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Sea-Level Rise and Human Mobility: The Legal Implications for Ireland's Foreign and Domestic Policies

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ABSTRACT

In October 2023, the Irish government's *Report of the Inter-Departmental Group on National Coastal Change Management Strategy* concluded it was inevitable that, as a result of rising sea levels, a managed retreat may in time be required along some parts of the Irish coastline. This stark warning highlights Ireland's vulnerability as an island nation to global climate change and sea-level rise. While adaptive measures can be made to protect coastal communities, there is a need to undertake comprehensive planning to prepare for the foreseeable impacts of climate change. Ireland is not alone in facing such risks—over a third of states in the world are directly affected by sea-level rise. Such scenarios raise complicated legal questions, which prompted the UN International Law Commission (ILC) to commence analysis in 2018 of the legal implications of sea-level rise. This article starts by examining recent developments concerning the legal implications of climate change in general, before specifically analysing the ongoing work of the ILC on sea-level rise and human mobility. Drawing on international legal and policy frameworks, the article then considers Ireland's obligations arising from sea-level rise and population displacement. In particular, it addresses a) Ireland's foreign policy, including international development assistance and legal migration routes

¹This paper was written while the author was a Visiting Erskine Fellow at the University of Canterbury, New Zealand. In particular, I would like to thank colleagues in the University of Canterbury's Cluster for Community and Urban Resilience (CURE) and the Institute of Law, Emergencies and Disasters (LEAD). I would also like to thank Stephen Flood for his helpful comments on the Irish domestic policies, and the valuable comments from the peer reviewers. All errors remain my own.

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for persons fleeing the impacts of sea-level rise; and b) domestic policies relating to climate change adaptation and planning for internal climate displacement.

INTRODUCTION

Even with comprehensive monitoring systems and a policy of appropriate intervention, *it is inevitable* that, as a state, we will be faced in some circumstances with the need to co-ordinate a managed retreat strategy, as the safest, most appropriate response in certain cases to rising sea levels and the associated impact on the national coastline.²

This stark warning from the Irish government, contained in the 2023 *Report of the Inter-Departmental Group on National Coastal Change Management Strategy*, highlights Ireland's vulnerability as an island nation to global climate change and sea-level rise. According to the results of the 2016 Census, over 40,000 people live within 100 metres of the Irish coast, and a further 100,000 people live within 250 metres.³ Notably, a recent case study recorded a mean sea-level rise of 41cm in Cork Harbour between 1842 and 2019, which is in line with global trends.⁴ Any policy of managed retreat, defined as the coordinated movement of people and infrastructure away from areas of specific risk and allowing the coastline to retreat naturally,⁵ will have significant ramifications for individuals, families and communities. Such impacts are likely to develop gradually over time, so it is important to undertake comprehensive risk management planning in advance to avoid any unnecessary alarmism when discussing such scenarios. The negative impacts of global climate change are well documented.⁶ So, in addition to preparing and responding to the increasing frequency, severity and unpredictability of extreme weather events such as storms, rainfall and heatwaves, the government, local authorities, businesses and communities across Ireland must plan for the foreseeable impacts of coastal erosion and sea-level rise.

Ireland is not alone in facing such challenges—over a third of states in the world are directly affected by sea-level rise and most other states are indirectly

²Government of Ireland, *Report of the Inter-Departmental Group on National Coastal Change Management Strategy* (2023), 70 (emphasis added). This report is an initial scoping exercise to provide a framework for key decisions, rather than a fully elaborated coastal management strategy.

³Central Statistics Office, Census 2016, 'Population by distance to the nearest coastline, 2016' (Figure 1.2), available at: www.cso.ie/en/releasesandpublications/ep/p-cp2tc/cp2pdm/pd/ (all hyperlinks last accessed: 10 September 2024). Equivalent statistics were not collected in the 2022 Census, but since the overall Irish population increased by 387,274 (or 8 per cent) between April 2016 and April 2022, it is likely there has also been an increase in the number of people living in close proximity to the coastline.

⁴David Pugh *et al.*, 'Mean sea level and tidal change in Ireland since 1842: A case study of Cork', *Ocean Science* 17 (2021), 1623–37: 1635.

⁵Government of Ireland, *Report of the Inter-Departmental Group*, 8.

⁶Hans-Otto Pörtner *et al.*, 'Summary for Policymakers', in *Climate Change 2022: Impacts, adaptation and vulnerability, Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2022).

affected, meaning that sea-level rise is truly a global phenomenon.⁷ Indeed, many small island developing states (SIDS) face an existential risk from sea water intrusion or inundation due to the relentless march of sea-level rise and more powerful storm surges.⁸ The magnitude of the global changes humanity is causing as a result of CO₂ and other greenhouse gas (GHG) emissions can be hard to grasp. Through our activities, we are undertaking a form of negative geo-engineering, which is already having devastating consequences for biodiversity and life on this planet. The severity of the crisis is evidenced by the UN Security Council's recent debate on the threat to international peace and security arising from sea-level rise, and UN Secretary-General António Guterres has warned that rising sea levels are creating new sources of global instability and conflict.⁹

This article argues that current international debates regarding state obligations for climate change, sea-level rise and population displacement provide an important opportunity to proactively consider the implications for Irish foreign and domestic policy. The article commences with a brief overview of important legal developments regarding state obligations in the context of climate change and sea-level rise in general. This is followed by an analysis of the on-going work of the International Law Commission on the protection of persons and human mobility resulting from sea-level rise. Drawing on relevant legal and policy frameworks, such as the UN's Sustainable Development Goals, Guiding Principles on Internal Displacement, and the Global Compact for Safe, Orderly and Regular Migration, the article then considers the legal implications of sea-level rise specifically for: a) Ireland's foreign policy, including international development assistance to SIDS and legal migration routes for persons fleeing the impact of sea-level rise; and b) domestic policies relating to climate change adaptation and planning for internal climate displacement within Ireland.

LEGAL IMPLICATIONS OF CLIMATE CHANGE

General

The grave threat posed by global climate change has long been recognised. Edith Brown-Weiss' seminal article on climate change and inter-generational equity was first published in 1989;¹⁰ while Graeme Hugo's analysis of environmental migration was published in 1996.¹¹ States' obligations to reduce GHG emissions

⁷UN, *Report of the International Law Commission, Seventieth session* (30 April – 1 June and 2 July – 10 August 2018), A/73/10, 330.

⁸Pörtner *et al.*, 'Summary for Policymakers', 15.

⁹UN, 'Secretary-General's remarks to the Security Council Debate on "Sea-level rise: Implications for international peace and security"' (14 February 2023), António Guterres, Secretary-General, available at: www.un.org/sg/en/content/sg/statement/2023-02-14/secretary-general-remarks-the-security-council-debate-sea-level-rise-implications-for-international-peace-and-security.

¹⁰Edith Brown Weiss, 'Climate Change, Intergenerational Equity and International Law' (1989), reprinted with new introduction in *Vermont Journal of Environmental Law* 9 (2008), 615–27.

¹¹Graeme Hugo, 'Environmental Concerns and International Migration', *International Migration Review Special Issue: Ethics, Migration, and Global Stewardship* (Spring 1996) 30 (1), 105–31.

are central to the 1992 UN Framework Convention on Climate Change (UNFCCC), and the human rights implications of climate change were first comprehensively enumerated by the Office of the UN High Commissioner for Human Rights in 2009.¹² While recognising the differing levels of responsibility for historic and current GHG emissions, it is nevertheless clear that all states have obligations to prevent, minimise and respond to climate change. Consequently, the last few years have seen a burgeoning of requests for adjudication of such obligations. For example, in April 2024 the European Court of Human Rights held that Switzerland had not complied with its positive obligations under the convention concerning climate change. In a case addressing the impacts of heatwaves on the elderly, the Court found that Article 8 of the Convention (right to private and family life) encompasses a right to effective protection by the state authorities from the serious adverse effects of climate change on lives, health, well-being and quality of life. In particular, the Court held there were critical gaps in the Swiss domestic regulatory framework, including regarding the establishment of a carbon budget and national GHG emissions limitations.¹³

Two pending cases regarding state obligations in the overall context of climate change are of particular note. In March 2023, following an initiative from the Pacific island state of Vanuatu, the UN General Assembly (UNGA) formally requested an advisory opinion from the International Court of Justice (ICJ) on the obligations of states under international law to ensure the protection of the climate system and the environment from GHG emissions, and the legal consequences for those states which have caused significant harm to the climate system.¹⁴ The ICJ's interpretation of these points will be fundamental in understanding the extent of states' binding obligations. Reflecting the importance of the World Court's first substantive deliberations on climate change, a variety of inter-governmental organisations have been authorised to participate in the proceedings, including the Pacific Islands Forum and the Alliance of Small Island States.¹⁵ Separately, in January 2023, Colombia and Chile requested

¹²UNGA, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights* (15 January 2009), A/HRC/10/61. The most recent version of General Comment No. 36 on Article 6 (the right to life) under the International Covenant on Civil and Political Rights expressly highlights climate change as one of 'the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.' See: UN Human Rights Committee, General Comment No. 36: Article 6 Right to Life (3 September 2019), CCPR/C/GC/36, para. 62.

