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# 'CLIMATE REFUGEES'

Beyond the Legal Impasse?

*Edited by Simon Behrman and Avidan Kent*

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## A NEW CATEGORY OF REFUGEES?

## 'Climate refugees' and a gaping hole in international law

Sumudu Anopama Atapattu

The impact of climate change on small islands is no less threatening than the dangers guns and bombs posed to large nations. Pacific island countries are likely to face massive dislocations of people, similar to population flows sparked by conflict. The impact on identity and social cohesion are likely to cause as much resentment, hatred and alienation as any refugee crisis.

*(Papua New Guinea, speaking on behalf of the Pacific Islands Forum at the UN Security Council Debate on Climate Change, 2007)<sup>1</sup>*

Resettling the First American 'Climate Refugees'

*(New York Times, May 2, 2016)<sup>2</sup>*

## I Introduction

For the first time in the history of climate negotiations, displacement associated with climate change became worthy of mention in climate documents at COP21. While this topic did not find a home in the Paris Agreement itself, it was included in the decisions taken during COP21 in relation to the loss and damage mechanism. The Executive Committee on Loss and Damage was instructed to establish a taskforce on displacement associated with climate change and to "develop recommendations for integrated approaches to avert, minimise and address displacement related to adverse impacts of climate change".<sup>3</sup> As if inclusion once in 25 years was not enough, displacement was included again in the decisions taken at COP22 at Marrakech:

*Encourages Parties to incorporate or continue to incorporate the consideration of extreme events and slow onset events, non-economic losses, displacement,*

*migration and human mobility, and comprehensive risk management into relevant planning and action, as appropriate, and to encourage bilateral and multilateral entities to support such efforts.<sup>4</sup>*

This lack of attention to displacement associated with climate change is not due to lack of attention to the topic. Indeed, in its first assessment report, the Intergovernmental Panel on Climate Change (IPCC) predicted that the greatest single impact of climate change could be on human migration.<sup>5</sup> Although this prediction was made as early as 1990, the international community has been slow to react. With the projected number of persons displaced ranging from 20 million to 200 million by 2050<sup>6</sup> the international community seems to be at the verge of a massive humanitarian catastrophe in the making. Much ink has been spilled by scholars in articulating the problem, theorising various legal approaches and proposing possible solutions all of which seem to have fallen on diplomatic (and political) deaf ears until last year.

In the United States, where climate deniers and skeptics seem to thrive and are even celebrated, there are already 'climate refugees' as the caption in the *New York Times* shows – in Louisiana the Isle de Jean Charles received a grant from the federal government to relocate to the mainland. In Alaska, the Army Corps of Engineers determined in 2006 that the village of Kivalina, an indigenous village consisting of 400 villagers must be relocated due to the adverse consequences of climate change. The inhabitants of another Alaskan village, Shishmerof, voted recently to relocate to the mainland – again due to the adverse consequences of climate change. Even though moving within your own state does not implicate international law and is considered an easy solution, these relocations have been anything but easy. The village of Kivalina has yet to be relocated. Government entities are busy squabbling over who should pay the cost of relocation. The money allocated by President Obama is insufficient and a suitable place to relocate to has so far not been found. In the meantime, the villagers live in appalling conditions with many lacking basic amenities.<sup>7</sup> In all three cases, the people are indigenous groups who have strong ties to their land. Many do not want to move as their ancestors have lived there for centuries but recognise that they have no other option. If the wealthiest country in the world cannot address the plight of less than 1,000 citizens, it is hard to imagine how the international community will cope with the plight of a large number of people who could be forced to move as a result of climate change.

This chapter proceeds in three further sections. Section II will discuss the phenomenon of climate refugees, the scale of the problem and the projections made. It will discuss climate migration generally as well as the plight of small island states and other vulnerable states and the rights that are at the risk of being violated as a result of climate migration. Section III will discuss the legal regime applicable to political refugees and other types of migrants under international law and the current lacuna with regard to climate refugees. It will not discuss the legal regime applicable to migrant workers although increasingly, the distinction

between these different categories of people may be getting blurred. Section IV will then discuss the proposals that have been advanced to cover climate refugees starting with environmental refugees in general. It will conclude by questioning whether international human rights law coupled with *erga omnes* obligations provide a useful framework to govern them. I will draw from the chapter in my recent monograph titled *Human Rights Approaches to Climate Change: Challenges and Opportunities* published in 2016.

## II A new category of refugees: the phenomenon of climate refugees and the scale of the problem

People rarely move solely for environmental reasons. Thus, consequences associated with climate change may be one of the reasons among many that trigger migration. Climate change acts as a threat multiplier.<sup>8</sup> Due to this reason, it is often hard to establish the causal link between migration and climate change, obscuring the impact of climate change on migration. This complicates policy responses to migration and leads next to the problem of identifying the numbers of people currently displaced due to climate change as well as those who would be in the future. The projected numbers of 20–200 million displaced by 2050 have been heavily critiqued as not being grounded in empirical research.<sup>9</sup> Of course, it is hard to come up with credible numbers without an agreed definition of climate refugees. Be that as it may, there seems to be sufficient evidence pointing to the possibility of mass movement of people due to the consequences associated with climate change.<sup>10</sup> These numbers could be higher given the projected consequences of food scarcity, water scarcity, prolonged droughts and floods and severe weather events.<sup>11</sup> Even if in most instances migration will be temporary and internal,<sup>12</sup> fragile governments and current infrastructure will be inadequate to cope with these movements of people. Cross-border displacement will be even harder to cope with. Whether displacement is internal or cross-border, most cause untold misery and hardship to the displaced populations. The current refugee crisis caused by the conflict in Syria has given rise to so much human suffering with virtually all protected rights being violated both by the conflict as well as the flight of refugees. Conditions in many refugee camps are less than basic and many of the recipient countries are unable to cope with the influx of refugees without the assistance of relief agencies and donor countries.

