CHAPTER 1

INTRODUCTION

We should already be starting to think about who ought to take in ecological refugees – people forced to flee their homes because of global warming and the resulting changes in the physical environment. Since the rich industrial states bear a major responsibility for the environmental changes that are already taking place, it seems plausible to argue that it is our responsibility, not those of geographically proximate states, to find a place for these ecological refugees to live. Of course, there are counter arguments, as there are in the wider debate about how to allocate the costs of responding to climate change...¹

— Joseph Carens, Open Borders

Midway between Australia and Hawaii lies the tiny archipelago nation of Tuvalu. The fewer than 12,000 Tuvaluans who inhabit the nine islands thrive on a system in which each family has its own designated task to perform – be it house-building or fishing – to benefit the community at large. They speak a language that is at once similar to other Polynesian languages and all their own. They dance to celebrate their leaders, and they sing to mourn their dead. Yet more than a collectivist culture sets Tuvalu apart. The state rises a mere 10 centimeters above sea level, and if the ocean continues to rise at the current rate, Tuvalu will be completely submerged within fifty years.²

¹ Joseph Carens, Open Borders (In Publication), Ch.8, 18.
Figure 1

Map of Tuvalu

In addition to rising sea levels, the island nation of Tuvalu is at risk of coral bleaching, ocean acidification, saltwater contamination, and drought. As such, even before Tuvalu disappears into the ocean, the island nation could become uninhabitable due to climate change-produced cyclones and storm surges. Indeed, Tuvalu appears to be

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fated to cease to exist as a state, whether it must be abandoned to avoid severe weather conditions or sinks into the ocean. Either scenario would involve the complete loss of territory and exile of an entire population, a situation for which there is no precedent.\(^5\)

Though Tuvalu may be the first state to face the disappearance of its territory due to climate change, it will likely not be the last. While Tuvalu alone is only home to a little under 12,000 people, current estimates indicate that 50 to 200 million individuals will be forced to leave their homeland due to climate change by 2080.\(^6\) (It should be noted that this wide range of figures is due to the urgent need for better analysis, data, and predictions.\(^7\) Nevertheless, the lower limit on the projections is still quite staggering.) Furthermore, at the International Scientific Congress on Climate Change held in March 2009 in Copenhagen, scientists highlighted that likely sea-level rise by 2050 could be up to a half of a meter or more. But at the very least, it is highly unlikely that increases in sea level will prove to be less than a quarter of a meter.\(^8\) As such, Tuvalu, along with its island nation

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\(^5\) “Climate Change and Statelessness: An Overview.” Submitted by the UNHCR to the 6th session of the Ad Hoc Working Group on Long-Term Cooperative Action (AWG-LCA 6) under the UN Framework Convention on Climate Change (UNFCCC) 1 to 12 June 2009, Bonn, Germany, 1.


\(^8\) Climate Secretariat, University of Copenhagen, “Rising Sea Levels Set to Have Major Impacts Around the World,” March 10, 2009. http://climatecongress.ku.dk/newsroom/rising_sealevels/. Nevertheless, it is
neighbors like Kiribati and other tiny island states, is in danger of witnessing a mass exodus due to human-induced climate change in the decades to come.\textsuperscript{9} Even if the more conservative estimates prove to be accurate, the change in sea level could have a tremendous impact around the world. Both the scope and scale could far outweigh anything that the international community has witnessed to date.\textsuperscript{10}

Forced climate change migration is a relatively new form of human movement and currently exists only in projections of what will be, as opposed to what is visible. Accordingly, there are no internationally accepted procedures for offering protection to environmental migrants on a scale that is comparable to what is extended to other involuntary migrants, namely refugees. Currently, the impact of “permanent, non-reversible displacement caused by climate change and rising sea levels” has yet to be grasped by the international community.\textsuperscript{11} Nonetheless, climate change threatens to test the capabilities of the international system, as well as the

\textsuperscript{9} Tuvaluan Government, 1.
humanitarian system “to respond effectively to increasing hazards, vulnerabilities, and response costs.”\textsuperscript{12}

