



# **SUSTAINABLE DEVELOPMENT LAW ON CLIMATE CHANGE**

## **WORKING PAPER SERIES**

**01**

### **CLIMATE CHANGE IN SOUTH ASIA: TOWARDS AN EQUITABLE LEGAL RESPONSE WITHIN A FRAMEWORK OF SUSTAINABLE DEVELOPMENT AND HUMAN SECURITY**

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# **CLIMATE CHANGE IN SOUTH ASIA: TOWARDS AN EQUITABLE LEGAL RESPONSE WITHIN A FRAMEWORK OF SUSTAINABLE DEVELOPMENT AND HUMAN SECURITY**

Sumudu Atapattu<sup>1</sup>

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# 1. Introduction

Climate change has attracted unprecedented attention in recent years. It has been referred to as the defining human development issue of our generation.<sup>2</sup> While climate change originated as an environmental problem, it now impinges on every aspect of human life including international peace and security.<sup>3</sup> As the UNDP noted in its 2007/08 Human Development Report:

[m]illions of world's poorest people are already being forced to cope with impacts of climate change..... But increased exposure to drought, to more intense storms, to floods and environmental stress is holding back the efforts of the world's poor to build a better life for themselves and their children."<sup>4</sup>

This clearly links climate change, poverty and the protection of human rights. It also highlights that the world's poor is bearing the brunt of climate change, whether they are in developed countries or developing countries, as their options for adaptation are severely limited and also lack the necessary resources. This seriously undermines notions of equity: the world's poor and marginalized would be disproportionately affected as a result of climate change – a phenomenon that they did not contribute to nor benefitted from the process of industrialization that caused climate change in the first place.

South Asia provides an interesting case study to discuss climate change as the challenges facing these countries are wide and varied yet they share similar cultural and socio-economic backgrounds. Issues relevant to India which is fast industrializing will be different from the Maldives, which is threatened by submergence due to rising sea levels giving rise to "climate refugees."<sup>5</sup> Problems facing Sri Lanka, an island nation, will be different from Nepal and Bhutan which are landlocked states. At the same time, these countries are plagued by conflict, poverty and malnutrition.

This paper will discuss the challenges faced by South Asia due to climate change, including the issue of climate refugees. It will briefly discuss the rights that will be violated as a result of climate change and how South Asia could address this issue amidst poverty and conflict. It will propose sustainable development and human security as an overarching framework to address these challenges.

## 2. Climate Change in South Asia

### 2.1. Socio-political situation in South Asia

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<sup>2</sup> See Overview, "Fighting Climate Change: Human Solidarity in a Divided World," Human Development Report 2007/08 (UNDP) available at: <http://hdr.undp.org/en/reports/global/hdr2007-2008>

<sup>3</sup> Penny Christopher, "Greening the Security Council: Climate Change as an emerging "threat to international peace and security" *Int'l Environ Agreements*, 7 (2007): 35-71, available at: <http://www.springerlink.com/content/j4857081065920w1/fulltext.pdf>

<sup>4</sup> *Ibid.*

<sup>5</sup> See the discussion in section 2.3 *infra*.

South Asian countries while sharing similar geographical and cultural features, are also very diverse: the region has the country with the second largest population in the world (India), a small island state (Maldives), an island nation (Sri Lanka), land-locked countries (Nepal and Bhutan), two nuclear power states (India and Pakistan), and a country located on a river delta (Bangladesh). They are very rich in biological diversity as the region is home to many tropical rainforests and world heritage sites. While the list of countries that fall within the category of South Asia is disputed<sup>6</sup> the present discussion will discuss the region as a whole while recognizing that there is individual variation. However, given the confines of the paper, it can only skim the surface of this rich yet troubled region of the world.

South Asia is home to well over one fifth of the world's population and is one of the most densely populated areas of the world. Most countries in the region are prone to conflict and political instability and are also plagued by poverty and corruption. Sri Lanka enjoys the highest GDP per capita and the highest literacy rate in the region while India alone accounts for 5.6 million child deaths per year.<sup>7</sup> According to the World Hunger Index, the region also has the highest child malnutrition rate in the world.<sup>8</sup>

On the other hand, India is fast industrializing, and has made tremendous strides in the field of science and technology – it even made its mark on the moon recently.<sup>9</sup> Bangladesh and Nepal are among the poorest countries in the world while the Maldives, consisting of atolls barely above the sea level, is a tourist haven. While Sri Lanka was the first country in the region to liberalize its economy its development efforts have been undermined by the 25 year old civil war that ravaged the country. Tensions have always been high between the two nuclear powers - India and Pakistan. India, by far the largest and the most populous country in the region, has naturally been its dominant political power.

## **2.2. Some consequences of climate change in the region**

The foregoing summary serves as a backdrop for our discussion on climate change in South Asia. While all regions will experience the effects of climate change, "it will have a disproportionately harmful effect on developing countries – and in particular poor communities who are already living at or close to the margins of survival."<sup>10</sup> Thus, the debate on climate change can be framed in terms of equity: those who caused the problem are not those who will suffer its consequences most. As Sir Nicholas Stern noted: "From the Himalayas, which feed water to a billion people, to the

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<sup>6</sup> For example, the World Bank includes only the original SAARC countries and leaves Afghanistan out: Bangladesh, [Bhutan](#), India, the [Maldives](#), [Nepal](#), Pakistan and Sri Lanka while some definitions include countries such as Singapore and Iran. See [http://en.wikipedia.org/wiki/South\\_Asia](http://en.wikipedia.org/wiki/South_Asia)

<sup>7</sup> *Ibid.*

<sup>8</sup> *Id.* The Global Hunger Index is available at:

<http://www.worldhunger.org/articles/Learn/world%20hunger%20facts%202002.htm>

<sup>9</sup> India goes to the moon, <http://www.asmmaq.com/features/india-goes-to-the-moon>

<sup>10</sup> See Stern Review, available at: [http://www.hm-treasury.gov.uk/d/Chapter\\_4\\_Implications\\_of\\_climate\\_change\\_for\\_development\\_final\\_version\\_on\\_web\\_P1-71.pdf](http://www.hm-treasury.gov.uk/d/Chapter_4_Implications_of_climate_change_for_development_final_version_on_web_P1-71.pdf)

coastal areas of Bangladesh, South Asian countries must prepare for the effects of global warming, even as they work to combat the human causes of climate change.”<sup>11</sup> He noted that even a moderate rise in temperature could cause serious changes to the environment in South Asia. However, there are uncertainties too. For example, it is not clear what effect climate change will have on the monsoons. Already Bangladesh has witnessed the impact of adverse weather: “Between 1991 and 2000, 93 major disasters were recorded in Bangladesh, resulting in 200,000 deaths and causing US \$5.9 billion in damages.”<sup>12</sup> Unfortunately, climate change will only exacerbate these consequences. The Stern Review also projects that severe deterioration of local weather would lead to mass migration and conflict: “Rising sea levels, advancing desertification and other climate-driven changes could drive millions of people to migrate: more than a fifth of Bangladesh could be under water with a 1m rise in sea levels – a possibility by the end of the century.”<sup>13</sup>

