

# HAS THE INTERNATIONAL CLIMATE REGIME FAILED AND MISSED ITS PURPOSE? LOSS AND DAMAGE AND HUMAN RIGHTS PERSPECTIVE

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## A. INTRODUCTION<sup>1</sup>

The development of the international climate change regime perhaps could be divided into seven stages: the first stage was before 1985, when initial scientific knowledge of global warming began to emerge; the second stage was from 1985 to 1988, when global warming was transformed from a scientific issue into a policy-making issue; and the third stage was from 1988 to 1990, when the international climate change regime began to enter into an informal negotiation phase; the fourth stage was the formal intergovernmental negotiations and the conclusion of the United Nations Framework Convention on Climate Change (the UNFCCC) in 1992; the fifth stage was the negotiations on how to implement the UNFCCC and the adoption of the Kyoto Protocol in 1997;<sup>2</sup> the sixth stage was the negotiations on emissions reductions and the adoption of the Paris Agreement in 2015; the seventh stage is the negotiations since the signing of the Paris Agreement until now, which have been centred on how to advance the implementation of the Paris Agreement.<sup>3</sup> With the increasingly awful impacts of climate change, the international climate change regime has faced accusations from the international community, particularly from those climate-vulnerable states. It is said that the international climate change regime has failed and is not in line with its original purpose. This essay argues that the international climate change regime has been relatively successful in terms of its legislative framework, but its operationalisation function has been poor, thus making it a near failure and inconsistent with its original objectives. The essay will analyse this argument from two perspectives: damage and loss and human rights protection.

## B. LOSS AND DAMAGE PERSPECTIVE

As the new emerging issue of the international climate change regime, loss and damage become a more and more significant issue these days. Loss and damage has not been clearly defined in either the UNFCCC or the Paris Agreement, also being debated in the international community, as it is a politically, economically and socially multifaceted issue.<sup>4</sup> It was referred to by the Warsaw International Mechanism in 2013 *as the adverse impacts brought about by climate change, including extreme weather and slow onset events*.<sup>5</sup> Loss and damage is currently recognised in academia as well

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<sup>1</sup> Legal norms used up to 30 November 2023

<sup>2</sup> Urs Luterbacher and Detlef F Sprinz, *International Relations and Global Climate Change* (MIT Press 2001) 24

<sup>3</sup> Bodansky, D, Brunnée J and Rajamani L, *International Climate Change Law* (Oxford University Press 2017).

<sup>4</sup> Kreienkamp J and Vanhala L, 'Climate Change Loss and Damage' (Policy Brief, March 2017)

<sup>5</sup> WIM, decision 2/CP.19, Article 1

as in practice as an unmitigated and non-adaptable adverse effect of climate change.<sup>6</sup> Such adverse impacts are usually divided into two categories: one is economic losses, which can be addressed with monetary compensation; the other one is non-economic losses, which are often difficult to compensate for, including social, cultural and livelihood losses.<sup>7</sup> There is also a certain overlap between the two.

