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## Climate Change Displacement to Refuge

Elizabeth Burleson

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ELIZABETH BURLESON\*

## Essay\*\*

### Climate Change Displacement to Refuge

I.	Climate Change, Human Rights Law, and Refugees .....	20
II.	The Security Council.....	23
III.	International Cooperation.....	30
IV.	Conclusion.....	34

Migration is one of the oldest coping strategies for dealing with environmental change.<sup>1</sup>

International climate negotiations have focused on such complex issues as mitigation, adaptation, environmentally sound technology transfer, and financial mechanisms.<sup>2</sup> Calling for the humanitarian impacts of climate change to be addressed, eighteen aid organizations have formed the Inter-Agency Standing Committee to advocate for

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\* Associate Professor, University of South Dakota School of Law. LL.M., London School of Economics and Political Science; J.D., University of Connecticut School of Law. Elizabeth Burleson also has written reports for UNICEF and UNESCO and is a visiting professor at Florida State University.

\*\* This Essay covers topics Professor Elizabeth Burleson presented during the International Impacts and Equity: Displacement to Refuge panel at the *Journal of Environmental Law and Litigation's* symposium, *Advocating for an Environment of Equality: Legal and Ethical Duties in a Changing Climate*, held in Eugene, Oregon, on September 11, 2009. JELL wishes to thank Professor Burleson for her important contributions to the symposium.

<sup>1</sup> VIKRAM ODEDRA KOLMANNKOG, NORWEGIAN REFUGEE COUNCIL, FUTURE FLOODS OF REFUGEES: A COMMENT ON CLIMATE CHANGE, CONFLICT AND FORCED MIGRATION 6 (2008), available at [http://www.nrcfadder.no/arch/img.aspx?file\\_id=9904602](http://www.nrcfadder.no/arch/img.aspx?file_id=9904602).

<sup>2</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change, Bali, Indon., Dec. 3–15, 2007, *Report of the Conference of the Parties in its Thirteenth Session*, Dec. 1/CP.13, U.N. Doc. FCCC/CP/2007/6/Add.1 (Mar. 14, 2008), available at <http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf>.

the coordination of human rights and climate change law and policy. The Norwegian Refugee Council notes that “[m]ore than 20 million people have been displaced by climate-related sudden-onset natural disasters in 2008 alone.”<sup>3</sup> Member states to the U.N. Convention on Climate Change (UNFCCC)<sup>4</sup> have committed to draft an agreement to address post-Kyoto Protocol<sup>5</sup> commitments under the UNFCCC and an array of climate-related concerns. Beyond mitigation, adaptation, technology, and funding, other crosscutting climate issues continue to challenge the international community. The demographics, economies, and geographic features of given countries impact their priorities in the ongoing negotiations. Irrespective of the likely impacts of climate change, everyone has a vested interest in maintaining international peace and security. Migration is a factor that the U.N. Security Council regularly uses to determine whether a situation constitutes a threat to international peace and security. Regardless of the means by which agreement is reached, adaptation to climate change should be implemented as soon as possible.

This Essay analyzes the interaction between international human rights law and climate change law. Part II discusses climate-induced migration, human rights law, and refugee status. Part III considers the role of the Security Council in climate-induced insecurity. Part IV concludes that maintaining international peace and security requires timely codification of climate measures that address ecomigration.

## I

### CLIMATE CHANGE, HUMAN RIGHTS LAW, AND REFUGEES

Under the Refugee Convention, for a person to become a refugee she must (1) be outside her country of nationality or former habitual residence; (2) must fear persecution due to race, nationality, religion, membership in a particular social group or political opinion; and (3)

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<sup>3</sup> *Aid Agencies Call for Strong Agreement to Address 'Humanitarian Shocks' of Climate Change*, RELIEFWEB, June 8, 2009, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/JBRN-7STBRM?OpenDocument>.

<sup>4</sup> One hundred sixty-five countries ratified the UNFCCC. The convention entered into force March 21, 1994. United Nations Framework Convention on Climate Change, *opened for signature* May 9, 1992, 1771 U.N.T.S. 107 [hereinafter UNFCCC], available at <http://unfccc.int/resource/docs/convkp/conveng.pdf>.

<sup>5</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 37 I.L.M. 22 (1998).

the fear must be well founded.<sup>6</sup> Climate change is not expressly listed in this definition, but it may fall within a social group context.<sup>7</sup> Regional human rights instruments offer broader definitions of refugees than the Refugee Convention, but have yet to extend refugee status to the context of climate change. As the U.N. University Institute for Environment and Human Security explains:

[The African Charter and Cartagena Declaration's] definition of a situation of seriously disturbed public order that comes closest to some form of official international recognition which could potentially encompass those compelled to leave their country of origin due to environmental factors. However, these Conventions only apply to individuals living within the African and Latin-American regions and do not draw attention to environmental issues specifically.<sup>8</sup>

Climate-induced migration could trigger the human rights principle of non-refoulement, in which individuals are protected from being returned to their countries if facing a risk of certain ill treatment.<sup>9</sup> The Norwegian Refugee Council notes that:

[F]orced migrants are likely to be internally displaced. Disaster displacement is recognised in the 1998 Guiding Principles on Internal Displacement. Those displaced due to more gradual environmental degradation could be considered displaced due to slow-onset disasters, (the lack of) development or as a separate displaced category covered by the descriptive and non-exhaustive definition of the Guiding Principles. Many face challenges and have needs similar to conflict-induced displaced persons, but protection and assistance will largely depend on whether or not international organisations include them in their mandates. While there is often political will, money and media coverage when

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<sup>6</sup> Convention Relating to the Status of Refugees, art. 1A, *adopted on* July 28, 1951, 189 U.N.T.S. 150.

