

**ACCLIMATING TO CLIMATE CHANGE:  
FILLING THE INTERNATIONAL POLICY  
VOID FOR ENVIRONMENTALLY  
DISPLACED PEOPLE**

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I. INTRODUCTION

Even though the news programs say the worst is over, “your brain tells you that if this one happened, then other[s] will happen.”<sup>1</sup> First there was the thunderous shake of the

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earthquake that lasted longer than usual and that shook everything into rubble. Then the main tsunami hit, submerging everything in sight. After that, “eight successive ‘waves’ came [o]nto the shore,” each wave rushing in uncontrollable fear and “pull[ing] back with it more lives, buildings and hope.”<sup>2</sup> Seeing, hearing, and smelling the destruction and decay all around, and feeling that another tremor will come at any time “mak[es] the loss worse.”<sup>3</sup> Knowing the waves come from an aftershock of the earthquake creates the overwhelming “feeling that . . . [any] tremor will simply get stronger, longer, and create . . . another tsunami.”<sup>4</sup> Will the water ever subside? How can we ever rebuild our homes, streets, and lives? Does the rest of the world even know our plight?

Weather-related natural disasters displace millions of people each year.<sup>5</sup> The number of people forced out of their homes will only escalate as climate change exacerbates global,

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1. Rick Von Feldt, *What are Tsunami Survivors Feeling?*, TSUNAMI SURVIVOR STORIES (Mar. 13, 2011, 11:17 AM), [http://phukettsunami.blogspot.com/2011\\_03\\_01\\_archive.html](http://phukettsunami.blogspot.com/2011_03_01_archive.html). This blog provides a forum for tsunami survivors to share their first-hand accounts, experiences, and feelings about the natural disasters they have endured.

2. *Id.*

3. *Id.*

4. *Id.*

5. Fiona Harvey, *More than 30 Million Climate Migrants in Asia in 2010, Report Finds*, GUARDIAN (Sept. 19, 2011), <http://www.guardian.co.uk/environment/2011/sep/19/climate-migrants-asia-2010?INTCMP=SRCH> (“More than 30 million people were displaced last year by environmental and weather-related disasters across Asia”). For example, “by the middle of this century as many as 25 million Bangladeshis are at risk of displacement because of climate change.” Sheila Murray, *Environmental Migrants and Canada’s Refugee Policy*, 27 REFUGEE: CAN. J. ON REFUGEES 89 (2010), available at <http://pi.library.yorku.ca/ojs/index.php/refuge/article/viewFile/34351/31258>. “Roughly 75 million [Bangladeshis] live less than twelve meters above sea level,” and, therefore, are subject to continuously rising sea levels. *Id.*

environmental displacement.<sup>6</sup> Between 200 million and one billion people could be forced to leave their homes as a result of global warming within the next fifty years.<sup>7</sup> Initially the movement of environmentally displaced people has been temporary and has remained within the borders of their home country.<sup>8</sup> However, if an entire nation is threatened with the prospect of environmental destruction, displaced persons will have no choice but to seek permanent refuge elsewhere.<sup>9</sup> Therefore, it is imperative to account for the rights of the people who will lose their homes to impending environmental changes and destruction.<sup>10</sup>

Unfortunately, existing laws fail to address the issues that environmentally displaced people face.<sup>11</sup> Currently, “[t]here is no agreed upon category or terminology to describe persons compelled to move because of climate or environmental change.”<sup>12</sup> Many scholars have termed these migrants “environmental refugees” in an effort to emphasize the “involuntary nature of environmentally displaced persons’

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6. Harvey, *supra* note 5 (“Tens of millions more people are likely to be displaced in the future by the effects of climate change, including rising sea levels, floods, droughts, and reduced agricultural productivity.”). There has already been an increase in the number of extreme weather events in Asia and the Pacific region. *Id.*

7. Olesya Dmitracova, *Law Change Needed to Cover Climate Exiles—Lawyers*, REUTERS (Oct. 15, 2009, 8:02 AM), <http://in.reuters.com/article/2009/10/15/idINIndia-43164320091015>.

8. Michael Werz & Laura Conley, *Climate Change, Migration, & Conflict: Addressing Complex Crisis Scenarios in the 21st Century*, CTR. FOR AM. PROGRESS 4, 13 (Jan. 2012), [http://www.americanprogress.org/wp=content/uploads/issues/2012/01/pdf/climate\\_migration.pdf](http://www.americanprogress.org/wp=content/uploads/issues/2012/01/pdf/climate_migration.pdf).

9. *See Id.* (listing the types of movements that categorize environmental migrants, including for those that are permanently displaced).

10. *See* Harvey, *supra* note 5 (discussing warnings issued by the Asian Development Bank about the likelihood that millions of people will be displaced as a result of the effects of climate change, leading to the possibility of a widespread crisis if preparations are not made).

11. *See* Dmitracova, *supra* note 7 (warning that international laws are unfit to deal with the millions of people expected to flee their home countries to escape droughts and floods intensified by climate change).

12. ROGER ZETTER, REFUGEE STUDIES CENTRE, PROTECTING ENVIRONMENTALLY DISPLACED PEOPLE: DEVELOPING THE CAPACITY OF LEGAL AND NORMATIVE FRAMEWORKS 11 (2011) (describing the difficulty in delineating international responsibilities in relation to environmental drivers).

migration and the [complete] lack of resources available to ease their plight.”<sup>13</sup> However, this is a misuse of the term “refugee.”<sup>14</sup> Not only is refugee law ill-equipped to protect the interests of these displaced people, but other migratory frameworks and international laws do not completely cover those who are left without a home because of changes in environmental conditions.<sup>15</sup> Consequently, a new international framework is needed to repair the inadequacies of current laws and properly account for these migrants and their rights.<sup>16</sup>

This Comment discusses climate change, the problems it presents for international migration, and the need for a stronger international framework for dealing with environmentally displaced people. Part II outlines the developing environmental problems associated with climate change. Part III then discusses international law as it currently stands and illustrates its weaknesses and strengths in addressing the needs of environmentally displaced migrants. Finally, Part IV of the Comment concludes by proposing a new international agreement that pieces together features of current laws to accommodate the expected influx of forced migrants.<sup>17</sup>

## II. BACKGROUND

### A. *What is Climate Change?*

Climate change refers to the long-term shift in weather statistics, such as the average temperature and precipitation

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13. See generally Suzette Brooks Masters, *Environmentally Induced Migration: Beyond a Culture of Reaction*, 14 GEO. IMMIGR. L.J. 855, 865 (2000) (discussing the current human rights approach to population displacement through the use of the term “refugee”).

14. See discussion of refugee framework *infra* Part III.A.1.

15. See Dmitracova, *supra* note 7. See also discussion of current international laws *infra* Parts III.A, III.B (noting that while laws protecting displaced people exist in countries like the United States, Sweden, and Finland, they are not fully equipped to handle the number of potential refugees).

16. See, e.g., Dmitracova, *supra* note 7 (discussing the shortfalls of current law in dealing with environmental refugees).

17. A new international agreement could draw on current laws, weaving together existing definitions and similar principles. See discussion of possible solutions *infra* Part IV.

levels, that occur in a given place and time of year.<sup>18</sup> Scholars attribute climate change to two main causes, natural variability and human activity.<sup>19</sup> Natural variability trends are based on scientific observations of previous large-scale climate changes in the Earth's past.<sup>20</sup> Examples of natural variability include: interactions between the atmosphere, oceans, and land, as well as alterations in the amounts of solar radiation that reaches Earth.<sup>21</sup> On the other hand, human-induced climate change occurs through burning fossil fuels (like coal, oil, and natural gas).<sup>22</sup> This activity sparks the creation of harmful amounts of naturally occurring gases like carbon dioxide, water vapor, methane, nitrous oxide, and other greenhouse gases.<sup>23</sup> These gases trap heat and create the greenhouse effect, contributing to the rise in global temperatures.<sup>24</sup> Human activity is thought to carry the most responsibility for current climatic conditions.<sup>25</sup>

Despite the disagreement among scholars regarding specific and primary sources of climate change,<sup>26</sup> there is shared certainty and recognition of the already-occurring and future impacts of climate change on the world.<sup>27</sup> These include the

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18. NOAA National Weather Service, *Climate Change 1* (2007) available at <http://www.nws.noaa.gov/om/brochures/climate/Climatechange.pdf> [hereinafter National Weather Service, *Climate Change*] (defining climate change and discussing its potential global impacts).

19. See, e.g., *Id.* at 1, 2 (answering the question "Why is the Climate Changing?").

20. *Id.* at 1.

21. *Id.*

22. *Id.* at 2.

23. *Id.*; *Global Warming Fast Facts*, NAT'L GEOGRAPHIC NEWS (Oct. 28, 2010), [http://news.nationalgeographic.com/news/2004/12/1206\\_041206\\_global\\_warming\\_2.html](http://news.nationalgeographic.com/news/2004/12/1206_041206_global_warming_2.html).

24. *Climate Change: Climate Change Basics*, ENVTL. PROT. AGENCY, <http://www.epa.gov/climatechange/basics/> (last visited Oct. 27, 2011) [hereinafter *Climate Change Basics*].

25. See National Weather Service, *Climate Change*, *supra* note 18, at 2. "The current level [of carbon dioxide] is the highest in the past 650,000 years." *Id.* "Most of the observed increase in the globally averaged temperature since the mid-20th century is very likely due to the observed increase in anthropogenic greenhouse gas concentrations." RICHARD B. ALLEY ET AL., A REPORT OF WORKING GROUP I OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE: SUMMARY FOR POLICY MAKERS 10 (S. Solomon et al. eds., 2007), available at <http://www.ipcc.ch/pdf/assessment-report/ar4/wg1/ar4-wg1-spm.pdf>.

