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WITH OUR FEET TO THE FIRE: REGIONAL AGREEMENTS AS MECHANISMS OF CHANGING INTERNATIONAL LAW TO INCLUDE PERSONS DISPLACED BY CLIMATE CHANGE

INTRODUCTION

As climate change becomes an increasingly dire problem, the global community has equally and in tandem become more fraught in coming up with a solution.¹ With the Trump administration in the United States denying or quietly withdrawing support for policies that would cut carbon emissions, it seems the global community is sliding backwards in the arena of climate change.²

This poses particular problems for individuals since there currently exists little protection for persons fleeing their home countries due to sudden and incremental effects of climate change.³ These effects include both the increase in frequency of natural disasters such as drought and desertification and the strengthening of the impact of the socio-economic deprivation that follows.⁴ Lack of food, water, and education caused by the lack or reduction of resources as a result of climate change would not ordinarily sustain a refugee claim under the 1951 United Nations Convention Relating to the Status of Refugees (“1951 Convention”).⁵ António Guterres, the former United Nations High Commissioner for Refugees, “has called for a new international protection framework for people who have been forced to leave their own country and who may not qualify for refugee status under international law, including people displaced as a result of catastrophic environmental events.”⁶

This Comment will explore the potential avenues by which the international community can address the increasingly pertinent problem of international displacement as a result of climate change. First, this Comment will argue that existing international law framework is inadequate to handle the growing issue

¹ See generally Elaine Kamarck, *The Challenging Politics of Climate Change*, BROOKINGS (Sept. 23, 2019), <https://www.brookings.edu/research/the-challenging-politics-of-climate-change> (“Complexity is the death knell of many modern public policy problems and solutions. And complexity is inherent in climate change.”).

² John Schwartz, *Major Climate Change Rules the Trump Administration is Reversing*, N.Y. TIMES (Aug. 29, 2019), <https://www.nytimes.com/2019/08/29/climate/climate-rule-trump-reversing.html>.

³ *Refugees*, UNITED NATIONS – GLOBAL ISSUES, <https://www.un.org/en/sections/issues-depth/refugees>.

⁴ *Id.*

⁵ *Id.*

⁶ Sarah O. Stapleton et al., REPORT ON CLIMATE CHANGE, MIGRATION & DISPLACEMENT, OVERSEAS DEV. INST. 27 (2017).

of climate change displaced persons. Then, it will discuss the viability of using pre-existing international refugee and migrant law to encompass climate displaced persons.⁷

Although there have historically been expansions of the definition of both “refugee” and “migrant” in international law, there are still substantial gaps left by trying to stretch the definition of “refugee” to include climate change displaced persons.⁸ As a result, this Comment suggests a different international framework is required to deal with the humanitarian crisis—one unique to climate change displaced persons (and indeed, has been called upon by various figures of international prominence).⁹

I. CLIMATE CHANGE: WE DIDN’T START THE FIRE—OR DID WE?

It is a truth nearly universally acknowledged that our planet’s climate has been changing to devastating effect.¹⁰ 2019 was the second-hottest year on record, resulting in, *inter alia*, the severe heatwaves that hit various parts of the globe.¹¹ In June 2019, northern Europe experienced a record-setting heatwave that led France and Germany to shut down nuclear reactors.¹² The hot air then migrated to Greenland, where temperatures rose to as much as fifteen degrees Fahrenheit above normal, causing the surface of Greenland’s ice sheet to melt at

⁷ There has been no international consensus as to what persons displaced by climate change should be called, but in the effort to be succinct, this Comment will use the phrase “climate change displaced persons” while recognizing there is still space in the academic and legal literature for a more appropriate title. See *Climate Change and Displacement*, UNITED NATIONS HIGH COMM’R FOR REFUGEES, <https://www.unhcr.org/en-us/news/stories/2019/10/5da5e18c4/climate-change-and-displacement.html> (“Technically speaking, therefore, the term ‘climate refugee’ is something of a misnomer, as it has no basis in international law and does not accurately reflect the complex ways in which climate and human mobility interact.”). See generally Jayla Lundstrom, *Climate Change is Altering Migration Patterns Regionally and Globally*, CTR. FOR AM. PROGRESS (Dec. 3, 2019), <https://www.americanprogress.org/issues/immigration/news/2019/12/03/478014/climate-change-altering-migration-patterns-regionally-globally>.

⁸ See Jackie Swift, *Migration, Forced by Climate Change*, CORNELL RSCH., <https://research.cornell.edu/news-features/migration-forced-climate-change>.

⁹ See, e.g., John Podesta, *The Climate Crisis, Migration, and Refugees*, BROOKINGS (July 25, 2019), <https://www.brookings.edu/research/the-climate-crisis-migration-and-refugees>.

¹⁰ See *Climate Change and Public Health Policy*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/climateandhealth/policy.htm>.

¹¹ Drew Kann, *It’s Official: 2019 was the Second-Hottest Year on Record*, CNN (Jan. 8, 2020), <https://www.cnn.com/2020/01/08/world/2019-temperatures-second-hottest-year-on-record-climate-change/index.html>.

¹² Henry Fountain, *Europe’s Heat Wave, Fueled by Climate Change, Moves to Greenland*, N.Y. TIMES (Aug. 2, 2019), <https://www.nytimes.com/2019/08/02/climate/european-heatwave-climate-change.html>; Henry Fountain, *Climate Change is Accelerating, Bringing World ‘Dangerously Close’ to Irreversible Change*, N.Y. TIMES (Dec. 4, 2019), <https://www.nytimes.com/2019/12/04/climate/climate-change-acceleration.html> [hereinafter Fountain, *Climate Change is Accelerating*].

near-record levels.¹³ In one week in late July, fifty-seven people in Japan died due to heat-related medical issues and thousands more were hospitalized, resulting in the second highest number of hospitalizations due to high temperatures on record in Japan.¹⁴ A particularly devastating result of the series of heatwaves was the 1.5 million-acre fire that ignited across Australia in late 2019.¹⁵ The fire resulted in the devastating loss of property and animal and human life.¹⁶

Certainly, some part of the heatwave that sparked the wildfires in Australia is due to periodic occurrences.¹⁷ For example, short-term weather patterns, like the Indian Ocean Dipole, pushed away moisture from Australia in the spring preceding the wildfires.¹⁸ This, therefore, made the country drier in spring and thus likely contributed at least somewhat to the wildfires in the summer.¹⁹ Additionally, high temperatures and dry weather are generally typical symptoms of summer.²⁰ Australian experts note that the dry season has been getting longer and more frequent, which is a phenomenon that has been linked to climate change.²¹

As of January 2020, the fires have been somewhat contained with the arrival of rains.²² However, the ramifications and future effects of the blaze on Australia's unique ecosystems and human health remain to be seen.²³

Australia is, unfortunately, not the only country to have suffered enormous loss due to natural disasters. Since 2008, catastrophic weather disasters have

¹³ Fountain, *Climate Change is Accelerating*, *supra* note 12.

¹⁴ *57 Dead and 18,000 Taken to Hospitals in One Week Amid Japan Heat Wave*, JAPAN TIMES (Aug. 6, 2019), <https://www.japantimes.co.jp/news/2019/08/06/national/57-dead-18000-taken-hospitals-one-week-amid-japan-heat-wave/#.Xegi8OhKg2w>.

¹⁵ Brian Resnick et al., *8 Things Everyone Should Know about Australia's Wildfire Disaster*, VOX (Jan. 10, 2020), <https://www.vox.com/science-and-health/2020/1/8/2105228/australia-fires-map-animals-koalas-wildlife-smoke-donate>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See generally Pablo Uchoa, et al., *Indian Ocean Dipole: What is It and Why is It Linked to Floods and Bushfires?*, BBC (Dec. 7, 2019), <https://www.bbc.com/news/science-environment-50602971>.

¹⁹ Resnick et al., *supra* note 15.

²⁰ *Id.*

²¹ *Id.*; *State of the Climate 2018*, Australian Government Bureau of Meteorology (2018) ("There has been a long-term increase in extreme fire weather, and in the length of the fire season, across large parts of Australia.").

²² Joshua Berlinger & Hilary Whiteman, *Rain Pelts Fire-Ravaged Australian States, Bringing New Risks – and Some Relief*, CNN (Jan. 16, 2020), <https://www.cnn.com/2020/01/16/australia/australia-weather-intl-hnk/index.html>.

²³ Resnick et al., *supra* note 15.

displaced about twenty-four million people have been displaced by each year.²⁴ In 2016, the ten largest displacement events were climate-related.²⁵ However, natural disasters are not the only potential climate-related threats that cause displacement, both internally and externally. In 2018, the World Bank released a report that projected 143 million people in sub-Saharan Africa, South Asia, and Latin America could be forced to move within their own countries to escape slow-onset impacts of climate change.²⁶

While most displaced people tend to stay within their state borders, there are various regions whose citizens may soon be forced to seek relocation solutions abroad. Island communities situated in the Caribbean, Pacific, and Atlantic Oceans are at the frontline of the climate change crisis.²⁷ As oceans warm and sea-levels rise, such nations may even become uninhabitable.²⁸ Claire Anterea, a 41-year-old climate activist on the Pacific island nation of Kiribati, has noticed the change even within her own lifetime.²⁹ “My family’s home floods throughout the year,” she stated in an email to NPR.³⁰ “I see the sea getting higher as the coastal areas are eaten away.”³¹ Elsewhere in the South Pacific, coastal erosion has stripped so much away that countries have begun contemplating regional migration plans.³² The Solomon Islands’ environment minister, Melchoir Matakai, has called such plans a last resort, but also acknowledges that “for some parts of [the Solomon Islands], it is the only reasonable and sustainable option.”³³

While Pacific Island nations may face the brunt of the effects wrought by climate change, coastal areas in other countries will be affected.³⁴ One only needs to look at a projected future map of the U.S. coastline; there are cities in

²⁴ Tim McDonnell, *The Refugees the World Barely Pays Attention To*, NPR: GOATS & SODA (June 20, 2018), <https://www.npr.org/sections/goatsandsoda/2018/06/20/621782275/the-refugees-that-the-world-barely-pays-attention-to>.

