



In Search of Refuge: Pacific Islands, Climate-Induced Migration, and the Legal Frontier

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I S S U E S

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SUMMARY As the effects of climate change intensify, time is running out for millions living in Asia Pacific coastal and island communities. Many will be forced to leave their homes within the next half-century because of increased intensity and frequency of storms and floods, sea-level rise, and desertification. The low-lying small island states of the Pacific are especially endangered; residents there may lose not only their homes, but their entire nations. Planning aimed at avoiding humanitarian disaster and political chaos should already have begun, but a stumbling block is international law, which is not prepared to address the cross-cutting impacts of climate and migration. Finding viable solutions will require new ways of thinking, pushing the law to a new frontier that calls for a reconsideration of existing legal boundaries.

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As many as 200 million people worldwide may have to leave their homes because of climate change in the next half-century. This large-scale migration will result from increased intensity and frequency of storms and floods, sea-level rise, and desertification.¹ The Asia Pacific region, with its many low-lying islands, is often deemed the climate change ground zero. From Bangladesh to Papua New Guinea, loss of homeland is already occurring and may increase as slow-onset and sudden disasters, made more frequent and intense by climate change, damage or destroy human habitats. All “climate migrants” face painful realities, including loss of livelihood and culture and the need to adapt to a host country or community. But those who live on small islands may face the greatest risk: the permanent loss, not only of their own chance to go home, but of the home country itself.

The Asia Pacific is one of the regions most likely to be heavily impacted by climate-induced migration due to distinctive natural and geographic features. It is the most prone to environmental hazards, particularly tropical cyclones. It is the most vulnerable to sea-level rise, with its many small islands, large deltas, and large coastal populations.² The high incidence of densely populated areas in the region could exacerbate the toll of a climate-related event. In Bangladesh alone, for example, people migrating in response to climate change could outnumber all current refugees worldwide.³

The potential “drowning” of a legally recognized state presents novel and complex challenges to international law. A re-envisioning of law itself may be needed to face the challenges of human migration in the 21st century. Law today strives for consistency, universality, and predictability, but addressing increased migration requires flexibility, customizable applications, and responsiveness. And even if such an evolution occurs in international law, it will likely be complicated by individual countries’ responses to climate-induced migration—both of their own citizens and of others. This is a long-term, worldwide challenge, but it is likely to imminently affect small islands in exceptional ways, demanding just and reparative short-term legal and policy solutions.

Migration Resulting from Climate Change

In the 20 years since the Intergovernmental Panel on Climate Change first stated that the “gravest effects of climate change may be those on human migration,” the international community has made no legal or political progress, namely through international negotiations, on the issue.⁴ Migration, either across international borders or within nations, is the expected result of loss of habitable land. Recent data suggest that an increase in extreme weather events, from droughts to storms, may threaten millions. For example, the number of recorded natural disasters has doubled from about 200 to 400 per year over the past 20 years; nine out of ten of these additional events can be considered climate-related.⁵ (Though no single weather event can be attributed to climate change, these events are considered *climate-related* because without the increase in global average temperatures due to increased atmospheric carbon these additional events would be highly unlikely.⁶)

This increase in extreme weather events may be the “new normal,”⁷ and sea-level rise may result in the loss of entire nations and the displacement of 10 percent of the world’s population.⁸ Although their exact nature, timing, and magnitude cannot be predicted, the Asia Pacific region needs to prepare now for the possibility of mass migration induced by climate change. While the absolute number of people displaced from the region’s islands may be quite small, the consequences of climate change for small island states are formidable. For some small island states, climate change threatens their very existence and, thus, requires near-term solutions. The early response to their plight also holds great potential for the development of enduring solutions for climate-induced migration regionwide.

Hurdles to Formulating a Response

The growing problem of climate-induced migration has not yet received the attention it merits, and an absence of political will to confront the issue is exacerbated by a number of challenges inherent to the migration discourse. This type of migration is likely to

differ in several respects from other dislocations, and these migrants are marked by several factors: an inability to return to their homes, migration in large numbers and collectively, a predictable need for migration, and, in some cases, a unique and compelling moral element to the migrants' situation derived from these people's small contribution to global greenhouse gas emissions. To further facilitate discussion, more information is needed as to how many people are likely to migrate in the next two generations and exactly why, and how climate change can be distinguished from other factors influencing migration.

