As the Tide Rises: Addressing the Legal Gap in International Climate Migration Governance

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Abstract

As the magnitude and frequency of environmental disasters grow as a result of climate change, environmental displacement has become a serious global crisis in which communities from impoverished and fragile countries are often disproportionately affected. This article aims to understand the climate change-migration nexus and the role that intergovernmental organizations and international legal frameworks have in effective climate migration governance. By combining governing mechanisms from human rights and environmental legal frameworks, the international community can potentially fill the current gap in protocol while addressing the specific needs of affected individuals and communities. This article argues that the best course of action involves the creation of a new international legal framework dedicated entirely to the prevention and protection of individuals displaced by climate change. Early action will prove to be essential for the successful, long-term implementation of organized initiatives.

Keywords

Climate Change; Environmental Migration; Displacement; Global Governance; Non-Refoulement; Intergovernmental Cooperation; Refugee

In August of 2021, the Intergovernmental Panel on Climate Change (IPCC) released their sixth report on anthropogenic climate change in which a collection of participating scientists described how human influence and greenhouse gas emissions have impacted global warming at a rate that is unprecedented in the last 2000 years. These changes to the climate have been accompanied by profound and unequivocal consequences to both the environment and its inhabitants. Reiterating the findings of the IPCC report, UN Secretary General António Guterres stated that the report is a "code red for humanity" and acknowledged that "global heating is affecting every region on the Earth, with many of the changes becoming irreversible" (@antonioguterres).

With regards to both climate change and non-climate change-related scenarios, migration plays an important role in human adaptation and disaster response strategies. Anthropogenic climate change has led to an increased frequency of environmental disasters, such as extreme heatwaves and rising sea levels, that have directly resulted in the forced displacement of individuals and communities from their homes around the world. In the first half of 2020 alone, environmental disasters had displaced 9.8 million people and remained the leading cause of internal displacement globally ("Environmental Migration"). The IPCC estimates that around 200 million individuals will be displaced as a result of climate change by 2050 (OHCHR). This is to say that one in every 45 people will have experienced climate-induced displacement by the year 2050.

While the 2021 IPCC report outlines the grim outlook of our current climate crisis, it does little to address the nexus between forced migration and anthropogenic climate change. As a whole, neither international human rights policy nor international environmental policy has provided a substantial foundation for climate migration governance. Neither legal framework provides governance mechanisms that can address the future challenges of international climate migration holistically and comprehensively. While the United Nations General Assembly recognizes how climate change adds to the scale and complexity of human displacement, the UN and other intergovernmental organizations refrain from drawing a direct link between environmental degradation and forced migration. Despite positive developments, current international legal mechanisms are still too weak to adequately accommodate the millions of people who will be

displaced as a result of climate change by 2050.

Consolidating existing governance mechanisms will only do so much to provide short-term protection for environmental migrants. The international community needs to begin thinking about climate migration governance in the long term. This will mean reconceptualizing the way we approach the prevention and protection of environmental migrants. Beyond implementing soft-law initiatives, the international community has the opportunity to take advantage of the moment and begin developing blueprints for strong international protection regimes and mechanisms. The purpose of this article is to analyze the potential ways of filling the current gap in international protocol, focusing on methods that combine human rights and environmental governance in order to address the specific needs of environmental migrants. I will explore a variety of proposed solutions including the enhancement of a preexisting climate migration policy toolbox, the reconceptualization of the term "refugee", and the integration of non-refoulement[1] with the precautionary principle of environmental law. Ultimately, I argue that the best course of action involves the creation of a new international legal framework dedicated entirely to the prevention and protection of individuals displaced by climate change using mechanisms from both international human rights and environmental policy. Looking to the future, early action will prove to be essential for the successful long-term implementation of organized initiatives.

Enhancing the Protection Toolbox

The blueprint for a policy toolbox to prevent, prepare for and respond to the challenges of climate-induced migration was first and most comprehensively introduced by the Nansen Initiative on Disaster-Induced Cross-Border Displacement. Initially launched by the governments of Switzerland and Norway in October 2012, the Nansen Initiative recognized that international law did not provide any assurance that people affected by slow and sudden climate disasters would be able to flee across national borders and receive adequate assistance (Kälin). The most significant accomplishment of the Nansen Initiative was the formation and establishment of the

1 See page 11.

Agenda for the Protection of Cross-Border Displaced Persons, also known as the Protection Agenda. Consolidated through three years of regional intergovernmental consultations and civil society meetings convened by the Nansen Initiative, the Protection Agenda acts as a framework for states and other relevant actors to improve their preparedness and response capacity to address cross-border disaster displacement.

