refugee protection system.⁵⁶ At the very least, the reliance on international

and *Persecuted in the Twenty-First Century*, 16 CHI. J. INT’L L. 81, 83 (2015).

⁴⁸ HAMLIN, *supra* note 7, at 9.

⁴⁹ *Id.* at 10 (The binary logic that that a refugee rather than a migrant is more deserving of an international response incentivizes migrants to make riskier journeys to obtain refugee status while also incentivizing powerful states to invest in “preventative measures” to make their travels more dangerous.).

⁵⁰ *Id.* at 11.

⁵¹ BRADLEY & DE NORONHA, *supra* note 21, at 2 (“Borders are always being breached, it seems. Hence the watery metaphors—the ‘deluge,’ ‘waves,’ or ‘floods’ of immigrants—surpassed only by the animalising language of ‘swarms.’”). See also Victoria Richards, “Invasion, Swarm:” *Words Matter—When They’re Being Used Like This, They’re Being Used as a Weapon*, INDEPENDENT (Nov. 1, 2022), <https://www.independent.co.uk/voices/suella-braverman-invasion-migrants-firebombing-b2214905.html>.

⁵² Joel Rose, *Talk of “Invasion” Moves from the Fringe to the Mainstream of GOP Immigration Message*, NAT’L PUBLIC RADIO (Aug. 3, 2022), <https://www.npr.org/2022/08/03/1115175247/talk-of-invasion-moves-from-the-fringe-to-the-mainstream-of-gop-immigration-mess>; Raul Reyes, *Why Texas Cannot Declare an “Invasion” at the Border*, THE HILL (May 3, 2022), <https://thehill.com/opinion/immigration/3477083-why-texas-cannot-declare-an-invasion-at-the-border/>.

⁵³ Rev. Gordon C. Stewart, *It’s Not a Caravan*, MINNPOST (Nov. 8, 2018), <https://www.minnpost.com/community-voices/2018/11/its-not-a-caravan/>.

⁵⁴ HAMLIN, *supra* note 7, at 196-97.

⁵⁵ *Id.* at 197.

⁵⁶ *Id.* at 195. See also Thomas Gammeltoft-Hansen, *International Cooperation on*

migration governance decisions on labelling migration plays significantly into why the international human rights community's avoidance of the persistent and growing problem of internal displacement.

II. INTERNALLY DISPLACED PERSONS

While “likely much older if unheralded,” the phenomenon of internal displacement began receiving attention by the international community in the aftermath of the Second World War.⁵⁷ In recent years, the IDP crisis has escalated in scope and scale,⁵⁸ with displacement challenges continuing to be multifaceted in nature.⁵⁹

Despite the visibility of IDPs after World War II, the population was not included in the 1951 Refugee Convention, rendering their plight virtually ignored for four decades.⁶⁰ The international human rights community began

Migration Control: Towards a Research Agenda for Refugee Law, 20 EUROPEAN J. OF MIGRATION AND LAW 373 (2018) (“...[There is] increasingly disproportionate global distribution of refugees, leaving developing regions to shoulder 85% of the refugee population.”); Matthew J. Gibney, *Refugees and Justice Between States*, 14 EUR. J. POL. THEORY 448, 450 (2015) (noting that developing countries receive over 80% of refugees globally, a figure that “is 10% higher than it was a decade ago”); Tally Kritzman-Amir & Yonatan Berman, *Responsibility Sharing and the Rights of Refugees: The Case of Israel*, 41 GEO. WASH. INT’L L. REV. 619, 624 (2010) (stating that the Global South and “the least politically and economically capable countries” have continued to disproportionately bear the burden of hosting migrants as the Global North increasingly restricts immigration).

⁵⁷ ORCHARD, *supra* note 5 at 1, 68-72.

⁵⁸ See *supra* notes 3-4 and accompanying text.

⁵⁹ Cantor & Woolley, *supra* note 4. The conflict in Sudan has led to 10.7 million people uprooted from their homes, including 9 million displaced internally since the conflict erupted in April 2023. Mohamed Osman, *Sudan Conflict Fuels World’s Largest Internal Displacement*, HUMAN RIGHTS WATCH (Jan. 31, 2024), https://www.hrw.org/news/2024/01/31/sudan-conflict-fuels-worlds-largest-internal-displacement?gad_source=1&gclid=Cj0KCQiA5rGuBhCnARIsAN11vgRChgk__3c82kEc5FtF613tjPuxobpU6kcmSz-5Iei4IBgd3Jk32cMaAkCxEALw_wcB. Sudan now surpasses Syria, with its 7.2 million IDPs, marking a grave milestone in global displacement statistics. *Id.* See also UNRWA, *Situation Report #79 on the Situation in the Gaza Strip and the West Bank, Including East Jerusalem* (Feb. 19, 2024), <https://www.unrwa.org/resources/reports/unrwa-situation-report-79-situation-gaza-strip-and-west-bank-including-east-jerusalem> (estimating that it is currently housing 1,700,000 IDPs).

⁶⁰ See *infra* note 96 and accompanying text.

to identify the need for a framework to protect IDPs in the 1990s, when the number of people uprooted within the borders of their own countries began proliferating.⁶¹ Since IDPs do not trigger international humanitarian assistance, they are dependent upon their home state governments, which may be unable to provide them protection or, even worse, are directly or indirectly complicit in causing their displacement in the first instance.⁶² The majority of IDPs are from particularly vulnerable populations, including women and girls.⁶³ The attention to the plight of IDPs in the 1990s resulted in guiding principles ratified by the United Nations that, over twenty-five

⁶¹ *Guiding Principles on Internal Displacement*, INTERNAL DISPLACEMENT MONITORING CENTRE, <https://www.internal-displacement.org/internal-displacement/guiding-principles-on-internal-displacement> (“The first global IDP estimate compiled in 1982 comprised only 1.2 million people in 11 countries. By 1995, there were an estimated 20 to 25 million IDPs in more than 40 countries, almost twice the number of refugees.”). See also Francis M. Deng & Romola Adeola, *The Normative Influence of the UN Guiding Principles on the Kampala Convention in the Protection of Internally Displaced Persons in Africa*, 65 J. OF AFRICAN LAW 59, 61-62 (2021) (“While the process that led to the formation of the UNGP emerged in the 1990s, realization of the gap in global governance on internal displacement began in the 1980s with an International Conference in Oslo on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa.”); Cristina Churruca Muguruza & Patricia Garcia Amado, *Internally Displaced Persons: A Vulnerable Group in Need of Protection*, in THE RIGHTS OF MINORITIES: CULTURAL GROUPS, MIGRANTS, DISPLACED PERSONS AND SEXUAL IDENTITY (J. ALBERTO DEL REAL ALCALA, ED.) 147 (2017) (“...[I]t was in the 1990s when the increasing incidences of gross human rights violations and resulting massive human displacement, caused mainly by internal armed conflicts, linked international and national security with the protection of internally displaced persons.”).

⁶² The United Nations High Commissioner for Refugees, *Internally Displaced Persons*, REF WORLD (Mar. 10, 2023), <https://www.refworld.org/idps.html>.

⁶³ A report by the United Nations published the following breakdown based on internal displacement statistics from 2020, when 55 people were estimated to be living in internal displacement: “Women and girls make up over half of the world’s IDPs, 5 million IDPs are living with disabilities, and an estimated 2.6 million are elderly. Over 30.5 million are children and youth.” UN Secretary-General’s High-Level Panel on Internal Displacement, *Shining a Light on Internal Displacement: A Vision for the Future* (Sept. 2021), <https://internaldisplacement-panel.org/wp-content/uploads/2021/09/HLP-report-WEB.pdf>. See also Marshaley J. Baquiano & Philip Ian P. Padilla, *Unpacking Internal Displacement in Philippine Media Using Social Representation Theory*, J. OF ETHNIC & MIGRATION STUDS. 1, 3 (2023) (“Forced displacement also bolsters pre-existing discrimination, marginalisation, and socioeconomic disadvantage against particular groups. For example, compared to men, displaced women find it more difficult to secure a decent livelihood, which consequently affects their potential to find safety as well as access healthcare and education. They are less able to participate in decision-making, even on matters affecting them, and thus, are also less able to express their concerns and make their voices heard.”); Asia-Pacific Gender in Humanitarian Action Working Group, *Good Practices Brochure: Internally Displaced People with Intersecting Vulnerabilities* (2022) <https://reliefweb.int/report/afghanistan/good-practices-brochure-internally-displaced-people-intersecting-vulnerabilities>.

years later, has moved the issue of internal displacement from the discretion of states to “becoming a global collective issue.”⁶⁴

A. *Definitions and Definitional Concerns*

The United Nations defines Internally Displaced Persons as individuals and groups:

who have been forced or obligated 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.⁶⁵

This definition was introduced by the United Nations Guiding Principles on Internal Displacement (UNGP), submitted to the United Nations Commission on Human Rights in 1998⁶⁶ and unanimously recognized by the U.N. General Assembly in 2005 as an “important international framework.”⁶⁷ In addition to defining internal displacement, the UNGP outlines guidelines to protect and assist IDPs, but it does not create or confer a legal status.⁶⁸

While non-binding, the UNGP has gained acceptance as a reflection of binding international humanitarian, international human rights, and refugee law.⁶⁹ It also has informed the enactment of state laws on internal

⁶⁴ Deng & Adeola, *supra* note 61, at 61.

⁶⁵ The UNGP, *supra* note 23.

⁶⁶ *Id.*

⁶⁷ G.A. Res. 60/1, ¶ 132 (Sept. 16, 2005).

⁶⁸ Global Protection Cluster Working Group, *Handbook for the Protection of Internally Displaced Persons*, 1, 32 (June 2010), <https://www.unhcr.org/en-us/protection/idps/4c2355229/handbook-protection-internally-displaced-persons.html?query=internally%20displaced>; Expert Group on Refugee and Internally Displaced Persons Statistics (EGRIS), *International Recommendations on Internally Displaced Persons Statistics (IRIS)*, 3, 17 (Mar. 2020), <https://www.unhcr.org/en-us/statistics/unhcrstats/600188974/international-recommendations-internally-displaced-persons-statistics-iris.html?query=internally%20displaced>.

⁶⁹ Deng & Adeola, *supra* note 61; *see also* Expert Group on Refugee and Internally Displaced Persons Statistics (EGRIS), *International Recommendations on Internally Displaced Persons Statistics (IRIS)*, 3, 17 (Mar. 2020), <https://www.unhcr.org/en-us/statistics/unhcrstats/600188974/international-recommendations-internally-displaced-persons-statistics-iris.html?query=internally%20displaced>; Roberta Cohen: *The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting*, 10 GLOBAL GOVERNANCE 459, 459 (2004) (“Although not a legally binding instrument like a treaty, the Guiding Principles quickly gained substantial international acceptance and authority. From the time they were introduced into the commission, governments,

displacement. For example, Kenya and El Salvador are among the states that have modeled its domestic laws protecting IDPs by using the UNGP,⁷⁰ demonstrating how states may promulgate IDP policies by building on the guiding principles while “develop[ing policies] at their own pace in response to localized concerns and events.”⁷¹ Generally, the UNGP cast the government of IDPs’ country of origin as responsible for IDPs, but it also calls for “international intervention in case of manifest failure of a state to protect its population.”⁷²

Early efforts to implement the UNGP were met with the difficulty of addressing crises as they unfolded, which resulted in the creation of a cluster approach to strengthen humanitarian response to displacement, by increasing collaboration across international organizations and the respective leadership at the national level.⁷³ In doing so, national governments were identified as key figures in ensuring the principles were effectively met.⁷⁴ Recommendations that derived from these efforts included: “preventing or minimizing displacement, for example, by creating disaster mitigation and preparedness plans and training security forces; responding to needs in the immediate displacement phase; and establishing conditions necessary for the achievement of durable solutions” in consultation with IDPs.⁷⁵

In addition to the involuntary nature of the plight of IDPs, the other key element of the definition is, of course, the fact that they remain within the border of their country of origin. Described by political scientists as “non-alienage,”⁷⁶ pinning the definition of IDPs on which side of the border they

international organizations, regional bodies, and nongovernmental organizations (NGOs) began to cite and apply them.”)

