# **Turning the Tide: Recognizing Climate Change Refugees in International Law**

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Many of the debates surrounding the environmental, social, and economic implications of climate change are now well known. However, there is increasing concern over the extent to which those suffering displacement or forced migration as a result of climate change are protected. This article seeks to highlight the plight of such individuals and suggests how the current protection gap might be remedied. Present legal structures, such as the Refugee Convention and the framework for Internally Displaced Persons (IDPs), prove largely inadequate having been constructed for different purposes and being limited in their application. The alternative proposed in this article is a regionally oriented regime operating under the auspices of the UN Climate Change Framework. While both the Climate Change Convention and the Kyoto Protocol currently call for regional cooperation in respect of adaptation activities, it is argued there should be an explicit recognition of so-called climate change refugees in the post-Kvoto agreement that allows for, and facilitates, the development of regional programs to address the problem. Employing such a strategy would remedy the current protection gap that exists within the international legal system, while allowing states to respond and engage with climate change displacement in the most regionally appropriate manner.

There has been much ink spilled in recent years over legal and policy initiatives regarding climate change. While debate continues to rage over the most responsive, appropriate, and equitable method of addressing our changing climate, there is quickly developing a subsidiary problem. Increasingly, climate change is seen as being responsible for the displacement of individuals, communities, and, in some cases, entire nations, as the impacts of our changing climate are more widely and intensely felt. However, the plight of so-called "climate change refugees" continues largely unrecognized and mostly devoid of support by the international community.

This article seeks to explore the idea of climate change displacement and consider how those affected might fit within the international legal system.

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After exploring the link between climate change and displacement, the notion of an "environmental refugee" is considered as a possible platform from which to begin integrating the needs of those affected by climate change displacement into the international legal system. However, limitations as to the applicability of the 1951 United Nations Convention Relating to the Status of Refugees (the Refugee Convention), together with widespread confusion and skepticism regarding the terminology relating to environmental refugees, renders this approach ineffective. As an alternative, the concept of internally displaced persons (IDPs) appears relevant to those suffering displacement by environmental change and the Guiding Principles on Internal Displacement, along with national implementation policies, indicate a developing and expanding regime potentially suitable for climate change refugees. However, once more, there are notable shortcomings with this framework, which demonstrate problems in attempting to transplant a new category into a preexisting framework. Similar limitations are identified in relation to complementary protection. In light of this, an alternative is proposed whereby a regional system of collaboration is favored over international agreement. While the present climate change framework already calls for regional cooperation in respect of adaptation activities, there is scope for a post-Kyoto agreement to better facilitate regional law and policy development in response to climate change displacement. In addition to a discussion on what such a regional program might look like, a graduating scale of recognition is considered as a mechanism for identifying so-called climate change refugees. This article aims to highlight the plight of those affected by climate change displacement and considers possible law and policy alternatives for addressing the current lacuna within the international system. It is not, however, within the scope of this article to address issues of responsibility or specific rights and entitlements within a new climate change displacement framework.

# I. THE CHALLENGE OF CLIMATE CHANGE

The climate change problem continues to flourish, and there is now no country exempt from registering and experiencing its effects. The economic, environmental, social, and political implications of climatic change are widely recognized and documented, providing a basis for the negotiation of national, regional, and global mitigation efforts (e.g., Stern 2007; Intergovernmental Panel on Climate Change (IPCC) 2008a; and more generally Monbiot 2006; Lynas 2007). While international attempts to curb climate change are primarily channelled through the United Nations Framework Convention on Climate Change (UNFCCC) and Kyoto Protocol, there are additional policy initiatives operating at all governance levels: the Asia-Pacific Partnership on Clean Development and Climate represents an agreement between Australia, China, India, Japan, Korea, and the United States; the European Union has developed specific climate change policies and measures including the EU Emissions

Trading Scheme; the United Kingdom has concluded the 2007 Climate Change Bill; and the Alliance of Small Island States (AOSIS) functions primarily as an ad hoc lobby and negotiating voice for small island developing states within the UN system, especially in relation to climate change. Such programs and agreements primarily concentrate on efforts to reduce emission levels, implement mitigation mechanisms, and develop alternative technologies. There are clearly numerous problems created by the climate change phenomenon in terms of addressing and reconciling various economic, political, environmental, and technological interests. And there has been much written on the different problems and conflicting interests arising as a result of our changing climate (Freestone and Streck 2005; Helm 2005; Cowie 2007; Yamin and Depledge 2004; Toman and Sohngen 2004; Page 2006). However, perhaps one of the most recent challenges to come to light—and demonstrating significant potential to drastically redefine climate change discourse—is the increasing number of people displaced as a direct result of climate change.

The link between climate change and environmental vulnerability has now been well established and can be evidenced by, inter alia, the increased incidence of droughts, desertification, rising sea levels, and extreme weather patterns (IPCC 2008b). However, it is only more recently that the direct impact of these environmental changes on local communities is being recognized, especially in relation to the increasing prevalence of forced community relocation and resettlement (e.g., Kolmannskog 2008; Baird et al. 2007). While there remains some ongoing debate and skepticism as to the direct link between environmental climatic change and displacement as opposed to, for example, economic migration (see Black 2001; Castles 2002; Hagmann 2005), there is now mounting evidence to support the plight of so-called "climate change refugees," which is demanding increasing attention from the international legal community (see, e.g., Kolmannskog 2008).

# II. HOW DOES CLIMATE CHANGE CONTRIBUTE TO THE REFUGEE PROBLEM?

The notion of human displacement occurring as a result of climate change is a comparatively recent conceptualization vis-à-vis the more traditional ideas associated with refugees, such as persecution based on race, religion, nationality, or membership of a particular social group or political opinion. Nevertheless, the essence of the idea remains the same: the forced relocation of individuals due to external (and largely unmanageable) factors.

There are a number of different ways in which refugees can be created by climate change. First, and perhaps most conspicuous, is the displacement of persons due to changing sea levels (German Advisory Council on Global Change (GACGC) 2006). Current estimates by the IPCC indicate that by the end of this century the global sea level will rise somewhere between 28 and 43 centimeters as a result of thermal expansion and the melting of glaciers and ice caps (IPCC 2007a: 409). However, some scientists consider

the IPCC to be taking an overly conservative approach in terms of calculating rising sea levels since, inter alia, the acceleration of some glaciers draining ice from Greenland and West Antarctica is not included in the IPCC sea-level projection because there lacks a basis within existing literature from which to measure increases (Kerr 2006, 2007; Chao, Wu, and Li 2008). Indeed, more recent scientific research is suggesting a rise in sea level by as much as 40 to 150 centimeters within the same timeframe (Black 2008). As such, it is likely that the current estimates provided by the IPCC indicate a slower rise in global sea levels than is occurring in reality. Moreover, regional variances are predicted as a result of sea-level rise, with small island states likely to suffer disproportionate consequences especially in terms of land loss (IPCC 2007a: 413–14; see also IPCC 2008b; Gillespie 2003–2004).

