

**“DO WHAT YOU CAN DO, WITH WHAT  
YOU HAVE, WHERE YOU ARE”:  
ASSESSING THE PLIGHT OF CLIMATE  
CHANGE REFUGEES AND APPROACHES  
TO FILL THE GAPS WITHIN THE  
INTERNATIONAL LEGAL FRAMEWORK**

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**INTRODUCTION**

Climate change appears to be occurring at a faster rate than many worst-case predictions.<sup>1</sup> Climate-induced migration is likely

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one of the most significant consequences of climate change that the international community must confront, with millions of people projected to be displaced by shoreline erosion, coastal flooding and severe drought.<sup>2</sup> In recent years, substantial evidence has emerged that climate change will cause massive displacement throughout the world.<sup>3</sup> In 2007, the Intergovernmental Panel on Climate

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<sup>1</sup> J. Overland, M. Wang, & J. Walsh, *Atmosphere*, ARCTIC REPORT CARD: UPDATE FOR 2010 (Mar. 7 2011), <http://www.arctic.noaa.gov/reportcard/atmosphere.html> ("There continues to be significant excess heat storage in the Arctic Ocean at the end of the summer due to continued near-record sea ice loss. There is evidence that the effect of higher temperatures in the lower Arctic atmosphere in fall is contributing to changes in the atmospheric circulation in both the Arctic and northern mid-latitudes."); INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007: SYNTHESIS REPORT 23 (Abdelkader Allali et al. eds., 2007), available at [http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4\\_syr.pdf](http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf) [SYNTHESIS REPORT]; *Executive Summary*, in STERN REVIEW REPORT: THE ECONOMICS OF CLIMATE CHANGE 3 (2006), available at [http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/media/4/3/Executive\\_Summary.pdf](http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/media/4/3/Executive_Summary.pdf) [hereinafter STERN REVIEW] ("At this level there is at least a 77% chance - and perhaps up to a 99% chance, depending on the climate model used - of a global average temperature rise exceeding 2°C").

<sup>2</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *Overview*, in IPCC FIRST ASSESSMENT REPORT 56 (1990), available at [http://www.ipcc.ch/ipccreports/1992%20IPCC%20Supplement/IPCC\\_1990\\_and\\_1992\\_Assessments/English/ipcc\\_90\\_92\\_assessments\\_far\\_overview.pdf](http://www.ipcc.ch/ipccreports/1992%20IPCC%20Supplement/IPCC_1990_and_1992_Assessments/English/ipcc_90_92_assessments_far_overview.pdf).

<sup>3</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 2; STERN REVIEW, *supra* note 1, at 6; Press Release, Office of the High Commissioner for Human Rights, The Human Rights Impact of Climate Change, U. N. Joint Press Kit for Bali Climate Change Conference DPI/2483 (Nov. 2007), available at <http://www.un.org/climatechange/pdfs/bali/ohchr-bali07-19.pdf>.

Change (“IPCC”) estimated that by “2080 it is likely that 1.1 to 3.2 billion people will be experiencing water scarcity; 200 to 600 million, hunger; 2 to 7 million more per year, coastal flooding.”<sup>4</sup> These climate-induced impacts will lead to millions of migrants seeking to relocate within or between countries without any legal protection or aid, leaving them highly vulnerable.<sup>5</sup>

Unlike traditional refugees protected by the 1951 Refugee Convention<sup>6</sup> and its 1967 Protocol,<sup>7</sup> trans-boundary climate refugees are likely to face the greatest risks to their human rights and fundamental freedoms because they are not recognized as refugees or legal migrants. Without action, millions of migrants face threats to their human rights and the likelihood of being stripped of all their assets without a home to which they can return. Additionally, displacement of these unprotected populations will likely exacerbate conflict and impose migration pressures not only on home states, but on neighboring countries within the region.<sup>8</sup> For example, home and host states for these migrants face heightened economic, political and environmental stresses as well as serious security risks.

These alarming findings should signal to the international community that unprecedented climate-induced migration is inevitable, and unless action is taken, everyone will feel the brunt

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<sup>4</sup> CHRISTIAN AID, HUMAN TIDE: THE REAL MIGRATION CRISIS 22 (May 2007), available at <http://www.christianaid.org.uk/Images/human-tide.pdf>; WORKING GROUP II, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007: CLIMATE CHANGE IMPACTS, ADAPTATION AND VULNERABILITY(2007)(draft of the Technical Summary).

<sup>5</sup> CHRISTIAN AID, *supra* note 4; WORKING GROUP II, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007: CLIMATE CHANGE IMPACTS, ADAPTATION AND VULNERABILITY (2007)(draft of chpt. 19).

<sup>6</sup> Convention Relating to the Status of Refugees, *opened for signature* Jan. 28, 1951, 189 U.N.T.S. 150 [hereinafter Refugee Convention].

<sup>7</sup> Protocol Relating to the Status of Refugees art. 1, *opened for signature* Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 [hereinafter Refugee Protocol].

<sup>8</sup> CHRISTIAN AID, *supra* note 4; WORKING GROUP II, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 5.

of its powerful impact. Through the United Nations Framework Convention on Climate Change and the Kyoto Protocol, the international regime has attempted to mitigate climate change and has proposed adaptation techniques.<sup>9</sup> Yet, there has hardly been any discussion regarding how to plan for and manage the surge in climate refugees within this framework. The international community's lack of action, however, cannot be attributed to their lack of concern. During the last ten years, heightened awareness of the vulnerability of climate refugees has surfaced. In particular, massive displacement of island and coastal populations in Southeast Asia and estimates of future trans-boundary movement have propelled various international actors to discuss how to protect the needs of these irregular migrants and to plan for the major security implications.<sup>10</sup> Discussion is imperative to heighten awareness of the issue. However, the international community must immediately take action to address the following major gaps in the protection framework for climate refugees: (1) the disagreement on how to define climate-induced migrants; (2) the lack of clear guidelines for states in applying existing international humanitarian law to this subset of migrants; and (3) the absence of a clear division of responsibility for the creation of these norms, application of these standards and acquisition of funding. Given the grave consequences of maintaining the status quo, the international community will have to "do what [they] can do, with what [they] have, where [they] are."<sup>11</sup>

The international community will most likely reject the formation of a new, binding legal instrument addressing these migrants or expanding the scope of the 1951 Refugee Convention

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<sup>9</sup> Kyoto Protocol, United Nations Framework Convention on Climate Change, Dec. 11, 1997, available at <http://unfccc.int/resource/docs/convkp/kpeng.pdf>.