It must be noted at the outset that the term ‘climate refugee’ is not a legal category recognised under international law. Climate refugees are quite distinct from political refugees who are governed by the Geneva Convention on Refugees.<sup>13</sup> The term ‘climate refugees’ is used here to describe those who are forced to move due to consequences associated with climate change such as drought, floods, severe weather events and sea-level rise, whether internally or internationally. We will discuss some of the terms scholars have proposed to describe this new category of forcibly displaced people who currently lack protection under international law.

Despite the United Nations High Commissioner for Refugees’ (UNHCR) earlier stand that they do not recognise a category of people who will be forced to move for environmental reasons, they seem to have changed their position in the face of increasing numbers of people who are displaced as a result of climate-induced incidence. The UNCHR website states as follows:

Disasters and climate change are a growing concern. Since 2009, an estimated one person every second has been displaced by a disaster, with an average of 22.5 million people displaced by climate or weather-related events since 2008 (IDMC 2015). The Intergovernmental Panel on Climate Change, the UN’s science advisory board, projects an increase in the number of displaced over the course of this century. The majority of the people of concern to UNHCR are concentrated in the most vulnerable areas around the world. Climate change will force people into increasing poverty and displacement, exacerbating the factors that lead to conflict, rendering both the humanitarian needs and responses in such situations even more complex.

We are deeply concerned about the massive protection challenges raised by disasters and climate-related displacement, and work with other agencies and a range of partners to protect those at risk.<sup>14</sup>

It established an Advisory Group on Climate Change and Human Mobility to address displacement related to climate change. This is in stark contrast to what the former High Commissioner for Refugees, Sadako Ogata, said during the UN Conference on Environment and Development (UNCED) in 1992:

Using the term ‘environmental refugee’ to refer to all people forced to leave their homes because of environmental changes loses their distinctive need of refugees for protection. It blurs the respective responsibilities of national governments towards their citizens and of the international community towards those who are without protection. It also impedes a meaningful consideration of solutions and action on behalf of the different groups. Therefore, UNHCR believes the term ‘environmental refugee’ is a misnomer.<sup>15</sup>

However, faced with an increasing incidence of disasters associated with climate change and related displacement and increasing scientific evidence linking severe weather events with climate change, UNHCR has changed its position quite dramatically. It now recognises that:

For UNHCR, the consequences of climate change are enormous. Scarce natural resources such as drinking water are likely to become even more limited. Many crops and some livestock are unlikely to survive in certain locations if conditions become too hot and dry, or too cold and wet. Food security, already a concern, will become even more challenging.<sup>16</sup>

In response to the emerging issue of climate change induced displacement, many initiatives and programs have emerged, including the Nansen Initiative and the Protection Agenda,<sup>17</sup> the Peninsula Principles,<sup>18</sup> and the Draft Convention on the International Status of Environmentally Displaced Persons.<sup>19</sup>

A meeting of the Advisory Committee of the Nansen Initiative was held in October 2016 to "take stock of progress in implementing the Protection Agenda, share information on effective practices and lessons learned, present new research and new initiatives, assess gaps and challenges, and discuss and promote opportunities for further cooperation, coordination and action."<sup>20</sup>

The International Migration Organization (IMO), which became a related organisation of the UN in 2016 and now calls itself the UN Migration Agency,<sup>21</sup> has long accepted that environmental factors, especially consequences of climate change, will give rise to mass migration of people:

Migration, climate change and the environment are interrelated. Just as environmental degradation and disasters can cause migration, movement of people can also entail significant effects on surrounding ecosystems. This complex nexus needs to be addressed in a holistic manner, taking into account other possible mediating factors including, inter alia, human security, human and economic development, livelihood strategies and conflict. Migration often seems to be misperceived as a failure to adapt to a changing environment. Instead, migration can also be an adaptation strategy to climate and environmental change and is an essential component of the socio-environmental interactions that needs to be managed. Migration can be a coping mechanism and survival strategy for those who move. At the same time, migration, and mass migration in particular, can also have significant environmental repercussions for areas of origin, areas of destination, and the migratory routes in between and contribute to further environmental degradation.<sup>22</sup>

There is no question that mass movement of people can cause stress on natural resources and infrastructure in the new location and create tension, particularly if different ethnic or religious groups are involved. Even if there are no differences, inadequate infrastructure and dwindling resources can lead to new conflicts and exacerbate existing ones.<sup>23</sup>

The situation is particularly dire in regards to inhabitants of small island states. With sea-level rise associated with climate change and increased incidence of severe weather events, these people are facing a bleak future. However, this chapter will not discuss the legal issues associated with states disappearing,<sup>24</sup> whether territory is a pre-condition for an entity to exist as a state,<sup>25</sup> and the proposals that have been advanced to address this situation.<sup>26</sup>