However, the predicted rise in sea level does not only threaten small island states: many countries with low-lying coastal areas are similarly under serious threat. More than thirteen million people across five European countries could be affected due to flooding as a result of a one meter rise in sea level (European Environment Agency 2006: 22–23). Especially vulnerable are coastal regions in the Netherlands, Belgium, Germany, Romania, Poland, and Denmark (ibid.). Moreover, the threat is even more pronounced in regions of high population density, such as South Asia. The Ganges-Brahmaputra-Meghna river delta, which stretches from India and Bangladesh, to Nepal, China, and Bhutan, is home to approximately 129 million people. Rising sea levels, extensive flooding, and the resulting salt contamination of previously arable land has seen Bangladesh suffer more than most: the previously vast rice fields and agricultural land, which provided valuable resources and employment for local communities, have been replaced with export-based shrimp farms due to salt contamination and rising sea levels (Garnier 2007; McFerran 2007). With IPCC calculations indicating that a rise in sea levels of 45 centimeters would displace 5.5 million people and submerge over 10 percent of Bangladesh, increased levels of migration are unavoidable (IPCC 2001: 569). The problem is furthermore aggravated by the historical tensions within the region, with neighboring India and Burma reluctant to absorb the increasing number of migrants (see Ali 1993 for an overview of historical tensions within South Asia). Finally, less conspicuous than rising sea levels but equally concerning is the increased threat to food security. Storm surges deplete and degrade crop production, and coral bleaching extinguishes stocks of natural marine resources, while the availability of clean water supplies are threatened due to changing rainfall patterns, especially in small island states reliant on rainwater. Furthermore, coastal erosion together with the loss of land and infrastructure as a result of storm surges and unpredictable weather patterns, creates additional challenges in respect of displacement and relocation for local communities (Friends of the Earth 2005).

However, climate change displacement is not restricted only to coastal environments. The melting of glaciers in mountain regions results in huge

unstable lakes that threaten the existence of communities living in lower valleys. The recent increase in the frequency of glacial lake flooding, particularly in the Himalayan region, has been responsible for extensive fatalities, property damage, the destruction of forests, farms, and mountain infrastructure in downstream areas (Kattelmann 2003). In such situations, forced relocation becomes the only viable option where mountain glaciers continue to melt at an unprecedented rate. All of these factors are creating a new and increasingly prevalent refugee stream. Moreover, as climate change presently shows no indication of relenting, the number of refugees threatens to increase, along with the severity of environmental degradation and the ensuing humanitarian crisis. Based on a plausible range of emission scenario, current estimates suggest that anywhere between 50 million and 200 million people will be displaced by 2080, owing to the direct impacts of climate change (Nicholls 2004; but cf. Black 2001: 7-8). In this context, climate change displacement can be seen to represent a rapidly emerging problem for the international community.

# III. ADDRESSING CLIMATE CHANGE DISPLACEMENT THROUGH "ENVIRONMENTAL REFUGEE" DISCOURSE

When considering the plight of those displaced by climate change, perhaps the most obvious place to begin discussion is with the more popular notion of "environmental refugees." By its very nature, climate change displacement is both a result of, and has an impact on, the natural environment, so an examination of the preexisting discourse on environmental refugees appears a natural starting point (Black 1998). The concept of environmental refugees has now been in circulation for more than twenty years (see, e.g., Saunders 2000; Conisbee and Simms 2003; Keane 2004; McCue 1994; Falstrom 2002). While the precise definition of environmental refugee varies from commentator to commentator, there are characteristics common to all interpretations. During the late 1980s three categories of environmental refugees were identified that formed the basis of subsequent discussion on the topic (El-Hinnawi 1985: 4; Jacobson 1988: 6). The first category includes those people temporarily displaced due to temporary environmental stress but who return to their habitat once the area has been rehabilitated, such as following a natural hazard or environmental accident. Second, environmental refugees might include those permanently displaced who have resettled elsewhere due to permanent environmental change that, in many cases, is often man-made, such as large dam projects. The third category of environmental refugees includes people who have migrated (either temporarily or permanently) in search of a better quality of life as a result of progressive degradation of environmental resources. This often represents a more subjective classification whereby "the migration depends mainly on the refugees' perception of the change and their ability to cope with its consequences"

(El-Hinnawi 1985: 4–5). Subsequent interpretations have sought to characterize environmental refugees based upon factors such as the specific environmental raison d'être for migration (deforestation, rising sea levels, land degradation, water scarcity, and so on), the duration of migration (temporary, long term, permanent), a distinction between natural and man-made provocation (degradation of natural resources, industrial accidents, war and conflict, climate change), and migration in relation to state borders (internal or transboundary movements) (IOM and RPG 1992; Suhrke 1993; Trolldalen et al. 1992). This range of varied interpretations and consideration of different factors highlights many of the key challenges with the characterization and implementation of the concept of environmental refugees.

However, it is worth noting that the idea of communities migrating (or indeed collapsing) as a result of environmental change or development is not new (Diamond 2005). Traditionally, as natural resources become exhausted within one area, seasons change, agricultural crops become depleted, or the natural resources themselves migrate, people have relocated in order to better avail themselves of local natural resources. Furthermore, displacement and forced migration also occur due to one-off natural disaster events. The earthquake that hit Pakistan-administered Kashmir in October 2005 resulted in the death of more than 70,000 people and left more than three million people homeless, destroying hundreds of thousands of homes, schools, health centers, and shops (International Federation of Red Cross and Red Crescent Societies (IFRC) 2006: 12). The Indian Ocean tsunami of 2004 claimed 200,000 lives and displaced more than 150,000 with many thousands more affected directly by the disaster (IFRC 2005). Such environmental tragedies create huge numbers of displaced people, forcing both temporary and permanent migration in order to escape uninhabitable conditions. But, to what extent are environmental refugees recognized and what protection might such recognition offer?

