

Are 'Climate Refugees' Compatible with the 1951 Refugee Convention?

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"We must take bold alternative action today to secure tomorrow" was Tuvaluan Minister Simon Kofe's last remark at a 2021 United Nations Climate Change Conference (COP26) side event before the camera panned out with him knee-deep in the ocean (Tingle, 2021). Tuvalu is the first country to sign a landmark treaty with another country to enable a "special human mobility pathway" to Australia and ensure its sovereignty remains in a post-climate change world (Parliament of Australia, 2024). Tuvalu is one of many countries currently being impacted by climate change. The *Convention Relating to the Status of Refugees* (1951), commonly known as the 1951 Convention, is the founding document of international refugee law that defines who qualifies as a refugee and provides them with legal protection. However, with the prospect of rising sea levels, erratic weather patterns, and natural catastrophes caused by climate change, the idea of 'climate refugees', or those displaced owing to environmental conditions, raises substantial problems and challenges to the existing international legal system. As a result, this essay will investigate the complications of incorporating climate-induced displacement into the present international legal system.

To start with, the term "refugee" has varied connotations across cultures and languages. As Maley (2016, pp. 37–40) explains, while the English term emphasises protection, other languages, such as Russian, focus on the act of fleeing itself. These cultural nuances shape societal perceptions and the media's portrayal of refugees, often aligning with images of individuals escaping war or natural disasters. Morris (2021, pp. 2679–2681) explores how the term "refugee" originated in reference to French Huguenots escaping religious persecution in the 17th century. Geopolitical forces and humanitarian concerns affected the refugee system across time, with notable developments in the nineteenth and twentieth centuries, including the two World Wars, the Cold War, and the later foundation of the United Nations. The 1951 Convention, enacted in the aftermath of World War II, gave a modern legal definition to refugees and guaranteed their rights. According to Article 1A(2) of the *Convention Relating to the Status of Refugees* (1951, art. 1), a "refugee" is someone who

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

(*Convention Relating to the Status of Refugees*, 1951, art. 1)

Scholars like Andrew E. Shacknove argue that a refugee is someone whose basic needs are not met by their government, necessitating international aid (Maley, 2016, pp. 40–41). This broader view raises moral questions about the responsibilities of states towards those displaced by climate change, suggesting that current legal frameworks may be inadequate for addressing such emerging crises. However, legal definitions are stricter, focused on persecution and political threats rather than environmental considerations, and the classification of refugees is heavily impacted by historical and geopolitical situations.

To begin, it is necessary to notice that the vocabulary in the 1951 Convention used masculine pronouns to

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characterise refugees, implying that refugees are primarily male, resulting in a gendered definition that is not representative of reality. From 2001 to 2021, females accounted for 47% to 50% of the worldwide refugee population, according to UNHCR (2023). Notably, in 2022, female refugees overtook male refugees, accounting for 51% of the global refugee population (UNHCR, 2023). Second, the idea of "persecution" is fundamental yet ambiguous, allowing for interpretation. For instance, general human suffering due to armed conflict does not qualify as persecution under the Convention (Maley, 2016, pp. 20–24). Moreover, the Convention's scope is narrow, excluding internally displaced persons (IDPs) and those who do not meet the specific criteria outlined. Different nations interpret and use the term differently, resulting in variations in refugee protection (Maley, 2016, pp. 24–28). This demonstrates that the 1951 Convention's definition of refugees has limitations while being comprehensive.

In light of the 1951 Convention's shortcomings, it has been supplemented by other legal instruments over time, expanding its applicability. The *Protocol Relating to the Status of Refugees* (1967, art. I), also known as the 1967 Protocol, updated the definition of a refugee. The new definition in Article I(1) states that

the term "refugee" shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article I of the Convention as if the words "As a result of events occurring before 1 January 1951 and..." and the words "...as a result of such events", in article 1 A (2) were omitted.

(*Protocol Relating to the Status of Refugees*, 1967, art. I)

This change removed temporal limitations, ensuring the 1951 Convention's relevance beyond its initial context. The UNHCR's (2002) *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees* attempts to address the gender issue by stating that "[a]dopting a gender-sensitive interpretation of the 1951 Convention does not mean that all women are automatically entitled to refugee status," but rather "the refugee claimant must establish that he or she has a well-founded fear of being persecuted for reasons [stated in Article 1A(2)]".