Defining the terms. Even when migration can be directly linked with, for example, a climate-related storm, the lack of consensus on what to call these migrants—"climate refugees," "climate migrants," "the climate displaced"—hampers the discussion. The term "climate refugees" is widely used (and vigorously defended by some scholars), but from a law and policy perspective the term "refugee," a designation that defines and confers certain rights according to international law, does not accurately describe their legal status. In fact, those dislocated by the impacts of climate change currently have no legal status at all. As a result, legal scholars, researchers, and some political voices frequently use terms such as "climate migrants" and "climate displaced." (Since "climate migrant" is the term most often used in the relevant literature, it will be used here.) Finding an appropriate term is vital, as the rights of individuals—and the obligations to them of states and the international community—are heavily dependent on how their legal status is articulated.

Migrant numbers and motives. A commonly invoked estimate is that there will be 200 million to 250 million climate migrants by 2050; but estimates vary from 25 million to one billion.⁹ Oxford ecologist Norman Myers, the source of the 200–250 million figure, has acknowledged that his own estimate is based on "heroic extrapolations";¹⁰ yet in the absence of clear empirical evidence and an accepted scientific methodology, these numbers are widely accepted as capturing the potential magnitude of the problem.

Climate-induced migration is already occurring and significantly contributes to migration worldwide. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA) and the Internal Displacement Monitoring Centre (IDMC), more than 20 million people were displaced in 2008 by climate-related sudden-onset disasters such as floods and storms.¹¹ This number dwarfs the 4.6 million who were internally displaced due to conflict and violence during the same year.¹²

There are also many factors in addition to the original impetus for migration that can influence the decision to migrate—including political and economic development and the capacity of individuals, communities, and countries to adapt to external pressures. For individuals, age, sex, culture, education level, and work experience, as well as risk perception and risk aversion, play an integral part in their willingness and ability to move.

Migration, climate, and international law. International law has not addressed the cross-cutting impacts of climate and migration, which also affect many other areas, including development; national security; and human, indigenous, and cultural rights. A number of international instruments govern forced migration due to persecution, conflict, and disasters, but no one area of the law governs climate *and* migration. The 1951 Geneva Convention Relating to the Status of Refugees determines who qualifies as refugees and defines their rights and the legal obligations of states. The 1992 United Nations Framework Convention on Climate Change addresses the manner in which states mitigate and adapt to the effects of climate change. But neither these documents nor their implementing bodies have dealt squarely with climate-induced migration. There has been no consensus to amend the 1951 convention to cover this issue. Neither the Framework Convention on Climate Change nor the subsequent Kyoto Protocol acknowledged it beyond cursory mention of the threats to habitability and sovereignty that small island developing states face.

Given these challenges, it is tempting to postpone addressing the plight of climate migrants. But it is

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widely expected by both observers and leaders of small island states that climate change will likely lead to migration. The impacts of climate change—sea-level rise, and the greater frequency and intensity of storms and coastal inundation, among other things—might render entire nations uninhabitable as early as 2050.

The Unique Plight of Small Island States

For small island states in the Pacific, the factors that characterize climate-induced migration—the inability to return, collective migration in large numbers, and the predictable need for migration—might all occur in concert. The coincidence of all of these factors militates for a rapid and comprehensive global response. With their relative lack of responsibility for climate change and their relative poverty, Pacific climate migrants and their home states have a special moral, and perhaps legal, claim on wealthier and higher-polluting industrialized countries.

Fairness and equity call for an immediate draw-down of emissions by the world's top polluters, industrialized and emerging economies alike. But while a rapid reduction in global greenhouse gas emissions can mitigate the total impacts of climate change, it will do little to alleviate the immediate crisis for low-lying islands. Based on current climate forecasts, many island states have no time to spare. They may face challenges to their existing livelihoods within the next two generations, for which early migration planning is essential.

Small island states rely heavily on coastal resources for subsistence. Sea-level rise, coastal inundation, seawater intrusion into freshwater sources, and soil salinization are likely to compromise freshwater availability and adversely affect coastal agriculture.¹³ This is already occurring in some of the region's island communities. Food and water insecurity due to sea-level rise are already among the top problems for the Federated States of Micronesia.¹⁴ With increasing frequency, extreme spring tides known as “king tides” have damaged coastal infrastructure; soil; staple crops such as taro; and agroforestry resources in coastal settings, particularly in the low-lying atolls. Various sectors of the economy, including tourism, have been

negatively affected in some island states. Negative impacts on traditional knowledge and cultural sites are already occurring and may accelerate, as, for example, place-based practices, such as taro cultivation and the craft of salt making, are hampered in coastal areas.