¹³European Court of Human Rights, *Verein KlimaSeniorinnen Schweiz & Others v. Switzerland*, Application no. 53600/20, Judgment, Grand Chamber (9 April 2024).

¹⁴International Court of Justice, Request for Advisory Opinion transmitted to the Court pursuant to General Assembly Resolution 77/276 of 29 March 2023: Obligations of States in respect of Climate Change. For analysis, see: Maria Antonia Tigre and Jorge Alejandro Carrillo Bañuelos, 'The ICJ's Advisory Opinion on Climate Change: What Happens Now?' (29 March 2023), Columbia Law School, Sabin Center for Climate Change Law, available at: <https://blogs.law.columbia.edu/climatechange/2023/03/29/the-icjs-advisory-opinion-on-climate-change-what-happens-now/>.

¹⁵International Court of Justice, Obligations of States in respect of Climate Change (Request for Advisory Opinion), Press Release No.2023/76 (20 December 2023).

an advisory opinion from the Inter-American Court of Human Rights (IACHR) on the human rights implications of the climate emergency.¹⁶ The Court has so far received over 200 submissions from stakeholders, which is almost double the number the Court normally receives for advisory opinion proceedings.¹⁷ The forthcoming results of these two advisory opinions will provide essential guidance to states on the wide array of legal and human rights obligations which arise from climate change, both for mitigating GHG emissions and in adapting to the changing climate.

While the mitigation of GHG emissions is crucial to prevent future harms, even if all emissions were stopped today the impacts of past emissions will continue for many years. Indeed, as noted in the Irish government's *Climate Action Plan 2024*: 'It is...clear that some impacts of climate change, such as loss of ice sheets and rising sea levels, will be irreversible for centuries or millennia.'¹⁸ So states must undertake comprehensive adaptation actions now to protect against current and future risks. As defined by UN Climate Change, adaptation refers to 'adjustments in ecological, social or economic systems to respond to actual or expected climatic stimuli and their effects.'¹⁹ Adaptation measures can include changes to social and community processes, practices and structures, as well as 'hard' adaptation measures such as flood defences and early warning systems. For example, Cooper and Pile differentiate between activities that involve changing human behaviours and those which involve resisting environmental change.²⁰ In the context of sea-level rise, this could entail the construction of seawall defences to prevent sea water intrusion or could lead to a policy of managed retreat from coastal areas at risk.

The specific challenge of sea-level rise

According to NASA, over the past 100 years global sea levels have risen between 15–20cm, and over half of that increase has occurred since 1993.²¹ Likewise, the Inter-governmental Panel on Climate Change (IPCC) issued a special report in

¹⁶Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile (9 January 2023), available at: www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf

¹⁷Blog post, 'The Inter-American Court of Human Rights Must Prioritize Corporate Accountability in Climate Opinion' (18 April 2024), Center for International Environmental Law, available at: www.ciel.org/inter-american-court-hr-hearings/.

¹⁸Government of Ireland, *Climate Action Plan 2024*, 20. The *Climate Action Plan 2024* was adopted on 21 May 2024 following the completion of Strategic Environmental Assessment, Appropriate Assessment, and a six-week public consultation. Available at: www.gov.ie/en/publication/79659-climate-action-plan-2024/

¹⁹UNFCCC Secretariat (UN Climate Change), 'Topics: Adaptation and resilience' (nd), available at: <https://unfccc.int/topics/adaptation-and-resilience/the-big-picture/introduction>.

²⁰J. Andrew G. Cooper and Jeremy Pile, 'The adaptation-resistance spectrum: A classification of contemporary adaptation approaches to climate-related coastal change', *Ocean & Coastal Management* 94 (2014), 90–98.

²¹National Aeronautics and Space Administration (NASA), 'Sea level change observations from space, FAQ (nd)', available at: <https://sealevel.nasa.gov/faq/13/how-long-have-sea-levels-been-rising-how-does-recent-sea-level-rise-compare-to-that-over-the-previous/>

2019 on the evidence of sea-level rise, which concluded it is virtually certain that global mean sea-level rise was increasing, and scientists are highly confident this process is accelerating.²² Most worryingly, scientists have high confidence that the dominant cause of sea-level rise since 1970 is anthropogenic forcing—i.e., human activities.²³ The report highlighted that a combination of thermal expansion of the oceans, melting of glaciers and ice caps, and land water storage changes have already led to an increase in sea-levels and the IPCC estimated with medium confidence that over the next 75 years, sea levels will rise between 43 and 84cm.²⁴ Globally, it is calculated that 898 million people live in low-elevation coastal zones which are most at risk from hazards such as storm surges, increased soil salinity and rising sea levels.²⁵ It follows that unless adaptation measures to prevent coastal erosion and saltwater intrusion are put in place, large numbers of people may be forced to move from their current homes near the coast to safer, more habitable, areas. This risk might seem distant—both in time and space—but due to the complexity of the issues raised, here in Ireland and for the international community, there is a need to carefully plan and prepare for all such eventualities.²⁶

Parallel to the increasing certainty of climate scientists regarding the likely trajectories which sea-level rise will take in different warming scenarios, international lawyers, diplomats and policymakers are considering the complicated legal questions which need to be addressed. A study group was first established within the International Law Association (ILA) in 2012 to examine the issue, and then in 2018 the UN's International Law Commission (ILC) commenced analysis of the implications of sea-level rise under international law. Of note, two recent international cases have examined specific issues arising from sea-level rise. In 2021, Antigua and Barbuda and Tuvalu established the Commission of Small Island States on Climate Change and International Law (COSIS), which has since expanded to include Palau, Niue, Vanuatu, and St. Lucia.²⁷ Following COSIS' request for an advisory opinion,²⁸ on 21 May 2024 the International Tribunal for the Law of the Sea (ITLOS) held that GHG emissions constitute 'pollution of the marine environment' under the UN Convention

²²The reported annual rate of sea-level rise has increased from 1.4mm between 1901 and 1990 to 3.6mm between 2006 and 2015. The IPCC explains its scientific methodology as: 'each finding is grounded in an evaluation of underlying evidence and agreement. A level of confidence is expressed using five qualifiers: very low, low, medium, high and very high.' See: Michael Oppenheimer *et al.*, 'Sea level rise and implications for low-lying islands, coasts and communities', in Hans-Otto Pörtner *et al.*, *IPCC Special report on the ocean and cryosphere in a changing climate* (Cambridge University Press, 2019), 321–445: 323.

²³Oppenheimer *et al.*, 'Sea level rise', 323.

²⁴Oppenheimer *et al.*, 'Sea level rise', 324.

²⁵Lena Reimann, Athanasios Vafeidis and Lars Honsel, 'Population development as a driver of coastal risk: Current trends and future pathways', *Cambridge Prisms: Coastal Futures* (2023) 1:e14, 1–12, 3–4.

²⁶Robert Nicholls, 'Planning for the impacts of sea level rise' *Oceanography* 24 (2) (2011), 144–57.

²⁷For information on COSIS, see: www.cosis-ccil.org/about.

²⁸Commission of Small Island States on Climate Change and International Law, 'Request for an Advisory Opinion' (12 December 2022), available at: www.itlos.org/fileadmin/itlos/documents/cases/31/Request_for_Advisory_Opinion_COSIS_12.12.22.pdf

on the Law of the Sea, which can result in sea-level rise.²⁹ Consequently, states' parties are under an obligation 'to take all necessary measures' to prevent, reduce and control GHG pollution from any source. The tribunal stressed this was a stringent due diligence requirement, rather than an absolute obligation of result, i.e. states are not required to cease all GHG emissions immediately.³⁰ The wide-ranging nature of the ITLOS ruling is likely to directly influence the pending advisory opinions before the ICJ and IACHR.³¹

The UN Human Rights Committee has also been asked to examine the implications of climate change and sea-level rise, most notably in the Teitiota case (which resulted from a claim under the 1951 Refugee Convention and is discussed further below) and the Torres Straits Islanders case. In *Daniel Billy and others v Australia* (Torres Strait Islanders Petition),³² eight indigenous inhabitants of the Torres Straits Islands, who were Australian citizens, brought a petition against the Australian government claiming breaches of their rights under the International Covenant on Civil and Political Rights (ICCPR), namely: Article 6 (the right to life), Article 17 (the right to be free from arbitrary interference with privacy, family and home), and Article 27 (the right to culture). The petitioners specifically argued that the impact of sea-level rise due to climate change and the lack of adequate adaptive measures, such as upgraded seawall defences, had caused saltwater intrusion which damaged coconut trees and other agricultural lands.³³ The petitioners also highlighted their traditional and cultural connection to their lands, and the emotional impact of storm surges destroying family burial grounds.³⁴ The Committee held that Australia's failure to undertake adequate adaptation and mitigation measures amounted to a failure to perform its duties under the ICCPR and so adversely affected their lives and traditional way of life.³⁵ Notably, the Committee required Australia to provide adequate compensation to the indigenous islanders for the harm suffered, engage in meaningful consultations with their communities to assess their needs, and continue to implement in-situ protective measures to ensure the islanders can remain on their islands.³⁶

Cases such as these highlight the crucial role that judicial mechanisms play in interpreting state obligations regarding climate change. However, other

²⁹International Tribunal for the Law of the Sea, 'Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law: Advisory Opinion' (21 May 2024), Case No. 31, para. 197.

