

CLIMATE REFUGEES LEFT ADRIFT IN LEGAL
IMPASSE: THE NEED FOR INTERNATIONAL
LEGAL RECOGNITION OF PEOPLE DISPLACED
BY CLIMATE CHANGE

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I. THE DISPLACEMENT OF PEOPLE DUE TO CLIMATE CHANGE

One of the most noteworthy impacts of climate change is human migration.¹ Every day, an immeasurable number of people are forced to leave their homes, sometimes crossing national borders, due to climate-change induced floods, droughts, landslides, storms, wildfires, and other extreme weather conditions.² Environmental threats such as desertification, rising sea levels, and extreme weather events additionally challenge people’s enjoyment of recognized human rights—including rights to life, water, sanitation, food health,

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1. Steve Lonergan, *The Role of Environmental Degradation in Population Displacement*, 4 ENVIRONMENTAL CHANGE AND SECURITY PROJECT REPORT 5, 5 (1998).

2. AVIDAN KENT & SIMON BEHRMAN, RESETTLEMENT AND RIGHTS OF CLIMATE REFUGEES, 65-67 (2018); DINA IONESCO, DARIA MOKHNACHEVA, & FRANÇOIS GEMENNE, THE ATLAS OF ENVIRONMENTAL MIGRATION 12 (2017).

and adequate housing.³ This leads to increased vulnerability, limited human mobility, and human rights violations.⁴

Over the last few decades, the general trend of climate migration has only been increasing, with many reports citing environmentalist Norman Myers' prediction of two hundred million climate refugees by the middle of this century.⁵ Though difficult to estimate⁶, the U.N. International Organization for Migration has similarly forecasted an expected twenty-five million to one billion environmental migrants by 2050.⁷ Furthermore, the adverse climate effects will be disproportionately felt globally, resulting in the poorest and most climate-vulnerable people having the fewest resources—whether technological, economic, or social—to adapt or mitigate the effects, and few legal pathways available to them.⁸

This lack of protection mirrors deep societal inequalities, as the countries who have least contributed to global warming

3. ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (27 June, 1989); African Charter on Human and Peoples' Rights (27 June, 1981); U.N. Report of the Conference on the Human Environment (Stockholm Declaration), U.N. Doc. A/CONF.48/14/Rev.1 (5–16 June, 1972); European Parliament Briefing PE 698.753, *The Concept of 'Climate Refugee', Towards a Possible Definition*, 2 (October 2021) 7 [hereinafter: *EU Parliament Briefing*].

4. UNHCR, *Climate Change, Displacement and Human Rights* (March 2022), <https://www.unhcr.org/sites/default/files/legacy-pdf/6242ea7c4.pdf> [hereinafter: UNHCR Briefing]; KENT & BEHRMAN, *supra* note 2, at 2.

5. IDMC Report, *2023 Global Report on Internal Displacement* (11 May, 2023) <https://www.internal-displacement.org/research-areas/Displacement-disasters-and-climate-change> [hereinafter: *IDMC Report*]; KENT & BEHRMAN, *supra* note 2, at 1–2; Norman Myers, *Environmental refugees: a growing phenomenon of the 21st century*, 357 *PHILOSOPHICAL TRANSACTIONS OF THE ROYAL SOCIETY OF LONDON* 609, 609 (2002).

6. Francesco Bassetti, *Environmental Migrants: Up to 1 Billion by 2050*, *FORESIGHT: THE CNCC OBSERVATORY ON CLIMATE POLICIES & FUTURES* (22 May, 2019) [hereinafter: Bassetti, *Environmental Migrants*].

7. International Organization for Migration (IOM), *A Complex Nexus*, <https://www.iom.int/complex-nexus>; Inst. For Econ. & Peace (IEP) Press Release, *Ecological Threat Register Press Release* (Sept. 9, 2020) <https://www.economicandpeace.org/wp-content/uploads/2020/09/Ecological-Threat-Register-Press-Release-27.08-FINAL.pdf>; Tyler Bergeron, *No Refuge for 'Climate Refugees' in International Law*, *ENVIRONMENTAL, NATURAL RESOURCES, & ENERGY LAW BLOG* (January 20, 2023) [hereinafter: Bergeron, *Climate Refugees*].