Although emigration from Tuvalu due solely to climate change has yet to occur, over 3,000 Tuvaluans have already left the island state, primarily to New Zealand.\textsuperscript{13} As part of the Pacific Access Countries agreement, seventy-five Tuvaluans per year are admitted to New Zealand, though those who currently take advantage of the program are doing so largely for economic or family reunification reasons.\textsuperscript{14} Nevertheless, New Zealand has taken steps to ensure that the international community does not view its immigration policy as being related to the anticipated environmental changes. In a statement on the New Zealand Ministry of Foreign Affairs and Trade website, New Zealand officials make their sentiments clear:

New Zealand does not have an explicit policy to accept people from Pacific island countries due to climate change. Stories circulated in the media stating that New Zealand has an agreement with Tuvalu to accept people displaced by rising sea levels due to climate change are incorrect....New Zealand has no such arrangement with any other Pacific Island country.\textsuperscript{15}

\textsuperscript{13} Roberts.
\textsuperscript{15} New Zealand Ministry of Foreign Affairs and Trade.
Australia, on the other hand, has failed to even acknowledge appeals to admit Tuvaluans as a special group of migrants before an environmental disaster sets in. Ironically, Australia, which has witnessed its immigration policy become an election issue since the Tampa Incident (in which Australia refused to allow over four hundred rescued Afghans from entering its waters), has called on Tuvalu for aid in the past. Australia attempted to use Tuvaluan territory to detain asylum seekers as part of the “Pacific Solution” to prevent them from reaching Australian territory to make their claim. Despite this preexisting relationship, however, Australia has refused to take steps to aid Tuvalu’s impending environmental crisis. Specifically, Australia denied the request of Tuvaluan officials to enter into an agreement to allow Tuvaluans to proactively enter the state.\footnote{Carol Farbotko, “Tuvalu and Climate Change: Constructions of Environmental Displacement in the ‘Sydney Morning Herald.’” Geografiska Annaler. Series B, Human Geography, 87 (4): 287.}

Australia’s refusal to admit Tuvaluans and New Zealand’s explicit efforts to differentiate its immigration policy from any sort of forced climate change movement reflect the fact that “there is no legal compulsion for state signatories to the Refugee Convention to recognize persons displaced by environmental change and provide them with asylum.”\footnote{McNamara, Karen Elizabeth. “Conceptualizing Discourses on Environmental Refugees at the United Nations.” Population and Environment 29 (October 2007), 13.} Article 1 of the 1951 Convention and Protocol Relating to the Status of Refugees asserts that refugees are those who, “owing to a
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 (emphasis added).”

Due to the fact that the internationally accepted definition of refugee includes the element of persecution, numerous attempts to argue that climate change migrants should be classified under the 1951 Convention have failed. It is worth noting, however, that some experts indicate that the failure of the Convention to guarantee protection to climate change refugees is proper given the intention of the agreement. They further warn that climate change migration should be classified using other means, as any renegotiation of the 1951 Convention could prove to be dangerous and undermine refugee protection altogether.

More broadly speaking, policies beyond the 1951 Convention that address any sort of forced human movement tend to focus on situations that arise suddenly, as opposed to gradual conditions that compel migration. Consequently, states’ aversion to take on new obligations has manifested itself in a reluctance to either take steps to

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extend the 1951 Convention to environmental migrants or craft some new form of binding protection for climate change refugees.\textsuperscript{21} As a result, Tuvalu has resorted to exerting political pressure on the international community since it joined the United Nations in 2000, as an attempt to make its concerns a priority for the international community.\textsuperscript{22} Interestingly, some political scientists have suggested that a working definition of climate change migrants is “people who migrate from their usual residence due to changes in their ambient non-human environment.” Nevertheless, an accepted definition of climate change migrant, not to mention any sort of comprehensive policy aimed at their protection, remains absent in the international community.\textsuperscript{23} Part of the reason why even a formal definition is lacking lies in the difficulty many policymakers have expressed in teasing apart climate change from other drivers of human migration, such as poor economic conditions that prevent the adoption of proactive measures to lessen the impact of climate change.\textsuperscript{24}

Furthermore, the United Nations’ dialogue on the topic remains non-binding.\textsuperscript{25} The resulting system, as evidenced by New Zealand