The Nansen Initiative and Platform on Disaster Displacement have shown the international community that there are existing regional and national legal mechanisms that, if used strategically, can contribute significantly to the effectiveness of localized migration governance efforts that together form part of a global effort. Jane McAdam, director of the Andrew & Renata Kaldor Centre for International Refugee Law, is adamant that the international treaty-making process and the 'one size fits all' approach to international governance is both inappropriate and ineffective in the strengthening of resilience and the managing of the risk of future displacement (McAdam, "From the Nansen Initiative" 1543). Instead, she advocates for a greater emphasis on the reinforcement and consolidation of the protection toolbox, stating that this approach will allow policymakers to adapt their governance strategies to the specific needs and situations of vulnerable communities.

The Protection Agenda provides a template for further enhancement for a larger and more comprehensive protection toolbox. It is important to identify concrete subcategories of the protection toolbox in order to organize the potential policies that comprise a constructive approach to both the protection and prevention of environmental migrants. Firstly, states need to implement policies that enhance disaster risk reduction and prioritize environmental degradation prevention to build more resilient communities. The rapid and systematic integration of methods for disaster risk management will be the most effective way to avoid displacement altogether when disaster strikes. The methods implemented will vary depending on the region and the environmental circumstances—an enhanced protection toolbox will account for the wide variety of environmental disasters that may occur in any given part of the world and provide effective solutions for each scenario. For example, in Bangladesh, where flooding is becoming an increasingly pertinent threat to the communities that live in the flood plains (that make up 80% of the country) (Behrman and

Kent 6), flood-resistant crops will make these communities more resilient. It is worth noting that while this solution will enhance disaster risk reduction, it is unrealistic to expect farmers to wade through floodwaters to harvest crops (McAdam, "From the Nansen Initiative" 1543).

Notably, there is a point at which the ability to adapt is eclipsed by the need to migrate; with this in consideration, the second significant subcategory of the protection toolbox includes policies that prepare states for some inevitable displacement, taking into consideration preexisting migration patterns and regional differences. As the inevitability of climate-induced forced migration becomes more apparent, practices that address and protect affected individuals are integral. For example, domestic laws should be reformatted to enable temporary admission and stay for displaced individuals as well as look for effective resources to coordinate regional and sub-regional practices to promote a more cohesive system. This subcategory would also include appropriate laws and policies to address the numerous internally displaced individuals who will likely constitute the majority of the environmentally displaced population.

The third subcategory of the enhanced protection toolbox consists of policies and practices that address precautionary methods and enhance voluntary migration opportunities for vulnerable communities. Before sudden disasters strike or slow-onset climate change renders a region uninhabitable, clear bilateral and regional free movement agreements should be made so that at-risk individuals have the opportunity to be the active agent in their migration and have access to any important or beneficial resources (McAdam, "From the Nansen Initiative"1544). These resources would include labor training programs in areas of need, educational initiatives, and the development of distinct visas to accommodate these individuals. If a region is at risk of serious slow-onset environmental degradation, the provision of these resources will allow affected communities to migrate elsewhere, either temporarily or permanently, without having to suddenly and abruptly uproot their lives and struggle to receive basic necessities. For example, policies in Australia and New Zealand enable a specified amount of people from the Pacific Islands to immigrate through targeted work and education schemes (McAdam, "From the Nansen Initiative" 1544). By offering sustainable employment and education services to vulnerable communities,

host countries are implementing a migration system that is safer for environmental migrants and would alleviate pressure in the case of an environmental emergency. If executed correctly, these policies and practices have the potential to benefit both the host country as well as the country of origin.

The fourth and final subcategory of the enhanced protection toolbox involves the development of national strategies for the planned relocation of vulnerable communities. The longstanding impact of cross-border relocation specifically in regions across the Pacific has left planned relocations as a last resort. The complex process of relocation involves intersecting political, environmental, legal, and social issues, along with tumultuous negotiations between authorities, displaced, and host communities about land, housing, and property (Connell and Coelho). While planned relocations have had a poor track record in terms of the socioeconomic effects they have had on the communities, that only acts as a testament to the urgency of the enactment of provocative measures. This would imply the establishment of deeper government structures that are dedicated to the development of planned relocation programs. These structures would provide guidance both before and after relocation takes place as well as aid in the reestablishment of communities. Another vital aspect of these policies would be the inclusion of community consultation initiatives. This is a feature that has often been ignored in past planned relocation efforts, particularly for women and marginalized groups (Connell and Coelho). These consultations would need to pay specific attention to communal concerns regarding choosing the host site and receiving basic lifestyle services as well as cultural concerns such as lost connections to land and the observance of traditional practices.