26. National Weather Service, *Climate Change*, *supra* note 18, at 2.

27. See *Id.* at 1–2 (answering the question "What is being done to Study the Effects of Climate Change?").

negative effects that changes in the Earth's climate will have on sea levels, droughts, local weather, ecosystems, heating and cooling requirements, human health, agriculture, and natural disasters such as hurricanes.<sup>28</sup> The shrinking and thawing of glaciers, the break-up of ice on rivers and lakes, the lengthening of seasons, and the shifts in plants and animal ranges have all been attributed to global climate change.<sup>29</sup>

Indeed, changes in the global environment have grave consequences for coping responses and adaptability.<sup>30</sup> As a result, the political and legal structure in dealing with the far-reaching effects of global climate change will be forced to acclimate.<sup>31</sup> The United Nations High Commissioner for Refugees (UNHCR) has already warned that climate change will contribute to the scale and complexity of human displacement.<sup>32</sup>

### *B. Slow-Onset vs. Sudden Impact Disasters*

Natural disasters are defined as the "serious disruption of the functioning of a society, causing widespread human, material, or environmental losses which exceed the ability of the affected society to cope using its own resources."<sup>33</sup> There are

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28. *Climate Change Basics*, *supra* note 24; *Hurricanes and Climate Change*, NAT'L CTR. FOR ATMOSPHERIC RES., <http://www.cgd.ucar.edu/research/climate/hurricanes.html> (last visited Nov. 20, 2012).

29. *Id.*; *The Current and Future Consequences of Global Change*, NAT'L AERONAUTICS & SPACE ADMIN., <http://climate.nasa.gov/effects/> (last visited Nov. 15, 2012).

30. Climate changes strain the ability of societal and environmental systems to adapt or cope with change, despite the fact that the effects may ultimately prove beneficial. *See Adaptation Overview*, ENVTL. PROT. AGENCY, <http://www.epa.gov/climatechange/impacts-adaptation/adapt-overview.html> (last updated June 14, 2012) (explaining that current climate changes are happening more rapidly than in the past and, due to increased interdependence, their negative impacts have worldwide repercussions).

31. *See Id.* (listing ways governments may adapt to climate change including relocation of communities and infrastructure, implementation of government programs, and adaptation plans developed by private corporations).

32. U.N. High Comm'r for Refugees, *Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective*, 1 (Oct. 23, 2008), <http://www.unhcr.org/refworld/docid/4a8e4f8b2.html>.

33. Internal Displacement Monitoring Centre, *Disaster-Induced Displacement, Training on the Protection of IDPs* 1, <http://www.internal-displacement.org/>

many different types of climate change induced disasters.<sup>34</sup> Two types of disasters in particular lead to the displacement of people within and outside the borders of their country—sudden impact disasters and slow onset disasters.<sup>35</sup>

Floods, earthquakes, tidal waves, volcanic eruptions and other similar events are considered sudden impact disasters.<sup>36</sup> Such events not only devastate the internal infrastructure of a country, they also contribute to a sudden spike in the size of migratory populations.<sup>37</sup> By contrast, slow-onset disasters include droughts, famine, environmental degradation, deforestation, and desertification; these are caused by adverse weather conditions and poor land use.<sup>38</sup> Another type of slow-onset disaster is the significant loss of territory in low-lying coastal areas.<sup>39</sup> These slow-onset disasters are typically accompanied by early warning signs while sudden-onset disasters usually occur without warning.<sup>40</sup>

Although slow and sudden-onset disasters present different implications, both have the potential to displace people from their homes.<sup>41</sup> The effects of these disasters are aggravated by human activities such as the overuse of land as well as

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8025708F004BE3B1/(httpInfoFiles)/7CE8640E88EEB381C125711500479885/\$file/Protection%20during%20module%20handout%20natural%20disaster.pdf [hereinafter *Internal Displacement Monitoring Centre, Disaster-Induced Displacement*] (discussing the typology of natural and man-made disasters) (internal quotations omitted).

34. *Id.* at 1–2 (discussing five particular types of climate change-induced disasters).

35. *See Id.* at 1.

36. *Id.*

37. *Id.*

38. *Id.*

39. *See* U.N. High Comm’r for Refugees, Climate Change, Migration, and Human Displacement (Nov. 25, 2008), <http://www.unhcr.org/492eb4e02.pdf> (presenting background information and proposals for how to deal with the different categories of disasters and subsequent displacements, as well as the UNHCR’s operations).

40. World Health Org. [WHO], *Humanitarian Health Action-Definitions: Emergencies*, 13–14 (Jan. 2012), <http://www.who.int/hac/about/definitions/en/index.html>.

41. *See* Brookings-LSA Project on Internal Displacement, et. al., Regional Workshop on Internal Displacement Caused By Natural Disasters and Climate Change in the Pacific, 6–9 (May 4–6, 2011), [http://www.brookings.edu/~media/events/2011/5/06%20idp%20fiji%20workshop/0506\\_fiji\\_workshop\\_report\\_final.pdf](http://www.brookings.edu/~media/events/2011/5/06%20idp%20fiji%20workshop/0506_fiji_workshop_report_final.pdf) [hereinafter Regional Workshop on Internal Displacement Caused By Natural Disasters and Climate Change in the Pacific] (describing the effects of both sudden and slow onset disasters).

industrial development.<sup>42</sup> It is also expected that climate change will continue to increase the severity of natural disasters.<sup>43</sup> Furthermore, the application of some countries' immigration laws is dependent on the nature of the disaster. Therefore, the victims of continuous environmental decline may not receive the full protection of a country's immigration laws.<sup>44</sup> Because of the inadequacies of current laws, international policy must adapt and present solutions to address different disaster phenomena.<sup>45</sup>

### C. Visible Effects of Climate Change

In 1988, the United Nations Environmental Programme and the World Meteorological Organization established the Intergovernmental Panel on Climate Change (IPCC) "to assess the scientific, technical and socio-economic information relevant for the understanding of human induced climate change, its

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42. Francesco Femia & Caitlin Werrell, *Double Whammy: Sudden and Slow-onset Disasters for Pacific Island States*, CTR. FOR CLIMATE & SEC. (Sept. 26, 2011), <http://climateandsecurity.org/2011/09/26/double-whammy-sudden-and-slow-onset-disasters-for-pacific-island-states/> (internal quotations omitted); see also Karen M. Schwab, *Added Hope for the Amazon Rainforest*, 15 HOUS. J. INT'L L. 163, 165–66 (1992) (pointing to deforestation, a human activity, which can result in devastating and far-reaching changes causing both global climate change and warming, which is leading to surface soil erosion, prolonged periods of drought and flooding, and the extinction of plant and animal species).

43. See Regional Workshop on Internal Displacement Caused By Natural Disasters and Climate Change in the Pacific, *supra* note 41 (comparing sudden and slow-onset disasters as they impact the Pacific Island countries, urging the study of these countries to better understand and prepare for the challenges that accompany these disasters).

44. See Benjamin Glahn, *'Climate Refugees'? Addressing the International Legal Gaps—Part II*, INT'L BAR ASS'N (2007), <http://www.ibanet.org/article/detail.aspx?ArticleUid=3E9DB1B0-659E-432B-8EB9-C9AEEA53E4F6> (stating that Sweden's Aliens Act allows subsidiary protection for those unable to return to their country of origin because of environmental disaster but does not extend to those displaced by more continuous negative environmental conditions).

45. See Press Release, United Nations University, As Ranks of "Environmental Refugees" Swell Worldwide, Calls Grow for Better Definition, Recognition, Support (Oct. 11, 2005) [hereinafter UNU, IEHS, As Ranks of 'Environmental Refugees' Swell Worldwide], available at <http://www.ehs.unu.edu/article:130> (citing United Nations University-Institute for Environment and Human Security's move to study of "slow moving catastrophes" like desertification and climate change-induced sea level rise).

potential impacts and options for mitigation and adaptation.”<sup>46</sup> Since its creation, the IPCC has identified specific impacts of climate change in different regions of the world.<sup>47</sup>

Table 1

Projected Global Impacts of Climate Change: Region-Based Analysis <sup>48</sup>	
Africa	-Rising sea levels affecting low-lying coastal areas
Asia	-Glacier melting in Himalayas leading to flooding as well as flooding from seas and rivers
Australia and New Zealand	-Increased risk of sea-level rise, severity and frequency of storms, coastal flooding -Loss in biodiversity, agriculture, and forestry due to drought and fire
Europe	-Retreating glaciers, longer growing seasons, shift of species ranges, and unprecedented heat waves -Reduced water availability, forestation, precipitation -Frequent winter floods, endangered ecosystems
Latin America	-Replacement of tropical forest with savanna -Salinization and desertification of agricultural land, decreased productivity in important crops
North America	-Winter flooding and over-allocation of water resources -Stress on coastal communities
Polar Regions	-Reductions in thickness and extent of glaciers and ice sheets, permafrosts, increase coastal erosion, thawing
Small Island States	-Sea-level rise leading to inundation, storm surge -Erosion of beaches -Reduced water resources, high water temperatures

46. WORKING GROUP II TO THE FOURTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007: IMPACTS, ADAPTATIONS, AND VULNERABILITY 2 (Martin Parry et al. eds., 2007), available at <http://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-intro.pdf>.

47. *International Impacts*, ENVTL. PROT. AGENCY, <http://epa.gov/climatechange/effects/international.html> (last updated June 14, 2012) (summarizing the various impacts based on IPCC reports).

48. *Id.*

### 1. *Low Lying Coastal Areas*

As seen in the Table 1, climate change has already begun to drastically affect coastal zones, which are particularly vulnerable to climate variability.<sup>49</sup> The United States Mid-Atlantic and Gulf Coasts are already seeing higher sea levels and the subsidence of coastal lands.<sup>50</sup>

The populations of the small island states in the Pacific Ocean will be the most immediately affected populations.<sup>51</sup> In fact, these countries have already seen the effects of climate change. In 1997, the Tuvaluan island of Tepuka Savilivili disappeared into the sea.<sup>52</sup> Rising sea levels currently threaten to submerge Kiribati, Palau, and the Marshall Islands, forcing people from their homes.<sup>53</sup> Significant changes in the environment of these islands will render them uninhabitable, requiring even more population relocation.<sup>54</sup>

In 1992, an international treaty, the United Nations Framework Convention on Climate Change, was created to cooperatively find solutions to “limit average global temperature increases and the resulting climate change, and to cope with whatever impacts were, by then, inevitable.”<sup>55</sup> However, some island nations have made additional efforts to address the

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49. *Id.*

50. *Id.*; Kathryn Hobgood Ray, *Gulf Coast Sea Level Rise in Overdrive, Tulane Study Says*, TULANE U. (Apr. 3, 2012), [http://tulane.edu/news/releases/pr\\_040312.cfm](http://tulane.edu/news/releases/pr_040312.cfm); Jim Axelrod, *Fast-Rising Sea Levels Hit Atlantic Coast Hardest*, CBS NEWS (June 29, 2012, 7:27 PM), [http://www.cbsnews.com/8301-18563\\_162-57464122/fast-rising-sea-levels-hit-atlantic-coast-hardest/](http://www.cbsnews.com/8301-18563_162-57464122/fast-rising-sea-levels-hit-atlantic-coast-hardest/).