⁷⁰ Deng & Adeola, *supra* note 61, at 63. In Colombia, “the Constitutional Court drew heavily on the UNGP in articulating what standards are required in the protection of IDPs within the national context.” *Id.*

⁷¹ Angela Williams, *Turning the Tide: Recognizing Climate Change Refugees in International Law*, 30 L. & POL’Y 502, 511 (2008).

⁷² Deng & Adeola, *supra* note 61, at 66.

⁷³ Inter-Agency Standing Committee (IASC), *Guidance note on using the cluster approach to strengthen humanitarian response*, (Nov. 24, 2006) <https://interagencystandingcommittee.org/system/files/2021-03/Guidance%20Note%20on%20Using%20the%20Cluster%20Approach%20to%20Strengthen%20Humanitarian%20Response.pdf>.

⁷⁴ Brookings Institution—University of Bern Project on Internal Displacement, *Protecting Internally*

Displaced Persons: A Manual for Law and Policymakers, 1 (Oct. 2008). <https://www.refworld.org/pdfid/4900944a2.pdf>.

⁷⁵ *Id.* [Brookings Institution] at 39.

⁷⁶ Draper, *supra* note 17, at 315 (“Those who are inside their state are in a condition of non-alienage, whereas those who are outside the territory of their state are in a condition of

are displaced is, as discussed in *infra* Part IV.B., a reflection of the primacy of state sovereignty in traditional international legal thinking. The definition also presupposes that IDPs are able to access protection and aid from their own state. However, “[i]n some cases..., particularly in conflict situations, states do appear to have lost their standing to act as the guarantor of their members’ human rights.”⁷⁷

Prior to the ratification of the UNGP, the phenomenon of internal displacement was effectively unaccounted for.⁷⁸ Still, beyond the elements of the legal definition of IDPs, what counts as internal displacement also may be a matter of practice. For example, in the case of certain types of environmentally-induced displacement,⁷⁹ people who are forced to leave their homes and resettle a short distance away are not even counted as displaced:

[There was a] World Bank study that looked into [the] number of internally displaced people in the context of climate change. They didn't include people who were displaced within 14 kilometers or something, whilst actually at least in the studies I've done, those seem to be amongst the most vulnerable groups, as they don't have a lot of means to move further away. So they have sort of no other choice than to stay somewhat closer to the area that's being affected. But they are not included in the numbers because we always want to talk about migration or longer flows.⁸⁰

alienage.”).

⁷⁷ *Id.* at 317. For more on the fiction of state protection, see *infra* Part II.B.

⁷⁸ Tara Pozer & Laura Hammond, *Invisible Displacement Editorial Introduction*, 21 J. REFUGEE STUD. 417 (2008).

⁷⁹ Professor Michael Becker introduced the concept of environmentally-induced displacement with the moniker “environmental refugees.” See Michael A. Becker, *Environmental Refugees: The Forgotten Migrants*, 6 N.Y.U. ENVTL. L. J. 480, 503 (1998) (providing a comprehensive definition of environmental refugees to include individuals who are forced to leave their homes primarily because of severe environmental factors such as drought, deforestation, soil erosion, resource deficits, decline of urban habitat, climate change, and natural disasters). Since then, scholars have created various other terms; see Rathod, *supra* note 14, at 5 (noting the use of “environmental migrant,” “environmental emergency migrant,” “environmentally motivated migrant,” “environmentally forced migrant,” “climate migrant,” “eco migrant,” and “climate refugee”).

⁸⁰ Interview of Ingrid Boas, Cornell University’s Migrations Initiative, *Migrations: A World on the Move: Climate Change* (Mar. 1, 2021), <https://migrations.cornell.edu/transcript/episode-2-climate-change>. It should be noted that data on displacement generally has been documented as inadequate. See Bjorn Gillsater, *Forced Displacement is at a Record High—and so is the Data We Have on It*, JT. DATA CTR. ON FORCED DISPLACEMENT (Aug. 7, 2023), <https://www.jointdatacenter.org/forced-displacement-is-at-a-record-high-and-so-is-the-data-we-have-on-it/>.

The World Bank's practice of tracking IDPs is illustrative of an arbitrarily limiting definition of displacement.⁸¹ Generally, populations facing internal displacement who are not counted have been described as "invisible IDPs,"⁸² and the reasons for their indiscernibility range from not being able to be identified due to assimilation,⁸³ to governments deliberating avoiding the moniker.⁸⁴

Another definitional issue impacting the identification and tracking of IDPs involves uncertainty as to when internal displacement ceases to exist,⁸⁵ which has been described as the fulfilment of a "durable solution" to displacement.⁸⁶ Some governments prioritize return as a durable solution to conflict-induced displacement; however, returnee IDPs may continue to experience vulnerabilities and struggle to achieve a durable solution even after return.⁸⁷ IDPs may be returned to their area of residence, but not their

⁸¹ Viviane Clement et al., *Groundswell Part 2: Acting on Internal Climate Migration* (2021), <https://openknowledge.worldbank.org/handle/10986/36248>.

⁸² *Under the Radar: Internally Displaced Persons in Non-Camp Settings*, BROOKINGS LSE PROJECT ON INTERNAL DISPLACEMENT (Oct. 2013), <https://www.brookings.edu/research/under-the-radar-internally-displaced-persons-in-non-camp-settings/>; Ellie Kemp, *Africa's Invisible Internal Displacement*, THOMAS REUTERS FOUNDATION NEWS (Dec. 9, 2016), <https://news.trust.org/item/20161209103739-j9mkr/> (referring to "invisible internal displacement" in terms of inadequate data collection for IDPs located in Africa); Frederick Muisa Wakhisi, *Surviving Displacement: The Case of "Invisible Internally Displaced Persons" Kisumu County 1991-2011* at iv (Oct. 15, 2015) (M.A. Thesis, University of Nairobi), http://erepository.uonbi.ac.ke/bitstream/handle/11295/94576/Muisa_Surviving%20displacement.pdf;sequence=3 (Referring to "invisible IDPs" as "displaced persons absorbed by their original communities" who "face similar challenges like IDPs in camps").

⁸³ See Zaldy C. Collado, *Determinants of Return Intentions Among Internally Displaced Persons (IDPs) of Marawi City, Philippines*, 30 DEV. IN PRACTICE 113, 144-15 (2020) (referring to "home based" IDPs to describe displaced persons who have assimilated, or are presumed to have assimilated, into the general population of a host location).

⁸⁴ See Henry Wilkins, *Burkina Faso's Thousands of Invisible IDPs Cut Off from Support*, VOA (June 20, 2021), https://www.voanews.com/a/episode_burkina-faso-thousands-invisible-idps-cut-support-4722636/6117292.html (describing IDPs as made invisible by efforts of the government of Burkina Faso to limit international awareness of IDP populations and barring journalists from entering IDP settlements).

⁸⁵ Erin Mooney, *The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern*, 24 REFUGEE SURVEY Q. 9, 9 (2005) (noting that there is "...no consensus on 'when internal displacement ends,' that is, when an IDP should no longer be considered as such.").

⁸⁶ Dereje Regasas & Ine Lietaert, *In Search of the Invisible People: Revisiting the Concept of "Internally Displaced Persons" in Light of an Ethiopian Case Study*, 41 REFUGEE SURVEY Q. 320, 330 (2022).

⁸⁷ *Id.*

original home, rendering them what has been called “in-between IDPs.”⁸⁸ Invisible or in-between IDPs include populations living outside of camps, such as urban IDPs who often are ignored or misconceived as being locally integrated.⁸⁹

The concept of fulfilling a durable solution for internal displacement also relates to forced resettlement as a tool for particular development policies or political strategies.⁹⁰ For example, forced relocation justified as an emergency measure in the context of a famine has created a state of “permanent impermanence” for displaced populations who are involuntarily resettled and denied a durable solution—basically, they lack the choice to return but also cannot be fully integrated into the resettlement sites.⁹¹ In the context of drought-induced displacement, this phenomenon has been characterized as “compulsory voluntarism,” referring to seemingly voluntary migrants who appear to have accepted a planned but forced relocation.⁹²

B. *The Fiction of State Protection*

As discussed *supra*, the decisive distinction between IDPs and migrants is that the former are inside the border of their country of origin.⁹³ One of the premises conferring import to this distinction is the presumption that IDPs have access to protection from their country of origin’s government.⁹⁴ States’ duty to provide this function to its citizens is a central part of having a functioning government—indeed, the “protective role is at the heart of an implicit social contract between state and society.”⁹⁵

⁸⁸ *Id.*

⁸⁹ *Id.* at 331. See also *Displaced in Cities: Experiencing and Responding to Urban Internal Displacement Outside Camps*, INTERNATIONAL COMMITTEE OF THE RED CROSS (June 2020), <https://www.icrc.org/en/publication/4344-displaced-cities-experiencing-and-responding-urban-internal-displacement-outside>; Alexandra Fielden, *Ignored Displaced Persons: The Plight of IDPs in Urban Areas*, THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (2008), <https://www.unhcr.org/487b4c6c2.pdf>.

⁹⁰ Regasa & Lietaert, *supra* note 86, at 337.

⁹¹ *Id.* at 337-340.

⁹² *Id.* at 329. See also Laura Hammond, *Strategies of Invisibilization: How Ethiopia’s Resettlement Programme Hides the Poorest of the Poor*, 21 J. REFUGEE STUD. 517 (2008) (examining the process by which the poorest persons in Ethiopia’s food insecure regions were “made invisible” through forced recruitment into a food program to resettle food insecure populations).

⁹³ See *supra* note 76 and accompanying text.

⁹⁴ See JAMES C. HATHAWAY & MICHELLE FOSTER, *THE LAW OF REFUGEE STATUS* 17 (2014) (noting that refugee law is principally concerned with providing a remedy to a fundamental breakdown in the relationship between an individual and their state).

⁹⁵ CHRISTOPHER K. ANSELL, *THE PROTECTIVE STATE* 1 (2019) (noting that “[e]xtensive scholarship exists about the welfare state, the regulatory state, the developmental state, the

This presumption of state protection is a big part of the story of why the 1951 Refugee Convention ultimately did not include populations who are internally displaced. In voicing her opposition to the inclusion of IDPs into the Convention, then-former First Lady Eleanor Roosevelt, who was a member of the U.S. delegation to the United Nations General Assembly when the Convention was under consideration, stated that cases of internal displacement were

separate problems of a different character, in which no question of protraction of the persons concerned was involved...but those problems should not be confused with the problem before the General Assembly, namely, the provision of protection for those outside their own countries, who lacked the protection of a Government and who required asylum and status.⁹⁶

The reliance on the assumption of state protection for IDPs, however, may be false, given that there are a myriad of reasons as to why IDPs' home government may be unable or unwilling to protect them.⁹⁷ One is that the government is responsible for causing the displacement in the first instance, as in the case of Myanmar where there are almost two million IDPs.⁹⁸ Another reason involves reputational concerns, namely governments that do not want the attention of the international community in what it perceives to be a domestic issue.⁹⁹

security state, and even the green state, but the protective state is scarcely recognized as a distinctive idea.”). *Id.*

⁹⁶ ORCHARD, *supra* note 5, at 63. Prior to the Refugee Convention, refugees and IDPs were termed used interchangeably. *Id.* at 81 (“The debate during the drafting of the Refugee Convention were critical to framing how refugees were understood then and into the present and in excluding IDPs from similar consideration. Practices prior to those debates were not fixed. Both terms “refugee” and “displaced person” were used fluidly in different arrangements, conventions, and international organizational practice.”). See also Bríd Ní Ghráinne, *Time for a Convention on Internal Displacement? The History of the Internal Displacement Protection Regime*, Refugee History (July 21, 2022), <https://refugeehistory.org/blog/2022/7/21/time-for-a-convention-on-internal-displacement-the-history-of-the-internal-displacement-protection-regime> (noting that France also opposed the inclusion of IDPs on the grounds of state sovereignty).

⁹⁷ The language of a state actor “unable or unwilling” to protect is part of U.S. asylum law. 8 U.S.C. § 1158.