# IV. RECOGNITION OF ENVIRONMENTAL REFUGEES WITHIN THE INTERNATIONAL LEGAL SYSTEM

Attempts to recognize and attribute legal status to environmental refugees have traditionally been channeled via the Refugee Convention (for an introduction, see Goodwin-Gill and McAdam 2007; Hathaway 2005; Feller, Türk, and Nicholson 2003). Created in response to the escalating refugee flow in postwar Europe, the Refugee Convention adopts a restrictive definition consequently limiting refugee status to a fairly narrow legal interpretation.<sup>2</sup> There are two core elements to the requirement of refugee status under the Convention. First, Article 1A requires that there must be a "well-founded fear of being persecuted" and second, the reasons for persecution are limited to "race, religion, nationality, membership of a particular social group or political opinion." There is no obvious provision for refugees created by

environmental change within this definition. Some have sought to argue that environmental refugees do currently fit within the Refugee Convention definition by claiming that government-induced environmental degradation is a form of persecution and, furthermore, that such persecution is taking place "for reasons of" environmental refugees' membership in a social group (see, e.g., Cooper 1998: 501; Aleinikoff 2003). Examples suggested include the desertification of the African Sahel where it is claimed the governments of the Sahel region "could have enacted policies and programs to cut population growth, to improve agricultural techniques, or to heighten food production" (Cooper 1998: 504-07) and, similarly, the Chernobyl disaster where the impacts of which were argued to be accentuated by the Soviet government's delayed response to the accident and apparent disregard to safety and environmental considerations in the country's quest for nuclear power (Cooper 1998: 514–19). While this argument may have some academic merit, it is unlikely to be accorded any significant credibility even if one adopts the most liberal approach to treaty interpretation, given the object and purpose of the agreement and the narrow applicability of the Refugee Convention intended by the parties.

While government involvement in environmental crises might inspire claims of contributory negligence or liability in respect of the refugee problem, it remains unlikely that such behavior could be equated to and categorized with traditional legal notions of persecution (based on, for example, race, religion, and nationality) provided for by the Refugee Convention. Refugee situations such as those in Kosovo (following the 1999 North Atlantic Treaty Organization (NATO) air strikes) and Afghanistan (particularly as a result of the events of September 11, 2001) represent the specific scenarios for which the Refugee Convention is designed, whereby the type of persecution identified is based upon one of the reasons explicitly set out in Article 1A(2) of the Convention. This is very different from situations where government-induced environmental degradation (such as forced relocation due to development projects, displacement resulting from natural hazards, or environmental accidents) may create or contribute to the refugee problem. Where government responsibility or negligence can be established,<sup>3</sup> the persecution suffered by the resulting environmental refugees is nonetheless evident and worthy of recognition and remedial action, but it clearly does not fall within the scope of the Refugee Convention as defined by present interpretations. Moreover, the definition does not leave open for interpretation the reasons for persecution, but instead it includes an exhaustive list of "race, religion, nationality, membership of a particular social group or political opinion," clearly setting the boundaries of the legal application of the Refugee Convention, an approach that has subsequently been supported by refugee law jurisprudence (Goodwin-Gill and McAdam 2007; Hathaway 2005). However, this is not to say that the plight of those commonly referred to as environmental refugees is any less morally or legally worthy than those traditionally identified by the Refugee Convention, but rather, merely illustrates

that there is an obvious difference between the two groups of refugees and the way in which they are recognized, which consequently necessitates a different and perhaps more contemporary and innovative approach.

While the possibility of incorporating environmental refugees within the existing Refugee Convention has been considered by some, others have concluded that adding the adjective "environmental" to the category "refugee" is generally unhelpful given that environmental change cannot meaningfully be separated from political and economic changes (see also McGregor 1993: 158). Moreover, the merit of attempting to dislocate environmental change from social and political factors, given the inevitable complexity and interrelatedness of the many global challenges that lead to environmental change, can similarly be questioned. Indeed, an examination of the historical development of refugee law and policy indicates that humanitarian concerns have invariably been shaped and influenced by geopolitical considerations, as can be seen by responses to refugee situations following the dissolution of the Soviet Union and later the break up of the former Yugoslavia (Cunliffe and Pugh 1997; Sword 1992; Chimni 1998). In this way, one might argue that refugee law should in fact encompass notions such as environmental refugees, given its traditional predisposition to incorporate political considerations into refugee policy discourse. However, it seems unlikely that such an approach might extend to the contentious realm of environmental degradation, which traditionally has not experienced the same level of political priority (although this is likely to change with access to environmental resources becoming increasingly politicized as states scramble to secure rights to energy resources and food security (Traynor 2008)).

Attempts to extend the Refugee Convention definition so as to be more sympathetic to the plight of environmental refugees have faced further obstacles due to severe opposition from state governments concerned that such a move would open the "refugee floodgates" given the shear enormity of the problem. Moreover, it is considered that such an expansion of the current refugee definition might result in the potential devaluation of the current protection for refugees (Keane 2004: 214-17). The UN Refugee Agency (UNHCR) has recognized the increasing number of people displaced by environmental change and the continuing international debate regarding the extension of the Refugee Convention to include environmental refugees. However, although the UNHCR has for a number of years demonstrated some limited involvement in environmental issues, it maintains there are significant and fundamental differences between traditional refugees accorded status under the Refugee Convention and those now more commonly referred to as environmental refugees (UNHCR 2005). One argument frequently raised is that those displaced as a result of environmental change could, in theory, still rely on the protection of their national government, while traditional refugees could not, as states were often the source of persecution, thus making an individual "unwilling to avail himself of the protection of that country" as required by Article 1A(2) of the Refugee Convention. Moreover, the distinction between refugees and internally displaced persons is a fundamental and integral characteristic of traditional refugee law defining the extent to which assistance will be made available to displaced persons (Phuong 2005; Geissler 1999). As the Refugee Convention is limited to situations where forced migration results in persons crossing state borders, the plight of those displaced internally falls outside the remit of the Refugee Convention, and, thus, such individuals are not protected by the framework of international refugee law. This again demonstrates the extent to which the traditional approach to refugee protection is ill suited to address the contemporary challenge of environmental refugees. In many situations concerning environmental refugees, there may, in fact, exist either an element of contributory culpability on the part of the state government that could well preclude that government consequently adopting responsibility for the welfare of the individuals (such as where government-sponsored development projects have led to the creation of environmental refugees), or the nation state may simply be unable to offer any assistance to its citizens where the environmental change is of such a magnitude that international support is the only viable option (e.g., where rising sea levels threaten the existence of small island states). The UNHCR considers "[l]umping both groups together under the same heading would further cloud the issues and could undermine efforts to help and protect either group and to address the root causes of either type of displacement" (UNHCR 2002). Thus, while arguments persist regarding the possibility of the Refugee Convention recognizing refugees created by environmental displacement, the fact remains that this agreement was constructed more than fifty years ago in response to a particularly discreet problem, and although some interpretative expansion has taken place, stretching the Refugee Convention's scope so as to incorporate the notion of environmental refugees (which is an ambiguous term in itself) is problematic and would encounter prohibitively strict resistance from the international community.