Reconceptualizing the Term 'Refugee'

One of the immediately contentious issues that come up when discussing climate-induced migration is the issue of nomenclature. While the United Nations Development Program and the United Nations High Commissioner for Refugees both recognize climate change as a critical development challenge and the significant development implications that it has on the livelihoods and quality of life of vulnerable populations, neither organization officially recognizes

"environmental refugees". As a result, climate-displaced individuals cannot receive the same international attention as individuals who fall under the definition of "refugee" according to the 1951 Refugee Convention.[2] The use of the term "refugee" to describe an individual who has been forcibly displaced from their homeland due to environmental degradation has been the subject of heated debate amongst policymakers, academics, and the members of displaced communities themselves. Due to the notable political and social implications of legal semantics, a number of international organizations remain reluctant to accept the term.

The dispute regarding whether or not the definition of 'refugee' should be expanded to encompass environmental migrants is a significant feature of the international debate on environmental migration governance. Intergovernmental organizations such as the IOM and UNHCR continue to reject the term 'climate refugee' as, in their view, the term 'refugee' should remain limited to those individuals recognized under the 1951 Refugee Convention (Biermann and Boas 13). This has resulted in disturbingly insufficient legal protections for environmentally displaced individuals. For example, in 2013, a family from Kiribati island of Tarawa sought asylum in New Zealand. Having fled the island in 2007, the aforementioned family stated that they feared for her children's health and wellbeing due to the following reasons: the death of crops and coconut trees across the island due to rising sea levels, overcrowding due to multiple individuals moving from neighboring villages to Tarawa, frequent conflicts between residents, and the spread of disease (Frelick). The Supreme Court of New Zealand ultimately dismissed the case, stating that the family did not meet the requirements of the Refugee Convention to be eligible for asylum, and they were subsequently deported. By expanding and reconceptualizing the definition of 'refugee' under the Refugee Convention, the global community can potentially provide environmentally displaced individuals with an internationally recognized legal status to improve and enforce protection measures and practices.

2 The 1951 Refugee Convention and 1967 Protocol place clear regulations on who can and cannot be considered a refugee: A refugee is a person who "owing to well-founded fear of being 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" ("The Refugee Convention").

The first proposal to extend the mandate of the UN refugee regime to include climate refugees was extended in 2006 when the government of the Maldives organized a meeting of humanitarian and environmental organizations and UN agencies to discuss the possibility of providing protection and resettlement rights for environmentally displaced individuals (Biermann and Boas 10). Considering the country's location (i.e. a few meters above sea level) and the imminent effects of global climate change, this effort reflected the growing concerns over national security and the national survival of the Maldives and other small island states. Since then, there have been continued sentiments that the legal reach of the Refugee Convention has the potential to be expanded in favor of recognizing climate refugees—a sentiment carried most notably by the most environmentally vulnerable countries and sub-regions in the world. In December 2009, during the lead-up to the Copenhagen climate change conference, the Bangladeshi Finance Minister stated: "The convention on refugees could be revised to protect people. It's been through other revisions, so this should be possible" (McAdam, "Swimming Against the Tide" 6). In a similar position to the Maldives, Bangladesh and its political leaders have a strong incentive to endorse binding international legal instruments to ensure the welfare and livelihood of their citizens.

Despite attempts to expand the definition of 'refugee' under the Refugee Convention, there has been significant pushback from the international community. In general, industrialized nations have often pushed for stricter and more exclusive standards for the Refugee Convention, stating that the Convention is already too generous and responsible for the large numbers of refugees around the world. These nations are also known to seek restrictive interpretations of the Convention's provisions. International pushback on the proposal to reconceptualize the term 'refugee' has resulted in a stalemate for climate refugee advocates. Hence, it is highly unlikely that any effort to expand the legal reach of the Refugee Convention to encompass significantly more refugees than it currently does will be a viable option for policymakers any time soon. Additional concerns regarding the expansion of the Refugee Convention arise when considering that a proposal to extend the UN refugee regime to include climate refugees would fail to take into consideration a few core characteristics of the climate refugee crisis (Biermann and Boas 11).

