INVESTIGATING BILATERAL AND REGIONAL AGREEMENTS TO ACCOMMODATE CLIMATE-INDUCED MIGRATION

RACHEL STEINIG

Dr. Beth Simmons

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Abstract

Climate change has already begun causing displacement. This isn't a new problem: since 2008, an average of 24 million people have been displaced each year by catastrophic weather disasters. There are currently 70.1 million forcibly displaced people worldwide - this is the highest level on record ever. However, climate migrants are not considered refugees under international law, according to the definition of a refugee adopted in the 1951 Convention on Refugees, and thus lack legal protections. In my thesis I investigated the role of bilateral and regional agreements to provide protection and asylum for climate refugees. My research question was: what are the conditions under which states agree to legally binding instruments to accommodate climate-induced migration? I hypothesized that states will attempt to minimize their commitments to accepting climate-displaced persons and emphasize that they are not establishing precedent for accepting climate-displaced persons in the future. I collected nine case studies of bilateral and regional agreements that have either a) been implemented and have provided protection for climate-displaced persons (positive cases), or b) been proposed but never implemented (negative cases). My hypothesis proved correct: when accepting climate-displaced people, except for in the case of New Zealand, governments were careful to emphasize the specific extraordinary circumstances that were present, avoid language surrounding climate change, and fail to acknowledge climate-displacement as a phenomenon, yet alone pledge to address it in the future by accepting displaced people.

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Part I: Background

In this section, I provide an introduction on climate displacement, and then transition to provide an overview of the existing international legal framework which does not provide protections for climate-displaced persons. I will lastly discuss different proposed approaches to accommodate climate displacement and justify my choice of a focus on bilateral and regional instruments.

A) Climate Displacement

Climate change has already begun causing displacement. This isn't a new problem: since 2008, an average of 24 million people have been displaced each year by catastrophic weather disasters (International Displacement Monitoring Center 2019). There are currently 70.1 million forcibly displaced people worldwide - this is the highest level on record ever (UNHCR 2020). Latin America, Sub-Saharan Africa, and South Asia will generate 143 million more internally displaced climate migrants by 2050. Approximately 17 million people will likely be displaced in Central America, representing 2.6% of the region's population (World Bank 2018). "On average, one person is displaced every second by a disaster-related hazard. In global terms, that is about twenty-six million people a year" (McAdam 2017, 1). The number of climate-related disasters has increased over time as well: over the past decade the number increased from approximately 200 to 400 per year, and the number of people affected by disasters tripled over the past decade with an average of 211 million people directly affected each year (Kälin and Schrepfer 2012, 4-7). Almost 95 million people were internally displaced by sudden-onset natural disasters from

2008-2010, according to the Norwegian Refugee Council's Internal Displacement Monitoring Centre (Kälin and Schrepfer 2012, 11).

There is much debate over numerical predictions of people displaced by climate change. The number of people displaced by climate change will continue to rise in the future, although projections vary considerably and depend upon how "climate-displaced persons" are defined. The maximalist school of thought projects that millions or up to a billion people will be displaced by climate change: for example, one projection estimates that 150 - 200 million people will be displaced by climate change by 2050 (Kälin and Schrepfer 2012, 11). The minimalist school of thought argues that few people will be displaced as a result of climate change because in most cases it is too difficult to link human mobility and climate change. The vast discrepancy in numerical projections between the two schools of thought is due to their utilization of different definitions of "climate-displaced persons," with minimalists only counting those for whom migration was *only* caused by climate change and no other factors (which would be exceedingly rare given that migration is multicausal), and maximalists counting anyone who moved for reasons related to climate change.

While it is challenging to predict the exact number of people who will be displaced by climate change, Kälin and Schrepfer argue states should adopt a protection perspective, which highlights "the need to address displacement and migration in the context of climate change regardless of numbers because of the vulnerabilities such movements create for affected persons," (Kälin and Schrepfer 2012, 11) rather than a migration management perspective which prioritizes state interests and either adopts an alarmist maximalist stance that stokes fears about

massive inflows of migrants, or adopts a minimalist stance and downplays the severity of the issue and thus fails to act to implement policy.

This thesis is not based on any particular numerical prediction about climate displacement. When millions of people migrate due to climate change, whether climate change is just one potential factor in someone's decision to migrate, or whether the vast majority of climate-displaced persons remain within their national borders, it is proven that climate change exacerbates existing vulnerabilities and can increase pressure on vulnerable communities, and therefore climate change is relevant to global migration.

Climate change can be slow onset, such as sea level rise, heat waves, or desertification, which can lead to displacement and thus migration. However, natural disasters can also be a result of climate change and can cause displacement as well. One of the effects of slow onset processes such as sea level rise is the possibility of statelessness for those living in low-lying island states, such as Kiribati in the pacific. There are specifically 5 types of climate-induced movement that include migration prompted by sudden onset disasters, slow-onset degradation, sinking small island states, high risk zones that are dangerous for human habitation, and forced displacement due to violence or unrest caused by a scarcity of essential resources (Kälin and Schrepfer 2012). In terms of natural disasters, many are exacerbated by climate change, but others are unrelated (such as earthquakes). It can be difficult to prove that a climate-related event, such as a natural disaster, was truly caused by climate change. According to McAdam, however, it does not make sense to only offer protections to people displaced by certain types of natural disasters but not others.

Climate-induced displacement is a multicausal phenomenon: climate change functions as a threat amplifier and magnifies risk, meaning that disasters or slow-onset change on their own do not cause displacement but their interaction with other factors do. Disasters are not truly "natural" in the sense that human action determines the impact that they will have on the public: "disasters are always contingent on underlying social, economic, political, and environmental factors" (McAdam 2017, 3). Climate change does not itself always cause displacement, but it can *trigger* displacement due to its interaction with existing phenomena. Whether climate change will trigger displacement depends on a combination of three elements: the intensity, score, and frequency of the climate-related hazard, the vulnerability of affected people to the event, and the capacities of those affected to cope with it (Kälin and Schrepfer 2012, 7). However, even if climate change interacts with existing vulnerabilities and people migrate, it is challenging and perhaps impossible to determine whether people migrated because of climate change or because of the existing vulnerabilities.

Each community or state will have a different "tipping point" at which their coping capacity is exceeded, and they will no longer be able to effectively manage the disaster. Tipping points can also vary within communities, with the most vulnerable populations more at risk for climate displacement. Good governance is an example of a factor that can improve climate resilience and make displacement less likely. Tipping points can also vary globally, with countries in the Global South less equipped to deal with the effects of climate change due to a lower coping capacity and higher vulnerability, which have a negative impact on resilience.

Critiques of the Concept of Climate Displacement

As briefly touched upon above with reference to the minimalist school of thought regarding numerical predictions of climate displacement, there is ample criticism of the concept of climate displacement. While some scholars, such as Kälin and Schrepfer, criticize the maximalist school of thought, other scholars go further and criticize the entire concept of climate displacement. Hartman argues that rhetoric surrounding "climate refugees" and "climate conflict" contributes to a threat narrative that is unhelpful and even dangerous. She argues that the concept of climate displacement "naturalises the economic and political causes of environmental degradation and masks the role of institutional responses to it," (Hartmann 2010, 235) or, as Kibreab writes, to "depoliticize the causes of displacement" (Kibreab 1997, 21). According to these scholars, the concept of climate displacement blames climate change rather than governments for displacement, when in fact, for displacement to occur, climate change must interact with political and economic factors.

In addition, Hartman cites the over exaggerations of these narratives of climate migration and climate conflict, contrasting with the lack of supporting evidence for these phenomena. She argues that these narratives have gained popularity because they "draw on deep-seated fears and stereotypes of the dark-skinned, over-breeding, dangerous poor" (Hartmann 2010, 238). In addition, these narratives, especially that of climate conflict, which paints climate change as a security threat, feed the interests of the U.S. national security establishment, such as by justifying certain development and military interventions in the Global South. Therefore, Hartman argues that the narratives of climate change as a security threat are harmful and that "Those who continue playing the climate refugee and conflict card are raising the stakes unnecessarily and

threatening to militarize not only climate policy, but also development aid" (Hartmann 2010, 242).

In conclusion, while there is much debate over how many people are displaced by climate change, climate change functions as a threat amplifier and magnifier, exacerbating already-existing vulnerabilities and inequalities. Climate change can trigger displacement depending on the intensity and frequency of the climate-related hazard, the vulnerability of affected people, and the coping capacity. However, there are valid criticisms of the terms "climate migration" and "climate-displaced persons" due to their reductionist nature and contribution to a "threat narrative" which feeds into U.S. national security interests. Keeping in mind these critiques, this thesis does use the term "climate-displaced persons" to refer to those who are displaced at least *in part* because of climate change.

Given that climate displacement is a relatively recent phenomenon, it has not been addressed in international law. The 1951 Refugee Convention is the most important legal document for displaced-persons, and it does not address climate displacement. Thus, the international legal framework that deals with refugees does not accommodate climate displacement. Refugee law was not created with climate displacement in mind, so it can be a challenge to adapt existing law to meet the needs of climate-displaced persons. In this next section of the background, I provide a brief overview of existing refugee law.

B) Legal Framework

As mentioned above, the most relevant legal document in refugee law is the 1951 Refugee Convention, which defines a refugee as someone who,

"owing to wellfounded 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" (UNHCR 1951, 14).

As evident, this does not include climate change as a protected ground. The Convention outlines several other important principles that are relevant to climate-displaced persons. The Convention outlines nondiscrimination (Article 3) towards refugees based on prohibited grounds of discrimination (that over time have evolved to protect against discrimination on the basis of sex, age, disability, sexuality, etc.). The Convention states that refugees who enter another country illegally and were fleeing a territory where their life or freedom were threatened should not be punished or subject to penalty on account of their illegal entry (Article 31).

The Convention protects against expulsion of refugees (Article 32): "The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order." Lastly, the Convention prohibits "refoulement," or expulsion or return of refugees (Article 33), stating that "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of [the protected qualities in Article 1]."

In addition to the definition of "refugee" offered in Article 1, the principles of nondiscrimination, protections for illegal entry, and non-refoulement are useful in analyzing the migration of climate-displaced persons. For example, non-refoulement protects against migrants

being returned to places where they might suffer life-threatening circumstances, cruel treatment, or serious human rights violations. “Courts have yet to find that the impacts of climate change meet this threshold of harm, but this possibility has not been foreclosed” (UN Human Rights Council 2018, 22).

One important thing to note is that international law is not the only type of legal system that can determine who counts as a refugee: according to the High Commissioner for Human Rights, “A refugee is any person who meets the eligibility criteria in the refugee definition provided by *relevant international or regional refugee instruments or national legislation*” (UN Human Rights Council 22). Thus, a bilateral or regional treaty that included climate-displaced persons as a category of refugee would have to be followed, even if the international definition of refugee was not modified to offer such protections.

Climate-displaced persons will often not count as refugees, but in some specific situations, may. For example, if individuals migrate because of climate change and face serious harm or violations on account of one of the protected grounds in the Convention, they may count as a refugee. However, “This requires some form of ‘human agency’ or conduct by a State or non-State actor that contributes to a refugee’s predicament, not just the experience of or threats posed by the adverse impacts of climate change” (UN Human Rights Council 23). This ties into the concept of “confluence,” or the idea that climate change can exacerbate other processes that may on their own cause migration, such as armed conflict.

Persons in Need of International Protection

According to the UNHCR, "The need for international protection arises when a person is outside their own country and *unable to return home because they would be at risk there, and their country is unable or unwilling to protect them*" (UNHCR 2017, 1). Some of the risks that could lead to a need for international protection include violence, famine linked to armed conflict, persecution on the basis of sexual orientation, natural disasters, or being stateless. All people who would be considered refugees under international law are in need of international protection.

However, there exist implementation gaps in international law, and thus displaced individuals "who may not qualify as refugees under international or regional law, *may in certain circumstances also require international protection, on a temporary or longer-term basis*" (UNHCR 2017, 4). It is stated explicitly that people who are displaced because of natural disasters or the adverse effects of climate change, but who are not refugees, may fall under the definition of displaced people in need of international protection.

In some cases, displaced people who do not count as refugees may be protected against return on a humanitarian basis based on a fear of serious harm in their country or territory of origin. However, these conditions tend to be exceptional and temporary, such as natural hazards or public emergencies. In these cases, temporary protection or stay arrangements may prove useful.

Climate-Displaced Persons Definition

The International Organization for Migration has defined environmental migrants as "persons or groups of persons who, predominantly for reasons of sudden or progressive change

in the environment that adversely affects their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad" (IOM 2014, 13)

The IOM draws a distinction between the terms "environmental migrants" and "environmentally displaced persons." The IOM defines "environmentally displaced persons" as "persons who are displaced within their 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" (IOM 2014, 13).

