

There's No Place Like Home: Human Displacement and Climate Change

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Abstract

Forced migration of human populations due to the impacts of climate change poses an enormous challenge for the world community and international legal system to accommodate. At present there are no coordinated legal and administrative systems that will allow populations displaced by climate change impacts to migrate in a planned and orderly manner. However, in the absence of such systems, there is a risk that displacement will be accompanied by conflict and political instability. This article explores these emerging and uncharted issues in four parts. Part 1 of this article explains the impacts of climate change on small island developing States ('SIDS') and how these impacts may be drivers for migration both within and from island nations. Part 2 focuses on legal frameworks specifically established to address displaced persons, in particular the formal protection and rights afforded to refugees and migrants. Part 3 considers the international legal regime that has been established to deal with climate change, a regime that, to date, has not addressed issues relating to human displacement. Part 4 considers the special circumstances of people migrating in response to climate change, looking at legal initiatives being explored to respond to this looming issue.

Introduction

Each year over 32 million people are forced to leave their homes to seek permanent or temporary residence in other parts of their own countries and in new countries in response to political, social, economic and environmental forces.¹ Some of these people will meet criteria agreed to by the international community and will be given refugee status. Others will receive humanitarian assistance from organisations such as the United Nations ('UN') or complementary protection from other States. Many will go through formal, legal channels to achieve temporary or permanent migrant status and some will arrive in a new country, seeking asylum. International law has developed to respond to these different circumstances. It has not, however, fully developed to respond to some of the new triggers that are driving displacement, such as environmental degradation and climate change-related events.

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¹ United Nations High Commissioner for Refugees, *2007 Global Trends: Refugees, Asylum Seekers, Returnees, Internally Displaced and Stateless Persons* (2008) UNHCR <www.unhcr.org/statistics> accessed 29 January 2008.

The United Nations University claims that by 2010 as many as 50 million people will be seeking to escape the effects of environmental degradation.² Norman Myers³ and major environmental groups, such as Friends of the Earth, note that climate change, in particular the likelihood of increased extreme weather events and sea level rise, is likely to lead to significant increases in the number of environmentally displaced people, or so-called ‘environmental or climate change refugees’, citing figures in the hundreds of millions of people.⁴ Whilst these figures must be treated with caution, bearing in mind that the links between environmental degradation and unregulated population movements are not well established,⁵ they nevertheless highlight the fact that many people, and in some instances whole communities, may be displaced as a result of environmental change.

Small island developing States (‘SIDS’) are among the most vulnerable countries in the world to climate change due to their geographic isolation and susceptibility to natural disasters and climatic extremes. The increased frequency and intensity of extreme weather events and sea level rise has the potential to affect the long-term ability of humans to inhabit many of the atolls and islands that constitute these States. In Vanuatu⁶ and the Carteret Islands of Papua New Guinea⁷ whole villages are in the process of being relocated due to oceans inundating low lying areas and contaminating fresh water supplies. Many other islands in the Pacific and Indian Oceans and the Caribbean Sea are facing the possibility of relocation in the future. Indeed, governments of some of the countries most likely to be affected by climate change impacts, such as the small island nation of Tuvalu, are already trying to make arrangements for the acceptance of their citizens in other States as their own countries become uninhabitable.⁸

There is no well-established legal basis upon which States are obliged to assist people displaced by climate change under international law. By exploring the application of traditional refugee and migration laws, a number of legal and non-legal scholars have demonstrated that these areas of law are not well suited to respond to the particular

2 United Nations University Institute for Environment and Human Security, ‘As Ranks of “Environmental Refugees” Swell Worldwide, Calls Grow for Better Recognition, Support’ (Press Release, 11 October 2005) <www.ehs.unu.edu> accessed 31 January 2008.

3 Norman Myers, ‘Environmental Refugees: A Growing Phenomenon of the 21st Century’ (2002) 357 *Philosophical Transactions of the Royal Biological Sciences Society* 609: predicts approximately 212 million climate refugees by 2050. This figure was recently revised up to 250 million: Christian Aid, Interview with Norman Myers (London, 14 March 2007) cited in Christian Aid, *Human Tide: The Real Migration Crisis* (2007).

4 See Friends of the Earth, *A Citizen’s guide to Climate Refugees*, Friends of the Earth Australia at 7–8 <www.foe.org.au/resources/publications/climate-justice/CitizensGuide.pdf/view> accessed 7 September 2008: citing figures from Norman Myers of up to 150 million people in the next 50 years.

5 Alan Dupont & Graeme Pearman, ‘Heating up the Planet: Climate Change and Security’ (2008) *Lony Institute Paper* 12 at 56.

6 United Nations Environment Programme, ‘Pacific Island Villagers First Climate Change “Refugees”’ (Press Release, 6 December 2005) <www.unep.org> accessed 7 February 2008, referring to the Lateau Settlement in Vanuatu.

7 There is scientific debate about whether the Carteret Islands are actually being inundated due to subsidence or sea level rise. Nevertheless, the Islands are becoming uninhabitable, may cease to physically exist and require the relocation of their populations.

8 Friends of the Earth, above n4 at 6–7.

circumstances of global warming.⁹ Despite calls from some developing countries, Parties to the *United Nations Framework Convention on Climate Change* ('UNFCCC')¹⁰ have also shied away from considering human displacement under their mandate.

Using the small islands of the Pacific as a reference point, this article explores the international legal frameworks that touch upon the rights and obligations of countries and citizens affected by climate change-induced displacement and migration and considers (i) whether the concept of an 'environmental or climate refugee' is appropriate; (ii) whether new legal regimes to afford protection to those persons should be developed under international law; and (iii) if so, what is the most appropriate forum to develop such regimes.

Part 1 of this article provides a background to the impacts of climate change on SIDS and looks at how these impacts may be drivers for migration both within and from island nations. In addition, it highlights the pressures and tensions that may arise as a result of ever shrinking territory and how these could contribute to mounting instability within countries and the region. Part 2 focuses on legal frameworks specifically established to address displaced persons, in particular the *Convention Relating to the Status of Refugees*¹¹ and the formal protection and rights afforded to refugees and migrants. This section looks at the legal definition of a refugee and explores why so called 'environmental refugees' do not meet it. Part 3 then considers the international legal regime that has been established to deal with climate change – the UNFCCC and its *Kyoto Protocol*. This section notes that, to date, parties to the UNFCCC and the *Kyoto Protocol* have not addressed issues relating to human displacement, but that some of the guiding principles of the UNFCCC may be particularly relevant to any future regime that addresses climate related displacement. Finally, Part 4 considers the special circumstances of people migrating in response to climate change, looking at legal initiatives being explored to respond to this looming issue.

From both a humanitarian and a security perspective, it is imperative that all countries begin thinking about the impacts that climate change will have on human movement both domestically and within regions such as the Asia-Pacific. This paper aims to demonstrate that existing refugee and humanitarian laws do not extend adequate protection to persons displaced by climate change. Therefore, new approaches need to be developed at an international level and implemented nationally, drawing upon some of the key features of refugee and migration law, in particular mechanisms to afford protection to displaced people, but also drawing upon human rights principles, principles of sustainable development and concepts of environmental justice.

9 See, for example, Stephen Castles, 'Environmental Change and Forced Migration: Making Sense of the Debate', (Working Paper No 70, The United Nations High Commissioner for Refugees, 2002); Jane McAdam & Ben Saul 'An Insecure Climate for Human Security? Climate-Induced Displacement and International Law' (Working Paper No 4, Sydney Centre for International Law, 2008).

10 *United Nations Framework Convention on Climate Change*, opened for signature on 9 May 1992, (1992) 1771 UNTS 107; 31 ILM 849 (entered into force 21 March 1994) ('UNFCCC').

11 *Convention relating to the Status of Refugees*, opened for signature on 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) ('1951 Refugee Convention').

I. Rising Sea Levels and Small Island States

Small island developing States and low-lying countries are already suffering greatly from the impacts of sea level rise, resulting from the thermal expansion of the world's oceans and glacial melt which is caused by human-induced climate change. In 2001, the Intergovernmental Panel on Climate Change ('IPCC'), in its Third Assessment Report, highlighted that sea level rise of the magnitude then projected (i.e., 5 mm yr⁻¹, with a range of 2-9 mm yr⁻¹), could be expected to have disproportionately great effects on the economic and social development of many SIDS. In fact, land loss from sea level rise, especially on atolls in the Pacific and Indian Oceans and low limestone islands in the Caribbean Sea, might be of such a magnitude as to disrupt virtually all economic and social sectors in these countries.¹² In extreme circumstances, sea level rise and its associated consequences could trigger abandonment and significant off-island migration at great economic and social cost.¹³

In December 2007, the IPCC presented its latest findings to the parties to the UNFCCC assembled in Bali, Indonesia. The IPCC's Fourth Assessment Report ('AR4')¹⁴ again highlights the extreme vulnerability of SIDS to future climate change and sea level rise due to their limited physical size, geographic isolation, susceptibility to natural disasters and climate extremes, and low adaptive capacity. Significantly, the AR4 specifically notes that sea level rise could lead to a possible reduction of island size, particularly in the Pacific.¹⁵

The IPCC estimates of global average sea level rise by the end of the 21st century range between 0.18 and 0.59 metres.¹⁶ However, some scientists are concerned that accelerated melting of the polar ice sheets, on century rather than millennial time scales, could cause metres of sea level rise, resulting in major changes to coastlines and inundation of low-lying areas, with the greatest effect in low-lying deltas and low-lying islands. Even the conservative figures offer a catastrophic glimpse into the future for many small island countries in the Pacific and Indian Oceans - many of whom have much of their national land area less than five metres above sea level. For example, the Maldives, in the Indian Ocean, consists of some 1,300 small islands that are only an average of 1 to 1.5 metres above mean sea level.¹⁷ Over 80 per cent of the Maldives' land area is therefore less than one metre above sea level.¹⁸ The Maldives has a total population of approximately 269,000 people and has one of the highest population densities in the

12 Working Group II to the Third Assessment Report of the Intergovernmental Panel on Climate Change, *Climate Change 2001: Impacts, Adaptation and Vulnerability* (2001) Intergovernmental Panel on Climate Change at 855 <www.ipcc.ch/ipccreports/tar/wg2/index.htm> accessed 6 September 2008.