\textsuperscript{21} Williams, 21.
\textsuperscript{22} Roberts (2007).
and Australia’s reluctance to meaningfully address the issue of forced climate change migration, is characterized by ad hoc good-will regional agreements that provide no assurance for the protection of climate change migrants in the future. In short, forced climate change migrants are subject to serious protection gaps if the status quo in the international community goes unchanged.26

1.1 Purpose

The phenomenon of climate change migration suffers from a severe dearth of scholarship. Thus, this thesis will take preliminary steps toward narrowing this gap by, as the title suggests, proffering a theory of what is just for those individuals who are forced to abandon their homeland due to climate change. Since the international community indisputably recognizes the need to extend protection to political refugees (albeit without a perfect consensus on exactly which groups meet the criteria to be classified as political refugees), I will argue that a similar consensus can be reached regarding climate change refugees once policymakers realize that the most important characteristics present in the political refugee situation can also be found, and in some cases exist to an even a stronger degree, in the climate change refugee situation. In order to exhibit this, I will use

existing political theory literature revolving around political refugees and their need for protection and argue for its extension to climate change refugees due to the fundamental similarities between the two groups. What the reader will come away with is a sense of what protections ought to be extended to climate change refugees — and who ought to provide such protections.

As has already been stated, the forced movement of Tuvaluans has yet to occur and exists only in predictions of what will be. Thus, it is possible that the submersion of Tuvalu or climate change induced weather patterns and ecological changes will not occur, rendering my consideration of this specific state moot. Nevertheless, Tuvalu is not the only state experts predict will be mortally impacted by climate change; Papua New Guinea, Kiribati, Vanuatu, the Marshall Islands, the Maldives are among the other states that face an extraordinary risk of death by climate change.27 Thus, though I will use Tuvalu as my case study, I contend that this discussion holds merit in its broader application to other states in similar situations, even if Tuvalu remains a viable homeland.

1.2 Clarification of Assumptions

Given this outstanding uncertainty, I will make certain informed assumptions about the nature of the circumstances of the

27 Williams, 20.
Tuvaluans. First, I will assume that Tuvalu’s submersion and/or unlivable nature are imminent and not subject to debate. Second, I will assume that Tuvaluans will have to abandon the state entirely. Simply put, I will stipulate from the outset that, for the purpose of this discussion, the entire state will be rendered unlivable and relocation to a different part of the sovereign state will not be an option in order to survive.

Finally, it is worth noting that I shall refer to the Tuvaluans whom I will assume to be compelled to abandon their state as “refugees,” as opposed to “migrants.” The term “migrant” implies a certain element of choice in the movement — in other words, leaving one state to enter another is not a necessary condition for survival; “refugee,” on the other hand, denotes a forced movement to a new state that is linked to the avoidance of death. Thus, the title “refugee” is, to me, the more appropriate choice for the Tuvaluans, though it is clear that not all members of the international community would agree. In order to avoid any confusion, I will use the term “political refugee” to modify the group of migrants who are classically considered to be refugees and flee their states of origin for the reasons of persecution outlined in the 1951 Convention. When referring to the Tuvaluans or individuals in similar positions, I will call them “climate change refugees.” After I establish the similar nature of the situations faced
by the two groups, I will use the term “refugee” to broadly speak about members of both populations.

1.3 Outline of Discussion

This thesis will proceed in several parts. Chapter 2 will begin with a discussion of political refugees as a unique population deserving of special provisions and the merits of extending such protections to climate change refugees. In Chapter 3, I will elucidate just what such protections should entail, and I will attempt to identify exactly which parties are obligated to extend these protections. Chapter 4 will explore the most preferable manner of resettlement for climate change refugees once their states of origin become uninhabitable. Chapter 5 will focus on the decision of states not to extend protection to refugees, and I explore the legitimate grounds for excluding climate change refugees from state membership. Finally, in Chapter 6, I will focus on making specific policy recommendations based upon the findings of the preceding discussion. The goal of this thesis in its totality will be to demonstrate the moral necessity of granting admission to climate change refugees when abandonment of their state is necessary for survival.
2.1 Political Refugees