While we tend to assume that most migration flows are to the Global North, this is not the case. Most host countries are impoverished nations in the Global South

who can barely cope with their own populations on a daily basis. For example, in 2006 Colombia hosted the largest number of refugees (2 million) followed by Iraq (approximately 1.6 million) and Pakistan (approximately 1.2 million). Table 3.1 gives the current situation with regard to the refugee host countries and shows how countries in the Global North are not among the top 10 countries hosting refugees (even though Germany accepted 1 million Syrian refugees in 2015). While these numbers represent traditional refugees, the report recognises the link between climate change and refugee flows:

While war, violence, and human rights violations are the biggest driving forces behind the worldwide refugee crisis, there is another factor that contributes to the displacement of people. Global climate change is producing disastrous results. Water and food scarcity and increasing natural disasters are creating conflict among people as they fight over limited resources. Since 2008, approximately 22.5 million people have been forced from their homes due to climate and weather related events. These individuals often remain within their home countries and are not considered refugees in the traditional sense, but their situation is dire. As global climate change accelerates so too will the number of climate-affected refugees.<sup>27</sup>

According to the UNHCR, there are 65.3 million forcibly displaced people worldwide – of these 21.3 million are refugees (with 16.1 million under the UNHCR mandate) while 10 million are stateless persons.<sup>28</sup> Turkey hosted the highest number of refugees (2.6 million) for the second year in a row, surpassing Pakistan, which hosts around 1.6 million largely Afghan refugees. Some 54 per cent of the refugees worldwide are generated from just three countries: Somalia 1.1 million, Afghanistan 2.7 million and Syria 4.9 million.<sup>29</sup>

TABLE 3.1 Countries hosting the largest number of refugees in the world

Rank	Country	Number of refugees hosted by the country (mid-2015)
1	Turkey	1.84 million
2	Pakistan	1.5 million
3	Lebanon	1.2 million
4	Islamic Republic of Iran	982,000
5	Ethiopia	702,500
6	Jordan	664,100
7	Kenya	552,300
8	Uganda	428,400
9	Chad	420,800
10	Sudan	356,200

Source: WorldAtlas.com—[www.worldatlas.com/articles/countries-hosting-the-largest-number-of-refugees-in-the-world.html](http://www.worldatlas.com/articles/countries-hosting-the-largest-number-of-refugees-in-the-world.html) (accessed 20 June 2017).

### III Current legal framework: political refugees and the protection gap with regard to climate refugees

The topic climate/environmental refugees and the protection gap that exists with regard to them has received extensive scholarly attention in recent years.<sup>30</sup> To begin our discussion, it must be pointed out at the outset that there is no agreement as to the terminology in relation to those whose displacement is triggered by environmental reasons. In order to define those who will be forced to move due to consequences associated with climate change, we need to agree on a name to identify them – various terms have been advanced by scholars: forced climate migrants, climate refugees (this is the most popular), climate displacees and climate change-induced migrants,<sup>31</sup> all of which seem to fall within the definition of environmental refugees or migrants. The present author prefers the term ‘forced climate migrants’ to describe those who will be forced to migrate as a result of consequences associated with climate change.<sup>32</sup>

In my previous work I proposed the following definition of forced climate migrant:

People who are forced to leave their homes or land either temporarily or permanently due to significant environmental damage associated with climate change or where their national state is no longer habitable. Where they have crossed an international border, the receiving state should accord basic human rights protection, until such time they are able to return to their homes (in the case of temporary displacement) or in the case of permanent displacement, necessary legal arrangements should be made for their transition as residents of the receiving country with access to basic services and amenities.<sup>33</sup>

We seem to have advanced somewhat from the earlier position taken by the UNHCR that their mandate does not include environmental refugees. On the contrary, the UNHCR now accepts that climate change poses particular challenges for their work and that they need protection. The IOM, on the other hand, has always included environmental refugees within their mandate so by becoming a related agency of the UN, the work of the UNHCR may be expanded to cover non-traditional refugees. Over the years, the UNHCR has expanded its mandate from the original refugees recognised under the Geneva Convention to cover those affected by severe weather events and those fleeing armed conflict. These humanitarian refugees as opposed to political refugees have very much been part of the work of the UNHCR for many years now. The expanded scope is very much needed to ensure the basic needs of a large number of people projected to be displaced due to climate change. It seems that the UNHCR has taken a pragmatic approach to the issue without getting into the specifics of their legal mandate under the Geneva Convention.

While it may not be possible to pinpoint with certainty that climate change has caused forced migration, climate change will certainly contribute to the movement

by acting as a threat multiplier.<sup>34</sup> This, of course, complicates matters in designing a suitable legal regime. As has often been pointed out before, contemporary international law covers only political refugees – those who are fleeing persecution – and does not cover climate refugees. The legal definition is clear. A refugee is a person who:

[o]wing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>35</sup>

This definition makes it clear that not only should “a well-founded fear of being persecuted” be established but also that the fear must relate to being persecuted on certain grounds identified in the definition – these are: race, religion, nationality, membership of a particular social group or political opinion. It is quite clear that those who are fleeing adverse consequences of climate change do not fall within this definition. Moreover, the persecution must be carried out by one’s own state – hence, the international community must step in to protect that person because he is unable or unwilling to avail himself of the protection of his state. Thus, the legal regime governing refugees is based on the collective responsibility of states. The same principle can be applied in relation to climate refugees, particularly where the state itself is disappearing due to climate change. In recent years, faced with hundreds of people fleeing conflict though they are not subject to persecution themselves, the EU has expanded the definition of refugees to include humanitarian refugees and other countries have followed suit, accepting those fleeing the Syrian war. Germany alone agreed to admit 1 million such refugees on humanitarian grounds.<sup>36</sup>