8. Bergeron, *Climate Refugees*, *supra* note 7; KENT & BEHRMAN, *supra* note 2, at 4.

are bearing the brunt of its negative effects.⁹ For example, inhabitants currently most at risk of being displaced by climate disasters are those in the developing island states in the Pacific, due to the thermal expansion of ocean water submerging their islands.¹⁰ While some countries have access agreements with Australia, New Zealand and the United States, many countries carrying the greatest potential migration pressures—such as Tuvalu, Kiribati, and Nauru—have the fewest international destination options.¹¹ Moreover, the insufficient data on climate migration suggests that climate mobility mostly remains within the boundaries of countries, and that these internally displaced people have equally few legal pathways to rely on for protection.¹²

In its 2023 report, the Climate Overshoot Commission concluded that projected temperatures are highly likely to exceed the Paris Agreement goal of 1.5°C.¹³ Consequential effects such as reduction of soil fertility, desertification and coastal erosion risk worsening the impacts on human health, food security, water availability, social stability, and ecosystems.¹⁴

9. Though climate change may seem like an equal-opportunity crisis, unrelated to countries' incomes or GDPs, higher-income countries generally have more resources to deal with unavoidable impacts and low-income countries do not. See Kristalina Georgieva, et al., *Poor and Vulnerable Countries Need Support to Adapt to Climate Change*, IMF BLOG (March 23, 2022) <https://www.imf.org/en/Blogs/Articles/2022/03/23/blog032322-poor-and-vulnerable-countris-need-support-to-adapt-to-climate-change>; UNHCR Briefing, *supra* note 4.

10. KENT & BEHRMAN, *supra* note 2, at 5; Intergovernmental Panel on Climate Change Report, *Choices Made Now are Critical for the Future of Our Ocean and Cryosphere* (25 Sept., 2019); Amrita Deshmukh, *Disappearing Island Nations Are the Sinking Reality of Climate Change*, QRIUS (May 18, 2019).

11. John Campbell and Olivia Warrick, *Climate Change and Migration Issues in the Pacific*, UNITED NATIONS ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC REPORT (Aug. 1, 2014) 3; IDMC Report, *supra* note 5.

12. CLIMATE OVERSHOOT COMMISSION, *Reducing the Risk of Climate Overshoot* (Sept. 2023), at 71 [hereinafter: *COC 2023 Report*]; Intergovernmental Panel on Climate Change Sixth Assessment Report, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, AR6 WG2 1080-1083 (Aug. 7, 2021) [hereinafter *IPCC 2022 Report*]; IDMC Report, *supra* note 5.

13. *COC 2023 Report*, *supra* note 12, at 8; *IPCC 2022 Report*, *supra* note 12, at 19.

14. Bassetti, *Environmental Migrants*, *supra* note 7; EU Parliament Briefing, *supra* note 3 at 3; Viviane Clement et al., *Groundswell Part 2: Acting on Internal Climate Migration*, WORLD BANK GROUP xxii (2021), <https://openknowledge.worldbank.org/handle/10986/36248>; Bergeron, *Climate Refugees*, *supra* note 7.

Still, climate-induced migrants currently remain within what has been defined by many as a legal “protection gap” urgently in need of action.¹⁵ So far, the international community’s response to this global displacement issue has been limited, and protection for the people affected remains inadequate.¹⁶

This Comment will explore the current legal framework protecting people displaced by the impacts of climate change, while addressing its structure and shortcomings. It will discuss the value of an internationally recognized definition for “climate refugees”, whilst highlighting the complexities and criticisms any defining exercise may face. Finally, the Comment will touch on the feasibility of resolving the existing legal protection gap and the potential of introducing a new legal instrument protecting the rights of “climate refugees”.