13 Ibid.

14 N Mimura, L Nurse, RF McLean, J Agard, L Briguglio, P Lefale, R Payet & G Sem, 'Small islands' in ML Parry, OF Canziani, JP Palutikof, PJ van der Linden & CE Hanson (eds), *Climate Change 2007: Impacts, Adaptation and Vulnerability: Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* ('IPCC AR4').

15 Id at 697-698.

16 Id at 695.

17 Janet Strachan, 'Addressing Climate Change: What Does it Mean for Small States?' (Speech delivered at the Commonwealth Parliamentary Association Conference, Nigeria, 9 October 2006) <www.thecommonwealth.org/document/154932/addressing_climate_change_what_does_it_mean_for_sm.htm> accessed 6 September 2008.

world (909 people per square kilometre),¹⁹ In the Pacific, Tuvalu, with a population of 9,000, consists of five atolls and four separate reef islands, virtually all of which are below two metres above sea level.²⁰ Kiribati consists of 33 islands, most of which are less than two metres above sea level.²¹ The 78,000 residents of Kiribati primarily live on just a small number of islands. In all of these instances a significant proportion, and potentially the country's whole population, may have to relocate at some point in the future unless other means to address or adapt to sea level rise can be implemented.

Sea level rise, on the scale projected by the IPCC, without intervention, will eventually result in the inundation of many coastal and island countries. However, well before this occurs, significant land area will be lost or become unsuitable for human habitation. Freshwater lenses that provide drinking water for island populations and support for agricultural crops will become salinated and unusable, increasing the stress on already water-stressed areas. Storm surge and sea level rise will cause flooding and destroy coastal infrastructure. As coral bleaching becomes more regular, pressure will be placed on artisanal fisheries that have traditionally been supported by healthy coral reef systems. Agricultural outputs may also be compromised, affecting food security.²²

Globally, Nicholls and Klein calculate that 131 million people will be affected by a one metre sea level rise, with a consequent impact upon world GDP of over US\$1 billion. If sea level rise is over five metres, then 410 million people will be affected and the impact on world GDP will be in the order of up to US\$3 billion.²³ Although there are very few studies that assess the economic costs of climate change impacts on SIDS, those that do exist raise major concerns. For example, in 2000 the World Bank estimated that by 2050 the Tarawa atoll in Kiribati could face an annual damages bill equivalent to 13-27 per cent of its GDP.²⁴ The IPCC AR4 notes that the economic costs to SIDS arise not only as a result of extreme weather events and coastal erosion affecting infrastructure and property, but also from decreasing productivity of fisheries and agricultural areas.²⁵ Whilst loss of property can be quantified, the costs associated with loss of environmental assets are more difficult to estimate. For example, ecosystem services provided to humans by coral reefs and wetlands, both in terms of food resources and buffering against storm surges, are rarely factored into economic analyses. In response to the physical and economic costs of climate change, some countries have already started trying to 'climate proof' their territory. The Maldives has spent over \$100 million constructing a 'safe' island. However, at least 14 more islands would be needed to protect the population of 50 of the country's islands from storm surges and other climate-related phenomena.²⁶

18 Ministry of Environment, Energy & Water, *Environment Maldives: Climate Change* <www.environment.gov.mv> at 6 February 2008.

19 Jon Barnett & Neil Adger, 'Climate Dangers in Atoll Countries' (2003) 61 *Climate Change* 321 at 322.

20 Strachan, above n17.

21 Ibid.

22 Barnet & Adger, above n19 at 326.

23 Robert J Nicholls & Richard JT Klein, 'Climate Change & Coastal Management on Europe's Coast' in J Vermaat et al (eds), *Managing European Coasts: Past, Present & Future* (2006) at 199-226.

24 Barnett & Adger, above n19 at 326.

25 IPCC AR4, above n14 at 701.

In addition to environmental, socio-cultural and economic impacts, climate change may also affect the political balance within and between countries and heighten security concerns.²⁷ As an example, in countries with different ethnic groups, such as Fiji, if the land area of islands is diminished by sea level rise or coastal erosion, then existing tensions between different ethnic groups may be exacerbated.²⁸ The combination of low-lying land, exposure to frequent extreme weather events and high population density will place considerable pressures on already vulnerable communities and may result in both internal and external displacement of individuals and, ultimately, populations. It is important to realise that the causes of people movements are often complex and interconnected.²⁹ There may be a number of economic and social drivers for movement in addition to environmental factors. However, it is likely that sea level rise and climate change-related extreme weather events may become increasingly dominant drivers for migration in the Pacific, Indian and Caribbean Oceans. Although the direction in which people migrate is largely dependent upon ethnic and cultural ties, it is likely that developed countries such as Australia and New Zealand will be among those first approached by people seeking to migrate from Pacific islands. This is already evident with the call for assistance from Tuvalu. Hence the need to consider what the status of these migrants will be under international law and what rights and protections should be afforded to them.

2. 'Environmental Refugees' and International Refugee Law

A. International Refugee Law

(i) Definitions & Status

The term 'environmental refugee' or 'climate refugee' has been coined by the media and some academics.³⁰ However, for many reasons, traditional definitions and descriptions of refugees do not sit well with persons displaced by the impacts of climate change.

The 1951 *Convention Relating to the Status of Refugees* ('1951 Convention')³¹ is the principal international instrument addressing refugees. The 1951 Convention contains a formal definition of the term 'refugee' that ties it to the reasons for flight. The 1951 Convention

26 Ambassador Friday, Ambassador to the United Nations for Grenada (Statement given at UN Press Conference by the Alliance of Small Island States, 12 February 2008) <www.un.org/webcast/pc2008.htm> accessed 6 September 2008.

27 Dupont & Pearman, above n5 at 45.

28 Id at 46.

29 Id at 55.

30 Lester Brown of the World Watch Institute for the first use of the term 'environmental refugee' in the late 1970s. Essam El-Hinnawi, however, seems to be the first to have attempted to draft a definition of the concept in Essam El-Hinnawi, *Environmental Refugees* (1985), quoted by Fiona Flintan, *Environmental Refugees – A Misnomer or A Reality?* (2001) CSA-Discovery Guides <www.csa1.co.uk/discoveryguides/refugee/resources.php> accessed 29 January 2008.

31 *Convention relating to the Status of Refugees*, opened for signature on 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) ('1951 Convention').

was drafted with the specific situation of the Second World War as its backdrop, hence its focus on forms of persecution associated with that event and its aftermath. In 1967 a *Protocol to the Convention*³² was adopted to extend the Convention's temporal and geographic scope to other circumstances where people may be seeking asylum from persecution.

Under the *1951 Convention* a refugee is defined as any person who:

...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.³³

This definition provides two cumulative prerequisites: an *objective* element (the fact of being outside of the country and the inability to return) and a *subjective* element (the fear of persecution, for one of the reasons listed in the Convention). The Convention also distinguishes between refugees who have a nationality and are unable or unwilling to avail themselves of State protection, and those who are stateless, or, in other words, are unable or unwilling to return to their State of origin.³⁴

The concept of persecution is central to international refugee law. As Goodwin-Gill and McAdam note, the core meaning of persecution readily includes the threat of deprivation of life and physical freedom.³⁵ Over the last 10 years there has been an emergence of a human rights approach to refugee law. This is premised on the argument that 'persecution' should be understood to include the 'sustained or systemic violation of basic human rights, demonstrated in a failure of State protection.'³⁶ For example, Price expresses the view that 'today refugees are just as likely to be fleeing chaotic violence that accompanies State breakdown as to be seeking refuge from persecution.'³⁷ In other words, persecution is the manifestation of a more basic problem, the existence of people whose basic needs, including physical security and economic subsistence, are unmet.³⁸ However, despite the different reasons for flight, in order to obtain refugee status the four subjective criteria outlined in the *1951 Convention* must still be met.