<sup>10</sup> Alexander Betts, *Towards a 'Soft law' Framework for the Protection of Vulnerable Irregular Migrants*, 22 INT'L J. REFUGEE L. 209, 212-213 (2010) (Betts discusses several developments in the international community that indicate a heightened awareness of the vulnerability of irregular migrants).

<sup>11</sup> Theodore Roosevelt, 26th President of the United States (1859-1919).

and its 1967 Protocol. Both of these proposals are problematic in closing the gaps mentioned above and are unattractive to international actors reluctant to adopt binding norms that protect citizens of a foreign state. Rather, the most plausible approach is to take what they have, the existing international humanitarian law established within the Refugee Convention, and apply it to trans-boundary climate refugees in developing a “soft law” framework. Even though these standards would not bind international actors, climate migrants would be given some level of protection until the political will exists to form a new legal instrument. Additionally, if adopted, the established guidelines and the mechanisms for inter-agency collaboration to implement the norms and principles could serve as an important precedent for the international community in creating a new legal regime.

This paper will analyze how mass trans-boundary migration induced by climate change can be effectively addressed within the framework of the international legal system. Part I examines the climate refugee crisis that is expected to worsen as increased temperatures indirectly cause significant atmospheric changes and rising sea levels. Part II focuses on three different regions where climate change migration is currently occurring. It explores how these regions’ populations are adversely impacted, the characteristics of migrants there, the movement patterns for such persons, and the implications of this movement upon neighboring countries. This examination is critical in Part III in shedding light on how to define these migrants. Part III analyzes the complexity of defining people affected by climate change based on migration characteristics. It proposes that international policy makers adopt Biermann and Boas’s definition of “climate refugee,” which is terminology that is dependent upon whether the migration is directly related to the climate change effects in that region. It further recommends that the definition is limited to trans-boundary movement. Part IV analyzes the possible mechanisms that the international community could employ to fill the gaps in the legal framework to adequately assist climate

refugees. Ultimately, it concludes that the most plausible solution is to develop the soft law framework proposed by Alexander Betts to ensure that such persons have some level of protection.

## I. THE PLIGHT OF CLIMATE REFUGEES

In its 2007 Report, the IPCC found that unprecedented warming of the climate system is causing widespread melting of snow and ice and rising sea levels.<sup>12</sup> While scientists cannot directly attribute individual extreme weather events to larger scale climate changes, recent data analysis by the National Oceanic and Atmospheric Administration found a link between sea ice loss and an increased impact from the Arctic on mid-latitude climate.<sup>13</sup> Therefore, it is likely that as the Arctic continues to warm, changes in the sea level and atmospheric conditions will soon follow. Due to these changes, many regions will face increased drought, water shortages, desertification, and riverine and coastal flooding that will adversely impact many local and regional populations.<sup>14</sup>

It is unclear to what extent these regional impacts will exacerbate migration flows. Migration can be attributed to a complex range of interrelated factors, including the nature of the change (e.g., climate change consequences or natural disasters); the population's adaptive capacity; demographics; social culture; non-climate related environment; conflict; and local politics.<sup>15</sup> Despite this uncertainty, mounting evidence of shifts in the climate and its consequent effects indicate that climate change will likely influence large-scale displacement, forcing millions of people to seek shelter and aid within their country or across international

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<sup>12</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 1, at 30.

<sup>13</sup> Overland, Wang & Walsh, *supra* note 1.

<sup>14</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 1, at 50-51; STERN REVIEW, *supra* note 1, at 6-7.

<sup>15</sup> STERN REVIEW, *supra* note 1, at 7; Gaim Kibreab, *Climate Change and Human Migration: A Tenuous Relationship*, 20 FORDHAM ENVTL. L. REV. 357, 360 (2010).

borders.<sup>16</sup> Some estimate that 50 to 200 million people will be displaced due to climate change by 2100.<sup>17</sup> However, the most widely accepted figure,<sup>18</sup> proposed by Norman Myers, is that by 2050, there will be 150 to 200 million climate refugees.<sup>19</sup> Specifically, Myers estimated that by 2050, the number of climate refugees will be 73 million in China, 20 million in India, 26 million in Bangladesh, 12 million in Egypt, and 31 million elsewhere.<sup>20</sup>

Most of these impacts will take place in hotspots where regions and communities are especially vulnerable due to resource scarcity, over-population, political conflict and environmental degradation.<sup>21</sup> These hotspots include regions in Africa and Asia

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<sup>16</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 1, at 50-51; STERN REVIEW, *supra* note 1, at 7.

<sup>17</sup> Frankman Biermann & Ingrid Boas, *Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees* 9-14 (Global Governance Project, Global Governance Working Paper No. 22, 2007), available at

[http://www.sarpn.org.za/documents/d0002952/Climate\\_refugees\\_global\\_governance\\_Nov2007.pdf](http://www.sarpn.org.za/documents/d0002952/Climate_refugees_global_governance_Nov2007.pdf) (estimated displacement of 200 million people); Williams, *supra* note 7, at 506 (estimating 50 to 200 million displaced persons by 2080).

<sup>18</sup> See STERN REVIEW, *supra* note 1, at 6 (upholds an estimate that by the middle of the century, 200 million people will be displaced because of droughts, rising sea levels and flooding); See also INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 1.

<sup>19</sup> NORMAN MYERS, CLIMATE INST., ENVIRONMENTAL EXODUS: AN EMERGENT CRISIS IN THE GLOBAL ARENA 1 (1995), available at <http://www.climate.org/PDF/Environmental%20Exodus.pdf> (Estimated that there were 25 million environmental refugees in the mid-1990s. He claims that by 2010, this figure would double and that by 2050, the upper limit would be 200 million).

<sup>20</sup> MYERS, *supra* note 18, at 8.