II. CURRENT LEGAL FRAMEWORK PROTECTING PEOPLE DISPLACED BY THE IMPACTS OF CLIMATE CHANGE

Many scholars argue that the protection gap for climate refugees is caused by an overly restrictive definition of refugees in the United Nation’s legal frameworks, combined with considerably weak or overly general other international legal instruments. Consequently, these vulnerable groups are deprived of legal remedies, either in the form of rights to enter another state for refuge, financial compensation or a legal status that will allow them to begin their lives elsewhere.¹⁷

15. Kent & Behrman, *supra* note 2, at 9; SIMON BEHRMAN & AVIDAN KENT (eds.), *CLIMATE REFUGEES: BEYOND THE LEGAL IMPASSE?* (2018) [hereinafter: BEHRMAN & KENT, *LEGAL IMPASSE*]; MICHAEL GERRARD & GREGGORY WANNIER (eds.), *THREATENED ISLAND NATIONS: LEGAL IMPLICATIONS OF RISING SEAS AND A CHANGING CLIMATE* (2013); Walter Kälin & Nina Schrepfer, *Protecting people crossing borders in the context of climate change: normative gaps and possible approaches*, 24 UNHCR BACKGROUND PAPER (Feb. 2012) [hereinafter: Kälin & Schrepfer]; *COC 2023 Report*, *supra* note 12, at 13; *IPCC 2022 Report*, *supra* note 12, at 21; International Federation of Red Cross and Red Crescent Societies, *The Cost of Doing Nothing – The Humanitarian Price of Climate Change and How it Can Be Avoided*, (2019) at 2, 5.

16. *EU Parliament Briefing*, *supra* note 3, at 1-2.

17. KENT & BEHRMAN, *supra* note 2, at 9-11; Kälin & Schrepfer, *supra* note 15, at 14.

A. *Shortcomings in the United Nation's approach to external climate refugees*

The 1951 *United Nations Convention Relating to the Status of Refugees* and its 1967 *Protocol Relating to the Status of Refugees* (together, “the 1951 Convention”¹⁸) is the most influential international refugee legal instrument, as it determines who is a refugee, what legal protections, assistance and social rights they are entitled to receive, and the obligations refugees owe to their host countries. Following the Convention, a refugee is

a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality membership of a particular social group or political opinion; and is unable or unwilling to avail him or herself of the protection of that country, or to return there, for fear of persecution.¹⁹

Once refugee status has been determined, States are required to provide asylum for qualifying refugees and, under the principal of non-refoulement, prevented from sending a refugee to a territory where they fear threats to their life or freedom.²⁰ Nevertheless, the 1951 Convention extends only to people who have a well-founded fear of being persecuted on a limited list of grounds, and neither this convention nor its additional Protocol acknowledges climate hazard as valid grounds to acquire refugee status. Therefore, most climate displaced persons will not qualify for refugee status under the 1951 Convention, except for those leaving areas where climate change effects caused destabilization, such as food scarcity causing regional conflict.²¹ This keeps the existence of climate refugees uncertain in the context of law and practice.²²

Notwithstanding a lack of coverage in the refugee definition, the United Nations has increasingly expressed its recognition of the role of climate change in the forced displacement

18. UNHCR Office, *Convention and Protocol Relating to the Status of Refugees: Introductory Note 2* (Dec. 2010).

19. U.N. Convention Relating to the Status of Refugees, 189 U.N.T.S. 137 (July 28, 1951) Art. I(A)(2) [hereinafter: *1951 Convention*].

20. *Id.* at 3.

21. Bergeron, *Climate Refugees*, *supra* note 7.

22. *EU Parliament Briefing*, *supra* note 3, at 3.

of people.²³ On the issue of internal displacement, the non-binding 1998 U.N. *Guiding Principles on Internal Displacement* provide a framework for protecting victims of natural disasters who do not cross an international border.²⁴ In 2009, the Council of Europe suggested that these principles could be taken as a model to develop a global guiding framework for externally displaced people.²⁵ Though the principles have not (yet) been extended to cross-border displacement, they were used to draft other complementary regional protection instruments.²⁶

In 2016, the U.N. General Assembly adopted the New York Declaration for Refugees and Migrants, in which it called for the development of two global compacts, one on refugees and the other on “other migrants”. The second, the *Global Compact for Safe, Orderly and Regular Migration*, acknowledges the urgency of climate displacement under its Second Objective.²⁷ It requires states to combat “environmental degradation and ensure effective responses to natural disasters and the adverse impacts of climate change,” including migration.²⁸

Additionally, in the last few U.N. Climate Change Conferences—including COP26—the issue of people being displaced due to climate change has consistently been addressed.²⁹ Even with this acknowledgement in international fora, the people immediately concerned by this issue still have

23. UNHCR Briefing; European Parliament, *The European Green Deal*, COM (2019) 640 Final Communication from the Commission (Dec. 11, 2019).