### V. INTERNALLY DISPLACED PERSONS

Given the complications of reconciling most environmental refugees with the statelessness requirement of the Refugee Convention, the concept of IDPs offers a possible alternative. The UNHCR has acknowledged the plight of IDPs and set out the extent of its involvement with such individuals, although the role of the UNHCR in this respect has been subject to some criticism (Phuong 2001). While recognizing that the protection of IDPs is primarily the responsibility of the national state concerned, and furthermore that the Office has no specific mandate in respect of IDPs (the scope of the Refugee Convention being restricted to refugees), the UNHCR employs Article 9 of the Statute of the Office to legitimize its involvement, which authoriszes the High Commissioner to "engage in such activities... as the General Assembly may determine, within the limits of the resources placed at his disposal"

(United Nations General Assembly (UNGA) 1950). Accordingly, in light of Article 9, and subsequent endorsement by the UN General Assembly, the competence of the Office has been broadened so as to include groups of forcibly displaced persons who do not fall, either individually or collectively, within the scope of the refugee definition (UNGA 1994).

IDPs are defined by the UNHCR in paragraph 2 of the Guiding Principles on Internal Displacement as

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. [emphasis added]

This definition clearly encapsulates the concept of environmental refugees to the extent that any displacement occurs internally, as opposed to penetrating state borders. The UNHCR's Guiding Principles on Internal Displacement identify rights and guarantees for the protection of those suffering forced displacement (UNHCR 1998). While the Principles reflect, and are consistent with, international human rights law and international humanitarian law, they recognize that it is national authorities that have the primary duty and responsibility to provide protection and assistance to internally displaced persons. Concerns regarding the maintenance of national sovereignty and the avoidance of unwanted intervention by international organizations were largely quelled by the requirement that any engagement by the UNHCR must, first, be at the request of the Secretary-General or the competent principal organs of the UN and, second, that the consent of the state concerned is given (UNGA 1992, 1994, 1995). Although not a binding legal source, the Guidelines have been recognized by the UN General Assembly as "an important international framework for the protection of internally displaced persons" (UNGA 2005: para. 132). Notably, the Guidelines begin by recognizing that all authorities and international actors must "prevent and avoid conditions that might lead to displacement of persons" and guarantee that "every human being shall have the right to be protected against being arbitrarily displaced" (UNHCR 1998: principles 5 and 6(1)). However failing this, the Guidelines outline principles of nondiscrimination, protection during displacement, and guidance on return, resettlement, and reintegration in cases where displacement is unavoidable.

While the IDP Guidelines lack the formal legal status enjoyed by the Refugee Convention, their value perhaps is most significant to the extent that national IDP policies incorporate and build upon the international principles.<sup>4</sup> This allows for states to be flexible in national implementation both in terms of timing and also regarding the extent to which substantive commitments are introduced, thereby allowing for domestic IDP policies to develop at their own pace and in response to localized concerns and events. However, there may be cause for concern as to whether national IDP policies fully and comprehensively incorporate the principles and standards set out in the IDP Guidelines, as opposed to implementing something that is, in effect, merely a token expression of support. By way of illustration, the National IDP policy issued by Nepal in March 2006 made positive steps to formalize the situation of IDPs, but it ignored a number of basic principles and recommendations, despite explicit references to the UN Guiding Principles on Internal Displacement. However, a revised policy issued in February 2007 made important developments on the earlier version, including a new and nondiscriminatory IDP definition (United Nations Office for the Coordination of Humanitarian Affairs (OCHA) 2006, 2007). Nonetheless, as more states choose to adopt the Principles into national policies, they become increasingly self-enforcing and thereby represent a benchmark of international standards and expectation (for a contextual explanation, see, e.g., Islam 2006). Certainly, the ongoing national adoption of IDP principles could eventually indicate the emergence of a new norm of customary international law, thereby resulting in binding universal norms via ad hoc national and regional policy initiatives. Although this might be considered a somewhat lengthy law-making process (compared to concluding a new international agreement) it could, nevertheless, represent a more responsive "bottom-up" procedure for creating international law that better reflects the needs and capabilities of the states ultimately affected. Moreover, the value of such nonbinding "soft law" initiatives should not be underplayed. Where it is difficult to secure state agreement—in areas such as climate change displacement, which remains controversial partly due to its wide-ranging impact and potential threat to state sovereignty—soft law often provides an effective mechanism for promoting state action, albeit in a nonbinding form.

When considering the plight of environmental refugees, it appears that the IDP framework may offer greater value in terms of recognizing rights and protection than the more traditional system established under the Refugee Convention. The IDP definition envisages people displaced as a result of natural or human-made disasters, a category into which environmental refugees are clearly intended to fit. However, while the IDP framework is largely conducive to recognizing and supporting environmental refugees, it is limited in its applicability as a result of its nonbinding legal status. A possible resolution to this obstacle might be to focus on promoting the needs of environmental refugees through national IDP policies that enjoy greater legal influence, albeit only at the domestic level. In this way, environmental refugees may be better recognized, and their needs more appropriately met by a localized and more responsive framework. This approach could then be further bolstered by establishing some form of international coordination in respect of the various national polices to ensure basic standards and a uniform approach to environmental refugees is adopted within the IDP framework. The UNHCR would appear the obvious international body to take responsibility for such a role, especially given its expanded mandate regarding IDPs. Other candidates might include the intergovernmental International Organisation for Migration, or the Internal Displacement Monitoring Center (although this body focuses on conflict-based migration).

However, the biggest drawback with employing national IDP policies in response to environmental refugees is that displacement will only be recognized to the extent that it affects IDPs: no transborder displacement will be considered. While it may be argued that those likely to be considered environmental refugees are more likely to suffer from internal rather than transborder displacement (i.e., a higher proportion of those suffering environmental displacement will do so within national boundaries), such an approach fails to appreciate the true extent of the problem (internal displacement may well lead to transborder displacement in the long term as environmental change continues), and thus offers little more than a temporary solution. There still remains a need for such individuals to be recognized and protected based on their own intrinsic value and circumstances rather than being manipulated and engineered into a preexisting framework designed for other purposes. Moreover, when considering the wisdom of employing environmental refugee discourse to address those displaced by climate change, it must be acknowledged that there remains a certain degree of skepticism surrounding the development and understanding of the term environmental refugee itself (Black 2001).