Thus, environmentally displaced persons could include those both internally displaced (IDPs) as well as migrants, or those who cross international borders (using "migrant" in this sense as an umbrella term). This distinction between "migrants" and "displaced persons" was intentional: the IOM explains that they use the latter term as an alternative to the terms "environmental refugee" or "climate refugee," as those terms have no legal basis. Thus, this term is used "to refer to a category of environmental migrants whose movement is of a clearly forced nature" (IOM). In this thesis I focus on "climate displaced persons," or those who had no choice but to flee their homes and, in the case of the group that I examine in my thesis, cross international borders.

Although the majority of climate migrants will become internally displaced, some will cross international borders. However, climate migrants are not considered refugees under international law, according to the definition of a refugee adopted in the 1951 Geneva Convention on Refugees, and thus lack legal protections. This lack of legal protection means that climate-displaced persons are ineligible to apply for refugee status or asylum, thus making it

more difficult to migrate. So, what can be done to afford climate-displaced persons legal protections?

Some scholars and practitioners argue that climate-displaced persons should be granted refugee status, either by redefining the term "refugee" or by creating a new legal category to accommodate them. However, others argue against this proposed approach, for a myriad of reasons. In the following section, I examine three buckets of approaches to this lack of legal protection: integration into existing refugee law, multilateral conventions or framework proposals, and bilateral and regional agreements, the last of which I argue is the most promising type of approach. These approaches all attempt to answer the problem which I have identified above: the lack of legal protections for climate-displaced persons. Lastly, I will address the importance of listening to local and Indigenous perspectives.

C) Proposed Approaches

Approach 1: Integration into Existing Refugee Law

Perhaps the most obvious solution to provide climate displaced persons with protections is to integrate them into existing refugee law. Some may argue that climate-displaced persons could get legal protection under the current definition of a refugee. For example, if individuals migrate because of climate change and face serious harm or violations on account of one of the protected grounds in the Convention, they may count as a refugee. However, "This requires some form of 'human agency' or conduct by a State or non-State actor that contributes to a refugee's predicament, not just the experience of or threats posed by the adverse impacts of climate change" (UNHRC 2018, 19). This ties into the concept of "confluence," or the idea that climate

change can exacerbate other processes that may on their own cause migration, such as armed conflict.

New Zealand case law has recognized that there could be a few limited situations in which refugee law could apply to offer protections to climate-displaced persons, but to do so there needs to have been a lack of an adequate government response. An example would be "if a government restricted access to fresh water supplies or to humanitarian assistance in the aftermath of a disaster, for a Convention reason, and as a consequence exposed people to treatment amounting to persecution" (McAdam 2017, 19). McAdam notes that the key factor for the case to be eligible would be that the act (or lack of action) by the government was the factor that caused the harm to the displaced person rather than the climate-related event.

While this makes sense theoretically, in practice it has never happened. According to Francis, "to date, no court has extended protection based on international refugee law to a climate migrant" (Francis 2019, 7). This demonstrates that the existing refugee definition under international law has not been successful at providing rights to climate-displaced persons. There have been multiple cases of climate-displaced people arguing that they should receive refugee protection from climate change impacts, but none of the cases were successful. While theoretically, existing international refugee law could be used to offer climate-displaced persons protection based on protected refugee grounds, given that it has never successfully been done it does not make sense to further pursue this option. The lack of success of using existing refugee law demonstrates the need for other types of solutions, such as bilateral or regional agreements.

Kälin and Schrepfer affirm the need for new international or regional instruments to offer protection given the infeasibility of applying existing refugee law: "New international or regional

instruments are needed that would define the conditions under which temporary (or permanent) admission and stay should be granted, the rights admitted persons would enjoy during their stay as well as the modalities of cooperation with the country of origin and international support/ burden-sharing mechanisms" (Kälin and Schrepfer 2012, 79). These types of instruments need not necessarily be multilateral agreements: bilateral or regional treaties could fit these parameters.

Approach 2: Multilateral Conventions or Framework Proposals

Various framework proposals on climate refugees have been advanced, such as a new international treaty on climate change displacement, or amending the 1951 Refugee Convention, but none have been implemented. Some argue that it would be ideal to change the international legal framework so as to offer protections for climate refugees, through steps such as expanding the U.N. Guiding Principles on Internal Displacement, expanding the Nansen Initiative to cover slow onset climate events, or adopting a Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) specifically dealing with climate refugees. Actors who have called for these multilateral instruments include scholars, states, and NGOs. "There is variation among these proposals as to how the displaced are defined, whether they would be subject to individual status determination (like Convention refugees), or whether protections would be extended *prima facie* on account of the objective country of origin conditions from which people flee" (McAdam 2011, 5).

Especially in the popular media, the argument that climate-displaced persons should be considered refugees is quite prevalent. For example, Koerth writes in FiveThirtyEight arguing

that the lack of international legal protections is problematic, and that we potentially need a "radical shift in the way we think about migration" (Koerth 2019), and John Podesta writes in Brookings arguing that "As severe climate change displaces more people, the international community may be forced to either redefine 'refugees' to include climate migrants or create a new legal category and accompanying institutional framework to protect climate migrants" (Podesta 2019). However, many experts argue that a new multilateral convention is not a feasible or wise solution.

The first reason why a multilateral legal solution is inadvisable is because it is not realistic: according to Nina Hall, a migration expert at Johns Hopkins University, "To get any progressive international policy, much less hard law, is almost impossible in today's climate. We're not going to get any kind of binding convention on displaced people due to climate change" (McDonnell 2018). Today's political climate is one of rising nationalism, xenophobia, and anti-immigrant sentiment, which makes a multilateral legal solution difficult, according to Podesta: "However, opening that debate [about a multilateral legal solution] in the current political context would be fraught with difficulty. Currently, the nationalist, anti-immigrant, and xenophobic atmosphere in Europe and the U.S. would most likely lead to limiting refugee protections rather than expanding them" (Podesta 2019). It is quite possible that, by even proposing a modification and expansion of the Refugee Convention, people could lose rights rather than gain them.

In "Seven Reasons the U.N. Convention Should Not Include 'Climate Refugees,'" McAdam argues that the Refugee Convention should not be amended and that its definition of a refugee is sufficient: "Indeed, the drafters were well aware that refugee protection was not a way

to bypass migration controls - on the contrary, refugee status determination exposes people to the most extreme vetting imaginable" (McAdam 2017). McAdam acknowledges that people displaced by climate change will not be afforded refugee protections, but argues that this is not a problem, and gives seven reasons why the Refugee Convention should not be expanded. These reasons include that the majority of people displaced by climate change will be Internally Displaced Persons (IDPs), that climate change alone does not cause displacement - it exacerbates existing inequalities and poor governance, that it is all but impossible to determine climate change as the single cause of migration, and that, by opening up negotiations to expand the Refugee Convention, we would likely end up weakening it, given the lack of political will on the part of countries to accept more refugees.

McAdam's last two arguments are perhaps the most unique and compelling: first, that "a treaty needs to be implemented and enforced to have any meaning in practice...The problem is not an absence of law, but an absence of political will to implement the law" (McAdam 2017). Just because international law exists, that does not mean that countries will comply with it. Countries such as the U.S., while a signatory to the Refugee Convention, under the administration of President Trump, attempted to effectively eliminate asylum, separating families, holding children in detention, forcing asylum seekers to remain in Mexico, barring specific groups from seeking asylum, and signing safe third country agreements with Guatemala, Honduras, and El Salvador (International Rescue Committee 2020). This demonstrates McAdam's point: that when there is a lack of political will to implement international law, the international law may be irrelevant, unless there are compelling incentives for a country to comply, which I will explore later in the section on theory.

Lastly, McAdam argues that governments should currently focus on preventing climate-induced displacement in the future, using strategies such as "implementing disaster risk reduction and climate change adaptation measures; enhancing voluntary migration opportunities; developing humanitarian visas; and potentially even undertaking planned relocations, in full consultation with affected communities" (McAdam 2017). This argument underscores the need for bilateral and regional treaties, which are a mechanism through which to provide voluntary migration opportunities, humanitarian visas, and planned relocation. McAdam's last point, that all solutions need to be undertaken in full consultation with affected communities, is key. While affording climate-displaced persons refugee status is a solution much discussed in the Western media, those impacted by climate change often do not want refugee status and instead want to stay in their home communities. In the later section on local and Indigenous perspectives I explore the desires of people impacted by climate change and compare those to the solutions often discussed by political leaders and scholars.

In "Swimming against the Tide: Why a Climate Change Displacement Treaty is Not the Answer," McAdam expands her arguments against a multilateral treaty, and groups her arguments in three categories: empirical evidence on movement, whether climate change actually "causes" movement, and political obstacles to a new treaty. First, the empirical evidence on movement caused by climate change indicates that most climate displacement will be internal and gradual, and not rapid or international, as in the case of refugees. For example, "Common assumptions that displacement will involve large-scale international migration from Bangladesh is not supported by existing patterns of movement from natural disasters, which provide the best indicators of future movement" (McAdam 2011). Thus, a multilateral treaty may not be the most

appropriate, given that it would address international movement caused by climate change, which will likely not occur. Francis confirms, writing that "Climate-induced migration occurs mostly within national borders, over short distances, with wealthier and more educated migrants trending to cross national borders" (Francis 2019).

Second, climate change cannot alone cause climate change: it exacerbates existing inequalities between the Global North and South and, by exacerbating pre-existing pressures, it may cause situations to reach a "tipping point" that is the impetus for forced migration. However, while "multicausality is not, of itself, a sticking point in devising a treaty," (McAdam 2011, 11) climate change would need to be determined to be one of those causes, which would be challenging. This causes McAdam to question the necessity of singling out climate change as a cause of migration or "climate-displaced people" as a category of migrants in international law, "since much of the 'responsibility' for movement resulting from these other drivers may be similarly attributable to international structures (economic and political) that perpetuate an ever-growing divide between rich and poor countries, rather than to acts or omissions of the government in the country of origin" (McAdam 2011, 10). In addition, given that migration is a multicausal phenomenon, how could policy makers differentiate between those experiencing general poverty and those experiencing poverty intensified by climate change? Francis agrees: "A multilateral convention specifically on climate-induced migration would be difficult to design given the difficulty of linking particular instances of migration to any climate related event." (Francis 2019, ii).

McAdam's last point, which I will not elaborate on, as it was addressed sufficiently above, is the lack of political will to negotiate a new treaty expanding international refugee

protections. However, in her conclusion, McAdam raises a fascinating point about the disciplinary constraints of international law and the tendency to universalize, which manifests in the numerous premature calls for a multilateral treaty. McAdam argues that "The risk is, of course, that if this [universalizing] is done without sufficient empirical understandings or foresight, we arrive at a level of generality that is too vague, and which cannot be translated into practical, rational policies and normative frameworks" (McAdam 2011, 19). However, McAdam does not completely dismiss an international legal solution to the problem of climate migration: she argues that we should be pursuing bilateral and regional agreements.

Another compelling reason why the definition of "refugee" should not be expanded to include climate-displaced persons is because the United Nations Refugee Agency (UNHCR) and the UN Development Programme may not have sufficient funding to support additional refugees: "The UNHCR already struggles to provide adequate support for the world's 22.5m refugees (from war and persecution)...If the UNHCR broadens its definition of "refugee" to support an entirely new category, it is unclear if the political appetite exists to provide the necessary funding" (The Economist 2018). This could result in the reductions of protections for existing refugees.

Francis describes other barriers to implementing global multilateral agreements as well: divergent interests between sending and receiving countries, national security concerns, the high number of states required to ratify may result in it being difficult to reach consensus, and the lower level of trust than may exist at the regional level (Francis 2019, 26). Francis advocates instead for a regional response to climate migration through the form of Free Movement Agreements (FMAs). Bilateral and regional agreements will be key in the future, and in some

cases are already being implemented. In this thesis I choose not to focus on multilateral agreements and instead focus on bilateral and regional instruments.

Approach 3: Bilateral and Regional Agreements

Multiple scholars including Francis, McAdam, and Kälin and Schrepfer argue that bilateral and regional agreements are the most promising legal instruments through which to address climate migration.

Francis argues that Free Movement Agreements, provisions within regional economic integration agreements, prove to be a compelling alternative to a potential multilateral agreement. FMAs tend to be linked to a common market, and currently 120 countries participate in FMAs. Francis recommends them as a response to climate-induced migration "because they increase regular migration pathways for climate migrants, enhance economic resilience, and can bypass the political hurdles of creating an international legal status for climate migrants" (Francis 2019, iv). In addition, FMAs provide rights independent of the drivers of movement, so there is no pressure for climate-displaced people to "prove" that they are in fact climate refugees. However, FMAs would require some reforms to fully meet the needs of climate-displaced persons. Most importantly, Francis recommends that FMAs guarantee "regional citizenship" and protect against forcible return.

