A Well-Founded Fear of Environment: International Resistance to Climate Refugees

https://www.e-ir.info/2018/08/05/a-well-founded-fear-of-environment-international-resistance-to-climate-refugees/

NICOLE SPADOTTO, AUG 5 2018

Through agreements and conventions, many in the international community recognize climate change as a threat to livelihood. The correlation between climate change and environmental degradation has been well-established, especially with the advent of scientific technology. Currently, scientifically verifiable links between climate change and droughts, rising sea levels, extreme weather patterns, and desertification have been established and permeated global consciousness (Williams 2008, 504). Environmental and climate migrants were first identified at the 1997 Kyoto Protocol (ibid, 219), and are defined under the United Nations Environment Programme as "peoples who have been forced to flee 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 their quality of life" (ibid, 218). The International Organization for Migration defines climate migrants similarly, adding that these people or groups can either choose or be obligated to leave their homes due to sudden or progressive changes in the environment (Murray 2010, 92).

Existing literature and research from International Organizations (IOs), and International Non-Governmental Organizations (INGOs) has incited international understanding that the volume and scope of climate-displaced persons will exceed all currently known refugee crises within decades (Biermann 2010, 60). The research has spurred several bureaucrats and politicians, including American and Canadian administrations, to identify climate migrants as "climate refugees" and talk about potentially awarding these environmental migrants refugee status under international refugee law (Murray 2010, 90). This recognition has encouraged analysis about how individuals migrating because of climate change might deserve refugee status, due to loss of livelihood created by climate change (Islam 2013, 215).

In attempt to partially address the problem of awarding climate migrants refugee status, an agreement was passed at the 2015 Climate Change Conference in Paris with aims including mitigation of change and the human collateral linked to degrading environments in certain areas. During the negotiation process, the issue of environmental and climate refugees was a salient human rights issue: indeed, protections for these groups were initially and explicitly written into the body of the draft with most actors in agreement – though the "refugee" clause was later removed at the insistence of Australia (Karasapan 2015, par. 8). In the final draft, protecting climate migrants is still recognized in the preamble (UNFCCC 2015, 2). Additionally, 20% of the intended nationally determined contributions submitted specify the actionable item of aiding climate migration (Chazalnoel 2016, 7). Currently, the Paris Agreement has been ratified by 134 states of the 197 who were Parties to the Convention, and entered force in November of 2016, thus creating another layer of state acknowledgement towards the inevitable need to resettle climate migrants and afford them certain rights (UNFCCC 2014, par. 7).

As Australia's hesitancy demonstrates, though the emerging norm of granting refugee status to climate-forced migrants has been recognized by states and other international actors, de facto accepting these migrants as "refugees" has been resisted by states. Due to path dependency of the law, evolving state practice will be essential in working through this tension, especially as the "persecution" stipulation under international refugee law can technically encompass climate migrants based on human rights concerns. Ultimately, the climate refugee norm is stalled due to competing discourses surrounding environmental and migration remedies; divergent discourses create

A Well-Founded Fear of Environment: International Resistance to Climate Refugees
Written by Nicole Spadotto

a diffusion of pressure, which renders the boomerang effect ineffec tive across apathetic domestic populations and sporadic international pressure. This ineffectiveness is especially apparent as states employ instrumental analyses at the denial phase of the spiral model, whilst determining extension of asylum status. Case studies of forced climate migration in Bangladesh and Kiribati can award insight into nuances of states' (in)action towards climate migrants through disparate normative grafting techniques, and the consequences thereof. Thus, cost-benefit analyses are currently hindering the norm from integration; however, room exists for continued norm development as augmenting (and augmented by) international refugee law.

International Refugee Law and "Persecution"

Refugee law can be understood as a branch belonging to the holistic international human rights law regime which aims to protect the idea that humans are "born free and equal in dignity and rights" (McAdam 2006, 14). International refugee law was officially codified in the *Convention and Protection Relating to the Status of Refugees* in 1951, and retrenched in the 1967 *Protocol relating to the Status of Refugees*. Under the convention and protocol, the official definition of a refugee is a person who possesses "well-founded fear of being persecuted" in relation to their race, religion, nationality, membership of a social group, or political opinion. These persons are either unable or unwilling to return to their country of nationalization or residence due to their fear, or because their country of origin cannot afford these "refugees" the protection they claim as a human right (UNHCR 1957, 14).

Under the stipulation that an asylum seeker must have well-founded fear to be granted refugee status, room exists for climate refugees to be included within the legalistic language. As such, the requirement of "well-founded fear" is comprised of both subjective and objective clauses. Subjectively, *fear* is a state of mind predicated on individual perception of one's situation. Objectively, *well-founded* is considered an impartial premise, determined by reasonable possibility that asylum seekers would be subject to harm if returned to their country of residence (UNHCR 2005, 29). Given the subjectivity of *fear*, climate migrants can legitimately claim feeling fear because of their degrading environment and livelihoods linked to climate change. The principle of "well-founded" complicates the asylum claims of potential climate refugees. "Well-founded" is tied to persecution, which constitutes a "threat to life or physical freedom" (ibid, 31) due to belonging, *inter alia*, to a social group (Islam 2013, 52).

States, via international law, currently have not reached a consensus on remedies for environmentally displaced persons (ibid, 217). International refugee law, irrespective of the climate refugee question, creates a tension between the convention clause that there is no *duty* for a state to admit refugees and the *non-refoulement* custom, which bars return of a refugee to a place where they would be subject to persecution (Aleinikoff 1996, 260). To avoid responsibility for granting asylum as per the *non-refoulement* principle, states point to the fact that those migrating or requesting asylum due to climate change are not being overtly persecuted, or denied protection, in their home countries – and thus, that their fear is not "well-founded" (McAdam 2012, 47).