The issue of loss and damage was first raised in the early twentieth century in the context of the international climate negotiating agenda by representatives of the Alliance of Small Island States (AOSIS). The reason for raising this topic was that human adaptation and mitigation efforts had not been as effective as they should have been.<sup>8</sup> As a result, the adverse impacts of climate change could or would result in significant loss and damage to particular states, especially climate-vulnerable countries and small island countries. Loss and damage from climate change can often be devastating to a state's economy or society or culture. In Micronesia, where communities in Kosrae are losing burial grounds due to coastal erosion caused by sea level rise,<sup>9</sup> in Inuit communities whose cultural identity and hunting practices are being threatened by the loss of Arctic sea ice.<sup>10</sup> While the issue of loss and damage was raised, it did not receive much attention in that international negotiations round. That's the reason why it was avoided by the UNFCCC in 1992, and subsequent negotiations continue to focus on adaptation and mitigation. Until 2007, loss and damage caused by climate change in some developed countries became progressively more serious than before, then this issue was reintroduced into the agenda of international negotiations.<sup>11</sup> In 2013, the Warsaw International Mechanism (WIM) set up a global mechanism and institutional framework for dealing with the issue of loss and damage; in 2015, there was a heated discussion on this issue at the Paris Climate Conference, which finally led to the conclusion of the Article 8 of the Paris Agreement. At COP26, a coalition of vulnerable states advocated for the establishment of a financial institution or fund for loss and damage. Although their suggestion was unsuccessful, COP26 established a two-year Glasgow Dialogue Mechanism to discuss arrangements for loss and damage funding.<sup>12</sup> At COP27, loss and damage took center stage for the first time, and a fund for compensation for loss and damage caused by climate change was successfully established.<sup>13</sup> Currently, loss and damage, together with mitigation and adaptation, constitute the three pillars of the international climate change regime, with the focus of attention mainly on the compensation and indemnification regime.

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<sup>6</sup> van der Geest K and Warner K, 'Editorial: Loss and Damage from Climate Change: Emerging Perspectives' (2015) 8(2) Int J Global Warming 133

<sup>7</sup> 'Climate loss and damage: practical action' (The Scottish Government - gov.scot) <[www.gov.scot/publications/practical-action-addressing-loss-damage/pages/5/](http://www.gov.scot/publications/practical-action-addressing-loss-damage/pages/5/)> accessed 16 December 2023.

<sup>8</sup> Reinhard Mechler, *Loss and Damage from Climate Change: Concepts, Methods and Policy Options* (Springer Nature 2019)

<sup>9</sup> 'What Is 'Loss and Damage' from Climate Change? 8 Key Questions, Answered' (World Resources Institute) <[www.wri.org/insights/loss-damage-climate-change](http://www.wri.org/insights/loss-damage-climate-change)> accessed 16 December 2023.

<sup>10</sup> Chris Baraniuk, 'The Inuit knowledge vanishing with the ice' (BBC - Homepage, 12 October 2021) <[www.bbc.com/future/article/20211011-the-inuit-knowledge-vanishing-with-the-ice](http://www.bbc.com/future/article/20211011-the-inuit-knowledge-vanishing-with-the-ice)> accessed 16 December 2023.

<sup>11</sup> W Neil Adger and others, 'Are there social limits to adaptation to climate change?' (2008) 93(3-4) *Climatic Change* 335.

<sup>12</sup> see COP 26 The Glasgow Climate Pact

<sup>13</sup> 'COP27 Reaches Breakthrough Agreement on New 'Loss and Damage' Fund for Vulnerable Countries | UNFCCC' <<https://unfccc.int/news/cop27-reaches-breakthrough-agreement-on-new-loss-and-damage-fund-for-vulnerable-countries>> accessed 16 December 2023.

Based on the lineage of development of loss and damage regulations and policies, it can be said that it is in a favourable state of development. Firstly, the issue of loss and damage has gained the attention of the international community after several years of efforts by small island states. When the issue was mentioned by the AOSIS at the beginning of the twentieth century, most countries did not think much of it. After several years, however, it has developed to the core topic at COP 27, which means most of the states in the world recognize the importance of loss and damage issue. Secondly, the establishment of the WIM in 2013 has given loss and damage its own institutional arrangements for implementation. The WIM established the Executive Committee, whose main tasks include addressing loss and damage caused by the adverse effects of climate change; coordinating dialogue among parties; promoting cooperation and providing financial, technological, and capacity-building assistance.<sup>14</sup> It can be said that the Warsaw International Mechanism has set up an initial framework for addressing loss and damage issue, which has laid a good foundation for the subsequent negotiations on the Paris Agreement. In addition, under the UNFCCC, a number of support projects have been carried out on regulations to prevent or compensate for the occurrence of loss and damage. A typical example is the Caribbean Catastrophe Risk Insurance Facility (CCRIF), developed with the technical assistance of the World Bank and the financial support of the Government of Japan. It is mainly financed by the World Bank, the European Union, Canada and other developed countries.<sup>15</sup> The purpose is to respond rapidly to the adverse effects of extreme weather and emergencies such as tropical cyclones and excessive rainfall that occur in the Caribbean.<sup>16</sup> Over the past 16 years, this institution has significantly reduced the economic pressure on Caribbean countries facing natural disasters and extreme weather and is a relatively successful case of compensation for loss and damage.