²⁵ Stapleton et al., *supra* note 6, at 10.

²⁶ McDonnell, *supra* note 24.

²⁷ Dominic Davis, *Island Nations on Climate Crisis Frontline ‘Not Sitting Idly By’*, U.N. NEWS (Sept. 26, 2019), <https://news.un.org/en/story/2019/09/1047652>.

²⁸ Ashley Westerman, *‘We Need Support’: Pacific Islands Seek Help and Unity to Fight Climate Change*, NPR (Oct. 5, 2019), <https://www.npr.org/2019/10/05/764570478/we-need-support-pacific-islands-seek-help-and-unity-to-fight-climate-change>.

²⁹ *Id.*

³⁰ *Id.* (internal quotations omitted).

³¹ *Id.* (internal quotations omitted).

³² *Id.* (internal quotations omitted).

³³ *Id.*

³⁴ Davis, *supra* note 27.

states like Florida and Louisiana that will no longer exist as a result of encroaching sea levels.³⁵

With the increasing threat to these countries from climate change and the corresponding lack of alternative methods to combat it, the global community must consider how to best act in response to this ever-growing problem. The international community at large must shoulder some responsibility for the results of climate change. Small Pacific Island nations—while saddled with the most obvious effects of climate change—are in actuality the ones who have contributed least to the problem.³⁶ Large economic powers like the United States and China have enormous carbon footprints.³⁷ In comparison, Pacific Island nations like Kiribati and the Solomon Islands produce considerably less greenhouse gas emissions.³⁸ It seems unfair for the burden of providing a solution to so lopsidedly fall on the shoulders of those countries who contribute the least to the problem.

II. EXISTING SPACES IN INTERNATIONAL LAW DEFINITIONS

A. Does “Refugee” Apply?

The temptation to classify persons displaced by climate change and disasters as refugees is understandable. For those who are forced to cross international borders by circumstances outside their control, the crux of international legal protection has primarily been concentrated in refugees and, to a lesser extent, migrants.³⁹ The protections offered to persons who fall into the definition of refugee under the 1951 Convention are robust and well-documented.⁴⁰

In 2013, the Teitiota family, citizens of Kiribati, became the first to grapple with the question of whether individuals who have been displaced by climate change can avail themselves of the procedures and laws in place to help

³⁵ See generally *Sea Level Rise Viewer*, NAT’L OCEANIC & ATMOSPHERIC ADMIN., <https://coast.noaa.gov/slr/#/layer/slr/0/628666.2119643372/1211411.854698917/1/satellite/none/0.8/2050/interHigh/midAccretion>.

³⁶ Davis, *supra* note 27.

³⁷ Umair Irfan, *Why the U.S. Bears the Most Responsibility for Climate Change, in One Chart*, VOX (Dec. 4, 2019), <https://www.vox.com/energy-and-environment/2019/4/24/18512804/climate-change-united-states-china-emissions>.

³⁸ Davis, *supra* note 27.

³⁹ See *Asylum and Migration*, UNITED NATIONS HIGH COMM’R FOR REFUGEES, <https://www.unhcr.org/en-us/asylum-and-migration.html>.

⁴⁰ See *id.*; ‘Refugees’ and ‘Migrants’ – *Frequently Asked Questions (FAQs)*, UNITED NATIONS HIGH COMM’R FOR REFUGEES: REFORLD (Aug. 31, 2018), <https://www.refworld.org/docid/56e81c0d4.html>.

refugees.⁴¹ The family moved to New Zealand and applied for refugee status there.⁴² Their claim for asylum explicitly stated they were entitled to be recognized as refugees because of the changes to the environment of Kiribati as a result of the rising sea levels attributable to climate change.⁴³

Citizens of Pacific island nations are perhaps the most vulnerable to the rising sea levels associated with climate change and the irreversible damage to their sovereignty climate change poses.⁴⁴ As John Podesta, the founder and director of the Center for American Progress, notes, “[i]slands in the Federated States of Micronesia have drastically reduced in size, washed down to an uninhabitable state, had their fresh water contaminated by the inflow of seawater, and disappeared in the past decade.”⁴⁵ This poses a crisis for national sovereignty and individuals, who are forced to relocate as their country literally disappears from underneath their feet.⁴⁶ Although the Teitiota family’s case was ultimately dismissed by the High Court of New Zealand, the final judgment declined to completely foreclose the possibility that climate change or other kinds of environmental degradation could lead to protected status as refugees under international law.⁴⁷

1. *International Definition of “Refugee”*

After World War II, almost eleven million people in Europe had been displaced.⁴⁸ In response, the states of the United Nations banded together to establish a system to “protect civilians who had been forced from their home countries by political violence.”⁴⁹ The 1951 Convention, ratified by 145 parties, became the key document that formed the basis of the legal definitions and protections offered to refugees forced out of their country of origin.⁵⁰ The core principle of the Convention remains the principle of *non-refoulement*, which

⁴¹ See Tim McDonald, *The Man Who Would Be the First Climate Change Refugee*, BBC (Nov. 5, 2015), <https://www.bbc.com/news/world-asia-34674374>.

⁴² *New Zealand: ‘Climate Change Refugee’ Case Overview*, LIBRARY OF CONGRESS, <https://www.loc.gov/law/help/climate-change-refugee/new-zealand.php> (last visited Feb. 10, 2020).

⁴³ *Id.*; Podesta, *supra* note 9.

⁴⁴ Podesta, *supra* note 9.

⁴⁵ *Id.*

⁴⁶ See generally Sarah M. Munoz, *What Happens When a Country Drowns?*, CONVERSATION (July 1, 2019), <https://theconversation.com/what-happens-when-a-country-drowns-118659>.

⁴⁷ *New Zealand: ‘Climate Change Refugee’ Case Overview*, *supra* note 42.

⁴⁸ Shauna Labman, *Looking Back, Moving Forward: The History and Future of Refugee Protection*, 10 CHI.-KENT J. INT’L & COMP. L. 1, 9 (2010).

⁴⁹ Podesta, *supra* note 9.

⁵⁰ UNITED NATIONS HIGH COMM’R FOR REFUGEES: THE 1951 REFUGEE CONVENTION, <https://www.unhcr.org/en-us/1951-refugee-convention.html>.

asserts that “refugees should not be returned to a country where they face serious threats to their life or freedom.”⁵¹ The principle of non-refoulement has since become customary international law, which is binding on all states, regardless if they are party to the 1951 Convention.⁵² Since the signing, the 1951 Convention has been expanded under the 1967 Protocol, which removes geographical and time limitations that were in place as a result of the initial convention being an answer to refugees in Europe post-World War II.⁵³

The 1951 Convention provides a singular definition for “refugee.”⁵⁴ A refugee is “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”⁵⁵ This definition has been enshrined in various different countries’ domestic immigration and refugee laws, which further bolsters the protections and rights assured to refugees seeking asylum internationally.⁵⁶ Even countries that were not initial signatories of the 1951 Convention have adopted a definition of “refugee” similar to the one laid out in the 1951 Convention.⁵⁷

Both international and domestic law have recognized five separate elements that must be met for a person to qualify as a refugee:

- Well-founded fear of persecution
- For reasons of race, religion, nationality, membership of a particular social group, or political opinion[]
- is outside the country of his nationality
- is unable or, owing to such a fear, is unwilling to avail himself of the protection of that country

⁵¹ *Id.*

⁵² *Id.*; The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol, United Nations High Commissioner For Refugees, Sept. 2011, 5.

⁵³ The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol, United Nations High Commissioner For Refugees, Sept. 2011, 4.

⁵⁴ *Id.* at 3.

⁵⁵ *Id.*

⁵⁶ UNITED NATIONS HIGH COMM’R FOR REFUGEES: ASYLUM IN THE U.K., <https://www.unhcr.org/uk/asylum-in-the-uk.html> (last visited Sept. 23, 2019); *In re A--- R--- C--- G---* et al., 26 I. & N. Dec. 388, 390 (B.I.A. Aug. 26, 2014); *Claim Refugee Status From Inside Canada: Who Can Apply—Eligibility*, <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/eligibility.html> (last visited May 25, 2020).

⁵⁷ *American Courts and the U.N. High Commissioner for Refugees: A Need for Harmony in the Face of a Refugee Crisis*, 131 HARVARD L. REV. 1399, 1401 (2018).

- not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.⁵⁸

Although there has not been a successful claim brought merely based on climate change, it is possible to consider a hypothetical situation where climate change can drive factors that lead to a successful asylum claim, such as a situation where climate change leads to an extended drought. The resulting crop destruction leads to famine as a result of lack of food. This competition for resources then creates factions drawn along lines of identity, and the government does not intervene. In such a case, it is likely that the individual would be able to seek asylum in another country as a refugee under the definition in the 1951 Convention.

In the foregoing hypothetical, these individuals are not recognized as refugees because they were displaced due to a natural disaster likely attributable to climate change. Rather, in this case, climate change merely exacerbated the issue and created the circumstance from which the individual needed to seek refuge. This kind of scenario, although effective under the current international refugee doctrine, does not point to the real problem. That is, as climate change occurs, and its effects become permanent, how is the global community equipped to understand and cope with the ever-growing likelihood that a sizeable amount of people will need to migrate elsewhere. Since not all climate change displaced persons who cross international borders may fulfill all five elements in the definition of refugee, many are not able to avail themselves of international protection.⁵⁹

The most difficult situation under which many climate change displaced persons find themselves if they try to fit into the definition of “refugee” is persecution. Persecution has been poorly defined in the realm of international law.⁶⁰ Indeed, there is no universally accepted definition of the word.⁶¹ However, in 1992, the UNHCR issued a handbook to provide guidance to

⁵⁸ UNITED NATIONS HIGH COMM’R FOR REFUGEE, PROTECTION TRAINING MANUAL FOR EUROPEAN BORDER AND ENTRY OFFICIALS, SESSION 3 MANUAL: WHO IS A REFUGEE? 3 (<https://www.unhcr.org/4d944c319.html>) [hereinafter PROTECTION TRAINING MANUAL].