51. Dmitracova, *supra* note 7 (discussing the “first climate refugees” who are expected to be hit the hardest by climate change).

52. Patrick Barkham, *Going Down*, GUARDIAN (Feb. 15, 2002), <http://www.guardian.co.uk/environment/2002/feb/16/weekendmagazine.globalwarming> (describing the troubling changes the government of Tuvalu has noticed as its nine inhabited islands face the effects of rising sea levels and frequent violent storms).

53. *The Threat of Sea Level Rise*, GREENPEACE, <http://archive.greenpeace.org/climate/arctic/reports/seachange.hhtm> (last visited Nov. 8, 2012).

54. *Id.*

55. U.N. Framework Convention on Climate Change (UNFCCC), Background on the UNFCCC: The International Response to Climate Change (2012), [http://unfccc.int/essential\\_background/items/6031.php](http://unfccc.int/essential_background/items/6031.php) [hereinafter Background on the UNFCCC].

threats posed by climate change.<sup>56</sup> One island nation has taken a more litigious approach.<sup>57</sup> In the fall of 2011, President Johnson Toribiong, the President of the Republic of Palau, took action at the United Nations once the effects of climate change began tainting Palau's farmlands with seawater and shrinking the island nation's coast.<sup>58</sup> President Toribiong called for an advisory opinion from the International Court of Justice on the obligations and responsibilities of States under international law regarding the global harms from greenhouse gas emissions.<sup>59</sup>

By contrast, many island nations have made a collective effort to protect and prepare their communities for the impending damage of drastic climate change. These countries have created and joined the Alliance of Small Island States (AOSIS).<sup>60</sup> With forty-two States and observers of the organization, AOSIS serves as an ad hoc lobbying and negotiating voice for the Small Island States within the United Nations system.<sup>61</sup>

## 2. *Desertification—The Degradation of the Earth*

Beyond the threat it poses to low-lying coastal regions and islands, climate change also contributes to the degradation of the Earth.<sup>62</sup> Desertification, as defined by the United Nations Convention to Combat Desertification, is "land degradation in arid, semi-arid and dry sub-humid areas resulting from . . .

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56. See Aaron Korman & Giselle Barcia, *Rethinking Climate Change: Towards an International Court of Justice Advisory Opinion*, 37 YALE J. INT'L L. ONLINE 35, 36 (2012) (detailing Palau's decision to seek an advisory opinion from the International Court of Justice regarding climate change).

57. *Id.*

58. *Id.*; see also William Brangham, *Paradise Lost?*, PUB. BROAD. SERV. (Aug. 10, 2012), <http://www.pbs.org/wnet/need-to-know/video/video-paradise-lost/14421/>.

59. See Korman & Barcia, *supra* note 56, at 36.

60. *About AOSIS*, AOSIS: ALLIANCE OF SMALL ISLAND STATES, <http://aosis.org/about-aosis/> (last visited Nov. 11, 2012).

61. *Id.*

62. *Climate Change and Desertification*, WORLD METEOROLOGICAL ORG., [http://www.wmo.int/page/prog/wcp/agm/publication/documents/wmo\\_cc\\_desertif\\_foldout\\_en.pdf](http://www.wmo.int/page/prog/wcp/agm/publication/documents/wmo_cc_desertif_foldout_en.pdf) (last visited Nov. 15, 2012).

climatic variations and human activities.”<sup>63</sup> This process is altering the landscape of China as the Gobi desert expands, as well as the terrain of Morocco, Libya, and Tunisia where productive land is continuously lost to desertification.<sup>64</sup> The climatic variations that cause the desertification phenomenon include high, sustained temperatures, infrequent and irregular rainfall, and drought.<sup>65</sup> Excessive agricultural land use also contributes to this problem.<sup>66</sup> Desertification heavily affects countries where the economy depends on agricultural activities because of desertification’s negative impact on terrestrial conditions such as topsoil, earth, groundwater reserves, surface run-off, as well as animal, plant, and human populations.<sup>67</sup> As a result, whole rural communities’ income and livelihoods will be severely endangered, sparking mass migrations in search of arable land.<sup>68</sup>

To respond to this problem, the international community created the United Nations Convention to Combat Desertification and the Plan of Action to Combat Desertification.<sup>69</sup> The issue of desertification also commanded discussions at the United Nations Conference on Environment and Development (UNCED) and the United Nations General

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63. Comm. for the Elaboration of an International Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly Africa on its 5th Sess., June 17, 1994, U.N. Doc. A/AC. 24127, art. 1(a) (Sept. 12, 1994).

64. UNU, IEHS, As Ranks of ‘Environmental Refugees’ Swell Worldwide, *supra* note 45, at 3. It is estimated that the Gobi desert will expand more than 10,000 square kilometers a year while Morocco, Tunisia, and Libya “lose over 1,000 square kilometers of productive land a year to desertification.” *Id.*

65. A.P. Koohafkan, Senior Officer, Environment & Sustainable Dev., Food & Agric. Org. of the U.N., Desertification, Drought and their Consequences (May 1996), <http://www.fao.org/sd/EPdirect/EPan0005.htmDocument3>.

66. *Id.*

67. *Id.*

68. *Id.*; see also *Somalia: Drought-Displaced “in Tens of Thousands”*, IRIN NEWS (Mar. 30, 2011), <http://www.irinnews.org/Report/92323/SOMALIA-Drought-displaced-intens-of-thousands> (discussing the effects of the severe and spreading drought in Somalia displacing 52,000 people in the past year which forced them to relocate in urban areas).

69. U.N. Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa pmb., *opened for signature* Oct. 14, 1994, T.S. No. 33480 (entered into force Dec. 26, 1996).

Assembly meetings in 1992.<sup>70</sup>

### III. THE INADEQUACIES OF CURRENT LAWS

Changes in the Earth's climate have the potential to create a "disaster-in-waiting," and in its wake, large waves of environmentally driven migration.<sup>71</sup> Given the dangers climate change presents with "sinking islands" and desertification, it is imperative that international laws provide protection to affected populations.<sup>72</sup> Unfortunately, current international laws and migrant categories are ill equipped to accommodate the needs of people forced to move because of environmental conditions.<sup>73</sup>

#### A. Migration Categories

##### 1. The Traditional Refugee Framework

In 1951, as a response to the atrocities of World War II and the large-scale displacements that occurred in its aftermath,<sup>74</sup> the United Nations Convention relating to the Status of Refugees set out to define the term "refugee," the rights associated with refugee status, and the legal obligations of States.<sup>75</sup> In 1967, the Convention was revised to eliminate geographic and temporal limits, thus allowing the Convention to provide universal coverage.<sup>76</sup> Since then, it has been

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70. See *Id.* pmb. ("Recognizing the validity and relevance of decisions adopted at the United Nations Conference on Environment and Development[.]"); see also *Id.* art. 35. See generally United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3–14, 1992, *Report of the United Nations Conference on Environment and Development*, U.N. Doc. A/CONF.151/26/REV.1 (Vol. II), Annex II (Sept. 28, 1992), available at <http://www.un.org/documents/ga/conf151/aconf15126-4.htm>.

71. UNU, IEHS, As Ranks of 'Environmental Refugees' Swell Worldwide, *supra* note 45, at 1.

72. *Id.* at 1–2 (discussing the current lack of recognition for "environmental refugees" and the need to provide support for these individuals).

73. *Id.* The Red Cross estimates that the number of people displaced by environmental disasters exceeds the number forced to move as a result of war. *Id.*

74. Masters, *supra* note 13, at 866.

75. UNHCR, *The 1951 Refugee Convention: The Legislation that Underpins Our Work*, <http://www.unhcr.org/pages/49da0e466.html> (last visited Nov. 18, 2011).

76. Introductory Note by the Office of the U.N. High Commissioner for Refugees, *Convention Relating to the Status of Refugees*, 2, July 28, 1951, 189 U.N.T.S. 150, available at <http://www.unhcr.org/3b66c2aa10.html>.

supplemented by refugee and protection regimes in several regions and the development of international human rights law.<sup>77</sup> Given that this term was first created to refer to persons who fled war-ravaged countries, it is thought to be inappropriate to use “refugee” to refer to environmentally displaced persons.<sup>78</sup>

The 1951 Convention defines a refugee as:

[A]ny 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.<sup>79</sup>

The term “refugee” has already been deemed inadequate to “cover the rights and interests of environmentally displaced people” because of its restrictive application, particularly its application to only five categories: race, religion, nationality, membership in a particular social group, or holding a particular political opinion.<sup>80</sup> The 1951 Convention is not equipped to deal with the current problem of forced migration and environmental migration because of its specificity and its limited application. The term’s definition does not provide protection for those displaced as a result of climate change.<sup>81</sup> Since attempts to

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77. *Id.*

78. Masters, *supra* note 13, at 866.

79. Convention Relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 19 U.S.T. 6261, 189 U.N.T.S. 150 [hereinafter 1951 Convention].

80. Masters, *supra* note 13, at 866 (the 1951 Convention “was not created with environmental displacement in mind”); see also Ilona Millar, *There’s No Place Like Home: Human Displacement and Climate Change*, 14 *AUSTL. INT’L L. J.* 71, 79 (2007) (discussing how the 1951 Convention “has been narrowly construed and limited to areas where there is a clear basis for protection”).