Also central to the *1951 Convention* is the principle of *non-refoulement*, meaning that a person will not be removed to a territory where he or she would be at risk of being persecuted or being moved to another territory where he or she would face persecution. In other words, whilst States may have the freedom to grant or refuse permanent asylum

32 *Protocol relating to the Status of Refugees*, opened for accession on 31 January 1967, 606 UNTS 267 (entered into force 4 October, 1967) ('1967 Protocol').

33 *1951 Convention*, above n31, art 1(A)2.

34 Guy S Goodwin-Gill & Jane McAdam, *The Refugee in International Law* (3rd ed, 2007) at 67–68.

35 *Id* at 67.

36 Mathew Price, 'Persecution Complex: Justifying Asylum Law's Preference for Persecuted People' (2006) 47 *Harvard International Law Journal* 413 at 418.

37 *Ibid*.

38 *Id* at 419–20.

to refugees, those who have signed the *1951 Convention* may not return refugees to places where they could face persecution.

The Office of the UN High Commissioner for Refugees ('UNHCR') was established by the UN General Assembly with the aim of providing international protection and seeking permanent solutions to the problem of refugees.³⁹ *The Statute of the Office of the United Nations High Commissioner for Refugees* ('UNHCR Statute') brings into the institution's competence refugees falling within the *1951 Convention* definition. This narrow concept has, however, been enlarged in order to accommodate a larger number of people in circumstances where a State dealing with a humanitarian crisis request humanitarian assistance.⁴⁰ Refugees within the mandate of the UNHCR, and therefore eligible for protection and assistance by the international community, include not only those who can, on a case-by-case basis, be determined to have a well-founded fear of persecution on certain grounds (so called statutory refugees), but also other often large groups of persons who can be, or presumed to be, without or unable to avail themselves of the protection of their State of origin, namely *persons of concern* or *displaced persons*. Despite the reality that the UNHCR does provide humanitarian assistance to persons of concern and displaced persons, whether it has a legal mandate to do so in circumstances other than those that involve conflict is far from certain.⁴¹

The *1951 Convention* definition of a refugee has been adopted in a number of regional agreements. These agreements establish legal frameworks for the treatment of refugees having regard to the specific circumstances of the countries that constitute the region. Some of these regional initiatives have indeed extended the definition of a refugee, introducing additional criteria to accommodate the evolving nature of human flows in recent decades.⁴² For example, the 1969 *Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa* ('1969 OAU Convention')⁴³ extended the definition of refugee to include persons who were compelled to leave their country not only as a result of persecution, but also '*owing to external aggression, occupation, foreign*

39 *Statute of the Office of the High Commissioner for Refugees*, GA Res 428 (V), UN GAOR, 5th sess, 325th plen mtg, [1], UN Doc A/Res/428(V) (1950) ('UNHCR Statute'): 'The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting governments and, subject to the approval of the governments concerned, private organisations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.'

40 United Nations High Commissioner for Refugees, *Partnership: An Operations Management Handbook for UNHCR's Partners* (2nd rev ed, 2003) at 7.

41 Goodwin-Gill & McAdam, above n34 at 49. In 2005 the UNHCR identified 20.8 million people of concern. Of these, 40 per cent (8.5 million) were refugees, 32 per cent (6.6 million) were internally displaced persons in need of humanitarian assistance, and 11 per cent were people considered stateless. See also McAdam & Saul, above n9 at 8.

42 *Convention Governing the Specific Aspects of Refugee Problems in Africa*, opened for signature 10 September 1969, 1001 UNTS 45 (entered into force 20 June 1974) ('1969 OAU Convention'), art 1; *Cartagena Declaration on Refugees*, OAS Doc, OEA/Ser L/V/II 66/doc 10, rev 1/190 (1984-85) ('Cartagena Declaration').

43 *1969 OAU Convention*, above n42.

*domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality.*⁴⁴

Similarly, the 1984 *Cartagena Declaration on Refugees* ('*Cartagena Declaration*')⁴⁵ adopted for the Central American region added to the notion of refugee the criterion 'persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflict, massive violation of human rights or other circumstances which have seriously disturbed public order.'⁴⁶ The *Cartagena Declaration* is not formally binding but it has become the basis of refugee policy throughout Latin America, and was incorporated in the national legislation of a number of Latin American States. Thus, the evolution of the concept of a refugee observed at the regional level has brought international protection to a large number of people forced to move for a complex range of reasons and who were not covered by the *1951 Convention*.

Despite broadening the circumstances for the protection of refugees, none of the regional Agreements have specifically dealt with environmental factors. Although authors such as Cooper and Harvard argue that conditions such as 'serious public disturbance' in the *Cartagena Declaration* may be broad enough to cover environmental disturbance,⁴⁷ it is unlikely that refugee lawyers would agree. Edwards has noted that although there is an argument that the term 'events seriously disturbing the public order' in the *1969 OAU Convention* could encompass famine and drought, it has not been accepted as binding law by African States.⁴⁸ To the extent that, in the last ten years, there has been an effort by States to address the need to provide protection to people who fall outside the *1951 Convention* definition on the basis of their obligations to protect fundamental human rights, this has been narrowly construed and limited to areas where there is a clear legal basis for protection, for example, obligations under the *Convention Against Torture*⁴⁹ not to return an individual to a place where there is a threat of serious harm to him or her.⁵⁰

(ii) *Protection and Rights of Refugees and Forced Migrants*

The rights that attach to formal refugee status include both external elements relating to diplomatic protection and internal elements relating to protection of individual rights.⁵¹ The *1951 Convention* and the *1967 Protocol* set standards for the treatment of refugees,

44 Ibid.

45 *Cartagena Declaration*, above n42.

46 Ibid.

47 Jessica Cooper, 'Environmental Refugees: Meeting the Requirements of the Refugee Definition' (1997–8) 6 *New York University Environmental Law Journal* 480 at 497; and Brooke Harvard, 'Seeking Protection: Recognition of Environmentally Displaced Persons in International Human Rights Law' (2007) 18 *Villanova Environmental Law Journal* 65 at 77.

48 Alice Edwards 'Refugee Status Determination in Africa' (2006) 14 *African Journal of International & Comparative Law* 204 at 225–227. Also see McAdam & Saul, above n9 at 8.

49 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature on 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) ('*Convention against Torture*').

50 Goodwin-Gill & McAdam, above n34 at 285.

51 Jane McAdam, *Complementary Protection in International Refugee Law* (2007) at 8.

including their legal status, employment and welfare. Most favoured nation treatment is to be provided in respect of certain rights, including the right of association and the right to engage in wage-earning employment. National treatment is accorded with respect to some rights, such as freedom of religion, elementary education, access to courts and legal assistance, rationing, public relief, labour legislation and social security.⁵² In addition to the protection of certain rights, host countries are obliged to provide certain services and facilities, such as providing assistance with identity papers, travel documents, transference of assets and naturalisation.⁵³

Strictly speaking, only those persons who attract refugee status are entitled to the full gamut of rights afforded by the *1951 Convention* and the *1967 Protocol*. The term ‘complementary protection’ is used to describe those treaties that seeks to widen the application of refugee protection beyond the narrow basis of the formal *1951 Convention* definition.⁵⁴ McAdam notes that although States have historically extended protection to people beyond those who meet the formal refugee definition under the *1951 Convention*,⁵⁵ the legal meaning of complementary protection is limited to circumstances where an obligation to protect can be traced to international legal instruments that complement or supplement the *1951 Convention*.⁵⁶

The basis for affording complementary protection in these situations often arises from the recognition of the need to protect an individual’s fundamental human rights. This basis is well expressed in UNHCR’s 2005 ExCom Conclusion on Complementary Forms of Protection (‘ExCom Conclusion’).⁵⁷ The ExCom Conclusion calls upon States to uphold their international obligations under the *1951 Convention*, the *Convention relating to the Status of Stateless Persons*,⁵⁸ human rights law and humanitarian law, and acknowledges complementary protection as a positive way to respond to certain international protection needs.⁵⁹ Yet human rights law alone does not provide sufficient status for beneficiaries of complementary protection. To this end, there is a need to trace the obligation to protect to express guarantees of protection agreed to by States in international treaties. Hence the clearest area where complementary protection obligations may arise is in relation to torture where there are specific treaty obligations not to return an individual to a place where they will face serious harm.⁶⁰

52 Ian Brownlie, *Principles of Public International Law* (6th ed, 2003) at 558; Goodwin-Gill & McAdam, above n34 at 298–299.

53 Goodwin-Gill & McAdam, above n34 at 509–510, referencing arts 25, 27, 28, 30 & 34 of the *1951 Convention*.

54 McAdam, above n51 at 21.

55 For example, those people who fled Hungary in 1956: see discussion about the history and development of complementary protection in McAdam, above n51 at 23–39.

56 Goodwin-Gill & McAdam, above n34 at 285; also note McAdam, above n51 at 21, 48. Some of these obligations may also form part of customary international law.

57 EU ExCom Conclusion No 103 (LVI) ‘The Provision of International Protection including through Complementary Forms of Protection’ (2005). Note that the Ex Com conclusions are a soft law instrument with limited force in international law.

58 *Convention relating to the Status of Stateless Persons*, opened for signature on 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960).