Other regions and legal regimes have also expanded the rigid definition of refugees found in the Geneva Convention. The Guiding Principles on Internal Displacement adopted by the UN in 1998 defines an internally displaced person as:

[p]ersons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.<sup>37</sup>

This definition is much wider and covers those who are displaced as a result of natural or man-made disasters. Similar to that of the Nansen Initiative, this definition is confined to disasters. Thus, people who are displaced as a result of slow onset events such as sea-level rise will not be covered by this definition. Amending this

definition by aligning it with the loss and damage mechanism under the UNFCCC would be a great step forward.

The Guiding Principles were given binding force in Africa when the African Union adopted the Kampala Convention for the Protection and Assistance of Internally Displaced Person in Africa. It adopts the same definition of IDPs as the UN Guiding Principles:

'Internally Displaced Persons' means persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.<sup>38</sup>

The Cartagena Declaration on Refugees adopted in 1984 recognises that the definition in the Geneva Convention is rather restrictive and needs expansion. Thus, the Declaration notes:

Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.<sup>39</sup>

In the event that climate-related adverse consequences seriously disturb public order, those who are displaced by such events will be covered by this definition. The Declaration applies to refugees but it adopts a definition wider than the one adopted in the Geneva Convention.

Of course, except for the Kampala Convention, the other two instruments fall into the category of soft law but they can be taken as an indication that the international community is conceptualising 'refugees' widely, in an effort to accommodate the changing nature and circumstances of human displacement. None of these instruments, however, can be used to cover environmental/climate refugees unless their movement was triggered by a disaster, natural or man-made (internal/UN Guiding Principles) or an event that seriously disturbed public order (cross-border/Cartagena Declaration). The Nansen Principles (discussed below) seek to expand the IDP framework to cross-border migration triggered by a disaster but none of these frameworks will cover those who are forced to move due to other consequences associated with climate change. For example, would severe water shortages amount to a disaster? It is clear that there is a protection gap with regard to this category of refugees – projected to amount to millions – giving rise to a gaping hole in international law.

As McLeman articulates, there does not seem to be much enthusiasm or political support to expand the current legal regime governing refugees:

Although the concept of environmental refugees has now been around for several decades, there has been little appetite among governments or policy makers, especially in developed nations, to pursue the idea of adding the environmental refugee as a possible new category of protected persons. A well-established international definition of a refugee already exists, and a person fleeing an environmental crisis (whether human-caused or of purely natural origin) does not begin to meet that accepted definition.<sup>40</sup>

Things seem to have changed somewhat since McLeman's article as evidenced by the inclusion of a mandate to establish a Taskforce on Climate Displacement in the decisions taken at COP21 in Paris in 2015 and affirmed by the international community at COP22 in Marrakech in 2016. Of course, given IPCC's prediction over 25 years ago that the greatest single impact of climate change may be on human migration,<sup>41</sup> this is very slow progress but it is not too late to address the protection gap that exists with regard to climate refugees.

#### IV Proposals that have been advanced and the way forward

Many initiatives and programs have emerged in the face of the growing phenomenon of climate refugees. None of the proposals advanced so far, however, comprehensively address the issue of cross-border movement associated with climate change. Table 3.2 provides clarity with regard to the current legal framework and the proposals that have been advanced.

The Nansen Initiative, based upon a pledge made by the governments of Switzerland and Norway, recognises that forced displacement related to disasters including climate change is a reality and among the biggest humanitarian challenges facing the international community in the twenty-first century.<sup>42</sup> It is

a state-led, bottom-up consultative process intended to identify effective practices and build consensus on key principles and elements to address the protection and assistance needs of persons displaced across borders in the context of disasters, including the adverse effects of climate change.<sup>43</sup>

The Nansen Initiative has gained considerable traction as it is the only framework to date that seeks to apply a set of principles in relation to cross-border displacement. However, confining the framework to climate displacement due to severe weather events is rather restrictive. The advantage is that the causal link between the severe weather event and the displacement is easy to establish. It is not necessary to establish the link between climate change and the severe weather event, which would be much harder to do. The disadvantage of course is that those who are displaced due to other consequences associated with climate change, such as

TABLE 3.2 Existing and proposed frameworks

Existing framework/ proposed framework	Existing/proposed name	Protection envisaged	Scope of application
<i>Existing</i>			
Geneva Convention Relating to the Status of Refugees	Refugees	Protection of people fleeing persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country	Cross border
Guiding Principles on Internal Displacement	Internally displaced persons (IDPs)	Protection of people fleeing in particular as a result of the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters	Internal
Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa	Internally displaced persons (IDPs)	Same definition as in the guiding principles	Internal displacement within Africa only
Cartagena Declaration	Refugees	Persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances that have seriously disturbed public order	Cross border within Latin America only
<i>Proposed</i>			
Nansen Initiative	Cross-border disaster- displaced persons	Displacement associated with disasters and climate change	Cross border

Peninsula Principles	Climate- displaced persons	Protection of people who move due to the effects of climate change, including sudden and slow-onset environmental events and processes, occurring either alone or in combination with other factors	Internal displacement only
Draft Convention on Environmentally Displaced Persons	Environmentally displaced persons	Protection of people confronted with a sudden or gradual environmental disaster that inexorably impacts their living conditions, resulting in their forced displacement	Internal and cross border

sea-level rise, will not fall within this framework. In the parlance of the loss and damage mechanism of the UNFCCC, slow onset events are not included in the Nansen Initiative. Does this mean small island states will have no recourse under the Nansen Initiative? Is it possible to expand the Nansen Initiative to include other types of displacement? It seems that the least controversial issue relating to climate change – severe weather events – was chosen by the founders of the Nansen Initiative. This no doubt is a good start. Other forms of displacement can be built upon this foundation incrementally when the international community is able to garner more political support.