# VI. COMPLEMENTARY PROTECTION

In addition to the well-established notions of IDPs and refugees recognized within the Refugee Convention framework discussed above, a more recent development in the area of refugee discourse is that of complementary protection. Recognizing that the Refugee Convention has a narrow applicability and is therefore limited in its application, the idea of complementary protection describes "protection granted by states on the basis of an international protection need outside of the 1951 Convention framework" (McAdam 2007: 21). The very existence of this principle highlights the limitations of the Refugee Convention by recognizing and responding to the numerous individuals engaged in refugee-type experiences but unable to meet the Convention's definitional requirements. As such, complementary protection identifies additional legal sources that can provide an alternative basis for protection (ibid.: 23).

Agreements at the regional level can be seen to offer some form of complementary protection. European initiatives largely clarify existing international and community obligations, thereby harmonizing complementary protection practices (EC Directive 2004/83; EC Directive 2001/55). However, in doing so, agreement has mostly been reached at the lowest common level, meaning significant political compromises have been made in order to secure agreement and a diluted protection system has resulted (McAdam 2007: 53-

110; Lopez 2007: 393-400). Efforts to secure complementary protection in the United States are no more encouraging with the relevant regime being particularly discretionary in its application and offering temporary protection only (Lopez 2007: 400–02). At the international level the nonrefoulement principle, set out in Article 3 of the 1984 Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, has been used successfully to secure protection against a state expelling, returning, or extraditing "a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." While an important element of complementary protection for refugees, this provision would, however, be unlikely to offer much assistance to those displaced by environmental factors. The 1966 International Covenant on Civil and Political Rights notably broadens the scope of nonrefoulement in Article 7 so as to include "inhumane or degrading treatment or punishment," but this again remains of limited use to environmental refugees. Thus, complementary protection offers little additional value to securing the protection of those displaced by environmental change. Operating largely on an ad hoc basis, and unable to recognize or address the underlying causes of environmental displacement, this regime is currently better suited to other refugee groups seeking alternative protection, rather than those subject to environmentally motivated displacement.

# VII. CLIMATE CHANGE DISPLACEMENT

It appears there is increasingly a need to move away from traditional approaches of dealing with the migration and refugee problem created by environmental change. As demonstrated above, historically refugees have been identified and accorded status within the Refugee Convention framework, although problems inevitably arise when attempts are made to wedge a new category or legal mandate into a preexisting framework that was originally constructed for an entirely different purpose. Indeed what is required is a fresh and contemporary analysis of the situation. By taking stock of current trends and considering new emerging patterns of refugee migration resulting from climate change, it becomes possible to determine the extent to which there exists a need for specific recognition and protection to be afforded to such individuals. Climate change displacement will invariably be considered part of the broader family of environmental refugee discourse and in many ways cannot be dislocated from this association. However, without undermining the efforts of environmental refugees to gain recognition, the present discussion adopts a specific focus on the prospects for those displaced as a result of climate change. Indeed, could it be possible that the phenomenon of climate change has now created a new and independent category of refugee which requires specific and autonomous recognition by the international legal system?

# VIII. ILLUSTRATING THE PROBLEM IN QUESTION: THE CASE OF TUVALU

Located in the Pacific Ocean, the nation of Tuvalu is comprised of nine island atolls totaling an area of 26 square kilometers. However, as one of the world's lowest lying countries (ranging from five to less than one meter above sea level). Tuvalu and its 11,000 residents are in serious danger from the ongoing threat of global warming and rising sea levels. At the third conference of the parties for the UN Framework Convention on Climate Change in 1997, then prime minister of Tuvalu, Bikenibeu Paeniu, drew attention to the plight of his nation-state in light of global warming leading to rising sea levels, along with increased frequency of cyclones, tornados, flooding, and tide surges.<sup>5</sup> Less than ten years later, the population of Tuvalu has become one of the first to be forced into relocating as a result of climate change. Initial attempts to establish a relocation scheme with neighboring Australia proved unsuccessful. Despite mounting data to indicate otherwise, the Australian government maintained that there was no evidence to suggest Pacific island populations were in any imminent danger of being displaced by rising sea levels.6

Although some Tuvaluans have already relocated to Fiji, New Zealand, and other neighboring islands as a result of the impacts of climate change, there remains a clear and imminent threat for remaining residents. Some have sought to argue that the Pacific Access Category (PAC) agreement between New Zealand and Tuvalu, which establishes a specific annual quota for citizens to be granted residence in New Zealand, represents a special immigration deal to enable environmental refugees displaced by the effects of climate change to move to a less vulnerable environment (GACGC 2006: 47; Friends of the Earth 2005: 5-6). However, a closer examination of the agreement casts doubt over such assertions. The PAC agreement establishes a special quota for citizens of Tuvalu (along with individual quotas for Kiribati, Fiji, and Tonga) to be granted residence in New Zealand annually, along with their partners and dependent children.<sup>7</sup> However, there are certain requirements that Tuvaluans must satisfy in order to qualify under the PAC scheme: in addition to basic residence requirements, the immigration program is limited to those aged between eighteen and forty-five, who have an acceptable offer of employment in New Zealand, and meet a minimum level of English-language ability. Thus, although there is a link between, on the one hand, the immigration offer extended by New Zealand to residents of Tuvalu and, on the other, the increasing severity of climate change impacts in the Pacific Island region, the PAC initiative remains a structured and limited agreement rather than any type of environmental refugee arrangement. Indeed, it may be argued that the environmental significance of the PAC has been exaggerated and that the agreement represents little more than an economically oriented immigration move to bolster New Zealand's workforce, given the variety and class of conditions attached to the category.

Key findings released by the IPCC as part of its Fourth Assessment Report highlight the plight of small islands such as Tuvalu, noting characteristics that make them especially vulnerable to the effects of climate change, sea-level rise, and extreme events (IPCC 2007b: 13). In particular, it is observed that "[s]ea-level rise is expected to exacerbate inundation, storm surge, erosion and other coastal hazards, thus threatening vital infrastructure, settlements and facilities that support the livelihood of island communities" (IPCC 2007b: 13). The threat posed to small island states within the South Pacific by global warming has raised concerns over an influx of climate change refugees to neighboring New Zealand and Australia (Gorman 2007). While it is acknowledged that such individuals do not fall within the scope of the Refugee Convention, New Zealand's Refugee Resettlement organization (the government's key nongovernmental organization (NGO) partner in the area of refugee resettlement) has specifically recognized that the effects of climate change potentially create a "new category" of refugees. Future refugee scenarios must take into account the

seven million people inhabiting the islands of the South Pacific, many of whom could potentially be affected by "shrinking" land mass and/or environmental change. As a close Pacific neighbour, New Zealand could well be called upon to accept some of the displaced populations that may result from the growing effects of global warming and other climatic change. (Cotton 2004)

However, the Refugee Resettlement organization considers that "such displacement of Pacific populations is not likely to occur suddenly and there is therefore time for New Zealand to plan for an appropriate graduated response to such an unfolding scenario" (Cotton 2004). This approach is problematic firstly because it is considered that such displacement is not imminent—an assertion clearly dispelled by the IPCC, which recently indicated that average global temperatures could rise more than 6 percent by 2100, higher than previously estimated and also threatening to occur over a much shorter timeframe (IPCC 2007a: 803-04; McCarthy 2007). Such alarming results are all the more significant given the typically conservative nature of the IPCC and the inevitable haggling and negotiation that preempts the publication of the final report (Monbiot 2007; Castle 2007). Moreover, the manner of identifying climate change refugees by such organizations is misconstrued. Instead of limiting recognition to those affected by rising sea levels, broader environmental change must be recognized as contributing to climate displacement. Indeed natural disasters, the increasing prevalence of which can frequently be attributed to global warming, are identified separately by the Refugee Resettlement organization as representing "the most likely cause of sudden large-scale emergency displacement of people in the region" (Cotton 2004).