⁵⁹ *See About Us*, NANSEN INITIATIVE, <https://www.nanseninitiative.org/secretariat/> (last visited Oct. 26, 2020) (“[A] serious legal gap exists with regard to cross-border movements in the context of disasters and the effects of climate change.”).

⁶⁰ UNITED NATIONS HIGH COMM’N. FOR REFUGEES, HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES para. 51, U.N. Doc. HCR/IP/4/Eng/REV.1 (1992) [hereinafter HANDBOOK ON PROCEDURES AND CRITERIA]

⁶¹ *Id.*

governments “relating to procedures and criteria for determining refugee status.”⁶² The handbook discusses the definition and interpretation of terms found in the 1951 Convention, including the five various factors that determine refugee status.⁶³ It notes that the language of the 1951 Convention suggests “a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group” or “other serious violations of human rights” would constitute persecution.⁶⁴

The handbook also keeps the door open on other “prejudicial actions or threats” that would amount to persecution, determined by an evaluation of the person’s opinions or feelings regarding their fear of persecution.⁶⁵ This necessarily vague definition of persecution allows for countries to implement their own definitions and maintain “some discretion to steer asylum policies in a rapidly changing world.”⁶⁶

However, even with broad and ambiguous interpretations of the definition of “persecution,” it seems unlikely that most climate change displaced persons would be able to meet this criterium for several reasons. First, the handbook deliberately excludes natural disasters or famine as reasons relevant to a well-founded fear of persecution, absent any other reason related to the person being in one of the protected groups delineated by the wording of the Convention.⁶⁷ Although the handbook is not law, and therefore does not necessarily enshrine the exclusion of natural disasters or famine in international law, it is certainly persuasive in courts’ interpretation of the definition of refugee.⁶⁸

Second, even if the handbook had not explicitly excluded natural disasters or famine from the consideration of “persecution,” domestic jurisdictions such as Canada and New Zealand have since defined “persecution” to include “situations where the state is not in strictness an accomplice to the persecution

⁶² *Id.* at IV.

⁶³ *Id.* at para. 31–32, 34.

⁶⁴ PROTECTION TRAINING MANUAL, *supra* note 58.

⁶⁵ HANDBOOK ON PROCEDURES AND CRITERIA, *supra* note 60, at para. 52.

⁶⁶ Francesco Maiani, *The Concept of “Persecution” in Refugee Law: Indeterminacy, Context-sensitivity, and the Quest for a Principled Approach*, LES DOSSIERS DU GRIHL, LES DOSSIERS DE JEAN-PIERRE CAVAILLÉ, DE LA PERSECUTION (Feb. 28, 2010), <https://journals.openedition.org/dossiersgrihl/3896>.

⁶⁷ HANDBOOK ON PROCEDURES AND CRITERIA, *supra* note 60, at para. 39 (“The expression ‘owing to well-founded fear of being persecuted’ – for the reasons stated – by indicating a specific motive automatically makes all other reasons for escape irrelevant to the definition. It rules out such persons as victims of famine or natural disaster, unless they also have well-founded fear of persecution for [race, religion, nationality, political opinion or membership of a particular social group].”).

⁶⁸ *Id.* at VII.

but is simply unable to protect its citizens[.]”⁶⁹ or more simply, “persecution = serious harm + failure of state protection.”⁷⁰ Because climate change displaced persons could theoretically still rely on their national governments for protection, they do not meet one of the fundamental elements to establish persecution which, in turn, is one of the five elements in the international law definition of “refugee.”⁷¹

This element is where the Teitiota family’s claim failed. New Zealand’s Supreme Court held because there was no indication the Kiribati government was failing to take steps to protect its citizens from the effects of environmental degradation to the extent that it could, the Teitiota family could not avail themselves of the protections allowed to refugees.⁷² Thus, although persons displaced by climate change might seek aid from the current international refugee framework, it seems unlikely they can avail themselves of those protections.

2. *Regional Expansions of the Definition of “Refugee”*

Attempting to fit climate change displaced persons into the framework of the 1951 Convention does not fully appreciate the breadth and complexity of the situations faced by those displaced by climate change.⁷³ Although no evidence exists that the government failed to take action to protect the Teitiota family and its other citizens from environmental degradation as a result of climate change, there is a limit to what the Kiribati government can do in the face of rising sea levels.⁷⁴

However, the 1951 Convention’s definition of “refugee” sets merely a floor.⁷⁵ As discussed further in this Section, regional conventions can address

⁶⁹ Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689.

⁷⁰ Refugee Appeal No. 74665/03, at para. 53 (July 7, 2004) (N.Z.).

⁷¹ The Concept of “Climate Refugee”: Towards a Possible Definition, EUR. PARL. DOC. (PE 621.893) 5 (2019); see also Bhanu Sridharan, “Not Doing Anything is No Longer Acceptable”: A Conversation with Alice Thomas, *Climate Refugee Expert*, PACIFIC STANDARD (Sept. 4, 2018) <https://psmag.com/environment/not-doing-anything-is-no-longer-acceptable-a-conversation-with-alice-thomas-climate-refugee-expert> (“[M]ost climate-affected migrants will not be leaving their countries.”).

⁷² *New Zealand: ‘Climate Change Refugee’ Case Overview*, *supra* note 42.

⁷³ See UNITED NATIONS HIGH COMM’R FOR REFUGEES: CLIMATE CHANGE AND DISPLACEMENT, <https://www.unhcr.org/en-us/news/stories/2019/10/5da5e18c4/climate-change-and-displacement.html>.

⁷⁴ For example, regional migration is an option for the Solomon Islands, albeit a last resort. See Westerman, *supra* note 28.

⁷⁵ See *American Courts and the U.N. High Commissioner for Refugees: A Need For Harmony in the Face of a Refugee Crisis*, 131 HARV. L. REV. 1399, 1399 (2018) (“The 1951 Convention Relating to the Status of Refugees (Convention) and its subsequent amendment, the 1967 Protocol Relating to the Status of Refugees (Protocol)—instruments that are fairly short and drafted broadly, with many important clauses open for

and expand upon the baseline provided by the 1951 Convention. The two following examples, the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (“OAU Convention”) and the Cartagena Declaration on Refugees (“Cartagena Declaration”), are illustrative of how regional treaties can be successful in expanding international legal standards to fit region-specific issues while also operating as a complement to international law.⁷⁶

a. The OAU Convention

The OAU Convention sprung out of the regional need to broaden the definition of “refugee” to better suit the issues that African countries were facing at the time—that is, those problems of “violent struggle for self-determination and national development.”⁷⁷ Article I of the OAU Convention categorized refugees within the region using the same framework as the 1951 Convention, but added an additional circumstance where a person might be considered a refugee.⁷⁸ Article I of the OAU Convention reads:

The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.⁷⁹

This definition of refugee expanded the legal definition—and therefore, legal protection—to those “forced to leave their countries owing to aggression by another State and/or as a result of an invasion.”⁸⁰ Crucially, however, people seeking asylum under the OAU Convention’s definition of refugee did not need to “justify their fear of persecution.”⁸¹

This was a radical change from the 1951 Convention’s definition—one which has stumbled into roadblocks in countries like the United States and the United Kingdom, where many asylum appeals are denied due to a lack of

interpretation—govern this regime.”).

⁷⁶ See generally OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969 [hereinafter OAU Convention]; Cartagena Declaration on Refugees, Nov. 22, 1984 [hereinafter Cartagena Declaration].

⁷⁷ Eduardo Arboleda, *Refugee Definition in Africa and Latin America: The Lesson of Pragmatism*, 3 INT’L J. REFUGEE L. 185, 186 (1991).

⁷⁸ *Id.* at 188–89.

⁷⁹ *Id.* at 189.

⁸⁰ *Id.*

⁸¹ *Id.* at 194.

showing of adequate persecution as connected to the asylum-seeker's particular characteristic.⁸² Additionally, it has become law in the region, created by representatives from several states in the region in response to the region-specific need.⁸³ Several countries—such as Angola, Ghana, South Africa, and Uganda—have used the expanded definition to inform their own domestic legislation.⁸⁴ Thus, the OAU Convention illustrates the potential power and sensitivity the response by the region's nation-states can have on international law.

b. The Cartagena Declaration

Like the states who were party to the OAU Convention, states in Central America required an expansion from the international standard of “refugee” to respond to region-specific problems. Specifically, outbreaks of violence in the 1980s in Central America “forced hundreds of thousands of people to flee their homes”⁸⁵ Like the OAU Convention, the Cartagena Declaration expanded the definition of “refugee” beyond the 1951 Convention to include those fleeing from circumstances or events that disturbed the public order.⁸⁶ In doing so, the Cartagena Declaration also explicitly referenced the fact the expanded definition of “refugee” was in response to “massive flows of refugees in the Central American area”⁸⁷

As a result, the Cartagena Declaration approached the definition of refugee with a distinctly Central American focus, embracing the “Central American reality.”⁸⁸ The drafters of the Cartagena Declaration recognized a need to develop a more expansive definition of “refugee,” and the urgency of the situation “superseded the tendency to remain within the formal bounds of legal discourse.”⁸⁹ This expanded definition was later adopted into Brazil's national

⁸² See, e.g., In re A--- R--- C--- G--- et al., 26 I. & N. Dec. 388, 389–90, 393–94 (B.I.A. Aug. 26, 2014).

⁸³ Arboleda *supra* note 77, at 192–93.

