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Legal Regulation of Water Resources: Exploring the Interplay with Human Rights in the Context of Refugees Challenges

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Abstract. Natural water resources are often inadequately protected, despite their vulnerability to the consequences of armed conflicts. Access to water is a fundamental human need and a basic human right, demanding the prioritization of protecting the rights of civilian populations to a favorable environment and water resources during times of conflict. This article analyzes international humanitarian law norms concerning the protection of water resources during armed conflict. Through the identification of gaps and the proposal of improvements in the legal framework, this article contributes to strengthening the protection of water sources in wartime. It emphasizes the significance of considering the impact on water resources when evaluating the legality and justifiability of armed conflicts. The findings presented in this article inform discussions on enhancing the legal protection of water resources and upholding the rights of refugees and affected civilian populations. By comprehending the interplay between human rights, including the right to water access, and the protection of water resources during armed conflicts, this article aims to foster a better understanding of the issue and promote effective measures for safeguarding water in times of crisis.

Keywords: International humanitarian law, legal regulation, water resources, human rights, refugees, access to water, armed conflicts

Суды басқару: босқындар контекстіндегі адам құқықтарымен өзара әрекеттесуді зерттеу

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Түйіндеме. Табиғи су ресурстары қарулы қақтығыстардың әсерінен осалдығына қарамастан, көбінесе жеткіліксіз қорғалады. Суға қол жеткізу адамның негізгі қажеттілігі және жанжал кезінде бейбіт тұрғындардың

салауатты қоршаған ортаға және су ресурстарына құқықтарын басымдықпен қорғауды талап ететін негізгі адам құқығы болып табылады. Бұл мақалада қарулы қақтығыстар кезінде су ресурстарын қорғауға қатысты халықаралық гуманитарлық құқық нормалары талданады. Олқылықтарды анықтап, заңнамалық базаны жетілдіруді ұсыну арқылы бұл мақала соғыс уақытында су көздерін қорғауды күшейтуге ықпал етеді. Ол қарулы қақтығыстардың заңдылығы мен негізделуін бағалау кезінде су ресурстарына әсер етуді ескерудің маңыздылығын көрсетеді. Осы мақалада келтірілген қорытындылар су ресурстарын құқықтық қорғауды күшейту және босқындар мен зардап шеккен бейбіт тұрғындардың құқықтарын қорғау мәселелерін талқылауға негіз болады. Адам құқықтарының, соның ішінде суға қол жеткізу құқығының және қарулы қақтығыстар кезінде су ресурстарын қорғаудың арасындағы қарым-қатынасты тұжырымдамалай отырып, бұл мақала мәселені жақсырақ түсінуге және дағдарыс кезінде суды қорғаудың тиімді шараларына ықпал етуге бағытталған.

Негізгі сөздер: Халықаралық гуманитарлық құқық, құқықтық реттеу, су ресурстары, адам құқықтары, босқындар, суға қол жеткізу, қарулы қақтығыстар

Правовое регулирование водных ресурсов: Изучение взаимодействия с правами человека в контексте проблематики беженцев

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Аннотация. Природные водные ресурсы часто недостаточно защищены, несмотря на их уязвимость к последствиям вооруженных конфликтов. Доступ к воде является одной из основных потребностей человека и одним из основных прав человека, что требует приоритетной защиты прав гражданского населения на благоприятную окружающую среду и водные ресурсы во время конфликта. В данной статье анализируются нормы международного гуманитарного права, касающиеся защиты водных ресурсов во время вооруженных конфликтов. Выявляя пробелы и предлагая усовершенствования в правовой базе, данная статья вносит вклад в укрепление защиты водных источников в военное время. В ней подчеркивается важность учета воздействия на водные ресурсы при оценке законности и оправданности вооруженных конфликтов. Выводы, представленные в этой статье, служат основой для дискуссий об усилении правовой защиты водных ресурсов и защите прав беженцев и пострадавшего гражданского населения. Осмысленная взаимосвязь между правами человека, включая право на доступ к воде, и защитой водных ресурсов во время

вооруженных конфликтов, эта статья призвана способствовать лучшему пониманию проблемы и продвижению эффективных мер по защите воды во время кризиса.