Accordingly, more needs to be done to draw together different forms of environmental change affecting countries such as Tuvalu and recognize the inevitability of climate change displacement. One conclusion to be drawn from the piecemeal approach currently favored by states is that by neglecting to acknowledge such a phenomenon, states are in effect absolving themselves of any responsibility to recognize and deal with the increasingly problematic dilemma of climate change refugees. So, what is the best way forward?

# IX. PROPOSING AN ALTERNATIVE: HOW CLIMATE CHANGE REFUGEES MIGHT BE BEST PROVIDED FOR WITHIN THE INTERNATIONAL LEGAL SYSTEM

In recognizing the problem of climate change displacement, this article has highlighted the present lacuna within the international legal system in terms of effectively recognizing and responding to the needs of so-called climate change refugees. One solution to the current inadequacy of legal responses may be the negotiation and conclusion of a new international agreement that seeks to specifically recognize the plight of such individuals and provide a framework for their protection. However, this approach could well be fraught with problems. First, the notion of attributing international rights and responsibilities in respect of displaced persons cuts to the very heart of state sovereignty and thus would likely prove a contentious issue upon which to achieve universal (or as close to universal so as to make worthwhile) agreement. As the Kyoto Protocol has demonstrated, the issue of climate change remains controversial given its cross-cutting reach from environmental and social impacts, through to economic and political policy, resulting in many states being reluctant to make binding commitments. Accordingly, attempts to attribute rights and responsibilities in relation to the climate change displacement problem would require certain states accepting responsibility for environmental damage and thus, recognizing the consequent costs (be they economic, social, or political). While, in theory, such policy initiatives present an ideal solution, their reality appears less than likely (see, e.g., the phased immigration benefits suggested by Byravan and Rajan 2006: 249). Therefore, taking into consideration the unwillingness of states to compromise their sovereignty, and acknowledging the reluctance of the United States to agree to the most basic of commitments via the Kyoto Protocol, it would seem unlikely that a new global agreement could be reached specifically in relation to climate change displacement.

A second reason as to why a new global agreement would be problematic relates to the conceptualization of climate change refugees. Although it is arguably possible to identify displacement occurring as a direct result of climate change, current law and policy really only allow for the identification of refugees (as recognized by the Refugee Convention definition) or, where no transborder migration has occurred, IDPs in accordance with the UNHCR's Guiding Principles on Internal Displacement. Attempts to conclude a new international agreement on "climate change refugees" would be problematic given the present international legal terminology that distinguishes between transborder (i.e., refugees) and internal displacement (i.e., IDPs). Most literature on climate change and environmental refugees makes no legal distinction as to the type of displacement (internal or transborder). While this may well be an obstacle that can be resolved in the future—and it is anticipated that long term its resolution will be necessary—at the present point in global climate change negotiations, it would likely prove to be a debilitating factor that could frustrate ongoing discussions toward a new agreement.

In light of these potential problems, an alternative system for addressing the plight of those displaced by climate change may be better coordinated by way of regional agreement, operating under an international umbrella framework. At present, it appears unlikely that states would agree to a global binding treaty that, first, requires recognition of the existence of climate change displacement and, second, depends upon agreement to provide support and protection to those affected, given the general reluctance of states to voluntarily commit to obligations that may impact on economic, social, and political policy. However, regional cooperation and bilateral agreement that build on existing geopolitical and economic relationships and, moreover, that allow states to develop responsive policies in a timeframe appropriate to the relative capacity of the countries involved, appears a model better suited to climate change displacement. Indeed, regional agreements are more likely to be able to achieve a greater level of commitment from participating states than might otherwise be achieved at the international level, as demonstrated when refugee terminology was drafted so as to conceivably extend to "environmental refugees" in regional agreements for both Africa and Central America.8

The use of regional initiatives is already commonplace within the international legal system, whereby regional and international agreements are used to complement and strengthen one another (see, e.g., Schreuer 1995). One example is that of the Regional Seas Programme which has been in operation now for more than two decades under the auspices of the United Nations Law of the Sea Convention (UNCLOS). With more than 140 participating states and thirteen regional programs, this initiative aims to engage neighboring countries in order to protect their shared marine environment by concluding regional treaties and action plans responding to the specific needs of states and establishing relevant and appropriate responsibilities and obligations (Akiwumi and Melvasalo 1998; and generally Frankx 1998). The protection of the marine environment appears an obvious candidate for regional policy initiatives where issues of pollution, resource management, and environmental degradation clearly demonstrate a need for a localized geographical response within a broader international framework. However, similarities can be recognized in respect of climate change displacement. While the issue is one of international significance, the most immediate impacts will be felt regionally where those displaced seek new homes by way of transborder migration. Moreover, those subject to forced migration are likely to seek similar cultural, social, and environmental conditions, often (although not always) offered by neighboring states. In this way,

while very much an issue of international concern, climate change displacement is likely to be felt in the most immediate sense within the regional

So how might a regionally orientated program operate in terms of climate change displacement? As an international framework agreement, the UNFCCC currently promotes regional policy development by, inter alia, focusing on adaptation. The UNFCCC conceives adaptation strategies that involve an assessment of current vulnerabilities to climate change impacts, along with information exchange on traditional coping practices, diversified livelihoods, and current government and local interventions. The development of adaptation strategies in relation to displacement would clearly represent an encouraging and intelligent directional move for ensuring the protection of those displaced by allowing states to adapt to new challenges and trends created as a result of climate change. Article 4(1)(b) of the UNFCCC states that

[all Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall ... formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases . . . and measures to facilitate adequate adaptation to climate change. [emphasis added]