⁸⁴ Tsion T. Abebe et al., *After 50 Years, Africa's Refugee Policy Still Leads*, INST. FOR SEC. STUD. (June 20, 2019), <https://issafrica.org/iss-today/after-50-years-africas-refugee-policy-still-leads>.

⁸⁵ Arboleda, *supra* note 77, at 200.

⁸⁶ Arboleda, *supra* note 77, at 204–05; Cartagena Declaration, *supra* note 76, art. III, para. 3 (“[T]he definition or concept of [] refugee[s] [is] . . . 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.”).

⁸⁷ Cartagena Declaration, *supra* note 76.

⁸⁸ Arboleda, *supra* note 77, at 204.

⁸⁹ Arboleda, *supra* note 77 at 205; Cartagena Declaration, *supra* note 76, art. 1 (“Recognizing that the refugee situation in Central America has evolved in recent years to the point at which it deserves special attention.”).

legislation in 1997.⁹⁰ In 2019, the Brazilian government utilized the definition to approve 174 requests for refugee status by citizens of Venezuela.⁹¹

3. *Applicability to Climate Change Displaced Persons*

However, the question is whether such regional expansions of the definition of “refugee” can extend so far as to encompass climate change displaced persons. Under the definitions provided by both the OAU Convention and the Cartagena Declaration, it could be possible that “events seriously disturbing the public order” might extend to large events that could be attributable to climate change.⁹² Certainly a natural disaster might be considered an event disturbing the public order.

Consider, as in the hypothetical discussed above, a drought that leads to famine. Whereas a claim based on the 1951 Convention definition of refugee would require that nexus between the famine and violence on account of one of the five protected characteristics, under the OAU Convention, the individual would not have to prove that they had been persecuted. Accordingly, climate change displaced persons may be able to seek asylum on the basis of their refugee status under these wider definitions.

However, for those climate change displaced persons outside the jurisdiction of these two conventions, there is still little recourse. It seems unlikely that other regions will adopt similarly expansive definitions of “refugee.” Although the OAU Convention and the Cartagena Declaration were both successful in expanding the definition, the process required extensive efforts on the part of the national governments of states party to the agreements to both participate in the creation of and later adopt the principles in the agreements.⁹³ Additionally, the mere fact that such a definition exists in the region does not necessarily mean that each individual state chooses to immediately adopt such an expansive definition; as discussed above, Brazil only adopted the broader definition of the Cartagena Declaration in 1997.⁹⁴

⁹⁰ *ACNUR Parabeniza Brasil por Reconhecer Condição de Refugiado de Venezuelanos com base na Declaração de Cartagena*, UNITED NATIONS HIGH COMM’R FOR REFUGEES – BRASIL (July 29, 2019), <https://www.acnur.org/portugues/2019/07/29/acnur-parabeniza-brasil-por-reconhecer-condicao-de-refugiado-de-venezuelanos-com-base-na-declaracao-de-cartagena/> (last visited May 31, 2020).

⁹¹ *Id.*

⁹² Phillip D. Warren, *Forced Migration After Paris COP21: Evaluating The “Climate Change Displacement Coordination Facility”*, 116 COLUM. L. REV. 2103, 2123 (2016) (emphasis omitted).

⁹³ See generally Arboleda, *supra* note 77.

⁹⁴ *ACNUR Parabeniza Brasil por Reconhecer Condição de Refugiado de Venezuelanos com base na Declaração de Cartagena*, *supra* note 90.

Given the denial of the Teitiota family's claim in New Zealand, and the Supreme Court of New Zealand's explicit reference to the definition found in the 1951 Convention, it seems unlikely that, at least in the Pacific Ocean region, the definition of "refugee" will be handily expanded.⁹⁵ Despite the Supreme Court of New Zealand's qualification that its decision in the Teitiota case does not foreclose environmental degradation as a possible pathway to protection under international refugee guidelines, the New Zealand High Court—the appeals court—heard and subsequently denied applications for asylum from citizens of other Pacific Island nations who claimed fear of harm from environmental problems attributable to climate change.⁹⁶ It was more common practice to deny various other suits that claimed asylum based on environmental changes and degradation.⁹⁷

Therefore, while some regional definitions of "refugee" may be broad enough to cover climate displaced persons, attempting to fit climate change displaced persons under that large umbrella would lead to uneven results, since other regions of the world likely do not feel the need to consider expanding the definition of "refugee."

B. Does "Migrant" Apply?

Unlike "refugee," the term "migrant" is not defined in international law.⁹⁸ Because it has not been defined, different stakeholders have used it differently.⁹⁹ The term has traditionally been used to refer to people who move by choice, typically across international boundaries.¹⁰⁰ However, the UNHCR has recognized that the term has increasingly been used to refer to any person moving at any time, for any reason.¹⁰¹ Individual countries, such as the United States, have been equally as broad in defining "migrant" domestically.¹⁰²

Therefore, it is likely climate change displaced persons already fall under the category of "migrant." There is no doubt that climate change displaced persons can be considered migrants under the more recent, more general

⁹⁵ *New Zealand: 'Climate Change Refugee' Case Overview*, *supra* note 42.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Migrant Definition*, UNITED NATIONS HIGH COMM'R FOR REFUGEES—EMERGENCY HANDBOOK, <https://emergency.unhcr.org/entry/44937/migrant-definition> (last visited Feb. 10, 2020).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Definition of Terms*, U.S. DEP'T OF HOMELAND SEC., <https://www.dhs.gov/immigration-statistics/data-standards-and-definitions/definition-terms> (last visited Feb. 10, 2020) ("**Migrant**— A person who leaves his/her country of origin to seek residence in another country.").

definition of the term. However, this offers little benefit to climate change displaced persons. There is no internationally recognized legal definition for “migrant.”¹⁰³ It is for this reason the UNHCR cautions against conflating “migrant” and “refugee,” since refugees are given special legal status internationally as a result of the 1951 Convention.¹⁰⁴ Conversely, “migrant” was a catch-all term.¹⁰⁵ Whereas refugees could gain protection from asylum states, migrants had no such well-defined recourse.¹⁰⁶

Thus, although climate change displaced persons fall under the category of “migrant,” there were few applicable frameworks under international law that could help climate change displaced persons prior to the approval of the Global Compact on Refugees and the Global Compact for Safe, Orderly, and Regular Migration.¹⁰⁷

III. INTERNATIONAL EFFORTS TO ADDRESS PROBLEMS POSED BY CLIMATE CHANGE DISPLACED PERSONS

Beginning in 2016, there seemed to be a movement of the international community to attempt to fill in the gaps with the creation of the Global Compacts on Refugee and Migrants.¹⁰⁸ However, even with this concerted and laudable effort by the international community, climate change displaced persons still find themselves in legal limbo.

A. *Global Compact on Refugees*

In 2016, it appeared that the global community was galvanized to address the problem of global and internal migration.¹⁰⁹ On September 19, 2016, the member-states of the United Nations converged in New York City to “address the question of large movements of refugees and migrants”¹¹⁰ Subsequently,

¹⁰³ See *Who is a Migrant?*, UNITED NATIONS IOM, <https://www.iom.int/who-is-a-migrant> (last visited Feb. 10, 2020).

¹⁰⁴ *Migrant Definition*, *supra* note 98.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Global Compact for Migration*, UNITED NATIONS IOM, <https://www.iom.int/global-compact-migration> (last visited Feb. 10, 2020).

¹⁰⁸ See Global Compact on Refugees, Rep. of the U.N. High Comm’r for Refugees, U.N. Doc. A/73/12 (Part II) (2018) [hereinafter Refugee Compact]; G.A. Res. 73/195, Global Compact for Safe, Orderly and Regular Migration (2018) [hereinafter Migration Compact].

¹⁰⁹ G.A. Res. 71/1, New York Declaration for Refugees and Migrants, at 1 (Sept. 19, 2016) [hereinafter New York Declaration].

¹¹⁰ *Id.*; Cathryn Costello, *Refugees and (Other) Migrants: Will the Global Compacts Ensure Safe Flight and Onward Mobility for Refugees?*, 30 INT’L J. REFUGEE L. 643, 643 (2018).

the New York Declaration for Refugees and Migrants (“New York Declaration”) was unanimously adopted.¹¹¹ The New York Declaration purported to be an ambitious commitment to the issue of refugees and migrants, especially emphasizing the need for global responsibility-sharing and “the importance of a humanitarian approach to both migrants and refugees.”¹¹²

Crucially, the New York Declaration laid out the Comprehensive Refugee Response Framework (CRRF), which boldly detailed the guidelines for refugee reception, admission, and support, in addition to support for the host countries.¹¹³ The CRRF was then “rolled out in diverse refugee situations across more than a dozen countries[,]” and the results of the implementation of the CRRF were compiled and analyzed by the UNHCR.¹¹⁴

The Global Compact on Refugees (“Refugee Compact”) is the doctrinal successor to the CRRF.¹¹⁵ In fact, much of the Refugee Compact is built off the various consultations and analyses performed by the UNHCR following the implementation of the CRRF in various member-states.¹¹⁶ Affirmed on December 17, 2018, the Refugee Compact proffered to be an international framework for “more predictable and equitable responsibility-sharing” to achieve a solution to the unprecedented number of migrants and refugees forced to leave their countries of origin due to circumstances outside their control.¹¹⁷

The four key objectives of the Refugee Compact are listed on the UNHCR’s site: (1) “[e]ase the pressures on host countries”; (2) “[e]nhance refugee self-reliance”; (3) “[e]xpand access to third-country solutions”; and (4) “[s]upport conditions in countries of origin for return in safety and dignity.”¹¹⁸ The Refugee Compact, as listed in its guiding principles, “represents the political will and ambition of the international community as a whole for strengthened

¹¹¹ New York Declaration, *supra* note 109, at 1; Costello, *supra* note 110, at 643.