Ключевые слова: Международное гуманитарное право, правовое регулирование, водные ресурсы, права человека, беженцы, доступ к воде, вооруженные конфликты

Introduction. The global strain on water resources and the lack of access to clean drinking water and sanitation services pose urgent challenges, necessitating effective legal regulation. Projections indicate that by 2050, half of the world's population will reside in water-scarce regions, intensifying the need for sustainable management and conservation efforts. These circumstances, influenced by factors such as population growth, agricultural demands, energy generation, and environmental degradation, create a fertile ground for conflicts over water resources. The implementation of comprehensive legal frameworks and regulations becomes crucial in addressing these challenges and preventing the escalation of the already precarious situation.

Displaced individuals, numbering over 30 million annually due to conflicts and natural disasters, face significant challenges in accessing safe drinking water and sanitation. Their vulnerability is heightened by discrimination, racism, and xenophobia, which hinder their ability to secure necessary resources and services. These obstacles further compound the hardships faced by displaced persons, underscoring the importance of addressing their specific needs and ensuring access to essential services during emergencies.

The traditional conceptualization and interpretation of human rights necessitate adaptation to address the complex challenges of the twenty-first century. Environmental degradation and its detrimental consequences play a significant role in violating individuals' rights to life and health on a global scale. The recognition of the intrinsic link between environmental impact and human rights dates back to the official acknowledgment in 1972 through the Stockholm Declaration, ratified during the United Nations Conference on the Human Environment. Principle 1 of this declaration asserts that each person possesses an inherent entitlement to freedom, equality, and adequate living conditions within an environment that enables a life of dignity and well-being. Moreover, individuals bear a solemn responsibility to safeguard and enhance the environment for present and future generations, underscoring the importance of integrating environmental protection and sustainability into the framework of human rights. [1].

The human right to water encompasses the guarantee that every individual has access to a sufficient supply of safe, economically feasible, and physically reachable drinking water to meet their daily requirements. Having an adequate quantity of safe water is vital to prevent dehydration, reduce the risk of waterborne diseases associated with poor water quality, and fulfill essential needs such as drinking, cooking, personal hygiene, and domestic sanitation.

Materials and methods. The following methods were used in this paper: Legal analysis, including a comprehensive examination and analysis of international humanitarian law norms, treaties, conventions, and legal frameworks related to the protection of water resources during armed conflicts. Comparative analysis of legal frameworks and guidelines related to the protection of water resources and human rights during armed conflicts at the national, regional, and international levels. Literature reviewing and analyzing existing UN conventions and international treaties, reports and statistics of international organizations, scholarly literature, academic articles and publications concerning the subject matter.

The notion of fulfilling basic water requirements to satisfy essential human needs was initially established during the 1977 United Nations Water Conference held in Mar del Plata, Argentina. The conference's Action Plan [2] emphasized that individuals, regardless of their developmental stage or socio-economic circumstances, possess the entitlement to access drinking water that is both sufficient in quantity and of a quality that meets their fundamental needs. This acknowledgment was further reinforced in Agenda 21, which was adopted at the United Nations Conference on Environment and Development in 1992. Since then, numerous action plans have reiterated the recognition of safe drinking water and sanitation as a fundamental human right.

The Programme of Action of the 1994 International Conference on Population and Development [3] declared that all individuals possess the right to an adequate standard of living, including sufficient provisions of food, clothing, housing, water, and sanitation for themselves and their families. Similarly, the Habitat Agenda, adopted during the United Nations Conference on Human Settlements (Habitat II) in 1996, recognized water and sanitation as integral components of the right to an adequate standard of living.

Regional declarations have also acknowledged the right to water. The Council of Europe has asserted that every individual has the entitlement to an adequate quantity of water to fulfill their basic needs. [4] In 2007, leaders in the Asia-Pacific region reached an agreement [5] to recognize the right to safe drinking water and basic sanitation as a fundamental human right and a crucial element of human security. Similarly, the Abuja Declaration, adopted during the first Africa-South America Summit in 2006, saw Heads of State and Government commit to promoting their citizens' right to access clean and safe water and sanitation within their respective jurisdictions. [6] While these declarations lack legal binding, they represent a consensus and a political statement of intention regarding the significance of acknowledging and realizing the right to water.