81. See Masters, *supra* note 13, at 866 (“The legal definition of refugee was not created with environmental displacement in mind.”); see also *What is a Climate Refugee?*, ENVTL. JUSTICE FOUND., [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/droi/dv/401\\_ejfoundation\\_/401\\_ejfoundation\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/401_ejfoundation_/401_ejfoundation_en.pdf) (last visited Jan. 12, 2012) (arguing for the formal legal definition of “refugees” to be extended to include those affected by climate change).

include environmentally displaced people in the definition of “refugees” have proven unsuccessful, a different approach is needed.<sup>82</sup>

## 2. *The Emergence of the Term “Environmental Refugee”*

The concept of an “environmental refugee” was popularized in the 1990s.<sup>83</sup> Its widespread recognition originated in 1985 when Essam El-Hinnawi provided a detailed definition of the term “environmental refugee” as “those people who have been forced to leave their traditional habitat . . . because of a marked environmental disruption . . . that jeopardized their existences and/or seriously affected the quality of their life.”<sup>84</sup> He divided these “environmental refugees” into three categories: (a) “those temporarily displaced because of an environmental stress, such as an earthquake or cyclone;” (b) “those permanently displaced because of permanent changes in their habitat, such as dams or lakes;” and (c) “those permanently displaced because their original habitat can no longer provide basic needs.”<sup>85</sup> Yet another scholar, Norman Meyers, defined the term “environmental refugees” as those “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.”<sup>86</sup>

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82. See Boano et al., *Forced Migration Policy Briefing 1: Environmentally Displaced People, Understanding the Linkages Between Environmental Change, Livelihoods and Forced Migration*, REFUGEE STUDIES CENTRE 4 (Nov. 2008), <http://www.rsc.ox.ac.uk/publications/policy-briefings/RSCP1-Environment.pdf> (pointing to ineffective linkages of environmental degradation and forced migration because environmental conditions are not a basis for international protection under current international refugee law).

83. *Id.* at 7. Lester Brown of the World Watch Institute first coined the term in the 1970s, but it was not until the 1990s that the term began to be used with more frequency. *Id.*

84. LISER, *Environmental Refugees*, <http://www.liser.eu/> (last visited Feb. 11, 2013).

85. Millar, *supra* note 80, at 82.

86. Norman Myers, *Environmental Refugees: An Emergent Security Issue*, ORG. FOR SEC. AND COOPERATION IN EUROPE (2005), available at <http://www.osce.org/eea/14851>.

While the meanings applied to the term “environmental refugee” have merit and attempt to address the shortcomings of current refugee law, neither definition has been recognized by international law or been consistently applied.<sup>87</sup> There is neither an agreed upon definition of the term in international law nor is there a formal endorsement of the term “environmental refugee” by the United Nations.<sup>88</sup> El-Hinnawi’s, Meyers’, and other scholars’ “environmental refugee” definitions are attempts to extend the definition of a refugee beyond its scope and thus threaten to “devalue the current protections in place for traditional refugees under the 1951 Convention.”<sup>89</sup>

Another inadequacy of the term “environmental refugee” and its definitions is the misleading suggestion that nature alone is at fault for climatic changes.<sup>90</sup> The reality of the current environmental crisis is that humans are in fact “deeply implicated in the environmental changes that make life impossible in certain circumstances”<sup>91</sup> and cause population displacement. If the blame for environmental displacement is solely attributed to nature itself,<sup>92</sup> it will become difficult to mitigate the impact of human activities on the environment.

An additional reason the term “environmental refugee”

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87. See generally Boano et al., *supra* note 82, at 7–8. Furthermore, the internationally accepted definition of refugee as set out in the 1951 Convention as a person with a “well-founded fear of persecution” does not fit with the fact that the environment or nature cannot be seen as a persecutor for the purposes of adapting the refugee definition for forced environmental migrants. *Id.* at 10.

88. *Id.* at 7–8, 10 (noting the existence of disagreements between scholars for a proper definition).

89. *Id.* at 10.

90. Stefan Lovgrn, *Climate Change Creating Millions of “Eco Refugees,” UN Warns*, NAT’L GEOGRAPHIC NEWS (Nov. 18, 2005), <http://news.nationalgeographic.com/news/pf/18842370.html>.

91. Boano et al., *supra* note 82, at 8.

92. See Naomi Oreskes, *The Scientific Consensus on Climate Change*, 306 SCIENCE 1686 (Dec. 3, 2004) (“[T]he consensus of scientific opinion is that the Earth’s climate is being affected by human activities.”); see WORKING GROUP II TO THE THIRD ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2001: IMPACTS, ADAPTATIONS, AND VULNERABILITY 21 (James J. McCarthy et al. eds., 2001), available at [http://www.grida.no/climate/ipcc\\_tar/wg2/pdf/wg2TARtechsum.pdf](http://www.grida.no/climate/ipcc_tar/wg2/pdf/wg2TARtechsum.pdf) (stating that human activities are modifying the concentration of atmospheric constituents and thus greenhouse gas concentrations).

should not be used stems from its varying definitions invented by scholars.<sup>93</sup> The term has only been used in policy discussions in an effort to attach a moral sense of obligation and urgency to the situation and invoke the same feelings associated with traditional refugees.<sup>94</sup> Emotional obligations aside, international political consensus and recognition of a common definition are necessary to construct a successful framework to protect those displaced by climate change.<sup>95</sup> Finally, the term “refugee” fails to include “internally displaced people” who have been forced out of their homes but who have not crossed an international border.<sup>96</sup>

Despite the fact that they have not been recognized under international refugee law, the rights of these environmentally displaced people must be protected as the effects of climate change continue to threaten the security and stability of their living conditions.<sup>97</sup> The current refugee framework alone is insufficient to address these rights.<sup>98</sup>

### 3. *Internally Displaced People*

Another established label applied to persons who are forced

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93. See Millar, *supra* note 80, at 83 (noting that “environmental and climate change refugees” have not been linked to the rights and obligations typically associated with the term “refugee,” and that the majority of people using the term are not refugee attorneys); see also Bonnie Docherty & Tyler Gianni, *Confronting a Rising Tide: A Proposal for Convention on Climate Change Refugees*, 33 HARV. ENVTL. L. REV. 349, 363 (2009) (explaining that the definition of an environmental refugee exists only in academic literature and theoretical debate).

94. Masters, *supra* note 13, at 866.

95. See ZETTER, *supra* note 12, at 11–12 (pointing to the key role intergovernmental actors play in supporting the development of normative frameworks to assist environmentally displaced people).

96. The 1951 Convention covers only those who are outside their country of origin. See 1951 Convention, *supra* note 79, art. 1(A)(2) (stating a refugee must be “outside the country of his nationality”); see also Masters, *supra* note 13, at 868 (noting that people internally displaced by environmental factors are currently excluded from the 1951 Convention).

97. Boano et al., *supra* note 82, at 10–11.

98. Masters, *supra* note 13, at 868 (stating the expansion of the current refugee definition under the 1951 Convention would be ineffective in providing relief to environmental migrants).

to migrate is “internally displaced persons” or IDPs.<sup>99</sup> As promulgated by the United Nations through the UN Guiding Principles on Internal Displacement, IDPs are defined as:

[P]ersons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.<sup>100</sup>

The obvious flaw in the application of this definition to the environmentally induced migration context is its focus solely on those that are displaced within their home country.<sup>101</sup> Unlike refugees, internally displaced people migrate within their country’s borders, “remain under the protection of their own government,” and “retain all their rights as citizens under human rights and international humanitarian law.”<sup>102</sup>

The second defect with the application of the IDP definition is the involuntary and coercive connotation of IDPs’ movements.<sup>103</sup> As most responses to the climate change problem have been more reactive than preventative, this definition continues to emphasize these types of solutions by isolating covered migrants’ movements to those that are “forced” or responsive.<sup>104</sup> Furthermore, the definition is inapplicable to

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99. Stephen Tully, *The Contribution of Human Rights as an Additional Perspective on Climate Change Impacts within the Pacific*, 5 N.Z. J. PUB. & INT’L L. 169, 187 (2007).

100. U.N. Guiding Principles on Internal Displacement, Introduction-Scope and Purpose, ¶ 2, U.N. Doc. E/CN.4/1998/531/Add.2 (1998) [hereinafter Guiding Principles], available at <http://ochanet.unocha.org/p/Documents/GuidingPrinciplesDispl.pdf>.

101. See *Id.* (limiting IDPs to those “who have not crossed an internationally recognized State border”).

102. U.N. High Comm’r for Refugees, Internally Displaced People: On the Run in their Own Land, [HTTP://www.unhcr.org/pages/49c3646c146.html](http://www.unhcr.org/pages/49c3646c146.html) (last visited Nov. 18, 2011) (discussing the definition of internally displaced people and the rights associated with that term).

103. For further explanation, see the terms “forced” and “obliged” in the definition of an IDP. Guiding Principles, *supra* note 100; see also U.N. High Comm’r for Refugees, Forced Displacement in the Context of Climate Change: Challenges for States under International Law 4 (May 20, 2009), <http://unfccc.int/resource/docs/2009/smsn/igo/049.pdf> [hereinafter UNHCR, *Forced Displacement in the Context of Climate Change*].

104. See Shiv Someshwar, *Adaptation to Climate Change: Moving Beyond*

situations that are the most dire and likely to occur in the future, such as the gradual eradication of entire States as a result of rises in the sea level or the slow increase in the desertification and destruction of arable land.<sup>105</sup>

#### 4. *Migrants and Migration*

The term “migrant” is yet another category established for displaced people.<sup>106</sup> Migrants can be defined as “any person who lives temporarily or permanently in a country where he or she was not born, and has acquired some significant social ties to this country.”<sup>107</sup> The United Nations Convention on the Rights of Migrants has also defined the term migrant as “covering all cases where the decision to migrate is taken freely by the individual concerned, for reasons of ‘personal convenience’ and without intervention of an external compelling factor.”<sup>108</sup> This definition covers only those that make the free decision to leave and therefore, will not provide protection for those that are compelled to flee in response to the effects of climate change or environmental degradation.<sup>109</sup> However, the Special Rapporteur

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“Reactive” Approaches, WORLD RESOURCES REPORT, <http://www.worldresourcesreport.org/responses/adaptation-climate-change-moving-beyond-reactive-approaches> (last visited Feb. 11, 2013) (emphasizing the importance of moving beyond reactive approaches, which are prompted in situations where there is a departure from expected weather and climate conditions, toward finding ways to anticipate and manage risks taking into account the dynamic nature of climate and non-climate risks).