The Peninsula Principles on Climate Displacement proposed by Climate Solutions<sup>44</sup> is confined to internal displacement. They define 'climate displacement' as: "Movement of people within a State due to the effects of climate change, including sudden and slow-onset environmental events and processes, occurring either alone or in combination with other factors."<sup>45</sup> 'Climate displaced persons' are defined as "individuals, households or communities who face or experience climate displacement".<sup>46</sup> If we delete the words "within a state" we will have a sufficiently broad definition to cover climate-related displacement. However, the definition proposed by the present author ensures that the receiving state accords them basic rights until such time that they are either able to return to their home state or that they are more permanently settled in the receiving state.

On the other hand, the Draft Convention on the International Status of Environmentally Displaced Persons, proposed by the University of Limoges,<sup>47</sup> purports to be all-inclusive. It defines 'environmentally displaced persons' as: "Environmentally displaced persons' are individuals, families, groups and populations confronted with a sudden or gradual environmental disaster that inexorably impacts their living conditions, resulting in their forced displacement,

at the outset or throughout, from their habitual residence.”<sup>48</sup> The objective of the draft Convention is “to establish a legal framework that guarantees the rights of environmentally displaced persons and to organise their reception as well as their eventual return, in application of the principle of solidarity”.<sup>49</sup> Parties undertake “to protect environmentally displaced persons in conformity with human rights law guaranteed by international law and to ensure the full exercise of those rights specifically set forth by the present text”. The draft articles apply universally to cover those who are displaced internally as well as those who cross an international border.

While the draft articles seem to be the best attempt to date that purports to cover all environmentally displaced persons both internally and internationally, including climate refugees, confining the definition to ‘sudden or gradual environmental disasters’ seems too restrictive. Do all gradual environmental events have to amount to a disaster? For example, would sea-level rise associated with climate change fall within this definition? The draft articles also promote a right to displacement as well as the right not to be displaced without the consent of those to be moved, except in cases of “grave and imminent danger”.<sup>50</sup> While some contend that a right not to be displaced should be recognised under human rights law,<sup>51</sup> the draft Convention promotes a right to be displaced and calls upon states not to hinder that right. This is a rather contradictory statement – international human rights law recognises the right to privacy and family life on the one hand,<sup>52</sup> and the freedom of movement<sup>53</sup> on the other, and some interpret the right to an adequate standard of living as including a right to housing.<sup>54</sup> While a specific right not to be displaced is not recognised under human rights law, several rights point to this conclusion although the draft Convention seems to suggest that in certain circumstances people do have the right to move. Framing this as part of the freedom of movement would have been better as the current formulation seems to suggest that people can be forcibly moved from their homes or land.

The Peninsula Principles, on the other hand, are confined to displacement related to climate change and are applicable only to internal displacement. They are based on the premise that climate-displaced persons have a right to remain in their homes and retain connections to the land for as long as possible. It also recognises that “voluntary and involuntary relocation often result in the violation of human rights, impoverishment, social fragmentation and other negative consequences”.<sup>55</sup> Purporting to provide a comprehensive normative framework with regard to climate displacement, it nonetheless claims to do so consistent with the UN Guiding Principles on Internal Displacement. It thus raises the question as to whether it would have been simpler to amend the Guiding Principles to cover climate displacement as both frameworks place the onus on the state to protect its own people but recognise the need for humanitarian assistance from outside. It also recognises that climate displacement is a matter of global responsibility and that states have the right to seek assistance from other states and relevant international agencies. However, overall these principles merely reiterate existing principles and do not seem to add anything new. Most frameworks do not want to address the

most controversial issue – cross-border displacement due to climate change, very likely in large numbers.

The first and easiest steps to take to address the protection gap are as follows: first, amend the UN Guiding Principles on Internal Displacement to cover situations other than disasters. While these are non-binding guidelines, they enjoy wide support and will trigger involvement of the UNHCR and the Red Cross. Second, consider expanding the Nansen Initiative to situations other than climate disasters. The Nansen Initiative is the first initiative to date to address cross-border migration associated with climate change and is thus a major step forward. Expanding its scope to cover forced displacement associated with slow onset events is the logical next step but the reluctance to do that is understandable. The Peninsula Principles, on the other hand, address climate migration broadly but is limited to internal movement. Each of these initiatives seems to fall short of what is required – a comprehensive legal regime governing cross-border climate displacement broadly.