The range of climate change impacts in South Asia includes: water shortages, increased salinity, inundation of low lying cities, less water for agriculture, soil erosion, increased incidence of disease, extreme weather events and loss of endemic species.<sup>14</sup> These coupled with poverty and conflict, reliance on an agricultural economy and lack of infrastructure and other social safety nets, make the situation rather bleak. TERI in its report summarizes the situation:

Various studies summarized in this paper show that climate change is a grave and immediate issue for South Asia. The impacts of climate change on food security, access to water, human health, ecosystems, urban areas, and frequency of disasters will have severe implications for the achievement of sustainable development. Present coping capacity is very limited particularly for small farmers, rural communities eking out precarious livelihoods dependent on natural resources, urban poor living in marginalized conditions, women and children.<sup>15</sup>

It is no secret that the poorest of the poor are most at risk as they are the least able to adapt. Despite historically being a very low intensity emitter of greenhouse gases, the region as a whole would be disproportionately affected due to geographical, social and economic factors. Given this scenario, it would be hard to find an equitable solution to the problem. The World Bank summarizes the factors that contribute to South Asia’s vulnerability as: geography coupled with high levels of poverty and

<sup>11</sup> “Climate change in South Asia – A conversation with Sir Nicholas Stern,” available at: [http://www.etourisminsight.com/index2.php?option=com\\_eti&view=news&docid=1588&region=&print=1](http://www.etourisminsight.com/index2.php?option=com_eti&view=news&docid=1588&region=&print=1)

<sup>12</sup> Climate Change and Bangladesh, published with support from Comprehensive Disaster Management Program of the Government of Bangladesh and UNDP and DFID (2007), available at: <http://www.climatechange-cell-bd.org/publications/13ccbd.pdf>

<sup>13</sup> See Stern Review, *supra* note 9.

<sup>14</sup> See Ulka Kelkar and Suruchi Bhadwal, “South Asian Regional Study on Climate Change Impacts and Adaptation: Implications for Human Development,” prepared for the Human Development Report 2007/08, Human Development Report Office, Occasional Paper (2007), available at: [http://hdr.undp.org/en/reports/global/hdr2007-2008/papers/kelkar\\_ulka%20and%20bhadwal\\_suruchi.pdf](http://hdr.undp.org/en/reports/global/hdr2007-2008/papers/kelkar_ulka%20and%20bhadwal_suruchi.pdf)

<sup>15</sup> *Ibid.*

population density; poverty in rural areas and natural resource degradation; climate variability already in the region and high incidence of natural disasters; region's heavy reliance on the monsoons; long and densely populated coastline with low-lying islands; and urbanization.<sup>16</sup>

There is no doubt that virtually the whole gamut of protected rights would be undermined as a result of climate change.<sup>17</sup> The petition filed by the Inuit before the Inter-American Commission of Human Rights against US in 2005 highlighted the rights that could be and are being violated as a result of climate change.<sup>18</sup> These include the right to life, the right to health, the right to privacy, the right to an adequate standard of living, right to food and water, right to shelter, right to a livelihood, right to equality; the right to culture; and the right to a healthy environment to the extent the latter two rights are recognized under international law.<sup>19</sup> The situation in South Asia will not be much different.

### 2.3 Displacement and Migration

A crucial issue that will have to be addressed by the South Asian region is how it will deal with displacement and possible migration due to sea level rise and other severe weather events. This is particularly crucial for low lying cities such as Dhaka, Mumbai and Karachi and small island states such as the Maldives. The entire coastal belt of Sri Lanka is vulnerable to sea level rise and already much land has been lost due to sea erosion. The issue of displacement and migration would be a good issue to be addressed within the framework of SAARC.

The Stern Report warns that many people in developing countries will be displaced as a result of climate-related incidents: "Severe deterioration in the local climate could lead, in some parts of the developing world, to

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<sup>16</sup> World Bank draft report on Climate Change in South Asia, available at: <http://siteresources.worldbank.org/SOUTHASIAEXT/Resources/Publications/448813-1231439344179/5726136-1232505590830/1SARCCSJanuary192009.pdf>

<sup>17</sup> For a discussion of the relationship between climate change and human rights, see Report of the Office of the High Commissioner of Human Rights on the Relationship Between Climate Change and Human Rights, A/HRC/10/6115 January 2009 (Advanced unedited version) available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement>

<sup>18</sup> Full petition available at: <http://www.earthjustice.org/news/documents/12-05/FINALPetitionICC.pdf>

<sup>19</sup> There is considerable literature on the link between climate change and human rights. See generally, HUMAN RIGHTS AND CLIMATE CHANGE (Stephen Humphreys ed., 2010); John Knox, Climate Change and Human Rights Law, 50 Va. J. Int'l L. 163 (2009); Sarah Aminzadeh, *A Moral Imperative: The Human Rights Implications of Climate Change*, 30 Hastings Int'l & Comp. L. Rev. 231 (2007); Simon Caney, *Cosmopolitan Justice, Rights and Global Climate Change*, 19 Can. J.L. & Juris. 255 (2006); Marguerite E. Middaugh, *Linking Global Warming to Inuit Human Rights*, 8 San Diego Int'l L.J. 179 (2006); Hari Osofsky, *The Inuit Petition as a Bridge? Beyond Dialectics of Climate Change and Indigenous People's Rights*, 31 Am. Indian L. Rev. 675 (2006/2007); Jorge Daniel Taillant, *Human Rights, Development and Climate Change Negotiations* (2007), available at [http://www.cedha.org.ar/en/initiatives/climate\\_change/docs/human\\_rights.pdf](http://www.cedha.org.ar/en/initiatives/climate_change/docs/human_rights.pdf); Human Rights and Equal Opportunity Commission, *Background Paper: Human Rights and Climate Change* (2008) (Austl.), available at [http://www2.ohchr.org/english/issues/climatechange/docs/submissions/Australia\\_HR\\_Equal\\_Opportunity\\_Commission\\_HR\\_ClimateChange\\_4.pdf](http://www2.ohchr.org/english/issues/climatechange/docs/submissions/Australia_HR_Equal_Opportunity_Commission_HR_ClimateChange_4.pdf); U.N. Dev. Programme [UNDP], *Human Development Report 2007/2008: Fighting Climate Change: Human Solidarity in a Divided World* (2007), available at [http://hdr.undp.org/en/media/HDR\\_20072008\\_EN\\_Complete.pdf](http://hdr.undp.org/en/media/HDR_20072008_EN_Complete.pdf); Sumudu Atapattu, "Global Climate Change: Can Human Rights (and Human Beings) Survive this Onslaught?" 20 *Colorado J. Int'l Env'tl L. & Pol'y* 35 (fall 2008); and Daniel Bodansky, Climate Change and Human Rights: Unpacking the Issues, 38 *Georgia J. Int'l & Comp.L.* 511 (2010)

mass migration and conflict, especially as another 2-3 billion people are added to the developing world's population in the next few decades."<sup>20</sup> It points out that rising sea levels, desertification, and other climate-related events could drive millions to migrate. More than one fifth of Bangladesh could be under water by the end of the century. With a predicated one meter rise in sea levels, the Maldives could be completely submerged as well. A similar fate awaits people living in low lying cities and small island states.