⁹⁸ UNHCR Regional Bureau for Asia and Pacific (RBAP), *Myanmar Emergency Update* (Oct. 2, 2023), <https://reliefweb.int/report/myanmar/myanmar-emergency-update-2-october-2023>.

⁹⁹ Anne Koch, *On the Run in Their Own Country: Political and Institutional Challenges in the Context of Internal Displacement*, GERMAN INST. FOR INT’L AND SECURITY AFFS. 7 (May 2020), <https://www.swp->

Governments may also resist labeling particular populations as IDPs because of discrimination against certain citizens. An example is in Ethiopia, where a latent consequence of the government's regime of ethnic federalism is a politics of othering, of "insider-outsider" labelling.¹⁰⁰ As such, "outsider" ethnic groups are often through their proactive measures to escape violence that might follow negative stereotyping.¹⁰¹ In locations where conflicts and violence is common, less powerful "othered" ethnic groups may choose to leave the territory before mutual suspicion and labelling grows into actual violence.¹⁰² Lastly, governments simply may not be able to protect IDPs, as is the case in certain Central American states where displacement is due to gang-related violence.¹⁰³

The notion that the international community does not need to extend protections to IDPs because their home state government will play that role is linked closely to the deference in traditional international law to state sovereignty, which as discussed *infra* in Part IV.B. is a concept that has been critically examined by scholars and global humanitarian leaders since the Second World War and the post-Cold War era.¹⁰⁴ Before examining this conceptual shift and the extent to which international and regional

berlin.org/publications/products/research_papers/2020RP05_InternalDisplacement.pdf (“...[M]any governments deny that internal displacement occurs on their territory because they fear international sanctions or a loss of reputation.”).

¹⁰⁰ The 1994 constitution under the Ethiopian People's Democratic Revolutionary Front restructured the configuration of Ethiopia's centralized state power to a federalist system comprised of nine semi-autonomous self-governing regional states organized on ethnic lines. Regasa & Lietaert, *supra* note 86, at 332-33.

¹⁰¹ *Id.* at 335. See also Rabel Desalegn, *Inter Communal Conflicts (2017-2018) and the Protection of IDPs in Ethiopia: The Need for Specific Legal and Institutional Regime*, 16 MIZAN L. REV. 59, 67 (2022) (observing lack of (and calling for) a domestic legal or institutional framework to protect inter-communal conflict induced IDPs in Ethiopia).

¹⁰² Regasa & Lietaert, *supra* note 86, at 329.

¹⁰³ Tamara Taraciuk Broner, *Countering El Salvador's Democratic Backsliding*, HUMAN RIGHTS WATCH (Mar. 21, 2023), <https://www.hrw.org/news/2023/03/21/countering-el-salvadors-democratic-backsliding>; Kevin Ackerman et al., “There is No One Here to Protect You.” *Trauma Among Children Fleeing Violence in Central America*, PHYSICIANS FOR HUM. RTS. (June 10, 2019), <https://phr.org/our-work/resources/there-is-no-one-here-to-protect-you/>; Jane E. Dowd, *A Credible Fear: The Politics of Gang Violence in the Northern Triangle*, CITY OF NEW YORK ACADEMIC WORKS (May 2019), https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=4331&context=gc_etds.

¹⁰⁴ James Traub, *Absolute Fiction: The Perversion of Sovereignty*, 171 WORLD AFFAIRS 73, 73, 76, 78 (discussing the impact of the post-World War II concept of a “failed state,” then-U.N. Secretary General Kofi's comments on humanitarian crises during the 1990s, and the establishment of the International Committee on Intervention and State Sovereignty by the Canadian government).

instruments address internal displacement, the following grounds the discussion by offering a taxonomy of internal displacement.

C. A Taxonomy of Internal Displacement

The term displacement is used in a broad range of settings, from describing the consequences of gentrification¹⁰⁵ to capturing the human toll of civil conflicts and foreign invasions. While there is a real and negative impact on, for example, gentrification of an urban area on longstanding communities with lesser means, for the purposes of this Article the primary focus of protections for IDPs is “desperately poor” people—those who lack the means to satisfy basic needs (food, shelter, health care, etc.).”¹⁰⁶ As such, the following taxonomy of internal displacement will focus on scenarios that either affect already-marginalized communities or render displaced populations in a situation without access to basic needs. It will also hone in on causations that typically result in mass internal displacement, either within a short time frame or over a longer course of time.¹⁰⁷

One cause of mass internal displacement is natural disasters.¹⁰⁸ In 2021, China led the world with the highest IDP population displaced due to natural disasters.¹⁰⁹ Indeed, climate change is at play, as there is a causal relationship between natural disasters and climate change insofar as the frequency and

¹⁰⁵ Ashley J. Qiang et al., *Displacement and the Consequences of Gentrification* (Nov. 21, 2021), https://sites.duke.edu/christophertimmins/files/2021/11/displacement_paper_2021_11.pdf; Sue Easton et al., *Measuring and Mapping Displacement: The Problem of Quantification in the Battle Against Gentrification*, 57 URBAN STUDIES 286 (2020); *The Cultural Ramifications of Gentrification in New Orleans*, SHELTERFORCE (Aug. 23, 2017), <https://shelterforce.org/2017/08/23/cultural-ramifications-gentrification-new-orleans/>.

¹⁰⁶ Kieran Oberman, *Immigration, Global Poverty and the Right to Stay*, 59 POLIT. STUD. 253, 260 (2011).

¹⁰⁷ See *Shining a Light on Internal Displacement*, *supra* note 63, at 3 (“Many of these threats [causing internal displacement] intersect and compound one another.”).

¹⁰⁸ See Imray, *supra* note 4 (noting that the impact of natural disasters on displacement cannot be overlooked, with the La Niña weather phenomenon contributing to record levels of flood displacement in countries like Pakistan, Nigeria, and Brazil, as well as severe droughts in Somalia, Kenya, and Ethiopia.).

¹⁰⁹ *Number of Internally Displaced People (IDPs) Due to Disaster in 2021, By Country*, STATISTA (Aug. 5, 2022), <https://www.statista.com/statistics/546004/number-of-internally-displaced-people-due-to-disaster-worldwide-by-country/> (“In 2021, about 6.04 million people in China were internally displaced due to [natural] disaster[s] – the most out of any country. The Philippines, India, the Democratic Republic of Congo, and Indonesia rounded out the top five.”).

intensity of disasters.¹¹⁰ Floods and storms¹¹¹ account for over eighty percent of weather-induced displacement.¹¹² Earthquakes, such as those battering Haiti¹¹³ and more recently wreaking devastation in Turkey and Syria,¹¹⁴ are another significant type of sudden-onset natural disasters that create mass displacement. There are also anthropogenic causes, particularly development projects that displace Indigenous and other vulnerable land-dependent communities. Examples of such projects include the building of hydroelectric dams in India¹¹⁵ and Panama.¹¹⁶ Another cause of internal

¹¹⁰ *Climate and Weather Related Disasters Surge Five-Fold Over 50 Years*, UN NEWS (Sept. 1, 2020), <https://news.un.org/en/story/2021/09/1098662>; Sarah Kaplan, *The Undeniable Link Between Weather Disasters and Climate Change*, THE WASH. POST (Oct. 22, 2020); Maarten K. Van Aalst, *The Impacts of Climate Change on the Risk of Natural Disasters*, 30 DISASTERS 5 (Mar. 2006).

¹¹¹ The flooding in Pakistan is a recent tragic example, see Gibran Naiyyar Peshimam & Syed Raza Hassan, *Death Toll in Pakistan Floods Nears 1,500: Hundreds of Thousands Sleep in Open*, REUTERS (Sept. 15, 2022), <https://www.reuters.com/world/asia-pacific/pakistan-floods-death-toll-nears-1500-2022-09-15/>. In the United States, Hurricane Katrina disproportionately displaced, many permanently, low-income people of color along the Gulf Coast, see Gillian B. White, *A Long Road Home: The Systems In Place to Provide Aid After Natural Disasters Often Fail Those Who Need Help the Most*, THE ATLANTIC (Aug. 3, 2015), <https://www.theatlantic.com/business/archive/2015/08/hurricane-katrina-sandy-disaster-recovery-/400244/>.

¹¹² *Displacements Due to Natural Disasters: Spending and Solutions*, EASTERN KENTUCKY UNIVERSITY (July 2020), <https://safetymanagement.eku.edu/blog/displacements-due-to-natural-disasters-spending-and-solutions-infographic/>

¹¹³ *Country Profile: Haiti*, INTERNAL DISPLACEMENT MONITORING CENTRE (2021) (estimating 1.7 million Haitians have been internally displaced by earthquakes between 2008-2021).

¹¹⁴ *More Than 850,000 Syrian, Turkish Children Displaced by Earthquakes*, UN NEWS (Mar. 6, 2023), <https://news.un.org/en/story/2023/03/1134182>; Oliver Holmes et al., *Thousands Dead, Millions Displaced: The Earthquake Fallout in Turkey and Syria*, THE GUARDIAN (Feb. 21, 2023), <https://www.theguardian.com/world/2023/feb/20/thousands-dead-millions-displaced-the-earthquake-fallout-in-turkey-and-syria>.

¹¹⁵ Laraib Qavi, Mohd. Hamza & Mohd. Rehan, *The Need of a Proper Policy for IDPs in India*, 5 INT'L J.L. MGMT. & HUMAN. 720 (2022) (noting India's reticence to develop IDP-centered policy and calling for comprehensive domestic policy to assist IDPs in India which totaled over 5 million in 2019); see also Internal Displacement Monitoring Centre, *India: National and State Authorities Failing to Protect IDPs* (Sept. 2, 2010), <https://www.justice.gov/sites/default/files/eoir/legacy/2014/01/28/India%2B-%2BSeptember%2B2010.pdf>;

Paramjit S. Judge, *Response to Dams and Displacement in Two Indian States*, 37 ASIAN SURVEY (1997).

¹¹⁶ Mary Finley-Brook & Curtis Thomas, *Treatment of Displaced Indigenous Populations in Two Large Hydro Projects in Panama*, 3 WATER ALTERNATIVES 269 (2010); see generally, *Dams and Internal Displacement*, INTERNAL DISPLACEMENT MONITORING CENTRE et al. (April 2017), <https://www.internal-displacement.org/sites/default/files/publications/documents/20170411-idmc-intro-dam->

displacement are conflicts and wars, “trigger[ing] 28.3 million internal displacements worldwide, a figure three times higher than the annual average over the past decade.”¹¹⁷ Relatedly, organized crime is significant source of internal displacement, a factor that is prominent in Mexico. A transit country for migrants seeking to cross the U.S-Southern border, Mexico typically is associated with its refugee population rather than internal displacement.¹¹⁸ The numbers, however, tell a different story: As of December 2020, while there were an estimated 50,000 refugees in Mexico, there were roughly seven times that number of IDPs.¹¹⁹ In just over ten years, the number of Mexican IDPs increased dramatically: In 2009, there were approximately 8,000 IDPs in Mexico, and by 2020 there were roughly 357,000 people facing internal displacement¹²⁰ The forced lockdowns in response to the COVID-19

case-study.pdf (“An estimated 80 million people have been displaced by dam projects worldwide.”).

¹¹⁷ See *supra* note 4 (citing the war in Ukraine as accounting for the displacement of nearly 17 million citizens). Generally, besides environment-induced displacement, the civil wars in Iraq and Syria are amongst the leading causes for a spike in internal displacement since 2018. *Displaced People: Why are More Fleeing Home than Ever Before?*, BBC NEWS (Sept. 24, 2019), <https://www.bbc.com/news/world-49638793>. The internal conflicts in the Democratic Republic of Congo, Yemen, and South Sudan, and the flow of Rohingya refugees from Myanmar to Bangladesh have also factored into the growing number of IDPs. *Id.* See also Henry Ngenyam Bang & Roland Azibo Balgah, *The Ramification of Cameroon's Anglophone Crisis: Conceptual Analysis of a Looming "Complex Disaster Emergency,"* 7 J. INT'L HUMANITARIAN ACTION 1, 2 (2022) (describing displacement in Cameroon due to the “Anglophone crisis,” i.e. the clash between English and French speakers.).