For example, the Refugee Convention does not address any aspect of internal migration, nor does it include provisions on displacement that occurs over a long period of time. Most significantly, climate refugees do not have to leave their countries because of totalitarian governments. In reality, they still enjoy the protection of their home country's government. Therefore, the protection of climate refugees is essentially a development issue that requires large-scale and long-term planned resettlement programs for groups of affected people, usually within their country of origin. The Refugee Convention does not present itself as the ideal document to use as the foundation for legal protection for climate refugees. Despite its value, vulnerable communities require more than solely an internationally recognized refugee status. As the provisions offered by the Refugee Convention fail to fully address the particular challenges faced by environmental migrants, it would be more effective and beneficial for the international community to draft a new, climate refugee-specific protocol.

Non-Refoulement and the Precautionary Principle in Environmental Law

The principle of non-refoulement is considered to be the cornerstone of international refugee law, barring the return of refugees—defined as people with a well-founded fear of being persecuted—to places where their lives or freedom would be threatened (Frelick). Nonrefoulement provides refugees with the protection provision that states cannot send them back to their home country if they would be subject to torture or face serious human rights violations as a result of said repatriation. Most importantly, non-refoulement is a binding obligation for all states, regardless of whether or not they are a party of the Refugee Convention (Poon 159). On the other hand, the primary goal of international environmental law is to protect the environment. While the principle of non-refoulement seeks to prevent irreversible and irreparable harm to asylum claimants and refugees, environmental law seeks to prevent irreversible and irreparable harm to the environment. Experts have suggested that by applying the principle of nonrefoulement to international environmental law, the global community can potentially use human rights provisions within environmental protocols to address the protection gap for climate change-displaced individuals.

Within international environmental law, the precautionary principle is a response to the

uncertainty regarding potential threats to the environment and whether or not action should be taken to protect the environment without knowing the full effect of said action. The principle recognizes that delaying action until there is compelling evidence of harm will often mean that it is then too costly or impossible to avert the threat. The use of the principle promotes action in favor of protecting the environment despite the lack of full scientific certainty, therefore providing a fundamental policy basis to anticipate, avoid and mitigate threats to the environment. The precautionary principle has become an essential element of existing international environmental agreements and declarations having been found in 60 multilateral treaties (Poon 159). As climate change has proven to be extremely unpredictable and an extremely elaborate issue, the precautionary principle has allowed policymakers to act in light of uncertainty.

Analogous to the principle of non-refoulement in international refugee law, the precautionary principle operates as an insurance policy of sorts against potential harm in international environmental policy. According to McAdam, neither principle requires definitive proof of harm. Rather, the possibility of a risk that serious harm may ensue is sufficient to warrant protection (in the case of the principle of non-refoulment) and due diligence (in the case of the precautionary principle) (McAdam, "Climate Change" 75-76). In traditional policymaking, these principles have been considered and applied separately. If considered separately regarding the current climate refugee crisis, there would be obvious deficiencies on both sides. For example, while the precautionary principle does not extend its provisions beyond the confines of the state's national jurisdiction to include the duties of neighboring states, the principle of non-refoulment does not address the protection of individuals displaced specifically as a result of environmental degradation and climate change. However, when considered together, these principles have the potential to not only prevent future harm to environmental migrants but also attribute state responsibility to polluters, therefore enhancing protection for affected and vulnerable communities.

Jenny Poon, a research affiliate at the Refugee Law Initiative, argues in favor of bridging these two principles and extending the precautionary principle to also protect climate change displaced individuals from the effects of environmental degradation by drawing upon the extraterritorial

applicability of the principle of non-refoulment (Poon 163). According to international law, states are responsible for protecting refugees in circumstances where the acts responsible for the initial displacement are attributable to the state. Under this provision, a state has responsibility for protecting a refugee if it is determined that the refugee is 'under effective control of, or [is] affected by those acting on behalf of, that State wherever this occurs' (Poon 161). In the context of climate change, this would mean that states are responsible for protecting and preventing environmentally displaced individuals when it can be proven that an individual polluter acting under the 'direction and control' of the state has exercised 'effective control and authority' over their environment, thus contributing to serious environmental damage and subsequent climate displacement (Poon 161).

Poon argues that by using the extraterritorial application of non-refoulement to inform the expansion of the precautionary principle, international law will be better equipped to protect those fleeing the effects of climate change while also extending the responsibility of mitigation to polluter states. In this manner, states are obligated to take precautionary measures to mitigate the effects of climate change. The conjunction of the precautionary principle and nonrefoulement creates a protection mechanism that keeps states accountable for both backward-looking preventative measures and forward-looking protective measures. They are thus responsible for ensuring that efforts are made to limit activities that contribute to climate change and environmental degradation while also ensuring protection for people who have been displaced as a result of the activities of individuals under state jurisdiction.