Relocation from regions that have become uninhabitable has already occurred in a number of areas in the Pacific. The migration within Papua New Guinea of 2,600 people from the low-lying Carteret Islands to Bougainville may be the first instance in which an entire island community attempted to resettle because of sea-level rise. But this kind of internal migration is not possible for nations that consist entirely of low-lying islands.

By highlighting the apparently inevitable loss of their entire homelands, Tuvalu and the Maldives have challenged the international climate change discourse that is dominated by the wealthier, higher-polluting countries. The Maldives, an archipelago of 1,190 islands in the Indian Ocean with an average elevation of four feet above sea level, could see portions of its capital flooded by 2025. Its president, Mohamed Nasheed, has publicly avowed his desire to acquire land outside of the Maldives' current territory and move all 300,000 Maldivians to safer ground—preferably within the region in a place with a similar culture, such as India or Sri Lanka.

While Tuvalu is similarly vulnerable, it, like some other small island nations, has not wanted resettlement to figure prominently in international agreements, lest industrialized countries deem relocation a quicker, easier fix than reducing their emissions to slow or halt the impacts of climate change. Nevertheless, countries like Tuvalu and Kiribati have had to contemplate the loss of their territory and have begun discussions with larger, industrialized countries like Australia and New Zealand. Though these discussions have largely focused on enhanced labor migration, deeper investigation into migration alternatives for these countries appears inevitable. To date, however, no refuge has been identified.

Sovereignty and statelessness. Climate change may render low-lying island states uninhabitable even before they are fully submerged. Loss of freshwater

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sources and arable land, damage to the near-shore marine environment, and the associated destruction of their economic base may force displacement of entire populations and their governments. That reality justifies a separate category of protection for the people of small island states in the Pacific, who are experiencing these changes more immediately.

The imminent possibility that entire countries could become uninhabitable raises novel questions that challenge the foundation of nation states on which the modern world order is based. International law addresses the deprivation of nationality following the transfer of rights, obligations, and property from a prior state to a successor state, for example. But it does not address circumstances in which a state has disappeared but no successor state exists. When island states are no longer inhabited and their citizens are permanently displaced to other countries, it is unclear whether, under international law, they will become stateless persons or merely landless citizens of a state that no longer exists.

An international or regional legal regime, swiftly conceived and implemented, is vital to resolve this and similar questions. The complexity and immediacy of the issue call for early efforts at planning and coordination. The alternative is disorganized and insufficient aid that will come too late.

Planning for migration. Even if global greenhouse gas emissions are reduced, the loss of some islands and the displacement of their populations may be unavoidable. In these cases, the international community must support resettlement and ensure that displaced islanders are compensated, directly or indirectly, for any deterioration in their quality of life. Scott Leckie, director of Displacement Solutions, has stated simply and effectively: “For there to be a sense of climate justice, climate-displaced persons need to be ensured a home for a home and land for land.”¹⁵

Any plan for climate-induced migration by Pacific islanders—whether within their own countries or across borders—must be sound both in its substance and in the process by which it is created. In terms of substance, it must, at a minimum, determine an appropriate governance structure to oversee migration,

organize smooth transitions, and resolve the issue of statelessness and citizenship.

- National, regional, and international frameworks to protect the rights of climate migrants must be identified, designating public institutions in the host and home countries to implement the transition.
- A smooth transition will require the following steps: determining which communities require resettlement and when, selecting resettlement communities in collaboration with home and host countries, providing basic infrastructure that is at least comparable to that left behind, helping migrants to relocate, and helping them become involved in their new communities.¹⁶ The cost for this should be borne by the international community, especially the wealthiest and most polluting countries.
- When the loss of entire countries does occur, citizenship issues will likely require radical changes in international law. In the short term, binding agreements must be reached to address the peculiar circumstances of small island states and protect the rights of Pacific Islands climate migrants.

The planning process is also important. It must begin early, allowing orderly migration and perhaps allowing migrants to take vital resources with them. Arguments have been made—for example, by the president of Kiribati, Anote Tong—for pre-emptive migration to prevent last-minute chaos and insufficient international support. President Tong has suggested that this approach could yield benefits for both home and host countries, especially if future migrants are trained to fill employment gaps in host countries.¹⁷

The planning process must actively involve the affected individuals, communities, and states. As people are forced to relocate far from their ancestral lands, their participation in resettlement arrangements may be the only way to preserve their identity and culture.