Even though the legal framework for loss and damage is constantly being improved with a number of projects being developed to try to address the problem. It still has to be said that it has indeed failed and appears to have strayed from its original purpose. One possible reason for this is the loss and damage regulations may run counter to the principles of the international climate change regime. On the one hand, the industrialised countries of the northern hemisphere have, for historical reasons, emitted large quantities of pollutants during the past industrial revolution.<sup>17</sup> These industrialised countries should be held accountable for the pollution they caused in their history because, according to the 'polluter pays principle'<sup>18</sup> and the implication of historical development, these industrialised countries polluted the atmosphere and are one of the main contributors to the current global warming for the reason that they should be made to pay for their actions or else it may be a violation of the polluter pays principle. On the other hand, the industrialised countries of the North plundered a lot of the resources of the non-industrialised countries of the South during their

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<sup>14</sup> WIM, decision 2/CP.19, Article 5

<sup>15</sup> 'Home | CCRIF SPC' (Home | CCRIF SPC) <[www.ccrif.org/](http://www.ccrif.org/)> accessed 16 December 2023.

<sup>16</sup> 'The Caribbean Catastrophe Risk Insurance Facility (CCRIF) | UNFCCC' (UNFCCC) <<https://unfccc.int/topics/adaptation-and-resilience/resources/S-N/CCRIF>> accessed 16 December 2023.

<sup>17</sup> Benoit Mayer and Alexander Zahar, 'Debating Climate Law: Conclusion' [2021] SSRN Electronic Journal.

<sup>18</sup> Rio Declaration, Principle 16

industrialisation in the past so that they can reach the present level of development.<sup>19</sup> Even today, the pollution emissions of the non-industrialised countries in the South are still far lower than those of the industrialised countries in the North. Under these circumstances, it may run counter to the principles of equity and common but differentiated responsibilities principle<sup>20</sup> to hold countries of the North and South equally responsible for climate change. On the contrary, most of the industrialised countries of the North are unwilling to compensate and take responsibility for the pollution they caused in history.<sup>21</sup> There is no way that the existing loss and damage framework can compel developed countries of the North to pay for past pollutant emissions, and both Article 8 of the Paris Agreement and WIM deal only with a framework for addressing loss and damage in the future, not even with compensation to address the Loss and Damage that the globe is facing at present. Current solutions to the problem of pollution compensation generally involve judicial recourse after the damage has been caused.<sup>22</sup>

An important reason is that the international climate regime's response capacity in this regard is weak and slow. In terms of recognition, the mainstream view of the international community still focuses on adaptation and mitigation, which is considered sufficient to solve the environmental problems currently faced. The states that hold such a view are mainly developed countries,<sup>23</sup> which hold the main discourse power in the international community. Even though the importance of the issue of loss and damage is recognised, most states still view it in relation to mitigation and adaptation.<sup>24</sup> Within the framework of the WIM, countries led by the United States and the European Union continue to limit the scope of the Executive Committee's work to enhance adaptation and risk management.<sup>25</sup> It is precisely because the international community is not yet sufficiently aware of the issue of loss and damage, and the states with sufficient awareness lack sufficient voice at the international level. This led to the construction of the implementation system for loss and damage being slow and the consensus that can be reached is limited. In terms of implementation mechanisms, the WIM and Article 8 of the Paris Agreement are both very broad provisions. The activities that WIM can implement have to appear in your work programme that it has agreed upon, and the current work programme is not ambitious enough.<sup>26</sup> In addition, there are internal problems with the WIM Executive Committee, which is required to have half developed country representatives and half developing country

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<sup>19</sup> Benoit Mayer and Alexander Zahar, 'Debating Climate Law: Conclusion' [2021] SSRN Electronic Journal.