59 Goodwin-Gill & McAdam, above n34 at 296.

In contrast, there is very little authority to support a right to remain in a third country purely on socio-economic grounds. Instead, most applicants will typically also seek to rely on concerns about being returned to circumstances where they may face inhuman and degrading treatment.⁶¹ This is largely because the protections afforded by human rights instruments such as the *International Covenant on Civil and Political Rights* ('ICCPR')⁶² and the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR')⁶³ do not expressly guarantee the protection of some of the socio-economic rights. Further, the ICESCR is not readily enforceable internationally or domestically.⁶⁴

In summary, although there are circumstances where legal protection may be afforded to persons who do not meet the definition of a refugee under the *1951 Convention* through the provision of complementary protection, the circumstances where such protection will be provided are very narrowly confined and the protection afforded is rarely equivalent. Other types of protection, such as temporary protection for mass influxes of asylum seekers, may also provide limited assistance, but the provision of such protection is rarely legally mandated⁶⁵ and the scope of protection varies considerably between States.⁶⁶ Importantly, temporary, and in some instances complementary, protection does not always extend to guarantee economic and social rights associated with employment, education and social security. Moreover, the rights that are afforded are often rights protected by principles of non-discrimination in the ICCPR and ICESCR, which specifically guarantee everyone (including non-citizens) within a State the right to work, to an adequate standard of living and to health and education.⁶⁷ In other words, a displaced person's status will determine the obligations of States to afford that person a particular level of protection. If a person achieves refugee status, they will be entitled to the full gamut of protection under the *1951 Convention* and *1967 Protocol*. If not, the protection afforded may be more limited.

60 Goodwin-Gill & McAdam, above n34 at 297, citing art 3 of the *Convention against Torture*, art 7 of the *International Covenant on Civil and Political Rights* and art 3 of the *European Convention on Human Rights*.

61 McAdam, above n51 at 163–164.

62 *International Covenant on Civil and Political Rights*, opened for signature on 16 December 1966, 999 UNTS 171, (entered into force 23 March 1976) ('ICCPR').

63 *International Covenant on Economic, Social and Cultural Rights*, opened for signature on 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) ('ICESCR').

64 Goodwin-Gill & McAdam, above n34 at 314.

65 An exception is the European Council Directive 2001/55/EC of 20 July 2001 on Minimum Directive Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences Thereof [2001] OJ L212/12.

66 As an example, some of the key areas that may be covered by temporary protection include no penalty for illegal presence, respect for fundamental civil rights, provision of food, shelter and other basic needs, no cruel, inhumane or degrading treatment, no discrimination, legal recognition, provision of a safe and secure location, respect for family unity, assistance with family reunion, protection for minors, arrangements for registering births, deaths and marriages, permission to transfer assets, facilitation of voluntary repatriation etc. See United Nations High Commission for Refugees, *Executive Committee Conclusion 22: Protection of Persons of Concern to UNHCR who fall outside the 1951 Convention: A discussion note*, UN Doc EC/1992/SCP CRP 5 (1992), cited in McAdam, above n51 at 246.

67 ICESCR art 2(2) and ICCPR art 26.

B. Environmental Refugees

(i) Definitions

Bearing in mind the legal framework for refugees set out above, can those persons displaced by climate change really be called ‘climate refugees’? One of the first definitions of an ‘environmental refugee’ was provided by Essam El-Hinnawi in 1985,⁶⁸ who described them as ‘those people who have been forced to leave their traditional habitat...because of a marked environmental disruption...that jeopardized their existence and/or seriously affected the quality of their life.’ He identified three categories of ‘environmental refugees’ that might exist:

- those temporarily displaced because of an environmental stress, such as an earthquake or cyclone;
- those permanently displaced because of permanent changes to their habitat, such as dams or lakes; and
- those permanently displaced because their original habitat can no longer provide for their basic needs.

Similarly, Myers, approaching the issue as a social scientist, has defined environmental refugees as ‘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.’⁶⁹ Under both these definitions, environmental refugees may be either internally displaced within their country, or pushed into external exile and hence become asylum seekers in other countries. In order to respond to the particular circumstances of climate change-induced migration, Biermann and Boas propose defining ‘climate refugees’ as ‘people who have to leave their habitats, immediately or in the near future, because of sudden or gradual alterations to 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.’⁷⁰

Whether people facing these conditions can be considered refugees under international law is a question that involves looking at the nature of persons’ displacement and the circumstances for such persons leaving their traditional place of residence. Under the *1951 Convention*, a refugee must also be outside his or her usual State of residence and unable to return as a result of a fear of persecution from that State. This then forms the basis for setting out the obligations owed by the international community to people who meet the definition of a refugee. Looking at the definitions posed above, none of the elements of the legal definition of a refugee under the *1951 Convention* are

68 El-Hinnawi, above n30.

69 Norman Myers, *Environmental Refugees: An Emergent Security Issue* (2005) The Organization for Security and Co-operation in Europe <www.osce.org/documents> accessed 30 January 2008.

70 Frank Biermann & Ingrid Boas, ‘Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees’ (Working Paper No 33, The Global Governance Project, 2007) 8 <www.glogov.org> accessed 30 January 2008.

met. Instead, the definitions merely identify factors that may trigger temporary and permanent displacement. Whilst some of these environmental factors are recognised in the context of internal displacement under the Guiding Principles on Internal Displacement,⁷¹ they are not recognised in the *1951 Convention*.

Simms suggests that the definition within the *1951 Convention* could provide a generic opening to other reasons for fleeing a country, for example, due to environmental conditions or hardship.⁷² However, this does not seem legally feasible. As Castles argues, the term ‘refugee’ has a precise meaning in international law.⁷³ In his opinion, the notion of environmental refugees may only have a useful deployment in the narrow sense of people forced to flee when repressive forces use environmental destruction, such as defoliation or polluting water, as an instrument of war against a specific group.⁷⁴ Refugee claims of these groups would be based on persecution itself, rather than the form of it, making the term environmental refugee redundant.⁷⁵ To the extent that the UNHCR has considered this issue, it has consistently rejected the case for categorizing environmental causes as grounds for refugee status. Where the UNHCR has provided people fleeing natural disaster with assistance, it has stressed that this is special humanitarian assistance, not protection within its legal mandate.⁷⁶

At best, the definitions of ‘environmental and climate change refugees’ are useful in identifying circumstances for flight. However, they are not linked back to the fundamental notion of an obligation to protect that derives from clearly recognised sources of international law such as treaties or custom. It is important to note that to date, the majority of people addressing the issue of ‘environmental refugees’ are not refugee lawyers and, with the exception of Castles and McAdam,⁷⁷ very few forced migration experts have contributed to the debate about the treatment of environmental refugees.

When these concepts of refugee status and protection are laid over the circumstances of people being displaced by climate change, it becomes clear that so called ‘climate change refugees’ firstly do not fit within the *1951 Convention* definition and secondly, to the extent that some members of the international community are starting to afford complementary protection to other people who are in need of international protection, the legal basis for affording protection remains very narrow and would not cover infringements of the types of rights that are most readily associated with the protection of the environment.

71 See McAdam and Saul, above n9 at 8.

72 Molly Conisbee & Andrew Simms, *Environmental Refugees: the Case for Recognition* (2003) at 30.

73 Stephen Castles, ‘Environmental Change and Forced Migration: Making Sense of the Debate’ (Working Paper No 70, The United Nations High Commissioner for Refugees, 2002) 10.

74 Castles, above n73 at 8.

75 *Id* at 9.

76 Goodwin-Gill & McAdam, above n34 at 31–34, 49.

77 McAdam & Saul, above n9.

(ii) *Should there be a New Category of ‘Environmental Refugee’?*

As noted above, a number of people and organisations have been calling for ‘environmental refugees’ to be recognised and dealt with under international law. The debate has, however, largely been among non-legal scholars and has attracted a very divergent range of views.

Myers argues that the issue of environmental refugees may become a cause of turmoil and confrontation, leading to conflict and violence.⁷⁸ He therefore suggests the adoption of procedures to ensure the control of flows of environmental refugees.⁷⁹ Myers has also called for the expansion of international refugee law mechanisms in order to encompass environmental refugees.⁸⁰ Furthermore, he recommends a series of preventative responses, aiming at reducing the motivation to migrate (i.e. promoting sustainable development; foreign aid measures designed to alleviate environmental pressures and to address the needs of the most impoverished groups; measures for the relief of foreign debt of the poorest nations; and specific initiatives designed to help developing countries confront environmental challenges).⁸¹

In a similar vein, Conisbee and Simms⁸² argue that policies that cause harm to people but are pursued in full knowledge of their damaging consequences should be classed as environmental persecution.⁸³ They call for the establishment of a global UN Commission on Environmental Refugees, in charge of updating the *1951 Convention* or for preparing a new specific international instrument.⁸⁴

The International Committee of the Red Cross’s *2002 World Disaster Report* has also suggested that refugee laws need revising to cope with the problem of mass movements of environmental refugees.⁸⁵ The United Nations University recently proposed extending refugee status to include those escaping environmental damage and called for an international agreement on how individual states support people who move across borders because of environmental pressure.⁸⁶ Taking this a step further, some commentators have called for the establishment of a new human rights based Convention to address the protection of environmentally displaced persons⁸⁷ or even a new Protocol to the *UNFCCC*.⁸⁸

78 Norman Myers, ‘Environmental Refugees’ (1997) 19 *Population and Environment* 167 at 167–175.

79 *Id* at 176.