The question, of course, is how to address this issue within a framework of international law. Presently, international law protects only "political refugees" – those who flee from persecution. Those who are displaced as a result of climate change will not be covered by the definition of refugees in the Geneva Convention.<sup>21</sup> While some proposals have been advanced with regard to climate refugees,<sup>22</sup> no concerted international action has so far been taken to address this issue although it was recognized as a problem by the Intergovernmental Panel on Climate Change (IPCC) as far back as 1990.<sup>23</sup> Some have proposed that climate refugees should be addressed through a separate protocol to be adopted within the UNFCCC.<sup>24</sup> While there is some merit in this proposal, confining international

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<sup>20</sup> See Stern Report, *supra* note 9.

<sup>21</sup> See Sumudu Atapattu, "Climate Change and Forced Migration: Implications for International Law," 27 *Wisconsin Int'l L. J.* 607 (2009). The Geneva Convention defines a refugee as a person who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it," Article 1, Convention and Protocol Relating to the Status of Refugees, available at: <http://www.unhcr.org/3b66c2aa10.html>

<sup>22</sup> This issue has attracted much literature. See generally Norman Myers, *Environmental Refugees: A Growing Phenomenon of the 21st Century* (2002) 357 *Philosophical Transactions: Biological Sciences* 609; Suzette Brooks Masters, *Environmentally Induced Migration: Beyond a Culture of Reaction*, 14 *Geo. Immigr. L.J.* 855 (2000); Dana Zartner Falstrom, *Stemming the Flow of Environmental Displacement: Creating a Convention to Protect Persons and Preserve the Environment*, 13 *Colo. J. Int'l Envtl. L. & Pol'y* 1 (2001); Tracey King, *Environmental Displacement: Coordinating Efforts to Find Solutions*, 18 *Geo. Int'l Envtl. L. Rev.* 543 (2006); Brooke Havard, *Seeking Protection: Recognition of Environmentally Displaced Persons under International Human Rights Law*, 18 *Vill. Envtl. L.J.* 65 (2007); Molly Conisbee & Andrew Simms, *Environmental Refugees: The Case for Recognition* (New Economics Foundation 2003), available at <http://www.neweconomics.org/gen/uploads/lpce0g55xjx5eq55mfjx5523102003180040.pdf>; U.N. High Comm'r for Refugees [UNHCR], Evaluation & Policy Analysis Unit, *Environmental Change and Forced Migration: Making Sense of the Debate*, Working Paper No. 70 (Oct. 2002) (prepared by Stephen Castles); Susana B. Adamo, *Addressing Environmentally Induced Population Displacements: A Delicate Task* (2008), available at [http://www.populationenvironmentresearch.org/papers/sadamo\\_ern2008.pdf](http://www.populationenvironmentresearch.org/papers/sadamo_ern2008.pdf) (background paper for the Population-Environment Research Network Cyberseminar on "Environmentally Induced Population Displacements"); Seren Boyd & Rachel Roach, *Feeling the Heat* (2006), available at <http://www.tearfund.org/webdocs/Website/News/Feeling%20the%20Heat%20Tearfund%20report.pdf>; U.N. Univ. Inst. For Env't & Human Sec. [UNU-EHS], *Control, Adapt or Flee: How to Face Environmental Migration?*, No. 5/2007 (prepared by Fabrice Renaud et al.). See also, Maria Stavropoulou, *The Right not to be Displaced*, 9 *Am. U. J. Int'l L. & Pol'y* 689 (1994); Karen E. McNamara, *Conceptualizing Discourses on Environmental Refugees at the United Nations*, 29 *Population & Env't* 12 (2007); David Keane, *The Environmental Causes and Consequences of Migration: A Search for the Meaning of "Environmental Refugees"*, 16 *Geo. Int'l Envtl. L. Rev.* 209, 210 (2004); and Robert McLeman, *Climate Change Migration, Refugee Protection, and Adaptive Capacity-Building*, 4 *McGill Int'l Journal of Sustainable Dev. Law & Pol'y* 1, 11 (2008).

<sup>23</sup> First Assessment Report, IPCC (1990) where it was noted that the "greatest single impact of climate change might be on human migration," referred to in the UNHCR report on climate change and human rights, A/HRC/10/61, p 18, *supra* note 16.

<sup>24</sup> See Frank Biermann & Ingrid Boas, "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees," *Global Governance Working Paper*, No 33, Nov 2007.



protection to climate refugees may be short sighted as it could exclude those who are fleeing an environmental incident unrelated to climate change or where the causal nexus between climate change and the event that triggered displacement cannot be established. The international community has been accused of playing a game of political pass-the-parcel in this regard: "No one wants to be left holding the problem of climate refugees."<sup>25</sup> However, it is becoming increasingly clear that **millions** of people will be displaced as a result of climate change and at present there is no international legal framework governing them. This legal vacuum should be addressed before the problem is thrust upon the international community. The best possible way to address this issue is through adaptation strategies for each country with the assistance of an adaptation fund. However, where people have to be re-located across international borders (with regard to many small island states this is a grave possibility), international law will have to step in to afford some protection to these migrants in the host country. Nationality, language and culture (particularly in relation to indigenous communities) are some of the issues that will have to be addressed in relation to people, while sovereignty, legal continuity and territory are some of the legal issues that will have to be addressed in relation to states.

In its 2008 report Greenpeace noted:

Climate change is the biggest environmental threat faced by South Asia and may well be the biggest humanitarian and economic challenge that the developing world will have to face in the coming decades. While the world has woken up to the threat of climate change, the true enormity of what this implies is still sinking in. Governments are yet to face up to the extraordinary social and economic problems in the future, not to mention environmental impacts that unchecked global warming would generate.<sup>26</sup>

The report points out that about 125 million people, of which 75 million would be from Bangladesh alone, could be rendered homeless by the end of the century.<sup>27</sup> Sea level rise will not be the only reason that leads to migration. Increased droughts leading to food and water shortages, dwindling natural resources and increased extreme weather events triggered by climate change will also lead to migration. While people have not traditionally moved solely for environmental reasons, it is likely that this will change with climate change-related consequences. Greenpeace concludes in its report that "if current trends in global emissions of greenhouse gases continue, it is inevitable that more than a hundred million people will be uprooted from their homes in the course of this century in South Asia alone."<sup>28</sup> Although the Greenpeace report is titled

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<sup>25</sup> See Megan Rowling, "Climate Refugees in Political Pass-the-Parcel, Reuters AlertNet, available at: <http://www.alertnet.org/thenews/newsdesk/L10842290.htm>

<sup>26</sup> Blue Alert, Climate Migrants in South Asia: Estimates and Solutions – A Report by Greenpeace (2008), Executive Summary, available at: [http://www.greenpeace.at/uploads/media/blue-alert-report\\_web.pdf](http://www.greenpeace.at/uploads/media/blue-alert-report_web.pdf)

<sup>27</sup> *Ibid.* This is in contrast to earlier reports that there will be 200 million refugees worldwide by 2050. See International Organization for Migration, "Migration and Climate Change," IOM Migration Research Series No 31 (2008), available at: <http://www.unitar.org/mm/file/Migration/2008/MRS-31.pdf>

<sup>28</sup> *Ibid.*

"Climate Migrants in South Asia" it is regrettable that the report refers only to India and Bangladesh with a passing reference to Pakistan. Other countries in South Asia which will be adversely affected, particularly the Maldives which could become completely submerged and Sri Lanka whose coastal belt could be submerged are not even mentioned in the report. The Maldives, a small island nation, consisting of atolls which are barely above the sea level, is particularly vulnerable to even a minimal rise in the sea level. As the representatives of the Small Island States emphasized in the Male Declaration on Climate Change: "small island, low-lying coastal, and atoll states are particularly vulnerable to even small changes to the global climate and are already adversely affected by alterations in ecosystems, changes in precipitation, rising sea-levels and increased incidence of natural disasters."<sup>29</sup>