Poon uses the Pacific Island states and the sinking island scenario as a case study to demonstrate how the extraterritoriality of non-refoulement can be applied to the precautionary principle to aid in the protection and prevention of environmental displacement. The Pacific Islands are one of the most vulnerable regions to climate displacement in a world where nearly 1.7 million people are projected to be affected by climate change displacement by 2050 (Poon, 165). Rising sea levels and salt-water pollution have resulted in the region constantly being threatened by social and political insecurity. Multiple communities within the Pacific Island region have already been internally displaced. However, the current trend of the sea-level rise indicates that many of the

island countries will soon be completely uninhabitable, therefore necessitating the enforcement of effective international protection measures for displaced communities.

Within this aforementioned scenario, the extraterritorial provision of non-refoulement can be applied to the precautionary principle in a way that extends the responsibility to take any measures to prevent environmental degradation to polluting states rather than solely the affected Pacific Island countries. As a result, the precautionary principle presents a preventative obligation in the face of potentially serious or irreversible damage by attributing responsibility for specific pollution back to the state. The other potential application of the enhanced precautionary principle can be seen in the protection of environmental migrants after displacement occurs. Protection for environmental migrants is offered by host states on the pretense that the host states are held accountable for environmental degradation that they may have caused or contributed to, thus inevitably resulting in climate change-induced displacement. By considering both preventative and protective state obligations, the use of the precautionary principle in conjunction with the principle of non-refoulement in environmental migration governance can potentially widen the means of protection for vulnerable communities. Bridging two significant principles within international environmental law and international refugee law can enhance the general capacity of international law to effectively protect those fleeing from the effects of climate change.

Proposals for New International Legal Frameworks

The case for the creation of a specific regime on climate refugees has been met with considerable disagreements from several sides of the climate refugee academic community. Jane McAdam argues that the absence of a multilateral treaty on climate change-induced migration and environmental refugees does not mean that there is a complete legal void on the matter (McAdam, "Swimming Against the Tide" 4). She states that there has been a consensus among legal scholars that it is premature to push for a new legal instrument and standard-setting agreement, citing clear state unwillingness as well as insufficient domestic and regional response capacity. Because of this, McAdam states that processes to establish a new international protocol would only lead to more uncertainty for relevant states and communities. Instead, she declares her support for Protection-

Agenda-style policymaking where states are allowed to determine their individual climate migration policies. Successful policies would then guide the formation of possible future legal mechanisms for climate change displacement. Likewise, climate migration specialist Beatriz Felipe Pérez argues that the highly intricate, heterogeneous, and multi-causal nature of environmental migration means that governing climate migration with a single legal instrument would be unrealistic (Pérez 215). Pérez suggests that effective climate migration governance would come instead from allocating responsibilities to existing legal regimes to protect different categories of climate migration.

There is merit in the belief that the formation of a new international legal framework would result in inaction from the global policymaking community. History has proven that efforts to find consensus on internationally recognized agreements are almost always met with severe compromise or complete failure, particularly for issues such as climate-induced migration. However, the long-term benefits of having a dedicated institutional structure are too profound to ignore. The challenges of finding consensus and the risk of short-term inaction should not discourage policymakers from considering the establishment of an overreaching instrument that binds states to protection standards that specifically target individuals and communities that have been forcibly replaced as a result of climate change and environmental degradation. Additionally, the probability of an accelerated increase of climate refugees in the coming decades means that we will almost definitely require a stronger institutionalized regime to manage all affected communities systematically. The following section will look at the different responsibilities that this international protocol would have as well as the different components it would contain. A look at this theoretical legal and political regime will hopefully consolidate the potential governing methods mentioned earlier in this article to provide insight into the possibilities that exist for cementing widely agreed-upon principles and creating a system for common but differentiated responsibilities.

Frank Biermann and Ingrid Boas were two of the earliest environmental policy specialists to develop a comprehensive proposal for a potential framework of climate migration governance. Their proposed framework, the Protocol for the Recognition, Protection, and Resettlement of Climate Refugees would be implemented under the UNFCCC and focus on enabling nations to

proactively manage the resettlement and protection of climate refugees through a global mitigation regime of quantified reduction and limitation objectives (Biermann and Boas 12). By linking the protection of climate refugees to the overall goals of the climate regime, the protocol would define the specific risks that vulnerable communities face and effectively bind parties of the UNFCCC to the duties required by developed and developing nations as a part of the principle of common but differentiated responsibilities.