24. U.N. OHCHR and Economic and Social Council, *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2 (Feb. 11, 1998); *EU Parliament Briefing*, *supra* note 3, at 7; Kälén & Schrepfer, *supra* note 15, at 14.

25. See Resolution 1862 of the Parliamentary Assembly of the Council of Europe, *Environmentally induced migration and displacement: a 21st-century challenge*, bullet-point 6.5 (Jan. 30, 2009).

26. African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009) [hereinafter: Kampala Convention]; *EU Parliament Briefing*, *supra* note 3, at 7–9.

27. U.N. GA Draft Outcome Document of the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration, Annex, A/CONF.231/3 (July 30, 2018).

28. U.N. General Assembly, *New York Declaration for Refugees and Migrants*, A/RES/71/1, ¶ 43; KENT & BEHRMAN, *supra* note 2, at 6.

29. U.N. Framework Convention on Climate Change (UNFCCC), *Report of the Conference of the Parties on its twenty-fourth session*, FCCC/CP/2018/10, (March 19, 2019); U.N. Framework Convention on Climate Change (UNFCCC), *Report of the Conference of the Parties on its twenty-sixth session*, FCCC/CP/2021/12, (March 8, 2022).

not been granted any official status or legal protection. Host countries prefer to address the “root of the problem”, by reducing pollution levels and minimizing climate change, rather than addressing the people finding themselves in an international regulatory void.³⁰

B. *Other regional instruments that offer protection*

Aside from the 1951 Convention, the only other *binding* multinational agreement that offers some expanded protections to climate displaced persons is a regional African accord, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Binding on all member states of the OAU, Article 1 of the OAU Convention defines refugee exactly as in the 1951 Convention, requiring the same “well-founded fear of...”³¹ but goes on to state that the term will also apply to

every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order, in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.³²

This definition seems rather promising for climate displacement, as those “fleeing events seriously disturbing public order” could potentially cover climate refugees if given an expansive interpretation.³³ However, it lacks an explicit consideration of the status of climate refugees and fails to set out states’ obligations to protect refugees when providing asylum, by leaving it

30. *EU Parliament Briefing* at 2; International Federation of Red Cross and Red Crescent Societies, *The Cost of Doing Nothing – The Humanitarian Price of Climate Change and How it Can Be Avoided 2* (2019).

31. Organization of African Unity (OAU), OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (Sept. 10, 1969), 1001 U.N.T.S. 45, Art. 1 [hereinafter: *OAU Convention*]; *1951 Convention*, *supra* note 19.

32. *OAU Convention*, *supra* note 31; *1951 Convention*, *supra* note 19, at art. 1(2); .

33. KENT & BEHRMAN, *supra* note 2, at 10; Jane McAdam, *Climate change displacement and international law: complementary protection standards*, UNHCR BACKGROUND PAPER, LEGAL AND PROTECTION POLICY RESEARCH SERIES 14–15 (May 2011).

up to the discretion of each state's legislature.³⁴ Moreover, it is further limited by its regional nature.³⁵

On the other hand, there are a variety of *non-binding* agreements offering protection to climate displaced persons, such as the Cartagena Declaration of 1984. This Declaration addresses the large refugee flows in Central America by "enlarging the concept of a refugee . . . as far as appropriate and in the light of the situation prevailing in the region."³⁶ Similar to the OAU Convention, the Cartagena Declaration's definition of refugees can include climate refugees when climate change events "seriously disturb public order" but, unlike the OAU Convention, the Cartagena Declaration is not binding. It remains an aspirational set of guidelines for countries to voluntarily incorporate into their domestic law.³⁷