<sup>21</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 1, at 50-51; STERN REVIEW, *supra* note 1, at 7-8; U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS AND CARE INT'L, HUMANITARIAN IMPLICATIONS OF CLIMATE CHANGE 2 (2008), available at [http://www.careclimatechange.org/files/reports/Human\\_Implications\\_PolicyBrief.pdf](http://www.careclimatechange.org/files/reports/Human_Implications_PolicyBrief.pdf).

as well as small islands.<sup>22</sup> Thus, developing countries with the least adaptive capacity will face the brunt of climate change effects.<sup>23</sup> For example in Africa, between 75 and 250 million people are expected to face water shortages, and in some countries, agricultural production will be reduced by as much as 50 percent by 2020.<sup>24</sup> Heavily populated coastal areas in Southeast Asia face a high risk of increased flooding from the ocean and mega-delta regions face flooding from rivers.<sup>25</sup> Small islands will be threatened by inundation, storm surges, erosion and other coastal hazards, to the extent that whole populations of nations may have to relocate.<sup>26</sup>

All of these impacts will destabilize vital infrastructure and drastically alter lifestyles in these communities.<sup>27</sup> Climate change will worsen existing conditions within these nations where impoverished populations already struggle to survive.<sup>28</sup> While some who will be displaced may stay in their home state, it seems likely that growing numbers of people will cross international

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<sup>22</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 1, at 50-51; STERN REVIEW, *supra* note 1, at 6; U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS AND CARE INT'L, *supra* note 20, at 2.

<sup>23</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 1, at 50-51; STERN REVIEW, *supra* note 1, at 7-8; U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS AND CARE INT'L, *supra* note 20, at 2.

<sup>24</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 1, at 50.

<sup>25</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 1, at 50-51; STERN REVIEW, *supra* note 1, at 6; U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS AND CARE INT'L, *supra* note 20, at 2.

<sup>26</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 1, at 50-51; STERN REVIEW, *supra* note 1, at 6; U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS AND CARE INT'L, *supra* note 20, at 2.

<sup>27</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 1, at 50-51; STERN REVIEW, *supra* note 1, at 7-8; U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS AND CARE INT'L, *supra* note 20, at 2.

<sup>28</sup> INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 1, at 50-51; STERN REVIEW, *supra* note 1, at 7-8; U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS AND CARE INT'L, *supra* note 20, at 2.

borders in order to seek protection and aid.<sup>29</sup> A recent study by the American Security Project asserts that, in the long-term, worsening economic conditions, growing social tensions and political instability will drive greater numbers to make the dangerous journey to the United States.<sup>30</sup> Climate refugees in other developing nations will likely flee their home state for the same reasons. Additionally, when an entire state, or a substantial part of one, becomes uninhabitable, as with the “disappearing” small island states, it is impossible for these populations to stay or return to their home states. This trans-boundary movement could have negative effects, not only on climate-affected communities, but on the international system as migration becomes unmanageable.<sup>31</sup>

## II. CASE STUDIES: UNDERSTANDING THE MODERN CLIMATE CHANGE REFUGEE AND IMPLICATIONS FOR NEIGHBORING COUNTRIES

While the projections in Part I indicate what will occur in the future, consequences of climate change are already being felt across the globe. Approximately 25 million people are displaced by environmental factors – more than are displaced by war.<sup>32</sup> In order to effectively confront climate change migration, the international community must have a firm understanding of the nature and scale of these displacements. The following case studies can be informative in forming a consensus regarding

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<sup>29</sup> See STERN REVIEW, *supra* note 1, at 7 (“Impacts on this scale could spill over national borders, exacerbating the damage further”).

<sup>30</sup> See LINDSEY ROSS, CLIMATE CHANGE AND IMMIGRATION: WARNINGS FOR AMERICA’S SOUTHERN BORDER 1 (2010), *available at* <http://americansecurityproject.org/wp-content/uploads/2010/09/Climate-Change-and-Immigration-FINAL.pdf> (asserting that with increasing flooding, droughts, and heat waves, the U.S. should anticipate a surge in migrants from South America.)

<sup>31</sup> ROSS, *supra* note 29, at 5-6.

<sup>32</sup> INT’L FEDERATION OF RED CROSS AND RED CRESCENT SOCIETIES, WORLD DISASTERS REPORT 2001 (2001).

terminology and, consequently, in determining the appropriate international approach to confront this emerging crisis.

*A. Bangladesh versus India and the United Kingdom*

Emerging evidence in India and Bangladesh indicates that sea levels are rising faster than the global average of 1.2 millimeters a year.<sup>33</sup> Up to 20 million people may be forced to leave Bangladesh within the next 40 years because of climate change.<sup>34</sup> Bangladesh, and countries like it, are already experiencing the adverse impact of climate change as tens of thousands of its citizens have abandoned flooded and storm-damaged coastal areas.<sup>35</sup> Additionally, hundreds of Bangladeshis in the coastal zone are forced to drink salty water as the sea level rises and intrudes on fresh water aquifers.<sup>36</sup>

As part of Southern Asia, Bangladesh has some of the most vulnerable and impoverished communities that will face the brunt of climate change effects.<sup>37</sup> The South Asian region has the largest number of people living in poverty, many of whom live in the coastal zone.<sup>38</sup> Bangladesh, Pakistan and India share a coast line where nearly 130 million people live in the Low Elevation Coastal Zone (“LECZ”).<sup>39</sup> About 97 percent of the region’s LECZ

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<sup>33</sup> Harriet Grant et. al., *UK Should Open Borders to Climate Refugees*, GUARDIAN NEWS & MEDIA, Dec. 4, 2009, <http://www.guardian.co.uk/environment/2009/nov/30/rich-west-climate-change>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> SUDHIR CHELLA RAJAN, CLIMATE MIGRANTS IN SOUTH ASIA: ESTIMATES AND SOLUTIONS 6 (2008), available at <http://www.greenpeace.org/india/Global/india/report/2008/3/blue-alert-report.pdf>.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

population lives in Bangladesh and India, with approximately the same distribution in each country.<sup>40</sup>