¹¹² New York Declaration, *supra* note 109, at 2–3; *see also* New York Declaration, UNITED NATIONS: REFUGEES & MIGRANTS, <https://refugeesmigrants.un.org/declaration>; Costello, *supra* note 110.

¹¹³ G.A. Res. 71/1, annex, Comprehensive Refugee Response Framework (Sept. 19, 2016) [hereinafter CRRF].

¹¹⁴ *Comprehensive Refugee Response Framework*, UNITED NATIONS HIGH COMM’R FOR REFUGEES, <https://www.unhcr.org/en-us/comprehensive-refugee-response-framework-crrf.html> (last visited Oct. 28, 2019). *See generally* United Nations High Commissioner for Refugees, *Two Year Progress Assessment of the CRRF Approach September 2016 – September 2018: Evaluation Report*, ES/2018/07 (Dec. 31, 2018).

¹¹⁵ *Comprehensive Refugee Response Framework*, *supra* note 114.

¹¹⁶ Refugee Compact, *supra* note 108.

¹¹⁷ *The Global Compact on Refugees*, UNITED NATIONS HIGH COMM’R FOR REFUGEES, <https://www.unhcr.org/en-us/the-global-compact-on-refugees.html>.

¹¹⁸ *Id.*

cooperation and solidarity with refugees and affected host countries.”¹¹⁹ However, the Refugee Compact does little to specifically recognize issues and problems facing climate change displaced persons who are forced to migrate out of their country of origin.¹²⁰ Without specific recognition, climate change displaced persons continue to face several obstacles.¹²¹

First, the New York Declaration fails to push the envelope on expanding refugees to potentially cover climate change displaced persons.¹²² Rather, it reaffirms the definition of “refugee” as defined by the 1951 Convention, while “merely noting wider regional refugee definitions.”¹²³ Because the definition of “refugee” is so well-established, member-states are reluctant to expand refugee as a definition.¹²⁴

However, this narrow definition of refugee is lacking and wrongly assumes the definition of “refugee” laid out by the 1951 Convention “captures most instances of refugeehood and displacement.”¹²⁵ In contrast, the UNHCR, the international governmental body at the forefront of international refugee rights and issues, has a considerably larger breadth in their definition of refugee.¹²⁶ The large variance in the definition of refugee further emphasizes the need for a separate category for climate change displaced persons, outside of the definition of “refugee.” Additionally, the constraint of the Refugee Compact in defining “refugee” suggests that there is likely to be little help found for climate change displaced persons within the Refugee Compact.¹²⁷

Second, the Refugee Compact also focuses on global responsibility-sharing as a method of encouraging global cooperation.¹²⁸ One of the Refugee Compact’s main goals and important visions is the global sharing of

¹¹⁹ *Id.*

¹²⁰ *See* McDonnell, *supra* note 24.

¹²¹ *Id.*

¹²² *See* New York Declaration, *supra* note 109.

¹²³ Costello, *supra* note 110, at 645.

¹²⁴ *See* Alexander Aleinikoff, *The Unfinished Work of the Global Compact on Refugees*, 30 INT’L. J. REFUGEE L. 611, 615 (2018) (“[R]efugee norms are understood as binding; thus the inclusion of climate change-related migration in the Refugee Compact threatened to impose new obligations on States in a way that their inclusion in the Migration Compact does not.”).

¹²⁵ Costello, *supra* note 110.

¹²⁶ *Id.*; *see also* Aleinikoff, *supra* note 124, at 614 (“Through General Assembly resolutions, regional instruments, and international practice, the definition of ‘refugee’ – and UNHCR’s mandate to provide international protection – has evolved.”).

¹²⁷ *See* Stephanie Garcia, *What a UN Ruling Could Mean for Climate Refugees*, PBS (Jan. 22, 2020), <https://www.pbs.org/newshour/science/as-cop-25-ends-a-look-at-why-climate-migrants-dont-have-refugee-status>.

¹²⁸ *See generally* *The Global Compact on Refugees*, *supra* note 117.

responsibility in coming to solutions and mitigating actions for the current number of people migrating within and outside their countries of origin.¹²⁹

However, some scholars take issue with responsibility sharing.¹³⁰ Responsibility sharing on a global scale, coupled with the relative powerlessness of refugees and those displaced internationally in international law, could lead to the tragedy of the commons.¹³¹ Even though as a conceptual matter, the international community recognizes that some form of global burden sharing would advance the interests of refugees, host countries, and also receiving countries, recently the global community has seen a trend of withdrawal of support.¹³² Host States that would have previously offered resettlement opportunities have slowly been withdrawing or tempering their resettlement programs.¹³³

Perhaps most crucially, “the States that now benefit from a system that essentially locks refugees into host States have recognized that they can better protect their own interests by doubling down on deterrence measures than by joining a plan for responsible distribution of the world’s displaced.”¹³⁴ We can see it now in the promulgation of anti-migrant and anti-immigrant rhetoric internationally, with countries that have historically been leaders in relocation efforts refusing to expand and in some cases minimizing or withdrawing their support.¹³⁵ Now, there is less incentive for more states to become host States, and thus the purported solution instead exacerbates the problem of refugees, and, consequently, those persons who have been displaced by climate change.¹³⁶

Finally, much of the progressive, groundbreaking framework of the Refugee Compact is difficult to implement in practice on a large global scale because the compact is not legally binding.¹³⁷ As a result, countries can opt in or opt out at

¹²⁹ *Id.*

¹³⁰ See also Aleinikoff, *supra* note 124, at 612–13.

¹³¹ See *id.* at 612.

¹³² *Id.* at 613; see Marcia V. Espinoza et al., *Global Compact for Migration: What is It and Why are Countries Opposing It?*, CONVERSATION (Dec. 7, 2018), <https://theconversation.com/global-compact-for-migration-what-is-it-and-why-are-countries-opposing-it-106654> (“[S]tates with a restrictive migration agenda, such as Hungary, consider the symbolic act of approving the GCM as a sign that they are promoting migration.”).

¹³³ Aleinikoff, *supra* note 124, at 612–13; see, e.g., Molly Enking, *U.S. Won’t Take Climate Refugees Displaced By Hurricane Dorian*, GRIST (Sept. 13, 2019), <https://grist.org/article/u-s-wont-take-climate-refugees-displaced-by-hurricane-dorian/> (noting the Trump administration decided not to extend temporary protected status to residents displaced from the Bahamas by Hurricane Dorian).

¹³⁴ Aleinikoff, *supra* note 124, at 612.

¹³⁵ See, e.g., Rick Gladstone, *U.S. Quits Migration Pact, Saying It Infringes on Sovereignty*, N.Y. TIMES (Dec. 3, 2017), <https://www.nytimes.com/2017/12/03/world/americas/united-nations-migration-pact.html>.

¹³⁶ *Id.*; see Aleinikoff, *supra* note 124, at 612.

¹³⁷ Costello, *supra* note 110, at 643.

their own discretion, thereby removing some of the teeth in the comprehensive framework, since it will not apply to those states that have opted out.¹³⁸ Indeed, there are already key international players that have chosen not to participate in the negotiations or signing of the Refugee Compact, including the United States, which until recently had been a leader in refugee relocation.¹³⁹

B. Global Compact for Safe, Orderly, and Regular Migration

Another international agreement that sprung from the New York Declaration is the Global Compact for Safe, Orderly, and Regular Migration (“Migration Compact”).¹⁴⁰ The final text of the Migration Compact was finalized on July 13, 2018.¹⁴¹ It “comprises of 23 objectives for better managing migration at local, national, regional and global levels.”¹⁴² Its supporters laud it as the “first comprehensive framework on migration the world has ever seen” and praise it as a step toward multilateralism and global cooperation.¹⁴³ The Migration Compact lays out various actions “considered to be relevant policy instruments and best practices.”¹⁴⁴ Proponents of the Migration Compact call it a historic moment, lauding the “enormous potential” of the compact.¹⁴⁵ The former General Assembly President, Miroslav Lac Lajčák, who presided over the initial meeting, stated:

It does not encourage migration, nor does it aim to stop it. It is not legally binding. It does not dictate. It will not impose. And it fully respects the sovereignty of States It can guide us from a reactive to a proactive mode. It can help us to draw out the benefits of migration, and mitigate the risks. It can provide a new platform for cooperation. And it can be a resource, in finding the right balance

¹³⁸ See Andrew W. Samaan, *Enforcement of International Environmental Treaties: At Analysis*, 5 *FORDHAM ENV'T L. REV.* 261, 271 (2011) (“The problem of sovereignty is a large hurdle to overcome. Although states must honor commitments in good faith, they may also unilaterally withdraw from a regime to which they were previously parties.”).

¹³⁹ Edith M. Lederer, *U.N. Approves Compact to Support World’s Refugees; U.S. Objects*, AP NEWS (Dec. 17, 2018), <https://apnews.com/4fd4c127e8da4801b6bb3f8d5f184404>; Jens Manuel Krogstad, *Key Facts About Refugees to the U.S.*, PEW RSCH. CTR. (Oct. 7, 2019), <https://www.pewresearch.org/fact-tank/2019/10/07/key-facts-about-refugees-to-the-u-s>.

¹⁴⁰ U.N. Refugees and Migrants, *Global Compact for Migration*, <https://refugeesmigrants.un.org/migration-compact>.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ U.N. News – Migrants and Refugees, ‘Historic Moment’ for People on the Move, As U.N. Agrees First-Ever Global Compact on Migration (July 13, 2018), <https://news.un.org/en/story/2018/07/1014632> (internal quotations omitted); Marcia V. Espinoza et al., *supra* note 132.

¹⁴⁴ Migration Compact, *supra* note 108.