This commitment to formulate and implement regional adaptation measures would conceivably extend to initiatives in respect of climate change induced displacement. Furthermore, the Kyoto Protocol has gone some way in reaffirming the commitment to adaptation set out in the UNFCCC by stating in Article 19(b) that all parties shall agree to "formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change." Indeed the importance of states recognizing and engaging with adaptation to climate change was highlighted in 2005 when the conference of the parties agreed to a five-year program of work on impacts, vulnerability, and adaptation to climate change, known as the Nairobi work program (UNFCCC Conference of the Parties (COP) 2005). The objective of this program arguably envisages adaptation to factors such as displacement by providing assistance to parties (especially developing countries, least developed countries, and small island developing states) to "improve their understanding and assessment of impacts, vulnerability and adaptation, and to make informed decisions on practical adaptation actions and measures to respond to climate change on a sound, scientific, technical and socio-economic basis, taking into account current and future climate change and variability" (ibid.: para. 1, Annex). Thus, it appears that there already exists an international framework within which regional initiatives can be developed to respond more clearly and directly to the problem of displacement, and, indeed, regional cooperation and agreement has been encouraged as a way forward. However, there remains scope for a more explicit and detailed mandate for climate change displacement to be developed with the negotiation and drafting of a post-Kyoto agreement. Indeed, paragraphs 1(c)(i)–(v) of the 2007 Bali Action Plan specifically identify the need for enhanced action on adaptation by parties in a post-2012 agreement.

Accordingly, a few suggestions as to what a new post-Kyoto agreement should include in this respect can be proposed. First, there should be some specific recognition of the occurrence of climate change displacement. While acknowledging that states would not reach unanimous agreement regarding how climate change displacement might be defined, or what rights and responsibilities should be attributed in this respect, a new agreement should at the very least acknowledge the link between climate change and displacement and recognize the resulting problem. Next, the post-Kyoto agreement should explicitly provide for, and encourage, regional cooperation in addressing the problem. Currently the UNFCCC and Kyoto Protocol require states to take action (including at a regional level) in respect of adaptation, but a new agreement should set out a similar requirement specifically in terms of climate change displacement. In this way, there would be universal agreement that the problem exists and should, at this point in time, be managed regionally without requiring states to negotiate international commitments. Finally, depending on the political will of negotiating states, it would be advantageous to conclude, outside the formal international agreement, some form of nonbinding "Memorandum of Understanding" or "Plan of Action" whereby states can discuss strategies and techniques for implementing regional initiatives. In this way, states can continue the discussion and development of climate change displacement discourse, without the restraints of binding negotiations that would likely result in a stalemate.

# X. WHAT MIGHT A REGIONAL APPROACH TO CLIMATE CHANGE DISPLACEMENT LOOK LIKE?

One of the key challenges in securing protection for those affected by climate change displacement lies with the definitional complexities of the term, taking into account preexisting discourse surrounding the Refugee Convention and previous attempts to define environmental refugees. Alternatively, a system that instead recognizes the idea of climate change displacement at an international level, while leaving the detail of agreement and degree of engagement to regional groupings, appears more responsive and appropriate to the problem. Moreover, a regional system better employs notions of subsidiarity that more accurately reflect the reality of state behavior rather than installing a top-down legal framework.

Many current regional groupings based on economic, social, political, and environmental interests are already well established. Preexisting regional associations offer one framework within which programs for climate change displacement can be developed, with obvious candidates including the African Union (AU), the Organization of American States (OAS), the European Union (EU), and the Association of South East Asian Nations (ASEAN). Similarly, smaller regional initiatives could well be concluded within these larger groupings (one might envisage additional and more responsive initiatives operating within the AU, or in order to represent Central American states), and regional agreements could also be concluded where no obvious regional organization currently exists, but evidence of strong regional cooperation is apparent (e.g., the South Pacific). Working within these regional organizations (or indeed new collaborative alliances) would allow states to build a plan of action or agreement for dealing with climate change displacement specifically in that region. International institutional support from a subsidiary body located within the UNFCCC could be responsible for coordinating the regional initiatives, facilitating exchange of information, and (where appropriate) providing opportunities for interaction between regional organizations. Accordingly, taking into account the differing political will and capacity of various states within any regional grouping, and the specific displacement challenges facing that particular area, a regional agreement could develop displacement agreements and/or action plans within the context of the international climate change framework so as to best reflect individual regional capacities.

There are a number of possible advantages in employing such a structure. First, a regional approach represents an opportunity to further implement the framework on IDPs into discourse on climate displacement. While there currently exists fairly well-established guidelines on how IDPs should be treated, much of which has been incorporated into numerous national policy frameworks, regional action plans on climate change displacement could benefit from the experience of the preexisting IDP guidelines, while the additional endorsement and adoption of IDP principles would add greater credibility and acceptance to the guidelines themselves. Second, the creation of a regional program for climate change displacement establishes a structure whereby good practice can be demonstrated and exchanged between regional groups. This provides an excellent opportunity for states to demonstrate new initiatives or, conversely, analyze how programs are operating in other regions before adopting such regimes for use. Third, a regional structure allows for various levels of engagement and development by states, depending on the individual capacity of each country involved and the (perceived) severity of the problem in that area. It may be more likely that agreement can be reached and appropriate provisions made for regional migration (along with the attribution of rights and responsibilities) in, for example, a South Pacific regional alignment, than one involving the OAS where there remains ongoing reluctance by some states to recognize the extent of climate change and make necessary mitigation and adaptation commitments. Finally, in the long term, it may be that the conclusion and acceptance of various regional agreements concluded under the international climate change framework would, in years to come, lead to the creation of customary international law. While this clearly remains a far-reaching proposition at present, it is worth recognizing how far the law relating to climate change has developed in a comparatively short time and that, ultimately, customary law evolves through such state practice.