In their report on the link between human rights and climate change, the Office of the High Commissioner for Human Rights noted, referring to the First Assessment Report of the IPCC, that the greatest single impact of climate change will be on human migration.<sup>30</sup> The report recognizes that while persons moving across an international border due to environmental factors would be entitled to general human rights guarantees in the receiving state, they would not have a right of entry.<sup>31</sup> This, unfortunately, is a redundant statement – if they have no right of entry, what is the point of being entitled to general human rights guarantees in that state? The report seems to indicate that those who cannot reasonably be expected to return to their home country should be considered as forcibly displaced and be granted at least a temporary stay. It refers to the submergence of small island states as a possible scenario of forcible displacement and recognizes that human rights law does not provide clear answers to the status of populations in such situations. However, the report contends that what is needed is an adequate long-term political solution, rather than new legal instruments.<sup>32</sup> In the case of total disappearance of states, however, a legal solution would indeed be necessary.

It has been estimated that 634 million people live in low-lying coastal areas vulnerable to sea level rise associated with climate change and cities from Tokyo to New York would be affected.<sup>33</sup> Migration away from the zone at risk will be necessary. It is generally accepted that sea level rise in the long term will cause displacement of many millions of people currently living in coastal areas: "For the small island nations of the world, especially the many cultural groups living on coral atolls, entire nations face complete submersion."<sup>34</sup>

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<sup>29</sup> Male Declaration, available at: [http://www.ciel.org/Publications/Male\\_Declaration\\_Nov07.pdf](http://www.ciel.org/Publications/Male_Declaration_Nov07.pdf)

<sup>30</sup> See Report of the Office of the High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights, A/HRC/10/61, January 15, 2009, *supra* note 16.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Id.*

<sup>33</sup> See Thomas Wagner, "Major Cities Warned Against Sea-Level Rise," available at: [http://www.iol.co.za/index.php?set\\_id=1&click\\_id=31&art\\_id=nw20070328024424684C606123](http://www.iol.co.za/index.php?set_id=1&click_id=31&art_id=nw20070328024424684C606123)

<sup>34</sup> See Ben Wisner *et al.*, Climate Change and Human Security, available at: <http://www.disasterdiplomacy.org/cchswisneretal.pdf>

Contemporary international law does not envisage the situation where states **completely** disappear without leaving a successor state. Fortunately, this will be a gradual process and there is still time to address this issue. It is, however, disheartening to note that despite the recognition by the IPCC as early as 1990 that human migration will be the greatest single impact of climate change, the international community has not yet taken any meaningful measures to address that situation. If human migration is indeed the greatest single impact of climate change, the international community has *a duty* to address the issue. While a political solution may be necessary to deal with migrants, the legal situation created by the total disappearance of small island states which house 5% of the world's total population will have to be addressed sooner rather than later. The international community will not be able to plead ignorance or that they were taken by surprise in this instance.

Reviewing existing literature on environmental and/or climate refugees the Norwegian Refugee Council concludes that while climate change impacts are likely to contribute to an increase in forced migration, climate change and environmental factors are only one factor among several root causes of conflict and forced migration.<sup>35</sup> It also warns that the term "climate refugees" as well as the predicted numbers of refugees is misleading as it is not possible to isolate climate change as the cause of forced migration. Moreover, the term is legally inaccurate.<sup>36</sup> It is unlikely that the term "climate refugees" is used in literature as having legal connotations: on the contrary, it is used, for want of a better term, to describe a group of people who will be displaced either internally or across international borders as a result of climate change, particularly due to sea level rise.

While climate change or environmental factors will not generally be the sole criterion that triggered migration and those living in low lying cities would normally move within their country, we cannot ignore the plight of those living in small island states. The Norwegian Refugee Council report recognizes this situation and notes that small island states such as Tuvalu will become submerged as a result of sea level rise associated with climate change.<sup>37</sup> The islanders will become stateless persons in every sense of the term. In this situation, the report recognizes that migration or relocation to other states will be the only realistic option.<sup>38</sup> Such situations must be governed by international law – however, international law is yet to address the legal situation that arises where states become completely extinct without a successor state. About 5% of the world's population lives in small island states and the international community cannot by any means ignore their plight.

### 3. Action taken by South Asia

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<sup>35</sup> See Vikram Odedra Kolmannskog, "Future Floods of Refugees, A Comment on Climate Change, Conflict and Forced Migration," Norwegian Refugee Council (April 2008), available at: <http://www.nrc.no/arch/ img/9268480.pdf>

<sup>36</sup> *Ibid.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

Several strategies have been adopted and several studies have been commissioned on the issue of climate change at both national and regional levels. South Asia Association for Regional Cooperation (SAARC) - a regional alliance of seven countries<sup>39</sup> - has been particularly active. At their meeting in Dhaka in 2008, the SAARC Environment Ministers adopted a declaration<sup>40</sup> and an action plan on climate change.<sup>41</sup>

The Declaration notes that the SAARC region is most vulnerable to climate change and economic and social development and environmental protection are interdependent and are essential for food security and a better quality of life. Food security, however, would be in serious jeopardy due to natural disasters caused or exacerbated by climate change. It further recognizes that sustainable development is the best way to address the threat of climate change. The Ministers resolved to cooperate on climate change issues for capacity building, including the development of CDM projects, exchange information of best practices and sharing results of research and enhancing south-south cooperation on technology development and transfer. It also recognized the need to initiate programs on adaptation measures, monitoring, early warning, disaster management, capacity building and international cooperation.

The SAARC Action Plan on Climate Change is based on three objectives: to identify and create opportunities for activities achievable through regional cooperation and south-south support for technology and knowledge transfer; to provide impetus for a regional level action plan through national level activities; and to support the global negotiation process of the UNFCCC through a common understanding of the various negotiation issues to effectively reflect the concerns of SAARC member states.<sup>42</sup>

These objectives are commendable. It is important to adopt a common negotiating stance at the international level as a region, rather than negotiate against each other. Of course, it is hard to adopt a one-size-fits-all approach given the vast differentiation in the region, but adopting a common regional approach may benefit the region as most countries are low intensity contributors to greenhouse gases with the exception of India. India's position as an emerging global power as well as a fast industrializing country and the 2<sup>nd</sup> most populous country should be dealt with separately at post-Kyoto negotiations.

The SAARC Action Plan further identifies the following thematic areas for priority action: adaptation plans (adaptation to climate change impacts, extreme weather events, adaptation in sectors, risks to vulnerable communities); policies and actions for climate change mitigation (sharing best practices on nationally appropriate mitigation actions and forest management, and capacity building for developing CDM projects), policies and actions for technology transfer; financing and investment, education

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<sup>39</sup> These countries are: India, Pakistan, Nepal, Bhutan, Bangladesh, Sri Lanka and the Maldives. See the official website of SAARC: <http://www.saarc-sec.org/>

<sup>40</sup> Available at: [http://www.nset.org.np/climatechange/pdf/SAARC%20Declaration\\_Dhaka.pdf](http://www.nset.org.np/climatechange/pdf/SAARC%20Declaration_Dhaka.pdf)

<sup>41</sup> Available at: [http://www.slmfa.gov.lk/saarc/images/stories/saarc/Action\\_Plan\\_Climate\\_Change.pdf](http://www.slmfa.gov.lk/saarc/images/stories/saarc/Action_Plan_Climate_Change.pdf)

<sup>42</sup> *Ibid.*

and awareness, management of impacts and risks and capacity building for international negotiations.