Kälin and Schrepfer argue that bilateral and regional agreements between states with traditional migration flows "should be based on the principles of cooperation between states, international solidarity and burden-sharing (including financial support for poor countries admitting such migrants) in a manner that safeguards the human rights of migrants concerned

and protects them against exploitation, discrimination and marginalization" (Kälin and Schrepfer 2012, 60-61). They also argue that given the weakness of global migration governance, the future of efforts to accommodate climate-induced migration will take place between neighboring countries or at a (sub-) regional level, thus strengthening the argument for the use of bilateral and regional instruments. Regional and sub-regional instruments tend to be soft law, but there is also the possibility for hard law instruments as well.

McAdam also recommends the use of bilateral and regional agreements, especially with a focus on "economic" migration opportunities, arguing that these would "help address underlying problems relating to scarce resources, overcrowding, rapid urbanization and environmental degradation" (McAdam 2011, 19). She writes that national and regional responses will be able to provide necessary outcomes in a timely manner, working more quickly than multilateral negotiations. She points to regional soft-law declarations, including the Niue Declaration on Climate Change, as models of what agreements could look like.

The Importance of Local and Indigenous Perspectives

Thus far, all of the proposed approaches are those proposed by scholars, practitioners, politicians, or other elites. However, the group that should have the most say about solutions is those that are directly impacted by climate change, especially those for whom climate change is threatening (or has already caused) displacement. And on the whole, those impacted by climate change do not want refugee status and do not want to leave their homes. It is important to note that I did not conduct an in-depth investigation into local and Indigenous perspectives on climate displacement and was only able to find one Indigenous author to directly quote - all other

individuals who spoke about “Indigenous perspectives" were themselves (as far as I could tell) not Indigenous. The lack of consultation of local and/or Indigenous perspectives on climate displacement is highly concerning, and any policy that impacts people should be formulated in consultation with affected populations. I recommend further research on Indigenous views on climate displacement, and lament that I was not able to include more Indigenous perspectives in this study.

One of the case studies included in this thesis is a “Climate Refugee Visa,” which was proposed by New Zealand in 2017 but cancelled and never implemented because Pacific Islanders, who were to be the group to receive the visas, did not want visas because they viewed gaining refugee status as a last resort and would rather stay in their homes. It is also important to question who speaks for Pacific Islanders and whether it is possible to consolidate the views of such a diverse group of people. I was not able to ascertain who represented this perspective to the New Zealand government on behalf of Pacific Islanders.

Pacific Islanders instead requested that the New Zealand government focus on five things: reduce emissions, support adaptation efforts, provide legal migration pathways, and, as a last resort, grant refugee status. Providing legal migration pathways requires, according to Dempster and Ober, “the creation of three complementary pathways: bilateral/regional labor migration opportunities, humanitarian visas, and planned relocation/managed retreat” (Dempster and Ober 2020). These types of legal pathways are present in the case studies examined in this thesis.

The emphasis on providing legal migration pathways is because Pacific Islanders want to “migrate with dignity” rather than wait until the situation becomes so dire that refugee status is

required. However, migration is not the ideal solution for many Pacific Islanders: they would rather remain in their countries. In addition, "among issues to consider were self-determination for Pacific communities, which warranted a *collective solution rather than an individualised visa approach*" (Manch 2018). This is why it is key for countries in the Global North to support climate adaptation efforts rather than to just look to provide international legal solutions. This divide between the Global North and the Global South is relevant because in 2015, developing countries shouldered 78% of the cost of climate change (Dempster and Ober 2020).

Self-determination, cultural preservation, and Indigenous sovereignty are all concepts relevant to this discussion. According to Dempster and Ober, "Many, especially indigenous people, see migration as a disruption of ancestral livelihoods and cultural loss" (Dempster and Ober 2020). According to McAdam, a major factor inhibiting international migration is "a close sense of attachment to land, family and culture" (McAdam 2011, 9). In addition, using the lens of international human rights law to view and manage climate displacement "may not necessarily respond to communities' human rights concerns, especially those relating to cultural integrity, self-determination and statehood" (McAdam 2011, 13), given the emphasis on individual rights in international human rights law. Indigenous peoples are threatened by climate change caused disproportionately by the Global North, and then forced (or urged) to leave their land behind and migrate, which threatens the cultural and political futures of these communities and jeopardizes their collective rights.

Leilani Rania Ganser, an Indigenous Pacific Islander, part of the Chamoru Nation from Guam, writes of the cultural loss of potential climate-induced migration: "Leaving Guam, in managed retreat or otherwise, can feel like admitting defeat in a 500-year fight for self-

determination" (Rania Genser 2019), given that Guam is a non-self-governing territory recognized by the U.N. but historically occupied by the United States beginning in the 20th century. It is of paramount importance to listen to Indigenous voices and to support Indigenous resistance movements combating climate change. Rania Ganser argues that managed retreat is "a question of Indigenous sovereignty or, put another way, makes Indigenous sovereignty a form of climate action" (Rania Genser 2019).

In addition, adaptation solutions can and should draw on Indigenous knowledge and practices. McAdam uses the example of Bangladesh, where Indigenous communities have employed physical adaptation strategies and "developed indigenous knowledge to raise their houses on plinths, protected their houses or land with flood defenses, or adjusted their farming techniques, such as by using flood resistant strains of rice or by developing 'floating gardens' to deal with water-logging" (McAdam 2011, 9). Hartman argues that threat narratives, especially in the case of "climate conflict," assume that communities in the Global South are unable to respond to climate change and need those in the Global North to "save" them: "A certain exceptionalism is at work - while it is commonly assumed that scarcity can lead to institutional and technological innovation in more affluent countries, just the opposite is assumed for poor people in less affluent countries" (Hartman 2010, 237). Thus, it is important for scholars and practitioners who are writing about adaptation to decolonize their thought and let go of the assumption that Indigenous knowledge is somehow inferior to Western or Settler knowledge.

As demonstrated by the divergence of perspectives on approaches to providing legal protections to climate-displaced persons, it is hard for scholars, practitioners, governments, and/or activists to come to agreement about what should be done. In my thesis, I focus specifically on

the approach of bilateral and regional agreements. While there are many existing bilateral and regional agreements that deal with migration, adapting or interpreting them to accommodate climate displacement takes political will and commitment on the part of governments. Under what conditions will governments publicly acknowledge climate displacement and pledge to accept climate-displaced persons? This next section of my thesis explores international law and international relations theory that can help to explain government (in)action on this issue.

Part II: Theoretical Foundations for the Adoption of Bilateral and Regional Instruments

In this theory section, I first address why governments want to retain flexibility and are reluctant to agree to climate-displacement treaties. I then shift to discussing treaty ratification and compliance, which are relevant if governments agree to these treaties. This part is more theoretical, given that the agreements that I am analyzing are (for the most part) not explicitly focused on climate-displacement. Thus, this theory applies more to what agreements that *do* focus on climate-displacement would look like. However, this is useful given a future where climate-displacement treaties will hopefully become a reality.

In the cases where governments use existing treaties to accommodate climate displacement, *I hypothesize that states will attempt to minimize their commitments to accepting climate-displaced persons and emphasize that they are not establishing precedent for accepting climate-displaced persons in the future.*

Governments want to retain their flexibility because of the high degree of uncertainty in the future about climate-displacement. This means that they will take an approach more in line with soft law rather than hard law. Hard law is present when there are "legally binding obligations that are precise (or can be made precise through adjudication or the issuance of detailed regulations) and that delegate authority for interpreting and implementing the law" (Abbott and Snidal 2000, 421). Hard law has high contracting costs and high sovereignty costs, both of which are undesirable in the case of climate displacement. In the case of climate-displacement, both uncertainty and sovereignty costs are high, which, according to Abbott and Snidal, means that "legalization will focus on the statement of flexibility or hortatory obligations that are neither precise nor highly institutionalized" (Abbott and Snidal 2000, 444).

Soft law is chosen when the topic of the resolution is a very sensitive area and thus sovereignty costs are high, when it's difficult to reach an agreement (high contracting costs), when there is a high degree of uncertainty, which incentivizes states to either enter legally binding agreements with large escape and renegotiation clauses or to enter into softer agreements, and when there is a need for compromise. Soft legalization gives states the opportunity to adapt to changing and unknown circumstances because of the lack of legally binding obligations. When there is a high degree of uncertainty present, governments will build in more renegotiation clauses so as to ensure that they can alter their commitments in the future. According to Koremenos, "If states are unsure about current circumstances, and even less so about future ones, it is both much more difficult and less advantageous to settle on specific, state-contingent terms" (Koremenos 2013, 664).

Abbott and Snidal argue that soft legalization can deal with uncertainty in a few different ways: it can reduce the precision of commitments, there can be arrangements that have a high degree of precision but aren't legally binding, or they can include moderate delegation - "typically involving political and administrative bodies where states retain significant control" (Abbott and Snidal 2000, 443) - rather than adjudicative procedures. Abbott and Snidal specifically point to global warming as an example of uncertainty: "because the nature, the severity, even the very existence of these threats - as well as the costs of responding to them - are highly uncertain, the imprecise commitments found in environmental 'framework' agreements may be the optimal response" (Abbott and Snidal 2000, 442).

Another element that may influence the choice of soft legalization is capacity limitations: states may not be able to uphold more binding obligations. While Downs et al. do note that

"capacity limitations and uncontrollable social and economic changes rarely are cited as major determinants of violations" (Downs et al. 1996, 106), they may be relevant in the case of states that simply do not have the resources to accept a massive number of migrants. The managerial school argues that noncompliance is caused by three factors: ambiguity in treaty language, capability, and the temporal dimension. The issue of capacity is relevant here: do states have the capacity to accept and resettle climate-displaced persons? This likely depends on the country: many countries in the Global North, such as the U.S., have the capacity to accept many more migrants than they do, but some countries, mainly in the Global South, are already accepting a large number of refugees relative to their population size, such as Jordan and Lebanon, and thus capacity may be an issue for them (Norwegian Refugee Council).

If governments do agree that it is worthwhile to pursue climate-displacement treaties, then the first step in adopting them is ratification. Once they are ratified, then the question of compliance comes into play: just because a government has ratified a treaty does not mean that it will comply with it. The next section is a literature review of theories of ratification and compliance in international law, followed by a section applying these theories to potential climate-displacement treaties.

Literature Review: Theories of Ratification and Compliance in International Law

The first step to treaty compliance is ratification, which in this case would not be obligatory. There can be hurdles to ratification: "Higher ratification 'hurdles' imply real dedication to the purposes of the agreement and hence auger well for compliance" (Simmons 2010, 3). In addition, how the agreements were written can influence how likely countries are to

ratify and comply. “Details about membership, escape clauses and dispute settlement can influence violation and compliance” (Simmons 2010, 2). Hard law agreements have higher barriers to ratification, but also represent deeper cooperation, which is desirable in that it represents a significant departure from the status quo. In human rights law there is a classic tradeoff between quality and quantity, or the “quality” of the agreement and the “quantity’ of actors who ratify.

Once ratification has occurred, the conversation turns to compliance. Given the absence of centralized coercive power or an independent adjudicatory body, how can we expect states to comply with international law? There are different theories that explain compliance with international law. There are two main buckets of compliance theory: the managerial school and the enforcement school.

The managerial school argues that states want to comply with international law, that compliance can be managed, and that there are ways to encourage compliance. Chayes and Chayes, part of the managerial school, argue that states feel an obligation to comply with treaties, given that “the fundamental norm of international law is pacta sunt servanda (treaties are to be obeyed)” (Chayes and Chayes 1993, 75). Thus, states for the most part enter treaty negotiations with the intention to comply. If states did not intend to comply, then it would not make sense to waste so much time and resources on lengthy treaty negotiations.

Chayes and Chayes argue that noncompliance is caused by three factors or defenses. First, ambiguity in treaty language, which causes different states to interpret the obligations in different ways. Second, capability, or the problem of states not having the capacity to comply with the treaty obligations that they agreed to. Chayes and Chayes argue that the issue of

capacity is especially relevant when it comes to contemporary environmental agreements, specifically those that call on states to reduce greenhouse gas emissions. To comply with such agreements means that "the state will have to establish and enforce a full-blown domestic regime designed to secure the necessary reduction in emissions" (Chayes and Chayes 1993, 81) because the government is not the actor directly responsible for the emissions; it is nonstate actors who the government has to then bring into compliance.

Lastly, the third defense or cause of noncompliance is the temporal dimension: it can take a significant amount of time after ratification before states have the ability to bring themselves into compliance. To deal with this issue, contemporary environmental regulations often "start with a low obligational ante and increase the level of regulation as experience with the regime grows" (Chayes and Chayes 1993, 83). We can see this strategy used in the Paris Agreement, which specifically uses a ratchet-up mechanism which promotes stronger Nationally Determined Contributions (NDCs) over time through the architecture put in place. The Agreement establishes that global stocktakes will be conducted every five years and that each state needs to communicate an NDC every five years that will represent a progression beyond its previous NDCs.