<sup>20</sup> UNFCCC, Article 3(1)

<sup>21</sup> MJ Mace and Roda Verheyen, 'Loss, Damage and Responsibility after COP21: All Options Open for the Paris Agreement' (2016) 25(2) *Review of European, Comparative & International Environmental Law* 197

<sup>22</sup> Richard SJ Tol and Roda Verheyen, 'State responsibility and compensation for climate change damages—a legal and economic assessment' (2004) 32(9) *Energy Policy* 1109.

<sup>23</sup> Boyd E, James RA, Jones RG, Young HR and Otto FEL, 'A Typology of Loss and Damage Perspectives' (2017) 7(10) *Nature Climate Change* 723.

<sup>24</sup> Boyd E, James RA, Jones RG, Young HR and Otto FEL, 'A Typology of Loss and Damage Perspectives' (2017) 7(10) *Nature Climate Change* 723.

<sup>25</sup> MJ Mace and Roda Verheyen, 'Loss, Damage and Responsibility after COP21: All Options Open for the Paris Agreement' (2016) 25(2) *Review of European, Comparative & International Environmental Law* 197

<sup>26</sup> MJ Mace and Roda Verheyen, 'Loss, Damage and Responsibility after COP21: All Options Open for the Paris Agreement' (2016) 25(2) *Review of European, Comparative & International Environmental Law* 197

representatives in order to make decisions by consensus.<sup>27</sup> The problem in the selection and composition of the members has prevented the Committee from functioning.

The most important, and fundamental, reason of the failure of the loss and damage mechanism is the lack of financial resources. According to the current categorisation of loss and damage in practice, non-economic losses are generally difficult to repair thus are not considered here. The solution to economic losses requires a large amount of funds to support, which are generally used to rebuild homes damaged by the adverse impacts of climate change or to resettle residents whose living environment and standards have been affected by climate change.<sup>28</sup> Although WIM has mentioned the issue of funds, up to now WIM does not have a stable and sufficient source of funds, and even initially relies on the funds of some developed countries to support its operation in the first two years.<sup>29</sup> Moreover, the financial content of the five-year work plan has been always in a blank state.<sup>30</sup> In the Paris Agreement, developed countries committed to jointly provide \$100 billion per year in climate finance to developing countries.<sup>31</sup> Due to the linkage between WIM and the Paris Agreement, WIM has called for a portion of this funding to be used to address loss and damage. In 2020, developed countries provided \$83.3 billion, only 8 per cent of this has gone to low-income countries and about a quarter to Africa. Most of it has been used to address adaptation and mitigation, with a very small portion used to address loss and damage. This lack of funding does not allow the loss and damage regulations to function well, since the most fundamental way to address loss and damage is to provide financial compensation, and the lack of funding is the biggest obstacle to the good functioning of such a mechanism. In summary, the international climate change regime may not be in a position to fulfil its original purpose, given that the current loss and damage rules may violate the basic principles of the international climate change regime, and that the capacity to respond and implement in practice is weak.