Unlike areas with drought and desertification, these coastal communities face abrupt climate events, such as storm surges, inundation, rising water tables and saltwater erosion.<sup>41</sup> The most vulnerable and least resilient communities, dependent on climate-sensitive sectors such as fisheries and agriculture for their livelihoods, are forced to abandon their homes to find stability elsewhere.<sup>42</sup> These sudden climate events result in massive population displacement of entire villages, towns and cities in coastal areas.<sup>43</sup> Climate refugees from the LECZ tend to migrate to urban areas within or outside the country's borders.<sup>44</sup>

In the case of Bangladesh, internal and trans-boundary migration is problematic because large cities in Bangladesh and neighboring countries already have significant resource constraints and face rapid urbanization.<sup>45</sup> In particular, since Bangladesh is in close proximity to India, displaced Bangladeshis will most likely cross international borders into India.<sup>46</sup> This massive movement will place additional stress upon India's large interior cities, which face water shortages and resource scarcity due to climate change.<sup>47</sup> This creates a no-win situation for Bangladesh's climate refugees and places both the Bangladeshi and Indian governments in compromising positions. Evidence of the potential conflict between Bangladesh and India is already apparent. In 2002, India started the construction of a wall along the India-Bangladesh

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 4.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 10.

<sup>47</sup> *Id.*

border not only to stop illegal immigration, but also to control the flow of future climate refugees.<sup>48</sup>

Bangladesh has asserted that the United Kingdom should receive its climate refugees because Europe and the United States are primarily responsible for this displacement due to their greenhouse gas emissions.<sup>49</sup> Bangladesh's finance minister, Abul Mall Abdul Muhith, claimed that his country could not accommodate all the recent migrants fleeing coastal areas.<sup>50</sup> Additionally, Muhith asked the UN to change international law so that climate refugees would be given the same protection as those protected under the Refugee Convention.<sup>51</sup> Neither the United Kingdom nor the UN has taken action to address Muhith's request. However, as the number of climate refugees continues to increase, countries like Bangladesh and India may not be willing to compromise with developed nations in setting emission reduction targets at the next Convention, unless their concerns are addressed.

#### *B. Tuvalu versus Australia and New Zealand*

Tuvalu is a small island nation in the Southern Pacific that is highly vulnerable to the adverse impacts of climate change and weather events due to its low elevation.<sup>52</sup> It is a prime example of the "disappearing" island scenario where all 11,000 of its inhabitants will eventually have to relocate to a new country without the possibility of returning.<sup>53</sup> Flooding and water

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<sup>48</sup> INT'L ORG. FOR MIGRATION, MIGRATION AND CLIMATE CHANGE 40 (2008), available at [http://www.reliefweb.int/rw/lib.nsf/db900sid/ASAZ-7CGDBH/\\$file/iom\\_dec2007.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/ASAZ-7CGDBH/$file/iom_dec2007.pdf?openelement).

<sup>49</sup> Grant, *supra* note 32.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> MYERS, *supra* note 18, at 146.

<sup>53</sup> ANDREW BARKER, CLIMATE CHANGE MIGRANTS: A CASE STUDY ANALYSIS 17 (2008), available at <http://www.adb.org/Documents/Climate-Change/Migration-Final-Report.pdf> (claiming that because of significant sea-level rise, all of Tuvalu's residences face the prospect of migration).

shortages will take a massive toll, possibly leading Tuvalu to be the first populated island swallowed by the ocean.<sup>54</sup>

Like other hotspot regions, many of Tuvalu's citizens are impoverished and have limited work experience and workplace skills.<sup>55</sup> In addition, the nation's economy is weak and its main source of revenue comes from foreign aid.<sup>56</sup> Tuvalu's citizens are already threatened as the sea level rises significantly and the island sinks into the Pacific.<sup>57</sup> Tuvalu's government has reached out to Australia and New Zealand, requesting that these nations grant refugee status to Tuvalu's inhabitants.<sup>58</sup> However, these governments rejected that request, thereby leaving Tuvalu's residents unprotected and without aid as trans-boundary displacement occurs.<sup>59</sup>

### C. South American Nations versus *The United States*

The effects of climate change have already begun to negatively impact many areas in Latin America. Honduras, Nicaragua, Cuba and Guatemala are among the worst impacted by the 2005 drought that caused significant food shortages.<sup>60</sup> The UN Food and Agriculture Organization found that 53 million people in Latin America and the Caribbean face food shortages due to

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 18.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 19.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*; INT'L ORG. FOR MIGRATION, *supra* note 47, at 39 (stating that New Zealand will not accept Tuvaluans when the environment becomes uninhabitable).

<sup>60</sup> ROSS, *supra* note 29, at 2-3 ("By 2050, agricultural productivity is projected to decrease in Argentina and Brazil by seven and [ten] percent"); Jon Vidal and Tim Radford, *One in Six Countries Facing Food Shortages*, GUARDIAN NEWS & MEDIA, Jun. 5, 2005, <http://www.guardian.co.uk/world/2005/jun/30/science.famine> (UN Scientists state that Guatemala, Honduras, Nicaragua and Peru already being impacted with severe drought).

increasing droughts resulting from climate change.<sup>61</sup> The majority of those heavily impacted by the shortages live in impoverished and politically unstable communities with scarce resources.<sup>62</sup> These regions will face surmounting pressures as the earth continues to warm and they are pummeled by climate-induced effects. Citizens of these countries will seek to escape social and political instability and the shortage of resources of their home states in favor of a well-established safe harbor - the United States.<sup>63</sup>

The American Security Project, a bi-partisan, nonprofit research group, recently indicated that “while migration might be down in the short term, in the long term, the United States is likely to see an increase in migrants all across the southern border due to climate change and its effects.”<sup>64</sup> Therefore, the United States can expect a flood of climate refugees.<sup>65</sup> The pre-existing routes between South American countries and the United States increase the likelihood of amplified migration.<sup>66</sup> The projected surge in climate refugees will place an additional burden on United States border communities and raise serious security issues.<sup>67</sup> Given the United States’ current hostile immigration policy toward Latin American migrants, these border communities will have to plan and manage for waves of climate refugees by hiring more border patrol and law enforcement officers.<sup>68</sup> On the other hand,

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<sup>61</sup> FOOD & AGRIC. ORG. OF THE UNITED NATIONS, THE STATE OF FOOD INSECURITY IN THE WORLD 10 (2010), available at <http://www.fao.org/docrep/013/i1683e/i1683e.pdf>.