105. See Tully, *supra* note 99 (stating that the definition of internally displaced persons excludes those that are displaced suddenly and unexpectedly by a rise in sea level).

106. *Glossary of Migration Related Terms*, U.N. EDUC., SCIENTIFIC AND CULTURAL ORG., <http://www.unesco.org/new/en/social-and-human-sciences/themes/social-transformations/international-migration/glossary/> (last visited Nov. 19, 2011) [hereinafter UNESCO Glossary].

107. *Migrant/Migration*, U.N. EDUC., SCIENTIFIC AND CULTURAL ORG., <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/migrant/> (last visited Oct. 29, 2012) [hereinafter UNESCO Migrant].

108. U.N. Comm’n on Human Rights, *Report of the Working Group of Intergovernmental Experts on the Human Rights of Migrants*, ¶ 44, U.N. Doc. E/CN.4/1998/76 (Mar. 10, 1998), available at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/e696166bf66373f3c12566180046b9c6#IB3Def>.

109. UNESCO Migrant, *supra* note 107 (discussing the U.N. Convention’s definition and its narrow scope).

of the Commission on Human Rights has proposed an expansion of the definition to eliminate this “personal convenience” factor.<sup>110</sup> Given the various conflicting definitions for the term migrant, there is no universally accepted meaning for the term migrant,<sup>111</sup> and its true definition is still in dispute.<sup>112</sup>

The use of the term “migration,” as a term to describe the actual movement of people, carries a broader definition than the specific term “migrant,” which refers to a person who makes a free choice to leave their home country.<sup>113</sup> The expansive meaning associated with “migration” is evidenced by the many categories of “migrations,” including temporary labor, forced, and irregular migrations.<sup>114</sup> Both the variance in definitions and the wide application of the term “migration” demonstrate the difficulty in distinguishing between different types of migrants or creating a new category of migrants.<sup>115</sup> Additionally, there is no comprehensive international legal framework to govern migration.<sup>116</sup> There is, instead, a variety of legal rules which have been created through State-to-State relations in multilateral or bilateral treaties.<sup>117</sup>

Migration has become an “essential and inevitable component of the economic and social life of every State,”

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110. The “[p]ersonal convenience factor” refers to the lack of external compelling factors and the free decision migrants have in leaving their home countries. *Id.*

111. INT’L ORG. FOR MIGRATION, INTERNATIONAL MIGRATION LAW: GLOSSARY ON MIGRATION 40 (2004) [hereinafter IOM GLOSSARY ON MIGRATION], available at [http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published\\_docs/serial\\_publications/Glossary\\_eng.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/Glossary_eng.pdf).

112. *See Id.* at 3 (“[D]efinitions in the field of migration law are often vague, controversial, or contradictory [with] the absence of universally accepted definitions [due in part to] the fact that migration [was] traditionally only addressed at the national level.”).

113. *See Id.* at 40–41.

114. UNESCO Migrant, *supra* note 107.

115. *Id.* (discussing the difficulties associated with the broad and varying definitions of migrants and categorizing the different causes that spark their movements including conflicts, environmental degradation, or well-being).

116. *International Migration Law*, INT’L ORG. FOR MIGRATION, <https://www.iom.int/cms/en/sites/iom/home/what-we-do/migration-law/international-migration-law.html> (last visited Nov. 11, 2012) [hereinafter IOM’s International Migration Law].

117. *Id.*

providing enriching cultural and economic benefits to society.<sup>118</sup> Therefore, the imagery associated with the term “migrants” may have a more productive and positive connotation, especially given the flow of information and skills that can accompany migrations.<sup>119</sup> It also appears that the term “migrant” carries with it a broader definition than the narrowly and formally defined categories of “refugees” and “internally displaced persons.”<sup>120</sup> However, these positive traits are not enough to outweigh the fact that the term “migrant” is not well defined and may not always cover those who are forced to leave their homes because of the calamities associated with climate change.<sup>121</sup>

### *B. International Laws*

Several countries have already enacted immigration laws in an effort to adapt to environmental disasters.<sup>122</sup> Indeed, there is an expectation among neighboring States for assistance in protecting individuals from adverse environmental conditions, rescuing persons from ocean-related calamities, and providing humanitarian assistance following natural disasters.<sup>123</sup> Countries that have enacted laws to cover displaced people from other countries include the United States, Sweden, and Finland.<sup>124</sup> However, these laws are not fully equipped to handle the potentially large groups of environmentally displaced

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118. *About Migration*, INT'L ORG. FOR MIGRATION, <http://www.iom.cz/about-us> (last visited Oct. 29, 2012) [hereinafter *About Migration*].

119. *See Id.*

120. United Nations documents narrowly define these terms. *See* 1951 Convention, *supra* note 79, art. 1(A)(2); *see also* Guiding Principles, *supra* note 100. The 1951 Convention confines the application of the term “refugee” to the five categories. 1951 Convention, *supra* note 79, art. 1(A)(2). The Guiding Principles limit the scope to those persons still within the borders of their country. Guiding Principles, *supra* note 100, at 1, 6.

121. UNESCO Migrant, *supra* note 107.

122. *See* Glahn, *supra* note 44 (discussing the inclusion of environmental migrants in official state immigration and asylum policy).

123. Tully, *supra* note 99, at 199–200.

124. Glahn, *supra* note 44 (describing the programs of New Zealand, Sweden, Finland, and the United States). “Migrants have historically been admitted into Australia, Canada, New Zealand and the United States for permanent resettlement.” Tully, *supra* note 99, at 197 (footnote omitted).

people.<sup>125</sup> This section discusses the variety of laws developed by each of these nations.

1. *United States—Temporary Protected Status INA: Act 244*

The Temporary Protected Status (TPS) legislation was enacted by Congress as part of the Immigration Act of 1990 and appears in section 244 of the Immigration and Nationality Act (INA).<sup>126</sup> Subsection (b)(1)(B) provides that the Attorney General can allow the temporary stay of aliens (unless their stay is contrary to national interest) if:

- (i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial but temporary disruption of living conditions in the area affected[,] (ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of that state, and (iii) the foreign state officially has requested designation under this subparagraph.<sup>127</sup>

Therefore, these eligible aliens are not removable from the US, cannot be detained by the Attorney General, can obtain employment authorization documents (EAD), and may apply for travel authorization.<sup>128</sup> Persons granted TPS can only stay for six to eighteen months.<sup>129</sup> However, their stays can be extended at the discretion of the Attorney General.<sup>130</sup> The INA has already granted temporary stay to aliens from nations that have endured environmental disaster, like with the Hondurans and Nicaraguans after Hurricane Mitch in 1998.<sup>131</sup>

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125. See Glahn, *supra* note 44 (pointing to the weaknesses in the Swedish Aliens Act, as well as the Temporary Protection Status legislation of the United States Immigration Act).

126. Immigration and Nationality Act of 1990 § 244, 8 U.S.C. § 1254a (2010); Glahn, *supra* note 44.

127. 8 U.S.C. § 1254a(b)(1)(B).

128. *Id.* § 1254a(a)(1), (d)(4), (f)(3).

129. *Id.* § 1254a(b)(2).

130. *Id.* § 1254a(b)(3)(C).

131. RUTH ELLEN WASEM & KARMA ESTER, CONG. RESEARCH SERV., RS 20844, TEMPORARY PROTECTED STATUS: CURRENT IMMIGRATION POLICY AND ISSUES 5 (2004), available at <http://fpc.state.gov/documents/organization/41113.pdf> (discussing the states

Table 2

Countries Whose Nationals Have Received Temporary Protected Status from the United States <sup>132</sup>		
Country	Dates	Estimated Number
Burundi	November 4, 1997–November 2, 2005	19
El Salvador	March 2, 2000–March 9, 2005	290,000
Honduras	December 30, 1998–July 5, 2006	81,875
Liberia	October 1, 2002–October 1, 2005	3,792
Montserrat	August 22, 1998–February 27, 2005	292
Nicaragua	December 30, 1998–July 5, 2006	4,309
Somalia	September 16, 1991–September 17, 2005	324
Sudan	November 4, 1997–November 2, 2005	1,949

The TPS program has provided several people with necessary relief; unfortunately, as the name of this designation suggests, TPS is only a temporary fix.<sup>133</sup> As a result, TPS does not account for the more permanent nature of migrations induced by large-scale environmental degradation.<sup>134</sup> TPS provides protection before any decision on the long-term resolution of the alien's status has been reached.<sup>135</sup> Furthermore, aliens granted TPS are not eligible to become legal permanent residents in the United States unless there is a special act of Congress that changes their immigration status.<sup>136</sup>

Yet another limitation with TPS is that it is available only

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that have already received benefits from TPS and the accompanying relief from suspending deportation).

132. *Id.*

133. 8 U.S.C. § 1254a(b)(1)(C) (stating TPS is reserved for extraordinary and temporary conditions).

134. WASEM & ESTER, *supra* note 131, at 2–3 (“[A] foreign state requests TPS because it temporarily cannot handle the return of nations due to environmental disaster.”); see Glahn, *supra* note 44 (noting the TPS is unlikely to apply in situations where countries might be permanently devastated by large-scale environmental degradation such as submersion of small island states).

135. WASEM & ESTER, *supra* note 131, at 2.

136. *Id.* at 6.

in restricted circumstances and only after designation by the Attorney General.<sup>137</sup> Relative to environmental disasters, TPS designation requires the prior occurrence of three conditions: (a) there has been an environmental disaster (that substantially disrupts living conditions in the foreign state), (b) the foreign state cannot adequately handle the return of its nationals to the affected area, and (c) the foreign state has officially requested TPS designation.<sup>138</sup>

Moreover, subsections (b)(1)(B) and (C) of the TPS program provide the Attorney General with the discretion to allow aliens to stay temporarily in the United States under TPS.<sup>139</sup> Specifically, subsection (b)(1)(C) states that protection is granted when

[T]he Attorney General finds . . . extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the Attorney General finds that permitting the aliens to remain temporarily . . . is contrary to the national interest . . .<sup>140</sup>

This discretion also includes allowing the Attorney General to set the number of foreign nationals that can seek TPS, as well as the length of their stay.<sup>141</sup> Given its temporary nature, the various conditions that must be met by the foreign state for its citizens to deserve TPS, and the amount of discretion the Attorney General is awarded, the TPS program is not equipped to handle the potentially large numbers of environmentally displaced people.<sup>142</sup>

## 2. *Swedish and Finnish Aliens Acts*

Sweden and Finland, like the United States, are among the other countries that have enacted legislation that address the

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137. See Immigration and Nationality Act, 8 U.S.C. § 1254a(b)(1) (2006).