### C. HUMAN RIGHTS PERSPECTIVE

Human rights issues are fundamental to international law and should be given equal attention in the international climate change regime. In the context of growing environmental problems, the issue of human rights in the field of the environment was not mentioned at all until the 1980s. The first time human rights were mentioned in an international conference was at the Stockholm Conference on the Human Environment in 1972, where the declaration stated that human beings have a fundamental responsibility towards the environment and at the same time have a valuable right to live.<sup>32</sup> During 1990s, the possible impacts of environmental degradation on the right to life and the right to health began to be discussed in the

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<sup>27</sup> see WIM, decision 2/CP.19

<sup>28</sup> 'CCRIF Makes Four Payouts Totalling US\$15.2 Million During October for 2022 Hurricane Season Events | CCRIF SPC' (Home | CCRIF SPC) <[www.ccrif.org/news/ccrif-makes-four-payouts-totalling-us152-million-during-october-2022-hurricane-season-events](http://www.ccrif.org/news/ccrif-makes-four-payouts-totalling-us152-million-during-october-2022-hurricane-season-events)> accessed 16 December 2023.

<sup>29</sup> Kreienkamp J and Vanhala L, 'Climate Change Loss and Damage' (Policy Brief, March 2017)

<sup>30</sup> Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts. Addendum, FCCC/SB/2017/1/Add.1

<sup>31</sup> United Nations, 'Climate Finance' <https://www.un.org/en/climatechange/raising-ambition/climate-finance> accessed 16 December 2023.

<sup>32</sup> Report of the Conference A/CONF.48/14/Rev.1, para.1

negotiations of the UN Commission on Human Rights.<sup>33</sup> On 28 March 2008, the United Nations Human Rights Council adopted resolution 7/23 on human rights and climate change, which, for the first time in a United Nations resolution, explicitly acknowledged that climate change 'has implications for the full enjoyment of human rights'.<sup>34</sup> In 2015, the Paris Agreement called on all parties to respect, promote, and take into account the human rights obligations of all States.<sup>35</sup> Now there is an international consensus that climate change will lead to human rights violations. Dozens of political, economic, social and cultural human rights are enshrined in the International Declaration of Human Rights, and in the area of the environment, climate change threatens several widely enjoyed human rights, including, but not limited to, the right to life, the right to health, the right to water, the right to food, the right to development and the right to self-determination.<sup>36</sup>

From the perspective of human rights protection, the international climate change regime has had its more successful aspects. One important aspect is that it provides a relatively well-developed framework for the protection of human rights in the climate context. On the one hand, this framework provides safeguards for the core conditions of human life in the context of the climate crisis. The Human Rights Council report contains detailed descriptions of the rights to life, health, food, access to clean water and habitat, calling on Governments to focus on the living environment, food and drinking water stocks and sanitation.<sup>37</sup> These are the basic conditions for human survival, and the inclusion of human rights in the international climate change framework has largely supplemented the inadequacies of the previous climate change governance system in the context of the current growing climate crisis. As an example, the core content of the long-term development of the original international climate regime is to reduce greenhouse gas emissions through the trading mechanism of carbon emission, which mainly relies on the market mechanism.<sup>38</sup> However, the market mechanism is not completely fair and just, which will lead to the neglect of human needs in the governance of the international climate regime. In this context, the international climate regime's concern for human rights has ensured the most basic conditions of human survival, especially those of environmentally fragile states and small island states. On the other hand, human rights provide a basis for prosecution in international climate change litigation. In contexts where there is no reference to human rights, a person cannot claim his rights if he loses food because of climate change. The existence of human rights has fuelled climate change litigation by providing a way for victims to claim their rights. Since the signing of the Paris Agreement, such lawsuits have sprung up.<sup>39</sup> In the case of *Urgenda Foundation v.*

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<sup>33</sup> Daniel Bodansky, 'Introduction: Climate Change and Human Rights: Unpacking the Issues' (2010) 38 *Ga J Int'l & Comp L* 511

<sup>34</sup> Human Rights Council Res 7/23, UN Doc A/HRC/7/78 (28 March 2008)

<sup>35</sup> see Paris Agreement Preamble

<sup>36</sup> UNHRC, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (1 February 2016) UN Doc A/HRC/31/52

<sup>37</sup> UNHRC, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (1 February 2016) UN Doc A/HRC/31/52