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Legal Challenges

As currently organized, the law is ill-equipped to deal with an inherently cross-cutting issue like climate change: “The traditional ways in which law and policy have been divided into ‘fields’ of inquiry and operation, such as ‘human rights’, ‘trade’, ‘development’ and so on, do not reflect the messy, complex interconnectedness of the issue.”¹⁸

This complexity makes it almost impossible for any one legal and policy community to aggressively promote solutions. It also makes it all too easy to ignore the issue and postpone addressing even its most dire and tragic consequences. This phenomenon exposes a great weakness in the law. “Justice requires consistency” is an oft-cited reason for classifying law into separate fields.¹⁹ Until now, one could seek legal solace in classification, consistency, and settled expectations. Climate change issues are changing this, however, as climate change is defined by inconsistency and requires significant, ongoing adaptation. The need for adaptation is at odds with the law’s purported commitment to finality, a cornerstone of its claim to procedural and substantive fairness. Thus, climate change demands a rethinking of deeply held legal precepts.

Legal scholar J.B. Ruhl predicted that “climate change...[will] exert tremendous structural pressures on the very design and implementation of law itself.”²⁰ Environmental law—and the laws governing national security, immigration, public health, housing, and human rights, among others—must together embrace transformation.

Climate change is pushing the law to a new frontier. The novel scenarios that it presents force a re-consideration of existing legal boundaries. Notions of consistency and finality are increasingly moribund.

For example, the ideal approach to climate change governance in general, and migration in particular, would be a single integrated legal instrument. It is probable, however, that these issues will be addressed in overlapping instruments, specific to the circumstances of disparate peoples and environments. Such a complex, layered, and interlinked regime could pose considerable legal and governance challenges. Yet the challenges are as great if the law is left in its current

state. This is evident in the failure, despite 20 years of global awareness of the problem, to agree on a legally workable definition of migrants, much less a well-formulated legal and policy framework to govern their migration.

An excessive focus on coherence will discourage experimentation, exactly what is needed in the migration context. The law would do well to embrace layers and interlinkages—that is the essence of its successful transformation.

The Need for Action

All experimentation in the law is contingent on political will. Despite the geopolitical concerns raised by climate change, that will has thus far been absent. In a pattern not exclusive to this region, migration policy in Asia and the Pacific has been marked by “constraint, policing and exclusion” rather than management.²¹ No state wants to be the first to offer a solution to climate-induced migration, for fear that it might be swamped by appeals from affected populations. Lack of management may also be a function of the “regulatory commons” problem²²—though a social ill is widely recognized, the very existence of multiple potential managers prevents any one player from taking responsibility. This is especially true when the causes and harms of that ill cross jurisdictional boundaries. Absent a binding legal agreement with international support, states’ concerns about the integrity of their own borders are likely to inhibit them from responding swiftly and effectively.

Evidence increasingly suggests that effective management of climate-induced migration will benefit both regional stability, through the minimization of humanitarian crises and conflicts, and socioeconomic development. Avoiding the poverty and suffering that might arise from continued inaction compels immediate implementation of multilevel policy interventions and harmonized governance systems. Small island states, facing imminent challenges to their statehood and the likely need for substantial, if not total, relocation, deserve a swiftly executed initiative tailored to their plight. This will not provide the kind of certainty required of the law. It will, however, set the framework

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for sequenced and measured responses appropriate for particular scenarios and geographical regions.

Climate change raises profound and unprecedented questions for Pacific Islanders. Walter Kalin, the UN secretary-general's representative on the human rights of internally displaced persons, warned that, without preparation:

People from islands and territories will start to migrate, legally or with an irregular situation, and overall the society will slowly disintegrate. For a certain time there will be a government,

but it will be a fiction. It will be a slow process of whole nations dying in the social sense in addition to the geographical sense.²³

Resolution of the current and near-term plight of Pacific islanders can serve as a living laboratory for the legal questions the international community will confront in the next few decades. Venturing into this legal frontier early may shift law and policy as we know it, but will allow for the greatest opportunity to thrive once the severe impacts of climate change are felt throughout the globe.

Notes

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³ F. Biermann and I. Boas, "Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees," Global Governance Working Paper 33 (Amsterdam: Global Governance Project, 2007), 13. Oxford ecologist Norman Myers expects 26 million climate migrants from Bangladesh and 20 million from India. *Ibid.*, 9.