Any contemporary discussion of refugees cannot begin without first acknowledging the origins of refugee law “in the shadow of the Holocaust.”28 Indeed, in one infamous case in 1939, the St. Louis, a boat carrying German Jewish refugees, reached North America and pleaded for asylum. At that time, concentration camps had not yet been built, but it was no secret that Jews were being subjected to various degrees of suffering in their European homelands. Nevertheless, the boat was refused permission to land, and the refugees were forced to return to Germany. After being sent home, many of the St. Louis passengers went on to perish at the hands of the Nazis in concentration camps. Nearly a century later, Joseph Carens writes that “the response of democratic states to Jewish refugees during the 1930s was a profound moral failure, something that we should acknowledge as a shameful moment of our histories and resolve never to repeat.”29

Few refugee situations today are comparable to the atrocities faced by the Jews in the Holocaust. Still, Carens warns that we should

28 Caren, Joseph. Open Borders (in publication). Ch.8, 1.
29 Ibid, Ch.8, 2-3.
be mindful of falling into such a false sense of comfort. Much of the rhetoric today – discussing why contemporary refugee situations do not appear to be *that* dangerous or compelling – is eerily similar to the justifications used in the 1930s by Western democracies to close their doors to the most helpless of victims.\(^{30}\)

### 2.2 The Need for Flexibility in Assessing Refugee Claims

In short, Carens highlights the dangers of taking a narrow-minded approach in assessing the claims of individuals who seek refuge in a foreign state. While the situation he describes contains the element of persecution that is central to the international definition of a political refugee, he also alludes to the dangers of states focusing on reasons why a migrant should not be extended protection, as opposed to attempting to find commonalities in situations in which individuals have fled their homelands for reasons other than a Hitler. Given the changing international landscape, not only with respect to regime type but also in the face of newly emerging sources of threats to national security, forced migrants fleeing for previously unconsidered reasons may still have claims on a foreign state that are just as morally imperative as those of traditional political refugees.

Furthermore, a lack of flexibility in assessing those claims may prove to be as regretted a misstep as that of the Western states when

\(^{30}\) *Ibid*, Ch.8, 3.
they turned away the German Jews aboard the *St. Louis* and many others whose lives could have been easily saved by granting them admission. In fact, when climate change and forced migration was raised for the first time before the UN Security Council in 2007, United Kingdom Foreign Secretary Margaret Beckett compared the life-threatening situation faced by climate change refugees and the opportunity to proactively address their suffering to the threats previously faced by European Jews and other minorities and the ability to intervene when the outbreak of war was clearly looming before 1939.⁴¹

### 2.3. Is Persecution What Truly Sets Refugees Apart?

A state cannot possibly take in every individual who begs to reside within its borders. Indeed, the reasons why states are justified in excluding potential immigrants are discussed in subsequent sections. Nevertheless, refugees are not ordinary migrants. According to Peter Schuck, “The reason for this focus on the refugees themselves is as obvious as it is sound and humane: Refugees present egregious cases of injustice and compelling claims for some form of international protection.”⁴² Refugees, like many other migrants, often come from conditions of poverty, unemployment, rude shelter, and mistreatment,

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⁴¹ Kolmannskog, V.O.
which by themselves constitute a certain type of injustice. Nevertheless, these living conditions, that by our Western standards are deplorable and evoke feelings of disgust and extreme sympathy, are not what triggers the strong moral obligation to remove refugees from their homelands. What differentiates refugees from other migrants who come from conditions of extreme poverty and deprivation, such as the world’s poor for example, is “their radical, enforced dislocation and isolation and their uncertain legal status as aliens.”

It is noteworthy that what Schuck defines as the central justification underlying the distinct treatment of refugees has nothing to do with persecution. Certainly, “radical enforced dislocation and isolation” and “uncertain legal status” are not at all dependent upon persecutory treatment at the hands of a state actor. Thus, Schuck’s theory leaves significant room for other groups, namely climate change refugees, to have their claims assessed on equal footing with political refugees.

Indeed, attempting to juxtapose political and climate change refugees as a means to determine what differences are present in the condition of the latter to justify their exclusion reveals that the two groups have the most crucial features in common. Not only are climate change refugees in the position of the Tuvaluans going to be subject to

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33 Ibid, 246.
involuntary abandonment of their homeland in order to survive, but they also will trigger questionable legal status — they will have citizenship to (and be guaranteed protection by) a state that no longer exists. A more uncertain legal status is unimaginable.