Regional initiatives have complemented the 1951 Convention by broadening refugee definitions to include those fleeing generalised violence and public order disturbances. For instance, the Organisation of African Unity adopted the *Convention Governing the Specific Aspects of Refugee Problems in Africa* (1969, art. 1), also known as the OAU Convention. Similarly, the Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama adopted the *Cartagena Declaration on Refugees* (1984) (Maley, 2016, pp. 24–28). Complementary protection acknowledges international protection requirements not addressed by the 1951 Convention. These requirements are frequently based on human rights treaties or humanitarian principles and include legal protections for those escaping widespread violence and other threats (Maley, 2016, pp. 28–31). However, different governments' application of these safeguards might result in gaps and discrepancies, emphasising the need for a more comprehensive approach to refugee protection.

As pointed out by many scholars, climate change is projected to be the greatest threat to public health in the coming decades, leading to significant population displacement (Bellizzi et al., 2023, pp. 1–3; Brown, 2008, p. 11; IPCC, 1992, p. 55). By June 2022, over 100 million people had been displaced worldwide, with weather-related disasters causing approximately 21 million displacements annually since 2008 (Bellizzi et al., 2023, pp. 1–3). Norman Myers (as cited in Brown, 2008, pp. 11–12) estimated that climate change could displace 200 million people by 2050. According to Bellizzi et al. (2023, pp. 1–3), the frequency and intensity of such disasters have nearly tripled in the past 40 years due to climate change. Displacement exacerbates health issues, including malnutrition and water-borne diseases, especially in low- and middle-income countries with weak health systems. This is because refugees and migrants have specific health needs that must be addressed through comprehensive care strategies. In addition, as noted by Ide (2023, pp. 77–78), Möbjörk and Brzoska (2017, pp. 285–315), Schaar (2018, pp. 7–11), UNFCCC (2022), and Zingg (2021, pp. 9–10), environmental changes can indirectly cause or exacerbate existing conflicts, leading to increased violence and persecution.

Due to these projections, many have urged for a formal recognition of climate refugees, often called the "forgotten victims" (Bellizzi et al., 2023, pp. 1–3). In 1985, the concept of "environmental refugees" was referred to by Essam El-

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Hinnawi, a United Nations Environment Programme (UNEP) expert, as:

those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life.

(Hinnawi, 1985, p. 4)

Nonetheless, despite the use of the term "climate refugees" since 1985, such individuals often do not qualify for asylum under the 1951 Convention (Bellizzi et al., 2023, pp. 1–3; Siegfried, 2023). According to the UNHCR, most climate-related displacement occurs within countries, basically classifying them as IDPs, while the 1951 Convention provides protection only to those fleeing war, violence, conflict, or persecution who have crossed international borders (Siegfried, 2023). However, the UNHCR does point out that the 1951 Convention can apply when climate change exacerbates an individual's risk of persecution or violence (Siegfried, 2023). For instance, in 2021, climate change-related dwindling water resources in northern Cameroon led to violence between herders and fishermen, resulting in hundreds of deaths and tens of thousands fleeing to Chad (Ngargoune, 2021).

To address these concerns, the United Nations General Assembly on 19 December 2018, adopted resolution A/RES/73/195 titled *Global Compact for Safe, Orderly and Regular Migration* (also known as GCM) in which Article 21(h) states that countries will commit to "Cooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin owing to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation" and to devise "planned relocation and visa options, in cases where adaptation in or return to their country of origin is not possible." The recognition of the potential of climate-displaced migrants moving across borders in the GCM was a pivotal move in advancing the recognition of climate refugees. Building on the commitment of the GCM, the UNHCR (2020, p. 4) released the *Strategic Framework for Climate Action*, which, while still classifying that most climate refugees are IDPs, does recognise that "some may also be impelled to cross borders in search of safety and protection." This increased awareness and formal recognition of climate refugees is a necessary step, with a focus on adaptation, mitigation, and protection of human rights.

In a historic ruling on a climate change-related asylum case on 21 January 2020, the United Nations Human Rights Committee stated that countries cannot deport individuals to conditions that violate their right to life due to climate change (OHCHR, 2020). This decision followed the 2015 case in which an I-Kiribati, Ioane Teitiota, sought asylum in New Zealand but was rejected because he argued that climate change had rendered his home uninhabitable with rising sea levels, violent land disputes, and environmental degradation (OHCHR, 2020). While the United Nations Human Rights Committee determined that New Zealand did not violate Teitiota's right to life, as sufficient protection measures were in place at the time, it did, however, establish new standards for future climate change-related asylum claims, emphasising that asylum seekers do not need to prove imminent harm (OHCHR, 2020). In particular, Article 7.1 from the *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016*, adopted by the United Nations Human Rights Committee on 23 September 2020, notes that "For climate change refugees, the risk of serious harm arises from environmental factors indirectly caused by humans, rather than from violent acts," thus acknowledging that climate-displacement can potentially fit the framework of the 1951 Convention. However, Article 9.12 does note that:

the time frame of 10 to 15 years, as suggested by the author [Ioane Teitiota], could allow for intervening acts by Kiribati, with the assistance of the international community, to take affirmative measures to protect and, where necessary, relocate its population.