<sup>7</sup> KOLMANNKOG, *supra* note 1, at 25–27.

<sup>8</sup> FABRICE RENAUD ET AL., U.N. UNIV. INST. FOR ENV'T AND HUMAN SEC. [UNU-EHS], CONTROL, ADAPT OR FLEE: HOW TO FACE ENVIRONMENTAL MIGRATION? 12 (2007), *available at* <http://www.each-for.eu/> (follow "Publications, Deliverables" hyperlink; then follow "Control, Adapt, or Flee" hyperlink).

<sup>9</sup> KOLMANNKOG, *supra* note 1, at 28; *see also* European Convention of Human Rights and Fundamental Freedoms [ECHR], art. 3, *opened for signature* Nov. 4, 1950, 213 U.N.T.S. 222 (banning torture and inhuman and degrading treatment, and imposing a duty not to send a person to a state where she could be at risk of exposure to the prohibited treatment); Elizabeth Burleson, *Juvenile Execution, Terrorist Extradition, and Supreme Court Discretion to Consider International Death Penalty Jurisprudence*, 68 ALB. L. REV. 909, 910–14 (2005).

sudden disasters hit, those who move primarily due to gradual environmental degradation are often less visible.<sup>10</sup>

Consensus should be reached on the extent to which new protocols, free-standing treaties, and guiding principles on climate-induced dislocation need to be drafted. Amending the 1951 Refugee Convention to include environmental refugees or ratifying a free-standing climate change refugee and displaced person convention could end the legal limbo that future ecomigrants face.<sup>11</sup> The Norwegian Refugee Council notes that “forced migrants may be included in already existing categories of protected persons, but they may need to be made more visible and recognised within the categories. For the internally displaced persons in general there is still a severe protection deficit that must be better addressed.”<sup>12</sup> Francis Deng, the first Special Representative of the Secretary-General on internally displaced persons, has explained the concept of sovereignty as the responsibility to protect.<sup>13</sup>

Climate change multiplies the impact of existing health risks, according to the World Health Organization.<sup>14</sup> Further, climate change adaptation measures, such as water storage, recycling, and promotion of biofuel use, have profound impacts on public health.<sup>15</sup>

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<sup>10</sup> KOLMANNSSKOG, *supra* note 1, at 5.

<sup>11</sup> Bonnie Docherty & Tyler Giannini, *Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees*, 33 HARV. ENVTL. L. REV. 349, 360, 372 (2009). Docherty and Giannini note that a “holistic approach to the climate change refugee problem should consider the needs and positions of parties and encompass a variety of relevant disciplines, including law, science, economics, technological innovation, development, and poverty alleviation.” *Id.* at 360. Their proposed definition includes six elements: (1) forced migration, (2) temporary or permanent relocation, (3) movement across national borders, (4) disruption related to climate change, (5) sudden or gradual environmental disruption, and (6) a “more likely than not” standard for human contribution to the environmental disruption. *Id.* at 372. See also Diane C. Bates, *Environmental Refugees? Classifying Human Migration Caused by Environmental Change*, 23 POPULATION & ENV'T 465, 468 (2002).

<sup>12</sup> KOLMANNSSKOG, *supra* note 1, at 5.

<sup>13</sup> *Id.* at 30.

<sup>14</sup> WORLD HEALTH ORG., PROTECTING HEALTH FROM CLIMATE CHANGE: GLOBAL RESEARCH PRIORITIES 6 (2009), available at [http://www.who.int/phe/news/madrid\\_report\\_661\\_final\\_lowres.pdf](http://www.who.int/phe/news/madrid_report_661_final_lowres.pdf).

<sup>15</sup> *Id.* at 12.

A better understanding is required of how key groups of decision-makers—from national policy-makers, to public health professionals, to individual citizens—perceive the health risks posed by climate change, and the kinds of information that would help them to take effective action. This should include the full spectrum of health risks and potential responses, from evaluating how well policy-makers

On March 28, 2008, the U.N. Human Rights Council passed its first resolution to address human rights and climate change, explaining that “climate change poses an immediate and far-reaching threat to people and communities around the world,” and called upon the Office of the U.N. High Commissioner to develop a study on climate change and human rights.<sup>16</sup> In March 2009, a second Human Rights Council resolution recognized that, “climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights.”<sup>17</sup> These efforts demonstrated increasing collaboration on crosscutting issues between international human rights and environmental decision-makers.

## II

### THE SECURITY COUNCIL

Countries are committed to increasing energy use to grow their economies.<sup>18</sup> Yet according to the United Kingdom, “if we use more

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outside of the health sector understand the health implications of their decisions, to how individuals perceive and respond to early warnings of health risks from heat waves and other extreme events.

*Id.* at 14; see also, e.g., Elizabeth Burleson, *Energy Policy, Intellectual Property, and Technology Transfer to Address Climate Change*, 18 TRANSNAT'L L. & CONTEMP. PROBS. 69, 69 (2009); Elizabeth Burleson, *Integrating Our Approach Toward Water, Climate, and Energy*, 16 WILLAMETTE J. OF INT'L L. & DISP. RESOL. 2 (2009); Elizabeth Burleson, *Water Leadership and the Rights of Youth to Sustainable Development*, 31 HAMLINE L. REV. 756, 756 (2008); Elizabeth Burleson, *A Climate of Extremes: Transboundary Conflict Resolution*, 32 VT. L. REV. 477, 477 (2008); Elizabeth Burleson, *Water is Security*, 31 ENVIRONS: ENVTL. L. & POL'Y J. 197, 197 (2008); Elizabeth Burleson, *Multilateral Climate Change Mitigation*, 41 U.S.F. L. REV. 373, 373 (2007); Elizabeth Burleson, *Tribal, State, and Federal Cooperation to Achieve Good Governance*, 40 AKRON L. REV. 207, 207 (2007); Elizabeth Burleson, *Middle Eastern and North African Hydropolitics: From Eddies of Indecision to Emerging International Law*, 18 GEO. INT'L ENVTL. L. REV. 385, 386 (2006); Elizabeth Burleson, *Equitable and Reasonable Use of Water in the Euphrates-Tigris River Basin*, 35 ENVTL. L. REP. NEWS & ANALYSIS 10,041, 10,041(2005).