¹¹⁸ Andrew I. Rudman, *Mexico's Internally Displaced are An Unrecognized Migration Crisis*, THE HILL (Oct. 5, 2021), <https://thehill.com/opinion/international/575310-mexico-internally-displaced-are-an-unrecognized-migration-crisis>. See also *Country Profile: Mexico*, INTERNAL DISPLACEMENT MONITORING CTR. (2021), <https://www.internal-displacement.org/countries/mexico>.

¹¹⁹ Rudman, *supra* note 118.

¹²⁰ *Id.* IDPs in Mexico have been a growing concern for decades; however, it has not been systematically documented. Valeria Uribe, *On the Run at Home: Internally Displaced Persons in Mexico*, MEX. BUS. NEWS: POL'Y & ECON. (June 15, 2021), <https://mexicobusiness.news/policyandeconomy/news/run-home-internally-displaced-persons-mexico>. It was not until 2019 that the Mexican government legally recognized internal displacement occurring within its borders and acknowledged the need to address this issue through updates to institutional frameworks. Since then, Mexico has made strides to assist IDPs. *Id.* In 2019, the Mexican government provided food and alternative housing for displaced persons in Chichihualco, Guerrero after demands for humanitarian support were made. *Id.* In September of 2020, the lower house of Mexico's Congress passed the Law to Prevent, Attend to, and Repair Forced Internal Displacement. *Id.* This law was designed to “recognize and guarantee the rights of IDPs; assign responsibility among federal and municipal organizations to generate durable solutions; create a national mechanism to explicitly address forced internal displacement; and establish a national registry for IDPs.” *Id.* However, the Senate has yet to pass this legislation. *Id.* Outside of recognizing IDPs,

pandemic caused greater tension between criminal organizations, thereby flaming their violence and increasing displacement.¹²¹ Interestingly, the Mexican media refers to IDPs as *desplazados*, which translates into “other migrants.”¹²²

Internal displacement may also be a result of restrictive migration policies that both transit and destination states have implemented in greater measure, namely transnational migration deterrence policies designed to prevent migrants from crossing the border of their desired destination state.¹²³ Put another way, with the prospect of what lays ahead once one crosses their home country border becoming increasingly perilous, an increasing number of displaced persons may be electing to remain displaced in their home countries. Cross-border migration is increasingly dangerous, lethal, and/or unsuccessful,¹²⁴ rendering the decision to migrate beyond one’s border ever more onerous. A characteristic of transnational migration deterrence is what one scholar coined “the politics of exhaustion,” a term encompassing the ways in which destination countries endeavor to force migrants to abandon their journey.¹²⁵ Transnational migration deterrence also encompass the

Uribe argues that the government needs to provide safe homes for IDPs in host communities, assist them in obtaining gainful employment opportunities, and support education institutions in adapting to integrating new displaced children. *Id.*

¹²¹ Rudman, *supra* note 118 (noting that many IDPs in Mexico have trouble finding safe and affordable housing in new areas causing them to flee to other unsafe locations.); *see also* Deslandes, *supra* note 11.

¹²² Deslandes, *supra* note 11.

¹²³ *See* Sinha, *supra* note 43, at 1299 (describing transnational migration deterrence as an accountability framework which, building from the concept of externalization, “...captures the affirmative steps taken by [destination] states to curb the mobility of migrants...[through] arrangements where other, less-resourced states do the work of migration control for them.”). *See also* HAMLIN *supra* note 7, at 28 (noting how policies of border externalization prevent migrants from access to the asylum systems in the Global North).

¹²⁴ Tightened border controls in destination countries are also one of the primary reasons migrants find themselves stuck in transit countries. *Living in the Shadows: A Primer on the Human Rights of Migrants*, AMNESTY INT’L 27 (2006). The term “stranded migrant” is used to describe migrants stuck in transit, unable to enter their desired destination country and unable to return home. Rebecca Dowd, *Trapped in transit: the plight and human rights of stranded migrants*, UNHCR (June 2008), <https://www.unhcr.org/en-us/research/working/486c92d12/trapped-transit-plight-human-rights-stranded-migrants-rebecca-dowd.html>. Stefanie Grant, *The Legal Protection of Stranded Migrants*, in R. CHOLEWINSKI, R. PERRUCHOU AND E. MACDONALD (EDS), *INTERNATIONAL MIGRATION LAW: DEVELOPING PARADIGMS AND KEY CHALLENGES* 30 (2007). There is no agreed or legal definition for the term “stranded migrant.” MIGRANT F. IN ASIA, STRANDED MIGRANTS 1 (n.d.).

¹²⁵ Professor Welander describes “the politics of exhaustion” as a “complex deterrence approach with the objective of exhausting asylum seekers, mentally and physically, with the

creation of new border posts,¹²⁶ destination states financing and otherwise executing the removal of migrants from transit states.¹²⁷

Perhaps among the most overlooked causes of internal displacement involve internal immigration enforcement policies and modern border enforcement practices by host countries. In the United States, for example,

ultimate goal of deterring them from approaching Britain for asylum, or indeed other European asylum systems.” Marta Welander, *The Politics of Exhaustion and the British Sea Crossings Spectacle*, BORDER CRIMINOLOGIES (Jan. 28, 2019), <https://blogs.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2019/01/politics>. Extrapolating from her field work outside the United Kingdom border, Welander identifies several categories of practices and methods within the politics of exhaustion: (1) ritualized forms of direct and indirect violence and abuse; (2) the withdrawal of care and manufacturing of vulnerability; (3) acts of dispossession; (4) shrinking and defoliation of living spaces; (5) forced mobility and immobility; and (6) uncertainty and undercurrents of threat. Marta Welander, *The Politics of Exhaustion and the Externalization of British Border Control. An Articulation of a Strategy Designed to Deter, Control and Exclude*, 59 INT’L MIGRATION 29, 31-32 (2020).

¹²⁶ European states encouraged the creation of a new border post outside the town of Kantchari in the borderland between Burkina Faso and Niger to stop West African labor migration. Kamal Donko, Martin Doevenspeck & Uli Beisel, *Migration Control, the Local Economy and Violence in the Burkina Faso and Niger Borderland*, J. OF BORDERLANDS STUD. (2021), <https://www.tandfonline.com/doi/epub/10.1080/08865655.2021.1997629?needAccess=true>. In December of 2019, there were also thirteen different checkpoints between Ouagadougou (the capital of Burkina Faso) and Kantchari (near Niger), where military would stop travelers without valid documents and charge fines and subject individuals to searches. *Id.* See also Juan Montes, *Mexico Steps Up Detentions and Deportations of Migrants*, THE WALL ST. J. (Apr. 17, 2021), <https://www.wsj.com/articles/mexico-steps-up-detentions-and-deportations-of-migrants-11618699790> (detailing Mexico’s deterrence measures to prevent migrants from crossing into the United States, including installing dozens of new checkpoints in its southern states of Chiapas and Tabasco, and increasing its presence at the border with Guatemala to prevent children and teenagers from being used by adult migrants to enter the United States.).

¹²⁷ For example, since 2017 the European Union has paid for the flights of approximately 16,000 people back from Libya to Nigeria. Matie Vermeulen, *What Happens to Migrants Who Are Sent Back? I Spent A Year Following 12 People to Find Out*, THE CORRESPONDENT (Jan. 9, 2020), <https://thecorrespondent.com/213/what-happens-to-migrants-who-are-sent-back-i-spent-a-year-following-12-people-to-find-out/28168874481-35612b42>. Many deportees return with less than the left with, and the shame and depression that comes with returning to home country makes reintegration even harder. *Id.* See also Amnesty Int’l, *USA and Mexico Deporting Thousands of Unaccompanied Migrant Children into Harm’s Ways* (June 11, 2021), <https://www.amnesty.org/en/latest/news/2021/06/estados-unidos-mexico-deportan-miles-ninos-migrantes-situaciones-peligro/> (documenting how Mexican immigration authorities shut down the southern border and forcibly returned most of the unaccompanied child migrants they apprehended, specifically of the Central American children who were taken into custody, 90 percent and 70 percent were deported in 2019 and 2020, respectively.).

the deportation of non-citizens has skyrocketed over the last two decades,¹²⁸ including the deportations of lawful permanent residents and others who have little to no ties to their countries of origin.¹²⁹ Additionally, deportations effectuated by the U.S. government and countries around the world do so in a haphazard and arguably inhumane manner.¹³⁰ Another factor linking deportation with internal displacement is societal stigma in the country of origin attached to deportees.¹³¹

¹²⁸ *Deportations & Removals*, MIGRATION POLICY INSTITUTE (A sharp rise in removals of unauthorized immigrants has taken place in the United States since 1990—rising from approximately 30,000 to nearly 400,000 annually); *see also* Ana Gonzalez-Barrera & Jens Manuel Krogstad, U.S. *Immigrant Deportations Declined in 2015, But Remain Near Record High*, PEW RESEARCH CENTER (Aug. 31, 2016), <https://www.pewresearch.org/fact-tank/2016/08/31/u-s-immigrant-deportations-declined-in-2014-but-remain-near-record-high/>.

¹²⁹ *The Deported: Immigrants Uprooted from the Country They Call Home*, HUMAN RIGHTS WATCH (Dec. 5, 2017), <https://www.hrw.org/report/2017/12/06/deported/immigrants-uprooted-country-they-call-home>.

¹³⁰ For example, migrants deported from the United States to Guatemala are often returned to cities they have never been and with often nothing more than their names. Dow, et al., *Biden Wants to Halt Deportation. Here's What Happens When Migrants Are Sent Back*, THE WASH. POST (Mar. 3, 2021), <https://www.washingtonpost.com/politics/2021/03/03/biden-wants-halt-deportations-heres-what-happens-when-migrants-are-sent-back/>. After three to six months of living in Guatemala, many deportees remain unable to find work and fall victim to gangs and the police. Many deportees often leave family members in the United States as well as savings, property, and other valuables. Many are unable to access any of the assets they left in the United States prior to being deported. *Id.* Of Guatemalans deported from the United States, approximately 5% called Guatemala City home, meaning most return to an area they are unfamiliar with and must chose to remain or where to go next. *Id.*

¹³¹ *See, e.g.,* Bernard Headley & Dragan Milovanovic, *Rebuilding Self and Country: Deportee Reintegration in Jamaica*, MIGRATION POL'Y INST. (Aug. 16, 2016), <https://www.migrationpolicy.org/article/rebuilding-self-and-country-deportee-reintegration-jamaica>. Over 45,000 Jamaicans were deported between 2000 and 2014. Most are deported from the United States, the United Kingdom, and Canada. *Id.* The U.S. government is not alone in causing internal displacement in the removal of migrants. The Swedish government, for example, removes asylum seekers to Iraq and Afghanistan often return to inhumane living conditions. Frey Lindsay, *What Happens When Rejected Asylum Seekers Are Sent Back*, FORBES (June 14, 2021), <https://www.forbes.com/sites/freylindsay/2021/06/14/what-happens-when-rejected-asylum-seekers-are-sent-back/?sh=2094ad667f1d>. Because the Swedish government deems Kabul safe for removals, Afghan returnees are returned to the capital regardless of their internal place of origin. This poses problems because returnees often do not have connections in Kabul and are subject to discrimination and harassment because of their minority status. Some returnees actually spent their entire lives in Iran even though they are Afghan nationals. Other returnees arrived in Sweden as children and therefore return to Kabul with almost no connections. *Id.*

The next Part provides a comprehensive analysis of international and regional agreements that have come into effect particularly after the United Nations recognized the need for specific guidance on internal displacement. It also demonstrates how adjacent international agreements, particularly with respect to climate change and migration more generally, typically fail to address the concerns, growing in scale and scope, of IDPs.

III. EXISTING DISPLACEMENT INSTRUMENTS

A. *Twenty-Five Years of Internal Displacement Policies*

The international human rights community engaged in decades of neglecting the plight of IDPs after the 1951 Refugee Convention marginalized the problem of internal displacement. As discussed in *supra* Part II.A, in 1998 the United Nations ratified the UN Guiding Principles on Internal Displaced Persons (UNGP), in a decade when internal displacement garnered considerable attention from the global community.¹³² To facilitate the critical task of collecting data on IDPs, the Internal Displacement Monitoring Centre (IDMC) was established in 2005.¹³³ Additional initiatives from the United Nations to address internal displacement followed.