Of course, the best-case scenario for states to avoid mass movement of people due to climate change is to invest in mitigation measures to minimise the catastrophic consequences that give rise to displacement. Because we have locked in a certain amount of adverse consequences due to the greenhouse gases that we have already emitted, the next best option is to provide adaptation assistance to the most vulnerable nations that are likely to generate large numbers of climate refugees. McLeman argues that the obligation found in the UNFCCC to help developing nations adapt to the consequences of climate change has been ‘foreshadowed’ by the emphasis on mitigation.<sup>56</sup>

Because migration is one of a broader range of possible adaptive responses to climate change, assisting vulnerable populations in building their adaptive capacity provides a potentially effective strategy to reduce the potential for large scale population displacements and migrations as a consequence of climate change.<sup>57</sup>

## V Conclusion

Currently, we do not have a widely accepted term to refer to climate refugees. As Oli Brown pointed out in 2007:

Labels are important. One immediately contentious issue is whether people displaced by climate change should be defined as ‘climate refugees’ or as ‘climate migrants’. This is not just semantics – which definition becomes generally accepted will have very real implications for the obligations of the international community under international law.<sup>58</sup>

Climate displacement is the term that the UNFCCC has adopted but it has not adopted a term to describe those who will be displaced – are they climate displaced? If so, how will they be defined? Perhaps we can adopt the term and the



definition proposed in the Peninsula Principles but not limit it to internally displaced persons.

It does make sense to include climate displacement within the UNFCCC framework – after all, these displacement scenarios are caused by or are largely a result of climate change. This would avoid the need to design a new legal framework, which scholars such as McAdam have cautioned against,<sup>59</sup> or to amend the existing refugee framework, which many have said is not politically feasible.<sup>60</sup> Other scholars have argued that climate displacement can be based, *inter alia*, on the principle of planned relocation and resettlement.<sup>61</sup>

We can also use the same principle that underlies the legal framework governing political refugees to design a framework to protect climate refugees – the responsibility of the international community when individuals are no longer able to avail themselves of the protection of their national state. In the case of climate displaced persons, the country of origin is unable to protect their citizens either because it is overwhelmed with severe weather events, lacks resources or because the state itself is disappearing. Because many of the states that will be disproportionately affected are not the main emitters, principles of justice and equity dictate that those who contributed most to the problem should shoulder a greater burden. The UNFCCC underlies this premise when it bases legal obligations on the common but differentiated responsibility principle.<sup>62</sup> Moreover, the obligations under the UNFCCC legal regime are *erga omnes* and this, coupled with human rights law, provides us with a good framework to protect the rights of climate displaced persons.<sup>63</sup> McAdam relies on overarching normative principles such as the duty to cooperate, the principle of humanity and situations of distress, and human dignity<sup>64</sup> to inform the normative framework relating to climate displaced modelled on the UN Guiding Principles on Internal Displacement “in terms of addressing three phases of movement: pre-movement/prevention, movement, and relocation/resettlement”.<sup>65</sup>

With regards to the inhabitants of small island states, the legal situation is different if the need arises to relocate them en masse. While the international community has not relocated states in their entirety before, several proposals have been put forward<sup>66</sup> and scholars such as McAdam propose that we should ensure that people can live on these islands as long as they can with proper adaptation measures.<sup>67</sup> If they are to be relocated eventually, should not the international community start planning for that eventuality before the issue is thrust upon it?

As the UNEP noted, while environment-induced migration poses challenges to the international community (and international law), it also provides an opportunity:

Environmentally induced migration has the potential to become a phenomenon of unprecedented scale and scope. Its effects on the global economy, international development, and national budgets could be profound, with significant implications for almost all dimensions of human security, in addition to political and state security. Yet, amid these challenges, there is opportunity.<sup>68</sup>

This provides us with an opportunity to devise a legal regime to cover climate refugees before we are faced with a humanitarian catastrophe. International law has usually lagged behind events and situations and has largely been reactionary but this need not be the case here. Issues such as ozone depletion have shown that the international community is capable of taking precautionary measures even when taking such measures are expensive and economically disadvantageous, at least in the short term. But if we are serious about addressing the situation, and protecting future generations and indeed our planet, we do not have much time to lose.