While action at the regional level would strengthen their negotiating position at the international level, most action in relation to climate change will have to be taken at the national level. Many countries, including two countries from South Asia (Bangladesh and the Maldives) have already prepared National Adaptation Programs of Action (NAPAs).<sup>43</sup> These reports play an important role. They recognize that mitigation alone is not sufficient to address climate change and that properly prepared adaptation plans play a crucial role in addressing consequences of climate change.

#### **4. Sustainable development and Human Security: A Possible Framework to Address Climate Change?**

The phrase “freedom from fear and freedom from want” captures the essence of the relationship between human security and sustainable development. Both these concepts emerged in the late 1980s as an alternative to the paradigm that existed then: national security and unlimited economic growth. It also placed emphasis on the *individual*, as opposed to nation-states as the subject of attention in the new paradigm.

Unfortunately, neither human security nor sustainable development has a precise, legal definition. Both have been subject to intense debate and both are affected by globalization. Moreover, as more and more people migrate due to, *inter alia*, environmental stress and particularly climate change, conflicts over access to resources are only likely to increase thereby affecting human security. It is clear that both sustainable development and human security will be jeopardized as a result of climate change.

##### **4.1. Sustainable development**

While it is impossible to do justice to this very important concept within the confines of this paper, its salient features will be summarized here. In very broad terms, sustainable development requires us to balance economic development with environmental protection. Despite much literature on the subject, the only workable definition we have to date is the definition coined by the World Commission on Environment and Development<sup>44</sup> which defined sustainable development as: “development that meets the needs of the present without compromising the ability of the future generations to meet their needs.”<sup>45</sup>

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<sup>43</sup> List of countries that have adopted NAPAs is available at: [http://unfccc.int/cooperation\\_support/least\\_developed\\_countries\\_portal/submitted\\_napas/items/4585.php](http://unfccc.int/cooperation_support/least_developed_countries_portal/submitted_napas/items/4585.php)

<sup>44</sup> The World Commission on Environment and Development (WCED) was appointed by the UN General Assembly in 1983 to find ways to reconcile the increasingly polarized debate between developing countries and developed countries on economic development, on the one hand, and environmental protection, on the other.

<sup>45</sup> See OUR COMMON FUTURE, THE REPORT OF THE WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT 43 (1987).

However, sustainable development has evolved considerably since its adoption by the WCED in 1987 and is now considered an umbrella term encompassing both substantive and procedural components.<sup>46</sup> Thus, while the principles of integration and equity form part of the substantive component, access to information, participation in the decision making process and access to remedies are considered procedural elements. These procedural elements are also part of principles of good governance and environmental democracy. Preparation of environmental impact assessment reports which seek to give effect to the principle of integration is an important tool that has evolved at both national and international levels.

With regard to the lack of definition relating to sustainable development, Birnie and Boyle note that:

Much of the same problems [definitional] affect international attempts to define sustainable development, yet this has not rendered futile UN's efforts to promote sustainability as the central objective of international environmental policy, or its use by international courts and inter-governmental bodies as a legal principle which can influence their decisions. Indeterminacy is thus a problem, but not necessarily an insurmountable one.<sup>47</sup>

The Rio Declaration on Environment and Development adopted in 1992, while not embodying a definition of sustainable development, sought to give it content. In addition, it identified linkages and tools to achieve sustainable development. It is the most comprehensive endorsement of sustainable development by the international community to date – although it falls into the category of soft law, its importance cannot be undermined and has had a great influence in developing the notion of sustainable development. Principle 2 of Rio endorsed almost verbatim Principle 21 of the Stockholm Declaration while Principles 3 and 4 endorsed the principle of integration. It further identified tools to achieve sustainable development (EIA, polluter pays principle and the precautionary principle) and linkages such as poverty, warfare and consumption patterns.

International tribunals too have endorsed sustainable development. For the first time in its history, the ICJ discussed the notion of sustainable development in the *Case Concerning the Gabsikovo Nagymaros project*:

"Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind – for present and future generations – of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the

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<sup>46</sup> See SUMUDU ATAPATTU, EMERGING PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW (2006) for a comprehensive discussion of sustainable development, its emergence, how it has been operationalized and its legal status.

<sup>47</sup> See BINIE AND BOYLE, INTERNATIONAL LAW AND THE ENVIRONMENT, 257 (2<sup>nd</sup> ed. 2002).

last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. *This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.*<sup>48</sup>

While the court did not specifically say that sustainable development is such a new norm that must be taken into consideration, its reference to sustainable development in this context is indicative of the important role that the court thought it should play, not just in relation to new projects but also when continuing activities begun in the past.

In his separate opinion in this case Judge Weerantry discussed the principle of sustainable development extensively including its application in a historical context; it will go down in history as a major contribution to the development of sustainable development. He noted:

When a major scheme, such as that under consideration in the present case, is planned and implemented, there is always the need to weigh considerations of development against environmental considerations, as their underlying juristic bases – the right to development, and the right to environmental protection – are important principles of current international law.<sup>49</sup>

Noting that since each principle cannot be given free rein, he pointed out that sustainable development acts as the principle of reconciliation and that this case provided a unique opportunity to apply that principle.<sup>50</sup> Although sustainable development may lack the “fundamentally norm creating character” that the ICJ has generally required of customary international law principles,<sup>51</sup> it has been articulated that sustainable development is not totally devoid of any impact at the international level. Calling it a “meta-principle,” Lowe is of the view that:

Sustainable development can properly claim a normative status as an element of the process of judicial reasoning. It is a meta-principle, acting upon other legal rules and principles – a legal concept exercising a kind of interstitial normativity, pushing and pulling the boundaries of true primary norms when they threaten to overlap or conflict with each other. If I read Judge Weeramantry’s Opinion correctly, this (or something close to it) is the kind of normativity that he asserts is now possessed by sustainable development.<sup>52</sup>

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<sup>48</sup> See *Case Concerning the Gabčíkovo Nagymaros Project, Hungary v. Slovakia*, ICJ Rep (1997), emphasis added, available at: <http://www.icj-cij.org/docket/files/92/7375.pdf>

<sup>49</sup> See Separate Opinion, Judge Christopher Weeramantry, available at: <http://www.icj-cij.org/docket/files/92/7383.pdf>

<sup>50</sup> *Ibid.*

<sup>51</sup> *Id.*

<sup>52</sup> See Vaughn Lowe, “Sustainable development and Unsustainable Arguments,” in *INTERNATIONAL LAW AND SUSTAINABLE DEVELOPMENT: PAST ACHIEVEMENTS AND FUTURE CHALLENGES*, 24 (Alan Boyle & David Freestone eds., 1999).