In terms of compliance with treaties, Chayes and Chayes argue that most states comply with treaties and argue that "if the benefits of the collective good to one or a group of parties outweigh the costs to them of providing the good, they will continue to bear the costs regardless of the defections of others," and thus that "the free-rider problem has been overestimated" (Chayes and Chayes 87).

Chayes and Chayes offer solutions to these three "defenses." For ambiguity, improving dispute resolution procedures helps; for capacity issues, technical and financial assistance help; and to deal with the temporal dimension, increased transparency help. They argue that improving these mechanisms is less costly and more effective than coercive sanctions, the preferred "solution" of the enforcement school. Managerialists more broadly argue that compliance can be encouraged through persuasion, encouragement, capacity assistance, and rewards. They view compliance as itself socially constructed, and thus the process of treaty negotiation can encourage compliance through discourse and socialization.

In contrast to the managerial school, the enforcement school argues that most agreements only produce shallow compliance because states do not agree to treaties that they do not want to comply with, and thus only ratify treaties that already align with their interests. Shallow cooperation means that states behave the way that they would be if there were no agreement. Downs et al., part of the enforcement school, argue that deep cooperation is truly rare in international law, which explains the tendency of states to comply because they would have behaved in the same manner regardless of the treaty.

To reach deep cooperation, enforcement mechanisms must be in place, and punishment should be the enforcement mechanism of choice. This is because states will cheat unless the costs associated with cheating are greater than the benefits. "The deeper the agreement is, the greater the punishments required to support it," (Downs et al. 1996, 98) because given that compliance is inconvenient for states and imposes costs, noncompliance provides heightened benefits that the punishments must outweigh.

Potential Theories of Ratification and Compliance in Climate-Displacement Treaties

In the case of treaties dealing with climate displacement, the managerial school is more applicable than the enforcement school, given that states would not be accruing many benefits from admitting migrants, so it would not be in the rational self-interest of countries of destination to ratify and/or comply with such treaties. The managerial school is better able to explain compliance in the human rights, refugee, and climate change legal regimes due to its theories that states want to comply, compliance can be managed, and that there are ways to encourage compliance.

Climate-displacement treaties would share certain characteristics with treaties in the refugee regime: the rights holders are individuals, not states, not all individuals have the same rights, there is a strong presumption of state sovereignty, ratifying and complying with treaties increases the burden for duty bearers (mainly countries of destination), and reciprocity isn't as relevant, except perhaps in temporary and circular migration schemes. As in the case of human rights treaties, states would likely tend to ratify climate-displacement treaties with the intention to comply, and this compliance can be encouraged through persuasion.

Ideational approaches are based in theories of social constructivism and argue that states will comply with treaties because of the perceived legitimacy of international legal obligations. This could apply to climate-migration treaties, but may be threatened by rising protectionist sentiment, xenophobia, and skepticism of international law. What happens if states do not care about their image, and domestic publics oppose international cooperation, the international legal system, and migration? Anti-immigrant xenophobic domestic publics could decrease the likelihood of ratification and/or compliance. These factors are all relevant to consider as we

examine existing agreements that have been mobilized to provide protection for climate-displaced persons. The next section of this study is an in-depth examination of nine case studies of existing agreements.

Part V: Case Studies

Given that my thesis is on bilateral and regional agreements as an alternative to a new multilateral agreement, it was crucial to establish if there were any such existing agreements, whether agreements specifically on climate displacement or other types of agreements that had been operationalized to assist climate-displaced persons. By conducting an analysis of the existing agreements, I gained an idea of what successful agreements could look like in the future. As a result of conducting my research, I found nine case studies:

1. Caribbean Community (CARICOM) & Organization of Eastern Caribbean States (OECS) FMAs (2017, regional)
2. 1969 OAU Refugee Convention
3. 1984 Cartagena Declaration
4. TCLM Program between Colombia and Spain
5. Proposed New Zealand Climate Refugee Visa
6. Kiribati National Policy & Relocation Plans
7. UNHCR Ruling Teitiota v. New Zealand
8. Successful Tuvalu/New Zealand Residency Case
9. Proposed U.N. Climate Change Displacement Coordination Facility

These case studies show a lot of variety, demonstrated by Table 1 (included below). The first major distinction is between positive and negative cases. Positive cases are those where the agreement was both a) implemented, and/or b) operationalized to deal with a situation of climate displacement. I included negative cases, such as proposed measures that were either never implemented or were cancelled, because they are useful in demonstrating what factors contribute

to these agreements failing. Another important distinction is between the type of policy: free movement agreements, asylum, planned relocation, temporary labor mobility plan, regional declaration, and a displacement coordination facility are all present in my nine case studies. Some are new agreements that haven't been operationalized yet (such as Kiribati's purchase of land in Fiji for relocation purposes) and others are existing agreements that have been operationalized to deal with climate displacement (such as the CARICOM and OECS FMAs).

Of all of the agreements that I researched, I decided on these nine as potential case studies for my thesis, but in that process, I also considered and decided against multiple agreements for various reasons. Here is a list of the agreements that I determined would not count for my thesis for various reasons:

Agreements that Do Not Qualify for Case Studies:

1. **African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ~ "Kampala Convention" (2009, regional):** This convention does not count because it only covers internally displaced persons.
2. **Cancun Adaptation Framework of 2010:** This framework does not count because there is only one mention of displacement or migration: "Measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels" (United Nations 2011, 5).
3. **U.S. Senate Bill S.2565:** This senate bill was introduced by Senator Markey in 2019 and creates "both a global climate resilience strategy and a new humanitarian program for

those who have been displaced by environmental disasters of climate change" (Markey 2019). However, while introduced, this senate bill has not entered into law and should not qualify as a case study given that it is national in nature and was never implemented.

4. **Tuvalu Climate Change Policy:** Tuvalu's climate change policy includes the Tuvalu National Strategic Action Plan for Climate Change and Disaster Risk Management 2012-2016. The Action Plan has references to both planned relocation and international migration, but neither have been implemented specifically for people displaced by climate change. Thus, while these national policies exist, they do not count as case studies given that they are not bilateral or regional in nature.
5. **The Solomon Islands Climate Change Policy:** The Solomon Islands Climate Change Policy does not count for similar reasons to why the Action Plan discussed above does not count. While it discusses relocation, all relocation that has occurred has been internal. In addition, while one of the government-mandated assessments (the Ontong Java Assessment) recommended encouraging voluntary relocation, no such plan has been implemented (Fornale and Kagen 2017). Thus, this policy would be considered national, not international.
6. **Fiji Climate Change Policy:** Fiji has engaged in internal relocation, but nothing international. Fiji has sold land to Kiribati, but I am categorizing that as part of the case study on Kiribati. Historically, Fiji has participated in international relocation as the receiving country: "In December 1945 the population of the island of Banaba (also known as Ocean Island) in present-day Kiribati was moved to Rabi island in Fiji on account of on-going phosphate mining by the British Phosphate Commission, a joint

British, Australian and New Zealand enterprise. Two years later, in October 1947, part of the population of Vaitupu, an island of present-day Tuvalu, bought and settled another Fijian island, Kioa, coincidentally close to Rabi" (McAdam 2013). While these instances are not sufficient to count as case studies due to the fact that the displacement was not caused by climate change, they do merit further investigation.

7. **EU Qualification Directive:** Does not mention climate change or natural disasters.
8. **Bangkok Principles on the Status and Treatment of Refugees:** Does not mention climate change or natural disasters other than "The issue of root causes is crucial for solutions and international efforts should also be directed to addressing the causes of refugee movements and the creation of the political, economic, social, humanitarian and environmental conditions conducive to voluntary repatriation" (AALCO 1966).

Table 1: Case Studies

Name of agreement	**Was it ever implemented?**	**Dates in place**	**Bilateral, regional, or multilateral?**	**Parties involved**	**Type of policy (planned relocation, temporary labor mobility, FMA, etc.)**	**Treaty or plan? Legally binding?**	**Who does it cover - can everyone migrate, or only certain groups?**	**Does it use the term "climate refugee?"**
Caribbean Community (CARICOM) & Organization of Eastern Caribbean States (OECS) FMAs	Yes	2017 (mobilized), in place earlier	Regional	CARICOM and OECS member states	Free Movement Agreement (FMA)	Treaties	Depends on the treaty	No
Temporary and Circular Labour Migration (TCLM) Programme between Colombia and Spain	Yes	2006 - (unsure of exact dates)	Bilateral	Colombia and Spain	Temporary labor mobility plan	Plan	Specific criteria for choosing who can migrate (vulnerable communities, environmental factors, identity, etc)	No
1984 Cartagena Declaration	Yes	1984 - present	Regional	14 countries in Latin America	Non-binding regional declaration	Declaration	Refugees	No

1969 Organization of African Unity (OAU) Convention	Yes	1969 - present, mobilized in 2011-2012	Regional	OAU member states	Binding regional treaty	Treaty	Refugees	No
Kiribati: 1) Purchase of land in Fiji, 2) "Migration with Dignity" Policy, 3) Kiribati Australia Nursing Initiative	Yes	Depends on program/ policy	Bilateral, National	Kiribati, Fiji, Australia	Planned relocation, national migration policy, temporary labor mobility plan	Plan	Unsure: relocation hasn't happened yet	Yes
Proposed New Zealand "Climate Refugee" Visa	No	Proposed in 2017, cancelled in 2018	National	New Zealand and Pacific Island States	Climate refugee visa	Would have been legally binding if adopted	Pacific Islanders displaced by climate change (100 people/year)	Yes
Climate Change Displacement Coordination Facility in the Paris Draft Agreement 2015	No	2014-2015	Multilateral	UN members	Climate change displacement coordination facility	Unsure given it was not adopted	Unclear	No but does reference climate change displacement
Successful Tuvalu/ New Zealand Residency Case	Yes	June 2014 ruling	National - court case	New Zealand	Residency	Legally binding	One specific family	No, but discusses the humanitarian consequences of climate change

UN Human Rights Committee ruling in the case of Teitiota v. New Zealand	Yes	September 2020 ruling	National, but international court case	New Zealand	Asylum	Legally binding	One person - asylum denied but HRC made broader ruling	No, but discusses climate change displacement

Case Study 1: Caribbean Community (CARICOM) & Organization of Eastern Caribbean States (OECS) FMAs (2017, regional)

Overview:

The Caribbean Community (CARICOM) and the Organization of Eastern Caribbean States (OECS) Free Movement Agreements (FMAs) granted protections to Caribbean nationals who were displaced by catastrophic hurricanes during the 2017 Atlantic Hurricane Season. Hurricane Irma displaced more than 2 million people, which counts as an instance of rapid-onset climate-displacement. In fact, "Recent trends in Caribbean migration flows show a higher level of environmental migration" (Francis 2019, 4).

These FMAs: " i) provided disaster displaced persons a right of entry in other islands; ii) supported the waiver of travel document requirements where documents had been lost or damaged; iii) granted indefinite stays to some disaster displaced persons, facilitating permanent resettlement; and iv) eased access to foreign labor markets through a mutual recognition of skills scheme and/or a waiver of work permit requirements" (Francis 2019, i). 120 countries currently participate in regional treaties involving free movement provisions, with the most famous example being the European Union (EU), but other examples include the East Africa Community (EAC), the Association of South East Asian Nations (ASEAN), and the Asia-Pacific Economic Cooperation (APEC).

Francis explains the important role of FMAs in accommodating climate-induced displacement. First, it is important to define FMAs: "FMAs are provisions within (sub-) regional economic integration schemes that liberalize mobility restrictions between participating member states...In most regions, FMAs are linked to a common market, where free movement of goods,

services, capital and labor serve as the basis of economic integration, and workers are granted the right to enter, work and/or settle in member states" (Francis 2019, 11). The CARICOM Single Market and Economy (CSME) was established in 1973 and has 15 member states and 5 associate members. Its four pillars of integration are economic integration, foreign policy coordination, human and social development, and security (OECS). The OECS was created in 1981, and in 2010 the Revised Treaty of Basseterre created an economic union or single market. The OECS has eleven member states and five strategic objectives: regional integration, resilience, social equity, foreign policy, and high performing organisation (OECS).