<sup>62</sup> ROSS, *supra* note 29, at 1.

<sup>63</sup> *Id.*

<sup>64</sup> Shaun Waterman, ‘Climate Migrants’ Projected to Flood U.S., THE WASH. TIMES, Sept. 1, 2010, <http://www.washingtontimes.com/news/2010/sep/1/global-warming-will-increase-migration-report-says/>.

<sup>65</sup> ROSS, *supra* note 29, at 7.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 6.

<sup>68</sup> *Id.* at 5.

unprotected climate refugee migrants can expect to experience human rights violations as they are detained and deported back to their country and its uninhabitable living conditions.

### III. WHAT'S IN A NAME?

There is little agreement in the international community on how to define those who are displaced as a result of climate change. However, establishing a widely accepted definition of such persons is the first step in addressing climate change migration within the international legal framework. Without a clear definition, policy makers will struggle to adequately plan and manage for this crisis. In particular, international policy makers must consider whether irregular migrants qualify for a legal definition which recognizes that international law must govern the legal situation created by the movement.

Under international law, “refugees” are those who cross international borders, whereas “internally displaced people” (“IDPs”) are those who leave their home but stay within their home state.<sup>69</sup> Those migrating across international borders due to climate change would by definition seem to fall into the former category under international law. However, under the 1951 UN Refugee Convention and its 1967 Protocol, there has been extreme reluctance to extend the term “refugee” to such persons. The 1951 Convention was created primarily to protect European refugees after World War II, but the 1967 Protocol expanded the scope of the Convention by eliminating the geographical and time limitations in the first instrument.<sup>70</sup> International policy makers intended to afford protection to migrants fleeing their countries

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<sup>69</sup> Sumudu Atapattu, *Climate Change, Human Rights, and Forced Migration: Implications for International Law*, 27 WIS. INT'L L.J. 607, 616 (2009).

<sup>70</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *The 1951 Refugee Convention - Q & A*, [http://www.unhcr.org.ua/main.php?article\\_id=8&view=full](http://www.unhcr.org.ua/main.php?article_id=8&view=full), (last visited Jun 1, 2011).

from persecution. Article I of the Convention defines a “refugee” as:

[a] person who is outside his/her country of nationality or habitual residence; has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution.<sup>71</sup>

Neither climate change nor environmental degradation is mentioned in this definition. Therefore, many international actors are concerned that modifying it to include these terms would distort the original definition of “refugees”<sup>72</sup> that the international community created within the Convention and Protocol.

In recent years several scholars have attempted to define climate-induced migrants as a subset of environmental refugees. The first widely used definition of environmental refugee was created in 1985 by Essam El-Hinnawi from the United Nations Environment Programme. El-Hinnawi describes these persons as: “[T]hose people who have been forced to leave their traditional habitat, temporarily or permanently, because of marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected their quality of life.”<sup>73</sup>

In 2005, Norman Myers proposed a similar definition that described environmental refugees as:

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<sup>71</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *supra* note 69.

<sup>72</sup> INT’L ORG. FOR MIGRATION, *supra* note 47, at 10 (stating that there is significant resistance to expanding the definition of political refugees to include “climate” refugees); Benjamin Glahn, ‘Climate Refugees’? *Addressing the International Legal Gaps*, 63 No. 3 INT’L B. NEWS 17, 18-19 (2009), available at <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=B51C02C1-3C27-4AE3-B4C4-7E350EB0F442>.

<sup>73</sup> ESSAM EL-HINNAWI, ENVIRONMENTAL REFUGEES 4 (1985).

People who can no longer gain a secure livelihood in their homelands because of drought, soil erosion, desertification, deforestation and other environmental problems, together with associated problems of population pressures and profound poverty. In their desperation, these people feel they have no alternative but to seek sanctuary elsewhere, however hazardous the attempt. Not all of them have fled their countries, many being internally displaced. But all have abandoned their homelands on a semi-permanent if not permanent basis, with little hope of foreseeable return.<sup>74</sup>

Both of these broad definitions confine “refugees” to those who are “forced to leave.” However, voluntary and forced movements are hard to distinguish from each other in the context of climate-induced migration. In the case of Tuvalu, highlighted in Part II, it is apparent that these citizens are forced to leave. However, the drivers of migration in Latin America and Bangladesh are harder to determine; even though their homes may not be entirely uninhabitable, their vulnerability and lack of resources may compel them to relocate to suitable living conditions across borders. Still, there are those who would counter that because their area was not uninhabitable, the migrants could remain in their home state, and any trans-boundary movement would be voluntary. However, as the case studies in Part II point out, developing countries such as Bangladesh, Brazil and Argentina, where the land may still be habitable, do not have the resources or the infrastructure to support increased migration into their nations. As a result, displaced persons move to known safe refuge across national boundaries. If policy makers formulate a definition that covers only “forced” migrants fleeing climate change based on whether land is substantially or fully uninhabitable, those like the Bangladeshis and the Brazilians will be left unprotected upon crossing international borders even

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<sup>74</sup> NORMAN MYERS, ENVIRONMENTAL REFUGEES: AN EMERGENT SECURITY ISSUE 1 (22 May 2005), *available at* <http://www.osce.org/eea/14851>.

though they may not be able to return to their home state because of its economy and scarce resources.

Myers and El-Hinnawi also considered whether relocation is temporary or permanent. Myers takes the position that the term “environmental refugees” includes only instances of permanent or semi-permanent relocation, while El-Hinnawi’s definition encompasses both temporary and permanent relocation.<sup>75</sup> Similar to the previous character of migration discussed above, distinguishing whether climate-induced migration will be temporary or permanent is a toss-up based upon how climate change affects the particular region, the population’s adaptive capacity, the government’s infrastructure and resource abundance. For example, it is plausible that migrants from South America who face food shortages due to severe droughts may be able to return to their countries. However, experts are uncertain about when and to what extent climate effects will take place. If drought continues in these countries, the possibility of return for many Latin Americans will diminish. Hence, there is no bright-line approach for policy makers in determining whether migrants impacted by climate change are temporarily or permanently displaced.