Critics of this proposal have stated that the proposed protocol does not do enough to address the evolutionary aspect of the climate-migration nexus. Mike Hulme, professor of human geography, points out three significant flaws with the proposal: the category of "climate refugee" is essentially underdetermined; it adopts a static view of climate-society relationships; and it is open to charges of carrying a neocolonial ideology, which guarantees it will meet political resistance (Hulme 50). The first two flaws relate to the compound nature of the climate migration nexus that the Biermann and Boas proposal fails to acknowledge. Their definition of 'climate refugee' covers any individual living in a region where prospective climate change and environmental degradation will occur. In this way, the protocol inflates the number of individuals who would be considered climate refugees and requires states to determine which areas can and cannot be protected by adaptation in the long run. Likewise, the proposed protocol also encourages host states to treat all climate refugees as permanent residents, regardless of the nature of environmental degradation that had initially forced the individual to migrate. Hulme argues that by treating all environmental degradation as irreversible and permanent, the protocol does not establish a system of return for climate refugees who only require temporary migration (50).

Hulme also mentions a third flaw which argues that establishing a protocol that would be supervised by an international executive committee would open up a new front in the emerging debate about green neocolonialism (51).[3] He questions for whose interests the protocol would be established and whether such a protocol is simply yet another way to impose international financial

3 Hulme defines green neocolonialism as the use of global environmental protection as a means of extending the hegemony of the international financial and political interests of the prosperous global North over the underdeveloped global South.

and political interests. This flaw is particularly interesting and somewhat ironic because it localizes the issue of climate change to the region where it is occurring. The argument that the interference of developed nations would only result in the imposition of their interests on less-developed nations effectively denies global responsibility for climate change. The climate crisis, which has been brought upon by wealthy developed nations, needs to be addressed by institutions that have the potential to provide protections for the thousands of vulnerable communities. By insisting that the proposed protocol would only help to institute green neocolonialism, this argument comes across as an excuse to evade international responsibility.

While the Biermann and Boas proposal for a new climate refugee framework is undoubtedly imperfect, they still manage to identify the core principles that a climate refugee protocol would need to embody in order to be successful. First, the protocol would need to be focused on the planned and voluntary resettlement and reintegration of affected populations, opposed to the mere emergency response and disaster relief (Biermann and Boas 12). While spontaneous migration is unavoidable, efforts need to be made so that resettlement plans allow climate refugees to move over the long run. Next, the protocol needs to recognize the importance of ensuring that host countries have the capacity to treat climate refugees as permanent immigrants. While this is not the case for all climate refugees, many will need to relocate permanently. It would be more productive if the climate refugee protocol had institutions in place for these cases, rather than ignoring that scenario and treating all climate refugees as temporary migrants.

Thirdly, unlike the current UN refugee regime, the climate refugee protocol should be tailored not only to the needs of individuals, but also to the needs of entire communities, cities, and even nations. In the case of small island states, special assistance is required to resettle and protect an entire nation of climate refugees, a provision that is not necessarily needed for political refugees. Fourth, the protocol should focus support on local communities and national agencies. In this way, the protocol would operate by using international assistance and funding for the domestic support and resettlement programs of affected countries (Biermann and Boas 13). According to the Biermann and Boas proposal, the final core principle of the protocol should be to see the protection

of climate refugees as a global problem and a global responsibility. This would imply that as the main contributors to climate change, industrialized countries have a responsibility to share in the financing, resettlement, and support of climate refugees.

In order to carry out these core principles, the protocol would require a system of administrative components and practical provisions to implement the regime effectively. According to Bonnie Docherty, senior researcher in the Arms Division of Human Rights Watch, and Tyler Giannini, Clinical Director of Harvard Law School Human Rights Program, these components can be broadly categorized into three branches: guarantees of assistance, shared responsibility, and administration of the protocol (Docherty and Giannini 373). Under guarantees of assistance, the important components of the protocol would include anything that would guarantee basic protections for climate refugees as they transfer from their home state to the host state. These protections would include standards for an internationally recognized status as climate refugees, human rights protections, and humanitarian aid (Docherty and Giannini 374). Largely borrowing from the provisions of existing refugee law, these components would be contributed by the host state and international community directly to climate refugees. Since environmental degradation affects entire communities, group recognition of climate refugee status would be the default protocol, although individual recognition would still be allowed. Clear protections for human rights and humanitarian assistance also need to be explicitly guaranteed by the protocol through an agreed-upon general standard of treatment. This includes access to public education, legal resources, employment benefits, and social security. This branch would also include the principle of non-refoulement in which host states would be prohibited from returning refugees to their home states on the basis that doing so would threaten their lives or ability to survive.