## Notes

- 1 The representative for Papua New Guinea, speaking on behalf of the Pacific Islands Forum at the UN Security Council Debate on Climate Change. United Nations, 'Security Council Holds First Ever Debate on Impact of Climate Change on Peace, Security, Hearing Over 50 Speakers' (United Nations, 17 April 2007), [www.un.org/press/en/2007/sc9000.doc.htm](http://www.un.org/press/en/2007/sc9000.doc.htm) (accessed 5 April 2017).
- 2 Coral Davenport and Campbell Robertson, 'Resettling the First American "Climate Refugees"' (*New York Times*, 2 May 2016), [www.nytimes.com/2016/05/03/us/resettling-the-first-american-climate-refugees.html?\\_r=0](http://www.nytimes.com/2016/05/03/us/resettling-the-first-american-climate-refugees.html?_r=0) (accessed 5 April 2017).
- 3 See United Nations Framework Convention on Climate Change, 'Loss and Damage' (United Nations Framework Convention on Climate Change, no date assigned), [https://unfccc.int/adaptation/workstreams/loss\\_and\\_damage/items/7545txt.php](https://unfccc.int/adaptation/workstreams/loss_and_damage/items/7545txt.php) (accessed 6 April 2017).
- 4 United Nations, 'Report of the Conference of the Parties on its Twenty-Second Session' (United Nations Framework Convention on Climate Change, Marrakech, January 2017), Decision 3/CP.22 Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts.
- 5 J.T. Houghton, G.J. Jenkins and J.J. Ephraums, 'Climate Change: The IPCC Scientific Assessment' (World Meteorological Organization/United Nations Environment Program – Intergovernmental Panel on Climate Change 1990), [www.ipcc.ch/ipccreports/far/wg\\_I/ipcc\\_far\\_wg\\_I\\_full\\_report.pdf](http://www.ipcc.ch/ipccreports/far/wg_I/ipcc_far_wg_I_full_report.pdf) (accessed 5 April 2017).
- 6 See Norman Myers, 'Environmental Refugees: A Growing Phenomenon of the 21st Century' (2002) 357 *Philosophical Transactions of the Royal Society of London* 609, 611.
- 7 Tom Risen, 'Left Behind' (*US News*, 16 June 2016), [www.usnews.com/news/articles/2016-06-16/some-native-americans-lack-access-to-safe-clean-water](http://www.usnews.com/news/articles/2016-06-16/some-native-americans-lack-access-to-safe-clean-water) (accessed 19 June 2017).
- 8 United Nations Environment Program, 'Disasters and Conflicts: Climate Change and Security Risks' (United Nations Environment Program, no date assigned), <http://web.unep.org/disastersandconflicts/what-we-do/risk-reduction/climate-change-and-security-risks> (accessed 5 April 2017).
- 9 Jane McAdam, *Climate Change, Forced Migration and International Law* (Oxford University Press 2012).
- 10 Intergovernmental Panel on Climate Change, *Climate Change 2014: Impacts, Adaptation and Vulnerability, Summary for Policymakers*, [www.ipcc.ch/pdf/assessment-report/ar5/wg2/ar5\\_wgII\\_spm\\_en.pdf](http://www.ipcc.ch/pdf/assessment-report/ar5/wg2/ar5_wgII_spm_en.pdf), 6 (accessed 19 June 2017).
- 11 *Ibid.*
- 12 McAdam (n 9).
- 13 United Nations, *Convention Relating to the Status of Refugees* (1951) 189 UNTS 137.
- 14 United Nations High Commission for Refugees, 'Environment, Disasters and Climate Change' (UNHCR, no date assigned), [www.unhcr.org/en-us/environment-disasters-and-climate-change.html](http://www.unhcr.org/en-us/environment-disasters-and-climate-change.html) (accessed 5 April 2017).
- 15 Sumudu Atapattu, *Human Rights Approaches to Climate Change: Challenges and Opportunities* (Routledge 2016) 161.

- 16 United Nations High Commission for Refugees, 'Climate Change and Disasters' (UNHCR, no date assigned), [www.unhcr.org/en-us/climate-change-and-disasters.html](http://www.unhcr.org/en-us/climate-change-and-disasters.html) (accessed 5 April 2017).
- 17 The Nansen Initiative, [www.nanseninitiative.org/](http://www.nanseninitiative.org/) (accessed 5 April 2017).
- 18 The Peninsula Principles, 'The Peninsula Principles on Climate Displacement within States' (The Peninsula Principles, 18 August 2013), <http://displacementsolutions.org/peninsula-principles/> (accessed 5 April 2017).
- 19 Intergen Law, 'Draft Convention on the International Status of Environmentally Displaced Persons – Third Version' (Intergen Law, May 2013), <http://intergenlaw.com/wp-content/uploads/2015/02/Draft-Convention-on-the-International-Status-on-environmentally-displaced-persons-third-version.pdf> (accessed 5 April 2017).
- 20 Platform on Disaster Displacement 'Advisory Committee Workshop' (Platform on Disaster Displacement, 6 October 2016), <http://disasterdisplacement.org/advisory-committee-workshop/> (accessed 5 April 2017).
- 21 IOM Becomes a Related Organization to the UN, [www.iom.int/news/iom-becomes-related-organization-un](http://www.iom.int/news/iom-becomes-related-organization-un) (accessed 19 June 2017).
- 22 International Organization of Migration, 'Migration and Climate Change' (International Organization of Migration, no date assigned), [www.iom.int/migration-and-climate-change](http://www.iom.int/migration-and-climate-change) (accessed 5 April 2017).
- 23 See Homer-Dixon, 'Environmental Scarcities and Violent Conflict: Evidence from Cases' (1994) 19(1) *International Security* 5; Lyal Sunga, 'Does Climate Change Kill People in Darfur?' (2011) 2(1) *Journal of Human Rights and the Environment* 64.
- 24 See Atapattu (n 15), ch 9.
- 25 Ibid.
- 26 Ibid.
- 27 World Atlas, 'Countries Hosting The Largest Number of Refugees in the World' (World Atlas, no date assigned), [www.worldatlas.com/articles/countries-hosting-the-largest-number-of-refugees-in-the-world.html](http://www.worldatlas.com/articles/countries-hosting-the-largest-number-of-refugees-in-the-world.html) (accessed 5 April 2017).
- 28 United Nations High Commission for Refugees, 'Facts and Figures' (United Nations High Commission for Refugees, no date assigned), [www.unhcr.ie/about-unhcr/facts-and-figures-about-refugees](http://www.unhcr.ie/about-unhcr/facts-and-figures-about-refugees) (accessed 6 April 2017).
- 29 Ibid.
- 30 See Atapattu (n 15), ch 6 and the sources cited in notes 16 and 17.
- 31 François Crépeau, *Report of the Special Rapporteur on the Human Rights of Migrants*, A/67/299, 13 August 2012, [http://oppenheimer.mcgill.ca/IMG/pdf/Report\\_of\\_Special\\_Rapporteur\\_to\\_General\\_Assembly\\_-\\_A-67-299\\_English.pdf](http://oppenheimer.mcgill.ca/IMG/pdf/Report_of_Special_Rapporteur_to_General_Assembly_-_A-67-299_English.pdf), para. 24 (accessed 19 June 2017).
- 32 Atapattu (n 15) 165.
- 33 Ibid.
- 34 United Nations Environment Program (n 8).
- 35 Ibid. Article 1.
- 36 AFP, 'Germany on Course to Accept One Million Refugees in 2015' (*Guardian*, 8 December 2015), [www.theguardian.com/world/2015/dec/08/germany-on-course-to-accept-one-million-refugees-in-2015](http://www.theguardian.com/world/2015/dec/08/germany-on-course-to-accept-one-million-refugees-in-2015) (accessed 5 April 2017).
- 37 UNHCR, Article 2, UN Guiding Principles of Internal Displacement (1997).
- 38 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009).
- 39 The Cartagena Declaration on Refugees (1984).
- 40 Robert McLeman, 'Climate Migration, Refugee Protection and Adaptive Capacity Building' (2008) 40(1) *McGill International Journal of Sustainable Development Law & Policy* 1, 13.
- 41 Intergovernmental Panel on Climate Change, 'Assessment Reports' (Intergovernmental Panel on Climate Change, no date assigned), [www.ipcc.ch/ipccreports/assessments-reports.htm](http://www.ipcc.ch/ipccreports/assessments-reports.htm) (accessed 6 April 2017).