80 *Ibid*.

81 *Ibid*.

82 Conisbee & Simms, above n72.

83 *Id* at 30.

84 *Id* at 32.

85 Jonathon Walker (ed), *World Disaster Report 2002: Focus on Reducing Risk* (2002), section 1 chapter 4 <www.ifrc.org/PUBLICAT/wdr2002/index.asp> accessed 7 September 2008.

86 David Adam, ‘50m Environmental Refugees by end of decade, UN Warns’, *The Guardian* (United Kingdom), 12 October 2005.

87 Dana Zartner Falstrom, ‘Stemming the Flow of Environmental Displacement: Creating a Convention to Protect Persons and Preserve the Environment’ (2001, Yearbook) 13 *Colorado Journal of International Environmental Law & Policy* 15 at 23; Aurelie Lopez, ‘The Protection of Environmentally-Displaced Persons in International Law’ (2007) 37 *Environmental Law* 365 at 402–408.

88 Biermann & Boas, above n70 at 25–29.

In contrast, the concept of environmental refugee has been criticised by several authors as vague, simplistic and even detrimental. Black, writing in 2001, argued that ‘although environmental degradation and catastrophe may be important factors in the decision to migrate, and issues of concern in their own right, their conceptualization as a primary cause of forced displacement is unhelpful, unsound intellectually, and unnecessary in practical terms.’⁸⁹

In 2002 Castles⁹⁰ carried out a review of approaches to the question of environmental refugees. Castles disputed the methodological approach taken by Myers, submitting that it is based on general forecasting and common sense linkages, arbitrarily isolating environmental factors in the midst of complex situations, without considering specific cases.⁹¹ He argued that the notion of the ‘environmental refugee’ is misleading as it implies a mono-causality, which very rarely exists in practice, instead the environmental factors are closely linked to economic, social and political factors.⁹² Therefore, he concluded that the notion of environmental refugees does little to help understand the complex processes at work in specific situations of impoverishment, conflict and displacement.⁹³

With stark pragmatism, Castles remarked that there is no consensus for extending the refugee regime, as most receiving states actually want to restrict it further rather than improve it. In this regard, he argued that notions like ‘environmental refugees’ are not only misleading, but also possibly harmful.⁹⁴ He suggested that, in the current climate of hostility to refugees and asylum seekers, ‘we need to do our utmost to defend the *1951 Convention*, while at the same time, calling for improved international legal regimes and institutions to protect other types of forced migrants.’ In his opinion, the crucial issue is to adopt policies that will deal with the root causes of all types of forced migration and make it unnecessary.⁹⁵

From a practical perspective the reasoning adopted by Castles is extremely persuasive, particularly in light of the difficulty in characterising the primary causes of forced migration and also the current sentiments towards refugees and migrants across the world. Experience with discussion about the possibility of negotiating a Protocol to the *1951 Convention* to address complementary protection in the 1980s highlights the fact that many States are reluctant to take on additional protection obligations under international law, preferring instead to encourage States to align national laws with international standards.⁹⁶ It is very likely that there would be a similar reluctance in relation to this topic.

89 Richard Black, ‘*Environmental Refugees: Myth or Reality?*’ (Working Paper No 34, The United Nations High Commission for Refugees, 2001) 1.

90 Castles, above n73.

91 Ibid.

92 Id at 10.

93 Id at 12.

94 Ibid.

95 Ibid.

96 Goodwin-Gill & McAdam, above n34 at 291–294.

From a legal perspective, there would be a number of problems associated with trying to extend the *1951 Convention*. First, without a broad consensus to negotiate and adopt a Protocol it is highly unlikely that any document that is prepared would gain the necessary number of ratifications to enter into force. Second, an issue that goes to the heart of the matter is the fact that current protection regimes are designed around the need to protect people from violations of fundamental human rights orchestrated by the State in which they are ordinarily domiciled. Climate change impacts, particularly those impacts on vulnerable developing countries, are not wrought by their State governments. Any attempting to protect people from the impacts of climate change through the *1951 Convention* would require this underlying premise to be rewritten, undermining completely the original intent of the Convention and rendering it meaningless.

For the reasons set out above, existing refugee law is unlikely to be an appropriate framework in which to deal with people being permanently forced to relocate, over a longer period of time, as a result of environmental or climatic factors. Thus, there is a need to look to other and potentially new legal regimes to coordinate and manage what may be a slower and more long-term process. Refugee law does, however, highlight a number of important issues to consider when looking at how to address displaced people: in particular, the need to provide a clear definition of the people that will qualify for protected status and, further, the need to clarify the extent of protection and rights that are to be afforded to persons who meet that status.

3. Climate Change & International Law

The *UNFCCC* and its *Kyoto Protocol* establish the international legal framework for addressing climate change. The objective of the Convention is set out in Article 2 as follows:

The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the convention, stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a timeframe sufficient to allow ecosystems to adapt naturally to climate change, to ensure food production is not threatened and to enable economic development to proceed in a sustainable manner.

The concept of ‘dangerous climate change’ has not been defined, although many have sought to place parameters relating to greenhouse gas (‘GHG’) emission thresholds or stabilisation levels, temperature increases and timeframes.⁹⁷ For example, the European Union has adopted a policy that sets the goal-keeping temperature increases to not more than two degrees Celsius.⁹⁸ Although the IPCC does not make value judgements about the meaning of ‘dangerous climate change’ the AR4 suggests that temperature increases

⁹⁷ See, for example, M Oppenheimer & A Petsonk, ‘Article 2 of the *UNFCCC*: Historical Origins, Recent Interpretations’ (2005) 73 *Climate Change* 195.

of two degrees Celsius will have significant impacts globally, and particularly on vulnerable countries such as SIDS and on climate-sensitive ecosystems.⁹⁹ Within the current international negotiations about future climate action, the Alliance of Small Island States (‘AOSIS’)¹⁰⁰ has expressed the view that any package of mitigation related activities must be sufficient to ensure that GHG concentrations in the atmosphere are stabilised at well below 450ppm by volume, and temperature increases remain well below 2 degrees Celsius.¹⁰¹ AOSIS, which has often acted as the moral conscience of the climate change regime, is guided by the motto ‘No Island State Left Behind’. With this in mind it argues that the international community should benchmark its performance on global warming against whether States are prepared to physically lose one of their own as a result of the impacts of climate change.

A. Guiding Principles

The UNFCCC contains a number of important principles to guide its implementation. These include the principle of intergenerational equity; the principle of ‘common but differentiated responsibilities and respective capabilities’, which implicitly recognises that developed countries have made the greatest historical contribution to GHGs in the atmosphere and are most capable of responding to climate change and its adverse effects (and hence ‘the developed country Parties should take the lead in combating climate change and the adverse effects thereof’); the precautionary principle; and the right to promote sustainable development and economic growth.¹⁰² These principles are broadly consistent with the principles in the *Rio Declaration on Environment and Development* (‘*Rio Declaration*’)¹⁰³ which are commonly referred to as principles of sustainable development. Looking at each of these principles briefly in turn, intergenerational equity operates as an umbrella concept that requires the present generation to ensure that ‘the health,

98 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee of the Regions, *Limiting Global Climate Change to 2 Degrees Celsius: The way ahead for 2020 and beyond* (COM/2007/002 final) <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0002:FIN:EN:PDF>> accessed 6 September 2008.

99 IPCC AR4, above n14.

100 *Members and Observers* (2004) Alliance of Small Island States <www.sidsnet.org/aosis/members.html> accessed 6 September 2008: the 43 countries that comprise AOSIS include, in the Pacific Ocean: Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau Papua New Guinea, Western Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu; in the Caribbean: Antigua and Barbuda, Bahamas, Barbados, Belize, Cuba, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago; in the Atlantic Ocean: Cape Verde, Guinea-Bissau, and Sao Tome and Principe; in the Indian Ocean: Comoros, Maldives, Mauritius, and the Seychelles; Cyprus in the Mediterranean Sea; and Singapore in the South China Sea. AOSIS observers include American Samoa, Guam, the Netherlands Antilles, and the U.S. Virgin Islands.

101 MJ Mace, ‘Small Island States seek equitable post-2012 climate agreement’ (Natural Resources background paper prepared for the Commonwealth Heads of Government Meeting, Uganda, 23–25 November 2007) <www.field.org.uk/PDF/CHOGM-Mace.pdf> accessed 6 June 2008.

102 UNFCCC, above n10 at art 3.

103 *Rio Declaration on Environment and Development* (Declaration made at the United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, June 1992) UN Doc A/CONF.151/26 (vol. I); 31 ILM 874 (1992) (‘*Rio Declaration*’).

diversity and productivity of natural resources are maintained or enhanced for the benefit of future generations.¹⁰⁴ Brown Weiss has identified three fundamental tenets that form the basis of intergenerational equity. These include the conservation of options (i.e. to ensure there are options to satisfy future needs), the conservation of quality (i.e. that the resources are passed on in no worse a condition than they were received) and the conservation of access (i.e. the legacy of past generations should be available for future generations).¹⁰⁵ In the context of climate change impacts on SIDS we are already seeing critical ecosystems that support the livelihoods of communities, such as coral reefs and freshwater aquifers, being severely affected by temperature increases and rising sea levels. This suggests that unless dramatic steps are taken by the international community as a whole to preserve island ecosystems, this principle will be breached.