An option to include climate migrants under international refugee law could be to rewrite the law to exclude the condition of "persecution." Often, however, the law is path dependent; once a core element is included as constitutive in the law, going back to redefine issues is complex. In the context refugees, persecution was entrenched as a core component of law before the issue of mass climate migration was salient. To amend or rewrite the legal convention to exclude persecution as a determinant of constituting refugee status would be politically precarious partially due to adaptation, integration, learning, and coordination costs (Pierson 2000, 253). Deriving international support and consensus for redefining issues within refugee law will likely be politically costly; thus, states need to recodify understandings of "persecution" through practice (Hathaway 1997, xxviii).

"Path dependency" can be understood as previous choices and existing practices influencing subsequent choices in relation to the law and policies (Kirk 2007, 252). Once political actors have begun to pursue a certain path, incentives exist to continue along the course, and many disincentives exist to thwart a reversal of course, thus creating "positive feedback loops" wherein early decisions reinforce later developments (Kay 2003, 411). Specifically, when a state must make a choice, the option they are most likely to pursue is the one that matches previous choices or existing practice most closely (Kirk 2007, 252), even if the original context for pursuing that path has changed.

A Well-Founded Fear of Environment: International Resistance to Climate Refugees
Written by Nicole Spadotto

Path dependency operates within the refugee regime itself (through which the norm of awarding status based on persecution has become ingrained), and additionally via domestic courts that refer to the regime when deciding whether or not to grant an asylum seeker refugee status (Kay 2003, 407). The 1951 Refugee Convention is commonly understood as the cornerstone of the refugee protection regime because the standards it espouses are continually (re)codified through state practice (Islam 2013, 96). Since international refugee law does not enforce a duty upon states to accept refugees – aside from the arguably *jus cogens* weight of *non-refoulement* (Costello 2015, 283) – then accepting refugees is predicated on individual claims and domestic court systems that have already embraced the norm of including "well-founded fear of *persecution*" into asylum decisions. Notably, these decisions work through existing legal frameworks codified by the Refugee Convention. Thus, the argument for creating space in international refugee law for climate migrants would point to state practice changing over time rather than rewriting existing conventions, which would perhaps create exogenous over-legalization (Helfer 2002, 1873).

Path dependency plays a large role in the decisions of judges rendering them unwilling to abandon previous clauses, but they are willing to bend elements of existing language to serve their ends (Hathaway 2003, 625). This bending in interpretation is a vital element in expanding international law to include other provisions, much like within the *Toonen v. Australia* case, in which the norm of protection under sex was expanded to encompass sexual orientation even beyond initial deliberate state intent (Human Rights Committee 1994, par. 1). Elements of the Refugee Convention have been re-defined and re-contextualized through an evolving international human rights legal regime and landscape (Islam 2013, 121). While persecution is not explicitly defined under the convention (ibid, 220); however, based on perpetuated state practice and convention interpretation, persecution has practically become understood as a loss of protection in one's home state (Aleinikoff 1996, 259). Most explicitly, if an asylum seeker has been deliberately targeted in their country of origin or country of residence based on belonging to a certain in-group, they qualify for refugee status (UNHCR 1957, 14).

The definition of "refugee" has proven to be malleable, possessing the ability to encompass a variety of migrants through evolving ground-level and time-specific contexts. Victims of war are not the intended "targets" of war – but are rather caught as a collateral victim of the destruction the war is causing, and states' understanding of "refugee" has been expanded to encompass these individuals (UNHCR 1957, 6). Indeed, under existing international refugee law and convention, if a government is *unable* to protect their citizens from "persecution," they still qualify for refugee status under the Refugee Convention – as backed by decisions from the Canadian Federal Court of Appeal (Hathaway 2014, 305). As the "persecution" stipulation has been reinterpreted more broadly through state practice, light is shed on how "persecution" is clearer in some cases than others, but refugee status can still be granted (Bhabha 2002, 569). As individuals affected by, and fleeing, the "climate" of war are accepted as refugees through state practice working through the boundaries of refugee law, an increasingly broader interpretation of the term "persecution" is revealed. As states accept people fleeing the *climate* of conflict as refugees, passive persecution can be included under the broader understanding of "persecution." Thus, assessing both normative and rationalist models is invaluable in determining how state practices have, and might continue to, evolve to encompass climate refugees under international refugee law – and reasons why the nascent norm has not been ingrained in state practice.

Theoretical Approaches: Norm Development

The global problem of forced climate migration has been accepted by most states in the international community; but the emerging norm of awarding climate migrants refugee status has been resisted, as prospective refugees are sent back to deteriorating environmental conditions or labelled as "illegal migrants." Evaluating normative models showcases how norm entrepreneurs are divergently grafting climate migration onto different existing norms, stalling the adoption of the nascent climate refugee norm. These exercises are especially valuable from the standpoint of assessing how the norm will be forced to evolve: climate change is inciting environmental degradation wherein certain areas (and even states) are becoming inhabitable. Ostensibly, either states can adopt the climate refugee norm to prepare for the imminent crisis through a human rights protection lens; or once the crisis reaches a certain point, states will be forced to adapt to the most serious migrant crisis in history.