⁴ Intergovernmental Panel on Climate Change (IPCC), *First Assessment Report, Policy Maker Summary of Working Group 2: Potential Impacts of Climate Change* (Geneva: IPCC, 1990), 103, para. 5.0.10. This statement was substantiated by the IPCC's fourth assessment report: IPCC, *Climate Change 2007: Impacts, Adaptation and Vulnerability, Contribution of Working Group 2 to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, ed. M.L. Parry, O.F. Canziani, J.P. Palutikof, P.J. van der Linden, and C.E. Hanson (Cambridge: Cambridge University Press, 2007), <http://www.ipcc.ch/ipccreports/ar4-wg2.htm>.

⁵ V. Kolmannskog, "Climate of Displacement, Climate for Protection?," Migration Seminars, DIIS Brief (Copenhagen: Danish Institute for International Studies, 2008).

⁶ Regarding these severe weather events being *climate-related*, NASA's Earth Science News Team reporter Adam Voiland states, "[I]t's correct to say that the Moscow heat wave was not caused by climate change. However, if one frames the question slightly differently: 'Would an event like the Moscow heat wave have occurred if carbon dioxide levels had remained at pre-industrial levels,' the answer, Hansen asserts, is clear: 'Almost certainly not.'" From "How warm was this summer?" <http://www.nasa.gov/topics/earth/features/summer-temps.html>, a summary of Hansen, J., R. Ruedy, Mki. Sato, and K. Lo, "Global Surface Temperature Change," *Reviews of Geophysics* 48, RG4004 (2010), doi:10.1029/2010RG000345.

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⁹ International Organization for Migration, *Compendium of IOM's Activities in Migration, Climate Change and the Environment*, 16.

¹⁰ Quoted in Rachel Morris, "What Happens When Your Country Drowns?," *Mother Jones*, November/December 2009, <http://motherjones.com/environment/2009/11/tuvalu-climate-refugees>.

¹¹ International Organization for Migration, *Compendium of IOM's Activities in Migration, Climate Change and the Environment*, 17.

¹² Elisabeth Rasmusson, Secretary General of Norwegian Refugee Council (delivered by Rolf A. Vestik, Director of Advocacy and Information), "Climate Change, Migration, and Displacement" (high-level side event on migration and displacement presented at the United Nations Framework Convention on Climate Change, Copenhagen, December 16, 2009).

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¹⁴ Charles H. Fletcher and Bruce M. Richmond, "Climate Change in the Federated States of Micronesia: Food and Water Security, Climate Risk Management, and Adaptive Strategies," Project 41.A/AS-1 (Honolulu: Center for Island Climate Adaptation and Policy, University of Hawai'i Sea Grant College Program), 9. According to NASA satellite maps, sea level is rising most rapidly in the area around Micronesia. Rachel Morris, "Tuvalu v. ExxonMobil," *Mother Jones* (May/June 2010), <http://motherjones.com/transition/inter.php?dest=http://motherjones.com/environment/2010/04/climate-desk-climate-change-legislation>.

¹⁵ Scott Leckie, "Climate-Related Disasters and Displacement: Homes for Lost Homes, Lands for Lost Lands," in *Population Dynamics and Climate Change*, ed. Jose Miguel Guzman et al. (New York: United Nations Population Fund, 2009).

¹⁶ Asian Development Bank, "Climate Change and Migration in Asia and the Pacific," Draft Executive Summary (2009), 14.

¹⁷ Kolmannskog, "Climate of Displacement, Climate of Protection?" 4.

¹⁸ Jane McAdam, "Environmental Migration Governance," University of New South Wales Faculty of Law Research Series (Sydney: University of New South Wales, 2009), 6.

¹⁹ Todd S. Agaard, "Environmental Law as a Legal Field: An Inquiry in Legal Taxonomy," *Cornell Law Review* 95 (2010), 221, 224.

²⁰ J.B. Ruhl, "Climate Change Adaptation and the Structural Transformation of Environmental Law," *Environmental Law* 40, 363.

²¹ Asian Development Bank, "Climate Change and Migration in Asia and the Pacific," 10.

²² William W. Buzbee, "The Regulatory Fragmentation Continuum, Westway and the Challenges of Regional Growth," *Journal of Law & Politics* 21 (2005), 323, 356.

²³ Morris, "What Happens When Your Country Drowns?"

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