³⁰ITLOS, 'Request for an Advisory Opinion', para. 243.

³¹For analysis, see: Korey Silverman-Roati and Maxim Bönnemann, 'The ITLOS Advisory Opinion on Climate Change: An Introduction into the Joint Blog Symposium' VerfBlog (22 May 2024), available at: <https://verfassungsblog.de/the-itlos-advisory-opinion-on-climate-change/>

³²UN Human Rights Committee, Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No.3624/2019 (22 September 2022), CCPR/C/135/D/3624/2019.

³³UN HRC, Communication No.3624/2019, para. 2.5.

³⁴UN HRC, Communication No.3624/2019, para. 5.2.

³⁵UN HRC, Communication No.3624/2019, paras 8.3 and 8.14.

³⁶UN HRC, Communication No.3624/2019, para.11.

international forums are also considering the legal implications of sea-level rise. In particular, over the past five years the International Law Commission (ILC) has engaged in detailed analysis of sea-level rise, including a specific focus on human mobility. As the UN body mandated to promote the progressive development and codification of international law, the ILC has divided their work on sea-level rise into three strands: maritime boundaries, state sovereignty, and the protection of persons.

THE INTERNATIONAL LAW COMMISSION'S WORK ON SEA-LEVEL RISE

Overview of issues

Respect for international law is one of the founding principles of the United Nations. Many people may recognise the clarion call contained in the UN Charter's preamble to 'save succeeding generations from the scourge of war' and to 'reaffirm faith in fundamental human rights.'³⁷ However, alongside these core principles, the preamble also proclaims that: 'We the peoples of the United Nations are determined...to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.'³⁸ Consequently, the International Law Commission was established in 1947 as a central component of the UN system, tasked specifically with 'the promotion of the progressive development of international law and its codification.'³⁹ The ILC Statute elaborates that 'progressive development of international law' means 'the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of states'; while the expression 'codification of international law' means 'the more precise formulation and systematization of rules of international law in fields where there already has been extensive state practice, precedent and doctrine.'⁴⁰

The ILC has long taken an interest in maritime matters—codifying the law of the sea was one of the first topics tackled by the ILC in 1949, and their work

³⁷UN, *Charter* (26 June 1945) UNCIO XV, 335; amendments by General Assembly Resolution in UNTS 557, 143/638, 308/892, 119.

³⁸UN, *Charter*. The Irish government recently reiterated that: 'Ireland is committed to the protection and promotion of a global order based on respect for international law.' See: Department of Foreign Affairs, 'Statement of Ireland in the ICJ Advisory Opinion hearings on Israeli practices and policies in the Occupied Palestinian Territory' (22 February 2024), Delivered by Mr. Rossa Fanning, S.C., Attorney General of Ireland. Available at: www.gov.ie/en/press-release/9637a-statement-of-ireland-in-the-icj-advisory-opinion-hearings-on-israeli-practices-and-policies-in-the-occupied-palestinian-territory/

³⁹UN, Article 1(1), *Statute of the International Law Commission*, adopted by the General Assembly in resolution 174 (II) of 21 November 1947, as amended by resolutions 485 (V) of 12 December 1950, 984 (X) of 3 December 1955, 985 (X) of 3 December 1955 and 36/39 of 18 November 1981.

⁴⁰UN, *Statute of the ILC*, Article 15.

ultimately led to the 1982 UN Convention on the Law of the Sea (UNCLOS).⁴¹ The threat of sea-level rise has also been on the agenda of the international community for many years—in particular since UNGA Resolution 44/206 of 22 December 1989 which flagged ‘the potential global problem of sea-level rise, which could adversely affect islands and coastal areas, particularly low-lying coastal areas.’⁴² Since the adoption of the UN Framework Convention on Climate Change in 1992,⁴³ the IPCC has issued increasingly detailed reports on the scientific basis and likely consequences of global sea-level rise. These reports acknowledge that the impacts of sea-level rise will not be evenly spread across the globe. For instance, detailed analysis conducted in 2019 noted:

The vulnerability of coastal ecosystems to SLR [sea-level rise] and related coastal hazards differs strongly across ecosystem types and depends on human interventions (e.g. land use change and fragmentation, coastal squeeze and anthropogenic subsidence) and degradation (e.g. pollution), as well as climate change, including changes in temperature and precipitation patterns.⁴⁴

Against this backdrop, in 2018 five ILC members submitted a proposal for inclusion of the topic of sea-level rise onto their work agenda.⁴⁵ The proposal identified three discrete aspects for consideration, namely: Law of the Sea issues (e.g. maritime boundaries); statehood (e.g. the continuing sovereignty of inundated island states); and the protection of persons affected by sea-level rise (e.g. human mobility and displacement).⁴⁶ The Irish government supported the proposal, and stated that:

An in-depth examination of [these] issues would provide a solid basis for future constructive discussions within the Committee and would play an important role in identifying existing rules and gaps in the legal framework that the international community would need to address as part of its response to sea-level rise.⁴⁷

The ILC agreed to proceed by splitting the topic into two subtopics: with the first open-ended study group co-chaired by Bogdan Aurescu and Niüfer Oral focusing on the possible legal effects of sea-level rise on maritime baselines, the outer limits of maritime spaces, and on sovereignty issues including possible legal effects on the status of islands and the maritime entitlements of a coastal state.

⁴¹UN, *Convention on the Law of the Sea* (10 December 1982) 1833 UNTS 3.

⁴²UNGA, Resolution 44/206, Possible adverse effects of sea-level rise on islands and coastal areas, particularly low-lying coastal areas (22 December 1989). This Resolution built on the Malé Declaration on Global Warming and Sea Level Rise, adopted by the Small States Conference on Sea Level Rise, held at Malé, The Maldives from 14–18 November 1989, A/C.2/44/7, annex.

⁴³UN, Framework Convention on Climate Change (9 May 1992) 1771 UNTS 107.

⁴⁴Oppenheimer *et al.*, ‘Sea level rise’, 367.

⁴⁵UN, *Report of the ILC* (A/73/10), 326–34.

⁴⁶UN, *Report of the ILC* (A/73/10), 328–29.

⁴⁷UNGA, Sixth Committee, ‘Summary Record of the 29th meeting, held at Headquarters, New York on Friday 1 November 2019’ (26 November 2019), A/C.6/74/SR.29, para. 43 (Ireland: James Kingston).

This study group published their first issues paper in February 2020,⁴⁸ and a follow-up paper in February 2023.⁴⁹ The second open-ending study group co-chaired by Patrícia Galvão Teles and Juan José Ruda Santolaria was tasked with two distinct sets of issues: statehood and the protection of persons. Ruda Santolaria took the lead in examining fundamental questions of statehood and the existential risk faced by some states due to sea-level rise, while Galvão Teles has analysed the protection of persons affected by sea-level rise, with a specific focus on internal and international mobility. The second study group finalised one issues paper⁵⁰ and a supplementary bibliography⁵¹ in 2022, and an additional paper reflecting subsequent developments in February 2024.⁵²

The ILC's work on the topic of sea-level rise is expected to end in 2025, and it is outwith the scope of this article to examine the multitude of legal issues raised during the ILC discussions and by states in the UNGA's Sixth (Legal) Committee. Therefore, the following section will focus specifically on the strand of work led by Patrícia Galvão Teles on human mobility and the protection of persons affected by sea-level rise, as well as drawing on other relevant international legal and policy frameworks.

Protection of persons affected by sea-level rise

There is a multitude of human rights potentially impacted by sea-level rise—from negative health outcomes and loss of livelihoods caused by land degradation and saltwater intrusion to socio-economic inequality within and between nations.⁵³ One of the most controversial is the question of involuntary or forced displacement. Estimates for the potential number of people around the world who may migrate for environmental or climatic reasons in the coming decades varies widely, as do the terminology and definitions utilised. Many lawyers reject

⁴⁸International Law Commission (ILC), 'Sea-level rise in relation to international law: First issues paper by Bogdan Aurescu and Nilüfer Oral' (28 February 2020), A/CN.4/740

⁴⁹International Law Commission (ILC), 'Sea-level rise in relation to international law: Additional paper to the first issues paper' (2020), by Bogdan Aurescu and Nilüfer Oral (13 February 2023), A/CN.4/761.

⁵⁰International Law Commission (ILC), 'Sea-level rise in relation to international law: Second issues paper by Patrícia Galvão Teles and Juan José Ruda Santolaria' (19 April 2022), A/CN.4/752.

⁵¹International Law Commission (ILC), 'Sea-level rise in relation to international law: Second issues paper by Patrícia Galvão Teles and Juan José Ruda Santolaria, Addendum—Selected bibliography related to (i) statehood issues and (ii) issues related to the protection of persons affected by sea-level rise' (14 June 2022), A/CN.4/752/Add.1.