- 42 The Nansen Initiative, 'Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (Volume 1, The Nansen Initiative 2015)', <https://nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf> (accessed 6 April 2017); Francois Gemenne and Pauline Brucker, 'From Guiding Principles on Internal Displacement to the Nansen Initiative: What the Governance of Environmental Migration can Learn from the Governance of Internal Displacement' (2015) 27(2) *International Journal of Refugee Law* 245.
- 43 Ibid. 6.
- 44 The Peninsula Principles, 'The Peninsula Principles on Climate Displacement Within States' (Displacement Solutions, 18 August 2013), <http://displacementsolutions.org/wp-content/uploads/FINAL-Peninsula-Principles-FINAL.pdf> (accessed 6 April 2017).
- 45 Ibid. Principle 2 (b).
- 46 Ibid. Principle 2 (c).
- 47 Intergen Law (n 19).
- 48 Ibid. Article 2(2).
- 49 Ibid. Article 1.
- 50 Ibid. Article 11.
- 51 Maria Stavropoulou, 'The Right Not to be Displaced' (1994) 9(3) *American University Journal of International Law & Policy* 689.
- 52 International Covenant on Civil and Political Rights (1966), Articles 17 and 23(1).
- 53 Ibid. Article 12(4).
- 54 The National Economic and Social Rights Initiative argues that "Everyone has a fundamental human right to housing, which ensures access to a safe, secure, habitable, and affordable home with freedom from forced eviction." National Economic and Social Rights Initiative 'What is the Human Right to Housing?' (National Economic and Social Rights Initiative, no date assigned), [www.nesri.org/programs/what-is-the-human-right-to-housing](http://www.nesri.org/programs/what-is-the-human-right-to-housing) (accessed 6 April 2017).
- 55 The Peninsula Principles (n 18).
- 56 McLeman (n 40) 16.
- 57 Ibid. 17.
- 58 See Oli Brown, 'Climate Change and Forced Migration: Observations, Projections and Implications' (2007) *Human Development Report 2007/2008* (2007/17), 7 (emphasis added), [www.iisd.org/pdf/2008/climate\\_forced\\_migration.pdf](http://www.iisd.org/pdf/2008/climate_forced_migration.pdf) (accessed 20 June 2017). Cf. Richard Black who critiques the works of Homer-Dixon and others, writing on environmental refugees. He believes that "Practical concern with the plight of poor people leaving fragile environments has not translated into hard evidence of the extent or fundamental causes of their problems." Richard Black 'Environmental Refugees: Myth or Reality' (2001) *New Issues in Refugee Research Working Paper* 34/2001.
- 59 McAdam (n 9) ch 7.
- 60 McLeman (n 40).
- 61 Frank Biermann and Ingrid Boas, 'Protecting Climate Refugees: The Case for a Global Protocol' (2008) *Environment Magazine*, [www.environmentmagazine.org/Archives/Back%20Issues/November-December%202008/Biermann-Boas-full.html](http://www.environmentmagazine.org/Archives/Back%20Issues/November-December%202008/Biermann-Boas-full.html) (accessed 6 April 2017).
- 62 UNFCCC, Article 3. See Atapattu (n 15) ch 1.
- 63 Ibid. 175. See also McAdam (n 9).
- 64 McAdam (n 9) 256–266.
- 65 Ibid. 252.
- 66 Atapattu (n 15) ch 9.
- 67 McAdam (n 9).
- 68 Koko Warner, Tamer Afifi, Olivia Dun, Marc Stal and Sophia Schmidl, *Human Security, Climate Change and Environmentally Induced Migration* (UNU 2008).