(United Nations Human Rights Committee, 2020, art. 9.12)

This thereby positions the protection of climate refugees as non-urgent and within the responsibility of the impacted state. Despite this, the United Nations Human Rights Committee's recognition of both sudden and slow-onset climate events as valid grounds for asylum highlighted the international community's role in supporting affected countries, underscoring the potential for climate change to trigger non-refoulement obligations. This ruling, though not legally

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binding, underscores the need for enhanced climate change mitigation and adaptation efforts and suggests that migration might be a viable adaptation strategy (Aleksandrova et al., 2020). It highlights the limitations of the 1951 Convention in addressing climate-related displacement and the emerging reliance on non-binding instruments to address such issues.

Despite the progress in recognising climate refugees, the concept is still heavily debated, with critics arguing that it lacks scientific and legal clarity (Tertrais, 2021). As mentioned above, the UNHCR does not officially endorse the concept but rather places climate refugees, or individuals under "displacement solely in the context of climate change or disasters," as persons of interest instead of persons under protection under the organisation (Siegfried, 2023). According to a report by the Intergovernmental Panel on Climate Change (IPCC), establishing a causal relationship between environmental degradation and migration is challenging due to competing interpretations of causalities (Field and Barros, 2014, p. 628). According to Field and Barros (2014, p. 628), while some argue that migration increases during times of environmental stress and leads to the abandonment of settlements, others contend that migration rates do not significantly rise under environmental stress. Field and Barros (2014, p. 771) point out that there is widespread agreement in scientific and legal literature that the term "climate refugee" is considered scientifically and legally problematic. McAdam (2011, p. 102, as cited in Field and Barros, 2014, p. 771) describes the concept as legally erroneous and conceptually inaccurate due to three main reasons: (i) environmental factors are seen as triggers rather than direct causes of migration; (ii) including environmental migrants under the Geneva Conventions could have negative geopolitical implications, and there is a lack of global instruments to manage IDPs or international migrants; and (iii) Small Island States oppose labelling their migrants as climate change victims. As noted by Aleksandrova et al. (2020, pp. 1–3), Field and Barros (2014, pp. 628, 771), and Tertrais (2021), migration is typically influenced by a complex mix of political, economic, and social factors; the term "climate refugee" can be imprecise and potentially misleading, as it overestimates the impact of climate change without accounting for human adaptability. Nonetheless, the European Parliamentary Research Service (EPRS) did attempt to provide a clear definition of climate refugees, suggesting that the European Union could lead the initiative in further formalising their recognition (Apap and Harju, 2021). The growing literature on practical adaptation and action emphasises governance mechanisms to handle displaced people, focusing on adaptation, mitigation, and resilience building, suggesting significant measures may be needed to support climate-displaced migrants.

Given the limitations of the 1951 Convention in addressing climate-induced displacement, there is a growing need for a broader legal framework. McAdam (2008, pp. 270–274) argues for extending the protection afforded to the 1951 Convention to others in need of international protection, suggesting that the 1951 Convention's humanitarian objectives should cover those falling outside its terms. This would involve integrating human rights principles and providing equivalent status under international law to all beneficiaries of protection. Recommendation E of the 1951 Convention also supports a broader application of the 1951 Convention, urging nations to extend its treatment to individuals who may not fit the 1951 Convention's refugee definition. This recommendation reflects a desire to include refugees outside the 1951 Convention's scope, emphasising the importance of a comprehensive approach to refugee protection (Maley, 2016, pp. 275–278).

In summary, while the 1951 Convention provides a crucial legal framework for protecting individuals fleeing persecution, its comprehensiveness and contemporary applicability are debated. The modern phenomenon of climate refugees necessitates an expansion of the international legal framework. As climate change continues to drive displacement through rising sea levels, extreme weather events, and environmental degradation, the inadequacies of the current system become more apparent. Efforts such as the GCM and various regional agreements highlight the international community's recognition of the issue, but legal protections remain insufficient. The ruling by the United Nations Human Rights Committee on climate change-related asylum cases, though non-binding, marks a critical step towards acknowledging the rights of those displaced by environmental factors. To address these emerging challenges, it is imperative to integrate human rights principles into refugee protection frameworks, ensuring that climate-displaced individuals receive the necessary legal recognition and protection. As scholars and policymakers continue to debate and refine the concept of climate refugees, the urgency of developing a comprehensive, inclusive approach to international protection grows ever more critical.

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