While receiving considerably less attention from scholars than the UNGP, the United Nations adopted an Inter-Agency Standing Committee (IASC) Framework for Durable Solutions for IDPs (hereinafter “IASC Framework”) in 2009.¹³⁴ The IASC Framework specifically addresses situations “when internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement.”¹³⁵ In doing so, it provides guidance for the return or reintegration of IDPs after the incident causing their displacement has passed.¹³⁶ Importantly, the IASC Framework

¹³² See *supra* notes 64-67 and accompanying text.

¹³³ See Cantor & Wolley, *supra* note 4, at 4 (“The Internal Displacement Monitoring Centre (IDMC), which is part of the Norwegian Refugee Council, a non-governmental humanitarian agency, collates data from different sources to produce global estimates on internal displacement. In tandem, the [UNHCR] publishes data on the IDPs whom it protects or assists...”).

¹³⁴ See Cantor & Woolley, *supra* note 4, at 7. See also Matijević et al., *supra* note 6.

¹³⁵ The Brooking Institution—University of Bern Project on Internal Displacement, *IASC Framework on Durable Solutions for Internally Displaced Persons* (Apr. 2010), <https://www.refworld.org/reference/themreport/brookings/2010/en/89707>.

¹³⁶ *Id.* See also Matijević et al., *supra* note 6; Margarita Lundkvist-Houndoumadi and Jasmine Ketabchi, *The Application of the IASC Framework in Somalia and Sudan*, 65 FORCED MIGRATION REV., 1 (2020), <https://www.fmreview.org/sites/default/files/FMRdownloads/en/recognising-refugees/DSWGSomalia-DSWGSudan-lundkvisthoundoumadi-ketabchi.pdf>; Megan

puts the primary responsibility for IDPs on state governments, and characterizes “international humanitarian and development actors hav[ing] complementary roles.”¹³⁷

To mark the twentieth anniversary of the UNGP, the UN Special Rapporteur on Rights of Internally Displaced Persons in 2018 dedicated an investigation to review country-specific solutions to internally displaced persons.¹³⁸ The report urged national governments to provide protection for internally displaced persons and to re-conceptualize them as “citizens with displacement specific needs.”¹³⁹ More recently, the United Nations Secretary General formed a High Level Panel on Internal Displacement.¹⁴⁰ The Panel’s issued findings informed the UN Secretary General Action Agenda on Internal Displacement,¹⁴¹ which amongst its recommendations call for “go[ing] beyond thinking about phases of action on displacement” and suggesting instead “work[ing] towards prevention, response and solutions simultaneously.”¹⁴²

Promulgated protections for internally displaced persons are also found in regional agreements and domestic laws.¹⁴³ Generally, shared attributes of

Bradley, *Durable Solutions and the Right of Return for IDPs: Evolving Interpretations*, 30 INT’L J. REFUGEE L. 218 (2018), <https://academic.oup.com/ijrl/article/30/2/218/5106117>.

¹³⁷ IASC *Framework on Durable Solutions for Internally Displaced Persons*, *supra* note 135.

¹³⁸ See U.N. Special Rapporteur on the Human Rights of Internally Displaced Persons, *Report of the Special Rapporteur on the human rights of internally displaced persons*, U.N. Doc. A/HRC/38/39 (Apr. 11, 2018); United Nations Human Rights Office of the High Commissioner, International Standards <https://www.ohchr.org/en/special-procedures/sr-internally-displaced-persons/international-standards>. The U.N. Special Rapporteur also noted a sense of urgency with respect to the “continuing and increasing adverse effects of climate change...” *Id.* at ¶ 18. See also Hannah Entwisle Chapuisat, *Working Together Better to Prevent, Address and Find Durable Solutions to Internal Displacement*, Global Protection Cluster, 2020, https://www.globalprotectioncluster.org/wp-content/uploads/GP20_web.pdf.

¹³⁹ See Chapuisat, *supra* note 138, at 9. For a discussion on the concept of precarious citizenship, see *infra* Part IV.C.

¹⁴⁰ *Shining a Light on Internal Displacement: A Vision for the Future* (Sept. 2021), <https://internaldisplacement-panel.org/wp-content/uploads/2021/09/HLP-report-WEB.pdf>.

¹⁴¹ United Nations, *The United Nations Secretary-General’s Action Agenda on Internal Displacement: Follow-Up to the Report of the UN Secretary-General’s High Level Panel on Internal Displacement* (June 2022), <https://www.un.org/en/content/action-agenda-on-internal-displacement/>.

¹⁴² *Id.* at 7. The UN Secretary-General’s Action Agenda also established a Special Advisor on Solutions to Internal Displacement, who will work with a Steering Group on Solutions to Internal Displacement. *Id.* at 11.

¹⁴³ Philip C. Orchard, *Protecting Internally Displaced Persons: The Role of National Legislation and Policies*, UNIV. OF WOLLONGONG RESEARCH ONLINE 1 (2018),

efforts that successfully implement protections for internally displaced persons include: “timing; the involvement of independent domestic institutions; clear linkages to other regional and international processes; and, finally, ongoing international support.”¹⁴⁴ Moreover, after the passage of the Kampala Convention, studies indicate that binding legal frameworks—particularly those that are regional in nature—may be able to provide an important contribution to shoring up protections for IDPs.¹⁴⁵

The Kampala Convention, originally adopted by a Special Summit of the African Union in October of 2009, entered into force on December 6, 2012.¹⁴⁶ Mirroring the language of the UNGP, the Convention defines IDPs as “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...natural or human-made disasters...and who have not crossed an internationally recognized State border.”¹⁴⁷

The Kampala Convention is not a climate-specific instrument, as it contemplates other types of displacement.¹⁴⁸ That said, its reference to climate change provides that “State Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change.”¹⁴⁹ The Kampala Convention is the first and currently the only legally binding regional instrument on internal displacement,¹⁵⁰ outlining the responsibilities pertaining to the prevention of

<https://ro.uow.edu.au/cgi/viewcontent.cgi?article=4765&context=lhapapers>.

¹⁴⁴ *Id.* at 11.

¹⁴⁵ Adama Dieng, *Protecting Internally Displaced Persons: The Value of the Kampala Convention as a Regional Example*, 99 INT’L REV. OF THE RED CROSS 263–282 (2017); International Committee of the Red Cross, *Translating the Kampala Convention Into Practice: A Stocktaking Exercise*, 99 INT’L REV. OF THE RED CROSS 365–420 (2017).

¹⁴⁶ African Union, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) at 3 (2012), https://www.internationaldisplacement.org/sites/default/files/treaties/36846-treaty-kampala_convention.pdf.

¹⁴⁷ *Id.* at Art. I(k).

¹⁴⁸ *Id.* at Art. IV(4) (obliging party states to prohibit arbitrary displacement “based on policies of racial discrimination...” or “displacement used as collective punishment”).

¹⁴⁹ *Id.* at Art. V(4).

¹⁵⁰ The *Juba Peace Agreement*, signed in 2020 by non-state actors in Sudan, following the fall of Omar al-Bashir in 2019, intended to address IDP return and transitional justice matters. The agreement has faced significant delays and challenges in implementation. See Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2022 Part 2*, 41 (2022), https://www.internaldisplacement.org/sites/default/files/publications/documents/IDMC_GRID_2022_LR.pdf (citing Institute for Democracy and Electoral Assistance, *The Juba Agreement for Peace in Sudan: Summary and Analysis* (Dec. 2021), <https://www.idea.int/sites/default/files/publications/the-juba-agreement-for-peace-in-sudan>).

displacement and recommending efforts to reduce the vulnerabilities of those displaced.¹⁵¹

The recognition of IDPs in Latin America, with the region's ratification of the San Jose Declaration in 1994, pre-dated the UN Guiding Principles for Internally Displaced Persons. The San Jose Declaration recognizes "the challenges posed by the new situations of human displacement in Latin America and the Caribbean, including...the increase in internal displacement and forced migration..."¹⁵² While the Declaration concludes that IDPs are "the fundamental responsibility of the States of their nationality," it describes internal displacement as "nevertheless of concern to the international community because it is a human rights issue which can be linked to prevention of causes which generate refugee flows."¹⁵³

en.pdf).

¹⁵¹ See Andrew Solomon, *(Re)Introducing the African Union Convention on the Protection and Assistance of Internally Displaced Persons*, Brookings (Feb. 17, 2010), <https://www.brookings.edu/articles/reintroducing-the-african-union-convention-on-the-protection-and-assistance-of-internally-displaced-persons/>. The Kampala Convention was predated by the *Protocol on the Protection and Assistance to Internally Displaced Persons*, which was adopted by the International Conference on the Great Lakes Region (ICGLR) in 2006 but became binding after eleven ICGLR states adopted the Protocol at a sub-regional level. *Id.* This instrument did not include explicit language pertaining to climate change, but refers to "natural or human-made disasters" in defining IDPs and outlining responsibilities of party-states. See, e.g., ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons* Art. 1, https://www.library.icglr-lmrc.org/images/Pact-Protocols/ICGLR_2006_Protocol_on_the_Protection_and_Assistance_to_Internally_Displaced_Persons_30th_November_2006.pdf (defining IDPs as "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." ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons* Art. 3 (listing under "Responsibility for Protecting Internally Displaced Persons" that "[m]ember States shall, to the extent possible, mitigate the consequences of displacement caused by natural disasters and natural causes." *Id.* Other responsibilities include "...establish[ing] and designat[ing] organs of Government responsible for disaster preparedness, coordinating protection and assistance to internally displaced persons..." *Id.*

¹⁵² *San Jose Declaration on Refugees and Displaced Persons*, adopted by the International Colloquium in Commemoration of the "Tenth Anniversary of the Cartagena Declaration on Refugees," § 1 (Dec. 7, 1994).

¹⁵³ *Id.* at § 2 (16). Amongst the recommendations in the San Jose Declaration for the protection of IDPs in the region are: The application of human rights norms, humanitarian law, and principles of refugee law such as non-refoulement "by analogy;" access to protection by national authorities and essential assistance "with the support of the international community;" attention to rights "crucial to the survival, security and dignity" of IDPs, and "other rights such as adequate documentation, ownership of land and other assets, and freedom of movement including the voluntary nature of return;" and "the

Importantly, a decade prior to the San Jose declaration, the region ratified the Cartagena Declaration,¹⁵⁴ which broadened the definition of who constitutes a refugee.¹⁵⁵ While making only a few references to IDPs, it does “...express its concern at the situation of displaced persons within their own countries.”¹⁵⁶ However, it does not provide solutions for IDPs aside from a broad recommendation that its conclusions¹⁵⁷ “receive adequate attention in the search for solutions to the grave problems raised by the massive flows of refugees in Central America, Mexico and Panama.”¹⁵⁸

There are two additional regional agreements on displacement in Latin America, both issued in connection with decadal anniversaries of the Cartagena Declaration. However, rather than expanding on the San Jose Declaration’s attention to internal displacement, both instruments make only nominal references to IDPs. Specifically, the 2004 Mexico Declaration, commemorating twentieth anniversary of the Cartagena Declaration, notes “with concern that in some parts of Latin America internal displacement of persons as well as refugee flows persist.”¹⁵⁹ Similarly, the 2014 Brazil

possibility of attaining a dignified and safe solution to their displacement.” *Id.* at § 2(16)(a)-(e).

¹⁵⁴ *Cartagena Declaration on Refugees*, Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama (Nov. 22, 1984).

¹⁵⁵ See Timothy E. Lynch, *Refugees, Refoulement, and Freedom of Movement: Asylum Seekers’ Right to Admission and Territorial Asylum*, 36 GEO. IMMIGR. L.J. 73 (2021); Timothy Calica, *Improving the Refugee Crisis in Syria: A Comparative Analysis of Regional Refugee Policies*, 40 LOY. L.A. INT’L & COMP. L. REV. 115 (2017); Carlos Maldonado Castillo, *The Cartagena Process: 30 Years of Innovation and Solidarity*, 49 FORCED MIGRATION REV. 89, 89 (2015), <https://www.fmreview.org/sites/default/files/FMRdownloads/en/climatechange-disasters/maldonadocastillo.pdf>.