A norm can be understood as appropriate standards of behaviour for actors that share a certain identity, and thus are

A Well-Founded Fear of Environment: International Resistance to Climate Refugees
Written by Nicole Spadotto

linked to inter-relationships wherein behaviour is learned, reflected upon, and transformed (Nash 2016, 5). The norm lifecycle model aids in understanding the emergence and prospective influence of the climate refugee norm. Generally, a norm will move from emergence to norm acceptance (through a norm cascade) to internalization (Finnemore 1998, 255). The climate refugee norm is currently stalled between norm emergence and the norm cascade. The norm has emerged, as evident by international dialogue, states' denial that climate migrants should be granted refugee status, and individuals making asylum claims based on climate change effects (McAdam 2015, 134). The first phase of the model is concerned with norm emergence into the international community. As norms begin to emerge and gain footholds with certain actors, stronger norms survive and reproduce at a higher rate than other competing norms (Florini 1996, 368). In this context, norm entrepreneurs have a vital role to play in furthering a norm, as they can condition the norm into fitness while influencing the international community (ibid, 376). Framing is important because it can help an international norm gain prominence (wherein the quality of the norm and/or the quality of the states reaffirming the norm bolster the norm itself) (Finnemore 1998, 266). In norm emergence, norm entrepreneurs call attention to issues, or even create issues, as they use language that "names, interprets, and dramatizes them" (ibid, 257). Norm entrepreneurs will utilize the logic of appropriateness – understood as effective persuasion and discourse – either by bridging existing and accepted norms with a new norm, or being deliberately inappropriate to convey a message to the international community (ibid, 274).

As norm entrepreneurs showcase how the new norm fits coherently with existing and accepted international norms, they have the potential to wield tremendous influence based on their discursive argument (Florini 1996, 375). This is especially apparent in an inter-connected world wherein information can flow faster between more actors, with potential to increase the speed of normative change (ibid, 269). Skillful norm entrepreneurs will often use the tactic of "grafting" to institutionalize a new norm by linking it onto an already existing norm within the same sphere of issues; in this way, grafting becomes reinterpretation rather than reconstruction, which is helpful in working through path dependent international legal frameworks (Acharya 2004, 244). While working on the problem of climate migration, norm entrepreneurs have grafted the new norm of climate refugees onto the norms of the existing *refugee* regime. However, other norm entrepreneurs have grafted climate migration onto environmental protection norms, which has created a competitive normative landscape and has hindered development / integration of the climate refugee norm (Mayer 2014, 32). For example, during the negotiations of the Paris Agreement, competing voices pushed for local environmental capacity building in degrading states to aid people, while others were proponents of granting refugee status to forced climate migrants. Ultimately, neither solution was entrenched in the Paris Agreement in explicit terms – each competing perspective gained relatively equal support and thus eradicated the other. If any solution had been written into the Agreement, reaching a multilateral consensus would have been exceedingly difficult.

Though bridging climate migration with existing refugee and environmental norms has served to highlight the seriousness of problems of both climate change and migrants, it has also created sporadic understanding of the rights of climate migrants. Each competing framework is furthered by groups that are deeply committed to rectifying the situation. Actors aiming to grant refugee status tend to encompass the international legal community, academics, journalists, and some NGOs and research tanks like the *Environmental Justice Foundation*. Linking the nascent norm of climate migration to environmental sustainability is fostered specifically by a conglomerate of certain academics and environmental NGOs and IOs (ibid, 30).

Each camp furthering these competing frameworks care about forced climate migration; but in the case of the actors grafting the migration problem onto environmental concerns, they care about the environment primarily. From the vista of environmental organizations, if climate migrants were to be granted refugee status, the problem of forced migration due to climate incited environmental decay would lift the unit of analysis from climate change and onto the refugees. As such, based on a cost-benefit analysis from the point of view of environmental groups, if climate refugees are recognized, the responsibility of stopping climate change might be compromised – since the problem of forced migration would have been handled through means distinct from environmental goals. Thus, the recognition of climate refugees might work directly against the mandate of certain environmental groups – and be contributing to their alternate framing mechanisms. However, the multiple framing mechanisms convolute potential remedies available and quell subsequent action, especially states avoid responsibilities partially linked to the inconsistent framework this grafting creates (Biermann 2010, 62). At present, the development of the climate refugee norm is compromised, as several normative enterprises are "competing on the same conceptual field" (ibid, 36).

A Well-Founded Fear of Environment: International Resistance to Climate Refugees
Written by Nicole Spadotto

The norm lifecycle model theorizes that a norm cascade will be catalyzed through international socialization, whereby the norm is diffused and promoted across actors through praise, derision, and / or emulation (Finnemore 1998, 902). With linkages and socialization to the wider world within the bounds of the macrosociological world society theory, states can be influenced through conferences and world meetings to acknowledge and eventually adopt an emerging norm. As international conferences elucidate standards, they can facilitate state development of an action platform through education and interaction with other actors, including NGOs and other domestic actors (Wotipka 2008, 312). Of course, the twenty-first Conference of the Parties leading to the mass-ratification of the Paris Agreement, is an ideal example of how conferences have potential to develop, finesse, and disseminate certain norms. During the Conference, transnational advocacy networks (TANs) were established and strengthened as states, NGOs, and members of civil society were invited to interact and learn from one another (Keck 1998, 12), with potential for preferences to solidify as these groups interact and socialize (Fomerand 1996, 370). As many actors engaged through TANs, the norm of *climate refugees* was developed and disseminated – forcing states to acknowledge the existence of the emerging norm (UNFCCC 2015, 2). Boomerang patterns reflect these dense links at the international arena, as socialization can incite both domestic and international actors to pressure states (Keck 1998, 30).