In November 2002, the Committee on Economic, Social and Cultural Rights issued its General Comment No. 15 on the right to water. This comment defined the right to water as the entitlement of all individuals to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic use. Although the International Covenant on Economic, Social and Cultural Rights does not explicitly mention the right to water, the Committee emphasized that the right to

water is an integral part of the right to an adequate standard of living, which also encompasses the rights to adequate food, housing, and clothing. Furthermore, the Committee highlighted the inseparable linkage between the right to water and the rights to health, adequate housing, and food.

In 2006, the Sub-Commission on the Promotion and Protection of Human Rights adopted guidelines aiming to achieve the realization of the right to drinking water and sanitation. These guidelines adopt the definition of the right to water provided by the Committee and define the right to sanitation as the entitlement of all individuals to access adequate and safe sanitation facilities that promote public health and environmental protection.

In response to a request from the Human Rights Council, the Office of the High Commissioner for Human Rights (OHCHR) conducted a study in 2007 on the scope and content of human rights obligations pertaining to access to safe drinking water and sanitation [7].

The study concluded that the time had come to officially acknowledge access to safe drinking water and sanitation as a human right. Furthermore, specific obligations concerning access to safe drinking water and sanitation have increasingly been recognized in fundamental human rights treaties, primarily as components of the right to an adequate standard of living and the right to health.

Several international human rights treaties contain specific obligations regarding access to safe drinking water and sanitation for various groups, including women, children, workers, and persons with disabilities. These treaties include:

1. The Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1979, which includes Article 14(2) that addresses the right to access safe drinking water and sanitation.
2. International Labour Organization (ILO) Convention No. 161 concerning Occupational Health Services, adopted in 1985, contains provisions (Article 5) related to access to safe drinking water and sanitation in the context of occupational health.
3. The Convention on the Rights of the Child, adopted in 1989, outlines in Articles 24 and 27(3) the rights of children to access safe drinking water and sanitation services.
4. The Convention on the Rights of Persons with Disabilities, adopted in 2006, includes Article 28, which addresses the right of persons with disabilities to access safe drinking water and sanitation.

The adoption of General Assembly resolution 64/292 in July 2010 demonstrated a growing recognition that the human rights to water and sanitation are closely connected to the right to an adequate standard of living, the right to health, and the right to life. Water, as a finite natural resource, plays a crucial role in determining the well-being and health of the population. Recognizing access to water as a human right is essential for individuals to live with dignity. [8] This right serves as a fundamental prerequisite for the realization of other human rights.

As it is stated in the report of the Human Rights Committee, the right to water encompasses both freedom and rights. The concept of freedom includes the right to

access existing water resources necessary for fulfilling the right to water. It also incorporates the right to non-interference, meaning that water supplies should not be arbitrarily disconnected or contaminated.

In summary, while the explicit recognition of water and sanitation as human rights is absent in the respective covenants, the resolutions and interpretations by the General Assembly, the Committee on Economic, Social and Cultural Rights, and the Human Rights Committee affirm the integral relationship between access to water, the right to life, and the broader framework of human rights. [9]

During the United Nations Conference on the Midterm Comprehensive Review of the Implementation of the Objectives of the International Decade for Action, "Water for Sustainable Development," held in 2023, the discussions revolved around the objectives and activities of the Transboundary Water Cooperation Coalition. This coalition focuses on promoting collaboration and cooperation among countries sharing transboundary water resources. Furthermore, the conference emphasized Sustainable Development Goal 6, which specifically addresses the need for clean water and sanitation for all. [10]

Discussion: According to UN official data, water scarcity is a critical issue affecting over 40 percent of the world's population, and it is projected to intensify in the future. Today more than 1.7 billion individuals reside in river basins where water consumption surpasses the replenishment capacity of water sources. [11]

This situation highlights the increasing strain on water resources and the urgent need for sustainable management and conservation efforts. Within this context, it is alarming that around 2 billion individuals globally currently lack access to clean and safe drinking water. Furthermore, approximately 3.6 billion people, accounting for 46% of the world's population, do not have access to adequate sanitation services. [12] The ramifications of these circumstances are destabilizing, as they intertwine with factors such as population growth, water demands for agriculture, energy generation, and industrial activities. Additionally, the deteriorating quality of water and environmental degradation further compound these challenges. Consequently, tensions surrounding water resources can escalate, rendering water-stressed regions more susceptible to conflicts. The urgency to address these issues and implement sustainable solutions is crucial to prevent exacerbating the already precarious situation. [13]

Annually, over 30 million individuals are forced to leave their homes due to conflict or natural disasters, while more than 200 million people are impacted by natural hazards. [14] This situation presents significant challenges for displaced individuals in terms of accessing safe drinking water and sanitation, which can have severe and life-threatening consequences. Displaced persons face unique obstacles in obtaining these essential services during emergencies.