138. *Id.* § 1254(b)(1)(B)–(C).

139. See *Id.* § 1254a(b)(1)(B) (stating that the Attorney General can designate a foreign state where qualifying conditions exist and thereafter grant temporary protected status to a national of that state after consultation with appropriate U.S. agencies).

140. *Id.* § 1254a(b)(1)(C).

141. *Id.* § 1254a(b)(1)(C), (b)(2).

142. WASEM & ESTER, *supra* note 131, at 3.

movement of environmentally displaced people.<sup>143</sup> While both countries' laws address the possibility for protection, they fall short of complete protection.<sup>144</sup> Neither the Swedish nor Finnish Aliens Act is fully equipped to tackle the problems associated with environmental displacement.<sup>145</sup>

*a. Swedish Aliens Act*

Chapter four of the Swedish Aliens Act addresses the issues of refugees and persons otherwise in need of protection.<sup>146</sup> Sweden follows the same definition of refugee that is internationally accepted and “shares in the responsibility for the international protection of refugees[.]”<sup>147</sup> It defines a “person otherwise in need of protection” as an

[A]lien who in cases other than those referred to in Section 1 is outside the country of the alien's nationality because he or she (1) feels a well-founded fear of suffering the death penalty or . . . inhuman or degrading treatment or punishment, (2) needs protection because of external or internal armed conflict or . . . other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses[,] or (3) is unable to return to the country of origin because of an environmental disaster.<sup>148</sup>

While the Swedish Aliens Act appears to have a provision for populations displaced by climate change, the Act still has

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143. See 4 ch. 2 § Utlänningslag (Svensk författningssamling [SFS] 2005:716) (Swed.), available at <http://www.sweden.gov.se/content/1/c6/06/61/22/bfb61014.pdf> (referring to the protections afforded to environmentally displaced people); see also 6 ch. 88a, 109 §§ Ulkomaalaislaki (2004:301) (Fin.), available at <http://www.finlex.fi/en/laki/kaannokset/2004/en20040301.pdf> (employing protections for people displaced by environmental and climatic changes).

144. Glahn, *supra* note 44 (pointing out the possible shortcomings of each of these Acts).

145. *Id.*

146. 4 ch. 1–2 §§ Utlänningslag (SFS 2005:716) (Swed.).

147. *Id.* at 4 ch. 1 § Utlänningslag (SFS 2005:716) (Swed.); *Policy Areas: Migration and Asylum Policy*, GOVERNMENT OFFICES OF SWEDEN, MINISTRY OF JUSTICE (Apr. 28, 2011), <http://www.sweden.gov.se/sb/d/3083> [hereinafter *Policy Areas*] (discussing the scope of the Swedish Aliens Act).

148. 4 ch. 2 § Utlänningslag (SFS 2005:716) (Swed.).

many weaknesses.<sup>149</sup> This chapter is the only place the Act mentions or refers to the category of people unable to return home because of the effects of an environmental disaster.<sup>150</sup> Beyond the inclusion of the environmentally displaced into the other-than-refugee protection status,<sup>151</sup> the Act does little else to outline the process for seeking this protection, or the implications for this categorization. Furthermore, the Division for Migration and Asylum Policy, part of the Swedish Ministry of Justice and the branch of government responsible for the enforcement of Sweden's Migration and Asylum Policy, has confined the application of this provision.<sup>152</sup> Not only must there be a sudden environmental disaster to trigger this protection,<sup>153</sup> there is also a prerequisite that no alternative of relocation to a safe area within the home State exists.<sup>154</sup> Moreover, while it is reserved for exceptional situations, the Act can be restricted further if it is determined that Sweden's absorption capacity would be overwhelmed with the admittance of "person[s] otherwise in need of protection" because of an environmental disaster.<sup>155</sup>

Additionally, Chapter 2, Section 2(3) has not been exercised—no one has been granted subsidiary protections in Sweden for environmental reasons.<sup>156</sup> Because this portion of the Swedish Aliens Act is weak in its protection of those displaced as a result of climate change and has never been applied, it could not serve as an international instrument to

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149. Glahn, *supra* note 44.

150. *See generally* 4 ch. 2 § Utlänningslag (SFS 2005:716) (Swed.) (failing to reference environmentally displaced persons in any other chapter).

151. *Id.*

152. Glahn, *supra* note 44.

153. *See Id.* (using an example of populations displaced by storms, which are eligible for protection, and those displaced by drought, which would not be, to show the Ministry of Justice's position that sudden environmental disasters are covered under the Swedish Aliens Act, but continuous environmental decline is not).

154. UNHCR, *Forced Displacement in the Context of Climate Change*, *supra* note 103, at 12 (discussing the inadequate protection the Swedish Aliens Act provides for environmentally displaced people).

155. *Id.*; 4 ch. 2 § Utlänningslag (SFS 2005:716) (Swed.).

156. Glahn, *supra* note 44.

protect these populations.<sup>157</sup>

*b. Finnish Aliens Act*

Section 88a of the Finnish Aliens Act provides humanitarian protection through the issuance of a residence permit for those people who are outside their “country of origin or country of former habitual residence as a result of an environmental catastrophe.”<sup>158</sup> Finland’s government, in Section 109 of the Finnish Aliens Act, grants temporary protection to “aliens who need international protection and who cannot return safely to their home country . . . because there has been a massive displacement of people in the country or its neighbouring areas as a result of an armed conflict, some other violent situation or an environmental disaster.”<sup>159</sup>

Unlike the Swedish Aliens Act, the Finnish Aliens Act provides coverage to displaced people without requiring the lack of an alternative safe area for relocation within the home state.<sup>160</sup> While seemingly more expansive than its Swedish counterpart,<sup>161</sup> the Finnish Aliens Act still falls short of full protection for environmentally displaced populations.<sup>162</sup> Section 109’s temporary protection requires that the need for relocation be of short duration, lasting at a maximum of three years in total.<sup>163</sup>

Other countries have used legislation to balance their own domestic interests with their responsibility to protect the various types of immigrants, refugees, and migrants that

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157. EUROPEAN MIGRATION NETWORK, THE PRACTICES IN SWEDEN CONCERNING THE GRANTING OF NON-EU HARMONISED PROTECTION STATUSES 4 (2010).

158. 6 ch. 88a(1) §§ Ulkomaalaislaki (2004:301) (Fin.).

159. 109(1) § Ulkomaalaislaki (2004:301) (Fin.).

160. UHNCR, *Forced Displacement in the Context of Climate Change*, *supra* note 105, at 12.

161. *See* Glahn, *supra* note 44 (noting that unlike the framework of Sweden, the Finnish Aliens Act contains fewer limitations and does not distinguish between the danger associated with human actions or natural disasters).

162. *See* UHNCR, *Forced Displacement in the Context of Climate Change*, *supra* note 103, at 12 (“[T]he Finnish Aliens Act emphasize[s] that the preferred option in environmental disasters is internal relocation and international humanitarian aid, but acknowledge[s] that protection in Finland may also be necessary.”).

163. 109(1) § Ulkomaalaislaki (2004:301) (Fin.).

attempt to pass through their borders.<sup>164</sup> While these measures provide some coverage, some of these domestic strategies will prove inadequate in the wake of climate change and increased environmentally induced migrations.<sup>165</sup> One possible solution to address these shortcomings would be the creation of a new, internationally accepted and uniform framework for protecting this emerging group of environmentally displaced people.

#### IV. WHAT SHOULD THE SOLUTION FEATURE?

Because current international laws do not provide protection for the people that will be displaced as a result of climate change,<sup>166</sup> it is imperative that the global community adopts a new environmental displacement convention. The nature of climate change also demands a solution because it “is a complex problem, which, although environmental in nature,” has broad reaching consequences across the globe.<sup>167</sup> Climate change has an effect on or is affected by “poverty, economic development, population growth, sustainable development and resource management.”<sup>168</sup> The UNHCR has even acknowledged that there is a real “need to find durable solutions for those among the displaced and who cannot return and resume their normal

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164. See, e.g., Immigration and Nationality Act § 244, 8 U.S.C. § 1254a(b)(1)(C) (2010) (allowing for the measure of national interest in granting temporary protected status).

165. See *supra* Parts III.B.1, III.B.2 (comparing the migration laws of the United States, Sweden, and Finland).

166. See Masters, *supra* note 13 (arguing that there is a “policy vacuum” in the context of environmentally induced migrations and “lack of commitment to identifying long-term solutions to environmental events”); see also UHNCR, *Forced Displacement in the Context of Climate Change*, *supra* note 103, at 9–10 (“[T]he large majority of persons leaving their countries in the context of disasters are unlikely to qualify as refugees under extant international law.”).

167. Background on the UNFCCC, *supra* note 55.

168. *Id.* See also Elina Marmer et al., *Integrating Migration into Climate Adaptation Policy Frameworks in Africa*, RETHINKING MIGRATION CONFERENCE BERLIN (Oct. 13, 2011), available at <http://www.network-migration.org/rethinking-migration-2011/2/papers/Elina%20Marmer%20BERLIN%20out.pdf> (stating that migration can increase population pressure and strain scarce resources, can overwhelm management capacities of destination communities, and can even provoke conflict); Boano et al., *supra* note 82, at 4 (describing predictions of mass population movements, political instability, and conflict).

lives in the immediate aftermath of a disaster.”<sup>169</sup> Given the wide array of international conventions, terms, and individual State’s laws,<sup>170</sup> a workable solution should draw on successes of current laws, adapt them, and piece them together in a unified method of protection for those displaced by climatic and environmental disaster.