<sup>16</sup> G.A. Res. 7/23, ¶ 1, U.N. Doc. A/HRC/7/78 (July 14, 2008). For material submitted by countries and international agencies, see Office of the United Nations High Commissioner for Human Rights, OHCHR Study on the Relationship Between Climate Change and Human Rights: Submissions and Reference Documents Received, <http://www2.ohchr.org/english/issues/climatechange/submissions.htm> (last visited Mar. 26, 2010).

<sup>17</sup> G.A. Res. 10/4, U.N. Doc. A/HRC/10/L.11 (Mar. 31, 2009).

<sup>18</sup> Representative of the United Kingdom of Great Britain and Northern Ireland, *Letter Dated 5 April 2007 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the President of the Security Council*, U.N. Doc. S/2007/186 (Apr. 5, 2007), available at <http://www.undemocracy.com/S-2007-186.pdf>.

fossil fuels without mitigating the resulting emissions, we will accelerate climate change, which itself presents risks to the very security we are trying to build.”<sup>19</sup> In its proposal encouraging the Security Council to take up climate change, the United Kingdom suggests a focus on such drivers of conflict as access to energy, water, food and other scarce resources, population movements, and border disputes:

[W]hile recognizing that it is for other United Nations bodies (in particular the United Nations Framework Convention on Climate Change) to pursue other aspects of climate change that are not within the mandate of the Security Council (including action to stabilize greenhouse gas concentrations in the atmosphere at a safe level, based on the principle of common but differentiated responsibilities and respective capabilities). . . . At the same time, the Security Council, meeting at the level of Heads of State and Government (resolution 1625 (2005)) reaffirmed the need to adopt a broad strategy of conflict prevention, which addresses the root causes of armed conflict and political and social crises in a comprehensive manner,<sup>20</sup> including inter alia by promoting sustainable development.

The United Kingdom articulated several factors influencing security, such as changing energy supply, competition over scarce energy resources, security of supply, and the role energy resources play once conflict has broken out.<sup>21</sup> Other areas for discussion include:

(a) Border disputes

A significant proportion of current threats to international peace and security are disputes over borders or land. Melting ice and rising sea levels caused by climate change are likely to result in major changes to the world's physical landmass during this century. Will political and maritime borders change as well? Areas of concern include the possible submergence of entire small island States, dramatically receding coastlines, and the development of new shipping routes. . . .

(b) Migration

On current projections, substantial parts of the world risk being left uninhabitable by rising sea levels, reduced freshwater availability or declining agricultural capacity. This will exacerbate existing migratory pressures from rural areas to cities, from unproductive land to more fertile land, and across international

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<sup>19</sup> *Id.* at 2.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

borders. Some estimates suggest up to 200 million people may be displaced by the middle of the century. . . .

(d) Other resource shortages

Climate change is likely to make essential resources (notably freshwater, cultivable land, crop yields and fish stocks) more scarce in many parts of the world, particularly in already vulnerable societies. Resource scarcity threatens people's livelihoods, especially when changes occur relatively quickly. Much depends on the adequacy of adaptation strategies. But increased scarcity increases the risk of competition over resources within and between communities and States. This can create instability, increasing vulnerability to conflict. This is already well documented in the case of freshwater, whose availability may decrease by at least 20-30 per cent in some regions as a result of climate change, while populations continue to increase.<sup>22</sup>

Discussion in the Security Council could focus on identifying and prioritizing the impact of climate risks on security, developing a shared understanding of climate-related factors, articulating the Security Council's role in integrated conflict prevention, improving effective support for those at increased risk of instability, and identifying contributions that the U.N. Secretariat can make to inform Security Council and U.N. membership of climate risks to security.<sup>23</sup> The U.S. Military Advisory Board explains that:

Climate change acts as a threat multiplier for instability in some of the most volatile regions of the world. Many governments in Asia, Africa, and the Middle East are already on edge in terms of their ability to provide basic needs: food, water, shelter and stability. Projected climate change will exacerbate the problems in these regions and add to the problems of effective governance.<sup>24</sup>

On April 17, 2007, the Security Council held an open debate on energy, security, and climate.<sup>25</sup> Generally, issues placed on the Security Council's agenda must involve a threat to international peace and security.<sup>26</sup> The United Kingdom has explained that climate

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<sup>22</sup> *Id.* at 3-4.

<sup>23</sup> *Id.* at 5.

<sup>24</sup> THE CNA CORP., U.S. MILITARY ADVISORY BD., NATIONAL SECURITY AND THE THREAT OF CLIMATE CHANGE 45 (2007), available at <http://securityandclimate.cna.org/report/National%20Security%20and%20the%20Threat%20of%20Climate%20Change.pdf>.

<sup>25</sup> Climate Change and its Possible Security Implications, G.A. Res. 63/281, ¶ 4, U.N. Doc. A/63/L.8/Rev.1 (May 18, 2009) [hereinafter G.A. Res. 63/281].