Conversely, the conference also facilitated the exposure to other competing frames, wherein NGOs and some developing states pushed for focusing on environmental sustainability rather than refugee remedies (UNFCCC 2015, 31). With the competing framing narratives linked to climate migration, the progression of the *climate refugee* norm is hampered amid disparate perspectives. As such, a gap has been created between recognition and integration of the norm, which has stalled actionable items related to integration of offering climate migrants refugee status. The lack of international consensus on how to approach climate migrants creates space for states to navigate around the norm and leverage non-entry measures to "insulate themselves from claims by asylum seekers" (Islam 2013, 256) by deferring to environmental frames without needing to explicitly deny the validity of the refugee norm – though some still outright deny.

Arguably, in an increasingly interconnected world, local agents have a role to play in promoting norm diffusion as they seize upon transnational norms to modify them in conjunction with their existing normative beliefs and practices (Acharya 2004, 269). As climate migration is becoming an increasingly salient global issue, and in certain contexts will be inevitable (as small island states flood, rendering conditions impossible to live in, whole class of people will need refuge), actors can leverage whichever climate migrant framework is compatible with existing local belief systems – theoretically giving the overarching norm a better chance of succeeding at the local level. However, this argument neglects to delineate the socio-group of climate migrants and a uniform set of rights these individuals can claim. If these frameworks continue to be disparately leveraged through different localities and polities, a standard of treatment will not be established for forced climate migrants, which can lead to poor treatment and an inconsistent rights foundation divorced from international legal power.

Awarding climate migrants refugee status is a strong normative enterprise in terms of moral and legal grafting, given international prominence, the *jus cogens* standards of treatment already associated with the refugee regime, the ability to expand "persecution" within refugee law (and avoid political costs of re-writing the law), and existing moral weight attached to the regime. Additionally, granting refugee status moves the unit of analysis to protecting the individual (Islam 2013, 231), with an emphasis on human rights (Aleinikoff 1996, 264). Especially since domestic governments of these groups of people are *unable* to provide protection from climate "persecution" (Hathaway 2014, 319), surrogate national protection might be warranted with a certain standard of protection under international law (ibid, 67).

Presently, however, the climate refugee norm is still nascent as other discursive frameworks hinder its ability to reach the critical tipping point. To better account for the inability of the climate refugee norm's inability to cascade within the lifecycle model, appealing to the spiral model can illuminate why the norm appears to have reached a stasis. Unlike the norm cascade, the spiral accounts for variation and stalling because it operates in a series of boomerangs with international and domestic pressure working in tandem to pressure the state (Risse 1999, 18). The spiral model works through five phases to demonstrate the path from state commitment to compliance by mapping the path of human rights norms. The first phase on the spiral model is repression of the norm and activation of the international

A Well-Founded Fear of Environment: International Resistance to Climate Refugees
Written by Nicole Spadotto

community, which puts the situation under international investigation (ibid, 22). The second phase is denial that the norm exists; this phase is important because by denying the norm, the state acknowledges the norm exists and reveals that they are being socialized to the norm (ibid, 23). The third phase involves tactical concessions, wherein the government will accept the validity of the norm as demonstrated by making superficial concessions with the intent of placating international pressure – which has the purpose of galvanizing the domestic population (ibid, 12). The fourth phase encompasses prescriptive status, as the state begins institutionalizing the norm. Finally, rule-consistent behaviour occurs when compliance is consistent with the norm (ibid, 20). Compliance may occur across the spiral depending on five scope conditions (Risse 2013, 17): in the context of granting climate refugees' migrant status, one might intuitively believe that material and socially vulnerable states would be more willing to grant refugee status and develop the norm – ie, those states also being affected by climate, and which might need the norm to evolve to protect its own citizens at a future date. However, resistance to the climate refugee norm has manifested across all states, regardless of vulnerability.

Aggregating modeled information about state practices can illuminate the emerging international norm's status on the spiral model. States *en masse* have recognized the problem of climate migration, and 134 states have ratified the Paris Agreement – which entrenches this recognition into a multilateral treaty. These states also acknowledged the norm of awarding climate migrants refugee status, as they have not with the frameworks linking climate migration to environmental norms. This recognition is manifested through denial (or deferral to other capacity-building environmental remedies), with Australia specifying that they do not *want* to recognize the climate migrants as refugees (Karasapan 2015, par. 10). Thus, states are on the "denial" phase of the model in relation to the emerging norm of granting climate migrants *refugee* status. This denial becomes easier amid competing framing mechanisms at international civil society, which fail to mobilize apathetic domestic civil societies: both of which are incapable of applying consistent boomerang pressure to change state practice (Mayer 2014, 36). The acceptance of climate migrants as refugees is largely predicated on states' instrumental analyses – indeed, as is some of accepting certain asylum claims in general – so socialization and argumentative discourses through civil society are vital to prod the norm along the spiral model into subsequent phases (ibid, 13).

At the early phases of the spiral model, whether a state is receptive to an emergent norm (or not) is weighted more on instrumental than ideological factors. The nascent norm of affording climate migrants refugee status is stuck on the early phases of the model – the adoption of the norm as this phase thus encompasses cost-benefit considerations more heavily, and robust analyses should reflect this cost-benefit calculation that states are likely considering. Argumentative discourses and socialization to norms can work in tandem with instrumental factors to influence norm development and acceptance (Risse 2013, 13); however, in the case of norm of affording climate migrants refugee status, competing discourses and high costs create a widespread resistance and stalling of norm development and integration.