Treaty Contents:

The CARICOM FMA operationalized to provide these protections was the Revised Treaty of Chaguaramas (2001), specifically Article 45 "Movement of Community Nationals" and Article 46 "Movement of Skilled Community Nationals." Article 45 states "Member states commit themselves to the goal of free movement of their nationals within the Community" (CARICOM Secretariat 2001, 27). Article 46 defines which groups of people count as skilled, including university graduates, media workers, sportspersons, artists, and musicians. It calls on Member States to provide for the movement of "community nationals" by eliminating: 1), "the requirement for passports for Community nationals traveling to their jurisdictions," 2) "the elimination of the requirement for work permits for Community nationals seeking approved employment in their jurisdiction," 3) the "establishment of mechanisms for certifying and establishing equivalency of degrees and for accrediting institutions," and 4), the "harmonization and transferability of social security benefits" (CARICOM Secretariat 2001, 28). Especially

noteworthy is the last point, given that many FMAs do not include transferability of social security benefits. Article 46 continues, saying that nothing in the Treaty inhibits Member States from "according Community nationals unrestricted access to, and movement within, their jurisdictions subject to such *conditions as the public interest may require*" (CARICOM Secretariat 2001, 28) - italics are mine.

The relevant OECS FMA was the Revised Treaty of Basseterre (2010), specifically Article 3 "Principles" and Article 12 "Movement of Persons." Article 3 sets the principle of "the abolition, as between Protocol Member States, of the obstacles to the free movement of persons, services, and capital" (OECS 2010). Article 12 provides for freedom of movement for citizens of OECS Member States and states in 12.2 that "such freedom of movement shall entail the abolition of any discrimination based on nationality between citizens of the Protocol Member States as regards employment, remuneration and other conditions of work and employment" (OECS 2010, 33). However, it also makes a point to emphasize the sovereignty of member states by stating in 12.5 that "Notwithstanding any provisions of this article, a Protocol Member State may, subject to the approval of the OECS Authority, regulate the movement of such citizens" (OECS 2010, 33).

According to Francis, "While CARICOM extends free movement to specific categories of workers, all OECS nationals enjoy the right to live and work in other OECS member states (Article 3(c) and 12)" (Francis 2019, 18).

<u>When it was Mobilized:</u>

In the 2017 hurricane season, 3 million people were displaced in one month, and both the OECS and CARICOM FMAs were operationalized to provide protection to climate-displaced persons. In September 2017 Trinidad and Tobago welcomed Dominicans displaced by Hurricane Maria through "the CARICOM FMA's 6-month visa-free stay provision" (Francis 2019, 18). Prime Minister Dr. Keither Rowley allowed Dominicans to enter the country without restrictions and stay for six months: "Trinidad and Tobago will open its doors, homes, pots and I dare say, our schools," said the Prime Minister (Stabroek News, 2017). All Dominicans were allowed to enter Trinidad and Tobago and stay for up to six months, and there were no other restrictions - for example, it was not the case that only "skilled nationals" were allowed to enter. The Prime Minister said that he did not expect a large number of people to accept the offer and anticipated at most 2,000 temporary migrants (Stabroek News, 2017).

In addition to Trinidad and Tobago, "The Antigua, St. Vincent, Grenada and St. Lucia governments also welcomed Dominicans, making sure of the OECS FMA" (Francis 2019, 18). The Acting Prime Minister of Antigua, Attorney General Steadroy Benjamin, convened a meeting of government leaders to develop a fixed set of policies to manage temporary migration of citizens of Dominica, due to the fact that "Citizens of Dominica have a right to entry into Antigua and other OECS countries and an automatic six-month stay and must present their passport, driver's license or voter's identification card to allow entry" (St. Lucia News Online 2017). All Dominicans who have those forms of identification and are Dominican citizens were to be allowed to enter. All Dominican citizens entering Antigua needed to provide health information.

In addition, the Caribbean Disaster Emergency Management Agency (CDEMA) and the Caribbean Public Health Agency (CARPHA), both CARICOM institutions, conducted rapid needs assessments in Dominica (CARICOM 2017).

Case Study 2: 1969 OAU Refugee Convention

Overview:

The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) broadened the concept of refugee from that in the 1951 Convention and the 1969 Protocol to include "events seriously disturbing public order in either part or the whole of his country of origin or nationality" as part of the refugee definition (UNHCR 1969), which could potentially include those impacted by climate change. Some argue that the OAU Convention is the most promising of the regional refugee accords in terms of the potential to offer protection for those displaced by climate change.

The OAU Convention was successfully mobilized in one instance to protect those impacted by climate change: it was mobilized in 2011 and 2012 by Kenya, Ethiopia, and other East African countries, which accepted 300,000 refugees from Somalia fleeing a massive drought. 150,000 Somalis arrived in Kenya, and 120,000 arrived in Ethiopia (Weerasinghe 2018, 37). In addition to the drought and famine, crisis conditions were compounded by political instability and violence, partially due to the control of Al-Shabab, a terrorist group, who blocked access to humanitarian assistance.

These displaced people fit under the OAU refugee definition with the "Events seriously disturbing public order" clause. Specifically in Kenya, "due to the generalized violence, the government of Kenya and UNHCR officials in Kenya consider that all people coming from South Central Somalia are refugees according to the OAU definition" (Kolmannskog 2013). However, this determination was about violence and not necessarily climate change.

Treaty Contents:

Article 1 of the OAU Convention defines "refugee" as a term that

"shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality" (UNHCR 1969, 3).

The inclusion of "events seriously disturbing public order" broadens the concept of a refugee from that of the 1951 Convention and the 1967 Protocol. In 1991 the African Group and the Latin American Group submitted to the Executive Committee Working Group on Solutions and Protection of the UNHCR an annexed paper, "Persons covered by the OAU Convention governing the Specific Aspects of Refugee Problems in Africa and by the Cartagena Declaration on Refugees," where they specifically address climate-displaced persons. They discuss those who are "victims of man-made disasters who are at the same time victims of natural disasters," writing that

"This cause or category of people is not explicit in the OAU Convention, but reference in the Convention to "events seriously disturbing public order in either part of the whole of his country of origin or nationality", can be construed to cover this category" (UNHCR 1992).

The OAU Convention is arguably the most promising of the regional accords for affording protection to climate-displaced persons because, according to Stopper, "it also includes a broader secondary definition that would encompass climate refugees" (Stopper, 21). However, Stopper identifies challenges that climate-displaced persons would face when trying to qualify for protection under this Convention. Even if they qualified as refugees under the Convention,

that does not mean that they would receive social services, given that "the treaty lacks any provision relating to medical treatment, food, education, housing or any other social service that a refugee would need to adapt to life in a host state" (Stopper, 22). The provision of social services would depend on the domestic politics of the country of destination.

In addition, the Convention faces other challenges, including three laid out by the Kaldor Centre for International Refugee Law at UNSW: "rudimentary refugee status determination procedures in African states, increasing securitization of refugee protection on the continent, and a lack of clear and detailed understanding of the substance of the scope and meaning of the Convention's terms" (UNSW 2019).

Wood, through the Nansen Initiative, produced a paper using the 2011 Horn of Africa drought and famine as a case study to examine the use of the OAU Convention in addressing the needs of climate-displaced persons, as well as regional human rights law. Wood argues that the OAU definition "has the potential to extend protection to persons displaced in the context of disaster, at least in situations where the disaster is accompanied by conflict, widespread violence and/or a breakdown of national government systems" (Wood 2013, 23).

Wood argues, similarly to others, that the key to determining whether the OAU refugee definition covers those displaced by climate change lies in the interpretation of the phrase "events seriously disturbing public order." State practice in interpretation of this definition for climate-displaced persons has been inconsistent and ambiguous. On the one hand, there have been examples of climate-displaced persons being awarded refugee status, such as for Somalis fleeing the 2011 drought. However, many African states afford refugee status to those fleeing natural disasters, but don't acknowledge that they are doing so because of the OAU Convention

or don't classify the recipients as "refugees." Wood argues that one should not focus on these examples of state practice in interpreting the OAU refugee definition, but rather that it should be interpreted according to the "international principles of treaty interpretation, found primarily in Article 31-33 of the Vienna Convention on the Law of Treaties (VCLT)" (Wood 2013, 25).

Wood proposes four approaches to interpretation of the OAU refugee definition, arguing for the fourth one, which is "to interpret events seriously disturbing public order using a human rights framework," (Wood 2013, 25) or basing the severity of the event on its adverse impact on the human rights of those affected, which is a similar approach to defining "persecution" in the 1951 Refugee Convention. However, Wood argues that not every natural disasters would count under this interpretive framework, such as a "short-term flooding followed by an effective government response, in which personal security, access to justice and basic socio-economic rights are maintained" (Wood 2013, 28). In addition to the interpretation of the phrase "events seriously disturbing public order," even if a natural disaster was determined to be severe enough, the displaced person would also need to meet the other refugee criteria in the OAU definition, such as "is compelled to leave his [or her] place of habitual residence" (UNHCR 1969).

<u>When it was Mobilized:</u>

The OAU Convention was mobilized by Kenya, Ethiopia, and other East African countries in 2011-2012 to admit 300,000 climate-displaced persons fleeing the drought and famine in Somalia, which was the "most severe humanitarian crisis in the world in 2011, and Africa's worst food security crisis since the Somali famine between 1991-92" (Kolmannskog 2013).

Due to Kenya being party to the OAU Convention and due to the generalized, underlying violence in Somalia, "the government of Kenya and UNHCR officials in Kenya consider that all people coming from South Central Somalia are refugees according to the OAU definition" (Kolmannskog 2013). There were two schools of thought in terms of justifications for why Somalis were considered refugees in this context: some saw Somalis displaced by drought and in need of humanitarian assistance but not technically refugees, while others did consider Somalis refugees, given that they "fled underlying conflict, generalized insecurity or disruption to public order" (Weerasinghe 2013, 3) under the OAU Convention. However, the Kenyan government stopped registering new refugees starting on October 11, and the Kenyan-Somali border has been closed since 2007. "According to the Refugee Consortium of Kenya, the continued refusal to open the border and the lack of access to nutrition, health, water, transport, and other essentials at the border amounts to an extraordinary protection failure" (Kolmannskog 2013).

Ethiopia also accepted people displaced from Somalia from 2011 - 2012, given that Ethiopia's national refugee law considered Somalis refugees, and even after the drought and famine "more recent Somali asylum-seekers have continued to be recognized on the same basis, with ongoing efforts by ARRA and UNHCR to stay abreast of developments in Somalia" (Weerasinghe 2013, 3). However, the OAU definition was also relevant to the consideration of Somalis as refugees due to the fact that Ethiopian officials viewed the drought and famine as an event "seriously disturbing public order." Informants from Ethiopia "suggested that Somalis were fleeing areas affected by regular conflict or insecurity or that these aspects contributed to their fear of return," (Weerasinghe 2013, 4) and acknowledged that there were multiple root causes that contributed to the Somali migration, of which climate change was just one. The

underlying conflict and economic and political insecurity were highlighted in refugee claims and admissions.

According to Weerasinghe, Kenya's response to Somali displacement was tied to the "'politics of the day': a securitized environment in which the burden of hosting large numbers of refugees and concerns regarding solidarity have arguably influence high-level government engagement, sensitivity and scrutiny of refugee affairs" (Weerasinghe 2013, 48).

Case Study 3: 1984 Cartagena Declaration

Overview:

The Cartagena Declaration was formulated in 1984 in order to address the large number of Central American migrants and thus aimed to expand the refugee definition. Building on the 1969 OAU Convention, the Cartagena Declaration broadens the refugee definition to include "massive violation of human rights or other circumstances which have seriously disturbed public order" (UNHCR 1984, 36). This definition could include those displaced by climate change, but climate change and/or natural disasters are not explicitly mentioned in the declaration. The biggest issue with the declaration is that it is a non-binding agreement and is only aspirational in nature - it is not a treaty. It also does not include any articles relating to the provisions of social services.

Some states have incorporated it into domestic law: "fifteen states...have incorporated a complementary refugee definition based on that recommended by the Declaration into their national law" (Cantor 2018, 24), which means that persons who qualify as refugees under the Cartagena definition also qualify as refugees under national law. Six of the eight Central American states have incorporated the Cartagena refugee definition into national law. However, in Belize and Mexico, the incorporation was incomplete and did not include all five situational elements in the Declaration. Nine states in South America incorporated the refugee definition into national law, but some are incomplete, including Peru and Brazil. In Peru, the national law does not include "generalized violence," and in Brazil the national law only includes one of the five elements in the definition.

Treaty Contents:

The Cartagena Declaration defines refugees as "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order" (UNHCR 1984, 36). While, as mentioned above, multiple states have incorporated the Cartagena Declaration refugee definition into national law, not all five situational elements were incorporated in every state's national law. While "other circumstances which have seriously disturbed the public order" could apply to climate displacement, "States have tended to apply this situational element as requiring a direct link to governmental or political circumstances" (Cantor 2018, 24).

When it was Mobilized:

The Cartagena Declaration is both a positive and a negative case study in that there are examples of states using it to admit climate-displaced persons, but there are also (more) examples of states which had already incorporated the definition into domestic legislation but refused to accept climate-displaced persons.