Thus, sustainable development seems to fall somewhere between a concept and a legal principle. The better approach may be to consider it as a goal with its components providing normative quality. Thus, a decision that has been taken without following proper procedure, without evaluating its impacts on the environment and without consulting those who would be affected by that decision can very well be legally challenged.<sup>53</sup> Thus, sustainable development provides an important yardstick to measure developmental decisions. Finally, the Johannesburg Declaration on Sustainable Development<sup>54</sup> endorsed the notion of sustainable development and identified its three pillars as economic development, environmental protection and social development.<sup>55</sup> This definition goes beyond the principle of integration and adds a third pillar to the equation – social development.

#### 4.2. Human security

Human security, on the other hand, has a narrow definition as well as a broad definition. While a narrow interpretation would confine human security to freedom from fear, a broad definition would include freedom from want in the definition of human security. In other words, a human security agenda interfaces with poverty eradication which, in turn, is linked to sustainable development. As has been articulated, human security is tied to people's access to resources and vulnerabilities to environmental change while environmental change is affected by human activities and conflicts.

Three major developments are considered to have played a part in reshaping the notions of security and conflict resolution:

"The shift in analysis from a narrow focus on military security in the defense of national sovereignty to consideration of internal sources of stability such as communal strife, ethnic unrest, poverty, unemployment, crime, and terrorism.

Recognition of the inevitable link between the welfare of citizens and the security of the state. Non-military barriers to stability can be economic, social, environmental or civil. ....

Increasing awareness that national and sub-national problems are amenable to, and sometimes require, international assistance or even intervention."<sup>56</sup>

Mass population displacement is identified as a common consequence of in-country devastation. While human security is not confined to refugee flows, "State security has shifted from a focus on military defense from external threats to internal sources of instability, arising from economic, social and political consideration."<sup>57</sup>

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<sup>53</sup> See BIRNIE, BOYLE AND REDGWELL, *INTERNATIONAL LAW AND THE ENVIRONMENT*, 125 (3<sup>rd</sup> ed., 2009)

<sup>54</sup> Adopted by the international community at the Johannesburg Summit on Sustainable Development in 2002, A/CONF.199/20, available at: <http://www.joburg.org.za/pdfs/johannesburgdeclaration.pdf>

<sup>55</sup> *Ibid.*

<sup>56</sup> See John F. Jones, *Human Security and Social Development*, *DENV. J. INT'L L. & POL'Y* 92 (2004).

<sup>57</sup> *Ibid.*



It has been noted that human security has two components: civil rights and social welfare: "Civil rights guarantee protection, while social welfare encompasses the provision of basic needs. Each is essential, and together they are the foundation of human security."<sup>58</sup> This is also articulated in the phrase "freedom from want, freedom from fear." However, not all proponents of human security define it in such broad terms. Many confine it to the civil rights component. It is, however, proposed here that they should be discussed together given their interrelationship which becomes even more pronounced when you discuss the link with poverty.

In its report "Human Security Now" the UN Commission on Human Security noted that "human security complements state security, enhances human rights and strengthens human development..... Human security thus brings together the human elements of security, of rights, of development."<sup>59</sup> According to the Commission, human security "protect[s] the vital core of all human lives in ways that enhance human freedoms and human fulfillment."<sup>60</sup>

According to the former UN Secretary General, "human security joins the main agenda items of peace, security and development:"

Human security in its broadest sense embraces far more than the absence of violent conflict. It encompasses human rights, good governance, access to education and health care and ensuring that each individual has opportunities and choices to fulfill his or her own potential. Every step in this direction is also a step towards reducing poverty, achieving economic growth and preventing conflict. Freedom from want, freedom from fear and the freedom of future generations to inherit a healthy natural environment – these are the interrelated building blocks of human, and therefore national, security.<sup>61</sup>

Thus, Kofi Annan draws a clear link between human rights, good governance, poverty alleviation, environmental protection and sustainable development all of which are required to realize human security. This, of course, means that human security is very broad and encompasses everything from human rights to poverty alleviation and from sustainable development to good governance. For our purposes, we will adopt a working definition which is reflected in the phrase, "freedom from fear and freedom from want." In other words, human security will mean living free from violent conflict and enjoying a decent standard of living, free from poverty where basic needs are met. There is no doubt that climate change would undermine these basic rights.

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<sup>58</sup> *Id.*

<sup>59</sup> See "Human Security Now," Report of the Commission on Human Security (2003), pp 3-4.

<sup>60</sup> *Ibid.*

<sup>61</sup> See Kofi Annan, "Secretary-General Salutes International Workshop on Human Security in Mongolia." (2000) Two-Day Session in Ulaanbaatar, May 8-10, 2000. Press Release /SM/7382.[[www.un.org/News/Press/docs/2000/20000508.sgsm7382.doc.html](http://www.un.org/News/Press/docs/2000/20000508.sgsm7382.doc.html)], referred to in Human Security Now, *supra* note 58.

In a paper on the linkages between human security and sustainable development, Sanjeev Khagram and others argue that four key elements distinguish human security from state security: shift in the focus on **who** is to be protected; the expansion of what security means – covering survival and dignity of human beings; the latter requires freedom from fear and freedom from want; and protection and promotion of human rights trump state's rights.<sup>62</sup> They note that much of human security is tied to people's access to natural resources and vulnerabilities to environmental change and much of environmental change is affected by human activities and conflicts.<sup>63</sup>

### 4.3. Intersections

Poverty has been identified as a violator of human rights as well as an impediment to achieving sustainable development. In addition, on-going conflicts in many developing countries have exacerbated the situation by imposing severe constraints on the realization of economic, social and cultural rights and endangering human security. Moreover, resources that could be allocated for development projects and poverty alleviation are diverted instead to buying arms and ammunition and to fight terrorism. Thus, not only is human security endangered as a result of the on-going conflicts in these countries, development projects and poverty alleviation programs also suffer due to lack of resources which, in turn, exacerbate poverty. A vicious cycle of poverty breeding conflict and conflict breeding poverty is thus established.<sup>64</sup> Moreover, it has been articulated that climate change would increase conflicts over natural resources, particularly water<sup>65</sup> thereby endangering human security.

While sustainable development originated as the need to strike a balance between economic development and environmental protection, the subsequent discourse has added a third pillar to this equation: social development. Human security offers much to the discourse on sustainable development and highlights the social dimension of sustainable development's three pillars.<sup>66</sup> Stressing that elimination of short term destitution should not be overlooked, some scholars have contended that "intra-generational equity should not be sacrificed to the altar of inter-generational equity"<sup>67</sup> and that "human security focuses on ensuring the

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<sup>62</sup> See Sanjeev Khagram, William Clark and Dana Raad, "From the Environment and Human Security to Sustainable Security and Development," 4(2) *Journal of Human Development* (2003), 289-313, available at: [http://www.hks.harvard.edu/sustsci/ists/docs/khagram\\_etal\\_jhd03.pdf](http://www.hks.harvard.edu/sustsci/ists/docs/khagram_etal_jhd03.pdf)

<sup>63</sup> *Ibid.*

<sup>64</sup> See Sumudu Atapattu, "Sustainable Development and Terrorism: International Linkages and a Case study of Sri Lanka, 30 *William and Mary Environmental Law & Policy Review*, 273 (2006)

<sup>65</sup> See Irna van der Molen & Antoinette Hilderling, "Water: Cause for Conflict or Co-operation?," *Journal on Science and World Affairs*, Vol. 1, No. 2, pp 133-143 (2005), available at:

[http://www.scienceandworldaffairs.org/PDFs/VanDerMolenHilderling\\_Vol1.pdf](http://www.scienceandworldaffairs.org/PDFs/VanDerMolenHilderling_Vol1.pdf) The authors quote Homer Dixon who distinguishes between five types of conflict related to environmental scarcity: (i) disputes arising from local environmental degradation; (ii) ethnic clashes arising from migration due to environmental scarcity; (iii) civil strife caused by environmental scarcity; (iv) scarcity-induced interstate war; and (v) North-South conflicts over mitigation, of, and adaptation to, and compensation for global environmental problems, see Homer-Dixon, *ENVIRONMENT, SCARCITY, AND VIOLENCE* (1999). However, as van der Molen & Hilderling point out, "armed conflict is seldom mono-causal" *ibid*, p 135.