<sup>26</sup> U.N. Charter art. 39; see also *U.N. Council Hits Impasse Over Debate On Warming*, N.Y. TIMES, Apr. 18, 2007, at A6; James Bone, *Britain Puts Climate Change on UN*



change poses such a threat and pointed to the fact that the council has similarly addressed AIDS. Yet, work remains to be done to build consensus among Security Council members in order for the Security Council to play an effective role in addressing climate impacts on security. Meanwhile, U.N. Secretary General Ban Ki-moon has declared climate change as large a threat to mankind as war.<sup>27</sup> Further, the General Assembly passed a resolution on June 3, 2009, on Climate Change and its Possible Security Implications which:

1. *Invites* the relevant organs of the United Nations, as appropriate and within their respective mandates, to intensify their efforts in considering and addressing climate change, including its possible security implications;
2. *Requests* the Secretary-General to submit a comprehensive report to the General Assembly at its sixty-fourth session on the possible security implications of climate change, based on the views of the Member States and relevant regional and international organizations.<sup>28</sup>

While representatives such as Switzerland called for stronger reference to the Security Council's role, the General Assembly reached consensus to address issues raised by the Pacific Small Island Developing States, who emphasized that rising seas were, sooner than predicted, eroding territory, compromising freshwater and food capacity, and necessitating migration that could impact international peace and security.<sup>29</sup> The General Assembly agreed to deal with

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*Agenda*, TIMES (London), Mar. 8, 2007, at 6; Daniel Trotta, *U.N. Security Council to Debate Climate Change*, REUTERS, Apr. 4, 2007, <http://www.reuters.com/article/topNews/idUSN0435450020070404>; *Darfur, Climate Change Lead Issues for Security Council Discussion this Month*, UN NEWS CENTRE, Apr. 4, 2007, <http://www.un.org/apps/news/story.asp?NewsID=22135&Cr=Security&Cr1=Council>.

<sup>27</sup> Hilary Osborne et al., *Climate Change is Our Top Priority, Says UN Chief*, GUARDIAN (London), Mar. 2, 2007, <http://www.guardian.co.uk/environment/2007/mar/02/climatechange.climatechangeenvironment> ("Climate change poses at least as big a threat to the world as war, the new UN secretary general, Ban Ki-moon, warned last night.")

<sup>28</sup> G.A. Res. 63/281, *supra* note 25, ¶¶ 10–11.

<sup>29</sup> Press Release, General Assembly, General Assembly, Expressing Deep Concern, Invites Major United Nations Organs to Intensify Efforts in Addressing Security Implications of Climate Change, U.N. Doc. GA/10830 (June 3, 2009) [hereinafter General Assembly Press Release], available at <http://www.un.org/News/Press/docs/2009/ga10830.doc.htm>; see also Statement by H.E. Marlene Moses, Permanent Representative, Permanent Mission of the Republic of Nauru to the United Nations on Behalf of the Pacific Small Island Developing States to Introduce Draft Resolution A/63/L.8/Rev.1 "Climate Change and its Possible Security Implications" Under Agenda Item 107: Follow-up to the Outcome of the Millennium Summit, June 3, 2009, available at [http://www.islandsfirst.org/updates/resolution\\_statement\\_nauru.pdf](http://www.islandsfirst.org/updates/resolution_statement_nauru.pdf) (noting that Pacific Small Island

climate change in a holistic manner that would address the security implications for high-risk populations.<sup>30</sup> The resolution passed by consensus with 101 cosponsors, including China and the United States.<sup>31</sup> It marks one of the first international instruments to make the link between security and climate change.<sup>32</sup>

Pacific Islanders point out that addressing climate change can avert migration as many do not want to be absorbed into populations already struggling to interact with ethnic minorities.<sup>33</sup> Tarita Holm of the Palauan Ministry of Resources and Development notes that “[i]t is about much more than just finding food and shelter. . . . It is about your identity.”<sup>34</sup> Children and the elderly have the most difficult experiences finding countries willing to take them in.<sup>35</sup> While New Zealand is one of the first countries to establish a policy on integrating migrants displaced by climate change, New Zealand’s Pacific Access Category allows only 400 able-bodied adults between the ages of eighteen and forty-five to immigrate.<sup>36</sup> While New

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Developing States (PSIDS) with presence at the United Nations include: Federated States of Micronesia, Fiji, Nauru, Palau, Papua New Guinea, Republic of the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu).

<sup>30</sup> Press Release, General Assembly, *supra* note 29, at 1.

<sup>31</sup> Press Release, Federated States of Micronesia, Island Nations Pass U.N. General Assembly Resolution on Climate Change and Security (June 15, 2009), *available at* <http://www.fsmgov.org/press/pr061509.htm> (“Today, the General Assembly of the United Nations unanimously passed a resolution urging the relevant organs of the U.N. to intensify their efforts to address the security implications of climate change. The passage of the resolution marks the culmination of a year-long campaign by a coalition of Pacific small island developing states (PSIDS) to focus the attention of the international community on the security aspects of climate change including matters of international peace and security which fall under the mandate of the Security Council.”).

<sup>32</sup> *Id.*; see also *GA Resolution: “Climate Change and its Possible Security Implications,”* U.N. NON-GOVERNMENTAL LIAISON SERVICE, June 17, 2009, <http://www.un-ngls.org/spip.php?article1381> (“The General Assembly on 3 June 2009 unanimously adopted a resolution titled ‘Climate change and its possible security implications’. . . . Member States were divided on issues such as the role of the Security Council: while some delegates preferred a stronger reference to the Security Council’s role in addressing the crucial challenge, others felt that the resolution must not undermine the primary responsibility of the General Assembly, and in some areas the Economic and Social Council, in addressing climate change from the viewpoint of sustainable development and the eradication of poverty.”).