⁵²International Law Commission (ILC), 'Sea-level rise in relation to international law: Additional paper to the second issues paper (2022) by Patrícia Galvão Teles and Juan José Ruda Santolaria' (19 February 2024), A/CN.4/774. See also: International Law Commission (ILC), 'Sea-level rise in relation to international law: Elements in the previous work of the International Law Commission that could be particularly relevant to the topic—Memorandum by the Secretariat' (26 January 2024), A/CN.4/768.

⁵³For a detailed overview, see: Bruce Burson, Walter Kälin and Jane McAdam, 'Statehood, human rights and sea-level rise: A response to the International Law Commission's second issues paper on sea-level rise in relation to international law', *Yearbook of International Disaster Law* 4 (2021), 265–80. See also: Jane McAdam and Marc Limon, 'Human rights, climate change and cross-border displacement: The role of the international human rights community in contributing to effective and just solutions', *Policy Report, Universal Rights Group* (2015); Sujatha Byravan and Sudhir Chella Rajan, 'The ethical implications of sea-level rise due to climate change', *Ethics & International Affairs* 24 (3) (2010), 239–60.

the term ‘climate refugees’ since the 1951 UN Convention relating to the Status of Refugees⁵⁴ was not designed to cover displacement arising from climate change, and a fundamental requirement for decision-makers adjudicating on refugee claims is confirming a clear nexus between the claimant’s personal circumstances and the feared persecution.⁵⁵ In particular, identifying an ‘agent of persecution’ in cases of climate displacement can be challenging. Similarly, in the context of internal displacement, Scott Leckie and Ezekiel Simperingham have referred to the ‘causation conundrum’ which they define as ‘the perceived difficulty in determining a precise causal link between climate change and an individual’s displacement.’⁵⁶

For these reasons, the ILC utilises the phrase ‘human mobility’ in the context of climate change as an umbrella term which encompasses: ‘involuntary internal and cross-border displacement, voluntary internal and cross-border migration, and planned relocation with the consent of those concerned.’⁵⁷ Of note, the ILC has flagged that such human mobility is not just a consequence of climate change but may also be a form of adaptation to the changing climate.⁵⁸ The International Organization for Migration (IOM) has likewise noted that ‘environmental migration should not be understood as a wholly negative or positive outcome—migration can amplify existing vulnerabilities, but it can also allow people to build resilience.’⁵⁹

Patrícia Galvão Teles’ analysis of the protection of persons affected by sea-level rise is divided into three sections. The introductory section identifies the serious threat posed by sea-level rise to human rights and concludes there is a potential for significant population movement. It then highlights the absence of a dedicated international legal framework to deal with the consequences of human mobility arising from sea-level rise, and compares this to the ILC’s previous work on the protection of persons in the event of disasters.⁶⁰ The next section provides an

⁵⁴UN, *Convention relating to the Status of Refugees* (28 July 1951) 189 UNTS 150. See also: UNHCR, *Climate Change Impacts and Cross-border Displacement: International Refugee Law and UNHCR’s Mandate* (12 December 2023).

⁵⁵See: Benoît Mayer, ‘Critical perspective on the identification of “environmental refugees” as a category of human rights concern’, in: Dimitra Manou *et al.* (eds), *Climate change, migration and human rights: Law and policy perspectives* (Routledge, 2017), 28–42; Jane McAdam, ‘Swimming against the tide: Why a climate change displacement treaty is not the answer’, *International Journal of Refugee Law* 23 (1) (2011), 2–27.

⁵⁶Scott Leckie and Ezekiel Simperingham, ‘Focusing on climate-related internal displacement’, *Forced Migration Review: Special Issue on Disasters and Displacement in a Changing Climate* 49 (May 2015), 35–36.

⁵⁷Leckie and Simperingham, ‘Focusing on climate-related internal displacement’, para. 315. The three components of migration, displacement and planned relocation in the context of climate change were first identified in the 2010 *Cancún Framework for Action*, under the UNFCCC, Conference of the Parties 16 (29 November–10 December 2010), FCCC/CP/2010/7/Add.1 (15 March 2011), para.14(f).

⁵⁸ILC, ‘Second issues paper’ (A/CN.4/752), para. 307.

⁵⁹International Organization for Migration (IOM), ‘Environmental migration’ (nd), available at: <https://environmentalmigration.iom.int/environmental-migration>

⁶⁰The ILC Draft Articles on the protection of persons in the event of disasters were concluded in 2016, and states are currently considering whether to progress to a diplomatic conference to develop an international convention on disasters. For the text of the draft articles and associated commentaries, see: UNGA, *Report of the International Law Commission, 68th Session* (2016), A/71/10. For discussion by the Special Rapporteur responsible for the process, see: Eduardo Valencia-Ospina, ‘The work of the International Law Commission on the “protection of persons in the event of disasters”’, *Yearbook of International Disaster Law* 1 (2018), 5–27.

initial mapping of other relevant branches of international law, such as internal displacement law and international law relating to climate change, followed by a mapping of state practice and the practice of relevant international organisations regarding the protection of persons affected by sea-level rise. The report also considers human *immobility*, in other words those individuals who may be unable or unwilling to move in the face of environmental degradation. In particular, Galvão Teles notes that questions may arise regarding how to ensure that in-situ adaptation measures made to prevent or delay displacement, alongside any processes for planned relocations, take place with due respect for human dignity, non-discrimination, access to information and public participation.⁶¹

The report concludes that the existing international frameworks are fragmented, non-specific and often take the form of non-binding soft law instruments. Moreover, state practice regarding climate displacement is sparse at the global level, although there is an increasing body of relevant state practice by those countries most affected, for example small island Pacific states. The report therefore presents a series of questions in the hope of elucidating more concrete information from governments:

- (a) What principles are applicable or should be applicable to the protection of the human rights of persons affected by sea-level rise?
- (b) What principles are applicable or should be applicable to situations involving the evacuation, relocation, displacement or migration of persons, including vulnerable persons and groups, owing to the consequences of sea-level rise or as a measure of adaptation to sea-level rise?
- (c) What is or should be the applicability and scope of the principle of international cooperation by other states, in the region and beyond, and by international organisations, to help states with regard to the protection of persons affected by sea-level rise?⁶²

In answering these questions, states are expected to consider their existing international legal obligations, for example under the UN Charter or UNFCCC, and under non-binding international texts such as the Sustainable Development Goals⁶³ or the Sendai Framework for Disaster Risk Reduction.⁶⁴ To date, Ireland has been supportive of the work of the ILC, as evidenced by regular statements

⁶¹ILC, 'Second issues paper' (A/CN.4/752), para. 428. The subsequent discussion of a state's obligations to undertake adaptation measures by the UN Human Rights Committee in the Torres Strait Islanders' case, can provide additional support to Galvão Teles' analysis. See also: Dug Cubie, 'In-situ adaptation: Non-migration as a coping strategy for vulnerable persons', in Manou *et al.*, *Climate change, migration and human rights*, 99–114.

⁶²ILC, 'Second issues paper' (A/CN.4/752), para. 435. Written comments submitted by governments to the ILC on the topic of sea-level rise can be accessed at: https://legal.un.org/ilc/guide/8_9.shtml#govcoms. States have also made oral statements during the debates in the UNGA Sixth Committee.

⁶³UNGA, *Transforming our World: The 2030 Agenda for Sustainable Development* (21 October 2015), A/Res/70/1.

⁶⁴UN, Sendai Framework for Disaster Risk Reduction 2015–2030 (18 March 2015), A/CONF.224/CRP.1.

made at the UNGA Sixth Committee.⁶⁵ Therefore, mindful of the questions posed at the end of Galvão Teles' report, the following section will consider the legal implications of sea-level rise from the perspective of Ireland's foreign policies on international cooperation and climate displacement, and our domestic policies relating to climate change adaptation, risk management and planned relocations.

IRELAND'S INTERNATIONAL OBLIGATIONS

As set out in Article 29.6 of the Constitution, no international agreement shall be part of Irish domestic law save as may be determined by the Oireachtas.⁶⁶ This provision establishes the dualist nature of the Irish legal system, and the need for parliamentary approval before Ireland can be bound by any international agreement.⁶⁷ However, not all international texts create binding legal obligations for states. Consequently, 'soft law' sources can provide authoritative interpretative guidance on a specific topic.⁶⁸ For example, a variety of international law and policy frameworks are of relevance to the question of sea-level rise and human mobility. Some of these initiatives, such as the ILA's Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise⁶⁹ and the Peninsula Principles on Climate Displacement within States,⁷⁰ were developed specifically to address the challenge of climate change and human mobility. Others, such as the UN Guiding Principles on Internal Displacement⁷¹ or the Global Compact for Safe, Orderly and Regular Migration,⁷² contain relevant provisions within a broader framework for internal or

⁶⁵The Irish government's statements from 2019, 2021, 2022 and 2023 on the topic of sea-level rise at the ILC are available at: www.gov.ie/en/publication/2e4ae-statements-by-ireland-on-international-law/#international-law-commission

⁶⁶Article 29.1, *Constitution of Ireland*, as amended.

⁶⁷For detailed analysis, see: Law Reform Commission, *Discussion Paper on Domestic Implementation of International Obligations* (LRC, 124-2020), in particular Chapter 2: 'How Ireland implements its international law obligations: the state's treaty practice in a "dualist" system', 75–121. See also: David Fennelly, *International Law in the Irish Legal System* (Dublin, 2014).