Moreover, displaced persons are particularly vulnerable to discrimination, racism, and xenophobia, which further exacerbate their difficulties in securing safe drinking water and sanitation. These forms of mistreatment can hinder their ability to

access the necessary resources and services, adding to their overall vulnerability and hardship. [15]

According to the Groundswell report published by the World Bank in 2021, the influence of climate change as a significant factor in migration is set to increase, potentially compelling approximately 216 million people in six global regions to relocate within their own countries by 2050. [16] The report suggests that localized instances of internal climate migration could emerge as early as 2030, and as we approach 2050, the magnitude and intensity of this phenomenon are expected to escalate. However, the report also highlights that immediate and concerted efforts to decrease global emissions and promote environmentally sustainable development that is inclusive and equitable could potentially reduce climate-induced migration by up to 80 percent.

Indeed, it is widely agreed, including by American Researcher J. McAdam, that recognizing individuals as refugees solely based on environmental factors is rare. While some precedents exist, the majority of cases do not solely rely on environmental grounds for obtaining refugee status. Instead, environmental factors are considered as accompanying criteria that help assess the objective situation within a state and the level of protection available to individuals. [17]

Environmental disasters can potentially contribute to individuals obtaining the status of environmental refugees in the following scenarios:

- 1) In cases where victims of natural disasters are compelled to flee their home country due to deliberate actions by the government. This could involve withholding or obstructing assistance intentionally as a means of punishing or marginalizing specific groups based on their identifiable characteristics.
- 2) When a state's actions, such as the destruction of crops or the contamination of water and land resources, contribute to widespread famine among the population. In such situations, people may be forced to leave their homes and seek refuge elsewhere due to the lack of access to essential resources for survival.
- 3) If a state rejects assistance offered by other states during an environmental disaster, resulting in a situation where the necessary aid required to address the crisis is not provided. This can potentially lead to people being displaced from their homes and seeking refuge in other areas or countries.
- 4) When a state fails to implement necessary measures to prevent or mitigate an ecological disaster, resulting in significant environmental damage and subsequent displacement of individuals. In these cases, people may be forced to leave their homes due to the deteriorating environmental conditions and seek refuge elsewhere.

[17]

These scenarios highlight situations where the actions or inactions of the state contribute to environmental circumstances that force individuals to become environmental refugees, seeking safety and security in other regions or countries.

In recent years, there has been a significant increase in scientific research exploring the relationship between climatic shocks, natural hazards, and migration. Previous studies conducted from the mid-1980s to the 2000s took an "alarmist"

approach, attributing the environment as the main driver of population movements and often making predictions of large-scale migration involving hundreds of millions of affected individuals. However, some researchers say these predictions lacked empirical grounding and were speculative in nature. [18]

In many cases, refugees originate from areas that serve as "hotspots" for adverse effects of climate change and other environmental disasters. [19] Consequently, environmental factors become intertwined with political, social, and economic factors when evaluating an individual's refugee status. This recognition highlights the complex nature of forced displacement, where environmental issues are often inseparable from broader contextual considerations. [20]

Assessing refugee status requires a comprehensive examination of the overall situation, including political persecution, conflict, human rights violations, socioeconomic conditions, and environmental factors. It is the combination of these factors that determines the eligibility for refugee protection, with environmental factors playing a role within this broader framework.

It is indeed concerning that while the world is facing the challenges of record-breaking heat and climate change [21], military conflicts continue to pose additional risks to both the environment and the people living in conflict-affected areas. These conflicts can result in various forms of environmental degradation, including damage to ecosystems, pollution, and the destruction of vital infrastructure.