¹⁴⁵ U.N. News – Migrants and Refugees, *supra* note 143.

between the rights of people and the sovereignty of States.¹⁴⁶

The Migration Compact is a framework that fosters international cooperation among all relevant actors on migration.¹⁴⁷ It is undoubtedly an impressive work of global cooperation regarding the world's framework on improving the lives of migrants in both their country of origin and their country of destination.¹⁴⁸

One of the main objectives of the Migration Compact is to “[m]inimize the adverse drivers and structural factors that compel people to leave their country of origin[.]”¹⁴⁹ Crucially, though, the Migration Compact also specifically highlights the challenges posed to people who are forced to migrate because of climate change, utilizing the phrase “slow-onset natural disasters” and thereby recognizing climate change as one driver of migration.¹⁵⁰ More than that, the Migration Compact also contemplates the possibility of a framework that might answer this specific problem.¹⁵¹ Such contemplation is profound since the Migration Compact is the first inter-governmentally negotiated agreement that deals specifically with all the dimensions of international migration.¹⁵² These particular actions promised by the Migration Compact are encouraging to see, as far as a movement of the global community toward recognizing the significance of climate change displaced persons.¹⁵³

However, there are several factors that still affect the effectiveness of the Migration Compact. In particular, despite the focus of certain sections in the Migration Compact on climate change displaced persons, the Compact itself still leaves a gap for climate change displaced persons to fall through.

First, the Migration Compact necessarily focuses on migration in general.¹⁵⁴ As a result, the reference to climate change—and specifically climate change displaced persons—is limited and generalized.¹⁵⁵ In contrast, climate change,

¹⁴⁶ *Id.*

¹⁴⁷ Migration Compact, *supra* note 108, at para. 7.

¹⁴⁸ *See also id.* at para. 15 (“[The Global Compact for Safe, Orderly, and Regular Migration] promotes the well-being of migrants and the members of communities in countries of origin, transit and destination”).

¹⁴⁹ *Id.* at para. 18.

¹⁵⁰ *Id.* at paras. 18(k), (l).

¹⁵¹ *See generally* Migration Compact, *supra* at note 108.

¹⁵² UNITED NATIONS IOM, *supra* note 107.

¹⁵³ Particularly interesting is the mention of the Platform on Disaster Displacement; as discussed later in this Comment, the Nansen Initiative was the consultative framework upon which the Platform on Disaster Displacement was built. *See generally* Platform on Disaster Displacement – Our Response, PLATFORM ON DISASTER DISPLACEMENT, <https://disasterdisplacement.org/the-platform/our-response>.

¹⁵⁴ *See generally* Migration Compact, *supra* note 108.

¹⁵⁵ *Id.*; *see* McDonnell, *supra* note 24 (“But the language in the compacts is too vague to spur much progress.”).

particularly in its position as a driver of migration, is a complex phenomenon.¹⁵⁶ The circumstances of persons who have been displaced by climate change, therefore, are necessarily complex.¹⁵⁷ Although the attempt by the Migration Compact to ensconce climate change in a discussion of migration is admirable and worthy of praise by the international community, it still leaves room for more specific, targeted solutions.

Second, much of the skepticism surrounding the Migration Compact's effectiveness mirrors the skepticism around the Refugee Compact: the Migration Compact is not legally binding, an issue that many commentators foresee becoming more pressing as international anti-migrant rhetoric becomes more and more prevalent.¹⁵⁸ Indeed, key international players such as the United States and Australia, are either not participating in the negotiations or explicitly refusing to sign, citing issues of national sovereignty.¹⁵⁹

The Migration Compact stands for a milestone in international cooperation, with acceptance by 152 member-states and a comprehensive and detailed framework on how to encourage safe migration and the maintenance of the dignity of those migrating.¹⁶⁰ However, its necessary generality leaves people displaced by climate change still wanting for structures that could lead to meaningful protection.

¹⁵⁶ *Climate Change and Displacement*, *supra* note 7 (“The interplay between climate, conflict, poverty and persecution greatly increases the complexity of refugee emergencies.”).

¹⁵⁷ *Id.* An issue that further complicates the circumstance of climate change displaced persons is the fact that climate change may incur irreversible damage to certain regions throughout the world, thus forcing those populations to relocate permanently. *See id.* (“The impact of natural disasters and the more gradual effects of climate change – such as the receding waters of Lake Chad, rising sea levels for coastal communities, longer and harsher droughts, or the creep of desertification – can create new displaced populations and pose challenges for existing ones.”).

¹⁵⁸ *Global Compact for Migration: What is It and Why are Countries Opposing It?*, *supra* note 132 (noting that states like Hungary with restrictive migration agendas “consider the symbolic act of approving the GCM as a sign they are promoting migration.”).

¹⁵⁹ Henry Sherrell, *Australia and the Global Compact on Migration*, PARLIAMENT OF AUSTRALIA (Mar. 15, 2019), https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Flag_Post/2019/March/Australia_and_the_Global_Compact_on_Migration; Joshua Keating, *The Nonbinding Migration Pact That Was Too Much for Trump*, SLATE (Dec. 7, 2018), <https://slate.com/news-and-politics/2018/12/global-compact-on-migration-u-s-and-several-european-countries-skip-out-on-migrant-pact.html>. This has also prompted certain scholars to wonder if the Migration Compact might be “dead on arrival.” Lex Rieffel, *The Global Compact on Migration: Dead on Arrival?*, BROOKINGS (Dec. 12, 2018), <https://www.brookings.edu/blog/up-front/2018/12/12/the-global-compact-on-migration-dead-on-arrival>.

¹⁶⁰ *See General Assembly Officially Adopts Roadmap for Migrants to Improve Safety, Ease Suffering*, U.N. NEWS (Dec. 19, 2018), <https://news.un.org/en/story/2018/12/1028941>.

IV. REGIONAL FRAMEWORKS AS THE SOLUTION

As discussed in Section III, there seems to be little space in the definitions of already-established international law where climate change displaced persons might find relief. Climate change displaced persons cannot necessarily avail themselves of protection under refugee status. International migrant laws are general enough to encompass climate change displaced persons, but there is little recourse allotted for migrants generally, and the current political atmosphere surrounding migrants and migration patterns may actually hinder any sort of help climate change displaced persons may otherwise receive.¹⁶¹

However, the fact that regional treaties like the OAU Convention and the Cartagena Declaration exist, which provide more comprehensive protection to citizens in those regions, suggests regional treaties could provide the mechanism by which states are able to develop procedures and policies that specifically address the unique needs of climate change displaced persons. As discussed more fully below, regional treaties have several distinct advantages, especially in the realm of climate change displaced persons.

A. Climate Change Displaced Persons Tend to Remain Within Their Region

Although most people who are displaced by climate change remain in their country, the migrants who do leave their countries as a result of climate change generally remain within their region, with the exception of Latin American countries.¹⁶² This could be for a multitude of reasons; usually, those who are displaced as a result of climate change or otherwise forced to move because of sudden onset natural disasters generally tend to have fewer resources.¹⁶³ Therefore, they may not have the means of leaving the region. Another reason might be that populations whose livelihoods and homes are affected by natural disasters (either sudden or slow-onset) may not want to move far.¹⁶⁴ People who have been displaced do not only have to rebuild the physical foundations of their lives but also the social and communal foundations.¹⁶⁵

¹⁶¹ See generally *Global Compact for Migration: What is It and Why are Countries Opposing It?*, *supra* note 132.

¹⁶² Stapleton et al., *supra* note 6, at fig.3.

¹⁶³ Sridharan, *supra* note 71 (“That’s why it’s the poorest people who are most affected. People living in informal homes or shacks in Bangladesh or Haiti or even in Puerto Rico are among those who will be worst-affected and most likely to be compelled to move.”).

¹⁶⁴ *Id.* (“There are dozens of native Alaskan communities that want to move inland, because they are literally falling into the water as the permafrost melts beneath them. They don’t even want to move very far inland.”).

¹⁶⁵ Anthony Oliver-Smith, *Disasters and Large-Scale Population Dislocations: International and*

Additionally, the states in the region would be in the best position with the most pertinent knowledge on not only the issues of climate change that force people to migrate internationally, but also on the unique societal issues that coincide and sometimes exacerbate issues of climate change induced displacement within the region.¹⁶⁶ For example, the drafters of the OAU Convention and the Cartagena Declaration both recognized urgent issues that were affecting the citizens of the countries in Africa and Central America.¹⁶⁷ As a result, both the OAU Convention and the Cartagena Declaration were able to tailor their methods to their region's particular needs.¹⁶⁸

In this way, a focus on climate change displaced persons can be distinguished from a focus through the lens of the larger category of "refugee" under the definition in the 1951 Convention, since a focus on climate change displaced persons naturally must be narrower. Specific climate change issues vary from region to region.¹⁶⁹ For example, Pakistan suffers from extreme heat waves that often decimate local farmers' crops and livelihoods, thereby inducing migration.¹⁷⁰ This particular type of climate change effect, and as such the steps taken to prevent or aid climate change displaced persons in this particular region, may not necessarily be the same in other states.¹⁷¹ Vietnam, conversely, is at higher risk for "sudden onset" events such as typhoons or flooding.¹⁷²

For these reasons, it seems natural to conclude that any sort of international agreement that focuses and puts the spotlight on the plight of climate change displaced persons is likely to be most effective when limited to a specific region.¹⁷³ The varying types of climate and region-specific climate issues additionally supports the idea that climate change displaced persons require a separate international framework to best address their concerns.¹⁷⁴ To be effective, any proffered international solutions must be tailored specifically toward climate change displaced persons in that specific region.

National Responses, OXFORD RESEARCH ENCYCLOPEDIA OF NATURAL HAZARD SCIENCE at 10 (2019).

¹⁶⁶ See generally *Climate Change and Displacement*, *supra* note 7.

¹⁶⁷ Arboleda, *supra* note 77, at 186, 200.

¹⁶⁸ *Id.*

¹⁶⁹ Stapleton et al., *supra* note 6, at 17.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ See *id.* at 25 ("In recognising that human mobility is a systemic issue (para. 111), [the Addis Ababa Action Agenda] reinforces the need for national and regional planning and formal and informal support at these levels, as well as at international level.")