<sup>66</sup> See Sanjeev Khagram, *supra* note 61.

<sup>67</sup> *Ibid*, 290.

survival and dignity of human beings through freedom from fear and freedom from want."<sup>68</sup>

The report titled *Human Security Now* notes the relationship between human security and sustainable development:

The relationship between human security and the environment is most pronounced in areas of human dependence on access to natural resources. Environmental resources are a critical part of the livelihoods of many people. When these resources are threatened because of environmental change, people's human security is also threatened. This relationship is captured in the promotion of sustainable development. ***And at the centre of sustainable development is the delicate balance between human security and the environment.***<sup>69</sup>

Of course, for those who have been working on sustainable development, this assertion seems a little strange. We consider sustainable development as seeking to strike a balance between economic development and environmental protection and now with the added component, social development. In other words, sustainable development is the intersection between economic development, environmental protection and social development. While sustainable development cannot be achieved where there is conflict, it is really through the social development pillar that human security issues overlap with the sustainable development paradigm. There is no doubt that human rights, good governance, peace, security and sustainable development all overlap with each other. It would probably be right to say that human security seeks to strike a balance between various aspects of human rights (this includes both civil and political rights and economic, social and cultural rights), poverty alleviation (in other words, ensuring a decent living standard for people encapsulated in the intra-generational equity principle) and protecting the resource base (in other words, protecting the environment encapsulated in the inter-generational equity principle).

What do these phrases add to the present discussion? The emphasis on individuals, rather than states in relation to security is a significant development, particularly since most violations in relation to individual security takes place at the hands of that individual's own state. It has also shifted the focus from external aggression to internal disruption.<sup>70</sup>

The UN Millennium Declaration identified the importance of freedom thus:

"Men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence,

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<sup>68</sup> *Id*, 292.

<sup>69</sup> See *Human Security Now*, *supra* note 58, pp 16-17 (emphasis added).

<sup>70</sup> See *HUMAN SECURITY IN SOUTH ASIA: GENDER, ENERGY, MIGRATION AND GLOBALISATION*, 3 (P.R. Chari & Sonika Gupta eds., 2003).

oppression or injustice. Democratic and participatory governance based on the will of the people best assures these rights."<sup>71</sup>

Although the Millennium Declaration does not refer specifically to human security, this quotation captures the essence of the relationship between human security and sustainable development.

One area that highlights the intersectionality of human security and sustainable development in the context of climate change is "climate refugees." As discussed earlier, climate change undermines all three pillars of sustainable development while also posing a particular challenge to human security which is defined in relation to the well-being of people and their capacity to respond to environmental and social threats.<sup>72</sup> Climate change will exacerbate these vulnerabilities and climate refugees in particular will have to cope with increasing vulnerabilities such as being uprooted from one's place of residence, lack of access to traditional lands and livelihoods, coping with diminishing resources particularly water which could increase the likelihood of conflicts. Lack of protection under the existing international legal framework further complicates this situation.

The Rio Declaration too recognized the link between sustainable development and human security: Principle 25 articulated that "peace, development and environmental protection are interdependent and indivisible"<sup>73</sup> while Principle 24 endorsed that "warfare is inherently destructive of sustainable development."<sup>74</sup>

The Millennium Development Goals provide another example of the intersectionality. The Millennium Declaration identified fundamental values that are essential for international relations in the 21<sup>st</sup> century as follows: freedom, equality, solidarity, tolerance, respect for nature and shared responsibility.<sup>75</sup> The Declaration highlights several issues as needing attention – peace, security and disarmament, development and poverty eradication, protecting the common environment, human rights, democracy and good governance, protecting the vulnerable and meeting the special needs of Africa.<sup>76</sup> Towards these ends, the international community has pledged, *inter alia*, to:

- Free people from the scourge of war, whether within or between states;
- To halve, by 2015, the proportion of the world's people on less than a dollar a day and those who suffer from hunger
- Affirm the support for the principle of sustainable development
- Achieve universal primary education by 2015
- Eliminate gender disparity

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<sup>71</sup> See UN Millennium Declaration, (A/55/L.2) adopted by the UN GA, available at: <http://www.un.org/millennium/declaration/ares552e.htm>

<sup>72</sup> See Karen O'Brien, "Reconceptualizing Human Security in the Context of Climate Change" (2007), paper presented at conference on "Blind Spots of Global Climate Governance," Berlin, Germany (Feb 2007)

<sup>73</sup> Rio Declaration on Environment and Development, 1992, available at: <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>

<sup>74</sup> *Ibid.*

<sup>75</sup> See Millennium Declaration, *supra* note 70.

<sup>76</sup> *Ibid.*

- Halve, by 2015, the proportion of people without sustainable access to safe drinking water and sanitation<sup>77</sup>

#### **4.4 Threats to human security and sustainable development**

According to the Center for Human Security at Coventry University, the greatest threats to human security are: climate change, an inequitable global economic system, bad governance, corruption, abuse of human rights and violence.<sup>78</sup> Poverty, conflict (which, in turn, leads to a violation of many human rights) and lack of good governance can be identified as the main threats to human security and sustainable development.

Specific linkages between climate change and security are identified as followed: food insecurity and livelihood; health; inequity relating to mitigation and adaptation; food-fuel conflict; disasters; water insecurity; and displacement associated with sea level rise.<sup>79</sup> All the threats that are identified in relation to sustainable development and human security – poverty, conflict, corruption, bad governance, inequality etc – are unfortunately all present in South Asia. Climate change-related consequences, particularly large scale migration will only exacerbate the situation.

#### **4.5 What do these two paradigms offer each other as a framework to address climate change?**

It has been articulated that these two paradigms are mutually beneficial. Thus, the human security regime offers the following to the sustainable development regime:

- Human security and human development, by emphasizing people, strengthen the social pillar of sustainable development;
- It encourages the sustainable development field to move away from a standard of living approach towards a “sustainable livelihood” approach.
- It moves the sustainable development field from a needs-based approach to a rights-based one: “The practical implication of this broadening is that civil and political rights along with economic, social and cultural rights become an integral component of the social pillar of sustainable development.”<sup>80</sup>
- Human security emphasizes the intra-generational aspects of sustainable development, noting that freedom from want and freedom from fear must be achieved urgently.<sup>81</sup>

Conversely, the sustainable development regime offers the following to the human security regime:

<sup>77</sup> See Millennium Development Goals, available at: <http://www.un.org/millenniumgoals/index.shtml>

<sup>78</sup> See Malcolm McIntosh, “Human Security Solutions Require Sustainable Enterprise,” Compact Quarterly, available at:

[http://www.enebuilder.net/globalcompact/e\\_article000688256.cfm?x=b11,0,w](http://www.enebuilder.net/globalcompact/e_article000688256.cfm?x=b11,0,w)

<sup>79</sup> See Norwegian Refugee Council report, *supra* note 34.