Additionally, conflicts can displace populations, leading to humanitarian crises and exacerbating the already fragile environmental conditions. It highlights the importance of addressing both the environmental and humanitarian dimensions of conflicts to mitigate their impact on vulnerable populations and the planet.

In contemporary civil wars, which make up the majority of armed conflicts globally, the utilization of water by the warring factions poses a significant danger to the affected population. Unlike laws during times of peace, legal frameworks related to armed conflicts generally do not comprehensively address the protection of the aquatic environment. Only a limited number of provisions within international humanitarian law specifically address this aspect of water protection. [22]

Water resources are often neglected and insufficiently protected during armed conflicts, despite their vital role in sustaining life. The consequences of hostile confrontations extend to water sources, emphasizing the urgent need to safeguard them. Ensuring the protection of water resources and the rights of civilians to access them is crucial during conflicts. Protocol I of the Geneva Conventions of 1949 provides important provisions for safeguarding the environment, including water resources. Protecting water resources indirectly contributes to maintaining the broader ecosystem. Efforts should encompass direct protection of water infrastructure and ensuring access to safe water, as well as indirect measures to minimize environmental damage. Upholding these principles mitigates the humanitarian and environmental impact of armed conflicts, necessitating compliance with international legal frameworks and collaborative action. [23]

The term "environmental or eco-refugee" has gained recent recognition, describing individuals who are displaced due to the adverse impact of armed conflicts or other disasters on their natural environment. This term signifies the significant harm caused by such situations. [24] In the context of internal conflict, the deliberate destruction or disabling of drinking water sources or reliable water supplies can rapidly deprive the local population of a vital resource. This becomes even more critical in hostile or arid regions, where the consequences are easily imaginable. The absence of a safe water supply can force an entire population into exile and lead to the withering and death of crops and livestock. Attacking water sources is equivalent to undermining an entire way of life. Moreover, military operations often impede access to available water resources, making access to water a challenging endeavor.

Although international humanitarian law applicable in armed conflicts does not have specific regulations solely focused on water protection, it does contain several rules related to the subject. Firstly, it is important to note that this branch of international law primarily aims to safeguard individuals who are in the custody or under the control of the enemy. Providing them with the necessary assistance or relief requires ensuring a minimum level of health and hygiene, which includes access to water, the life-sustaining element in all circumstances. [25]

Furthermore, humanitarian law is designed to protect civilian objects, including those essential for the survival of the civilian population. Article 29 of the Convention on the Law of the Non-Navigational Uses of International Watercourses, states that international watercourses and related installations, facilities, and works should be protected in accordance with the principles and rules of international law applicable to both international and non-international armed conflicts. These water resources should not be used in violation of those principles and rules. [26]

The general protection provided by the law applicable to armed conflicts extends beyond international watercourses, and there are four main prohibitions worth noting. These include the prohibition on the use of poison or poisonous weapons, the ban on the destruction, confiscation, or expropriation of enemy property, the prohibition on destroying objects essential for the survival of the civilian population, and the ban on attacking works or installations that contain dangerous forces. [27]

These four prohibitions, along with provisions on environmental protection, are explicitly mentioned in instruments related to international armed conflicts, while the last two are also established in the law applicable to non-international armed conflicts. The use of starvation as a method of warfare is explicitly prohibited, regardless of the nature of the conflict, and the concept of objects essential for the survival of the civilian population encompasses drinking-water installations, supplies, and irrigation works. Immunity for indispensable objects is waived only when they are solely used by the armed forces or directly support military actions. Even in such cases, adversaries must refrain from any actions that could lead to starvation or deprive the population of essential water resources. Similarly, the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification

Techniques prohibits the use of means that affect the natural environment in a manner that is widespread, long-lasting, and severe. [28]

The safeguarding of the natural environment under international humanitarian law is specifically aimed at preventing extensive, lasting, and significant damage. This implies that there is a cumulative threshold that must be met for the prohibition of certain means and methods of warfare to apply. The Berlin Rules also uphold this principle, prohibiting the destruction or diversion of water and waterworks if such actions would result in widespread, lasting, and serious environmental harm, pose risks to public health or survival, or cause substantial damage to the ecological integrity of water bodies. Additionally, the Madrid Rules, which were developed before the adoption of the Additional Protocols, consistently refer to "substantial damage" as the threshold for protecting the "ecological balance" during armed conflicts. [29]