Another non-binding, milestone legal instrument is the Nansen initiative³⁸, launched in 2012, by the governments of Norway and Switzerland.³⁹ It aims to build consensus among states to implement a protection agenda in accordance with their specific situations and challenges, including standards of treatment.⁴⁰ In 2015, this state-led consultative process resulted in an agenda for the protection of cross-border displaced persons in the context of disasters and climate change, which was endorsed by 109 governmental delegations. This non-binding Protection Agenda set out ten Principles which can be categorized as soft law or guidelines.⁴¹ They synthesize best practices from around the world in terms of providing effective

34. *OAU Convention*, *supra* note 31, at art. 1; *1951 Convention*, *supra* note 19, at art. 2(1).

35. Bergeron, *Climate Refugees* *supra* note 7.

36. *Cartagena Declaration on Refugees*, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama art. (3), (Nov. 22, 1984) [hereinafter *Cartagena Declaration*].

37. *Id.* at 36.

38. NANSEN INITIATIVE, AGENDA FOR THE PROTECTION OF CROSS-BORDER DISPLACED PERSONS IN THE CONTEXT OF DISASTERS AND CLIMATE CHANGE: VOLUME 1 7 (2015) [hereinafter: NANSEN INITIATIVE].

39. *EU Parliament Briefing*, *supra* note 3, at 8.

40. KENT & BEHRMAN, *supra* note 2, at 13; NANSEN INITIATIVE, *supra* note 38, at 7.

41. See more on 'migration as adaptation': David J. Cantor, *Environment, Mobility and International Law: A New Approach in the Americas*, 21 CHICAGO JOURNAL OF INT'L. L. 3; Susan Martin, *Climate Change, Migration and Governance*, 16 GLOBAL GOVERNANCE (2010) 397, 399; Thekli Anastasiou, *Migration as adaptation: the role of international law* in BEHRMAN & KENT, LEGAL IMPASSE, *supra* note 15.

protection and assistance for externally displaced people, setting out stakeholders' roles and responsibilities, emphasizing the necessity of regional frameworks and the utilization of existing norms of international law, all while developing a new instrument with the UNHCR.⁴² Although the Nansen initiative opened up new perspectives and initiatives for the recognition of externally displaced climate refugees, a legal void regarding their status remains.⁴³

III. MOVING TOWARDS AN INTERNATIONALLY RECOGNIZED DEFINITION FOR "CLIMATE REFUGEES"

To establish a meaningful set of rights and duties for people displaced due to climate change, there must at least be some definitional clarity on who this group of vulnerable peoples is.⁴⁴ In 2020, Norwegian Professor Isabel Borges, explained: "The absence of an accurate definition of what constitutes a person displaced by environmental factors has resulted in the inability to measure exactly the numbers of existing and potential displacement flows".⁴⁵

This defining exercise has been historically complex, requiring any future definition to take into account pre-existing discourse surrounding attempts to define "environmental refugees".⁴⁶ Additionally, since internal displacement is covered by instruments of international human rights law and the Guiding Principles on Internal Displacement, the main focus at present is on defining the people forced to cross international boundaries due to climate change.⁴⁷

42. KENT & BEHRMAN, *supra* note 2 at 6; NANSEN INITIATIVE, *supra* note 38, at principles II-IX.

43. Platform on Disaster Displacement, *Towards Better Protection for People Displaced Across Borders in the Context of Disasters and Climate Change, PDD Strategy 2019–2023* (2023) <https://disasterdisplacement.org/the-platform/our-response>; *EU Parliament Briefing*, *supra* note 3, at 8.

44. KENT & BEHRMAN, *supra* note 2, at 41.

45. *EU Parliament Briefing*, *supra* note 3, at 4, 11; European Economic and Social Committee, *Climate Refugees Account for More than Half of All Migrants But Enjoy Little Protection* (last accessed: July 2024) <https://www.eesc.europa.eu/en/news-media/news/climate-refugees-account-more-half-all-migrants-enjoy-little-protection>.