<sup>33</sup> *Id.*

<sup>34</sup> Neil MacFarquhar, *Islanders Fearing Climate Change Press a U.N. Debate*, N.Y. TIMES, May 29, 2009, at A4.

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

<sup>36</sup> *Id.*; see also KOLMANNSSKOG, *supra* note 1, at 28 (“The Pacific Access Category (PAC) is an immigration agreement with New Zealand.”).

Zealand accepts seventy-five Tuvaluans a year,<sup>37</sup> Reuters notes that many of “those fleeing the consequences of climate change will find themselves in a legal limbo.”<sup>38</sup> The U.N. High Commissioner for Refugees (UNHCR) recognizes that climate change could dislocate six million people a year.<sup>39</sup>

The international community needs to clarify the legal status of individuals left homeless by climate change-induced food and water shortages and other factors that will likely permanently dislocate up to 250 million people by 2050.<sup>40</sup> It is far more sensible to take all possible measures to avert the need for migration than it is to referee the mass relocation of people and facilitate their integration into new communities across the globe. Yet, the international community remains overwhelmed by the prospect of addressing even a single nation’s unraveling due to climate-induced reductions in natural resources. The Darfur region of Sudan continues to witness widespread violence between nomads and villagers over water and other scarce natural resources.<sup>41</sup>

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<sup>37</sup> Megan Rowling, *Climate Refugees In Political Pass-The-Parcel*, REUTERS (London), Mar. 13, 2008, <http://uk.reuters.com/article/idUKL1084229020080313>.

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

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

<sup>40</sup> *Id.*; see also John H. Knox, *Linking Human Rights and Climate Change at the United Nations*, 33 HARV. ENVTL. L. REV. 477, 477–78 (2009) (“In January 2009, the Office of the U.N. High Commissioner for Human Rights (“OHCHR”) became the first international human rights body to examine the relationship between climate change and human rights. The OHCHR report reaches several important conclusions: (1) climate change threatens the enjoyment of a broad array of human rights; (2) climate change does not, however, necessarily violate human rights; (3) human rights law nevertheless places duties on states concerning climate change; and (4) those duties include an obligation of international cooperation. . . . [T]he report does take a position on one key issue: it makes clear that those duties are not limited territorially. In particular, it emphasizes that states have an international duty to cooperate in order to realize human rights, and that this duty is especially important with respect to climate change, an inherently global threat to human rights.”).

<sup>41</sup> MacFarquhar, *supra* note 34, at A4; see also Burleson, *Middle Eastern and North African Hydropolitics: From Eddies of Indecision to Emerging International Law*, *supra* note 15, at 421; Burleson, *Water is Security*, *supra* note 15, at 198; Elizabeth Burleson, *Climate Change Consensus: Emerging International Law*, 34 WM. & MARY ENVTL. L. & POL’Y REV. (forthcoming 2010); Andrew Heavens, *Darfur Conflict Ravages Environment*, REUTERS, Dec. 10, 2008, <http://www.reuters.com/article/idUSTRE4B91X42008120> (“People caught up in the five-year crisis have cut down large areas of woodland, partly to feed a booming war-fueled construction industry. . . .”); Neil MacFarquhar, *Security Council Members Push to Condemn Sudan*, N.Y. TIMES, June 6, 2008, at A10 (“The chief prosecutor of the International Criminal Court presented a grim portrait of conditions in the Darfur region of Sudan to the Security Council on Thursday, as a majority of Council members pushed for what would be the first statement in three years condemning the

Due to sea level rise, Tuvalu's predicted lifespan is less than fifty years.<sup>42</sup> Tuvalu and other small island nations face the prospect of extinction without successor states.<sup>43</sup> This raises the serious problem of statelessness.<sup>44</sup> The UNHCR estimates that roughly fifteen million people are stateless.<sup>45</sup> Displacement of people within nation-states also continues to overwhelm individuals, aid agencies, and countries. For instance, a program to relocate Palau residents has met with resistance as residents of larger islands forced newcomers back to submerging islands.<sup>46</sup> Over eleven million people have been displaced by conflict and natural disaster in Central and East Africa.<sup>47</sup>

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Sudanese government. . . . 'The entire Darfur region is a crime scene,' Luis Moreno-Ocampo, the prosecutor, told the Council, saying the government of Sudan had been bombing schools, markets and water installations . . . . He said the strategy of Sudan's government in trying to deflect international attention reminded him of how the military junta in his native Argentina reacted to the notorious disappearances of the 1970s when political opponents were kidnapped and killed . . . . 'The Security Council has been too shy in responding to Sudan's refusal to comply with regards to Darfur,' said Bruno Stagno Ugarte, Costa Rica's foreign minister. . . . 'The ghosts of Srebrenica and Rwanda should awaken us to the fact that some in Sudan believe that the graves in Darfur are not sufficiently full.' . . . Secretary General Ban Ki-moon issued a statement expressing his 'deep concern' over the lack of cooperation from Sudan as demanded by Security Council Resolution 1593 in 2005.'"); *Sudan and Chad: A Bloody Tit-for-tat*, ECONOMIST, May 15, 2008, at 59-60; Ellen Knickmeyer, *Israel to Block New Refugees From Darfur*, WASH. POST, Aug. 20, 2007, at A10; Nick Bryant, *Australia in African Refugee Ban*, BBC NEWS, Oct. 3, 2007, <http://news.bbc.co.uk/2/hi/asia-pacific/7025386.stm> ("A freeze on the settlement of refugees from Africa—including those from Sudan's Darfur region—has been announced by the Australian government."); Jeffrey Gettleman, *Darfur Withers as Sudan Sells Food*, N.Y. TIMES, Aug. 9, 2008, at A1 ("Even as it receives a billion pounds of free food from international donors, Sudan is growing and selling vast quantities of its own crops to other countries . . . . The country is already growing wheat for Saudi Arabia, sorghum for camels in the United Arab Emirates and vine-ripened tomatoes for the Jordanian Army."); Mia Farrow & Eric Reeves, *Now Sudan Is Attacking Refugee Camps*, WALL ST. J., Sept. 6, 2008, at A9 (discussing the weak international response in Darfur).