As opposed to grounding the justification for the differential treatment of refugees in their forced movement and legal uncertainty, Michael Walzer presents a different argument for the pressing nature of providing refugees with assistance, namely by considering statelessness as “a condition of infinite danger.”\(^\text{34}\) Since states offer security and welfare for their citizens, “non-members are vulnerable and unprotected in the marketplace.”\(^\text{35}\) Thus, refugees make a type of claim on a state that is distinguishable from all other forms of migrants. “If you don’t take me in… [refugees] say, I shall be brutally oppressed by the rulers of my own country.”\(^\text{36}\) Phrased a bit differently, despite the fact that refugees’ homelands have regimes in place, these forms of government fail to provide the type of protection requisite for survival. Thus, Walzer asserts that admission of these migrants is “morally imperative…for these strangers who have no other place to go.”\(^\text{37}\)

\(^{36}\) *Ibid*, 49.  
At first glance, Walzer's argument leaves climate change refugees in somewhat more of an uncertain position than Schuck’s. Central to Walzer’s discussion of why states cannot be morally justified in denying refugees admission is the resulting brutal oppression by the rules of the state of origin, should the refugees be returned home. If climate change migrants such as the Tuvaluans are returned home after their state becomes unlivable, they will likely not face any such brutal oppression at the hand of a political leader. Nevertheless, if Tuvaluans are returned home, they will face something worse; instead of the high probability of brutal oppression in the various forms it may take, Tuvaluans will be faced with the certainty of death. This imminence of death will result not from political persecution but from literal “landlessness,” or the absence of livable environmental conditions, and any semblance of a government to protect them. Would Walzer, then, suggest that a state is any less morally obligated to extend protection to individuals in such a position as the Tuvaluans simply because the credible and unavoidable threat fails to emanate from a political leader or faction? Given that the underlying justification that Walzer provides for admitting political refugees is the lack of a safe homeland to which to return, it seems unlikely that Walzer would fail to consider forced climate change refugees as an exceptional class of migrants that triggers special state obligations.
Indeed, it is plausible that Walzer would argue that climate change migrants are even more deserving of protection as compared to political refugees. The lack of government — and on a more basic level the lack of land — quite literally leaves climate change refugees with no place to go but a new state. Thus, Walzer’s theory, which regards statelessness as a condition of endless risk to one’s life, does leave room for a state to be morally obligated to extend protection to climate change refugees, as well.

Carens takes a similar approach to Walzer and notes that the unique nature of political refugees as migrants stems not from any persecution but instead from the insecurity of their states. While other migrants may seek to enter a state for reasons of family reunification or other ties to the community, refugees are “trying to join... simply because they no longer can live safely in their home state.”38 Though reasons of family reunification are strong drivers of migration and are normatively important for their own reasons, they are not necessities for human survival. However, having a homeland in which preventable death and/or severe bodily harm is inevitable or nearly certain should not be a feature of human existence. Further, Carens extends his claim by adding that nearly everyone recognizes that refugees have a strong moral claim to admission somewhere: “Even those who most strongly defend the moral right of states to exercise

38 Carens, Ch.8, 4.
discretionary control over admissions say that we have a duty to accept at least some refugees.”  

Thomas Nagel goes beyond Carens’s assertion that states have a special duty to accept refugees and argues that, in the most extreme circumstances, “denial of the right of immigration may constitute a failure to respect human rights or the universal duty of rescue.” The reason behind a state’s unique obligation to refugees, Nagel argues, is “[t]he normative force of the most basic human rights against violence, enslavement, and coercion, and of the most basic humanitarian duties of rescue from immediate danger…(it) depends only on our capacity to put ourselves in other people’s shoes (emphasis added).”