46. KENT & BEHRMAN, *supra* note 2, at 40.

47. UNHCR, *Guiding Principles on Internal Displacement* (July 22, 1998); *International Covenant on Civil and Political Rights*, General Assembly Resolution

The major legal critique on attributing the term “refugees” to people displaced by climate change is that the term is legally inappropriate because it should be reserved for those fleeing persecution, as intended in the 1951 Convention. However, there is increased recognition that climate refugees *should* actually fall within this narrowly constrained legal definition.⁴⁸ Professor Jane McAdam provided an analysis of the use of Convention terminology, stating that the “creation of a definition inevitably leads to a testing of its boundaries, and establishes the parameters for re-evaluating and re-defining what it should be.”⁴⁹ Though the UNHCR has historically been reluctant to blur the boundaries between the 1951 Convention definition of refugees and popular concepts of its understanding⁵⁰, one could argue that the current definition in international law has become fixed in outdated observations and is in need of further development so as to not leave vulnerable people behind based on a legal category defined seventy years ago.⁵¹

Additionally, the claim that a unique legal meaning of “refugee” exists is incorrect. The concept of protection in international law has evolved in the past, which could illustrate space for further development of its scope. The 1951 Convention’s refugee definition has been subject to expansion on at least three occasions. The 1967 Protocol made a small technical alteration by removing the geographic and temporal limitations that had restricted refugee status to those who had fled following events in Europe occurring before 1951. In 1969, the OAU Convention expanded the definition of a refugee to include those fleeing as a result of war, occupation, and other “events seriously disturbing public order.”⁵² And in 1976, the Council of Europe recognized that there were many people in Europe who technically fell outside its scope but were nevertheless

2200A (XXI) of 16 December 1966 art. 1, 6; KENT & BEHRMAN, *supra* note 2, at 44–45.

48. KENT & BEHRMAN, *supra* note 2, at 55.

49. JANE MCADAM, *Climate Change, Forced Migration, and International Law* (2012) 42.

50. *EU Parliament Briefing*, *supra* note 3, at 4.

51. Guy Goodwin-Gill quoted in Erika Feller, *The Refugee Convention at 60: still fit for purpose? Protection tools for protection needs*, REFUGEE PROTECTION AND THE ROLE OF LAW: CONFLICTING IDENTITIES (Susan Kneebone et al., eds.) (2014) 63; KENT & BEHRMAN, *supra* note 2, at 43, 46.

52. *OAU Convention*, *supra* note 31, at art. 1(2); *Cartagena Declaration*, *supra* note 36, at § III(3); KENT & BEHRMAN, *supra* note 2, at 48.

deserving of protection as “de facto refugees”.⁵³ In each case, these developments were a response to changing realities of forced displacement. Even the UNHCR has acknowledged at times that people who fall outside of the 1951 Convention can still be described as “refugees”, as they did in their 1994 Note on Protection for forcibly displaced persons.⁵⁴

Based on this evolution, it is evident that there is room to expand the definition of refugee, where appropriate, in the context of people forced to leave their homes because of climate change. Nevertheless, as the realities of climate change themselves unfold, the need for an ever-evolving definition is clear.⁵⁵ To remain attached to an outdated framing of what it means to be a refugee means denying protection to many who need it and contributing to the legal impasse on this issue.⁵⁶

Certain practical alternative terms to “climate refugee” have been put forward as approaches to defining this vulnerable group, such as “climate-induced displacement” (for slow-onset disasters) or “disaster-induced displacement” (for sudden disasters).⁵⁷ By contrast, Alexander Betts has coined the more inclusive term of “survival migration”, which covers any person forced to leave their home due to an existential threat.⁵⁸ While this inclusive approach would protect wide classes of people, it would not incentivize states to broadly extend substantive rights of movement and practical support. In an effort to limit its scope, climate scientists today can identify hot-spots where climate change is causing extreme weather events or aggravating existing patterns, distinguishing these from

53. Council of Europe: Parliamentary Assembly, *Recommendation 773 on the Situation of De Facto Refugees* 775 (Jan. 26, 1976).