For legal purposes, perhaps the most important characteristic of climate-induced migration considered by El-Hinnawi and Myers is whether internal or trans-boundary migration is covered in their definitions. El-Hinnawi and Myers include both IDPs and trans-boundary migrants within their definitions. Given the current political environment and the hesitancy of international actors to extend “refugee” status to those who do not cross international borders, the better approach for policy makers to take is to cover only trans-boundary migrants within the accepted definition. The foremost reason is that non-binding norms already exist for internally displaced persons, such as those displaced by climate change, and they have proven to be

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<sup>75</sup> EL-HINNAWI, *supra* note 72, at 4; MYERS, *supra* note 73, at 1.

somewhat effective.<sup>76</sup> While IDPs still face risks to their human rights and freedoms, they are afforded some level of protection and aid, which those fleeing across borders do not receive. Secondly, in line with the Refugee Convention's emphasis on trans-boundary movement within its definition of "refugee," any terminology assigned to those impacted by climate change that implicates legal protection should be confined to persons who cross international borders.

There are many who assert that climate change migrants will move domestically within their own countries and, thus, will not qualify as "refugees" crossing international borders.<sup>77</sup> However, observable climate change displacement indicates a very different result. It is projected that millions of Bangladeshis will be displaced across international borders, with their most likely destination being India.<sup>78</sup> Additionally, Bangladesh's government pronounced that it cannot handle the tens of thousands of displaced migrants from the coast and requested that the United Kingdom "open its borders" to refugees. There is no dispute that the majority of Tuvalu's population will have to relocate to another country.<sup>79</sup> Further evidence of this are Tuvalu's unsuccessful requests to Australia and New Zealand to accept its citizens as refugees.<sup>80</sup> Finally, a flood of Latin Americans affected by climate change are expected to seek refuge in the United States for reasons provided in Part II.<sup>81</sup> These case studies exemplify that it is very likely that millions of migrants impacted by climate change will surge across national borders to seek shelter and aid. Given this information, using the term "refugee" to describe such persons is justified.

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<sup>76</sup> Betts, *supra* note 9, at 224.

<sup>77</sup> INT'L ORG. FOR MIGRATION, *supra* note 47, at 14 (claiming that the majority of people displaced by climate change will stay within their own borders).

<sup>78</sup> Grant, *supra* note 32.

<sup>79</sup> BARKER, *supra* note 52.

<sup>80</sup> INT'L ORG. FOR MIGRATION, *supra* note 47, at 39; BARKER, *supra* note 52, at 18.

<sup>81</sup> ROSS, *supra* note 29, at 7.

Authors Frank Biermann and Ingrid Boas's terminology of a "climate change refugee" most closely resembles the formulated terminology that policy makers should adopt for trans-boundary climate migrants. Their proposed definition includes:

People who have to leave their habitats, immediately or in the near future, because of sudden or gradual alterations in their natural environment related to at least one of three impacts of climate change: sea-level rise, extreme weather events and drought and water scarcity.<sup>82</sup>

First, Biermann and Boas focus on how migration relates to climate change effects rather than on migration characteristics, such as whether the movement is forced, voluntary, temporary, or permanent. It is important to understand that this proposed definition does not depend on whether one particular effect of climate change causes the migration, but whether migration is related to climate change. The authors acknowledge that there can be overlapping climate change effects on a particular region.<sup>83</sup> As previously stated, while scientists cannot substantiate causation of climate change to specific atmospheric changes, there is clear evidence that it is related to such "alterations." Secondly, the authors confine the definition to "victims" of widely accepted undisputed climate effects: "sea-level rise, extreme weather events, drought and water scarcity."<sup>84</sup> They restrict the definition to these categories because they reason that allowing peripherally related events would "water down the core causes of climate-related migration in a way that would [render] the concept analytically...and politically...meaningless."<sup>85</sup> For example, the fourth limitation excludes secondary or indirect impacts of climate change such as environmental degradation that leads to violent conflict over scarce resources. They reason that while those fleeing

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<sup>82</sup> Biermann & Boas, *supra* note 16, at 8.

<sup>83</sup> *Id.* at 39.

<sup>84</sup> *Id.* at 410.

<sup>85</sup> *Id.*

as a consequence of the direct effects (e.g., flooding and drought) should be covered, those fleeing from conflict require “different institutions, agencies and programmes... for their protection.”<sup>86</sup> This is a rational limitation that policy makers should weigh because defining this term too widely could be damaging for those directly impacted and could “water down” the protection given to them.

Biermann and Boas’s definition does not distinguish between internal and trans-boundary migration. As previously discussed, the better approach is to follow the reasoning behind both the Guiding Principles of Internal Displacement and the 1951 Convention. IDPs and trans-boundary migrants affected by climate change should be kept in separate categories when referencing the term “refugee,” which by the traditional international law definition is one who moves across international borders. Therefore, it is recommended that policy makers adopt Biermann and Boas’s definition of “climate refugees” with an additional limitation covering only trans-boundary movement. Upon recognition that climate change induced movement is an international phenomenon and should be defined as such, the international community could then move forward to fill in this void and provide legal protection to climate refugees.

#### **IV. “DO WHAT YOU CAN DO, WITH WHAT YOU HAVE, WHERE YOU ARE”**

The international community’s acceptance that climate change migrants should be recognized as climate refugees would open the doors to addressing the normative and operational gaps that currently exist in the international legal framework for such persons. Foremost, while there is an established framework for international human rights law under the 1951 Convention and 1967 Protocol for “traditional” refugees, there is a lack of guidance on the application of existing human rights norms to climate

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<sup>86</sup> *Id.*

refugees.<sup>87</sup> The existing rights of traditional refugees, such as rights to international humanitarian assistance, resettlement, and return, do not apply to them.<sup>88</sup> As a result, climate refugees are left without protection, assistance and aid in resettling in their new environment. Secondly, it is unclear what international organizations would be responsible for creating, implementing and applying these norms within this context.<sup>89</sup> Organizations such as the UN High Commissioner for Refugees (“UNHCR”) are reluctant to help trans-boundary migrants because of the concern that such an undertaking will hinder the ability to protect traditional refugees and IDPs.<sup>90</sup> If the international community equally divided responsibility among various organizations for different functions, such as creating and implementing norms, addressing this massive problem would most likely be manageable.<sup>91</sup> Determining this responsibility will largely depend upon the instrument that the international community chooses to address trans-boundary movement by climate refugees.