¹⁷⁴ See Lauren Nishimura, *Climate Change Migrants: Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies*, 27 INT'L J. REFUGEE L. 107, 126 (2015).

B. Key International Players are More Likely to Enter Regional Treaties

One of the greatest issues that impeded the potential for the Global Compacts on Refugees and Migration was the fact that many key international players refrained from joining or even participating in the negotiation. This is a problem that will also likely be faced by regional treaties. However, regional treaties as a vehicle for international law may go some distance in ameliorating some of the considerations that cause key players in the international forums to refrain from joining treaties.

First, there are high transaction costs for open multilateral treaties—that is, treaties like the Refugee Compact and Migration Compact that are open to the entire international community.¹⁷⁵ Because there are more countries, global agreements are more difficult to get off the ground.¹⁷⁶ This may dissuade states from negotiating where the public good (i.e. humanitarian benefits for climate change displaced persons) is not attractive enough.¹⁷⁷

However, there is some literature that suggests there may also be higher transactional costs for non-U.N. multilateral treaties (“closed” multilateral treaties).¹⁷⁸ Because of the specificity required in closed multilateral treaties and the relatively fewer members to closed multilateral treaties as opposed to open, U.N. multilateral treaties, authors of a working paper endorsed by the University of Chicago School of Law, Miles and Posner, postulate there may be higher transaction costs for members negotiating in closed multilateral treaties.¹⁷⁹

In their analysis of the data collected when they compared the countries in the world and the treaties entered by those countries, Miles and Posner discovered larger, wealthier states are more likely to enter into closed multilateral treaties and bilateral treaties.¹⁸⁰ Additionally, they discovered that the average number of non-U.N. multilateral treaties states join far outnumbers the number of U.N. multilateral treaties joined.¹⁸¹ Miles and Posner also discovered that “[s]tates tend to belong to more closed multilateral treaties than

¹⁷⁵ Thomas J. Miles & Eric A. Posner, *Which States Enter Into Treaties, and Why?* 7 (Univ. of Chi. L. Sch. Pub. L. & L. Theory, Working Paper No. 225, 2008); Todd Sandler, *Environmental Cooperation: Contrasting International Environmental Agreements*, 69 OXFORD ECON. PAPERS 345, 360 (2017).

¹⁷⁶ Miles & Posner, *supra* note 175, at 7; Sandler, *supra* note 175, at 360 (“By involving all countries, global agreements are more difficult to consummate unless there are relatively few necessary participants, who view benefits and costs in a similar fashion[.]”).

¹⁷⁷ Miles & Posner, *supra* note 175, at 4–6.

¹⁷⁸ *Id.* at 6.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 10–11.

¹⁸¹ *Id.*

open multilateral treaties, but each closed multilateral treaty has on average fewer members than open multilateral treaties do.”¹⁸²

Although Miles and Posner only observe the data and do not draw further conclusions, the data do suggest that most countries prefer to enter into closed multilateral treaties over open multilateral ones. Conversely, what the data at the very least imply are that countries are more likely to be parties to closed, non-U.N. multilateral treaties over open, U.N. multilateral treaties. Additionally, where countries in the same region know each other’s preferences and biases, transaction costs among those countries are reduced.¹⁸³

Thus, a regional multilateral agreement may be able to close the gap on the problem posed by the global compacts while simultaneously being more specific and appropriate for the regional problems.

C. *The Impact of Regional Agreements on International Law*

In addition to its theoretical benefits as discussed in the previous subsection, regional agreements can have far-reaching effects in the realm of general international law. The Nansen Initiative is especially illustrative of the power and impact of successful regional agreements, particularly in the developing realm of climate change induced displacement.

The Nansen Initiative was co-launched by the Norwegian and Swiss governments in October 2012 after the UNHCR held a Ministerial meeting to commemorate the 60th anniversary of the Refugee Convention.¹⁸⁴ Norway and Switzerland were the pioneering countries, joined by Costa Rica, Germany, and Mexico.¹⁸⁵ The Nansen Initiative aimed to “build a consensus on key principles and elements regarding the protection of persons displaced across borders in the context of natural disasters that sets the agenda for future action at domestic, regional, and international levels.”¹⁸⁶ It did this with an emphasis on state action and a bottom-up approach to the issue of climate changed persons.¹⁸⁷

¹⁸² *Id.*

¹⁸³ Sandler, *supra* note 175, at 360.

¹⁸⁴ Jane McAdam, *Creating New Norms? The Nansen Initiative on Disaster-Induced Cross-Border Displacement*, BROOKINGS (Apr. 1, 2013), <https://www.brookings.edu/opinions/creating-new-norms-the-nansen-initiative-on-disaster-induced-cross-border-displacement/> [hereinafter *Creating New Norms? The Nansen Initiative on Disaster-Induced Cross-Border Displacement*].

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*; Jane McAdam, *From the Nansen Initiative to the Platform on Disaster Displacement: Shaping International Approaches to Climate Change, Disasters and Displacement*, 39(4) UNSW L.J. 1518, 1521 (2016) [hereinafter *Shaping International Approaches to Climate Change, Disasters and Displacement*] (“There was a

In 2012, the Nansen Initiative recognized the gap left by trying to fit climate change displaced persons into the definition of “refugee” under the 1951 Convention.¹⁸⁸ In trying to close these gaps, the Nansen Initiative focused on state-led “disaster preparedness [] to prevent [] forced displacement and ensure better protection for those affected.”¹⁸⁹ Such measures later informed a Protection Agenda that was added into the Platform on Disaster Displacement.¹⁹⁰ In October 2015, the Protection Agenda was adopted by 109 states in Geneva.¹⁹¹

There are several areas in which the Nansen Initiative succeeded and where future regional agreements that focus on climate change can emulate. These successes can be grouped into two different realms. The first realm is the macro, large-scale, big-picture realm: the Nansen Initiative succeeded in bringing to an international audience the specific problem of cross-border migration as a result of climate change and other natural disasters.¹⁹² Although recognition is certainly not sufficient for immediate results and change, it signals to the global community that states should be contemplating the next move regarding climate change displaced persons.

Additionally, in the case of the Nansen Initiative, the information and resources shared and gathered as a part of the Nansen Initiative contributed to the development of international law on an international scale.¹⁹³ As Jane McAdam, Director of the Kaldor Centre for International Refugee Law at the University of New South Wales, writes:

In turn, the Nansen Initiative could leverage existing processes by ‘framing and feeding’ its findings into related policy initiatives, thus building up a common language on and coordinated approach to disaster- and climate change-related mobility. It also became a focal point for researchers and organisations working in the area – a hub that connected scholars, policymakers, practitioners and officials – and organically became a depository and ‘go to’ point for up-to-date information. It was highly successful both in mobilising the relevant

strong sense that if any work was to be done on the topic, it should be led by states rather than an international organisation.”).

¹⁸⁸ *Platform on Disaster Displacement*, FED. DEPT. FOREIGN AFFS., <https://www.eda.admin.ch/eda/en/home/foreign-policy/human-rights/humanitarian-policy/nansen-initiative.html> (last visited Oct. 29, 2019).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Shaping International Approaches to Climate Change, Disasters and Displacement*, *supra* note 187.

¹⁹³ *Platform on Disaster Displacement*, *supra* note 188.

actors and creating multi-sectoral networks, and in collating resources and knowledge.¹⁹⁴

This particular strength of the Nansen Initiative—that is, “building up a common language on and coordinated approach to disaster- and climate change-related mobility[.]”—is precisely the foundation for any regional agreement that aims to provide a framework for climate change displaced persons.¹⁹⁵

The second realm where the Nansen Initiative succeeds is on more of a micro-level. It provides a framework by which states can consult with each other on best practices to address the needs of people displaced internationally as a result of natural disasters and climate change without jeopardizing national sovereignty and agency.¹⁹⁶

Most importantly, though, the Nansen Initiative brought the issue back to the local, regional, and national levels, rather than keeping it stuck in the quagmire of international policymaking.¹⁹⁷ It emphasized the value in letting states collaborate and work together with other states in the region, thereby creating a common language.¹⁹⁸ Various regional consultations occurred to “feed” the Nansen Initiative process in the Pacific, Central America, Horn of Africa, Southeast Asia, and South Asia.¹⁹⁹ Participants from those various regions helmed these regional consultations, meeting to discuss concerns over cross-border relocation.²⁰⁰

Much of the strength of the Nansen Initiative lay in the establishment of state-led consultative processes that were just as much about international cooperation as allowing states in the region to helm and participate in that international effort. Deep delves into research helmed by and provided for regional states can certainly help inform and provide structure for the regional agreements that can be made to address the legal blind spot for climate change displaced persons.

¹⁹⁴ *Shaping International Approaches to Climate Change, Disasters and Displacement*, *supra* note 187, at 1525.

¹⁹⁵ *Id.*

¹⁹⁶ NANSEN INITIATIVE, <https://www.nanseninitiative.org/> (last visited Oct. 29, 2019).

¹⁹⁷ *Shaping International Approaches to Climate Change*, *supra* note 187, at 1524.

¹⁹⁸ *Id.* at 1525.

¹⁹⁹ *See, e.g.*, NANSEN INITIATIVE, *supra* note 196.

²⁰⁰ *Id.*

V. WHAT MIGHT A REGIONAL TREATY LOOK LIKE?

The question of what exactly a regional treaty might say to address the problem of climate change displaced persons exceeds the scope of this Comment. However, this Comment will endeavor to posit some suggestions from existing international precedent and initiatives that may inform how regional actors may decide to approach the issue of climate change displaced persons.