When considering the actions being taken by States in relation to activities that produce greenhouse gases and contribute to global warming, the precautionary principle is particularly relevant. Principle 15 of the *Rio Declaration* states the precautionary principle as follows:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

The IPCC AR4 has unequivocally found that climate change is occurring as a result of human activities. Nevertheless, there are many areas of climate science that are less than certain. For example, there is only limited peer-reviewed scientific material that considers the extent of sea level rise and extreme weather events in the Pacific and the likely impacts of those phenomena upon island ecosystems and communities. In this regard, AOSIS has called for urgent work by the scientific community and the IPCC to consider the implications of a two degree Celsius increase in global average surface temperature and on means to achieve low stabilisation levels to prevent negative impacts on SIDS.¹⁰⁶ There also remains considerable uncertainty around the likelihood that island populations will have to relocate in response to climate change impacts and what pattern that relocation might take. Nevertheless, if the precautionary principle were to be applied, the international community should be considering means to first prevent significant impacts upon SIDS, but also to prepare for the consequences of possible impacts.

The principle of common but differentiated responsibility and respective capabilities is central to the *UNFCCC* regime. Although all countries are required to take steps to combat the adverse effects of climate change, developed countries are required to 'take the lead'. This is partly because of the greater financial and technical capabilities of

104 Brian Preston, 'Ecologically Sustainable Development in the Courts in Australia and Asia' (Paper presented at the Environmental Law Seminar, Wellington, New Zealand, 28 August 2006) 24 <[www.lawlink.nsw.gov.au/lawlink/lec/ll Lec.nsf/vwFiles/Speech_28Aug06_Preston.pdf/\\$file/Speech_28Aug06_Preston.pdf](http://www.lawlink.nsw.gov.au/lawlink/lec/ll Lec.nsf/vwFiles/Speech_28Aug06_Preston.pdf/$file/Speech_28Aug06_Preston.pdf)> accessed 6 June 2008.

105 Edith Brown Weiss, 'Intergeneration Equity: A legal framework for global environmental change' in Edith Brown Weiss (ed), *Environmental Change and International Law: New Challenges and Dimensions* (1992) at 401.

106 Mace (2007), above n101 at 105.

developed countries, but also because of the historic responsibility of industrialised countries for the climate change problem.¹⁰⁷ Taking the lead manifests itself in a number of ways: firstly, through developed countries taking binding emissions reduction commitments under the *Kyoto Protocol*; secondly, through the provision of financial and technological support to developing countries; and thirdly, through assisting with adaptation.

In relation to the needs and special circumstances of particularly vulnerable developing country parties, the *UNFCCC* requires all parties to, inter alia, 'cooperate in preparing for adaptation to the impacts of climate change.'¹⁰⁸ Developed country parties are also required to assist developing country parties that are particularly vulnerable to the adverse effects of climate change in meeting the costs of adaptation to those adverse effects.¹⁰⁹ Small island countries are specifically recognised in the *UNFCCC*, along with countries with low-lying coastal areas and other vulnerable countries, as requiring special consideration. In this regard, parties are required to give full consideration to what actions are necessary under the *UNFCCC*, including funding, insurance, and the transfer of technology, to meet their specific needs and concerns.¹¹⁰ In relation to funding, the *UNFCCC* has established a fund for Least Developed Countries ('LDCs')¹¹¹ and a special climate change fund¹¹² which provide funding for capacity building, adaptation planning and technology transfer. In addition, the *Kyoto Protocol* has established what is known as the 'Adaptation Fund'¹¹³ by which a two per cent share of the proceeds from the Clean Development Mechanism is set aside to support adaptation activities. This later fund was only operationalised at the third Conference of the parties serving at the meeting of the parties ('COP'/'MOP') in Bali in December 2007. The Adaptation Fund is likely to generate approximately US\$500-700 million during the *Kyoto Protocol* first commitment period.¹¹⁴ Yet conservative estimates suggest that between US\$10 billion and US\$40 billion is required to meet the costs of adaptation.¹¹⁵ It is becoming more and more obvious that the amount of money in these funds will be far from adequate to address the costs of climate change impacts. Hence the need for new and additional sources of funding to be found in the future.

107 MJ Mace 'Adaptation under the UN Framework Convention on Climate Change: The Legal Framework' (Paper presented at Justice in Adaptation to Climate Change Seminar, London, 7-9 September 2003) 7 <www.field.org.uk/PDF/Adaptation-Tyndall%20Paper-MACE-August%202003-FINAL.pdf> accessed 6 June 2008.

108 *UNFCCC*, above n10 at art 4.1(e).

109 *Id* at art 4.4.

110 *Id* at art 4.8.

111 United Nations Framework Convention on Climate Change, Decision 7/CP.7.

112 *Ibid*.

113 United Nations Framework Convention on Climate Change, Decision 10/CP.7: 2 per cent of the value of certified emission reduction units will be transferred to the Adaptation fund. Decision 1/CMP.3 provides for the institutional and governance arrangements for the Adaptation Fund.

114 See 'Background paper on Share of Proceeds to assist in meeting the costs of adaptation', *UNFCCC Workshop on the Adaptation Fund*, Edmonton, Alberta, Canada, 3-5 May 2006.

115 See, for example, 'Review of the experience of international funds, multilateral financial institutions and other sources of funding relevant to the current and future investment and financial needs of developing countries. Technical paper' (2007) *FCCC/TP/2007/4*.

The polluter pays principle requires the polluter to take responsibility for the external costs arising from his pollution.¹¹⁶ Although the *UNFCCC* does not expressly refer to the polluter pays principle, a number of scholars have suggested that this may be one way to address the historic responsibility that developed countries may have in relation to climate change and to apportion costs for past and future damage.¹¹⁷ Indeed, AOSIS has called for the polluter pays principle to be used to determine the obligations of different parties and groups of parties in the international regime that is developed for the post-2012 period.¹¹⁸ This principle has been widely accepted at a national level. However, many States do not accept that it governs rights and responsibilities between States at the international level.¹¹⁹

The principles of sustainable development are binding upon States to the extent that they are articulated in treaties to which the States are party. In addition, some commentators argue that the principles are becoming part of customary international law, however, this is far from agreed amongst international lawyers.¹²⁰ Nevertheless, when looking to ways to respond appropriately to the impacts of climate change on SIDS, these principles must underpin any actions taken.

B. Adaptation and Migration

Although the term adaptation is not defined in the *UNFCCC*, it is widely understood to mean ‘the adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates, harm or exploits beneficial opportunities’.¹²¹ For SIDS and many other developing countries, adaptation is the main priority with respect to climate change. However, one of the main criticisms of the *UNFCCC* process, particularly from developing countries, has been that the international negotiations have focused on mitigation, with adaptation being somewhat marginalised. It was not until 2006 that a five year work programme on impacts, vulnerability and adaptation to climate change was agreed to (the Nairobi Programme of Work),¹²² and even then that programme has been criticised for its lack of support for implementation of adaptation activities as distinct from planning and exchange of information.

Bearing in mind that more than 50 per cent of islander populations live within 1.5 kilometres of the coast and most critical infrastructure is also situated in this zone, there are a number of adaptive measures that are necessary to safeguard people and livelihoods. Initially these measures can include securing water and food supplies and

116 Preston, above n104 at 33.

117 Daniel Farber ‘Apportioning Climate Change Costs’ 26 *UCLA Journal of Environmental Law & Policy* 21 at 28–29.

118 AOSIS, ‘Dialogue on long-term cooperative action to address climate change by enhancing implementation of the Convention’ (Working Paper No 14, United Nations Framework Convention on Climate Change, 2007).

119 Philippe Sands, *Principles of International Environmental Law* (2nd ed, 2003) at 280–281.

120 Patricia Birnie & Alan Boyle, *International Law and the Environment* (2nd ed, 2002) at Chapter 3.

121 IPCC TAR WGII, above n12 at 982.

122 United Nations Framework Convention on Climate Change, Decision 1/CP.10.

using natural and artificial measures to buffer and protect coastal areas. However, as the IPCC notes, emigration is a potentially effective adaptation strategy.¹²³

Whilst some commentators have argued that migration should be considered as part of the debates around adaptation,¹²⁴ there are others who see migration as representing the complete failure of adaptation policies and planning. Furthermore, by treating migration as a means of adapting to climate change, the discourse on urgent an immediate adaptation actions is silenced and the funding for such actions does not materialise.¹²⁵ In other words, the focus of adaptation planning and funding should be on ensuring effective action takes place on the ground, without delay, as it will be significantly more expensive to address the impacts of climate change in the future.