<sup>42</sup> Reuters, *Tuvalu: A Cry for Help*, N.Y. TIMES, Sept. 14, 2007, at A6 ("[T]he ocean will swallow the country in 30 to 50 years."); Maryam Omid, *Budget Cuts To Keep Maldives Away From U.N. Climate Talks*, REUTERS, Aug. 19, 2009, <http://www.reuters.com/article/idUSCOL342180> ("The Maldives on Wednesday said a budget crisis will keep its president from attending landmark U.N. climate talks, the results of which could have a huge effect on the future of the low-lying archipelago."); Michael Perry, *Sinking Pacific Nations Face Uncertain Games Future*, REUTERS, Aug. 8, 2008, <http://www.reuters.com/article/idUSSP31129620080807>.

<sup>43</sup> MacFarquhar, *supra* note 34, at A4.

<sup>44</sup> KOLMANNSSKOG, *supra* note 1, at 4.

<sup>45</sup> *Id.* at 28.

<sup>46</sup> MacFarquhar, *supra* note 34, at A4.

<sup>47</sup> *Over 11 mln Displaced In Central, East Africa—UN*, REUTERS, May, 22, 2009, <http://www.reuters.com/article/idUSN18437643>.

"There were about 25 million ecomigrants in the world a little more than a decade ago . . . . That number is now 'a good deal higher,'" according to Norman Myers of Oxford University.<sup>48</sup>

### III

#### INTERNATIONAL COOPERATION

Wet regions will experience wetter conditions and dry regions will experience drier conditions, according to the Intergovernmental Panel on Climate Change (IPCC).<sup>49</sup> The Washington Post notes that:

In Bangladesh, about 12 million to 17 million people have fled their homes in recent decades because of environmental disasters—and the low-lying country is likely to experience more intense flooding in the future. In several countries in Africa's Sahel region, bordering the Sahara, about 10 million people have been driven to move by droughts and famines. In the Philippines, upwards of 4 million people have moved from lowlands to highlands as a result of deforestation.<sup>50</sup>

In reaction, India is building a 2100-mile fence along its border with Bangladesh.<sup>51</sup> Spain has aired advertisements in West Africa in an effort to reduce illegal immigration.<sup>52</sup> Protection of endangered species such as the ocelots led to litigation to halt construction of the

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<sup>48</sup> Shankar Vedantam, *Climate Fears Are Driving 'Ecomigration' Across Globe*, WASH. POST, Feb. 23, 2009, at A1.

<sup>49</sup> Intergovernmental Panel on Climate Change, *Technical Paper on Climate Change and Water*, at 32, IPCC-XXVIII/Doc.13 (Apr. 9–10, 2008), available at <http://www.ipcc.ch/meetings/session28/doc13.pdf>.

<sup>50</sup> Vedantam, *supra* note 48, at A1 ("President Anote Tong of Kiribati asked the international community . . . to start thinking of ways to help entire nations relocate to higher ground. He called for an international fund to buy land for such mass migrations and said his nation's citizens are prepared to pay for a new homeland. Many citizens of Kiribati are attempting to migrate to New Zealand, and Tong said he is arming his people with skills in vocations such as plumbing that would be valuable in other countries.").

<sup>51</sup> Lisa Friedman, *How Will Climate Refugees Impact National Security?*, SCIENTIFIC AMERICAN.COM, Mar. 23, 2009, <http://www.scientificamerican.com/article.cfm?id=climate-refugees-national-security>.

<sup>52</sup> *Spain Begins Anti-Migration Ads*, BBC NEWS, Sept. 20, 2007, <http://news.bbc.co.uk/2/hi/africa/7004139.stm> ("But 2006 was a record year for the immigrant boats, fishing canoes known as cayucos. Officials list 31,678 people reaching the Canaries, against 4,767 in 2005. An estimated 6,000 died of drowning, thirst or starvation—although no-one has any idea of exactly how many because no tally is kept of the numbers who set out."); see also Itziar Reinlein et al., *Storm Destroys Part Of Spain's North African Fence*, REUTERS, Oct. 26, 2008, <http://www.reuters.com/article/idUSB107976> ("A storm washed away part of a wall designed to keep out illegal immigrants crossing into Spain's North African enclave of Melilla on Sunday and heavy rains flooded many of the city's streets.").

U.S.-Mexico border fence.<sup>53</sup> The Bush administration waived over thirty environmental and land management laws to fast track the fence.<sup>54</sup> In the United States, over the “last decade the number of immigrants in detention each day has tripled from 10,000 in 1996 to more than 30,000 last year. . . . ‘Officials are locking up thousands of human beings without due process and holding them in a system that is impossible to navigate,’ said Larry Cox, executive director of Amnesty International USA.”<sup>55</sup> Due process, in particular, and rule of law, generally, are core principles for the United States. If the country with the largest economy struggles to humanely process the inflow of immigrants across borders, then it is unclear whether other countries will be able or willing to implement universal human rights thresholds.