54. U.N., High Commissioner for Refugees (UNHCR), *Note on International Protection* (Sept. 7, 1994), A/AC.96/830, ¶ 30, www.refworld.org/docid/3f0a935f2.html; KENT & BEHRMAN, *supra* note 2, at 49–50.

55. Simon Behrman, *Legal subjectivity and the refugee*, 26 INTERNATIONAL JOURNAL OF REFUGEE LAW 1 (2013).

56. LAURA WESTRA, ENVIRONMENTAL JUSTICE AND THE RIGHTS OF ECOLOGICAL REFUGEES 7 (2009); NINA HALL, DISPLACEMENT, DEVELOPMENT, AND CLIMATE CHANGE: INTERNATIONAL ORGANIZATIONS MOVING BEYOND THEIR MANDATES 63 (2016).

57. Walter Kälin, *Conceptualising climate-induced displacement* in CLIMATE CHANGE AND DISPLACEMENT: MULTIDISCIPLINARY PERSPECTIVES (Jane McAdam ed., 2010); NANSEN INITIATIVE, *supra* note 38, at 7.

58. Alexander Betts, *Survival migration: a new protection framework*, 16 GLOBAL GOVERNANCE 361, 362 (2010); KENT & BEHRMAN, *supra* note 2, at 41–42.

“normal geographic events”.⁵⁹ Based on that analysis, it would be possible to identify communities who will face acute effects of climate change—such as island nations threatened with submergence—and identify the vulnerable categories which would be eligible for climate refugee status.⁶⁰

Ultimately, it would be beneficial to define this group of displaced peoples as “refugees” as opposed to “migrants”, since the latter term suggests a connotation of voluntary migration and lacks the suggestion of a threat of harm.⁶¹ One could argue that words such as “displaced” and “migrant” do not adequately capture the combination of involuntary elements and agency that characterize the word “refugee”. Another advantage of adopting the “climate refugee” label is that it recognizes both the seriousness of their predicament and the deserving nature of their claim to protection in a way that alternative terms do not.⁶² Moreover, bringing these groups of people under the United Nation’s umbrella term of “refugee” provides them the necessary international legal protection, without the burdensome introduction of a new legal instrument.

In summary, the legal concept of the refugee has been malleable over time, often responding to geo-political changes that have forced us to reconceptualize the notion of a refugee. Climate change debatably represents one of the major shifts in our current geo-political reality.⁶³ The conceptualization of a definition for people forced to move as a result of the effects of climate change as climate refugees would be effective in locating

59. Filippo Giorgi, *Climate change hot-spots*, 33 *GEOPHYSICAL RESEARCH LETTERS* 8 (2006).

60. League of Nations, *Arrangement Relating to the Issue of Identify Certificates to Russian and Armenian Refugees* (May 12, 1926), *TREATY SERIES*, vol. LXXXIX, no. 2004; KENT & BEHRMAN, *supra* note 2, at 67, 71.

61. U.N. Framework Convention on Climate Change (UNFCCC), *Synthesis of Relevant Information, Good Practices and Lessons Learned in Relation to Pillar 1: Enhancing Knowledge and Understanding*, Technical Meeting, Action Area 6: Migration, Displacement and Human Mobility 7 (July 29, 2016).

62. Frank Biermann and Ingrid Boas, *Preparing for a warmer world: towards a global governance system to protect climate refugees*, 10 *GLOBAL ENVIRONMENTAL POLITICS* 60, 67 (2010).

63. Simon Behrman, *Accidents, agency and asylum: constructing the refugee subject*, 25 *LAW AND CRITIQUE* 249 (2014); KENT & BEHRMAN, *supra* note 2, at 52-55.

the problem, identifying those responsible, and opening up a set of legitimate rights claims.⁶⁴

IV. CONCLUSION: IS THERE POTENTIAL TO RESOLVE THE INTERNATIONAL LEGAL PROTECTION GAP?

It has clearly been established, not least by the Nansen Initiative, that cross-border migration for climate migrants is *the* key legal gap when it comes to displacement of people due to climate change, and it needs to be addressed.⁶⁵ Though the international community has seemingly woken up from its “legal impasse” on tackling this issue⁶⁶, evidenced by early political will and cooperative action groups set up at climate conventions⁶⁷, the feasibility of a new international instrument which could globally bind and impose the protections for a currently undefined group of “climate refugees” is unclear.⁶⁸