According to Cantor, "Ecuador recognised a small number of Haitians as refugees under the expanded definition situational element of 'other circumstances which have seriously disturbed public order' due to the breakdown in law and order generated by the 2010 earthquake in Haiti" (Cantor 2018, 52). In addition, Panama accepted a small number of Haitian students as refugees in 2010, but this was "apparently due to the risks in return deriving from the ensuing chaos in Haiti rather than on the basis of the disaster itself" (Cantor 2018, 40). Peru also accepted

some Haitians due to the 1951 Convention refugee definition and a "well-founded fear of persecution" based in this case on non-state actors and the governance vacuum and not on the disaster itself.

In Mexico, prior to the earthquake Haitians had been considered refugees under the regional refugee definition, and after the earthquake they continued to be recognized, both on the basis of the Refugee Convention definition ("membership of a particular social group" as well as "political opinion"), but also under the Cartagena Declaration's clause "other circumstances which have seriously disturbed public order." According to Weerasinghe, informants suggested that "prior to the earthquake, Haitians had been recognized pursuant to the regional refugee definition...and arguably, the chaos, social disruption and government incapacity in the aftermath of the earthquake heightened disruptive conditions" (Weerasinghe 2018, 83). Haitians did receive refugee status, and after the refugee system became overwhelmed, Haitians began to receive humanitarian visas as well.

The regional refugee definition, which was incorporated into Mexican national law in 1990, was thus used to admit Haitians as refugees, both before and after the earthquake, and "informants also suggested that COMAR [Comisión Mexicana de Ayuda a Refugiados] sought to determine how to apply the regional refugee definition to Haitian claimants" (Weerasinghe 2018, 98). Therefore, the Cartagena definition was applied in this case.

However, other states that had incorporated the Cartagena Declaration refugee definition into applicable domestic law chose not to honor the part of the definition that includes "other circumstances which have seriously disturbed public order" and decided not to grant refugee

status to Haitians fleeing the 2010 earthquake or granted Haitians admission, but not because of the Cartagena Declaration. These states included Brazil, Peru, and Chile.

The Brazilian government argued that Haitians did not meet the Cartagena refugee definition and initially allowed them to receive humanitarian visas, but later complicated things by arguing that they needed employment to obtain status. There was an overwhelming backlog of migrants, with many people prevented from crossing the Peru-Brazil border. No Haitians were ever recognized as refugees in Brazil between 2010 - 2015, even though over 34,000 applied, but some were given authorization to enter and stay, which was valid for five years. The Cartagena refugee definition was not seriously considered by Brazilian authorities: According to Weerasinghe, "The study highlighted that the regional refugee definition is infrequently applied in RSD [refugee status determination], and cases that could potentially be assessed under the regional refugee definition are instead assessed under complementary forms of protection" (Weerasinghe 2018, 73).

Brazil has incorporated one of the Cartagena Declaration's refugee definition elements ("severe and generalized violations of human rights"), "which in practice has only grounded claims in situations of conflict and violence" (Weerasinghe 2018, 98). However, "the relevance and applicability of the domestically incorporated regional refugee definition was also dismissed, although an unsuccessful public civil court action argued that Haitians should be recognized under this framework" (Weerasinghe 2018, 100). Therefore, just because a regional refugee definition is incorporated into domestic law, it does not mean that the domestic law will be obeyed.

In conclusion, there were multiple cases where the Cartagena refugee definition provided people protection fleeing a natural disaster (albeit one not caused by climate change), but in other cases the Cartagena refugee definition was ignored, and these displaced people were not offered protection. While its application has been largely unsuccessful in the past, the Cartagena Declaration could in the future be used to provide climate-displaced people with protections.

Case Study 4: TCLM Program Colombia/Spain

Overview:

This temporary labor mobility program was launched in 2000 by the Unió de Pagesos and the Fundació de Pagesos Solidaris (a rural workers' union from Cataluña, Spain) in cooperation with the International Organization of Migration (IOM). Starting in December 2006, the TCLM was expanded to migration for disaster-affected communities in Colombia: "Colombians facing recurring natural disasters are offered a livelihood alternative through temporary work abroad, while affected regions can recuperate. By supporting migrants in maximizing the impact of remittances on the recovery of their place of origin, the TCLM programme increases their resilience to environmental disruptions" (de Moor 2010, 4). Colombians temporarily moved to Spain to work in the agricultural sector.

The TCLM program (or *Migración Laboral Temporal y Circular* in Spanish) specifically targeted Colombians who were impacted by floods, landslides, and volcanic eruptions, and weather patterns created by La Niña. Between 2010 - 2011, in Colombia more than 3 million people were affected by floods and landslides, and "the damage done to the infrastructure, housing, and agricultural land throughout the floods forced many people to leave their homes and migrate" (Rinke 2011, 27).

The logic behind the program was so that "those who lost all their means of subsistence to the floods and landslides may earn some money in Spain in order to reconstruct their lives in Colombia as well as acquire new skills that they may use to contribute to the country's development. At the same time, this alleviates the pressure on the soil from Colombian territories that are trying to recover from the 2010 and 2011 floods" (Rinke 2011, 27). According to Rinke,

the TCLM program links climate change and development in that those who were impacted by environmental events are able to go to Spain and ideally learn new agriculture skills that allow them to return to Colombia and help develop the country. This also creates more resilient people which "may help to avoid unplanned forced migration which can cause additional damage to both the concerned populations and the territories of destination" (Rinke 2011, 27).

McAdam argues that temporary and circular migration is a useful strategy in the face of climate displacement because "it provides a 'safety net' by opening up alternative livelihood opportunities and allowing remittances to be sent back home to family members" (McAdam 2011, 9). However, there are also criticisms of temporary and circular migration, including that it does not give migrants enough legal protection.

Treaty Contents:

This was a program, not a treaty, but was based on the 2001 Agreement between Spain and Colombia on the Regulation and Organization of Migratory Flows for Employment, which the Unión de Pagesos used as the basis for the TCLM program. "The agreement regulates the recruitment process, the issuance of residence and work permits, and provides the migrant workers with a legal framework which promotes dignified and beneficial working conditions" (de Moor 2010, 15). Article 4 confirms that the Colombian government has the jurisdiction to pre-select candidates for the temporary employment in Spain, and in Article 10 defines eligibility as "Any Colombian citizen who performs seasonal or agricultural work and is the holder of an employment contract whose duration matches the characteristics and period of time of the season in question shall be deemed to be a temporary worker" (ILO 2001, 330). This bilateral agreement

does not contain any information about climate change or natural disasters, but that makes sense given that this agreement was the basis for the establishment of the program before it was shifted to focus on environmentally vulnerable communities.

When it was Mobilized:

The program was originally created in 2000. However, the specific mobilization of the program for those impacted by natural disasters and environmental change began in December 2006 (Rinke 2011). Through 2009, 8,115 Colombians participated in the program (Rinke 2011, 27). The IOM Colombia selects workers in Colombia, and targets low skilled workers. Colombians who participated went to Spain for a maximum of nine months to work in seasonal agriculture. Farmers are able to participate in the program multiple times.

According to Fornale and Kagen, the bilateral agreement was key in facilitating the TCLM program: "Implementation of this program has been facilitated by the existence of a solid bilateral legal framework allowing temporary labor mobility of low-skilled migrants between Spain and Colombia" (Fornale and Kagen 2017,7). People from vulnerable communities were specifically targeted, such as those affected by natural disasters, Indigenous people, and single mothers. The TCLM program at first only offered protection to people living in Southwest Colombia who were impacted in 2006 by the ashes of the Galeras volcano, but the "the program was expanded to include other environmentally-vulnerable communities, such as rural populations whose crops are vulnerable to floods and other environmental disruptions" (de Moor 2010, 13). In addition, the selection committee of the IOM Colombia prioritized Colombians who were engaged in their local communities.

El Tiempo, one of Colombia's most influential newspapers, published a story in January 2009 about 110 farmers from Bogotá who were traveling to Spain to participate in the TCLP. Felipe Antonio Caro wrote that eligibility requirements were determined by local authorities, but that all applicants must demonstrate that they are farmers and have few resources, and that they must have the support of their local community boards. In previous years, only farmers from Sumapaz, Suba and Usaquén were chosen, but starting in 2009 all of the local districts that had rural areas could participate in the program. María Victoria Rivera, sub secretary of Rural Economic Development, said that "*La idea es que vuelvan a Bogotá y que no busquen aventurarse, así tendrán otra oportunidad de regresar a España y obtener importantes ahorros*" (Caro 2009), or that workers return from Spain to Bogotá with savings. 38 farmers from Sumapaz participated in the program for the first time in 2007, and of those 38, 17 of them returned to Spain the next year.

Felipe Antonio Caro interviewed Carmenaza Martínez, a farmer who was displaced from her community in Meta because of violence, and fled with her family to Ciudad Bolívar, Bogotá in 2001. Her family moved to Sumapaz, where she heard about the TCLM program, applied, and were chosen. She traveled to Spain where for five months she worked packing apples, pears, peaches and grapes, and returned to Spain the next year to do the same job. She was paid 5 euros per hour and was able to save enough money to buy cows in Colombia. She hopes to return to Spain next year to save money to buy a house. She said that she never suffered discrimination in Spain and that she was treated kindly, but that she wouldn't like to remain in Spain - she wants to stay in Sumapaz putting into practice everything that she learned in Spain, and specifically wants to start a cooperative for cheese production to eliminate the middlemen.

Case Study 5: New Zealand Climate Refugee Visa

Overview:

In October 2017 New Zealand announced that it was going to create a "climate refugee visa" for Pacific Islanders, which would be an experimental humanitarian visa category and provide asylum to around 100 people per year. This was part of the Green Party's pre-election promise, and was announced by Green Party leader James Shaw, who said that "It is a piece of work that we intend to do in partnership with the Pacific islands" (Anderson 2017). The context of this announcement was in the wake of the rejection of two families' asylum applications from Tuvalu who based their asylum claims on climate change. New Zealand Prime Minister Jacinda Arden said that "We are anchored in the Pacific. Surrounding us are a number of nations, not least ourselves, who will be dramatically impacted by the effects of climate change. I see it as a personal and national responsibility to do our part" (Pearlman 2017).

However, in March 2018 the New Zealand government announced that the plan was cancelled because Pacific Islanders did not support it. James Shaw explained why, saying that "They want to stay in their homes and their homelands. The islands themselves made it clear that it's not something that they want us to unilaterally do. This is something that needs a multilateral dialogue between New Zealand and the islands" (News24 2018). Pacific Islanders instead wanted New Zealand to focus on climate change mitigation efforts, and Shaw reported that "New Zealand was poised to increase its aid spending in the Pacific and wanted to make communities more resilient to climate change" (News24 2018). However, Shaw emphasized that the climate refugee proposal is still on the table and that it may be utilized in the future, but only if Pacific Islanders want it. He added that "It's an incredibly sensitive area for the islands obviously and so

there's a lot of conceptual work that we've got to do that we don't want to rush into" (News24 2018).

Minister for Immigration Ian Lees-Galloway also commented on the cancellation of the humanitarian visa, saying that "Responses to the impacts of climate change would likely be considered as part of future discussions on Pacific immigration policies" (Manch 2018). The Ministry of Foreign Affairs and Trade advised that climate migration should be a planned, coordinated process, and that a "regional dialogue be held on climate migration at the Pacific Islands Forum in Tuvalu in 2019" (Manch 2018).

Why Pacific Islanders Rejected the Proposal:

Pacific Islanders do not want to resort to being refugees - they would rather stay in place. According to Professor Jane McAdam, "What Pacific Islanders have told me is that...We would like to have opportunities to migrate with dignity rather than have to wait until the situation becomes so dire that we are forcibly displaced" (ABC News 2014). At the International Conference on Small Island Developing States, Kiribati president Anote Tong stated that "We have more than enough time now to train them, to up-skill them, so that they can be worthwhile citizens when we relocate them as a community, not as refugees" (ABC News 2014). In addition, Walter Kaelin, former special envoy on internal displacement for the UN secretary general, reports that "People in the Pacific Islands...tell us, 'we do not want to be refugees because refugees are people who are marginalised and in desperation depend on handouts...We want to stay [in our home countries]" (ABC News 2014).

Instead of climate refugee visas, Pacific Islanders had four requests of the New Zealand government: reduce emissions, support adaptation efforts, provide legal migration pathways, and grant refugee status as a last resort. The legal migration pathways could take three complementary forms, according to Dempster and Ober: “bilateral/regional labor migration opportunities, humanitarian visas, and planned relocation/managed retreat” (Dempster and Ober 2020).