⁶⁸For contrasting approaches to the role and status of soft law, see: Jean d'Aspremont, 'Softness in International Law: A Self-Serving Quest for New Legal Materials', *European Journal of International Law* 19 (5) (2008), 1075–93; and Anthony D'Amato, 'Softness in International Law: A self-serving quest for new legal materials: A reply to Jean d'Aspremont', *European Journal of International Law* 20 (3) (2009), 897–910.

⁶⁹International Law Association, Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise (August 2018) Resolution 6/2018, available at: www.ila-hq.org/en/committees/international-law-and-sea-level-rise

⁷⁰Displacement Solutions, The Peninsula Principles on Climate Displacement within States (18 August 2013), available at: www.displacementsolutions.org/peninsula-principles

⁷¹UN, Commission on Human Rights, Guiding Principles on Internal Displacement (11 February 1998), E/CN.4/1998/53/Add.2. Conceived as a means of providing protection to people fleeing internal armed conflicts (not having crossed an international border, such persons are not entitled to refugee status), the non-binding Guiding Principles utilise an expansive definition of displacement which encompasses '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...natural or human-made disasters.' The inclusion of disaster displacement in the Guiding Principles in 1998 was an innovation, but there is no specific mention of environmental- or climate-induced displacement.

⁷²UNGA, Resolution 73/195 Global Compact for Safe, Orderly and Regular Migration (19 December 2018), A/Res/73/195 (11 January 2019).

cross-border migration. Underpinning many of these texts are the Sustainable Development Goals (SDGs). These instruments have different progenitors—while some originate from the UN's inter-governmental system, others have been developed by non-governmental organisations. Case law from relevant international tribunals can likewise provide important interpretations of state obligations. Despite the differing legal status and origins of such sources, both binding and non-binding texts can provide guidance on Ireland's obligations in the context of sea-level rise and human mobility, both at an international level and domestically.

Implications for Ireland's foreign policy

The ramifications of global climate change impact all aspects of Ireland's foreign policy. However, two specific issues will be addressed here: the duty of international cooperation in the context of climate change; and international obligations regarding climate displacement.

Ireland's international development programme has consistently played a significant role in Ireland's foreign policy.⁷³ In particular, Ireland has been a staunch supporter of the rights of least developed states and SIDS for many years. More recently, there has also been a move towards increased international development funding to address the impacts of climate change. This reflects the ILA's conclusions on legal principles relating to climate change, which highlight that states 'shall take full account of the special circumstances and needs of developing countries particularly vulnerable to the effects of climate change.'⁷⁴ As President Michael D. Higgins noted in his 2019 address to the UNGA:

Small Island Developing States, drawing on their expertise and their stark experience, have led the debate on climate change. I say to the representatives of Small Island Developing States that your challenging the status quo was with very good reason; your cultures and your very existence are at risk. You have a unique moral authority to speak out; you are paying an unbearable price for a problem you did not create.⁷⁵

Likewise, at a major UN conference on SDG 14, 'Life Below Water' in 2017, Minister for Employment and Small Business, Pat Breen, TD, highlighted that 'Increases in global temperature, sea-level rise, ocean acidification and other climate change impacts are seriously affecting coastal areas and low-lying coastal

⁷³Patrick Paul Walsh and Ciara Whelan, 'The move towards multilateral aid in Ireland's overseas development programme (2008–2019)', *Irish Studies in International Affairs* 32 (1) (2021), 299–309.

⁷⁴International Law Association, Declaration of Legal Principles Relating to Climate Change (April 2014) Resolution 2/2014, Article 6(1), available at: www.ila-hq.org/en/documents/conference-resolution-no-2-english-washington-2014

⁷⁵President of Ireland, Michael D. Higgins, 'President addresses UN General Assembly 2019, United Nations headquarters' (25 September 2019), available at: <https://president.ie/en/diary/details/president-addresses-un-general-assembly/speeches>

countries, including many least developed countries and Small Island Developing States.⁷⁶ These statements have been reinforced by Irish development assistance funding. Climate action is one of four priorities set out in Ireland's international development policy, *A Better World*,⁷⁷ and in turn climate change adaptation is one of four key priorities for Irish Aid's work on climate action.⁷⁸ This is supported by the government's commitment to provide at least €225 million per year in climate finance to developing countries by 2025.⁷⁹ However, the global macroeconomic impacts of climate change by 2050 have been estimated at up to \$38 trillion per annum, while the same research projected that the median cost for limiting global temperatures to 2°C was six times less, at \$6 trillion per annum.⁸⁰ From this perspective, the Irish government's current commitment appears insufficient; although it should be noted that the field of climate finance is hugely complex and firm funding commitments should be acknowledged. Oxfam International has estimated that developed countries only provided a third of the \$100 billion climate finance which they had committed to provide by 2020.⁸¹ Consequently, there is a need to ensure that government funding commitments are consistently translated into actual payments.⁸²

In 2019, the government of Ireland published its first *Strategy for Partnership with Small Island Developing States*.⁸³ The Strategy set out a series of commitments, including establishing a permanent network of envoys to support SIDS and mechanisms for dialogue and partnerships. The government also committed to providing dedicated resources to the Asian Development Bank and Caribbean Catastrophe Risk Infrastructure Facility to provide funding for risk management and climate and disaster resilience.⁸⁴ Although the *Strategy* does not specifically reference climate displacement, it cites examples of commonalities

⁷⁶Ireland's National Statement at High Level UN Conference to support the Implementation of SDG 14 'Life Below Water: Conserve and Sustainably Use the Oceans, Seas and Marine Resources for Sustainable Development' (5–9 June 2017), made by Minister for Employment and Small Business, Pat Breen, TD, available at: <https://sdgs.un.org/statements/ireland-15880>

⁷⁷Government of Ireland, *A Better World: Ireland's Policy for International Development* (February 2019).

⁷⁸Irish Aid, *Climate Action* (nd), available at: www.ireland.ie/en/irish-aid/what-we-do/climate-change/

⁷⁹This commitment was made by An Taoiseach Micheál Martin at the COP26 conference in Glasgow in 2021. See: Government of Ireland, *Ireland's International Climate Finance Roadmap 2022* (July 2022), available at: www.irishaid.ie/media/irishaid/publications/2022-Irelands-International-Climate-Finance-Roadmap-Digital.pdf

⁸⁰Maximilian Kotz, Anders Levermann and Leonie Wenz, 'The economic commitment of climate change', *Nature* 628 (April 2024), 551–57: 552–53.

⁸¹Climate finance short-changed: The real value of the \$100 billion commitment in 2019–20', Oxfam International Briefing Note (October 2022), 3. Available at: <https://policy-practice.oxfam.org/resources/climate-finance-short-changed-the-real-value-of-the-100-billion-commitment-in-2-621426/>

⁸²For details of the UNFCCC's Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, see: <https://unfccc.int/topics/adaptation-and-resilience/workstreams/loss-and-damage/warsaw-international-mechanism>

⁸³Government of Ireland, *Ireland's Strategy for Partnership with Small Island Developing States* (2019). An example of engagement with SIDS was the Our Ocean Wealth Summit and SeaFest which took place in June 2019, and included more than 30 heads of state and ministers, UN representatives and ambassadors from small island nations. See: Ann Robinson, 'World leaders convene to discuss ocean health at Our Ocean Wealth Summit in Cork' (31 May 2019), available at: <https://coastmonkey.ie/our-ocean-wealth-summit-cork/>

⁸⁴Government of Ireland, *Ireland's Strategy for Partnership*, 4.

between Ireland and other island states, including emigration. The document also highlights areas of shared concern within UN structures, such as climate change, migration and humanitarian assistance.⁸⁵ This was supplemented by Ireland's second *Strategy* document, published in December 2023, which expanded the range and ambition of Ireland's commitments under four priorities: building the partnership, climate and oceans, capacity, and advocacy.⁸⁶ A key focus of the second *Strategy* is providing support to SIDS for adaptation measures and improving their capacity for advocacy and action on issues such as climate change. For example, the *Strategy* expressly references the ILC's work on sea-level rise, and the government's commitment to support SIDS in such multilateral processes.⁸⁷ Another notable addition in the 2023 *Strategy* is an express recognition that many SIDS are already facing forced displacement and relocation of communities due to sea-level rise—although no specific commitments or policy proposals regarding human mobility are advanced.⁸⁸

Promoting international cooperation between states is one of the core purposes of the United Nations, as set out in Article 1 of the UN Charter,⁸⁹ and the duty of cooperation was listed as one of seven fundamental principles of international law in the 1970 'Friendly Relations' Declaration.⁹⁰ Building on this overarching commitment, the UNFCCC requires states to cooperate in climate adaptation measures;⁹¹ while the Sendai Framework highlights that a state's capacities in disaster risk reduction can be enhanced through sustainable international cooperation.⁹² Moreover, Article 29.1 of the *Irish Constitution* expressly states: 'Ireland affirms its devotion to the ideal of peace and friendly co-operation amongst nations founded on international justice and morality.'⁹³ Therefore, it is pertinent to review Ireland's policy statements and commitments from the perspective of international law, in particular regarding the duty of international cooperation and cross-border human mobility. For example, the Global Compact for Safe, Orderly and Regular Migration, adopted in December 2018,

⁸⁵Government of Ireland, *Ireland's Strategy for Partnership*, 9.