*A. Internationally Agreed Definition—EDPs*

The broad authority of the 1951 Convention relating to the Status of Refugees occurred because of the Convention’s wide recognition and its incorporation into several countries’ migration policies.<sup>171</sup> International acceptance of the 1951 Convention has contributed to the overall quality of protection for international refugees.<sup>172</sup> Similarly, environmentally induced migrants would benefit from an internationally agreed upon term, definition, and framework for their status.<sup>173</sup>

By avoiding the use of the term “refugee,” the United Nations High Commissioner for Refugees (UNHCR) has moved towards the creation of a new category of “environmentally displaced people.”<sup>174</sup> The UNHCR has defined “environmentally displaced people,” or EDPs, as those “who are displaced from or who feel obliged to leave their usual place of residence, because their lives, livelihoods and welfare have been placed at serious

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169. UHNCR, *Forced Displacement in the Context of Climate Change*, *supra* note 105, at 4.

170. *See supra* Part III and accompanying text (outlining and defining traditional migration terms like “refugees,” IDPs, and “migrants”).

171. Introductory Note by Guy S. Goodwin-Gill, *Convention Relating to the Status of Refugees: Protocol Relating to the Status of Refugees 1 (2008)* [http://untreaty.un.org/cod/avl/pdf/ha/prsr/prsr\\_e.pdf](http://untreaty.un.org/cod/avl/pdf/ha/prsr/prsr_e.pdf).

172. *Id.* at 1; Erika Feller, *International Refugee Protection 50 Years On: The Protection Challenges of the Past, Present and Future*, 83 INT’L REV. OF THE RED CROSS 581, 582 (2001).

173. *See Masters*, *supra* note 13, at 869–70 (positing that the lack of international support to adopt a new convention on IDPs has led to the non-binding nature of the new principles).

174. Boano et al., *supra* note 82, at 7–8. In fact, some advocates disagree with initiatives to modify the refugee definition in order to extend protection to environmentally induced migrants. UHNCR, *Forced Displacement in the Context of Climate Change*, *supra* note 105, at 10.

risk as a result of adverse environmental, ecological or climatic processes and events.”<sup>175</sup>

The Norwegian Refugee Council (NRC) has also refrained from using existing terms and, like the UNHCR, also uses the term “environmentally displaced persons.”<sup>176</sup> The NRC defines EDPs as “all ‘persons who are displaced within their own country of habitual residence or who have crossed an international border and for whom environmental degradation, deterioration or destruction is a major cause of their displacement, although not necessarily the sole one.’”<sup>177</sup> Because the NRC’s definition is more inclusive, covering both internally and internationally displaced people in a variety of environmental circumstances,<sup>178</sup> it would successfully serve as the basis for an international EDP framework. The NRC’s definition would provide a more expansive<sup>179</sup> and thorough

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175. Boano et al., *supra* note 82, at 7–8 (citing BRIAN GORLICK, ENVIRONMENTALLY DISPLACED PERSONS: A UNHCR PERSPECTIVE, available at [http://www.equatorinitiative.org/images/stories/events/2009events/brian\\_gorlick\\_environmentally\\_displaced\\_persons\\_unhcr\\_perspective.pdf](http://www.equatorinitiative.org/images/stories/events/2009events/brian_gorlick_environmentally_displaced_persons_unhcr_perspective.pdf)). This definition takes into account neither cross-border movement nor displacement related to persecution, armed conflict, or human rights violations. *Id.*; see also Millar, *supra* note 80, at 85 (referring to the misleading and “possibly harmful” nature of the notion of an “environmental refugee”).

176. NOR. REFUGEE COUNCIL, POSITION DOCUMENT, CLIMATE CHANGE, THE ENVIRONMENT AND DISPLACEMENT, Doc. No 72614, at 2 (Feb. 11, 2008), available at [http://www.nrc.no/arch/\\_img/9411999.pdf](http://www.nrc.no/arch/_img/9411999.pdf) (discussing the Norwegian Refugee Council (NRC), its integration of IPCC reports, and the NRC’s use of the term “environmentally displaced persons” instead of terms like “environmental refugee” or “climate refugee” which could undermine international legal regimes for refugee protection).

177. *Id.* (quoting International Symposium on Environmentally-Induced Population Displacements and Environmental Impacts Resulting from Mass Migration, Geneva, Switz., Apr. 21–24, 1996, *Environmentally-Induced Population Displacements and Environmental Impacts Resulting from Mass Migrations*, at 9 (Oct. 1996), available at <http://www.unhcr.org/refworld/docid/4a54bbd6d.html>).

178. *Id.* at 2–3.

179. This definition is more inclusive of the different types of environmentally displaced people and the multi-causality of migration. *Cf.* Boano et al., *supra* note 82, at 4–5 (explaining the different causes for human migration and the potential for terms like refugee or migrant to ignore these causes). The NRC’s definition is also broader than the UNHCR’s proposed definition. Brian Gorlick, Senior Policy Advisor UNHCR N.Y. Off., *Environmental Refugees: The Forgotten Migrants* (2009), available at [http://www.equatorinitiative.org/images/stories/vents/2009events/brian\\_gorlick\\_environmentally\\_displaced\\_persons\\_unhcr\\_perspective.pdf](http://www.equatorinitiative.org/images/stories/vents/2009events/brian_gorlick_environmentally_displaced_persons_unhcr_perspective.pdf) (“Proposed Definition of Environmentally Displaced Person: People who are displaced from or who feel obliged to leave their usual

classification, instead of rephrasing terms such as “refugee,” “internally displaced peoples,” or “migrants.”<sup>180</sup>

Drawing on the ideas of scholars during the early discussions of “environmental refugees,” an internationally recognized EDP definition could also incorporate the three sub-categories introduced by El-Hinnawi.<sup>181</sup> By including those displaced because of permanent changes in their habitat, because of environmental stresses, or because their habitat can no longer provide basic necessities,<sup>182</sup> this proposed definition of EDPs would cover both slow and sudden onset disasters and account for the coverage gaps that current international laws create. The current recognition and usage of the EDP classification by the UNHCR and the NRC also bolster the term’s legitimacy. Moreover, the creation of a new class of displaced people, instead of expanding on existing categories, would ensure that “already-strained” programs for traditional migration categories would not be overused.<sup>183</sup>

### *B. The Non-Refoulement Principle*

Any instrument that addresses the concerns of the newly classified “environmentally displaced persons” should contain a provision prohibiting the return, or refoulement, of environmentally displaced persons “to the frontiers of territories where his life or freedom would be threatened.”<sup>184</sup> This principle appears in a several human rights instruments, at both the regional and universal levels.<sup>185</sup> The presence of a

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place of residence, because their lives, livelihoods and welfare have been placed at serious risk as a result of adverse environmental, ecological or climatic processes and events.”).

180. While this Comment has used many different terms to refer to the populations that will be displaced as the result of changes in the global climate, “environmentally displaced persons” is the categorization that this Comment suggests.

181. See *supra* Part III.A.2 (delineating the three sub-categories scholars include in the consideration of “environmental refugees”).

182. Millar, *supra* note 80, at 82–83.

183. Kara K. Moberg, *Extending Refugee Definitions to Cover Environmentally Displaced Persons Displaces Necessary Protection*, 94 IOWA L. REV. 1107, 1131 (2009).

184. UHNCR, *Forced Displacement in the Context of Climate Change*, *supra* note 103, at 11 (quoting 1951 Convention, *supra* note 79, art. 33(1)).

185. *Id.*

non-refoulement principle is critical to the long-term protection of EDPs and would create an obligation on any receiving State to admit EDPs and allow them to remain within that state's borders.<sup>186</sup> It would also address the inadequate and temporary nature of existing protections that some countries have enacted.<sup>187</sup>

### *C. The Responsibilities of States*

#### *1. Exercising Responsible Sovereignty*

The Guiding Principles on Internally Displaced Persons feature beneficial elements that could be applied in the context of environmentally induced migrations.<sup>188</sup> The Guiding Principles place a duty and responsibility on States to assist and protect all phases of internal displacement, including providing aid to those that are displaced as a result of the effects of climate change.<sup>189</sup> Placing a duty of this nature on States would be beneficial if extended beyond IDPs to cover EDPs as well. It follows that States should cooperatively bear the primary burden not only for Internally Displaced People, but also for those that are internationally displaced—those who are forced to move out of their country and across international boundaries.<sup>190</sup> Like the Guiding Principles and IDP framework, EDP international conventions could also ensure that EDPs retain both their rights as citizens and the protection of their home government while receiving aid from another country.<sup>191</sup>

Cooperation among States is vital for the success of any treaty or international agreement, and this trend demonstrates the importance of the role States play in protecting their

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186. *See Id.* at 10–11 (stating that the international community must support and strengthen States' abilities to protect their own citizens both from and during displacement).

187. *See Id.* at 11 (noting that the non-refoulement principle provides a right to stay by preventing forced relocation or repatriation).

188. *See generally* Guiding Principles, *supra* note 100.

189. *Id.* at 3, 7.

190. *Id.* at 13; UHNCR, *Forced Displacement in the Context of Climate Change*, *supra* note 105, at 2 (promoting State responsibility for the plight of its citizens).

191. *See supra* Part III.A.3 and accompanying text (summarizing IDPs and the Guiding Principles framework).

citizens.<sup>192</sup> Therefore, countries should take on more responsibilities to protect their citizens in the event their safety is threatened.<sup>193</sup>

One effort that States could undertake to provide adequate protection for their citizens in the wake of natural disaster and climate change would be to shift their policy approach from reactive responses to preventative measures.<sup>194</sup> Environmental distress can occur in both sudden and slow-onset disasters and typical responses to these occurrences have been reactive.<sup>195</sup> Instead, countries should adopt a policy of prevention and preparedness.<sup>196</sup> By “exercis[ing] responsible sovereignty”<sup>197</sup> and as a gesture of good faith for protecting their citizens, States could create resettlement plans<sup>198</sup> for environmental displacement within their countries as well as outside their borders, and improve scientific research, education, training, and awareness of climate change.<sup>199</sup> As part of their resettlement plans, governments could also set aside funds to assist citizens who migrate outside their home country’s borders.<sup>200</sup> For example, EDPs from the Tuvalu islands could enter a receiving country, like New Zealand, with financial support from the Tuvaluan government thereby eliminating any strain on New Zealand’s resources. Money donated from

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192. UHNCR, *Forced Displacement in the Context of Climate Change*, *supra* note 103, at 10–11.