Human rights and environmental issues are often the flip side of the same coin—be it in relation to water availability, energy use, or climate resilience. This author has been in life threatening ice storms, wildfires, floods, and hurricanes. She has suffered through Europe’s heat wave of 2003, as well as heat-related blackouts in New York and New Delhi. As cities swell, rapid and chaotic urbanization illustrates the struggle facing the international community to meet the needs of humanity. Sand bags are insufficient. Resilience is required and can best be facilitated through preparation. Such disaster preparation

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<sup>53</sup> Juliet Eilperin, *U.S.-Mexican Border: Researchers Fear Southern Fence Will Endanger Species Further*, WASH. POST, Apr. 20, 2008, at A3; see also John Burnett, *Nature Conservancy Fights Planned Border Fence*, NPR, Jan. 26, 2009, available at <http://www.npr.org/templates/story/story.php?storyId=99882066&ft=1&f=1001>; Julia Preston, *Environmental Laws Waived to Press Work on Border Fence*, N.Y. TIMES, Oct. 23, 2007, at A27.

<sup>54</sup> Eilperin, *supra* note 53, at A3; see also *A Fence in the North, Too: Canada and the United States*, ECONOMIST, Mar. 1, 2008, at 40. (“Volunteer firemen from Quebec racing to fight a hotel blaze in upstate New York late last year were detained so long at the border that by the time they reached the scene the building had burned to the ground. After a Canadian ambulance carrying a patient requiring emergency surgery was stopped en route to Detroit, Stockwell Day, the security minister, asked Michael Chertoff, his American counterpart, to review border procedures.”); *Mexico Deports Stranded Migrants*, BBC NEWS, Aug. 15, 2007, <http://news.bbc.co.uk/2/hi/americas/6948263.stm> (“Hundreds of illegal immigrants have been deported from Mexico . . . Central American immigrants are known to cross Mexico’s southern border illegally on their way to the US.”).

<sup>55</sup> *U.S. Treatment of Immigrant Detainees Violates Human Rights, Report Says*, GUARDIAN (London), Mar. 25, 2009, <http://www.guardian.co.uk/world/2009/mar/25/amnesty-immigrants-detainees-human-rights> (“Amnesty International charges the U.S. government violates human rights by allowing tens of thousands of people to languish in custody every year without receiving hearings to determine whether their detention is warranted.”).

measures employed as early warning systems are crucial, but the international community must also come to terms with the millions of people that rely on water from vanishing glaciers on the Tibetan plateau. "Climate change is a crisis multiplier," according to the World Food Programme, which has recently signed a Memorandum of Understanding with the World Meteorological Organization to share information with which to predict future emergency food shortages.<sup>56</sup> Interpreting weather data can strengthen emergency preparedness as less predictable precipitation leads to food insecurity.<sup>57</sup>

When disasters strike, governments could provide tax rebates for those willing to take in dislocated individuals, be they internally displaced or of official refugee status. Regardless of the manner in which the government provides a safety net, it is important that governments recognize and act upon their responsibilities to do so. The breadth of such a safety net will vary from country to country, but the international community has gone to great lengths to establish universal thresholds.

Extending protection to climate displacement is feasible. The U.N. International Law Commission (ILC) has taken up the task of considering protection of persons in the event of disasters. The ILC has determined that humanitarian assistance is an important element to consider and that a rights-based approach that encompasses the "responsibility to protect" should also be considered.<sup>58</sup> Work is proceeding in the form of draft articles, whose binding force will be decided in the future. The ILC has decided to exclude armed conflict,

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<sup>56</sup> *New UN Pact Aims to Boost Sharing of Climate-related Data to Fight Hunger*, UN NEWS CENTRE, Sept. 4, 2009, <http://www.un.org/apps/news/story.asp?NewsID=31955&Cr=hunger&Cr1=climate>.

<sup>57</sup> *Id.*; see also Tsegaye Tadesse, *Africa Wants \$67 Billion a Year to Fight Climate Change*, REUTERS, Aug. 25, 2009, <http://www.reuters.com/article/idUSTRES7N26M20090824> ("African leaders will ask rich nations for \$67 billion per year to mitigate the impact of global warming on the world's poorest continent . . .").

<sup>58</sup> Eduardo Valencia-Ospina, *Second Report on the Protection of Persons in the Event of Disasters*, Geneva, May 7, 2009, U.N. Doc. A/CN.4/615, available at [http://untreaty.un.org/ilc/documentation/english/a\\_cn4\\_615.pdf](http://untreaty.un.org/ilc/documentation/english/a_cn4_615.pdf) (noting that the ILC presented the question: "How has the United Nations system institutionalized roles and responsibilities, at global and country levels, with regard to assistance to affected populations and States in the event of disasters—in the disaster response phase but also in pre- and post-disaster phases—and how does it relate in each of those phases with actors such as States, other intergovernmental organizations, the Red Cross movement, non-governmental organizations, specialized national response teams, national disaster management authorities and other relevant actors?").

but not to draw a strict line between man-made and natural disasters since both produce similar results. They have resolved to cover disaster response and post-disaster recovery. Work will focus upon state-to-state rights and obligations, as well as rights and obligations of states toward individuals needing protection.<sup>59</sup>