⁸⁶Government of Ireland, *Ireland's Second Strategy for Partnership with Small Island Developing States* (2023).

⁸⁷This commitment is reiterated in the government's Voluntary National Review under the UN Sustainable Development Goals. See: Government of Ireland, *Ireland's Second National Implementation Plan for the Sustainable Development Goals 2022–2024* (2022), 24.

⁸⁸Government of Ireland, *Ireland's Second National Implementation Plan*, 7.

⁸⁹UN, *Charter*, Article 1(3): 'The Purposes of the United Nations are...To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.'

⁹⁰UNGA Resolution 2625 (XXV) of 24 October 1970, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, annex, para.1.

⁹¹UNFCCC, Article 4(1)(e).

⁹²UN, Sendai Framework for Disaster Risk Reduction, para.19(a). The Framework also notes that '[a]n effective and meaningful global partnership and the further strengthening of international cooperation, including the fulfilment of respective commitments of official development assistance by developed countries, are essential for effective disaster risk management,' para.19(l).

⁹³Article 29.1, *Constitution of Ireland*, as amended.

is underpinned by ten Guiding Principles of which international cooperation is the second.⁹⁴ Moreover, the Global Compact specifically addresses the question of climate and disaster displacement, requiring states to develop ‘adaptation and resilience strategies to sudden-onset and slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, such as...sea-level rise.’⁹⁵ The Global Compact also stresses the importance of pathways for regular migration, and specifically notes the need for states to ‘cooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin...including by devising planned relocation and visa options, in cases where adaptation in or return to their country of origin is not possible.’⁹⁶

Meanwhile, the Peninsula Principles on Climate Displacement within States were developed by a non-governmental organisation, Development Solutions, in 2013 following a two-year process of analysis and discussion between international experts through a series of regional dialogues.⁹⁷ The resultant 18 Guiding Principles specifically address internal displacement arising from climate change, and build on commitments set out in the UN Guiding Principles on Internal Displacement.⁹⁸ The Peninsula Principles provide guidance on planned relocation programmes by setting out detailed normative guidelines relating to community participation, governance and implementation.⁹⁹ They also note the right of affected states to seek cooperation and assistance from other states and relevant international organisations to help prevent climate displacement.¹⁰⁰ Reflecting the dual nature of this right, Galvão Teles *et al.* have argued there is a legal duty on non-affected states to cooperate and assist those states most affected by sea-level rise, covering both preventative actions and the provision of humanitarian assistance when required.¹⁰¹ They argue that this is particularly important since sea-level rise has ‘more potential to create long-term or definitive movement of people than any other form of environmentally-induced human migration.’¹⁰²

⁹⁴UNGA, Global Compact for Safe, Orderly and Regular Migration, para. 15.

⁹⁵UNGA, Global Compact for Safe, Orderly and Regular Migration, para. 18(i), Objective 2: Minimize the adverse drivers and structural factors that compel people to leave their country of origin—natural disasters, the adverse effects of climate change, and environmental degradation.

⁹⁶UNGA, Global Compact for Safe, Orderly and Regular Migration, para. 21(h), Objective 5: Enhance availability and flexibility of pathways for regular migration.

⁹⁷Displacement Solutions, Peninsula Principles, 7–8.

⁹⁸UN, Guiding Principles on Internal Displacement.

⁹⁹Displacement Solutions, Peninsula Principles. For discussion of the human rights implications of temporary or permanent relocations, see: Bruce Burson, Walter Kälin, Jane McAdam and Sanjula Weerasinghe, ‘The duty to move people out of harm’s way in the context of climate change and disasters’ *Refugee Survey Quarterly* 37 (2018), 379–406.

¹⁰⁰Displacement Solutions, Peninsula Principles, Principle 8b: International Cooperation and Assistance.

¹⁰¹Patrícia Galvão Teles, Claire Duval and Victor Tozetto da Veiga, ‘International cooperation and the protection of persons affected by sea-level rise’, *Yearbook of International Disaster Law* 3 (2020), 213–37, 233–34.

¹⁰²Galvão Teles *et al.*, ‘International cooperation and the protection of persons’, p. 217.

The New Zealand government was praised in 2017 when it announced the world's first visa regime for 'climate refugees.' However, this initiative was abandoned within six months since Pacific island states viewed refugee status as a last resort, and called on developed states to first undertake more extensive reduction of GHG emissions alongside increased support for local adaptation measures and legal migration routes.¹⁰³ While well-intentioned, the New Zealand experience highlights that working in partnership with affected states to understand their needs is crucial. For example, Dempster and Ober have noted that migration with dignity requires three complementary pathways: bilateral/regional labour migration opportunities, humanitarian visas, and planned relocation/managed retreat.¹⁰⁴ Likewise, the ILA's Sydney Declaration provides that international cooperation should include the creation or harmonisation of more predictable domestic or regional legal frameworks for cross-border climate displacement.¹⁰⁵ While the 1951 Refugee Convention may not be the most appropriate vehicle for addressing climate displacement, it is clear that one component of the duty of international cooperation is to create defined legal pathways so that persons fleeing the extreme impacts of climate change can migrate with dignity.¹⁰⁶

Of note, in the 2020 'Teitiota' case the UN Human Rights Committee examined the question of sea-level rise and the right to life under Article 6 of the ICCPR.¹⁰⁷ The Committee accepted that while sea-level rise was likely to render the Pacific island of Kiribati uninhabitable within 10–15 years, the government was still in a position to undertake adaptive measures and, where necessary, to relocate their population. Crucially, the Committee highlighted that such actions may need to take place with the support of the international community.¹⁰⁸ Following the Teitiota case, the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, stressed

¹⁰³Helen Dempster and Kayly Ober, 'New Zealand's "climate refugee" visas: Lessons for the rest of the world' (10 January 2020) Centre for Global Development blog, available at: www.cgdev.org/blog/new-zealands-climate-refugee-visas-lessons-rest-world

¹⁰⁴Dempster and Ober, 'New Zealand's "climate refugee" visas'. Huckstep and Clemens have likewise argued for 'far greater use of climate-conscious complementary pathways.' See: Samuel Huckstep and Michael Clemens, 'Why we won't reach a "climate migrant" protection category—And what we can do instead' (8 June 2023) Centre for Global Development blog, available at: www.cgdev.org/blog/why-we-wont-reach-climate-migrant-protection-category-and-what-we-can-do-instead

¹⁰⁵ILA, Sydney Declaration, Principle 4: The Duty to Cooperate, ss.2(b).

¹⁰⁶Jane McAdam and Ben Saul, 'Displacement with dignity: International law and policy responses to climate change migration and security in Bangladesh' (2010), Sydney Law School, Legal Studies Research Paper No.10/113.

¹⁰⁷UN, Human Rights Committee, 'Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No.2728/2016' (7 January 2020), CCPR/C/127/D/2728/2016. Mr Teitiota and his family claimed asylum in New Zealand under the 1951 Refugee Convention based on the effects of sea-level rise and climate change in Kiribati. Following the refusal of their claim by the New Zealand authorities, they submitted a case under the ICCPR to the UN Human Rights Committee.

¹⁰⁸UN HRC, Communication No.2728/2016, para. 9.12.

that ‘it is now time for the international community to realize a responsibility to those displaced across international borders.’¹⁰⁹

From a foreign policy perspective, Ireland’s international development assistance via Irish Aid is already focusing on climate change adaptation for some of the states most vulnerable to the negative effects of climate change and sea-level rise, and has committed to strengthening the existing working partnerships with SIDS. However, the lack of dedicated legal migration routes to Ireland for people fleeing harm caused by climate change, as proposed in the UN Global Compact and the ILA Sydney Declaration, is an issue which requires further study and review.¹¹⁰

Implications at the domestic level

The impacts of climate change are also being felt on the island of Ireland. Considerable work has been undertaken by academics, local authorities and government departments, across multiple disciplines, to better understand the implications of global climate change on the Irish environment and society. In July 2021, the government published a detailed ‘climate status report’ which provided analysis of atmospheric, oceanic and terrestrial observations of the changes occurring to Ireland’s climate.¹¹¹ In the context of sea-level rise, the report concluded that between 1992 and 2019 the North-east Atlantic ocean proximate to Ireland rose on average 2–3mm per year (i.e. between 5–8cm over 27 years), and recommended the establishment of a National Sea Level Measurement Advisory Group.¹¹² Most recently, in January 2024 the Environmental Protection Agency (EPA) published a comprehensive series of reports entitled *Ireland’s Climate Change Assessment (ICCA)*. These reports cover issues such as the scientific basis of climate change, how Ireland can achieve climate neutrality by 2050, preparing for future changes, and how to realise the benefits of a climate-neutral, resilient and sustainable future.¹¹³ Such reports emphasise the complexity of the intersecting impacts which are likely to occur over the coming years at the domestic level, as well as the need to engage in both mitigation of GHG emissions and adaptation to the changing climate.