193. Gareth Evans & Mohamed Sahnoun, *The Responsibility to Protect*, FOREIGN AFF., Nov./Dec. 2002, at 101, available at <http://www.foreignaffairs.com/articles/58437/gareth-evans-and-mohamed-sahnoun/the-responsibility-to-protect> (stating that there is a “responsibility to protect” that all sovereign states owe to their citizens).

194. Masters, *supra* note 13, at 856; *see also* Someshwar, *supra* note 104 (discussing the importance of reactive and adaptive policy approaches).

195. *See supra* Part II.B and accompanying text (defining and comparing slow and sudden-onset disasters).

196. Masters, *supra* note 13, at 856.

197. UHNCR, *Forced Displacement in the Context of Climate Change*, *supra* note 103, at 10.

198. *See* Moberg, *supra* note 183, at 1133 (describing the harms of mass migration and the need for gradual resettlement plans).

199. *See* ZETTER, *supra* note 12, at 59–61 (citing potential adaptation capacities in States’ abilities to adjust to climate change).

200. *See* Docherty & Gianni, *supra* note 93, at 384 (stating that home States should provide financial assistance to the extent possible to countries hosting refugees).

governments and aid agencies could also be consolidated and invested in adaptive and preventative strategies.<sup>201</sup>

### 2. *The Living Space for EDPs Initiative*

Already, some of the Small Island Developing States have proposed a protocol for incorporating “environmental refugees” into the 1951 Convention.<sup>202</sup> This initiative, called LiSER, is aimed at creating a “living space for environmental refugees.”<sup>203</sup> Instead of aiming its efforts at extending and over-straining existing migration categories, Small Island Developing States, through the AOSIS, could lobby for the creation of living spaces for EDPs.<sup>204</sup> Like the LiSER Initiative, a proposed Living Space for EDPs (LiSEDP) Initiative could build off the idea of pooling resources in preparation for mass migration, and establish a Working Group to explore adaptive measures, preventative strategies, and multilateral agreements to further the interests of EDPs around the world.<sup>205</sup>

### 3. *Long-Term Multilateral Agreements*

The countries and EDPs that will suffer the harshest effects of climate change are the least likely contributors to global warming and do not have the level of financial influence to control the causes of climate change.<sup>206</sup> Furthermore, research

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201. See Masters, *supra* note 13, at 877 (suggesting the Global Environmental Migration Agency (GEMA) could convince participants to spend more money on prevention, which would increase the effectiveness of all money spent).

202. Boano et al., *supra* note 82, at 25.

203. *Join the Toledo Initiative*, LIVING SPACE FOR ENVTL. REFUGEES (LISER), <http://www.liser.eu/en/liser/how-you-can-help/join-toledo-initiative> (last visited Mar. 5, 2013).

204. See Docherty & Gianni, *supra* note 93, at 351–52 (arguing that current statuses available to refugees are ill-suited to handle the number of people forced to move due to climate change, therefore new approaches are needed).

205. See Masters, *supra* note 13, at 874–77 (proposing standards for how to prepare and react to disasters, help countries fund projects, and help governments plan for resettlement).

206. Juliet Eilperin, *Climate Shift Tied to 150,000 Fatalities: Most Victims Are Poor, Study Says*, WASH. POST, Nov. 17, 2005, at A20; see also Moberg, *supra* note 183, at 1122 (describing the typical financial conditions of countries likely to face large numbers of EDPs).

on climate change reveals that the impact of climate change is most severe among poorer countries,<sup>207</sup> making it difficult for some countries to provide the financial and preventative support for EDPs. Therefore, increased international cooperation and state responsibility could lead to protective agreements for EDPs similar to those made between the United States and the countries whose citizens have been granted Temporary Protected Status.<sup>208</sup> These cooperative international agreements should include visa-granting provisions for EDPs without the exclusivity present in existing bilateral agreements.<sup>209</sup> Canada and New Zealand's bilateral agreements are examples of arrangements that have benefitted migratory citizens, which should be adapted to protect EDPs.<sup>210</sup>

Canada, in keeping with its policy to "help Canadian citizens and permanent residents reunite with their family members abroad when natural disasters occur," took special measures when those affected by Typhoon Ketsana applied for residency status.<sup>211</sup> Canada made an effort to expedite the processing of more than 400 applications in order to help the victims of Typhoon Ketsana in the Philippines.<sup>212</sup>

New Zealand has also been accommodating to the neighboring island countries that face the prospect of rising sea levels.<sup>213</sup> The Government of New Zealand has agreed to accept waves of immigrants from various Pacific Islands under a new labor migration policy called the Pacific Access Category

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207. Moberg, *supra* note 183, at 1122–23.

208. *See supra* Part III.B.1.

209. *See Id.* (discussing the INA's Temporary Protected Status, which only requires a request from a foreign country to authorize Temporary Protected Status for EDPs).

210. *See Tully, supra* note 99, at 197–98 (explaining that because of its constitutional links with Pacific Island territories, New Zealand experiences population influxes, and noting that Canada is in the midst of establishing a migration program with the Pacific Island territories).

211. Press Release, Citizenship and Immigration Can., Special Immigration Measures for Victims of Typhoon Ketsana in the Philippines Resulted in Priority Processing for More than 400 Applications (Dec. 1, 2009), *available at* <http://www.cic.gc.ca/english/department/media/releases/2009/2009-12-01.asp>.

212. *Id.*

213. Glahn, *supra* note 44.

(PAC).<sup>214</sup> This policy provision is run by registration and ballot and allows citizens of Kiribati, Tuvalu, and Tonga to settle in New Zealand.<sup>215</sup> The PAC has permitted a specific number of citizens, their partners, and their dependents to enter the country and establish residency each year.<sup>216</sup>

Members of the Australian Senate proposed amendments to the Migration Act of 1958 to establish a new class of Australian “climate change refugee visas.”<sup>217</sup> Though unsuccessful in gaining the support of the Senate, the proposal demonstrates that national migration policies can influence the position of EDPs.<sup>218</sup> Other countries, through agreement or otherwise, could similarly introduce special visas for EDPs, thereby granting protection for these displaced people.

Collaborative agreements such as TPS, Canada’s reunification policy, and New Zealand’s PAC promote responsibility among States for EDPs.<sup>219</sup> Furthermore, a focus on family-based immigration procedures will ensure greater coverage of possible EDPs and, more importantly, that families are united and not separated in the wake of environmental disaster.<sup>220</sup> Innovative, preventative, and long-term measures, like the PAC taken by New Zealand, make the shift in policy away from ad hoc, reactive measures toward more thorough protection.<sup>221</sup> An international agreement regarding the status of EDPs should feature collaborative agreements among

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214. *Id.*; see also *Pacific Access Category*, IMMIGRATION NEW ZEALAND, <http://www.immigration.govt.nz/migrant/stream/live/pacificaccess/> (last visited Jan. 20, 2012).

215. *Pacific Access Category*, *supra* note 214.

216. *AB v Clayton* [2011] NZIPT 200061 (IPT) 1, 6 (N.Z.) (stating that the objective of the Pacific Access Category is for New Zealand to allow up to seventy-five citizens of Kiribati, seventy-five citizens of Tuvalu, and 250 citizens of Tonga (including their partners and dependent children) to establish residency in New Zealand every year).

217. Millar, *supra* note 80, at 97.

218. *Id.*

219. See UHNCR, *Forced Displacement in the Context of Climate Change*, *supra* note 103, at 10 (stating that regional instruments have inspired states to pass legislation protecting EDPs).

220. IMMIGRATION LAW AND THE FAMILY: A PRACTICAL GUIDE TO FAMILY-SPONSORED IMMIGRATION 17 (Charles Wheeler ed. 2011).

221. See Masters, *supra* note 13, at 856 (discussing the importance of reactive and adaptive policy approaches); Someshwar, *supra* note 104.

countries of varying financial statuses while maintaining family unity.

## V. CONCLUSION

With the increased influence of harmful human activities and subsequent rising global temperatures, the grave consequences of severe environmental disasters and climate change are becoming more apparent.<sup>222</sup> The problems that have occurred as the result of climate change have already contributed to the internal migration within countries' borders, and have the potential to dramatically increase the number of people seeking refuge outside their country of residence.<sup>223</sup> Current international conventions and laws are ill equipped to handle this crisis. If international, cooperative measures are not taken, millions of people will not only lose their homes, but will also, in effect, become stateless people and receive fewer human rights.<sup>224</sup> Angered by the lack of international protection, these displaced people could follow the suit of others adversely affected by climate change and turn to the courts for protection, stirring up negativity and conflict from extended litigation.<sup>225</sup> Therefore, it is essential that an internationally accepted definition be adopted, that a principal of non-refoulement be included, and that countries work together to fully protect vulnerable environmentally displaced people.

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222. Eilperin, *supra* note 206.

223. *See* Masters, *supra* note 13, at 855 (stating that environmental causes are the leading cause of "involuntary population displacement").

224. *See generally* U.N. High Comm'r for Refugees, Nationality & Statelessness: A Handbook for Parliamentarians 3 (2005), [http://www.ipu.org/pdf/publications/nationality\\_en.pdf](http://www.ipu.org/pdf/publications/nationality_en.pdf) (explaining the struggles faced by stateless people, and failing to note people displaced by environmental events).

225. While the U.S. judiciary has not welcomed U.S. plaintiffs' tort claims against power companies, the efforts of Kivalina's Inupiat population to hold oil companies responsible for the climate change in Alaska and the Palauan citizens' request for the International Court of Justice to hold other countries accountable for contaminating the global environment, demonstrate the litigious measures EDPs could take. *See* Tracy Hester, *Hester on Climate Change Decision* (Sept. 24, 2012), <http://www.law.uh.edu/faculty/faculty-experts/2012-0924-Hester.asp> (briefing the Ninth Circuit decision regarding the Alaskan village of Kivalina); *see also* Brangham, *supra* note 58 (identifying the United States's view that Palau's legal initiative will have a negative effect on international climate change negotiations).