<sup>38</sup> Atieno M, 'Human Rights and the Global Climate Change Regime' (2018) 58(1) *Natural Resources Journal* 51

<sup>39</sup> Quirico O, 'Climate Change and State Responsibility for Human Rights Violations: Causation and Imputation' (2018) 65(2) *Netherlands International Law Review* 185

Government of the Netherlands, the Urgenda Foundation filed a lawsuit in the District Court of the Netherlands on the grounds that the Government of the Netherlands was not doing enough to reduce emissions, which may be insufficient to fulfil the Paris Agreement's requirement of 'limiting warming to 2 degrees Celsius', and thus endangering the right to life of its citizens.<sup>40</sup> The case was brought before the District Court of the Netherlands on the basis of the European Human Rights Act. From this perspective, the international climate change regime has played a role in safeguarding human rights.

The international climate change regime has done far too little to give only a framework of protection and a basis for litigation in the area of human rights protection, which is why it has been accused of having failed and of not being able to fulfil its original purpose. Its failure is reflected in the inadequate protection of the rights of groups. The first group that is not adequately protected is the citizens, whose rights to participate in the international climate regime's decision-making are not well protected. The International Covenant on Civil and Political Rights mentions that the right of the public to take part in the conduct of public affairs is protected.<sup>41</sup> Under the current international climate change regime, both the UNFCCC<sup>42</sup> and the Paris Agreement<sup>43</sup> require States Parties to enhance citizens' access to information and participation in decision-making. In practice, however, this 'global democracy' has not been achieved. The public may have access to a great deal of information about the international climate change regime through the media or social media platforms, but it is very difficult for them to express their own or a group's ideas on an international platform. Currently, citizen participation is more likely to take the form of citizens signing petitions via the Internet, or webpage creators posing a question to which citizens respond with a short yes or no answer.<sup>44</sup> The second group that is not adequately protected is the vulnerable groups of women, children and persons with disabilities, their rights to life, health, development and self-determination are not well protected. In the context of climate change, women and children in economically disadvantaged areas, who were often responsible for collecting water and some food resources,<sup>45</sup> may be suffering unprecedented abuse due to the lack of basic survival resources. Those persons who with disabilities belonged to a group of people who had been neglected in the process of climate change for the reason that they were likely to encounter various problems in adapting to climate change.<sup>46</sup> And they are not such valuable to society. Existing international environmental regimes have left a virtual void in this area of protection, with only initiatives that need to pay extra attention to this category of people in the context of the climate change process.<sup>47</sup> For this vulnerable group, such initiatives

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<sup>40</sup> see *The State of the Netherlands (Ministry of Infrastructure and the Environment) v Urgenda Foundation*, Case No 200.178.245/01, The Hague Court of Appeal, 9 October 2018

<sup>41</sup> ICCPR, Article 25

<sup>42</sup> UNFCCC, Article 6

<sup>43</sup> Paris Agreement, Article 12

<sup>44</sup> Hayley Stevenson and John S Dryzek, 'The discursive democratisation of global climate governance' (2012) 21(2) *Environmental Politics* 18

<sup>45</sup> Bethuel Sibongiseni Ngcamu, 'Climate change effects on vulnerable populations in the Global South: a systematic review' [2023] *Natural Hazards*

<sup>46</sup> Bethuel Sibongiseni Ngcamu, 'Climate change effects on vulnerable populations in the Global South: a systematic review' [2023] *Natural Hazards*

<sup>47</sup> UNHRC, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (1 February 2016) UN Doc A/HRC/31/52, para.81-84

have little practical implementation effect at the legal level. As a vulnerable group, they are still not able to have equal rights under the protection of operational laws, and are still subject to violence and physical and mental health problems, not to mention these initiatives and reports that have no operational capacity.