At the beginning of the spiral model, international civil society can play a vital role in moving a state closer towards norm adherence (and later integration) by highlighting abuses and shaming states into making tactical concessions. This international mobilization accounts as a factor in the instrumental calculations of a state in their movement from the repression to denial to tactical concessions phases (Risse 1999, 276). The different mechanisms of social action that can influence the instrumental considerations of states include coercion (or external force), changing incentives by raising the cost of non-compliance under the logic of consequences, persuasion and discourse through rhetoric of the logic of appropriateness, and capacity building to help incapable states adhere to the emerging norm. For example, naming-and-shaming can be an effective technique at earlier phases of the model through instrumental calculations, especially if a state is socially vulnerable and wants to be recognized by the international community in adhering to the norm. Similarly, sanctioning might also be effective if a state is materially vulnerable (Risse 2013, 276). Persuasion mechanisms could re-constitute state interests, with a recalibrated cost-benefit calculation working to support the emerging climate refugee norm in question. In the case of the adoption and integration of the new climate refugee nascent norm, naming-and-shaming and sanctioning are neither occurring, nor feasible; despite widespread recognition of the emerging prospective norm of awarding climate migrants refugee status, no state has offered this protection yet. Therefore, no state would risk naming-and-shaming or sanctioning for fear of they, themselves, being held accountable to award refugee status to climate migrants; further, the boomerang pattern of mobilization is presently not targeted or strong enough to alter this calculation.

A Well-Founded Fear of Environment: International Resistance to Climate Refugees
Written by Nicole Spadotto

Case Study: Bangladesh and India

Exploring the case of forced climate migration in Bangladesh illustrates resistance to climate migration as grafted with the existing *refugee* regime. The study also showcases the potential consequences of ignoring forced climate displacement and thus the need to account for these individuals as refugees. The scenario is a microcosmic example of the macrocosmic problem, wherein developing nations have contributed little to greenhouse gas emissions, but suffer the most human collateral. Rising sea levels have displaced tens of millions of individuals in Bangladesh as coastal areas are being submerged. Currently, the Bangladeshi government has no plans or capacity to feed, house, or provide clean water for the number of forced climate migrants (Faruk 2016, par. 4). As such, many Bangladeshi people are migrating, and seeking refuge, in India – much to the Indian government and domestic populations' chagrin (Lone 2015, par. 3).

India does respect UNHCR conventions through practice (UNHCR 2011, par. 1). However, in the case of climate migration, India has taken an overtly antagonistic stance, despite Bangladeshi officials imploring for an international "climate refugee framework" to be implemented (Bhagati 2009, par. 14). In response, India has erected a border fence, which possesses the partial purpose of pre-empting and dissuading prospective *refugee* claims due to the inevitable climate migration crisis (Hoelscher 2011, par. 5). This creates an obvious tension: those who migrate into India due to degrading environmental conditions that affect their livelihoods are labelled "illegal immigrants" rather than prospective "climate refugees" by the government (Hathaway 2014, 28). By citing "illegality," India dodges responsibilities to grant these migrants the rights and retributions they would possess under refugee status. Once migrants are "criminalized," they often enter illegal and unregulated networks, and sometimes become entangled in human trafficking and exploitation, which incites even worse human rights abuses (Mayer 2013, 188). Flowing from this discourse, movement related to environmental changes between Bangladesh and India is politically charged in both states (ibid, 184).

Through (in)action, India is actively resisting granting environmental migrants refugee status; thus, India is on the denial phase of the spiral model. This resistance also is exhibited on the level of civil society. Local NGOs have released reports warning of the massive influx of supposed illegal migrants from Bangladesh that will continue to occur due to climate change, which news articles have leveraged and disseminated to the wider population (ibid, 187). The lack of civil society support, at both domestic and international levels, is crucial in why the norm is currently stalled on the spiral model. Since the international community cannot agree on how to frame, and thus offer remedy for, the climate migrant problem, any attempts to shame India for lack of migrant acceptance is applied with contradictory intents and inconsistent methods.

Socialization has been important in inciting exposure and acknowledgment of the emerging norm of climate refugees – India was a signatory and ratifier of the Paris Agreement, and through the conference was exposed to pressure and rhetoric surrounding *climate refugees.* Still, civil society has not been able to uniformly band together to highlight the same abuses, shame, or empower the domestic population to change these practices (Risse 2013, 276). Though journalists, Bangladesh, and some INGOs like Greenpeace – which works both internationally and through local Indian chapters – have exposed the migration problem and implored action, the pressure is not strong or consistent enough to incite a change in state practice or galvanize apathetic domestic actors (Greenpeace 2008, par. 3). Universities and NGOs globally and locally are also working to improve environmental capacity in Bangladesh (University of Manitoba 2006, par. 1), which is diffusing the potential power climate refugee norm entrepreneurs could have used to pressure India into making tactical concessions. With competing frames, India defers to lip-service regarding Bangladeshi environmental-capacity efforts instead (Bhagati 2009, par. 5).

Since international pressure has lacked uniformity, it has failed to mobilize the domestic population – which would help the norm move to tactical concessions phases of the model. However, domestic politics and divisions might also have an influence on norm entrepreneurs (Symons 2015, 82); for example, domestic populations are reluctant to accept migrants and will not hold India accountable to these commitments, and the Indian domestic population is overwhelmingly opposed to the refugee status India might offer to climate migrants (Hoelscher 2011, par. 6). Along this vein, lack of domestic mobilization goes beyond merely alleviating pressure on the Indian government to accept these migrants as refugees – it actively creates resistance that the state can build upon in refuging norm adoption.