In both international and non-international armed conflicts, the environment, recognized as a civilian entity, is safeguarded by the fundamental principles of warfare as outlined in international humanitarian law. The specific safeguarding of the natural environment is outlined in Additional Protocol I to the Geneva Conventions of August 12, 1949, specifically in Articles 35(3) and 55. These articles forbid the utilization of tactics and weapons that are intended or likely to result in significant, sustained, and severe harm to the natural environment. This prohibition constitutes a customary international law that is applicable to international armed conflicts.

Principle 15 of the Geneva List of Principles for the Protection of Water Infrastructure states that hydraulic infrastructure and other water-related infrastructure should not be targeted, even if they are considered military objectives. This prohibition applies when such attacks are intended to cause significant environmental damage or if there is a likelihood of such damage occurring. The principle emphasizes the importance of safeguarding water infrastructure and recognizing its critical role in sustaining the environment and the well-being of populations. [30]

David Rodin, a philosopher and co-director of the Oxford Institute for Ethics, Law, and Armed Conflict, argues that the laws of armed conflict were established based on a mutual understanding that exercising restraint benefits all parties involved. However, Rodin highlights the challenge posed when the opposing side refuses to adhere to these rules. The theory of war is rooted in pre-modern times and emphasizes the concepts of authority and community. In contrast, human rights emerged as a paradigmatic modern concept during the Enlightenment. Human rights place the individual moral agent at the forefront, which inherently challenges traditional sources of authority. Rather than focusing on the agents of violence, human rights direct attention towards the victims, shifting the ethical discourse in war from the ethics of dying to the ethics of killing. This shift represents a rebalancing of our ethical considerations, placing a greater emphasis on the moral implications of taking life in armed conflicts. [31]

Results and conclusions: The combination of conflicts and climate change has a devastating impact on millions of people, causing forced displacement and violations of their rights. Conflict-driven displacement, often due to war and violence, uproots millions of individuals from their homes, leaving them in precarious situations. These displaced populations face numerous challenges, including limited access to basic services, heightened vulnerability to human rights abuses, and a loss of livelihoods. The trauma and disruption caused by conflicts further compound the difficulties faced by these individuals and communities.

At the same time, climate change-induced factors, such as rising sea levels, extreme weather events, and desertification, are increasingly forcing people to flee their homes as well. The loss of habitable lands, dwindling water resources, and the inability to sustain livelihoods in affected areas drive climate-induced migration. This phenomenon is expected to escalate in the coming decades as the impacts of climate change intensify. [32]

Both conflict-driven displacement and climate-induced migration present significant challenges for individuals, host communities, and the international community at large. In addition to social system strains and increased demand for humanitarian assistance, these phenomena underscore the critical importance of water resources. Water resources play a vital role in addressing the multifaceted challenges posed by displacement and migration. They are essential for meeting the basic needs of affected populations, ensuring access to safe drinking water, sanitation, and hygiene facilities. Furthermore, water resources are crucial for agriculture, food security, and livelihoods, particularly in regions heavily impacted by conflicts and climate change.

To effectively address these interconnected challenges, a comprehensive and coordinated approach is necessary. This includes promoting peace, resolving conflicts, and preventing further displacement through diplomatic efforts and conflict resolution mechanisms. Simultaneously, efforts to mitigate and adapt to climate change are crucial in minimizing its impacts and protecting vulnerable populations. Comprehensive support, encompassing humanitarian aid, sustainable development assistance, and the protection of human rights, is essential for the well-being and protection of those affected by displacement and migration. This support should prioritize the availability and access to water resources, ensuring their sustainable management and equitable distribution.

Acknowledging the adverse consequences of conflicts, climate change, and the importance of water resources, there is a growing recognition of the need for global cooperation and coordinated action. International agreements and frameworks, such as the United Nations Guiding Principles on Internal Displacement and the Paris Agreement on climate change, provide important foundations for addressing these challenges. However, meaningful progress requires collaborative efforts from governments, civil society, and the international community to effectively protect the rights of millions of affected individuals and build a more resilient and sustainable future.

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