<sup>80</sup> See Sanjeev Khagram *et al.*, *supra* note 61 at p 300

<sup>81</sup> *Ibid.*

- It emphasizes that nature and society are interdependent.
- This interdependency provides both threats and opportunities for change.
- Threats and opportunities exist at all time and space scales from the acute and local to the chronic and global.
- Sustainable development emphasizes participatory rights of people – communities and people must be given the appropriate means to have their voices heard and to participate effectively in decision-making about their security and development.
- Nature is valuable in its own right.<sup>82</sup>

A few points must be highlighted here: while it is accepted that the main link between human security and sustainable development is through the social pillar of sustainable development, it is unlikely that the whole panoply of human rights would come within the sustainable development framework by linking the two regimes. It is more likely that the social dimension includes only socio-economic rights. Nonetheless, the transition from a needs based approach to a rights based approach is significant.

In addition, the other significant link is the inclusion of participatory rights in the human security agenda. These form part of the procedural elements of sustainable development and the extension of these rights to the human security paradigm is important. It must be pointed out that these rights are already part of the human rights discourse.

It has been pointed out that the link between environmental issues and human security has been often discussed in terms of conflict or cooperation:

“Yet, human security broadly defined, represents more than freedom from conflict. It includes the means to security basic rights, needs and livelihoods, and to pursue opportunities for human fulfillment and development. From another perspective, “human security is achieved when and where individuals and communities have the options necessary to end, mitigate, or adapt to threats to their human, environmental and social rights; have the capacity and freedom to exercise these options; and actively participate in attaining these options” (GECHS, 1999, p. 26)<sup>83</sup>

O’Brien and Leichenko further note that both direct and indirect consequences of climate change pose threats to human security. Inequities that exist within and across nations may be attributed to unequal economic relationships and unequal access to resources and climate change may create new inequities through its uneven outcomes. They contend that these new and emerging inequities pose the most critical threat to human security.<sup>84</sup>

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<sup>82</sup> *Id.*, p 301

<sup>83</sup> See Karen O’Brien and Robin Leichenko, “Climate Change, Equity and Human Security, Human Security and Climate Change,” an International Workshop, Norway, June 2005, p 11.

<sup>84</sup> *Ibid*, p 12.

Thus, how does this framework translate into climate change? As pointed out earlier, given the far reaching consequences of climate change, all three pillars of sustainable development (economic, social and environmental) would be affected as a result of climate change. Climate change also poses a danger to security, both national and international, particularly as a result of possible large-scale migration. Given that climate change is likely to increase tension between communities especially in relation to access to resources causing conflicts among communities, climate change also poses a particular challenge to human security. This situation will surely be compounded by climate-related migration causing more and more pressure on finite resources. Thus, adopting a framework that encompasses both sustainable development and human security principles would be beneficial to address the unprecedented challenges posed by climate change. Thus, for example, NAPAs and adaptation strategies should be formulated with the participation of those communities that would be particularly affected. In relation to the issue of migration and displacement, people's participation would be crucial. In this regard, providing information in a timely manner and giving a forum for people to participate will play an important role.

## 5. Conclusion

There is no doubt that climate change has created and will continue to create unprecedented challenges to the entire international community including future generations. Developing countries in particular are disproportionately burdened by climate change. South Asia with its huge population and large proportion of people living in low-lying areas, coupled with abject poverty and conflict are particularly at risk.

Climate change-related migration will pose many challenges to the international community in the years to come. South Asia, too, will be affected by this phenomenon. International law will have to address the legal situation caused by cross-border migration, particularly in the event that small island states will be completely submerged due to sea level rise. A regional framework, such as the SAARC, would be a good forum to address the issue in South Asia.

Climate change poses a particular challenge to sustainable development and is among the threats posed to human security. Sustainable development and human security provide us with an overarching framework to address the unprecedented challenges posed by climate change and its impact on people – human security brings in socio-economic rights to the social pillar of sustainable development, while the latter brings in to human security regime participatory rights and the need for environmental protection. As Ben Wisner *et al* noted: "Ironically, climate change offers humanity an opportunity for a quantum leap in sustainable development and in peace making."<sup>85</sup>

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<sup>85</sup> See Ben Wisner, *supra* note 33, p 9.

### **International Development Law Organization (IDLO)**

IDLO is an intergovernmental organization that promotes legal, regulatory and institutional reform to advance economic and social development in transitional and developing countries.

Founded in 1983 and one of the leaders in rule of law assistance, IDLO's comprehensive approach achieves enduring results by mobilizing stakeholders at all levels of society to drive institutional change. Because IDLO wields no political agenda and has deep expertise in different legal systems and emerging global issues, people and interest groups of diverse backgrounds trust IDLO. It has direct access to government leaders, institutions and multilateral organizations in developing countries, including lawyers, jurists, policymakers, advocates, academics and civil society representatives.

Among its activities, IDLO conducts timely, focused and comprehensive research in areas related to sustainable development in the legal, regulatory, and justice sectors. Through such research, IDLO seeks to contribute to existing practice and scholarship on priority legal issues, and to serve as a conduit for the global exchange of ideas, best practices and lessons learned.

IDLO produces a variety of professional legal tools covering interdisciplinary thematic and regional issues; these include book series, country studies, research reports, policy papers, training handbooks, glossaries and benchbooks. Research for these publications is conducted independently with the support of its country offices and in cooperation with international and national partner organizations.

### **Centre for International Sustainable Development Law (CISDL)**

The Centre for International Sustainable Development Law (CISDL) is an independent legal research institute that aims to promote sustainable societies and the protection of ecosystems by advancing the understanding, development and implementation of international sustainable development law.

As a charitable foundation with an international Board of Governors, CISDL is led by 2 Directors, and 9 Lead Counsel guiding cutting-edge legal research programs in a fellowship of 120 legal researchers from over 60 developing and developed countries. As a result of its ongoing legal scholarship and research, the CISDL publishes books, articles, working papers and legal briefs in English, Spanish and French. The CISDL hosts academic symposia, workshops, dialogues, and seminar series, including legal expert panels parallel to international treaty negotiations, to further its legal research agenda. It provides instructors, lecturers and capacity-building materials for developed and developing country governments, universities, legal communities and international organisations on national and international law in the field of sustainable development. CISDL members include learned judges, jurists and scholars from all regions of the world and a diversity of legal traditions.

With the International Law Association (ILA) and the International Development Law Organization (IDLO), under the auspices of the United Nations Commission on Sustainable Development (UN CSD), CISDL chairs a Partnership on 'International Law for Sustainable Development' that was launched in Johannesburg, South Africa at the 2002 World Summit for Sustainable Development to build knowledge, analysis and capacity about international law on sustainable development. Leading CISDL members also serve as expert delegates on the International Law Association Committee on International Law on Sustainable Development. For further details see [www.cisdl.org](http://www.cisdl.org).