With these sensitivities in mind, it is understandable to see why migration has not been formally considered under the *UNFCCC* or *Kyoto Protocol*, in the context of adaptation or elsewhere. Nevertheless, in the high level segment of COP 13, COP/MOP 3 in Bali in December 2007 the President of the Maldives, HE Mr Maumoon Abdul Gayoom, stressed the need for parties to seriously consider of the impacts of climate change on the populations of island countries like the Maldives to protect climate refugees in the future.¹²⁶ This statement built upon the *Male Declaration on the Human Dimensions of Climate Change*, which was adopted by representatives of SIDS on 14 November 2007.¹²⁷ The *Male Declaration* called upon the *UNFCCC* COP to seek the cooperation of the UN High Commissioner for Human Rights and the Human Rights Council in assessing the human rights implications of climate change and to convene a debate on this subject.¹²⁸

Recently the UN Human Rights Council adopted by consensus a resolution on human rights and climate change.¹²⁹ The resolution was co-sponsored by 69 countries. The resolution recognises that climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights. The resolution requests that the Office of the United Nations High Commissioner for Human Rights conduct a detailed study on human rights and climate change.

The idea of addressing the human dimensions of climate change, and in particular climate change-induced migration, does not, at this stage, have widespread support among developing or developed country parties to *UNFCCC*. This is largely because a

123 IPCC AR4, above n14 at 708.

124 Ibid, citing Agder et al, 'Adaptation to Climate Change in the Developing World' (2003a) 3 *Progress in Development Studies* 179.

125 Ibid, citing Farbotko, 'Tuvalu and climate change: constructions of environmental displacement in the Sydney Morning Herald' (2005) 87 *Geografiska Annaler: Series B* 279.

126 *United Nations Climate Change Conference* (2007) United Nations <www.un.org/webcast/UNFCCC/2007/index.asp?go=09071212> accessed 6 September 2008.

127 *Male' Declaration on the Human Dimensions of Global Climate Change* ('*Male Declaration*') <www.ciel.org/Publications/Male_Declaration_Nov07.pdf> accessed 6 June 2008.

128 Ibid.

129 UN General Assembly Human Rights Council, *Human Rights and Climate Change*, A/HRC/7/L.21/Rev.1, (26 March 2008).

number of countries take the view that the mandate of the *UNFCCC* should be construed narrowly and, where other international agreements address certain issues, for example human rights, the *UNFCCC* should not entertain those subjects. In addition, if migration is to be viewed in the context of adaptation, sensitivities still arise in relation to the need to do as much as possible to enable people to continue living in their traditional homes before looking to relocating them. Nevertheless, as Part 4 of this article explains, there are some commentators who suggest that a further Protocol to the *UNFCCC* could be used as a legal instrument to address human displacement and climate change.

4. Human Displacement and Climate Change

Parts 2 and 3 of this article have attempted to describe the existing international law frameworks that deal with both refugees and climate change. These regimes have very distinct mandates and institutional structures, none of which are ideally placed to address the phenomena of people displaced by the impacts of climate change. A third area of international law also relevant to this issue is that of human rights.

In 2005 the Inuit Circumpolar Conference ('ICC') brought a case in the Inter-American Commission of Human Rights, petitioning the court to remedy violations of the *American Declaration of the Rights and Duties of Man* ('*American Declaration*')¹³⁰ by the United States of America. The Inuit, the traditional inhabitants of the Arctic region of North America and Greenland, alleged that the US had violated a number of their rights encapsulated in the *ICCPR*, the *ICESCR* and the *American Declaration*. In particular, they alleged that their rights to practise and enjoy the benefits of their culture, to use and enjoy traditional lands, to enjoy personal property, to maintain cultural intellectual property, the rights to health and life, the rights to residence and the inviolability of the home and the right to means of subsistence, were being infringed. The ICC claimed that the US, as the world's largest emitter of greenhouse gases, should be accountable for these violations.

Although the Commission chose not to resolve the issues raised,¹³¹ the petition succeeded in drawing attention to issues of long-term liability for climate change and the obligation to protect those most vulnerable to climate change. Climate change raises interesting questions about the extent to which human rights obligations might be owed by one State to the citizens of another, whether compensation should be payable for a violation of rights and the extent to which the international community might be able to intervene to protect certain rights.

130 Petition to the Inter-American Commission on Human Rights Seeking relief from Violations resulting from Global Warming caused by Acts and Omissions of the United States (7 December 2005) <www.ciel.org/Publications/ICC_Petition_7Dec05.pdf> accessed 7 September 2008.

131 The Petition was dismissed without prejudice. However, the ICC requested and was granted the opportunity to address the IACHR on 1 March 2007: see <www.ciel.org/Publications/IACHR_Response_1Feb07.pdf> accessed 6 September 2008.

A. *Is there an Obligation to Protect, and Where Might it Lie?*

Although the protection of human rights underpins refugee law, in particular in relation to the obligations that States must afford to their citizens and other people within their territory, one area of human rights law that remains less well developed is whether States have obligations to protect non-citizens outside their jurisdiction. The *ICESCR* calls upon State parties to ‘take steps individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means.’¹³² Some of the critical rights enshrined in the *ICESCR* include ‘the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.’¹³³

Generally, responsibility for human rights protection is attributed to individual States and extends to all persons within that State’s territory or jurisdiction.¹³⁴ However, in most developing countries, the State is not directly responsible for the impacts of climate change and the potential violation of rights associated with the impacts of global warming. Chimni is of the view that the *ICESCR* creates an international obligation on developed States parties to cooperate and grant assistance to developing countries to help realise the right to development.¹³⁵ Whether this obligation extends to a duty to accept migrants has not yet been explored in any detail. However, two recent declarations on migration and development have identified the need to address the root causes of migration, especially those relating to poverty.¹³⁶ Furthermore, recent regional initiatives relating to migration have considered some of the environmental drivers, such as natural disasters (e.g. hurricanes) in the Caribbean.¹³⁷ The principle of international burden sharing is beginning to gain limited currency as a principle of customary international refugee law.¹³⁸ Extending this principle, and the obligations that flow from it,¹³⁹ to the acceptance of migrants displaced as a result of climate change could be one way to ensure those most responsible for climate change fulfil their obligations to those most affected and least able to address climate change impacts. Such an approach could therefore compliment the principles of sustainable development articulated in the *UNFCCC*.

132 *ICESCR*, above n63.

133 *Ibid.*

134 *General Comment No 31[80]: Nature of the General Legal Obligation Imposed on State Parties to the Covenant: 26/05/2004*, CCPR/C/21/Rev.1/Add 13 (General Comments), in particular [3], [10].

135 BS Chimni, ‘Development and Migration’ in T Alexander Aleinikoff & Vincent Chetail (eds), *Migration and International Legal Norms* (2003) at 256–7.

136 International Conference of Parliamentarians on Population & Development, *Cairo Declaration on Population and Development* (1994) POPIN <www.un.org/popin> accessed 5 February 2008; International Symposium on Migration, *Bangkok Declaration on Irregular Migration* (1999) UNESCO <<http://portal.unesco.org>> accessed 5 February 2008. See BS Chimni, above n135 at 262.

137 For example, the 4th Regional Conference on Migration for the Americas & Caribbean held in El Salvador in 1999 focused on migration issues related to Hurricane Mitch. See BS Chimni, above n135 at 310.

138 BS Chimni, above n135 at 266.

139 *Id* at 266–7: obligations such as phased dismantling of the non-entree regime, responding positively to third-country resettlement requests, increasing the funding for the UNHCR, providing greater material and financial assistance to first asylum host countries, eschewing burden escaping practices and not offering aid.

B. Proposals for New Measures to Provide for People Displaced by Climate Change

As the debate about ‘climate refugees’ heats up, a number of proposals have been made for how they should be treated. Social scientists such as Myers and Simms have argued that the definition of a refugee in the *1951 Convention* should be extended to include people displaced by environmental factors. However, as the discussion in Part 2 highlights, this approach is legally problematic and also politically unlikely to gain international support.

(i) Stand-alone Instruments

Adopting a different approach, Falstrom has proposed the development of a stand-alone Convention on the Protection of Environmentally Displaced Persons. This instrument would be formulated along similar lines to the *UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*,¹⁴⁰ with provisions that would create obligations for States, on a temporary basis, to take appropriate action to protect people who arrive in their territory because of any of a list of environmentally related problems.¹⁴¹ One of the central features of this proposed regime is that it only provides for temporary assistance and presumes that a person will be able to return to his or her home once the conditions for flight have subsided. Part of the rationale for such an approach appears to be pragmatic, noting the general malaise in the international community when it comes to permanent migration as opposed to short-term humanitarian assistance and the unlikelihood of the international community agreeing to a more comprehensive regime for permanent resettlement.¹⁴² Whilst this approach might work in relation to some environmental issues, temporary resettlement would be problematic in the case of islands becoming inhabitable due to sea level rise. Furthermore, this approach does not address the many complex drivers of displacement that occur over a longer period of time. Finally, this approach is premised on humanitarian and human rights bodies taking on some of the responsibility for protection and long-term resettlement which goes beyond the scope of their usual mandates.