Thomas Pogge takes a bit of a different approach in explaining why states ought to extend aid. Instead of framing states’ obligations in terms of positive duties that states must perform in order to ensure that rights are respected, Pogge argues that these obligations are a form of negative duties, or actions that the state must refrain from doing. Pogge argues that there exists a negative duty not to be an inactive member of a global system in which certain individuals are

39 Ibid, Ch. 8, 4.
41 Nagel, 131.
being deprived of their rights. Thus, such deprivations should be
prevented where possible.42

2.4. Criticisms of Acknowledging the Unique Situation of
Climate Change Refugees

Where does this leave forced climate change migrants who must
abandon their states like the Tuvaluans may have to? The work of the
aforementioned theorists seems to indicate that, despite the fact that
such individuals are not technically refugees according to current
international law, the need to extend the type of protection
traditionally reserved for political refugees is just as morally
imperative, if not more so. The lack of a government that will afford
necessary protections aside, climate change refugees will lack the most
basic feature of a state, namely a physical space in which to live, that
even refugees arguably are guaranteed within their homeland.

Despite the moral commonalities between the condition faced by
the not-yet-seen group of migrants and the group defined by the
traditional conceptualization of a refugee, scholars on the other side of
the debate have questioned the very idea of the ‘environmental refugee’
and advocated for the exclusion of the term entirely. Indeed, a
common contention is that people leave their homeland for numerous

42 Thomas W. Pogge, “Cosmopolitanism and Sovereignty,” in Political Restructuring
reasons — namely economic, political, institutional, and social, in addition to any environmental drivers. 43

JoAnn McGregor argues that the inclusion of “environmental” or “climate change” in the refugee classification is unhelpful and misleading. Categorizing an individual migrant as an “environmental refugee” implies that environmental factors can be isolated from other drivers. According to McGregor, the use of the term “environmental refugee” creates a “false separation between overlapping and interrelated categories.” Furthermore, McGregor argues that the classification obscures the other complex reasons for the movement. In essence, McGregor claims that the term “environmental migrant” is dangerous because of the misinformation and misconception it could perpetuate. 44

Richard Black echoes McGregor’s criticisms of characterizing forced climate change migrants as types of refugees. Black contends that the research providing evidence for environmental migration is “methodologically flawed.” The reason for the errors, Black asserts, are the artificial schism between environmental drivers and political and economic ones. Not only does Black question the accuracy of predictions of environmental migration, but Black also finds fault with

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43 McNamara, 3.
the blatant lack of statistics in environmental refugee literature in general, calling into questions its existence and legitimacy.  

2.5 Addressing the Critics

How can one reconcile the points raised by skeptics of environmental refugees like McGregor and Black with the situation faced by the Tuvaluans? While they criticize the accuracy of statistical predictions due to improper definitions, such as the variance in figures pertaining to the number of individuals who will be forced to leave their homeland due to climate change depending on how the type of migrant is defined, this criticism is irrelevant, at least in terms of the current discussion. After all, the projection of the disappearance of Tuvalu is based on the assumed continuation of average sea level rises. That sort of prediction, unencumbered by definitional issues, is unaffected by any points raised by the authors.

Furthermore, pertaining to the allegedly disingenuous separation of environmental factors from social and political ones, this objection is also moot. Even if Tuvalu’s political system were to be flawed and its institutions imperfect, rising sea levels, undoubtedly environmental factors, will nevertheless be the proximate cause for Tuvaluans’ movement. As such, should Tuvalu become submerged,

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classifying the forced migrants as environmental refugees seems to be far more apt than critics would suggest.

Still, assuming that the criticisms raised by skeptics such as McGregor and Black are accepted, the objections they raise do not preclude climate change migrants from being entitled to receive the types of protections traditionally offered to refugees. Rather, their arguments merely raise questions over the prudence of introducing a term such as “environmental refugee” into international law. While this lack of linguistic acknowledgement of the forced situation faced by climate change refugees may be vexing to scholars, human rights officials, and the very people who are affected by the devastating and life-threatening consequences of climate change on their homeland, it is an unimportant issue when compared to the other issues at hand. Furthermore, the adoption of the term “climate change refugee” does not change the crucial findings of this section. Call them “environmental migrants,” “climate change refugees,” or some other title altogether – regardless of what they are eventually termed, the moral imperative of states extending aid to forced climate change migrants like the Tuvaluans exists as long as statelessness is inevitable.
2.6 The Landmarks of the Type of Migrant That Is Most Deserving of Aid