¹⁰⁹UNGA, Human Rights Council, *Providing legal options to protect the human rights of persons displaced across international borders due to climate change: Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change*, Ian Fry (18 April 2023), A/HRC/53/34, para. 25.

¹¹⁰The Irish Human Rights and Equality Commission (IHREC) has made a similar recommendation. See: IHREC, Policy Statement on a Just Transition (March 2023), Recommendation 5, 1. Guidance can also be drawn from experiences in other European countries, see for example: Margit Ammer, Monika Mayrhofer and Matthew Scott, *Disaster-related displacement into Europe: Judicial practice in Austria and Sweden* (Ludwig Boltzmann Institute and Raoul Wallenberg Institute, April 2022).

¹¹¹Government of Ireland, *Climate Status Report for Ireland 2020, Research report 386* (Environmental Protection Agency, 2021).

¹¹²Government of Ireland, *Climate Status Report for Ireland 2020*, 91, 93. The report also highlights the additional impact of non-climate change-induced sea-level rise due to the continuing ‘glacial isostatic adjustment’ resulting from the loss of massive amounts of ice from the north of the island since the last Ice Age. Consequently, the south-west of the island is likely to face greater impacts from sea-level rise than the north, 89, 93.

¹¹³Government of Ireland, *Ireland’s Climate Change Assessment: Synthesis Report* (Environmental Protection Agency, 2023). The Synthesis Report and all four volumes can be accessed at: www.epa.ie/our-services/monitoring--assessment/climate-change/irelands-climate-change-assessment-icca/

Since the 2021 amendments to the Climate Action and Low Carbon Development Act 2015, the relevant minister is legally obliged to prepare an annual update to the *Climate Action Plan 2019 to Tackle Climate Breakdown*.¹¹⁴ The most recent update was published in May 2024, and highlights some of the projected implications of sea-level rise in Ireland, such as increased frequency of coastal flooding and significant impacts for coastal structures, communities, settlements and coastal heritage sites.¹¹⁵ The report acknowledges the risk of population displacement due to climate change, albeit the reference is made in the global context without specific mention of climate displacement within Ireland.¹¹⁶ Of note, the most recent National Adaptation Plan (NAP), published in June 2024, engages with the Inter-Departmental report on a national coastal change management strategy, and notes that a national-scale coastal erosion hazard mapping should be undertaken, which would include ‘an assessment of the potential impact of a range of sea-level rise scenarios on coastal erosion rates to ensure areas at highest risk of erosion due to climate change can be identified.’¹¹⁷

Supplementing the NAP, local authorities have also been tasked with developing comprehensive local adaptation plans.¹¹⁸ For example, Cork City Council’s 5-year *Climate Change Adaptation Strategy 2019–2024*, adopted in September 2019, identifies a variety of risk factors, such as the interaction of groundwater, river (fluvial) and rainfall (pluvial) flooding, as well as coastal erosion and coastal flooding due to increased storm wave heights.¹¹⁹ Similar analyses have been undertaken by local authorities around the country. Such strategies are supplemented with analysis of specific events, such as the climate attribution study on the impact of Storm Babet in Midleton, County Cork, in October 2023. This study, conducted by Clarke *et al.* on behalf of RTÉ, concluded that the town of Midleton ‘dodged a bullet’ since the heaviest rainfall and peak river flows coincided with a low spring tide.¹²⁰ The report noted that ‘[h]ad the event occurred at high tide and significant storm surge, flooding could have been

¹¹⁴Climate Action and Low Carbon Development (Amendment) Act 2021, s.6(4)(1)(a). The objectives of the underpinning Climate Action and Low Carbon Development Act 2015 include: ‘to provide for the approval of plans by the government in relation to climate change for the purpose of pursuing the transition to a low carbon, climate resilient and environmentally sustainable economy.’ For analysis, see: Andrew Jackson and Orla Kelleher, ‘Ireland’s Second Generation Climate Act: Still Playing the Laggard during the Climate Crisis?’ *The Irish Jurist* 70 (2023), 283–321.

¹¹⁵Government of Ireland, *Climate Action Plan 2024*, 333 and 395.

¹¹⁶Government of Ireland, *Climate Action Plan 2024*, 26.

¹¹⁷Government of Ireland, *National Adaptation Framework: Planning for a Climate Resilient Ireland* (2024), 55.

¹¹⁸As set out in s.14B(1) of the Climate Action and Low Carbon Development Act 2015 (as amended): ‘Each local authority shall prepare and make a plan relating to a period of five years...which shall specify the mitigation measures and the adaptation measures to be adopted by the local authority.’

¹¹⁹Cork City Council, *Climate Change Adaptation Strategy 2019–2024* (September 2019), 22–26, available at: www.corkcity.ie/en/media-folder/environment/final-cork-city-council-climate-change-adaptation-strategy-30-sept-2019-.pdf

¹²⁰Ben Clarke *et al.*, ‘Climate change made the extreme 2-day rainfall event associated with flooding in Midleton, Ireland more likely and more intense’ (29 February 2024), World Weather Attribution & Grantham Institute for Climate Change, 2. See also: RTÉ, ‘Climate study says Midleton “dodged a bullet” during 2023 flood’ (29 February 2024) Oonagh Smyth, Prime Time, available at: www.rte.ie/news/primetime/2024/0229/1435052-climate-study-says-midleton-dodged-a-bullet-during-2023-flood/

significantly more extensive.¹²¹ This type of granular planning, preparation and analysis is required to ensure that the negative impacts of a changing climate are minimised and lessons learnt for future events.

In the specific context of human mobility and internal displacement, it is beneficial to consider guidance and obligations found in international texts. For example, the Peninsula Principles can provide guidance for actions to prevent and prepare for climate displacement within Ireland. Principle 5 provides that ‘States should, in all circumstances, comply in full with their obligations under international law so as to prevent and avoid conditions that might lead to climate displacement.’¹²² This is followed by Principle 6 which reiterates a state’s obligations to ‘provide adaptation assistance, protection and other measures to ensure that individuals, households and communities can remain in their lands or places of habitual residence for as long as possible in a manner fully consistent with their rights.’¹²³ Meanwhile, the ILA’s Sydney Declaration specifically addresses the protection of persons displaced by sea-level rise, and stresses a state’s duty to prevent such displacement and to protect and assist people who are displaced, including arranging the evacuation and planned relocation of affected persons.¹²⁴ These provisions mirror the overarching obligation set out in Principle 5 of the UN Guiding Principles on Internal Displacement which provides that states and international actors should prevent and avoid conditions which might lead to the displacement of persons.¹²⁵

The UN Guiding Principles, ILA Sydney Declaration and Peninsula Principles are all soft law texts, and so are not legally binding on states. However, as noted by Francis Deng, the first Representative of the UN Secretary-General on Internally Displaced Persons, the UN Guiding Principles ‘reflect and are consistent with international human rights and humanitarian law and analogous refugee law.’¹²⁶ The UN’s flagship Sustainable Development Goals (SDGs), adopted in 2015, likewise draw on states’ existing obligations under international law. SDG 13 on Climate Action addresses states’ obligations to strengthen resilience and adaptive capacity to climate-related hazards and natural disasters.¹²⁷ While the SDGs do not specifically mention climate displacement, the targets set

¹²¹Clarke *et al.*, ‘Climate change made the extreme 2-day rainfall event associated with flooding in Midleton, Ireland more likely and more intense’, 1.

¹²²Displacement Solutions, Peninsula Principles, Principle 5: Prevention and Avoidance.

¹²³Displacement Solutions, Peninsula Principles, Principle 6(a): Provision of Adaptation Assistance, Protection and other Measures.

¹²⁴ILA, Sydney Declaration, Principle 3: The Duty to Take Positive Action; Principle 5: Evacuation of Affected Persons; Principle 6: Planned Relocations of Affected Persons.

¹²⁵UN, Guiding Principles on Internal Displacement, Section II: Principles Relating to Protection from Displacement, Principle 5.

¹²⁶UN, Guiding Principles on Internal Displacement, ‘Introductory Note by the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis M. Deng’ (June 2001).