(ii) Protocol to the UNFCCC

Recognising that climate change, and in particular sea level rise, will lead to permanent displacement of people from their homelands, Biermann and Boas have developed a blueprint for the future refugee crisis which would involve the creation of a *sui generis* regime under the framework of the *UNFCCC*.¹⁴³ The regime would be guided by five principles: first, the need to provide for planned and voluntary resettlement over a long-term period;¹⁴⁴ secondly, the use of an institutional design that recognises the inability

140 *Convention Against Torture*, above n49.

141 Falstrom, above n87 at 22.

142 Lopez, above n87 at 404.

143 Biermann & Boas, above n70 at 25.

144 *Ibid.*

of people to return to their homes and thus the need to be treated as permanent immigrants rather than temporary asylum seekers;¹⁴⁵ thirdly, the need to tailor any resettlement to respect the collective rights of communities and local populations rather than just individuals;¹⁴⁶ fourthly, ensuring international assistance and funding for the domestic support and resettlement programmes of affected countries;¹⁴⁷ and fifthly, the principle of international burden sharing which recognises that climate change is a global problem and that industrialised countries bear the moral responsibility for its victims.¹⁴⁸

Biermann and Boas suggest that this new regime could take the form of a Protocol on Recognition, Protection and Resettlement of Climate Refugees ('Climate Refugee Protocol'). The Climate Refugee Protocol would build upon the principles contained in the *UNFCCC*, in particular those of common but differentiated responsibility and reimbursement of full incremental costs. The authors also note that any new mechanism would require considerable levels of funding, and therefore a separate Climate Refugee and Resettlement Fund would be required to assist in protecting and relocating climate refugees.¹⁴⁹

The core principles in the proposal from Biermann and Boas have considerable merit and offer an important contribution to the debate on how to treat people forced to migrate in response to sea level rise and other climatic factors. The merits of this approach are that it promotes the adherence to the principles of sustainable development enunciated in the *UNFCCC* and also proposes developing frameworks to address resettlement. However, this approach does not go to the next level to address the responsibilities of States and the obligations and rights that may accrue to people who are resettled in third countries. As noted in Part 3 of this article, placing such a regime within the *UNFCCC* framework is likely to attract strong political and institutional resistance: first, because of the reluctance to consider human rights under the mandate of the *UNFCCC*; and second, because there are a number of countries that are concerned that by focusing on migration as an adaptation option, less attention will be placed on the need to mitigate climate change by adopting strong and ambitious greenhouse gas emissions reduction targets to ensure that the impacts of climate change are minimised.

(iii) *National Migration Laws*

Finally, perhaps the most pragmatic approach is to deal with displaced people under traditional migration laws at a national level. Such an approach will ultimately be premised on a host country's discretion to accept immigrants that meet certain threshold criteria, rather than any legal basis for protection. However, if people are forced to move to new countries as a result of environmental factors, recognising environmental thresholds as a basis for acceptance may assist. Whilst there are many international

145 Ibid.

146 Ibid.

147 Id at 26.

148 Ibid.

149 Id at 29–30.

treaties and bilateral and regional agreements which deal with migration, especially relating to humanitarian assistance, there is no comprehensive regional or multilateral institution that deals with the relations among States or tries to bring order to the myriad of conventions, agreements, best practice and guidelines on migration.¹⁵⁰ Instead, international law affirms the authority of States to regulate the movement of persons across their borders and to develop policies on admission, residence, expulsion and naturalisation policies for non-citizens.¹⁵¹

The distinction between citizens and non-citizens is significant when dealing with the extent of rights afforded to each category of person. In the context of migration, ensuring that a migrant has employment rights, rights to social security and health care, to affiliate with trade unions, to housing, to reunite his or her family, to educate his or her children and self, to retain and develop his or her culture and language, to engage in political activity and decision making processes and to remain in the host country without being unfairly expelled are paramount.¹⁵² However, it is often these rights that are at the mercy of the host States' immigration policies.

By contrast, the political, cultural, economic and social rights connected with nationality are to be applied equally to all citizens. In order to obtain the best results for themselves and their families, in many instances migrants will be seeking naturalisation and ultimately citizenship in their host country, notwithstanding that they may still be able to retain their original nationality.¹⁵³

In 2001 the government of New Zealand entered into an immigration agreement with the governments of the neighbouring Pacific States of Tuvalu, Kiribati and Tonga, which established the Pacific Access Category ('PAC') for migrants.¹⁵⁴ Each country is allocated a quota of citizens who can be granted residency in New Zealand each year – 75 for Tuvalu and Kiribati each and 250 for Tonga. Those citizens granted residency must meet specific requirements before entering the PAC ballot.¹⁵⁵ Some commentators have linked the PAC to the requests for assistance from countries such as Tuvalu and thus used it as an example of a government accepting migrants in response to climate change. However, according to the New Zealand government, this is not the rationale or basis for creating the visa category.¹⁵⁶

150 T Alexander Aleinikoff and Vincent Chetail (eds), *Migration and International Legal Norms* (2003) at viii.

151 Id at 3. There have been attempts to formulate minimum standards for the treatment of migrants who have not obtained citizenship in their new country. For example, the 1985 UN *Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they Live* requires host States to ensure that certain political, economic and social, cultural and residence rights are afforded to non-citizens who have legally migrated to their territory either permanently or temporarily. However, this Declaration is not legally binding and is also heavily qualified: see Ryszard Cholewinski, *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment* (1997) at 72.

152 Id at 1.

153 Aleinikoff & Chetail, above n150 at 22.

154 New Zealand Immigration Service, *Pacific Access Category* (2001) <www.immigration.govt.nz> accessed 6 February 2008.

155 Applicants must satisfy the following requirements: be between 18–45; have an acceptable offer of employment in New Zealand; have minimum English language skills, have minimum income requirements if the person has dependents, have health and character requirements, and have no history of unlawful entry into New Zealand.

In 2006, the then opposition Labor Party in Australia called upon the international community to accept 'climate refugees' from the Pacific.¹⁵⁷ This was then followed by Senator Kerry Nettle of the Australian Greens Party introducing a bill entitled the *Migration (Climate Refugees) Amendment Bill 2007* into the Australian Senate, which proposed amendments to the *Migration Act 1958*.¹⁵⁸ The bill proposed the establishment of a new class of Australian visa to be known as the 'climate change refugee visa', which could be granted to persons who had been displaced as a result of a 'climate change induced environmental disaster'. The bill defined a 'climate change induced environmental disaster' as

...a disaster that results from both incremental and rapid ecological and climate change disruption, that includes sea level rise, coastal erosion, desertification, collapsing ecosystems, fresh water contamination, more frequent occurrence of extreme weather events such as cyclones, tornados, flooding and drought and that means inhabitants are unable to lead safe or sustainable lives in their immediate environment.¹⁵⁹

Although the Bill failed to gain the wider support of the Senate, it offers an example of how national migration policies could be used to accept people migrating as a result of climate change.

Conclusion

This article has attempted to identify some of the emerging and uncharted issues associated with forced migration in response to climate change. It is clear that existing refugee law does not provide for this new class of 'environmentally displaced persons', 'environmental refugees' or 'climate refugees'. Notwithstanding the terminology, it is also unlikely that international refugee law will be the appropriate forum in which to take the protection of these people forward, particularly when considering the likelihood that migration will be slow, permanent and long-term rather than temporary.

Instead, a number of concepts developed in international refugee and humanitarian law could be usefully applied either to enhance existing migration laws or aid in the development of a new international regime. Most importantly, this would involve ensuring that forced migrants are afforded every possible opportunity to avail themselves of the full gamut of economic, social, cultural and political rights within their new country.

156 Pers comm, NZ Ministry of Foreign Affairs.

157 Australian Labor Party, *Our Drowning Neighbours: Labour Party Discussion Paper on Climate Change in the Pacific* (2006); Biermann & Boas, above n70 at 7.

158 Migration (Climate Refugees) Amendment Bill 2007 (Cth): A Bill for an Act to recognise refugees of climate change induced environmental disasters; for related purposes see Senator K Nettle, *Second Reading Speech of 21 June 2007* <www.kerry Nettles.org.au/500_parliament_sub.php?deptItemID=349> accessed 6 September 2008.

159 Migration (Climate Refugees) Amendment Bill (2007) (Cth) sched 1.

Principles of sustainable development could also be usefully applied to the issue of people displaced by climate change. Firstly, they guide the international community's response to climate change, but they could also underpin an obligation for developed countries to seriously consider the human impacts of climate change in terms of funding concrete adaptation activities in the immediate future and becoming more flexible in relation to domestic migration policies where the dominant driver for migration is climate change.

At the 57th session of the UN General Assembly in September 2002, the Tuvaluan Governor General made the following statement:

Taking us as environmental refugees, is not what Tuvalu is after in the long run. We want the islands of Tuvalu and our nation to remain permanently and not be submerged as a result of greed and uncontrolled consumption of industrialised countries. We want our children to grow up the way we grew up in our own islands and in our own culture.¹⁶⁰

In other words, 'there's no place like home'.

160 Sir Tomasi Puapua, 'Tuvalu Statement' (Speech delivered at the 57th Session of the United Nations General Assembly, New York, 14 September 2002).