Case Study 6: Kiribati National Policy & Relocation Plans

There are three separate programs or policies in Kiribati that I will analyze. First, the 2014 purchase of 20 sq km on Vanua Levu, an island in Fiji, which is currently being used for agricultural purposes but eventually could be used for permanent relocation for a portion of the Kiribati population. The second is a small and costly program, the Kiribati Australia Nursing Initiative (2004-2014), where 46 Kiribati citizens received nursing education to temporarily work in Australia as nurses. The third is Kiribati's "Migration with Dignity" policy, which is demonstrated in the Kiribati National Framework for Climate Change and Climate Change Adaptation (KNFCCCA) of 2013 and the National Labour Migration Plan (NLMP). This is a long-term nation-wide relocation strategy but was partially reversed after the change in administration in 2016.

Example 1: Purchase of Land in Fiji

First, Kiribati paid AUD $9.3 million to purchase Natoavutu Estate on Vanua Levu island in 2014. Then-President Tong reported that "I'm glad we've taken this milestone with Fiji and hope that developed countries can engage with front-line countries like us in this arena, as a matter of taking simple actions rather than negotiating climate change issues where common ground is far from reach" (Republic of Kiribati, 2014). Then President of the Republic of Fiji, Ratu Epeli Nailatikau, stated "that the people of Kiribati will have a home if their country is submerged by the rising sea level as a result of climate change" (Republic of Kiribati, 2014). He spoke to the potentially precarious future situation that Kiribati residents may be in: "In a worst case scenario and if all else fails, you will not be refugees" (Republic of Kiribati, 2014).

There is a past precedent for Fiji accepting Kiribati citizens: “Fiji has previously accepted the Banaban people when they were forced to leave Ocean Island - one of Kiribati’s thirty-three islands - because of the pressure of phosphate mining there” (Republic of Kiribati, 2014). The Banaban people have a seat in Kiribati's parliament. While these people were not displaced by climate change, but rather by human activity, they can still serve as a potential model for what it looks like to be a citizen of a state but not reside there. In the short term, the government of Kiribati planned to use Natoavutu Estate to “explore options of commercial, industrial and agricultural undertakings" (Republic of Kiribati, 2014). As of 2017, it was being used as farmland (Walker 2017).

While President Tong received international praise and became a “climate-change celebrity,” there was backlash to the Fiji land purchase from domestic opponents: “They derided the Fiji purchase, for nearly $7 million, as a boondoggle; dismissed his “migration with dignity” as a contradiction in terms; and called his talk of rising sea levels alarmist and an affront to divine will” (Ives 2016). I will discuss the domestic backlash further on in this section under “Political Context.”

Example 2: Kiribati Australia Nursing Initiative

Second, the Kiribati Australia Nursing Initiative program, funded by the Australian government, began in 2004 and was canceled in 2014. Through this program the Australian government paid for 84 I-Kiribati students to study nursing at Griffith University in Brisbane. 78 graduated, but only 46 could get temporary work visas in Australia, and it was estimated that the cost to educate each student was around $290,000 USD (Doyle 2014). This program was part of

Kiribati's "migration with dignity" policy: "skilled migration has been identified by the Kiribati government as an adaption to the impacts of climate change, and the project was designed to enable a small number of I-Kiribati young people to receive training to enable them to migrate to Australia, which could support both minor impacts in chain migration and transfers of remittances to those remaining in Kiribati" (Fornale and Kagen 2017, 38). The focus on nursing was chosen because Australia is expected to have a shortage of nurses by 2025 (Doyle 2014).

Although this project was expensive and small-scale, it is important that investments in human capital are long-term and might not immediately lead to either profit or migration but do increase the number of skilled workers in Kiribati. However, the program was not cost effective, costing between $2 - $3 million annually to educate an average of 8 registered nurses each year. According to Doyle, "KANI points the way forward, but is clearly not the answer itself" (Doyle 2014).

Example 3:

The third example is Kiribati's National Labour Migration Policy "Migration with Dignity" adopted by then-President Anote Tong starting around 2012. This includes a long-term nation-wide relocation strategy that aims to 1) "Create opportunities for those who wish to migrate abroad now and in the near future" (McNamara), and 2) focus on training and upskilling to make Kiribati citizens more competitive in the global labour market. The idea behind the "migration with dignity" strategy, in the words of former President Anote Tong, is that the strategy "is an investment in the education of our people and the upskilling of our young population to equip them with educational qualifications and employable skills that would enable

them to migrate with dignity to other countries voluntarily and in the worst case scenario, when our islands can no longer sustain human life" (McNamara). Thus, this strategy incentivizes voluntary migration in the short-term but also prepares for the case of forced displacement in the future.

The document that contains the majority of the details of this strategy is the 2013 Kiribati National Framework for Climate Change and Climate Change Adaptation. This document discusses the distributional consequences of climate change and argues that the Global North should play a greater role in adaptation. One of the needs articulated in section 2.4 "Population and Resettlement" is the need to "facilitate overseas employment opportunities and permanent emigration" (Republic of Kiribati 2013, 22). Another interesting feature of this section is the emphasis on population awareness and urging citizens to think very carefully before deciding to reproduce. Section 2.6 "Survivability and Self-Reliance" addresses the concept of statelessness and the options for a disappearing state such as Kiribati but emphasizes that this should not be the main focus of consideration as it is a last resort. The authors of the report stress that at the present moment "it is important that it is clear that government's role will be in facilitating the free choice of the individual to relocate to another country...With time and as CC [climate change] impacts takes hold, government may then decide to intervene and initiate measures for a more mandatory relocation" (Republic of Kiribati 2013, 33).

Another important document that formulates part of the relocation strategy is the Kiribati National Labour Migration Plan of 2015, which emphasizes that while permanent relocation is part of the long-term strategy, "in the medium-term, the National Labour Migration Policy's vision is to help Kiribati achieve its national sustainable development goals, reduce poverty and

relieve pressure on the domestic labour market through identifying strategies to secure employment abroad" (Republic of Kiribati 2015, 17). Thus, both documents treat relocation as a future possibility but voluntary migration as the present focus.

Political Context:

President Anote Tong reached his term limit (he served three terms, which was the maximum), and in the 2016 presidential election the opposition party won with 60% of the vote. The new president, Taneti Maamau, disagreed with President Tong's focus on climate change. President Maamau said that "Most of our resources are now diverted to climate-change-related development, but in fact there are also bigger issues, like population, the health of the people, the education of the people" (Ives 2016). He also doesn't believe that climate change is a man-made phenomenon, and that in fact what happens in terms of climate depends on divine will, saying that "We try to isolate ourselves from the belief that Kiribati will be drowned. The ultimate decision is God's" (Walker 2017). Instead of climate change, he has focused on addressing domestic social issues such as poverty, unemployment, high cost of living on South Tarawa, and investing in tourism through courting resorts to the islands, expanding the coconut trade, and increasing access to fisheries (Walker 2017).

Case Study 7: U.N. Human Rights Committee Ruling Teitiota v. New Zealand (2020)

In October 2019, the UN Human Rights Committee (HRC) ruled that Ioane Teitiota, a man from Kiribati who was deported from New Zealand in September 2015 after authorities denied his claim to asylum, was fairly deported. The HRC ruled that Mr. Teitiota was fairly deported because he was not at imminent risk: his appeal to the HRC argued that New Zealand had violated his right to life by deporting him because he was at imminent risk of death upon return to Kiribati due to climate change.

While the HRC argued that he was not at imminent risk of death, and thus was not unlawfully deported, it did claim that "people who flee the effects of climate change and natural disasters should not be returned to their country of origin if essential human rights would be at risk on return" (UNHCR 2020). This was a landmark case because the HRC "ruled that governments must take into account the human rights violations caused by the climate crisis when considering deportation of asylum seekers" (Amnesty International 2020). According to Kate Schuetze, Pacific Researcher at Amnesty International, "The decision sets a global precedent. It says a state will be in breach of its human rights obligations if it returns someone to a country where - due to the climate crisis - their life is at risk, or in danger of cruel, inhuman or degrading treatment" (Amnesty International 2020). This case thus sets the legal precedent that climate change can affect human rights.

In a press briefing by the UNHCR following the ruling, they shared that "This is a landmark decision with potentially far-reaching implications for the international protection of displaced people in the context of climate change and disasters...*It recognizes that international refugee law is applicable in the context of climate change and disaster displacement*" (Amnesty

International 2020) - italics are mine. The UNHCR stated that this ruling has "consequences for the application of the 1951 Convention and regional refugee frameworks such as the OAU Convention and the Cartagena Declaration" (Amnesty International 2020).

Contents of the Decision:

According to the UNHCR press briefing, the Committee found that "where such risks [due to climate change] are imminent, it may be unlawful under the International Covenant on Civil and Political Rights (ICCPR) for governments to send people back to countries where the effect of climate change exposes them to life-threatening risks (article 6) or where they are at real risk of facing cruel, inhuman or degrading treatment (article 7 of ICCPR)" (Amnesty International 2020). In addition, the Committee notes that before states may become uninhabitable, or before a sinking state becomes submerged, "conditions of life in such a country may become incompatible with the right to life with dignity" (Amnesty International 2020).

In a summary of the relevant issues at stake, the decision references the substantive issue being the right to live, the relevant article of the Covenant being 6(1), and the relevant articles of the Optional Protocol being 1 and 2. Two committee members dissented and argued that Teitiota should not have been deported. The Committee reviews the New Zealand Tribunal's negative decision, which included a review of Kiribati 2007 National Adaptation Programme of Action under the UNFCCC. The Tribunal ruled that "while in many cases the effects of environmental change and natural disasters will not bring affected persons within the scope of the Refugee Convention, no hard and fast rules or presumptions of non-applicability exist. Care must be taken to examine the particular features of the case" (Human Rights Committee 2020, 4). The Tribunal

argued that Teitiota did not face a real risk of persecution because of deportation. Teitiota complained, arguing that the deportation violated his right to life under article 6 of the Covenant. The Committee noted that “severe environmental degradation can adversely affect an individual’s well-being and lead to a violation of the right to life” (Human Rights Committee 2020, 10). However, the Tribunal ruled that “the evidence the author provided did not establish that he faced a risk of an imminent, or likely, risk of arbitrary deprivation of life upon return to Kiribati” (Human Rights Committee 2020, 10).

The Committee addresses both climate-change induced harm through slow-onset processes and sudden-onset events, writing that “without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the *non-refoulement* obligations of sending states" (Human Rights Committee 2020, 12). The Committee did agree with Teitiota’s argument that Kiribati will be uninhabitable in 10-15 years but argued that the Kiribati government still could intervene to do something in the meantime to relocate the population.

However, Committee member Duncan Laki Muhumuza presented a dissenting opinion, arguing that “the State Party placed an unreasonable burden of proof on the author to establish the real risk and danger of arbitrary deprivation of life...the conditions of life laid out by the author - resulting from climate change in the Republic of Kiribati...pose a real, personal and reasonably foreseeable risk of a threat to his life under Article 6(1) of the Convention” (Human Rights Committee 2020, 15). The committee member argues that the threshold to constitute a real threat to his life has been met: “the considerable difficulty in accessing fresh water because

of the environmental conditions, should be enough to reach the threshold of risk, without being a complete lack of fresh water" (Human Rights Committee 2020, 15). Muhumuza argues that for the right to life to be violated, death does not need to be imminent.

Case Study 8: Successful Tuvalu/New Zealand Residency Case (2014)

Overview:

A family from Tuvalu was granted residency in New Zealand in 2014 after arguing that they could not return home because of climate change. While this is not a bilateral or regional agreement, it is still a relevant case study as it was influential internationally and groundbreaking in its resolution. Even though the decision was made primarily on humanitarian grounds based on the family's ties in New Zealand, this was "the first successful application for residency on humanitarian grounds when climate change has been a factor" (ABC News 2014).

However, this ruling does not necessarily mean that other people for whom climate change was one of the causes of their displacement will receive residency in New Zealand in the future. Environmental law expert Vernon Rive said that "I do see the decision as being quite significant, but it doesn't provide an open ticket for people from all the places that are impacted by climate change. It's still a very stringent test and it requires exceptional circumstances of a humanitarian nature" (NZ Herald, 2014). Climate change was one of multiple factors in this ruling and not necessarily the most important one.

The family moved to New Zealand in 2007, and their two children were born in New Zealand. They were undocumented since 2009. They applied for refugee status in 2012 and were initially denied it, but they appealed this ruling on humanitarian grounds and the tribunal ruled

affirmatively. The family received residency on “exceptional humanitarian grounds,” with the tribunal finding that they would face harsh conditions returning to Tuvalu.

One factor that helped them win their case was the fact that they had children, with the Tribunal stating in [25] that “Their young age makes them inherently more vulnerable to natural disasters and the adverse impact of climate change” (Immigration and Protection Tribunal New Zealand 2014, 7). This was one factor that was not present in the case of Ioana Teitiota, a man from Kiribati who was deported from New Zealand in 2015 after the authorities denied his asylum claim which he had petitioned for based on the threat of climate change in Kiribati. Trevor Zohs, one of the Tuvaluan family’s immigration attorneys, notes that their family ties in New Zealand were also relevant to the ruling, including three generations of family members and six sisters.