A Well-Founded Fear of Environment: International Resistance to Climate Refugees
Written by Nicole Spadotto

Instrumental Analysis

Instrumental analysis clarifies why states do not want grant climate migrants refugee status, especially because (from their vista) costs are high and benefits are negligible in comparison. As commonly acknowledged, the impending migration due to climate change will likely be the largest migration-related crisis up until that point; in assessing potential costs, if a state is the first to award climate migrants refugee status, they open themselves to an influx of asylum claims that are administratively rigorous, and economically and politically costly. These costs would only be compounded by domestic populations that tend to be skeptical of immigrants and refugees already, such as within France or the United States. Since these refugees would be linked to climate change, costs become even higher; climate change, itself, remains a controversial issue as per its environmental and social impacts, as well as the policy changes its demanding politically and economically. States, even just through the climate change issue, drag their feet in making binding commitments (Hoelscher 2011, par. 9). Thus, attaching refugee expectations to this existing skepticism would create too high a risk from the states' perspectives, especially as doing so would facilitate a tension between *non-refoulement* and state sovereignty. Additionally, creating rights and responsibilities linked to climate change displacement would entail a certain acceptance of responsibility for environmental damage and recognition of the economic, political, and social costs that damage entails (Williams 2008, 517).

Consequently, expanding the scope of "persecution" under the international refugee regime could likely only come from state practice rather than re-formulating the law, but practically states will be unwilling to create an international landscape wherein new groups will demand asylum because of climate change. If a state were to accept climate change asylum claims as legitimate, they would prematurely invite more claims in their region from these groups. Other groups, too, might demand refugee rights through asylum claims due to the expanded application of "well-founded fear of persecution," thus opening the floodgates for additional claimants and migratory instability. Though an influx of climate migrants is inevitable, and has already commenced, awarding members of this group refugee status would encourage more migration and asylum claims, which is an invitation states historically have avoided. Of course, certain benefits might exist for a state to accept the asylum claim of a prospective climate refugee. For example, xenophobic states that have been reluctant to accept refugees from Middle Eastern, war-torn states due to fears of "terrorism" could ostensibly accept *climate refugees* from Western-oriented states, and thus signal to the international community that they are contributing to ameliorating refugee crises'. However, from states' perspective, this small benefit would not outweigh the inundation of costs associated with accepting climate asylum claims as warranting refugee status.

Since state practice will not organically evolve to encompass climate migrants under refugee status presently, the role of international civil society and domestic actors to pressure states (as states weigh their cost-benefit calculations) becomes important to galvanize changes in practice, especially with norm acknowledgment. As international civil society is launching competing solutions to the problem, they are unable to levy consistent pressure to incite movement towards the tactical concessions phase of the model. In theory, international actors can empower domestic groups to pressure the state to change practices from the bottom-up. However, given inconsistent international pressure, and domestic societies that are already skeptical of outsiders, states are not being sufficiently pressured in uniform fashion to galvanize change in their practice. Thus, the emerging potential norm of encompassing climate migrants under refugee status is unlikely to manifest unless a more consistent form of international pressure is levied.

In sum, logic of appropriateness is applied inconsistently and logic of consequences is not being applied (as no state is willing to accept climate refugees, no state is willing to change incentives); thus, capacity-building to help incapable states grant refugee status and rights on climate migrants might be the most promising avenue to alter the practice of certain developing and materially / socially vulnerable states so that they include climate migrants as refugees. This potential solution, however, is also problematic; the states that would be most interested in funding or aid for capacity building are states that probably would not offer these migrants the best conditions – and those funding the enterprise would be wealthier states, who would avoid accepting climate refugees through monetary compensation to vulnerable areas.

Case Study: Kiribati and New Zealand

A Well-Founded Fear of Environment: International Resistance to Climate Refugees
Written by Nicole Spadotto

The island state of Kiribati lies at the nucleus of the climate change debate, as the nation is at peril of disappearing due to rising sea levels, leaving the nation ecologically fragile and disrupting the livelihoods of nationals. As the islands are becoming submerged, the geological make-up of the island is already being compromised, creating the discussion of the remedies Kiribati nationals will be granted, and at what point they will be granted, as the country is slowly becoming eradicated. The Kiribati government has implored specifically Australia and New Zealand to accept citizens as permanent refugees; both states have not agreed to resettle Kiribati citizens on a large-scale basis (Barden 2011, 50).

Within this context, in 2015 a Kiribati national, Ioane Teitiota, became the first climate asylum claimant in New Zealand after his visa expired and authorities threatened his deportation. Teitoita asserted that he, his wife, and three children were fearful of returning to their home country due to over pollution and potential dangerous environmental conditions (Weiss). The case first went through the Immigration and Protection Tribunal, which heard this case under the Refugee Status branch – showcasing that the New Zealand judiciary has acknowledged the emerging norm of awarding climate migrants refugee status (Buchanan 2015, par. 1). Notably, the Tribunal acknowledged that Teitiota's case failed because there was no evidence establishing that the environmental conditions he would face upon return to Kiribati would be so perilous that they would amount to "persecution." However, in its decision, the court left space open for environmental conditions to fall under persecution if the conditions are dire enough (Wewerinke 2013, 3).

Teitoita appealed to the High Court, which agreed with the Tribunal that the appellant's case was "novel and optimistic," though the current climate condition in Kiribati was a medium-term problem, and thus the Refugee Convention should not be expanded to include climate refugees. The Court of Appeal held that the Refugee Convention did not encompass climate refugees; but the Supreme Court argued that Teitiota did not face "serious harm" under persecution by returning to Kiribati, especially since the Kiribati government (with aid from INGOs and other organizations) was making environmental capacity building a priority to aid their nationals. The New Zealand Supreme Court, however, was deliberate in noting that the Refugee Convention did have capacity to encompass appropriate climate refugee cases *in the future* depending on levels of environmental degradation (Buchanan 2014, par. 8).