Regardless of what term will come to be coined to describe their unique situation, climate change refugees like the Tuvaluans seem to share the two most defining characteristics of the type of migrant whom a state has the strongest obligation to admit alongside refugees. The first of these characteristics I will term the \textit{high probability condition}. The high probability condition concerns the elevated likelihood that the migrant will face death or serious injury if left with no option but to remain in his/her state of origin. For conventional political refugees, the high probability condition is satisfied by the political persecution they face by virtue of their race, religion, nationality, membership of a particular social group or political opinion. In the case of climate change migrants like the Tuvaluans who will be forced to abandon their homeland, the high probability condition will be satisfied by the unlivable physical conditions and lack of territory that will result in the loss of their homeland, or their literal landlessness.

The second landmark of the sort of migrant who is most morally deserving of a foreign state’s admittance I will term the \textit{abandonment condition}. The abandonment condition deals with the domestic regime — whether for reasons that are intentional or outside of the regime’s
control — leaving the migrant in a position in which he/she is left unprotected from the harms that are contained in the high probability condition. The abandonment condition means that the homeland’s regime, for whatever reasons, is either unable or unwilling to sufficiently mitigate the risk to life and safety faced by the migrant. The political refugee situation clearly fulfills the abandonment condition, as their states of origin cannot or will not protect them from the credible and likely risks to safety that they will face for reasons of their race, religion, nationality, membership of a particular social group or political opinion. Climate change refugees, specifically the Tuvaluans, meet the condition, as well. After the environmental changes take hold, their domestic government will be non-existent in their homeland. Recall that, as discussed in the previous chapter, the Tuvaluan government has already unequivocally stated that it will abandon the territory when the time comes. As such, it goes without the need for discussion that a non-existent government is not in a position from which it can extend any protection.

Therefore, political refugees and climate change refugees have the most important qualities in common. They share a high probability that they will face serious harm and/or death, as well as the inability of their government to sufficiently prevent such a threat of harm from coming to fruition. Accordingly, these characteristics, which political
theorists use as justifications for extending special protections to political refugees, seem to place climate change refugees in a position in which states extending aid to them is just as morally imperative. But what exactly must a state provide to political refugees, and, in turn, to climate change refugees in order to fulfill their moral obligations? I take up this question in the next chapter.
CHAPTER 3
WHAT IS OWED TO CLIMATE CHANGE REFUGEES, AND
WHO OUGHT TO PROVIDE IT

3.1 What Refugees Deserve

In the previous chapter, I demonstrated that political refugees and climate change refugees such as the Tuvaluans face equally credible and serious threats to their safety. Both populations face a high likelihood of death or serious injury if left in their states of origin and lack the appropriate governmental protections to sufficiently mitigate the risks, a situation which necessitates their protection. But what exactly does such protection constitute? To what are political refugees and, by extension, climate change refugees actually entitled? What do they morally deserve?

According to Caney, all people have an interest in leading fulfilling and rewarding lives; therefore, it is necessary to take an interest in the threats to the well being of all people.46 But what exactly is contained in the conception of “well-being” is not straightforward. In its most expansive form, well-being can encompass many qualities that one could argue portray a more idealistic rather than a realistic picture of the lives of even the most

well-off individuals. Martha Nussbaum, for instance, includes a large number of “human goods” that she argues constitutes well-being, including qualities as basic as “life” and “bodily integrity” and as abstract as “friendship” and “play.”\textsuperscript{47} Caney, on the other hand, takes a more minimalist approach, stressing that well-being, on its most basic level, involves “people’s interest in not being tortured, killed, or imprisoned without trial.”\textsuperscript{48}

Whether one were to accept Nussbaum’s elaborate view or Caney’s more basic version of well-being, the freedom from credible threats to life is integral to both accounts. With that in mind, it seems safe to say that climate change refugees like the Tuvaluans (much like traditional political refugees) will face serious risks to their well-being. If they are not physically taken in by another state and granted membership once their island nation becomes submerged, they will surely die.