Zohs reported that climate change was a significant factor in this case: “A lot of people are affected by illness when they go back, they get sick from drinking polluted water. The island is porous so even when the water is not flooding, it penetrates the rocks under the land” (NZ Herald, 2014). While Rive argued that this case does not necessarily set legal precedent, Carole Curtis, the family’s other immigration attorney, argued that it does set precedent: “She says that if there are issues separate from climate change linked natural disasters, like government incompetence leading to inadequate water, food or shelter supplies, that could boost their claims” (ABC News 2014).

Contents of the Decision:

In the Introduction to the Decision, the Immigration and Protection Tribunal of New Zealand writes that "the appellants claim that if deported to Tuvalu they will be separated from the husband's family, all of whom are living in New Zealand...the appellants also claim that they will be at risk of suffering the adverse impacts of climate change and socio-economic deprivation" (Immigration and Protection Tribunal New Zealand 2014, 1). The Tribunal ruled that these claims were the case, and that the family should be given residence visas.

In the section "Evidence of the Appellants," in part nine it was stated that "Life became increasingly more difficult in Tuvalu due to the effects of climate change and overpopulation. The husband's home island of X became increasingly more vulnerable to inundation by sea-water as a result of sea-level rise" (Immigration and Protection Tribunal New Zealand 2014, 3). In terms of statutory ground of appeal, the Tribunal had to determine whether to grant a humanitarian appeal against deportation based on section 207 of the Immigration Act, which says that for a humanitarian appeal "(a) There are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand; and (b) It would not in all the circumstances be contrary to the public interest to allow the appellant to remain in New Zealand" (Immigration and Protection Tribunal New Zealand 2014, 5).

In the Assessment, the Tribunal considered four factors: the presence of the husband's family in New Zealand, wider integration into their community, the best interest of the children appellants, and lastly climate change and environmental degradation as a humanitarian circumstance. In regard to the last consideration, the Tribunal notes in part [27] "That exposure to the impacts of natural disasters can, in general terms, constitute a circumstance of a

humanitarian nature is something which is reflected in state practice" (Immigration and Protection Tribunal New Zealand 2014, 7). The Tribunal cites the report of the Intergovernmental Panel on Climate Change Working Group Two *Climate Change 2014: Impacts, Adaptation, And Vulnerability* - Summary for Policymakers, arguing that "The current and future impacts of climate change on human systems and well-being has been expressly acknowledged...It is also widely accepted that the impacts of climate change can adversely affect the enjoyment of basic human rights" (Immigration and Protection Tribunal New Zealand 2014, 7-8). The Tribunal describes the effects of climate change on the Tuvaluan population, writing that "Environmental degradation caused or exacerbated by climate change was already a feature of life in Tuvalu," (Immigration and Protection Tribunal New Zealand 2014, 8) and argues that future vulnerabilities caused by climate change include population growth, food scarcity, drought, decreased agricultural yields, climate-related hazards, and an increase in disease.

In the "Conclusion on Exceptional Circumstances of a Humanitarian Nature," the Tribunal states that, in regard to climate change, "the evidence in appeals such as this must establish not simply the existence of a matter of broad humanitarian concern, but that there are exceptional circumstances of a humanitarian nature such that it would be unjust or unduly harsh to deport *the particular appellant* from New Zealand" (Immigration and Protection Tribunal New Zealand 2014, 9). Thus, it is not enough to claim that the appellants' country of origin is impacted by climate change, but that the appellants specifically are suffering or would suffer from that climate change.

<u>Press:</u>

This case was covered extensively in the international press, with articles such as the one from Smithsonian Magazine titled "The World's First Climate Change Refugees Were Granted Residency in New Zealand" (Nuwer 2014). An article from the Washington Post titled "Has the era of the 'climate change refugee' begun?" states that "The recent New Zealand ruling could give smaller nations stronger leverage on the international stage" (Noack 2014). While in the actual ruling climate change was only one factor considered in the Tribunal's ruling, in the international press the family were referred to as "climate refugees," which is interesting from a discourse perspective.

Case Study 9: Climate Change Displacement Coordination Facility in Paris

A Climate Change Displacement Coordination Facility was proposed to the UNFCCC (COP 20) in 2015 in Lima, Peru, but was struck from the text at COP 21 in Paris, France, and the COP 25 in Madrid, Spain did not address it. The facility would "provide emergency relief; assist in providing organized migration and planned relocation; and undertake compensation measures" (Dempster and Ober 2020). The proposal for the coordination facility was adopted by the rest of the Less Developed Countries (LDC) group, and later was also adopted by the G77 and China. "Developing countries have consistently pushed a climate change displacement coordination facility as part of a section on loss and damage instead of a section on adaptation" (Displacement Solutions 2015, 8).

Australia was one of the key players who opposed the creation of the facility, even though its allies such as the United States, the UK, and France were open to the idea. An Australian Department of Foreign Affairs and Trade spokesman said that "Australia does not see the creation of the climate change displacement coordination facility as the most effective or

efficient way to progress meaningful international action to address the impacts of climate change" (Milman 2015).

The Climate Change Displacement Coordination Facility was first proposed by Nepal in October 2014, with the proposal being to provide support for emergency relief, planned relocation, and compensation measures, and this draft was furthered at the ADP in February 2015 in Paragraphs 36 and 37:

"36. The governing body shall develop arrangements relating to loss and damage through the establishment of a climate change displacement coordination facility. (OPT III 74)

"37. The climate change displacement coordination facility shall:

a. *Establish measures for emergency relief;*
b. *Assist in providing organized migration and planned relocation;*
c. *Establish procedures for coordinating compensation measures. (OPT III 75)"* (Displacement Solutions 2015, 2).

This version of the text was slightly edited in the July 2015 "Co-Chairs tool-version," and then in the August 29th - September 8th, 2015 ADP meeting in Bonn, a similar text was agreed upon, but the section on "compensation measures" was deleted. Developed and developing countries both were behind the creation of this coordination facility. The text was further revised at the Bonn meeting on October 23rd, 2015, and "Developing country Parties were satisfied with the overall text...as it included several of their views and called the text 'balanced' and 'Party-owned'" (Displacement Solutions 2015, 6).

However, in the final text submitted to Paris, there was only one reference to the coordination facility, under Article 5 (Loss and Damage): "The governing body/CMP/CMA shall, at its first session, establish a climate change displacement coordination facility to help

coordinate efforts to address the displacement of people as a result of the extreme impacts of climate change" (Displacement Solutions 2015, 6-7). In addition, there were two options for a section on loss and damage, and one referenced the coordination facility while the other referenced displacement, migration, and planned relocation.

As mentioned above, the coordination facility was excluded from the draft agreement for the Paris climate talks because of opposition from countries such as Australia. The reference to the proposed coordination facility was not included in the draft text of the climate deal (Harvey 2015). The COP25 Talks in Madrid in 2019 also struck from the text language on loss and damage that developing countries had pushed for, with powerful countries such as the U.S. exerting pressure to ensure that they were not held accountable for more monetary payments. "Kaloga told Carbon Brief the US did a 'very good job' of ensuring the final decision reflects their position. 'The discussion on loss and damage has shown who has power in the world and how to exert power,' he said" (Evans and Gabbatiss 2019). Thus, there was not sufficient support for loss and damage, and it appeared that a displacement coordination facility was completely off the table.

Part VI: Discussion and Conclusion

My hypothesis was that states will attempt to minimize their commitments to accepting climate-displaced persons and emphasize that they are not establishing precedent for accepting climate-displaced persons in the future.

In my first case study, the CARICOM and OECS FMAs that were operationalized in 2017, the treaties themselves do not mention climate change. Of the countries that accepted displaced persons due to the hurricane season, I did not find any evidence that climate change was discussed. It appeared that the acceptance of migrants was justified on the basis of a humanitarian disaster. There were no public commitments to accept more migrants in the future outside of the bounds of the FMAs.

In my second case study, the 1969 OAU Refugee Convention, the acceptance of Somali refugees by Kenya and Ethiopia was not justified on the basis of climate change, and instead on the basis of political instability, the famine, and violence. The inclusion of the clause "events seriously disturbing the public order" was not created in reference to climate change and has only later been argued could be applied to climate displacement.

My third case study, the 1984 Cartagena Declaration, a non-binding agreement, has been incorporated into national law but its application for climate-displacement has been uneven. The only mobilization related to climate-displacement was that of the Haitian earthquake in 2010 (a natural disaster likely not caused by climate change), where a few countries accepted Haitians as refugees due to the Cartagena refugee definition, but not directly because of the earthquake. States including Brazil, Peru, and Chile did not accept Haitians, even though they had adopted the Cartagena refugee definition.

My fourth case study, the TCLM Program between Colombia and Spain, more directly addressed recurring natural disasters such as floods, but did not explicitly address slow-onset climate change. The only news article that I was able to find on the program, in *El Tiempo,* did not mention environmental factors as being relevant to the selection process.

My fifth case study, the New Zealand Climate Refugee Visa, was the case study that related most closely to climate-displacement in that it would have given refugee status to people displaced by climate change. However, this program was cancelled because of opposition from Pacific Islanders, which is quite significant given that the people who would have benefited from the visa program did not support it.

My sixth case study, the various programs in Kiribati, also directly addressed climate displacement. The government of Kiribati under Anote Tong purchased land in Fiji, adopted a "migration with dignity" policy platform, and ran the Kiribati Australia Nursing Initiative. However, it was significant that the next president, Tanteti Maamau, from the opposition party, did not believe that climate change was anthropogenic and shifted the policy focus to other areas. Kiribati is also in a rather unique situation in that it is a sinking state. Therefore, policies or positions adopted by the Kiribati government likely would not be applicable to many other states.

My seventh case study, the UN Human Rights Committee ruling in Teitiota v. New Zealand, set the legal precedent that climate change can affect human rights and should be taken into consideration when making decisions about asylum. However, the decision still upheld the deportation of Mr. Teitiota.

My eighth case study was another court case, in which a family from Tuvalu was granted asylum in New Zealand due (in part) to the effects of climate change in Tuvalu. However, climate change was only one of multiple factors considered in the Tribunal's affirmative ruling, such as the presence of numerous family members in New Zealand. Climate change on its own likely would not have been enough to grant asylum to the family: the ruling depended on the other factors.

My ninth case study chronicled the failure of a multilateral tool to accommodate climate-displacement, the proposed Climate Change Displacement Coordination Facility. In this case study, opposition from a key powerful country, Australia, contributed to the failure of a multilateral instrument and demonstrated the difficulty of adopting multilateral legal instruments to accommodate climate displacement.

To return to my hypothesis, in the cases of 1) the CARICOM and OECS FMAs, 2) the OAU Refugee Convention, 3) the Cartagena Declaration, 4) the proposed coordination facility, and 5) the TCLM program, we see governments pushing for flexibility and the minimization of commitments, rather than the adoption of precedence. In the two court cases we see slight progress towards the acceptance that climate change can cause displacement and should be a factor considered in asylum/refugee status, yet it remains unclear if these cases will establish legal precedent going forward. In the case of the New Zealand Climate Refugee Visa, we see a government open to accommodating climate displacement, but there was pushback from the proposed beneficiaries. In Kiribati, we see a government dedicated to pushing for the rights of displaced people, yet Kiribati is a sinking state and a country of origin. In the case of Kiribati there is also domestic opposition to these programs as well.

My hypothesis proved correct: when accepting climate-displaced people, except for in the case of New Zealand, governments were careful to emphasize the specific extraordinary circumstances that were present, avoid language surrounding climate change, and fail to acknowledge climate-displacement as a phenomenon, yet alone pledge to address it in the future by accepting displaced people.

My study presents somewhat of a grim picture for climate-displaced persons. None of my nine case studies provided a convincing example of the feasibility of using current regional or bilateral agreements to accommodate climate-induced displacement. In addition, aside from the governments of New Zealand and Kiribati, most governments proved unwilling to even acknowledge climate displacement as a phenomenon.

What does this mean for the future of climate displacement and legal protections for climate-displaced persons? A key takeaway is that there are no easy answers or solutions to climate-displacement. Another is that countries of destination will likely oppose the acknowledgement of and accommodation of climate-displaced persons. It is also important to keep in mind the priorities of local and Indigenous people in the Global South who are already being impacted by climate-induced displacement and who do not want to leave their homes.

However, the fact that governments are reluctant to accommodate climate-displaced people and that there are no easy solutions does not mean that the question of climate-displacement should be dismissed. On the contrary, it is a phenomenon that will only be increasing in severity throughout time and requires attention and action at the local, national, and international levels. A major challenge for my study was the lack of existing research on the intersection of international law and climate-induced displacement. I hope that this study will

positively contribute to the literature and that the amount of research on this topic will increase throughout time.

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