Without considering gaps, it seems unlikely that the international community will reach a consensus regarding the proper mechanism to implement in addressing climate change migration. Much of the disagreement in how to address this issue involves these considerations. Some propose expanding the scope of the 1951 Refugee Convention to cover climate refugees. However, this method is problematic because these populations do not meet the definition of “refugees” within this legally binding instrument, as discussed in Part III. Further, UNHCR, which has the mandate and responsibility of protecting refugees and IDPs,<sup>92</sup>

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<sup>87</sup> Betts, *supra* note 9, at 212.

<sup>88</sup> Glahn, *supra* note 71, at 17.

<sup>89</sup> Betts, *supra* note 9, at 212.

<sup>90</sup> Glahn, *supra* note 71, at 18 (“The UNHCR is opposed to this option, claiming that it might undermine the international legal protections for refugees and present a potentially misleading link between climate change and migration”).

<sup>91</sup> Betts, *supra* note 9, at 215.

<sup>92</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, Protection, <http://www.unhcr.org/pages/49c3646cc8.html> (last visited Jun 1, 2011).

does not support this proposal. UNHCR believes that this extension will undermine the international legal protections for presently covered refugees.<sup>93</sup> Specifically, it does not have the mandate, financing, or means to become the responsible protection organization for climate refugees.<sup>94</sup> Thus, this extension would lessen the protection and assistance provided to current refugees, while most likely offering inadequate aid to climate refugees. In addition, UNHCR thinks that extending the 1951 Convention to climate refugees will lead to confusion in determining and applying aid to existing refugees.<sup>95</sup> Since there are no specific guidelines on how to apply the norms of existing international law to climate refugees, it would be difficult for this organization to determine what rights these refugees should be given and how they should act in an operational capacity to protect such persons.

Others propose a new legal instrument, such as an independent convention and protocol, for climate refugees.<sup>96</sup> However, this approach would create new, binding norms where an existing framework already exists. This would be ignoring existing precedent in international humanitarian law that has proved to be informative in developing new norms for irregular migrants, such as IDPs.<sup>97</sup> Given that observable climate-induced migration is already occurring, the international response must be immediate, efficient and effective. Gaining international support for a policy issue of this magnitude in this political environment is not likely in the near future. For example, UNHCR expressed concern that “there is a worry doors will shut if we start [the] discussion” about increased migration.<sup>98</sup> If UNHCR believes that

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<sup>93</sup> Glahn, *supra* note 71, at 18.

<sup>94</sup> Betts, *supra* note 9, at 228.

<sup>95</sup> Glahn, *supra* note 71, at 18.

<sup>96</sup> See e.g., Bonnie Dochery, et. al, *Confronting a Rising Tide: A Proposal for a Convention of Climate Change Refugees*, 33 Harv. Envtl. L. Rev. 349 (2009).

<sup>97</sup> See Betts, *supra* note 9, at 214-215.

<sup>98</sup> Grant, *supra* note 32.

discussion is problematic, then it is probable that the creation of new binding legal standards is presently not an option.

On the other hand, international policy makers likely would be more receptive to implementing soft law as an initial step to addressing climate refugees. Firstly, developing soft law does not require the negotiation of new binding norms. Rather, soft law provides a non-binding normative framework where existing norms are combined within a single document. Secondly, guiding principles for climate refugees would provide much needed direction to nations seeking advice on how to define those impacted by climate change, what human rights law should be applied and how, and to whom they should refer these people. Third, UNHCR recently signaled that it would possibly support such an approach.<sup>99</sup>

In 2010, Betts argued that a soft law framework should be established to protect vulnerable irregular migrants that are not protected as either IDPs or refugees under the 1951 Convention.<sup>100</sup> Betts identified climate refugees as a possible sub-category of the unprotected irregular migrants.<sup>101</sup> He pointed to “two major gaps”<sup>102</sup> in the protection framework for vulnerable irregular migrants: (1) a “lack of clear guidance on the application of

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<sup>99</sup> Antonio Guterres, Statement, *Climate Change, Migration and Displacement*, Dec. 16, 2009, available at [http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/env\\_degradation/statement\\_guterres.pdf](http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/env_degradation/statement_guterres.pdf) (Guterres, the U.N. High Commissioner stated that “where legal frameworks exist, let us use them to the fullest”); See Glahn, *supra* note 71, at 18-19 (“According to José Riera, Senior Policy Advisor at UNHCR, there is no need to amend the 1951 Convention or to include new definitions; rather, there is a more urgent need to analy[z]e the existing gaps in rights and protections”).

<sup>100</sup> Betts, *supra* note 9, at 209.

<sup>101</sup> *Id.* at 211.

<sup>102</sup> For purposes of this paper, Betts’ assertion of the “two major gaps” in the legal framework for vulnerable irregular migrants are applied to climate refugees and used as secondary authority. However, in Part III, this paper addresses an additional gap within the legal framework for climate refugees.

existing human rights norms to the situation”; and (2) a “lack of clear division of responsibility among international organi[z]ations.”<sup>103</sup> In order to address these gaps, Betts suggested that the international community look to the approach that the international stakeholders used in creating the Guiding Principles on Internally Displaced Persons.<sup>104</sup> In particular, he asserted that these policymakers used existing international human rights and international humanitarian law to fill the gaps they identified in regards to IDPs.<sup>105</sup> He claimed that the Principles have been effective and valuable to the extent that they clarified the application of the existing legal and normative obligations for IDPs.<sup>106</sup>

Betts also asserted that the IDP precedent is informative in determining who will be responsible for deducing the application of rights and obligations, as well as what entities will be “in the field” to ensure that these migrants have access to these rights.<sup>107</sup> He referred to the “Cluster” Approach, where various UN and non-UN agencies shared responsibility for the IDPs.<sup>108</sup> Different divisions were established to address the security of IDPs, care and maintenance, food provisions, and protection, and these responsibilities were apportioned to different UN agencies.<sup>109</sup> Betts identified UNHCR as an advisory stakeholder that would help in the development of the soft law framework and would share information with other organizations that are directly responsible for operational functions.<sup>110</sup> He asserted that UNHCR

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<sup>103</sup> Betts, *supra* note 9, at 212.