Half of the internally displaced persons in the world reside in Africa.<sup>60</sup> Four million of the twelve million internally displaced persons on the continent are in Sudan.<sup>61</sup> In October 2009, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) opened for signature.<sup>62</sup> Once fifteen of the African Union's fifty-three members ratify the convention, it can come into effect.<sup>63</sup> Working with the framework of the U.N. interagency collaborative approach to internally displaced persons, the COP/MOP of the UNFCCC and Kyoto Protocol should consider adopting many of the African Union Convention articles. Climate negotiators should try to include both internally and transnationally climate-displaced people by adopting the Article 4(2) requirement that "States Parties shall devise early warning systems, in the context of the continental early warning system, in areas of potential displacement, establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures and, where necessary, provide immediate protection and assistance to internally displaced persons;"<sup>64</sup> the Article 5(4) requirement that "States Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change;"<sup>65</sup> and the Article 9(2)(j) requirement that States Parties "[t]ake necessary measures to safeguard against environmental degradation in areas where internally displaced persons are located, either within the jurisdiction of the States Parties, or in areas under

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<sup>59</sup> *Id.*

<sup>60</sup> *Selective Rescue: Protecting Displaced Africans*, *ECONOMIST*, Oct. 29, 2009, at 60.

<sup>61</sup> *Id.*

<sup>62</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), *adopted* Oct. 22, 2009, *available at* [http://www.africa-union.org/root/AR/index/Convention%20on%20IDPs%20\\_Eng\\_%20-%20Final.pdf](http://www.africa-union.org/root/AR/index/Convention%20on%20IDPs%20_Eng_%20-%20Final.pdf).

<sup>63</sup> *Id.* at art. 17(1).

<sup>64</sup> *Id.* at art. 4(2).

<sup>65</sup> *Id.* at art. 5(4).



their effective control.”<sup>66</sup> Coordinating post-Kyoto climate instrument language with the new African Convention could help facilitate international cooperation to assist individuals displaced by climate change.

#### IV CONCLUSION

The legal status of climate-displaced individuals should be set forth explicitly within the adaptation commitments under the post-Kyoto climate instrument. Beyond agreeing to cooperate on displacement, countries should recognize obligations to assist people who have become displaced due to climate change. Individuals within the effective control of given nation-states should be protected by those nation-states from climate change risks. If a country does not have the capacity to do so, then the international community should facilitate partnerships that combine international funding and implementation of adaptation that includes displacement assistance. International institutions can coordinate monitoring, funding, and widespread assistance efforts. Collective obligations to peace and security already bind member states of the United Nations to transnational coordination. While climate-displaced individuals may not fear the countries from which they flee in the way that politically persecuted refugees have, it is important to fill the gap that leaves those displaced by climate change in legal limbo.

The UNFCCC framework focuses on cooperation between countries, but it also has the capacity to address individuals displaced by climate change within the context of adaptation. Doing so would encompass assistance to individuals who cross international borders as well as those who are internally displaced within a given country. Climate negotiations within existing adaptation forums can fine-tune the scope of coverage with respect to the kind of migration and environmental harm covered. Sticking points such as whether migration should be included or whether individuals should be required to return to their countries of origin can be dealt with in a coordinated manner. While a given natural disaster cannot be attributed to climate change with certainty, the IPCC has already set forth a range of events that are highly likely to result from climate change. These include gradual as well as sudden disruption. Thus,

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<sup>66</sup> *Id.* at art. 9(2)(j).

both flash floods and ongoing desertification can qualify when determining the scope of climate displacement. Such a legal provision should establish a legal status for climate refugees that encompasses both basic human rights protections and humanitarian aid. The existing differentiated obligations approach taken in the international climate change legal framework is the best forum for coordinating international adaptation commitments. This can avert the fragmentation of international law and forum shopping. It also decreases the overhead of having multiple funds addressing aspects of adaptation.

The adaptation fund can be central in assisting climate-displaced individuals. As existing humanitarian bodies have begun campaigning for aid assistance to address climate change displacement, coordination can continue to ramp up capacity to help climate displaced individuals.

As the UNHCR recognizes, “[i]nternational human rights law complements the U.N. Framework Convention on Climate Change by underlining that international cooperation is not only expedient, but also a human rights obligation.”<sup>67</sup> Every effort should be made to ensure that climate change does not erode Millennium Development Goals in particular and sustainable development generally. Whether funds are derived from the proceeds of carbon trading under international climate instruments or funded by nation states and regional organizations with the capacity to make substantial investments, we must implement climate change mitigation, adaptation, funding, environmentally sound technology transfer, and a timely humanitarian response to climate-induced migration.

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<sup>67</sup> UNHRC, *Annual Report of the United Nations High Commissioner For Human Rights and Reports of the Office of the High Commissioner and the Secretary-General*, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009), available at [http://www.ohchr.org/Documents/Press/HC\\_Annual\\_report.pdf](http://www.ohchr.org/Documents/Press/HC_Annual_report.pdf); see also Laura MacInnis, *U.N. Human Rights Body Turns to Climate Change*, REUTERS, Mar. 28, 2008, <http://www.reuters.com/article/africaCrisis/idUSL28896962>; Laura MacInnis, *Red Cross Says Changing Climate Worsens Disasters*, REUTERS, Jan. 21, 2008, <http://www.reuters.com/article/idUSL2170391920080121>; Press Release, UNHCR, UNHCR and Google Unveil New Map Programme for Humanitarian Operations (Apr. 8, 2008), available at <http://www.unhcr.org/news/NEWS/47f5e7e02.html>. (“The ‘Google Earth Outreach’ programme gives UNHCR and other humanitarian agencies the ability to use Google Earth and Maps to highlight their work on behalf of millions of refugees and other populations of concern in some of the world’s most remote and difficult areas.”).