It is crucial that whatever the regional treaty contains in the way of language or policy should avoid assigning affirmative obligations to the member states party to it. With anti-migrant rhetoric sweeping throughout countries internationally, the danger of assigning any affirmative obligation in the treaty is that, international players will balk at the idea of signing and participating as a result of internal pressures.²⁰¹ For example, the United States has backed out of the Refugee and Migrant Compacts.²⁰² Domestic politics remains a thorny tangle and the greatest barrier for any kind of substantial change on an international level.

Therefore, regional agreements specifically targeted at climate change displaced persons may be more acceptable to key international players if they go the way of the Nansen Initiative. Rather than requiring affirmative obligations—particularly in the realm of immigration law, which can infringe upon national sovereignty—the regional agreements would be more palatable if they were focused on collating resources and sharing information with a specific eye on climate change displaced persons.²⁰³ Particularly compelling might be information targeted at how policies can be developed within the countries themselves to better improve the existing infrastructure in place to assist those who have been displaced by climate change related phenomena.

These internal development strategies have already begun to take form through efforts of the World Bank.²⁰⁴ Take, for example, the story of Monoara Khatun, a 23-year-old seamstress from Bangladesh.²⁰⁵ As a result of repeated flooding in her village and the resultant increase in unemployment, she had to

²⁰¹ See generally Rick Gladstone, *U.S. Quits Migration Pact, Saying It Infringes on Sovereignty*, N.Y. TIMES (Dec. 3, 2017), <https://www.nytimes.com/2017/12/03/world/americas/united-nations-migration-pact.html>.

²⁰² *Id.*

²⁰³ NANSEN INITIATIVE, *supra* note 196.

²⁰⁴ See generally *Meet the Human Faces of Climate Migration*, WORLD BANK (Mar. 19, 2018), <https://www.worldbank.org/en/news/feature/2018/03/19/meet-the-human-faces-of-climate-migration>.

²⁰⁵ *Id.*

move to the capital city of Bangladesh, Dhaka.²⁰⁶ This is not an uncommon experience; in fact, Bangladesh has been highlighted by the World Bank as one of three countries that are projected to have a substantial increase in people who have been displaced by climate change.²⁰⁷ Since most people who have been displaced tend to remain in their country, they tend to move from rural areas to more urban areas; such urban areas may not have the infrastructure in place to handle the sudden influx of new residents.²⁰⁸

However, in Monoara's case, she was able to avail herself of one of the World Bank's initiatives, the NARI project.²⁰⁹ The NARI project provides training, transitional housing, counseling, and job placement services for poor and vulnerable women.²¹⁰ By connecting with it, Monoara was able to support her family members who still remain in the village and gain financial independence for herself.²¹¹ Monoara's case exemplifies how integral development plans can be in helping countries handle the inevitable occurrence of migration.²¹² Any regional agreement should acknowledge the development of such initiatives for climate change displaced persons. Additionally, the added benefit of focusing regional agreements on development and policy planning is that such regional agreements would likely be more agreeable to countries who are more reluctant to fully engage in the ever-increasing issue of climate change displaced persons.

CONCLUSION

There is still a lot of work to be done for the case of climate change displaced persons, globally, regionally, and domestically. Certainly, pre-existing global international frameworks have been found lacking for those who must cross borders to escape the rising flood or the increasing drought, since international treaties do not address the gap left by the definition of refugees because these international treaties do not specifically target climate change displaced persons.²¹³

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ UNITED NATIONS MIGRATION AGENCY: INTERNATIONAL ORGANIZATION FOR MIGRATION [IOM], WORLD MIGRATION REPORT 2018 60–61 (2017).

²⁰⁹ *Meet the Human Faces of Climate Migration*, *supra* note 204.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *See* Refugee Compact, *supra* note 108; Migration Compact, *supra* note 108.

However, international law cannot afford to be so reluctant to envelop climate change displaced persons, even if it must begin with non-binding regional agreements. With the increasing certainty that climate change is altering the world, the lack of attention and solutions for climate change displaced persons is an unacceptable reality.

This Comment has suggested that establishing regional frameworks better takes into consideration the distinctive problems and unique political and legal systems in each region, given the potential host countries in the region will likely largely receive climate change displaced persons in that region.²¹⁴

First, regional agreements are more sensitive to the variations in region, whereas global compacts tend to paint with a broader brush.²¹⁵ Regional agreements are able to take into consideration the unique positions many key players in that region have regarding the ability to host climate change displaced persons who are at risk of losing their homes to climate change related disasters.²¹⁶ This could have the additional benefit of incentivizing or at least lowering the transaction cost of negotiating an agreement in the region.²¹⁷ Regional agreements would allow less of a diffusion of responsibility-sharing that may lead to a tragedy of the commons situation, as some scholars have suggested is a fault of the Refugee Compact.²¹⁸

Second, regional multilateral agreements can “constitute an important step in the process of putting such displacement onto the international agenda.”²¹⁹ By placing climate change displaced persons on the international agenda, multilateral regional agreements may lay important groundwork for more effective, more binding treaties in the future.

What might a regional treaty or agreement regarding solutions for persons displaced by climate change look like? That solution can be modeled after the pre-existing framework of the Nansen Initiative, which has a history of success in the mobilizing countries that volunteered to take part and “collating resources and knowledge” among multi-sectoral networks.²²⁰ As stated above, the Nansen

²¹⁴ See Stapleton et al., *supra* note 6, at fig.3.

²¹⁵ Sandler, *supra* note 175, at 360.

²¹⁶ *See id.*

²¹⁷ *See id.*

²¹⁸ See Aleinikoff, *supra* note 124, at 613.

²¹⁹ Walter Kälin, *From the Nansen Principles to the Nansen Initiative*, FORCED MIGRATION REV., <https://www.fmreview.org/preventing/kalin> (last visited Oct. 29, 2019).

²²⁰ *Shaping International Approaches to Climate Change*, *supra* note 187, at 1525.

Initiative was not a treaty.²²¹ Rather, it was a consultative process whose mission was to utilize soft law to build global consensus, which it hoped would include standards of treatment.²²²

Alternatively, states can take initiatives to convene to discuss this quickly-developing issue, as countries in Central America and Africa did.²²³ However, this may require a concerted effort on the part of domestic actors in states to recognize climate change displacement as a real issue and concern.²²⁴ The OAU Convention and the Cartagena Declaration were both responses to widely-acknowledged problems in the region.²²⁵ Thus, those states were prompted to create solutions.²²⁶

In comparison, climate change has not yet been identified in certain countries as a problem.²²⁷ For example, the United States, despite once being a leader in humanitarian assistance, has since stopped funding climate change adaption and, in conjunction, heightened the parameters of its immigration criteria.²²⁸ This reluctance to acknowledge climate change even as a problem, let alone a driver of international migration, likely means that these countries will not participate in regional solutions regarding persons who have been displaced internationally by climate change.²²⁹

Additionally, some of the issues that plagued the Refugee and Migrant Compacts still apply to regional treaties or agreements. The Nansen Initiative was a voluntary agreement.²³⁰ Whatever regional agreements that come out of negotiations within the region will likely be the same, since there was such an intense backlash regarding the Refugee and Migration Compacts from countries that would best be able to host any climate change displaced persons.²³¹ Key

²²¹ *About Us*, *supra* note 59 (“The Nansen Initiative does not seek to develop new legal standards, but rather to build consensus among states on the elements of a protection agenda, which may include standards of treatment.”).

²²² *Id.*

²²³ Arboleda, *supra* note 77.

²²⁴ See Oona A. Hathaway, *Why Do Countries Commit to Human Rights Treaties?*, 51 J. CONFLICT RESOL. 588, 613 (2007).

²²⁵ Arboleda, *supra* note 77, at 187.

²²⁶ *Id.*

²²⁷ See, e.g., Sridharan, *supra* note 71.

²²⁸ *Id.*

²²⁹ See also Maria C. Garcia, *Does the United States Need a Climate Refugee Policy?*, HISTORICAL CLIMATOLOGY—BLOG (Apr. 25, 2019), <https://www.historicalclimatology.com/blog/does-the-united-states-need-a-climate-refugee-policy>.

²³⁰ *About Us*, *supra* note 59.

²³¹ See *Shaping International Approaches to Climate Change*, *supra* note 187, at 1522; *Global Compact for Migration: What is It and Why are Countries Opposing It?*, *supra* note 132 (nothing that states like Hungary

international players, like the United States, may still refuse to enter international treaties as a result of concerns of national security and immigration policy grounds.²³²

In response, this Comment has suggested two potential avenues by which regional treaties can attempt to circumvent the pitfalls of existing international agreements. First, regional treaties can emulate the Nansen Initiative by only creating guidelines for information-sharing among the states in the region. Second, regional treaties may attempt to structure around initiatives like the World Bank that can create programs for domestic use within that region to better prepare cities to handle the inevitable migration of climate change displaced persons.

Regardless of the contemplated solutions, it is becoming increasingly clear the international community can no longer wait to act. With sea levels rising and threatening the Pacific island nations, with climate change exacerbating drought and desertification, with Australia on fire, the issue of climate change displaced persons should be at the forefront of domestic policymakers' minds.²³³ Society's collective feet are being held to the proverbial fire; if we do not take up the mantle, we may very well end up getting burned.

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with restrictive migration agendas “consider the symbolic act of approving the GCM as a sign they are promoting migration.”).

²³² Keating, *supra* note 159.

²³³ See Becky Alexis-Martin et al., *How to Save a Sinking Island Nation*, BBC (Aug. 15, 2019), <https://www.bbc.com/future/article/20190813-how-to-save-a-sinking-island-nation>; *Climate Change and Displacement*, *supra* note 7 (“Forced displacement across borders can stem from the interaction between climate change and disasters with conflict and violence, or it can arise from natural or man-made disasters alone.”); see also Bianca Nogrady, *How Long Will Australia Be Livable?*, ATLANTIC (Jan. 7, 2020), <https://www.theatlantic.com/science/archive/2020/01/only-way-confront-australias-wildfires/604546>.

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