¹⁵⁶ Cartagena Declaration, *supra* note 154, at § 3(9). The Cartagena Declaration has otherwise influenced policy for several states in the region. For example, it has been incorporated into the Ecuadoran Constitution, providing a broader framework for addressing the realities of modern displacement. Steve Meili, *The Human Rights of Non-Citizens: Constitutionalized Treaty Law in Ecuador*, 31 GEO. IMMIGR. L.J. 347, 365 (2017). This incorporation has had a positive impact on the rights of asylum seekers in Ecuador, demonstrating the potential benefits of adopting a more inclusive definition of refugees. *Id.* at 348-49. However, whether a migrant is granted asylum may vary significantly depending on the legal and political context of the country. See Lynch, *supra* note 155, at 93-94.

¹⁵⁷ *Id.* (listed in Section 3 of the Declaration, including its general call for national and international authorities to offer protection and assistance to IDPs).

¹⁵⁸ *Id.* at § 3-4.

¹⁵⁹ *Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America* (Nov. 16, 2004). See also William Spindler, *The Mexico Plan of Action: Protecting Refugees Through International Solidarity*, 24 FORCED MIGRATION REV.

Declaration and Plan of Action, commemorating the thirtieth anniversary of the Cartagena Declaration, makes few references to IDPs.¹⁶⁰ The Plan of Action does make note, however, of the significant IDPs populations in Guatemala, Honduras, and El Salvador, whose displacement predominantly is caused by security reasons such as transnational organized crime.¹⁶¹

B. Climate and Migration/Refugee Instruments

In addition to international, regional, and domestic guidance on address internal displacement, there are more general instruments focusing on climate change and migration more generally, and for the most part they do not substantially speak to the growing phenomenon of IDPs.

The 1992 United Nations Framework Convention on Climate Change (UNFCCC) is silent on the subject of environment-induced migration generally,¹⁶² an omission which, unsurprisingly, includes internal displacement. Almost a decade later, the 2010 Cancún Agreements, adopted under the UNFCCC,¹⁶³ incorporated a broad provision inviting

all parties to enhance action on adaptation under the Cancún Adaption Framework...by undertaking ...[m]easures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate,

64 (2005), <https://www.fmreview.org/sudan/spindler>.

¹⁶⁰ *The Brazil Declaration and Plan of Action, A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean* (Dec. 3, 2014).

¹⁶¹ *Id.* The Brazil Plan of Action also emphasizes the importance of promoting regional and sub-regional cooperation as a “fundamental element to continu[e] to develop the legal and institutional framework for the protection of refugees, displaced and stateless persons...” and to “promote knowledge and training among...States, international organizations and civil society, and ensure the dissemination of regional guidelines, doctrine and jurisprudence.” *Id.* at ch. 7.

¹⁶² *United Nations Framework Convention on Climate Change* (1992).

¹⁶³ The Initiative builds upon paragraph 14(f) of the 2010 UNFCCC Cancún Agreement, see *The Nansen Initiative Global Consultation Conference Report 26* (2015). Specifically, Paragraph 14(f) of the Cancún agreement invites States to enhance their action on adaptation including by “[m]easures 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.” *United Nations Framework Convention on Climate Change Decision 1/CP.16, The Cancún Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, FCCC/CP/2010/7/Add.1* (Mar. 15, 2011), <http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>.

at the national, regional and international levels...”¹⁶⁴

Indeed, the Cancún Agreements constitute the first international instrument to formally recognized displacement as relevant to a framework for climate change adaption.¹⁶⁵

The 2015 Paris Agreement does not expressly address displacement, neither internal nor cross-border. Article 7 of the Paris Agreement does, however, emphasizes the “goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change...” and advises parties to take into account the Cancún Adaptation Framework.¹⁶⁶

The stated objective of the Nansen Initiative, as defined by the 2015 Agenda for the Protection of Cross Border Displaced Persons in the Context of Disasters and Climate Change, was to identify effective practices and build consensus on principles to protect and assist persons displaced across borders due to disasters and climate change.¹⁶⁷ Importantly, Initiative explicitly acknowledges the particular importance of protecting IDPs, noting that most disaster displacement occurs within states’ borders.¹⁶⁸ The Initiative recognizes both the significance of the UNGP, and the explicit coverage of disaster-induced internal displacement under the Kampala Convention.¹⁶⁹

The Nansen Initiative is largely focused on reducing risk by “building resilience,” which essentially translates to providing guidance for IDPs’ home countries to avoid and/or manage internal displacement.¹⁷⁰ The

¹⁶⁴ United Nations, Framework Convention on Climate Change, *Report of the Conference of the Parties on its sixteenth session*, Article 14(f), FCCC/CP/2010/7/Add.1 (Mar. 15, 2011).

¹⁶⁵ Rathod, *supra* note 14, at 10.

¹⁶⁶ United Nations, Paris Agreement, art. 7 ¶ 1, 7 (2015).

¹⁶⁷ *The Nansen Initiative Global Consultation Conference Report* 26 (2015), <https://disasterdisplacement.org/wp-content/uploads/2015/02/GLOBAL-CONSULTATION-REPORT.pdf> [hereinafter *The Nansen Report*]. The Report specifically stated that it was a “state-led, bottom-up, consultative process.”) *Id.* The Nansen initiative “chairmanship” was led by Norway and Switzerland, who were joined by a “steering group,” consisting of Australia, Bangladesh, Costa Rica, Germany, Kenya, Mexico, and Philippines. *Id.* at 228-29.

¹⁶⁸ *Id.* at 161.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 50, 53. At a more granular level, the Initiative identifies effective practices with respect to addressing the needs of IDPs in disaster contexts, including: reviewing domestic legislation or policies on internal displacement to determine whether it includes IDPs in disaster contexts, and if not, consider protection in line with the UNGP and regional and

Initiative articulates broad recommendations, and articulates some relevant practices and future priorities concerning IDPs.¹⁷¹ For example, it encourages states to establish institutional leadership to coordinate national planning and response efforts, and while doing so ensuring meaningful involvement by local authorities and affected communities.¹⁷² Significantly, however, the Initiative also highlights the role of regional organizations, as well sub-regional mechanisms including Regional Consultative Process, human rights mechanisms, disaster risk management centers, climate change adaptation strategies, and common markets and free movement of persons arrangements.¹⁷³

The 2016 *New York Declaration for Refugees and Migrants*, reporting on the outcomes of the Assembly’s high-level plenary meeting concerning large movements of refugees and migrants,¹⁷⁴ was the precursor to two Global Compacts adopted by the United Nations in 2018: The Global Compact on Refugees (GCR) and the Global Compact for the Safe, Orderly and Regular Migration (GCM).¹⁷⁵ Importantly, “[t]he fact that there are two global compacts—and not one on global mobility—seems to set the distinction between refugees and migrants in stone.”¹⁷⁶ Equally importantly, internal displacement is “virtually ignored” in both global compacts.¹⁷⁷ Both the

subregional instruments; reviewing domestic legislation and policies on disaster risk management to determine whether they contain specific and adequate provisions to protect IDPs at all stages of a disaster; incorporating IDP protection considerations and clarify the roles and responsibilities of actors in disaster risk reduction and humanitarian response plans; strengthening the capacity of national and local authorities to enhance protection and support for IDPs in disaster contexts; and ensuring programs concerned with humanitarian assistance, early recovery, and durable solutions in disaster contexts “provide meaningful information and opportunities for consultation with and participation by displacement-affected persons or groups of person, those at risk of displacement and host communities.” *Id.* at 18.

¹⁷¹ *Id.* at 18. The Initiative details effective strategies that it identifies to address the needs of IDPs in disaster contexts as well as “priority areas for future action.”¹⁷¹ These tactics include reducing vulnerability and building resilience to displacement risk, “migration with dignity,” planned relocation, and assisting internally displaced persons.

¹⁷² *Id.* at 162.

¹⁷³ *Id.*

¹⁷⁴ United Nations, *New York Declaration for Refugees and Migrants* 1 (2016), https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/ODG/GCM/NY_Declaration.pdf.

¹⁷⁵ Elizabeth E. Ferris & Susan F. Martin, *The Global Compacts on Refugees and for Safe, Orderly and Regular Migration: Introduction to the Special Issue*, 57 INT’L MIGRATION 5, 7 (2019).

¹⁷⁶ *Id.* at 14.

¹⁷⁷ *Id.* at 15 (noting that the GCM does not mention IDPs and the GCR “includes a passing mention of IDPs—noting that large movements may involve both refugees and IDPs (para 12) does not address the serious gaps that remain, notably the need for more robust

perpetuation of the refugee/migrant binary and the omission of the plight of IDPs in the GCR and GCM signal the need for new, or in some cases renewed, normative frameworks to enhance the role of the international community in ensuring their protection.¹⁷⁸

IV. ENVISIONING CONCEPTUAL FRAMEWORKS FOR PROTECTING IDPS

The efforts to protect IDPs outlined in *supra* Part III “demonstrate that the IDP issue is more than just a passing fancy; it has been recognized as a critical international problem.”¹⁷⁹ In order to help facilitate the translation of this recognition into greater involvement by the global community, the discussion in this Part offers some theoretical elaborations on why IDPs encompass a population deserving of international protection.

A. *Extending Refugee Protection to IDPs*

As discussed *supra*, prior to the 1951 Refugee Convention the global community had a considerably more fluid notion of populations displaced inside versus outside the border of their countries of origin.¹⁸⁰ Solidifying the distinction between the two groups rendered the Convention to be an international protection instrument reflecting what has been coined as “exilic bias:”

The emphasis on resettlement was grounded in the legal conception of a refugee:

The definition is quite clearly based on the idea that a refugee is someone who has lost the protection of his or her state, is now located outside that state, and is in need of a new guarantee of protection. That is, the “problem” to be solved is the *de jure* or *de facto* loss of membership [i.e. citizenship], as measured by the likelihood of

measures at the national level, for regional actors to play a greater role in supporting IDPs and for a clear international institutional responsibility for IDPs.”) *Id.* See also Desai et al., *supra* note 19, at 4 (“As a result of opposition from participating states wary of undermining national sovereignty..., internal displacement received only four mentions and a footnote in the...[GCR];” Ben Hudson & Brid Ni Ghraíne, *Enhancing State-to-State Dialogue on Internal Displacement: Current Global Fora and Future Prospects*, 38 REFUGEE SURVEY Q. 425, 435 (2020) (noting that the GCR “has been criticized for ‘virtually’ ignoring IDPs.”),

¹⁷⁸ See Matijevic et al., *supra* note 6, at 188 (“Today’s internal displacement crisis has collective outcomes which are global in character and do not remain confined to the societies directly affected by displacement. These collective outcomes require collective action, the many aspects of which, sooner or later, might become a subject of international legal regulation.”).

¹⁷⁹ ORCHARD, *supra* note 5, at 223.

¹⁸⁰ See *supra* note 96 and accompanying text.

persecution on the specified grounds.¹⁸¹

While I question the primacy of exile as the basis for such a distinction, a framework that revives the pre-1951 Refugee Convention era's treatment of refugees and IDPs as more similar than distinct does not amount to a recommendation as to whether the existing refugee protection system should absorb IDPs.¹⁸² Instead, the underpinning of such a project is to encourage involvement from the international human rights community to address the ongoing and growing crisis of internal displacement.

What follows is a discussion of how the status of “refugee” and “IDP” exist not as fixed categories but rather in a continuum: “Some IDPs go on to cross a border and become refugees, and some refugees return to their countries of nationality and become IDPs. Often IDPs and refugees live side by side, especially where displacement straddles a border.”¹⁸³ Indeed, “[b]order-induced displacement is not equivalent to the original reasons forcing people into exile, but rather functions as a second-order type of (re-)displacement, produced precisely via (the violence implicated in) border control.”¹⁸⁴

¹⁸¹ Johannes Servan, *What Justice Requires: A State-Centric Bias in the Ethics of Migration* 131, in *STUDYING MIGRATION POLICIES AT THE INTERFACE BETWEEN EMPIRICAL RESEARCH AND NORMATIVE ANALYSIS* (Matthias Hoesch & Lena Laube, eds.) (2019), quoting Alexander T. Aleinikoff, *State Centered Refugee Law: From Resettlement to Containment*, 14 MICH. J. OF INT'L L. 120 (1992). See also MANZELLA, *supra* note 21, at 3 (quoting human geographer Tim Cresswell: “[The refugee] is founded on the organization of the nation-state at the turn of the [twentieth] century in Europe. The drawing and policing of national borders, the firming up of state sovereignty and the construction of national identities were all necessary conditions for the production of the refugee as a person “out of place.”).