Thus, the nascent norm has been acknowledged through the domestic judiciary with the capacity to carry over into other future decisions, especially through transjudicial dialogue (Slaughter 1994, 99). New Zealand has noted that once the local government becomes incapable of affording citizens' protection from climate change, then New Zealand protection could potentially be forthcoming under refugee law, ultimately leaving space for the Refugee Convention to be compatible with climate refugee claims (McAdam 2015, 134). This is a large step forward for norm development along the spiral model, as all previous climate refugee cases were deemed incompatible with the Refugee Convention (Buchanan 2014, par. 1). Still, this is a small tactical concession: New Zealand is currently adamantly denying they are in violation of the emerging norm based on precedent and ground-level situations.

Despite acknowledgement of the climate refugee norm, and denial that climate refugee status should not be awarded within recent cases in New Zealand, the cost-benefit analysis is currently keeping New Zealand from moving into the tactical concessions phase. Based on New Zealand judicial rationale, current environmental degradation is not limiting *enough*; further, currently governments of states adversely affected by climate change are able offer deliberate capacity building alternatives to their nationals. Concurrently, New Zealand governments and judiciaries have been open about potentially awarding refugee status to climate migrants should the emergency escalate. As such, New Zealand is instrumentally resisting acceptance of climate refugees *at this current time.* If New Zealand were to accept a climate refugee from Kiribati, an influx of asylum claims would fill New Zealand courts from other adversely affected proximal states, like Tuvalu – especially since New Zealand would be the first (and only) state to offer refugee status to climate migrants (Shen 2012, 73). As such, based on instrumental concerns, for the norm to reach the tipping point on the cascade or to progress to the tactical concessions and prescriptive status phases, many states will need to collectively agree to grant refugee status. This will likely only be probable and possible once climate change affecting human livelihood reaches an internationally-agreed upon point of disaster where inaction is no longer permissible due to loss of life – wherein many states will open their borders at once. For de facto Refugee Convention expansion through state practice, states affected by climate change must be completely *unable* to cope

A Well-Founded Fear of Environment: International Resistance to Climate Refugees
Written by Nicole Spadotto

with the crisis to alter the current instrumental calculation and potentially spur action due to existing principles of *non-refoulement* (McAdam 2015, 136).

Conclusion

Once climate begins to affect environmental decay enough where the home state is unable to offer remedy, the norm of granting climate migrants refugee status might be catalyzed along the cascade and the spiral, overcoming current instrumental barriers. With the eradication of certain coastal areas and states, climate migrants will be put in similar positions to other migrants fleeing "persecution" or "climates of war" – it is politically awkward to recognize claimants as refugees due to domestic dissent, but morally and legally difficult to refuse claims (Hathaway 1997, xxv). In this respect, the international refugee regime can offer a promising framework through which to grant those migrants displaced by climate change a foundation of uniform rights. However, expanding the law to include climate change under "persecution" must come from state practice – as understood by the process of norm integration. Still, the norm is stalled due to divergent goals of international civil society and apathetic domestic populations, which are not altering states' instrumental calculations as they evaluate whether to grant environmental asylum claims refugee status; these calculations, however, have capacity to shift as the environmental situation continues to erode certain island and coastal states. By grafting climate migrants onto the international refugee norms, the principle of *non-refoulement* might have a role to play as states will likely adhere to the *jus cogens* standard of not returning these groups of people back to conditions that are inhabitable – as demonstrated by New Zealand's judicial rulings that have kept this possibility ajar for future court decisions.

Bibliography

Ackerly, B. A., and True, J. (2008) An Intersectional Analysis of International Relations: Recasting the Discipline. *Politics and Gender*, **4** (1), 156-173.

Ackerly, B. A., Stern, M., and True, J. (eds.) (2006) *Feminist Methodologies for International Relations*. Cambridge: Cambridge University Press.

Agathangelou, A. M. and Ling, L. H. M. (2004) Power, Borders, Security, Wealth: Lessons of Violence and Desire from September 11. *International Studies Quarterly*, **48** (3), 517-538.

Agathangelou, A. M. and Ling, L. H. M. (2009) *Transforming World Politics: From Empire to Multiple Worlds*. Abingdon: Routledge. The New International Relations Series.

Agathangelou, A. M. (2002) 'Sexing' Globalization in International Relations: Migrant Sex and Domestic Workers in Cyprus, Greece, and Turkey. In: Chowdhry, G. and Nair, S. (eds.). *Power, Postcolonialism, and International Relations: Reading Race, Gender, and Class*. London: Routledge. Routledge Advances in International Relations and Global Politics, 142-169.

Anand, D. (2008) Porno-nationalism and the Male Subject. In: Parpart, J. L. and Zalewski, M. (eds.). *Rethinking the Man Question: Sex, Gender, and Violence in International Relations*. London: Zed Books, 163-180.

Barkawi, T. and Laffey, M. (2006) The Postcolonial Moment in Security Studies. *Review of International Studies*, **32**, 329–352.

Bilge, S. (2013) Intersectionality Undone: Saving Intersectionality from Feminist Intersectionality Studies. *Du Bois Review*, **10** (2), 405-424.

Brown, W. (1995) *States of Injury: Power and Freedom in Late Modernity*. Princeton: Princeton University Press.

Butler, J. (2007) *Gender Trouble: Feminism and the Subversion of Identity*. 4th ed., London: Routledge.