The branch for shared responsibility would incorporate the components that guarantee cooperation from all relevant parties, embodying the principle of shared but differentiated responsibilities. This includes host state responsibility, home state responsibility, and international cooperation and assistance (Docherty and Giannini 373). Host states would be required to implement the guarantees mentioned previously as they are in the best position to provide direct

humanitarian assistance. In turn, home states would be required to implement precautionary measures to the fullest extent possible with a particular emphasis on prevention and preparation for climate-induced migration. They would also be required to support the implementation of remedial measures by the host. Finally, the international community would be held accountable for providing financial assistance to both the host and home states accordingly so that the amount is proportionally contributed according to individual state responsibility for climate change and their capacity to pay (Docherty and Giannini 379). This shared responsibility would help allocate duties according to whomever is best fit to accomplish them as well as ensure accountability on behalf of all relevant parties.

Finally, given its complex nature, the protocol would require an established technical structure to help administer, coordinate, and oversee responsibilities. Docherty and Giannini mention three structures that are integral to the success of the potential protocol: a global fund, a coordinating agency, and a body of scientific experts (Docherty and Giannini 379). The resettlement of millions of people will almost definitely require substantial funds from the international community. A global fund would be established to determine the monetary amount a state is obligated to provide, collect payments, and distribute funds to states and organizations that provide direct aid to climate refugees. Biermann and Boas argue that a global fund should be created under a United Nations Framework Convention on Climate Change [UNFCCC] protocol under the principles that all financial awards would be grants, parties of the UNFCCC would determine the recipients and amounts of aid, and that the fund would reimburse refugee-protection costs fully when the sole cause of migration is climate change but partially when climate change is a contributing factor (Biermann and Boas 15). Additionally, the global fund should be able to allocate international contributions according to the common but differentiated responsibilities of individual states. This approach would account for differing contributions to global environmental problems as well as varied capacities to provide financial assistance.

A coordinating agency, similar to the model of the UNHCR, would be established to work directly with home and host states to implement the protocol's provisions and prevent major climate

refugee crises. Using existing humanitarian agencies as a model, the independent coordinating agency would ensure that host states provide appropriate access to human rights protection and humanitarian aid to climate refugees while simultaneously directing resources to migrants who have the opportunity to return to their homes. Another important responsibility of the coordinating agency would be to facilitate intergovernmental collaboration in order to effectively and quickly deliver aid. While the UNHCR provides a blueprint for such an agency, this newfound coordinating agency would need to learn from the experiences of existing agencies and tailor its methods and practices to the specific situation of climate refugees.

Lastly, a panel of scientific experts would be implemented to act as an advisory body to the new protocol. Comparable to the Technology and Economic Assessment Panel of the Montreal Protocol, the panel of scientific experts would provide the protocol with not only technical information related to the most effective climate refugee prevention strategies but also remedial practices. As an integral factor of informed decision-making, the panel would be responsible for determining the causality between specific environmental catastrophes and how closely they relate to subsequent migration. The panel would also provide information on individual state contributions to climate change—information that would then be used to determine their level of financial responsibility in the protection and resettlement of climate refugees. The studies conducted by the scientific experts would supplement the existing literature on the climate change-migration nexus and contribute new research to the field in order to help the new protocol adapt and evolve amongst the changing and dynamic environment of climate change- induced migration.

An important structure that Docherty and Giannini fail to include in their analysis is a panel for the representation of environmentally vulnerable communities. Community engagement is not only an important step to increasing civilian participation in climate action, but it also ensures that the concerns and questions of affected communities are heard by the international community and addressed by the appropriate agencies. As native residents of the regions affected by climate change, these communities are also the best equipped to provide a first-hand perspective to accompany scientific information in order to create comprehensive solutions to the climate

migration crisis, particularly because scientific credibility is reliant upon the incorporation of social expertise. Additionally, the establishment of a panel for vulnerable communities will allow the new protocol to understand the effect of climate migration on the distinctive cultural identities of the communities. As a result, the protocol would be better equipped to address concerns regarding the rights of climate refugees to enjoy their culture post-migration.