¹⁸² See, e.g., Catherine Phuong, *Internally Displaced Persons and Refugees: Conceptual Differences and Similarities*, 18 NETHERLANDS Q. HUM. RTS. 215, 224 (2000). (citing Luke T. Lee, *Internally Displaced Persons and Refugees: Toward a Legal Synthesis?*, 9 J. REFUGEE STUD. 31 (1996)). Somewhat conversely, scholars have recommended the application of strategies fashioned for refugees to IDPs. See Christakis Peristianis, *Challenging (Internal) Integration: Debating Internal Displacement and Integration in Greek-Cypriot Refugees' Oral Histories*, 1 CENT. & E. EUR. MIGRATION REV. 31 (2023) (applying refugee integration theory to a prolonged internally displaced population in Greece). Scholars have cautioned against addressing the needs of IDPs within the existing refugee protection system.

¹⁸³ See Hudson & Ghraïne, *supra* note 177, at 432-433.

¹⁸⁴ Violeta Moreno-Lax & Martin Lemberg-Pedersen, *Border-Induced Displacement: The Ethical and Legal Implications of Distance-Creation Through Externalization*, 56 QUESTIONS OF INT'L L. 5, 6-7 (2019).

1. IDPs as “Eventual Refugees” and Prematurely Returning Refugees

One way to narrow the protection gap for IDPs is by extending refugee protections to the population, requiring the removal of the requirement of cross-border movement in the definition of what constitutes a refugee.¹⁸⁵ While there is no comprehensive data on how many IDPs eventually become refugees,¹⁸⁶ importantly countries with the most IDPs are also amongst the top refugee-producing countries.¹⁸⁷ Moreover, while there is also a lack of data as to why IDPs ultimately decide to cross borders,¹⁸⁸ “...many IDPs who are unable to achieve durable solutions in their country of origin are forced to seek refuge abroad.”¹⁸⁹

Cross-border movements often are caused by the home country’s government and/or the international community’s failure to protect and assist IDPs in their country of origin,¹⁹⁰ prompting some scholars to assert that

¹⁸⁵ Benson, *supra* note 189; International Refugee Assistance Project, *Expanding Complementary Pathways for Refugees and Displaced Persons: A Blueprint for the U.S. Government* (Nov. 20, 2020), <https://refugeerights.org/wp-content/uploads/2020/12/Expanding-Complementary-Pathways-for-Refugees-and-Displaced-Persons-A-Blueprint-for-the-U.S.-Government.pdf>.

¹⁸⁶ See Passey, *supra* note 8 (noting that the correlation between internal displacement and cross-border migration is assumed but difficult to prove); see also Elizabeth J. Rushing, *The Invisible Majority*, INTERNAL DISPLACEMENT MONITORING CENTRE 2 (2017), https://www.internal-displacement.org/sites/default/files/inline-files/20171113-idmc-intro-cross-border-thematic-series_1.pdf.

¹⁸⁷ See Passey, *supra* note 8. See also Jon Echevarria-Coco & Javier Gardeazabal, *A Spatial Model of Internal Displacement and Forced Migration*, 65 J. OF CONFLICT RESOLUTION 591 (2021) (proposing a spatial model that “delivers predictions about how the fractions of a country’s population that become refugees and IDPs...related with the intensity of the shock, country size, terrain ruggedness and the degree of geographical proximity of the country with respect to the rest of the world.”).

¹⁸⁸ *Id.* Based on examples from large studies of families separated by migration, all Iraqis and Syrians had family members that had left for Europe in the previous three years. *Id.*

¹⁸⁹ Bina Desai et al., *On This Side of the Border: The Global Challenge of Internal Displacement: Scale, Impacts and Solutions* 2-3 (June 2021). Many of the driving factors for cross-border migration, such as unemployment, insecurity, and discrimination, are also the same barriers that prevent some IDPs from leaving their home countries. *Id.* In a study by the International Organization for Migration (IOM), displaced Iraqi respondents stated that cross-border migration is something that most IDPs cannot afford. See also Grace Benson, *The Escalating Crisis of Internal Displacement*, REFUGEE LAW INITIATIVE (Jan. 11, 2021), <https://rli.blogs.sas.ac.uk/2021/01/11/the-escalating-crisis-of-internal-displacement/> (noting that some IDPs cannot leave “because they live in authoritarian countries that enforce strict border controls.”).

¹⁹⁰ See Sydney, *supra* note 25. Of the approximately 1,500 IDPs, refugees, and returning refugees interviewed, 57% of the refugees and returning refugees were internally displaced prior to leaving their country of origin. *Id.* at 10. Of those, a third endured several internal

“[p]rotecting people inside their own countries is therefore key to preventing refugee flows.”¹⁹¹ Importantly, the United Nations High Commissioner for Refugees (UNHCR) has updated the methods it uses to engage with internal displacement situations.¹⁹² After completing its revised policy, UNHCR stated its increased emergency preparedness, coordination, data collection, and strategic support for durable solutions with respect to IDPs.¹⁹³

IDPs have reported that financial costs served as a barrier to their ability to cross their home country border, a factor exacerbated by the fact that many IDPs suffer financial losses during their internal displacement and cannot afford any further travel.¹⁹⁴ Displaced persons that cannot afford to cross the border are more likely to experience repeated displacement—in fact, approximately forty-seven percent of the IDPs surveyed were displaced more than once.¹⁹⁵

Scholars have posited that it is a fair assumption that many, if not most, refugees were internally displaced in their country of origin before they crossed the border, even if it was only for a brief period or while in transit.¹⁹⁶ While there is not a lot known about the process that leads from internal to external displacement, developing an understanding the displacement continuum would allow governments and policy makers to better respond to displaced persons immediate needs at their points of departure, transit, and arrival.¹⁹⁷

On the other side of the eventual refugee scenario is the phenomenon of prematurely returning refugees.¹⁹⁸ The principle of non-refoulement, which

displacements prior to crossing the border. *Id.* Many refugees crossed the border as a last resort because they could not find safety in their country of origin. *Id.* Many faced conflicts, violence, and persecution that forced them to flee their country of origin. *Id.* at 11.

¹⁹¹ See, e.g., Desai et al., *supra* note 189, at 3.

¹⁹² UNHCR, *UNHCR’s engagement with internally displaced persons*, U.N. Doc. EC/72/SC/CRP.14 (June 14, 2021).

¹⁹³ *Id.*

¹⁹⁴ Sydney, *supra* note 25, at 13. See also Cantor & Woolley, *supra* note 4, at 9 (noting that the UNHCR has been increasingly involved in IDPs since 2005, when it adopted a cluster approach).

¹⁹⁵ *Id.* Of those surveyed from southeast Myanmar, 77% had been displaced more than three times. *Id.*

¹⁹⁶ Rushing, *supra* note 186.

¹⁹⁷ *Id.*

¹⁹⁸ In 2018 and 2019, for example, many Syrian refugees who were residing in Lebanon began prematurely returning to Syria due to a variety of factors, including economic turmoil in Lebanon, and its government’s unjust policies toward them. *Lebanon: Why Are Returns of Refugees from Lebanon to Syria Premature?*, Amnesty International Public Statement

safeguards migrants against being returned to a country where they face serious threats to their life or freedom, serves as a cornerstone of international human rights law.¹⁹⁹ This principle, however, has not been uniformly applied to ensure that refugees returning to their countries of origin do not find themselves in situations that could lead to internal displacement.²⁰⁰ As a result, returning refugees are exposed to conditions of vulnerability, rendering their return home to merely trigger a rhetorical shift in their experience of displacement, namely from refugee to IDP.²⁰¹

B. Refusing and Reimagining State Sovereignty

Generally, the principle of state sovereignty has been invoked as a limiting concept with respect to refugee law specifically, and international human rights and humanitarian law more broadly.²⁰² Scholars, however, have pointed out that states invoke the concept of sovereignty selectively,²⁰³

(June 12, 2019), <https://www.amnesty.org/en/documents/mde18/0481/2019/en/>; see also Lori Beaman, Harun Onder, & Stefanie Onder, *When Do Refugees Return Home? Evidence from Syrian Displacement in Mashreq*, 155 J. DEV. ECON. 1 (2022).

¹⁹⁹ Flavia Zorzi Giustiniani, *The Obligations of the State of Origin of Refugees: An Appraisal of a Traditionally Neglected Issue*, 30 CONN. J. INT'L L. 171, 180-82 (2015).

²⁰⁰ *Id.*

²⁰¹ *Id.* at 185. States of origin bear a proactive duty in creating conditions that not only facilitate the safe, voluntary return of refugees but also ensure their successful reintegration and protection from internal displacement. *Id.* at 208.

²⁰² See Ferris & Martin, *supra* note 175, at 15 (“Addressing internal displacement is more complicated than for refugees as it raises questions of national sovereignty. International engagement with IDPs continues to be perceived as intervention into the internal affairs of a country.”). Scholars have argued via a historical analysis of the nation state that immigration and border systems did not come into existences until two hundred years after the emergence of the post-Westphalia international system. See, e.g., ANDREW S. ROSENBERG, UNDESIRABLE IMMIGRANTS: WHY RACISM PERSISTS IN INTERNATIONAL MIGRATION 58 (2022). Rosenberg contends that the desire of states to “exclude foreigners and secure borders was a consequence of the emergence of the modern nation-state, rather than a primordial feature. *Id.* States did not inherently receive the right to exclude from “the god of sovereignty; they developed the thirst for exclusion during the post-Enlightenment transition to the modern nation-state form.” *Id.* See also E. Tendayi Achiume, *Migration as Decolonization*, 71 STANFORD L. REV. 1509 (2019).

²⁰³ ABDELAATY, *supra* note 41, at 2 (describing “two puzzling patterns in state responses to refugees: states open their borders to some refugee groups while blocking others (what I call the “discrimination puzzle”), and a number of countries have given the United Nations control of asylum procedures and refugee camps on their territory (what I call the “delegation puzzle”). States do not consistently wield their capacity for control, nor do they jealously guard their authority to regulate. These observations lead to this book’s central question: why do states sometimes assert their sovereignty vis-à-vis refugee rights and at other times seemingly cede it?”).

often doing so to justify state violence.²⁰⁴ A prominent Third World Approaches to International Law (TWAAIL) scholar has characterized state sovereignty as a neo-colonial project, noting that “[s]overeignty for the non-European world is alienation and subordination rather than empowerment.”²⁰⁵ As discussed throughout this Article, the 1951 Refugee Convention safeguards the primacy of state sovereignty with respect to extending international protections to displaced communities.²⁰⁶ Since IDPs are displaced within the borders of their countries of origin, the issue of state sovereignty has been a significant obstacle for international support and solutions.²⁰⁷

Sovereignty, however, does not and has not always been defined merely as a limiting concept. Importantly, the UNGP are based on the concept of “sovereignty as responsibility” and set forth the responsibilities of governments and international organizations to IDPs.²⁰⁸ Francis M. Deng, the first U.N. Special Representative on the Human Rights of Internally Displaced Persons, advocated for the notion of sovereignty as responsibility,²⁰⁹ thus conceptualizing a divergent understanding of state sovereignty.²¹⁰ A 2005 resolution passed by the United Nations General

²⁰⁴ See CHOWDHURY, *supra* note 21 at 3 (“The juridical language of sovereign states...[is a way to use] existing discourses of rights and justice to frame border matters while obscuring the real mechanisms of repression and state violence.”).