A Well-Founded Fear of Environment: International Resistance to Climate Refugees
Written by Nicole Spadotto

Carastathis, A. (2008) The Invisibility of Privilege: A Critique of Intersectional Models of Identity. *Les Ateliers de l'Éthique*, **3** (2), 23-37.

Carbado, D. W. (2013) Colorblind Intersectionality. *Signs: Journal of Women in Culture and Society*, **38** (4), 811-845.

Chan-Tiberghien, J. (2004) Gender-Skepticism or Gender Boom? *International Feminist Journal of Politics*, **6** (3), 454-484.

Chowdhry, G. and Nair, S. (2002) Introduction: Power in a Postcolonial World: Race, Gender, and Class in International Relations. In: Chowdhry, G. and Nair, S. (eds.). *Power, Postcolonialism, and International Relations: Reading Race, Gender, and Class*. London: Routledge. Routledge Advances in International Relations and Global Politics, 1-32.

Connell, R. W. (1987) *Gender and Power: Society, the Person, and Sexual Politics*. Cambridge: Polity Press.

Conway, D. (2008) Contesting the Masculine State. In: Parpart, J. L. and Zalewski, M. (eds.). *Rethinking the Man Question: Sex, Gender, and Violence in International Relations*. London: Zed Books, 127-142.

Crenshaw, K. (1989) Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics. *University of Chicago Legal Forum*, **1** (8), 139-167.

Crenshaw, K. (1991) Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color. *Stanford Law Review*, **43** (6), 1241-1299.

Crenshaw, K., et al. (2013a) Intersectionality: Mapping the Movements of a Theory. *Du Bois Review*, **10** (3), 303-312.

Crenshaw, K., et al. (2013b) Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis. *Signs: Journal of Women in Culture and Society*, **38** (4), 785-810.

Crenshaw, K. (2016a) On Intersectionality: WOW 2016 Keynote. [lecture]. Held in March, Southbank Center.

Crenshaw, K. (2016b) The Urgency of Intersectionality. [lecture]. Held in October, TEDWomen.

Davis, K. (2008) Intersectionality as Buzzword: A Sociology of Science Perspective on What Makes a Feminist Theory Successful. *Feminist Theory*, **9** (1), 67-85.

D'Costa, B. (2006) Marginalized Identity: New Frontiers of Research for IR? In: Ackerly, B. A., Stern, M., and True, J. (eds.). *Feminist Methodologies for International Relations*. Cambridge: Cambridge University Press, 129-152.

Enloe, C. (2000) *Bananas, Beaches, and Bases: Making Feminist Sense of International Politics*. Updated ed., Berkeley: University of California Press.

Han, J. and Ling, L. H. M. (1998) Authoritarianism in the Hypermasculinized State: Hybridity, Patriarchy, and Capitalism in Korea. *International Studies Quarterly*, **42** (1), 53-78.

Hansen, L. (2006) *Security as Practice: Discourse Analysis and the Bosnian War*. New York: Routledge. The New International Relations Series.

Henry, M. (2017) Problematizing Military Masculinity, Intersectionality, and Male Vulnerability in Feminist Critical Military Studies. *Critical Military Studies*, **3** (2), 182-199.

A Well-Founded Fear of Environment: International Resistance to Climate Refugees
Written by Nicole Spadotto

hooks, b. (1981) *Ain't I a Woman?: Black Women and Feminism*. London: Pluto Press.

Nandy, A. (1983) *The Intimate Enemy: Loss and Recovery of Self under Colonialism* . Oxford: Oxford University Press.

Ong, A. (2003) State Versus Islam: Malay Families, Women's Bodies and the Body Politic in Malaysia. In: Lewis, R. and Mills, S. (eds.). *Feminist Postcolonial Theory: A Reader*. New York: Routledge.

Peterson, V. S. and Runyan, A. S. (2014) Gendered Lenses on World Politics. In: Peterson, V. S. and Runyan, A. S. (eds.). *Global Gender Issues in the New Millennium* . 4th ed., Boulder: Westview Press. Dilemmas in World Politics, 39-98.

Richter-Montpetit, M. (2007) Empire, Desire, and Violence: A Queer Transnational Feminist Reading of the Prisoner 'Abuse' in Abu Ghraib and the Question of 'Gender Equality'. *International Feminist Journal of Politics*, **9** (1), 38-59.

Said, E. W. (2003) *Orientalism*. 3rd ed., London: Penguin Books.

Steans, J. (2003) Engaging from the Margins: Feminist Encounters Within the 'Mainstream' of International Relations. *British Journal of Politics and International Relations*, **5** (3), 428-454.

Stoler, A. L. (2002) *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule* . Berkeley: University of California Press.

Tickner, J. A. (1997) You Just Don't Understand: Troubled Engagement Between Feminists and IR Theorists. *International Studies Quarterly*, **41** (4), 611-632.

Tickner, J. A. (2005) What Is Your Research Program? Some Feminist Answers to International Relations Methodological Questions. *International Studies Quarterly*, **49** (1), 1-21.

Whitworth, S. (2008) Militarized Masculinity and Post-Traumatic Stress Disorder. In: Parpart, J. L. and Zalewski, M. (eds.). *Rethinking the Man Question: Sex, Gender, and Violence in International Relations* . London: Zed Books, 109-126.

Wibben, A. T. R. (ed.) (2016) *Research War: Feminist Methods, Ethics, and Politics*. London: Routledge.

Yuval-Davis, N. (2007) Intersectionality, Citizenship, and Contemporary Politics of Belonging. *International Social and Political Philosophy*, **10** (4), 561-574.

Written by: Nicole Spadotto
Written at: McGill University
Written for: Fernando Nunez-Mietz
Date written: April 2017