Given the scale, cross-disciplinary nature, and immediacy of the problem, there is no one agency or partnership capable of providing a solution to the legal gap on its own.⁶⁹ Simultaneously, states seem more eager to address root causes of human displacement, rather than establishing a legal status for climate displaced persons, in an attempt to prevent the massive climate migration waves forecast for 2050.⁷⁰ Similarly, the UNHCR sees no need for a new instrument, as it argues that these vulnerable groups could, in theory, continue relying on the protection of their national governments, in contrast to “traditional refugees” fleeing persecution. The reality, however, is far more complex and therefore, the endorsement of a

64. KENT & BEHRMAN, *supra* note 2, at 2; BEHRMAN & KENT, LEGAL IMPASSE, *supra* note 15.

65. NANSEN INITIATIVE, *supra* note 50, at 31; *COC 2023 Report*, *supra* note 12.

66. UNFCCC, *Paris Agreement* (Dec. 2015); UNHCR, *New York Declaration for Refugees and Migrants* (Sept. 2016); KENT & BEHRMAN, *supra* note 2, at 174; BEHRMAN & KENT, LEGAL IMPASSE, *supra* note 15.

67. *InsuResilience Global Partnership for Climate and Disaster Risk Finance and Insurance Solutions* (2017) <https://www.insuresilience.org/>; UNHCR, *Population Movements Associated with the Search for Asylum and Refuge*, ExCom/WGSP/5 (Dec. 4, 1990); UNFCCC, *COP24 Addresses Climate Change Migration Ahead of U.N. Migration Pact Meeting in Marrakech* (Dec. 6, 2018); *EU Parliament Briefing*, *supra* note 3, at 9.

68. KENT & BEHRMAN, *supra* note 2, at 161–62.

69. *Id.* at 147–48.

70. *EU Parliament Briefing*, *supra* note 3, at 10.

binding convention aiming to offer legal protection to climate displaced people, or the inclusion of “climate refugees” under the 1951 Convention, should at least be considered.⁷¹

In tackling this issue, the international legal community will find a useful starting point in the substantial amount of law and policy proposals (i.e., existing conventions, guidelines, practices, and regulations, such as the Nansen initiative), from which an effective legal protection mechanism can potentially be pieced together.⁷² Admittedly, even broadly recognized instruments, such as the U.N. Guideline Principles on Internal Displacement, have not been widely implemented in domestic legal systems today.⁷³ The current protection provided by regional agreements leave millions of potential refugees helpless, and non-binding agreements allow states to break promises without consequence. However, not all hope is lost, as many currently displaced people can still invoke their rights based on international human rights conventions, the U.N. principles, and several subsidiary regional conventions, if not being granted refugee status under the 1951 Convention.⁷⁴

It is likely that the legal community, rather than acting proactively, will unfortunately only react when the problem takes on even bigger proportions. At that time, existing legal regulations and models will undoubtedly become of greater use.⁷⁵ Though the ideal solution appears to be global in nature and as comprehensive as possible, the promulgation of a global and legally binding treaty that would define the status of and obligations to climate refugees seems difficult to achieve.⁷⁶ Therefore, more flexible possibilities will have to be explored, such as smaller frameworks, whether bilateral or regional, that may be more practical to start tackling the issue. Ultimately, it is imperative that governments and leaders start recognizing that climate change displacement is an already occurring global challenge, one which demands urgent answers to the victims of human rights violations happening today.⁷⁷

71. *Id.* at 4.

72. KENT & BEHRMAN, *supra* note 2, at 163; NANSEN INITIATIVE, *supra* note 38, at 7.

73. NANSEN INITIATIVE, *supra* note 38, at 41.

74. *EU Parliament Briefing*, *supra* note 3, at 7.

75. KENT & BEHRMAN, *supra* note 2, at 163–64.

76. Bergeron, *Climate Refugees*, *supra* note 7.

77. *EU Parliament Briefing*, *supra* note 3, at 11.