<sup>104</sup> Betts, *supra* note 9, at 215.

<sup>105</sup> *Id.* at 224.

<sup>106</sup> *Id.* at 225.

<sup>107</sup> *Id.* at 227.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

would not have to alter its mandate nor increase its operations if it acted in this capacity.<sup>111</sup>

Another stakeholder Betts recognized was the International Federation of the Red Cross and Red Crescent Societies (“IFRC”), which he considered to be a strong candidate for the lead operational agency.<sup>112</sup> His determination was based on IFRC’s increased involvement in addressing the humanitarian needs of vulnerable migrants. This is primarily due to the Resolution on “International Migration” that IFRC passed in 2007.<sup>113</sup> This resolution obligated the IFRC to play a role in addressing the humanitarian needs of vulnerable migrants despite their legal status.<sup>114</sup> According to Betts, the International Organization for Migration (“IOM”) could serve as a vital operational stakeholder in conjunction with the IFRC.<sup>115</sup> While the IOM could work with states in establishing an efficient triage system between transit and destination countries, the IFRC could provide services such as identification, referral and treatment.<sup>116</sup> The IFRC already functions in this capacity, and with increased funding, could possibly expand its operational capacity. Finally, Betts positioned NGOs as the “in the field” agents to come into contact with the vulnerable migrants when they arrive.<sup>117</sup> Selection of these NGOs would differ according to location.<sup>118</sup>

While Betts’ article focused on the development of a soft law framework for the overall category of irregular migrants, it is extremely instructive on how international policy makers can move forward in protecting climate refugees. If the international community can agree on a definition, using existing international

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<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 229.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 230.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 231.

<sup>118</sup> *Id.*

humanitarian and refugee law as precedent in determining the norms for climate refugees, the definition would likely be relatively straight-forward. Here, UNHCR can play a significant role if it agrees to serve in an advisory capacity, as Betts proposed.<sup>119</sup> UNHCR has significant experience identifying and protecting vulnerable migrants, as well as a firm understanding of how to apply these protections. Betts' analysis of the "Cluster" Approach also helps identify multiple organizations that could undertake differentiated responsibilities in order to effectively and efficiently protect climate refugees. Betts' designation of each organization to separate but interrelated duties could limit the overextension of these organizations, which would be detrimental to all refugees and IDPs. Vital organizations, like UNHCR, would likely support the development of this type of soft law framework. The 1951 norms would be kept separate from these new formulations, thereby avoiding a co-mingling of the rights of traditional refugees with climate refugees. Additionally, the UNHCR would not be required to extend its operational capacity, which could water down the protections already given to IDPs and refugees.

As with the Guiding Principles, perhaps these non-binding principles would become binding law through adoption by individual states. Yet, the primary focus should be on the first step: addressing the gaps in protection for climate refugees through a collaborative and discretionary development of a soft law framework.

## CONCLUSION

It is of the utmost importance that the international community understands that mitigating climate change by reducing greenhouse gases is but one step of a multi-tiered ladder that could come crashing down unless we stabilize the base. As the Earth warms, observable climate change effects are becoming more

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<sup>119</sup> *Id.* at 228.

apparent, and vulnerable populations in developing countries are beginning to shift uncomfortably under the added stress. This has significant implications for millions of trans-boundary refugees not protected under the 1951 Convention and 1967 Protocol. States receiving these refugees will face increased pressure and heightened security implications. As IPCC Chairman Rajendra Pachauri recognized, “If you have 30 or 40 million migrating to other parts of the world, that’s a sizeable problem for which we have to prepare.”<sup>120</sup>

Part of this preparation is recognizing the three major gaps within the protection framework for climate refugees: (1) the disagreement on how to define climate-induced migrants; (2) the lack of clear guidelines for states in applying existing international humanitarian law to this subset of migrants; and (3) the absence of a clear division of responsibility for the creation of these norms, application of these standards, and funding. Before international stakeholders can address gaps two and three effectively, they must have a firm grasp of how to define those who are displaced by climate change. To determine the proper definition, international policy makers should create terminology that focuses on whether the migration is related to climate change effects rather than the characteristic of the migration. Migration characteristics, such as whether such movement is forced or permanent, are difficult to ascertain in climate-related scenarios because a variety of effects exist in different geographic locations. Because of this difficulty, Biermann and Boas’s definition of a climate refugee is likely the best formulation.

International policy makers also must consider the great likelihood that climate induced migration will be trans-boundary. The case studies in Part II exemplified this trend in developing countries currently impacted by climate change. These countries do not have the resources or structural capacity to harbor millions

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<sup>120</sup> Grant, *supra* note 32.

of displaced persons within their already stressed environments. As a result, climate refugees flee to neighboring countries in search of safety, protection, aid and suitable living conditions. The international community's recognition that climate migration is trans-boundary will be evidenced if it agrees to extend the term "refugee" in this context. If international stakeholders can agree that such persons are climate refugees, they impliedly acknowledge their obligation to step in and fill the void in protection.

Upon this consensus, the international community can move forward in determining how to address gaps two and three. In this political environment, the best plausible approach to immediately address the plight of climate refugees is to develop a soft law framework. Alexander Betts' analysis, which examines how the international community can use the Guiding Principles on Internally Displaced Persons as precedent for developing an institutional model to shape a soft law framework for vulnerable irregular migrants, can serve as a useful tool for policymakers in this context. Betts' allocation of differentiated responsibilities to established international organizations specializing in normative and operational capacities for vulnerable migrations is especially informative for addressing the third gap within the protection framework.

While under this approach nations would have the discretion to adopt the principles, it is a first step in addressing a very complicated policy issue. If the international community pushes for binding norms, the "doors could be shut" before substantial discussion takes place, thereby making progress difficult with this international crisis. However, if the international community collaborates to develop an effective and efficient soft law framework, it could result in individual nations establishing hard laws adopted through domestic legislation or eventually a new binding instrument based upon its precedent. In times of crisis, where there is a lack of political will, those with great

responsibility must “do what [they] can do, with what [they] have, where [they] have it” in order to progress towards their ultimate objectives.