The third group that is not sufficiently protected, which is the one that will be most affected throughout the climate change process, is the group that will migrate as a result of climate change. The first point is to know how to define this group. Since the decision of individuals to move is multifaceted, the definition has always been controversial. Climate refugees are mainly people displaced by the effects of climate change, with storms, heavy rains and floods being the main causes of this displacement.<sup>48</sup> The International Organisation for Migration defines environmental migrants as groups of people who are forced to leave their habitual place of residence or to migrate temporarily or permanently within their own country or abroad for compelling external reasons resulting from sudden or destabilising changes in the environment that adversely affect their living or subsistence conditions.<sup>49</sup> Clearly, the definition of environmental migrants encompasses the definition of climate refugees. The human rights of climate migrants cannot be guaranteed due to the current lack of a specific international legal regime applicable to climate migrants. International climate change law focuses primarily on mitigation and adaptation, but it fails to clarify the legal status of people who cannot adapt to climate change in their own countries and have to flee to other countries. The Cancun Agreements recognised climate migrants for the first time, encouraging states to implement measures at the national, regional and international levels on climate change-induced displacement, migration and planned resettlement, thereby enhancing understanding, coordination and cooperation.<sup>50</sup> Considering that existing international refugee law and protection of stateless persons do not adequately address and resolve the issue of climate-induced migration. Under the United Nations Convention relating to the Status of Refugees of 1951 and the Refugee Protocol as amended in 1967, climate change-induced migrants are often unable to demonstrate a well-founded fear of persecution and are therefore not eligible for protection as refugees.<sup>51</sup> If the protection of stateless persons is invoked, it is subject to a certain degree of uncertainty. In such cases, the disappearance of nationality presupposes the disappearance of the State, and the disappearance of the State presupposes the loss of territory. Maldives, for example, it would take some time before it was submerged totally, but it was clear that the country would no longer be habitable before it was completely submerged. What law should apply to those migrants during that period becomes a question. In this situation, where every legal rule is not applicable, even though the Cancun agreement recognises climate migrants and asks the parties to try to solve this problem, the international climate change regime has not given relevant operational details to this nascent issue in the climate field. In the absence of specific implementation rules, the human rights of climate migrants are not guaranteed at all, and even their survival is in question.

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<sup>48</sup> Walter Kälin, 'Conceptualising Climate-Induced Displacement' in Jane McAdam (ed), *Climate Change and Displacement: Multidisciplinary Perspectives* (Hart Publishing 2010)

<sup>49</sup> International Organization for Migration, 'Discussion Note: Migration and the Environment' (1 November 2007) MC/INF/288

<sup>50</sup> UNFCCC Conference of the Parties, 'Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010: Addendum Part Two: Action taken by the Conference of the Parties at its sixteenth session' (15 March 2011) UN Doc FCCC/CP/2010/7/Add.1, para. 13

<sup>51</sup> The 1951 Refugee Convention, Article 1



## **D. CONCLUSION**

In summary, the international climate change regime has had some success, but it has certainly been a near failure. From the perspective of loss and damage, the climate change regime has set up a framework for addressing loss and damage and has made all the parties recognise the importance of this issue; but it has been nearly inoperative, with the developed countries unwilling to assume their historical responsibility to make up for the loss and damage they have caused in the past; nor are they willing to deal with loss and damage as an important issue on its own, and still not treating it as a separate issue from mitigation and adaptation; furthermore, without adequate financial support, it is not possible to move into the practical stage. From a human rights protection perspective, the international climate change regime has likewise established a simple framework for it and has also provided a basis for climate litigation. However, due to the lack of specific operational provisions of the international climate change regime, the framework is mostly in the form of initiatives, which is not legally binding and is unable to solve the problems of public participation, protection of the rights and interests of vulnerable groups and climate migration. All in all, the international climate change regime is in a state of empty framework, weak legal-binding and practical operation, from this perspective, the international climate change regime has nearly failed and no longer meets its original purpose.