¹²⁷The phrase ‘natural’ disasters is generally now avoided since disasters are a combination of natural hazards with individual and/or societal vulnerability and resilience. For details of the #NoNaturalDisasters campaign, see: www.nonaturaldisasters.com/

out in SDG 13.1 promote actions at both the national level (e.g. the need to adopt and implement national disaster risk reduction strategies in line with the *Sendai Framework*), and at the local level (e.g. local governments should adopt and implement local disaster risk reduction strategies in line with national disaster risk reduction strategies).¹²⁸

It is clear there is a consensus in international policy (if not explicitly in hard law) that states have an obligation to prevent and prepare for potential internal displacement arising from the impacts of climate change, such as sea-level rise. It is also recognised that coastal erosion, flooding and saltwater intrusion are likely to lead to soil degradation, which in turn may progressively lead to decreasing living conditions and livelihood opportunities in the affected areas.¹²⁹ It is anticipated that, rather than a sudden movement of people, this will lead to progressive movement away from at-risk areas over time. As the government of Fiji highlighted during discussion of the ILC's work on sea-level rise: 'It is expected that populations will not all move at once due to sea-level rise and there will be gradual and random movement. Also, the population will slowly disintegrate and present a set of challenges such as legal, economic, financial, education, cultural, and many more.'¹³⁰ Logan *et al.* have expanded upon this by examining the intermediate stages of sea-level rise prior to displacement. In particular, they posit that in many cases population isolation, rather than property inundation, will be a key challenge in the immediate future. By this, they mean that segments of the population will be cut off from essential services for periods of time—for example because a key access road is flooded at particular times of the year. As sea levels rise, the duration of the year when a community may be isolated due to lack of access will increase, until ultimately decisions need to be made about relocation.¹³¹

While it may seem like a distant threat, the risk of internal displacement within Ireland due to sea-level rise is real.¹³² This point was acknowledged in the third volume of *Ireland's Climate Change Assessment*.¹³³ Entitled *Being Prepared for Ireland's Future Climate*, this volume sets out the current state of play

¹²⁸UNGA, *Transforming our World*, SDG 13, 'Take urgent action to combat climate change and its impacts'. See also: https://sdgs.un.org/goals/goal13#targets_and_indicators Notably, SDG 13 (Climate Action) was chosen as the most important goal for implementation by the public during the Irish Government's public consultation on the SDGs, and SDG 11 (Sustainable Cities) was ranked as fourth most important. See: Government of Ireland, *Second National Implementation Plan* (2022), 33–34.

¹²⁹Jane McAdam, Bruce Burson, Walter Kälin and Sanjula Weerasinghe, *International law and sea-level rise: Forced migration and human rights* (Fridtjof Nansen Institute, January 2016), p. 21.

¹³⁰Government of Fiji, *Statement at the sixth committee UNGA 73rd session: Specific issues on which comments would be of particular interest to the International Law Commission* (October–November 2018), available at: www.un.org/en/ga/sixth/73/pdfs/statements/ilc/fiji_1.pdf

¹³¹Tom Logan, Mitchell Anderson and Allison Reilly, 'Risk of isolation increases the expected burden from sea-level rise', *Nature Climate Change* 13 (April 2023), 397–402. For analysis of specific groups vulnerable to isolation, see: Kelsea Best *et al.*, 'Demographics and risk of isolation due to sea level rise in the United States', *Nature Communications* 14 (2023), 904.

¹³²The risk has been picked up in the media, see for example: Caroline O'Doherty, 'Thousands of homeowners could be forced to abandon coastal properties under new national policies', *Irish Independent* (31 October 2023), available at: www.independent.ie/irish-news/thousands-of-homeowners-could-be-forced-to-abandon-coastal-properties-under-new-national-policies/a1699941090.html

¹³³Government of Ireland, *Ireland's Climate Change Assessment, Volume 3: Being Prepared for Ireland's Future Climate—Summary for Policymakers* (Environmental Protection Agency, 2023).

regarding adaptation measures within Ireland and identifies eight ‘knowledge gaps.’ Of note, the fourth knowledge gap addresses relocation and managed realignment, and is worth quoting in full:

Understanding the negative impacts of relocation and how to avoid or minimise them and the potential opportunities and trade-offs of managed realignment need [to] be further understood. Consideration needs to be given to understanding the justice dimensions of relocation and the policy tools necessary to navigate such issues in the fairest way possible. Approaches to adaptation that consider managed realignment can reduce flood and erosion risk, reduce maintenance costs, mitigate coastal squeeze, and create new habitats and biodiversity benefits, while minimising relocation, depending on site-specific constraints. The potential opportunities and trade-offs of managed realignment need [to] be further understood.¹³⁴

This recommendation was succinctly summarised in the *ICCA Synthesis Report for Policymakers*: ‘Not everywhere can be protected from impacts such as sea-level rise, and consideration needs to be given to understanding the justice and governance implications of relocation and managed alignment.’¹³⁵ Recognition that such decisions are necessary is an important first step. However, increasingly difficult political, social and financial choices will need to be made at the national and local levels in the coming years.¹³⁶

CONCLUSION

While large-scale sudden events, such as major storms or flooding, can cause incidents of mass displacement, the need for permanent relocation resulting from sea-level rise will occur over a longer timeframe, and will be influenced by complicated multicausal relationships between economic, social, political and environmental factors.¹³⁷ Despite the global nature of sea-level rise, decisions made in each state will influence the vulnerability or resilience of individuals and communities to changes taking place in their local environment. In the specific

¹³⁴Government of Ireland, *Ireland's Climate Change Assessment, Volume 3*, ‘D: Knowledge Gaps’, ‘D.4 Relocation and managed realignment’, p.16. Managed realignment is defined as: ‘a measure that usually results in the creation of a salt marsh by removing coastal protection and allowing for an area previously protected from flooding to become flooded...It is also often a method that replaces hard coastal defense measures with soft coastal landforms. Rather than relying on hard structures for defense, managed realignment depends on natural defenses to absorb or dissipate the force of waves.’ See: RISC-KIT, ‘Managed realignment’, available at: <https://coastal-management.eu/measure/managed-realignment.html>

¹³⁵Government of Ireland, *Ireland's Climate Change Assessment: Synthesis Report*, 25. For a detailed case study of community participation, see: Fernanda Terra Stori and Cathal O'Mahony, *Coastal climate adaptation in Ireland: The effects of climate change in Portrane (Fingal, Co. Dublin) and future perspectives* (Coastal Communities Adapting Together—CCAT Project, 2021).

¹³⁶For discussion of the complex process of community dialogue for relocation of a single community of 320 residents in Alaska, see: Robin Bronen, ‘The human rights of climate-induced community relocation’, in: Manou *et al.*, *Climate change, migration and human rights*, 129–48.

¹³⁷ILC, ‘Second issues paper’ (A/CN.4/752), para. 427.

context of human mobility, there is a need for all states, individually and collectively, to undertake comprehensive climate mitigation and adaptation measures to reduce the risk of displacement.

Ireland has an admirable focus on climate action and supporting least developed countries under its international development assistance programmes and is a strong proponent of multilateralism at the regional and global levels. As a medium-sized wealthy island nation, Ireland can develop and strengthen existing bilateral and multilateral relationships with SIDS and other countries most impacted by sea-level rise and climate change. A component of these partnerships and dialogue should be developing realistic, safe and legal migration pathways for persons fleeing the negative impacts of climate change. In particular, these pathways should allow for pre-emptive adaptive migration with dignity, rather than waiting for crisis events such as the submersion of an entire Pacific or Caribbean island nation. However, as unfortunately seen in recent times, the arrival of refugees and migrants can be contentious. The recent spate of arson attacks on properties assumed to be earmarked for international protection applicants highlights the ugly reality of the far right and anti-immigrant groups in Ireland.¹³⁸ While international climate displacement may not currently seem like a priority for Ireland, especially in the face of major humanitarian crises such as in Ukraine and Gaza, it is important to review and plan for potential future human mobility trends including cross-border climate displacement.

Challenging discussions will also need to take place as part of national and local planning processes to ensure the protection of our coastal communities—the proposed Just Transition Commission could play an important role in this regard.¹³⁹ Building on the expanding scientific knowledge on the impacts of climate change within Ireland, such planning processes will need to include participatory mechanisms for discussion of the different options available when faced with local cases of coastal retreat.¹⁴⁰ The insurance industry will be a crucial part of such discussions. International legal and policy frameworks, such as the UN Guiding Principles on Internal Displacement, the ILA's Sydney Declaration and the Peninsula Principles, can all provide relevant guidance for consideration at the governmental, local authority and community level—not least Principle 13 of the Peninsula Principles, which stresses the need for adequate resources at all levels of government to support and facilitate people displaced by climate change.¹⁴¹

The questions posed in Galvão Teles's report to identify the fundamental principles underpinning state action on sea-level rise and human mobility

¹³⁸RTÉ, 'Martin vows to tackle "campaign of arson and criminality"' (8 February 2024), available at: www.rte.ie/news/ireland/2024/0207/1430998-leixlip-fire/

¹³⁹ Government of Ireland, *Taskforce on Just Transition: Terms of Reference* (2023). See also: IHREC, *Policy Statement on a Just Transition* (March 2023), Recommendations 8 & 13, 1–2.

¹⁴⁰See for example: UNIC, *Guidance on Risk Communication & Community Engagement Practices: Experiences from Cork, Ireland and Malmö, Sweden* (August 2024), UNIC: The European University of Cities in Post-Industrial Transition, available at: www.ucc.ie/en/ccjhr/researchclusters/disasterlaw/selectedpublications/

¹⁴¹Displacement Solutions, *Peninsula Principles, Principle 13: Institutional Frameworks to Support and Facilitate the Provision of Assistance and Protection*.

challenge us to reflect on how to ensure that international law and policy fully takes into account the human rights of persons affected by sea-level rise, in particular those facing evacuation, relocation, displacement or migration. Multiple sources stress the central role that the principle of international cooperation must play in addressing the protection needs of such displaced persons. The ongoing work of the ILC provides an important opportunity to proactively consider the legal implications for Irish foreign and domestic policy—in particular, how can we best support other states facing the worst impacts of climate change, and how can we prepare for the increasingly negative impacts we are likely to face here in Ireland.