These administrative components in coordination with the core principles outlined above form a basic abstract for a future climate refugee protocol. We can use this abstract to hypothesize how a potential protocol would function in a real-life situation. Consider the small island states in the Pacific: as sea levels rise and storm surges become more common, these states are some of the most vulnerable to complete environmental desecration and displacement as a result of climate change. The protocol provides a direct chain of events for action. Under this proposed protocol, small island states would be able to file for financial and technical support for affected populations. First, the panel of scientific experts will determine the best defense mechanism to protect low-lying areas and prevent climate displacement. Financial support for adaptation activities will be contributed proportionately by developed states and allocated by the global fund. If the panel of scientific experts decides that it is too difficult to protect the affected regions in the long term, immediate action to resettle communities will be provided by the coordinating agency in conjunction with the local governments and organizations of both host and home states. Climate refugees who are forced to move across borders will be given the same protections and rights as permanent citizens while maintaining their option to return to their homeland in the future. Meanwhile, a panel of representatives from the small island states will be established and their responsibilities will include ensuring that displaced communities have sufficient access to resettlement support and rights to cultural practices in their host state, collaborating with the panel of scientific experts to assemble a plan for the resilience development, and retraining programs in the home state that will be funded at the discretion of the global fund. While basic in concept and lacking in detail, this scenario opens the door to a discussion regarding the future of an organized and unified response to the climate migration crisis.

Looking to the Future

Considering the accelerating rates of both slow and sudden onset climate disasters across the world, a discussion on the responsibilities of the international community regarding climate migration governance could not be timelier. In February of 2021, the UNHCR, UN Refugee Agency, and the International Organization for Migration called for states to strengthen the protection and assistance of people displaced in the context of disasters and climate change. However, the responsibility to invest in preparations for future climate-induced displacement should not just rest on the shoulders of individual states. The extent of displacement will ultimately prove to be far too great for individual states to handle without intergovernmental collaboration and unified international governing structures.

Within the next century, millions of environmentally vulnerable communities primarily from Asia, Africa, and Latin America, will be forced to migrate from their homes and seek refuge in new locations around the world. Although there is no exact statistic or time frame regarding how many lives will be fundamentally changed by climate change, existing literature suggests that the climate migration crisis will surpass all present past refugee crises in terms of the scale and extent of people affected. As a result, this article offers three overarching points of consideration: the development implications of the climate change migration nexus necessitate immediate action, existing governance mechanisms are not sufficiently equipped to prevent or protect current and future environmental migrants, and finally, the success of future climate migration governance is contingent on the incorporation of principles from environmental, human rights, and refugee law into an organized and unified international response.

The current legal situation for climate refugees has been ubiquitously described as a 'legal gap' by experts from across the spectrum of international environmental and human rights law. Despite the predicted severity of the climate migration crisis, the international community has been reluctant to enforce meaningful legislation that relates directly to the unique situation of environmental migrants. Despite their role in contributing to climate change, developed countries have pushed back against committing to binding climate migration legislation. While it would

be inaccurate to say that the current legal landscape is barren, the most important and relevant international institutions to the issue of environmental migration do not currently address the climate migration crisis, nor do they provide any provisions for the protection and prevention of environmentally displaced individuals. Both international environmental institutions and human rights conventions fail to recognize the severe implications that forced migration has on the residents of developing countries or the responsibility that developed states have to prevent and protect environmental migrants. While there are undeniably weaknesses within existing frameworks, there are also numerous ways in which these frameworks have the potential to be more productive if they are expanded beyond their current mandate.

It is important that when crafting new environmental migrant legislation, policymakers use existing mechanisms as a precedent for international governance while also applying creative solutions to the new problems posed by the climate change migration nexus. Whether that be by expanding the definition of 'refugee' under the Refugee Convention, enhancing the current protection toolbox, or developing a brand-new climate refugee protocol, intergovernmental and inter-agency collaboration is vital. Current frameworks also localize efforts exclusively to regional and national governments with a notably absent focus on the international community. However, as the Nansen Initiative and Protection Agenda have proven, several practices on the regional and national level can be successfully coopted to the international level and applied to situations where deemed useful. In particular, financial aid for these projects will require a global mechanism that keeps funding states accountable according to the principle of common but differentiated responsibility.

As the policymaking community begins to open itself to the possibility of a concrete framework of climate migration governance, it is important to provide short-term resiliency solutions as well as long-term resettlement plans. Early action will allow vulnerable communities to prepare for both slow and rapid onset climate disasters. Looking ahead, we will need to identify which groups of people are most affected by climate change as well as what are the root causes of their vulnerability. The unpredictable nature of climate change impacts means that governance

mechanisms need to be prepared for all possible climate migration scenarios in order to most effectively meet the needs of vulnerable communities. Now is the time for the international community to acknowledge the human implications of climate change, accept responsibility, and begin composing long-term solutions because there will soon come a time when it is too late to organize a unified response.

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