²⁰⁵ ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* 102 (2005) (arguing that “sovereignty can be understood only in terms of its complex relationship with the colonial encounter and the constellation of racial and cultural distinctions it generated and elaborated.”). Anghie continues: “The basic point is that the development of the idea of sovereignty in relation to the non-European world occurs in terms of dispossession, its ability to alienate its lands and rights.” *Id.* at 105.

²⁰⁶ Richard Ekins, *The State’s Right to Exclude Asylum-Seekers and (Some) Refugees*, in DAVID MILLER & CHRISTINE STRAEHLE (EDS.), *THE POLITICAL PHILOSOPHY OF REFUGE* 39 (2020).

²⁰⁷ Martin, *supra* note 34, at 3. Professor Martin notes, however, that there has been a shift: “With the end of the Cold War came changing concepts regarding the responsibility to assist and protect the internally displaced. During the past two decades, classic notions of sovereignty have been placed under considerable pressure when they are used to prevent humanitarian assistance and protection from reaching populations in acute need of aid.” *Id.*

²⁰⁸ Roberta Cohen, *Reconciling R2P with IDP Protection*, 2 *GLOBAL RESP. PROTECT* 15, 20 (2010).

²⁰⁹ *Id.* at 29 (“From 1992 to 2004, Deng worked tirelessly to persuade governments that concern for IDPs was not a pretext for international political or military involvement. Indeed, the concept of ‘sovereignty as responsibility’ was intended to allay governmental fears about international programs for IDPs.”).

²¹⁰ See Francis M. Deng, *Divided Nations: The Paradox of National Protection*, 603 *ANNALS AM. ACAD. POL. & SOC. SCI.* 217 (2006) (doing so given the paradox that many United Nations member states are divided and are often the cause of displacement; Roberta Cohen, *Humanitarian Imperatives are Transforming Sovereignty*, 16 *ILSA Q.* 14, 21 (2008)

Assembly introduced the doctrine of the responsibility to protect,²¹¹ offering a reconceptualization of sovereignty that entails a responsibility to protect populations from severe human rights violations, such as genocide and crimes against humanity.²¹² It is a framework that introduces a complementary responsibility borne by the international community.²¹³ This perspective challenges traditional notions of state sovereignty, suggesting a shift towards a more cooperative and collective approach to refugee protection in international law.²¹⁴

Sovereignty as responsibility provides that, while home country governments are primarily responsible for the wellbeing of IDPs within their borders,²¹⁵ states that are unable to fulfill this duty should be made to accept aid from the international community, and conversely a state's refusal or obstruction of IDP-access to aid provides the international community with the right to act.²¹⁶

The notion of sovereignty as responsibility challenges the traditional invocation of sovereignty as a limiting concept,²¹⁷ as it instead emphasizes states' accountability with respect to addressing human rights concerns."²¹⁸ The international refugee regime, far from being a static set of rules and norms, is a dynamic and evolving framework.²¹⁹ It is a space where the age-

(reviewing Deng's conceptual framework of sovereignty as responsibility as a "shift in thinking about sovereignty and non-interference in internal affairs.").

²¹¹ E. Tendayi Achiume, *Syria, Cost-Sharing, and the Responsibility to Protect Refugees*, 100 MINN. L. REV. 687, 691 (2015).

²¹² *Id.*

²¹³ *Id.* at 694.

²¹⁴ *Id.* at 694, 734.

²¹⁵ Roberta Cohen, *Reconciling R2P with IDP Protection*, 2 GLOBAL RESP. PROTECT 15, 20 (2010).

²¹⁶ *Id.*; see also Francis M. Deng, *From Sovereignty as Responsibility to the Responsibility to Protect*, 2 GLOBAL RESP. PROTECT 353, 369 (2010) (noting the comments of UN High Commissioner for Refugees, Sadako Ogata, who stated that "the question of [IDPs] came to challenge state sovereignty as the founding principle of international relations.").

²¹⁷ Throughout the 20th century, the principle of state sovereignty often was invoked as a primary justification for non-intervention, particularly concerning internally displaced persons (IDPs). Susan Martin, *Forced Migration, the Refugee Regime and the Responsibility to Protect*, 2 GLOBAL RESP. PROTECT 38, 39, 47 (2010).

The Cold War era, marked by ideological battles and geopolitical tensions, saw states frequently invoking their sovereign rights to resist external interference, especially in matters deemed internal or domestic. *Id.* at 47. The end of the Cold War heralded significant shifts in the understanding of state sovereignty. *Id.* at 39. Namely, sovereignty began to be reconceptualized in terms of responsibility. *Id.* at 39-40.

²¹⁸ Deng, *supra* note 222, at 370.

²¹⁹ Susan Martin, *Forced Migration, the Refugee Regime and the Responsibility to Protect*, 2 GLOBAL RESP. PROTECT 38, 44-45 (2010).

old principles of state sovereignty encounter the pressing and often conflicting demands of human rights, humanitarian needs, and global justice.²²⁰ As forced migration continues to be a defining challenge of our times, the debates around sovereignty and its limits will remain central to the international community's efforts to address the plight of refugees and IDPs.²²¹ The concept of sovereignty as responsibility is also found in the doctrine of responsibility to protect in the International Commission on Intervention and State Sovereignty, namely in the context of humanitarian intervention, terrorism, and human rights.²²²

Translating state sovereignty as a responsibility to protect IDPs includes states' obligation to accept international assistance.²²³ Importantly, this rhetorical and normative shift transforms global collective action addressing the plight of internal displacement from an infringement to advancing state sovereignty.

C. Centering Coercion and Precarity

The reliance on labeling migration to determine how to govern human mobility has diluted the coercion factor of why most people—whether they are categorized as migrants, refugees, or IDPs—leave home. In fact, sociologists have put forth the assertion that “[t]he theorizing of forced migration and refugees has been paralyzed by excessive reliance on

²²⁰ *Id.* at 58

²²¹ *Id.*

²²² Georg Nolte, *Sovereignty as Responsibility*, 99 AM. SOC'Y INT'L. L. PROC. 389, 390 (2005). Nolte, however, critiques the concept as “highly ambiguous” and highly suspect if used as a legal term, as it may lead to the assertion of enforcement mechanisms beyond those provided under international law. *Id.* at 391. *See also* S. Pandiaraj, *Sovereignty as Responsibility: Reflections on the Legal Status of the Doctrine of Responsibility to Protect*, 15 CHINESE J. INT'L L. 795, 807 (2016) (similarly arguing that the notion of sovereignty as responsibility is in no way a legally binding framework and is significantly ambiguous). Pandiaraj primarily focuses on the lack of international consensus of R2P's applicability in the context of military intervention. *Id.* at 796; ANSELL, *supra* note 95 at 1 (“The protective state even extends to international politics where an international doctrine know as ‘responsibility to protect’ requires states to proactively intervene to protect citizens of other states from genocide or humanitarian disaster.”).

²²³ Katja Luopajarvi, *Is There an Obligation on States to Accept International Humanitarian Assistance to Internally Displaced Persons under International Law?*, 15 INT'L J. REFUGEE L. 678, 705 (2003) (“[S]tates and governmental authorities cannot arbitrarily refuse to give their consent to humanitarian assistance where international humanitarian law is applicable and must give very good reason for a refusal.”).

migration theory, and that we should instead use sociological theories of violence—bringing back the ‘force’ in forced migration.”²²⁴

Coercion most squarely encompasses violence, be it selective in the form of persecution or generalized as is the case of war.²²⁵ Centering coercion in the context of migration governance, however, does not have to be limited to violence.²²⁶ It may include scenarios of planned displacement in, for example, environmental-induced movement, given that “...people may move before the actual forced displacement in circumstances where the threats are perceived to be unavoidable.”²²⁷ The point is that the emphasis should be on forced nature of displacement, not national borders, when determining the extent to which the international human rights community provides protection particularly to those facing internal displacement.²²⁸

The other aspect of displacement that is centered in the cases where migrants are outside their countries of origin is vulnerability. As discussed *supra*, the United States during the deliberations on the 1951 Refugee Convention emphasized the need to provide international protection to those

²²⁴ Danilo Mandic, *What is the Force of Forced Migration? Diagnosis and Critique of a Conceptual Relativization, Theory and Society* (2021) https://scholar.harvard.edu/sites/scholar.harvard.edu/files/mandic/files/mandic2021_article_whatistheforceofforcedmigratio.pdf.

²²⁵ *Id.*

²²⁶ In this respect, I disagree with Mandic’s own characterization of putting forth a “conservative” concept of coercion, namely that it be tied to violence. *Id.* at 3.

²²⁷ Regasas & Lietaert, *supra* note 86 at 329. The authors go on to note that “[t]hese people are invisible in the existing IDP scholarship because they are conceived as voluntary migrants.” *Id.*

²²⁸ Along this vein, scholars have criticized the definition of “refugees” as unnecessarily restrictive. See, e.g., Luara Ferracioli, *Refugees, Rescue, and Choice*, in *THE POLITICAL PHILOSOPHY OF REFUGEE 195* (David Miller & Christine Straehle eds., 2020) (“Broadening the definition beyond that provided by the 1951 Refugee Convention could expand [our] view of when humanitarian assistance and legal rights are extended, for example by “...conceiv[ing] of a refugee as someone who cannot access her most basic human rights without migration.”); Hiroshi Motomura, *The New Migration Law: Migrants, Refugees, and Citizens in an Anxious Age*, 105 *CORNELL L. REV.* 457 (2020); Eunice Collins, *The Case for Reforming the Definition of ‘Refugee’ in the 1951 UN Convention Relating to the Status of Refugees*, 6 *BRISTOL L. REV.* 92 (2019); Andrew I. Schoenholtz, *The New Refugees and the Old Treaty: Persecutors and Persecuted in the Twenty-First Century*, 16 *CHI. J. INT’L L.* 81 (2015). Yet others have highlighted the complexities and challenges associated with implementing a broader definition of refugees, see, e.g., Timothy E. Lynch, *Refugees, Refoulement, and Freedom of Movement: Asylum Seekers’ Right to Admission and Territorial Asylum*, 36 *GEO. IMMIGR. L.J.* 73 (2021); Timothy Calica, *Improving the Refugee Crisis in Syria: A Comparative Analysis of Regional Refugee Policies*, 40 *LOY. L.A. INT’L & COMP. L. REV.* 115 (2017).

“who lacked the protection of a Government.”²²⁹ Made to restrict the scope of the Convention to migrants outside the border of their home country, this statement assumes that IDPs, just because they are within their country’s border, have access to protection from their government.

For IDPs, as addressed in *supra* Part II.B, the notion that they do not need the intervention by the international human rights community because they are citizens in the place they are displaced may lead to grave oversight. In fact, IDPs may be displaced in the first instance because they were part of a population of “precarious citizens,” namely individuals subject to “heightened vulnerability and aggression”²³⁰ at the hands of their government or by a group against whom the government is unable or unwilling to protect. Additionally, the experience of internal displacement may change once they become IDPs, namely their displacement has amplified the degree to which they face precarity. Centering the concept of precarity “allow[s] us to see how internal displacement is part of a larger nexus of political and economic forces designed to produce and maintain inequity, particularly in terms of race, gender, and class.”²³¹

CONCLUSION

The current and predicted future state of global human migration, namely the proliferation in cases of internal displacement, requires an examination and a revamping of the way in which international migration governance is limited by borders. The importance of physical nation-state borders has diminished due to modern-day externalized migration control practices. Moreover, the traditional international legal perspective on the limiting notion of state sovereignty also has shifted over time. The assumptions underlying the position that those facing internal displacement do not need the assistance of the international community, including the fiction of state protection and the rigid categorizations of IDPs and refugees, in many instances are dangerously inaccurate. This Article offers frameworks to reconceptualize international migration theory with the objective of bringing IDPs into the realm of global migration governance.

²²⁹ See *supra* note 96 and accompanying text.

²³⁰ JUDITH BUTLER, *PRECARIOUS LIFE: THE POWERS OF MOURNING AND VIOLENCE* xi (2004). Butler’s theory of precarity denotes a “politically induced condition in which certain populations suffer from failing social and economic networks of support and become differentially exposed to injury, violence and death.”) *Id.*

²³¹ MANZELLA, *supra* note 21, at 9.