# XI. HOW MIGHT STATES IDENTIFY CLIMATE CHANGE REFUGEES?

There will inevitably be challenges in concluding a worthwhile definition of climate change refugees. While each regional association would have the independence to conclude a definition or understanding of the term, which is relevant to that particular group of countries, it may be possible to propose one definitional approach that still allows a certain degree of flexibility. Appreciating the variability of how such refugees might be created, from, on the one hand, situations where environmental change necessitates relocation for ongoing survival to, alternatively, population migration for the purpose of securing a better quality of life as a result of progressive degradation of environmental resources, there is a considerable range of individuals that could conceivably be located within such a definition. Therefore, it may be worth pondering a definition that incorporates some form of graduating recognition whereby the notion of climate change refugees, and the correlating levels of protection guaranteed, occurs along a sliding scale. In situations where relocation becomes essential due to climate change induced environmental change, which largely degrades resources to the point of inhabitability, the highest level of protection should be afforded to the resulting refugees. When considering the climate change continuum, scenarios at this end of the scale represent an acute form of refugee status whereby a severe or critical problem is reached as a result of environmental change, such as rising sea levels submerging Tuvalu. At the opposite end of the continuum is located a more chronic form of displacement where climateinduced environmental change creates refugees by way of gradually degrading resources so as to make life increasingly difficult. This occurs where communities relocate due to, for example, experiencing an increase in flooding or problems associated with food security, but in theory could remain within that same environment albeit under increasingly onerous and challenging conditions. In such situations perhaps a lower level of protection (along the notion of a sliding scale) should be afforded to climate change refugees, compared with those acute refugees that have no option whatsoever as to relocation. Adopting an approach whereby climate change refugees are identified along a graduating scale would allow for differing degrees of protection to be accorded depending on the severity of the situation. Moreover, the flexibility of such a system would more likely encourage states to participate in a regional agreement on climate change displacement that represents the first challenge in addressing the problem. It is then possible

that increasingly substantive obligations could be developed once states are engaged in the process by evolving more detailed operational guidelines and responding to (more demanding) precedent established in other regional agreements. Furthermore, once regional agreements on climate change displacement are in place, international persuasion, political influence from other regional bodies, and the promotion of accountability by civil society might ensure that agreements on climate change displacement achieve some level of consistency. Crucially, given that individual states are not having a definition of climate change displacement and corresponding level of protection imposed upon them, concerns regarding the erosion of state sovereignty should be avoided.

While in some ways this approach is merited in terms of managing the apparently wide and varied scope of those people displaced by climate change, it arguably maintains and promotes an artificial distinction that could prove problematic in managing the overall problem. Climate change refugees occur at both ends of the continuum as a result of differing types and degrees of environmental change, with the key difference between acute and chronic refugees being the notion of *imminence*. Climate change induced environmental degradation leads to displacement, which may necessitate immediate relocation, or individuals may persist in an attempt to adapt and overcome environmental change until such point as they become overwhelmed (as problems with food security or the availability of clean water supplies become insurmountable) and relocation becomes the only viable remaining option. Accordingly, any definition for the conceptualization of climate change refugees must incorporate individuals at both ends of the theoretical sliding scale, along with all those that occur in between. Clearly such a definition could enjoy wide scope and application that potentially leads to concern in terms of floodgate claims and extensive (or excessive) responsibility for states. What is imperative in any definition concluded is that the both the displacement and the *causes of displacement* need to be addressed (Falstrom 2002: 15–17). This way, protection can be provided to those displaced, but, importantly, efforts can also be made to prevent such displacement reoccurring, and relocation of people back to their original homes may be possible in situations where the cause of displacement can be recognized and the environmental degradation rectified. While climate change displacement will not always be a temporary condition that can result in the return of individuals, incorporating a recognition of the causes of displacement inevitably represents good practice and demonstrates a more holistic understanding of the problem, which leads to more responsive and comprehensive solutions.

# XII. CONCLUSION

The notion of environmentally displaced persons is unlikely to ever be incorporated within the existing framework of the Refugee Convention.

However, the increasing prevalence of climate change, along with the resulting environmental degradation and humanitarian problems, has led to an urgent need for a response by the international legal community. There can no longer be speculation as to the existence of climate change or the consequences it is having on both the natural and human environment. The challenge now is to secure collective agreement and ensure that action is taken to address the situation. The rapidly increasing number of individuals displaced as a result of climate change highlights the need, first, for recognition of the problem and, second, for some form of protection to be provided to such individuals. However, this necessitates a move away from traditional conceptions of refugee discourse to a more contemporary approach —one that recognizes and responds to present-day challenges. There may be scope to develop more comprehensive protection for individuals within the IDP framework, specifically employing national IDP policies and introducing new policy mechanisms for international coordination. However, perhaps the best way forward lies with harnessing regional cooperation between states and building on existing geopolitical, economic, cultural, and environmental relationships that already exist within many regional frameworks. This article has attempted to demonstrate the current lacuna regarding those affected by climate change. It does not purport to provide all the answers regarding the creation of a new protection regime, but instead it highlights some of the most salient concerns and suggests possible approaches for addressing the problem. It is not always easy to convince states of the urgency and severity of such situations when it is not their own populations directly and immediately affected (or even sometimes, when it is). However, climate change displacement is on the rise both in terms of numbers and the increasing degrees of severity, with the result that there now exists (and there will continue to become increasing pressure) on both individual states and the international community as a whole to recognize and address the situation.

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### NOTES

- 1. Throughout this article, unless otherwise indicated the term "refugee" is used in its most general sense to refer to those persons subject to displacement, be it internal or transborder. Where the term is intended to have the definition included in the 1951 Refugee Convention, this will be indicated.
- 2. Initially the 1951 Convention applied only to "events occurring before 1 January 1951," but the scope was later extended by the 1967 Protocol Relating to the Status of Refugees.
- 3. There are clearly questions to be considered regarding the extent to which states can be held liable for contributing to a refugee problem.

- 4. The Internal Displacement Monitoring Centre, established in 1998 by the Norwegian Refugee Council, inter alia, monitors and collects information on the national IDP policies of countries especially affected by conflict-induced internal displacement. See http://www.internal-displacement.org/.
- 5. Tuvalu statement presented by His Excellency the Rt. Hon. Bikenibeu Paeniu, Prime Ministerial Special Envoy on Climate Change, United Nations Framework Convention on Climate Change (COP3) 8 December 1997, Kyoto, available at http://www.tuvaluislands.com/kyoto-panieu.htm.
- 6. A spokesman for then Minister for Foreign Affairs, Alexander Downer, commented that sea-level rise was a "long-term issue and it is too early to provide an accurate assessment of regional trends" adding that it was important to recognize that islands "rise and fall in height as a result of geological pressure" (Banham 2006).
- 7. The current quota for Tuvalu and Kiribati is seventy-five citizens each, while Fiji and Tonga have quotas for 250, respectively. See the Immigration New Zealand Web site, http://www.immigration.govt.nz/migrant/stream/live/pacificaccess/.
- 8. The 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa includes in its definition of "refugee" people displaced as a result of "events seriously disturbing public order in either part or the whole of his country of origin or nationality" (Article 1(2)). Note that South Africa's 1998 Refugees Act adopts the wider definition set out by the OAU, rather than the narrower definition identified by the 1951 Refugee Convention (see Section 3 of the Act, which defines "Refugee Status"). The 1984 Cartagena Declaration on Refugees (Central America) concludes that it is necessary to consider enlarging the concept of a refugee so as to include "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order" (para. III(3)) (emphasis added).

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