In that vein, Nagel argues that even the most minimal humanitarian morality requires states to take action to aid political refugees. While “[i]t does not require us to make their ends our own, … it does require us to relieve them from extreme threats and

\textsuperscript{48} Caney, 73.
obstacles… if we can do so without serious sacrifice of our own ends.”\textsuperscript{49} Thus, the “extreme threats and obstacles” faced by refugees either must be eliminated so that they can remain in their state or refugees must be given another space in which to live free of such danger.

Carens echoes Nagel’s claims, emphasizing that the primary focus when dealing with refugees must be ensuring their safety and protecting their human rights.\textsuperscript{50} There are two ways that states can provide for refugees, either resettling refugees who have found safety in another state or granting asylum when a refugee enters the state and asks for protection (though Carens notes that there is no obligation to resettle; rather, it stems from a states’ discretion over who they want to admit). If refugees are unable to return to their state of origin in a safe manner, Carens asserts, “[T]hey should have the opportunity to move to another state where they will be able to live their lives on the same terms as the people already there.”\textsuperscript{51} Walzer also argues that refugees have a positive right to membership in a state.\textsuperscript{52} Taken in conjunction, Walzer and Carens highlight another unique feature of the obligation states have to refugee populations – they cannot be met with anything other than the provision of physical space, a safe homeland in which to live.

\textsuperscript{49} Nagel, 131.
\textsuperscript{50} Carens, Ch. 8, 19.
\textsuperscript{51} \textit{Ibid}, Ch. 8,19.
\textsuperscript{52} Walzer, 31.
Several theorists touch upon what this right to membership might mean for climate change refugees. Derek Bell argues that, “[a] victim of environmental degradation for which she is not responsible will be entitled to resource transfers if she is left with less than her fair share of... resources.”\(^5^3\) Norman Myers elucidates what the resource transfers that climate change refugees are entitled to might look like. First, states should look to “export the wherewithal for sustainable development” to the states that are at a high risk of devastation due to environmental changes.\(^5^4\) This, however, may not be adequate, such as in the case of the Tuvaluans, where destruction of the state is seemingly imminent. What, then, if it is too late to “export the wherewithal for sustainable development,” as the destruction of the state is inevitable? After all, if projections of Tuvalu’s future are accurate, nothing can be done to prevent the island nation from becoming uninhabitable. In that case, Myers argues that states must prepare to “import growing numbers of environmental refugees.”\(^5^5\)

Schuck takes a different approach to arrive at the same conclusion as the aforementioned theorists in this section. He proposes that there are four ways states can meet their obligations to refugees: (1) identifying and alleviating the root cause of the movement before it

\(^5^5\) Ibid, 13.
even occurs; (2) returning refugees to their homeland as soon as the reason for the movement no longer poses a threat; (3) offering temporary protection in a state, usually near the refugee’s state of origin, until the refugee can be later moved to another state; and (4) providing refugees with a permanent homeland, which Schuck refers to as “the protective strategy of last resort.”

Examining each of these steps in light of the situation faced by climate change migrants like the Tuvaluans, Schuck’s theory demonstrates that states have little choice but to provide them with membership. In terms of the first obligation, identifying and alleviating the root cause, it seems impossible for this to be done. Shuck asserts that, even if the root causes can be isolated and identified by states, they may not be able to rectify the situation. As is the case with forced climate change movement, the complexity and interconnectedness of the causes of environmental change appear to make it impossible to identify with any reasonable degree of certainty the specific factors that are behind it. Even if excessive greenhouse gas emissions were to be blamed for the rise in sea level and other forms of climate change that will make certain states like Tuvalu unlivable, short of finding a way to make sure that the sea levels do not rise, there is no way to undo the damage that has already been done. Thus, the first of Schuck’s methods for a state to meet its

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56 Schuck, 262-267.
obligations appears to be insufficient when dealing with climate change refugees.

The second of Schuck’s methods requires little discussion in terms of climate change refugees like the Tuvaluans. The only way to return a refugee to their homeland is to ensure that the reason(s) prompting their movement are no longer a threat to their security. Tuvaluans will move simply because there is no longer a physically livable Tuvaluan state and a viable Tuvaluan government to protect them. Unless there exists a new Tuvalu (which could, in theory, occur if another state cedes a portion of its territory to the Tuvaluan government to create a new sovereign state), there will be no state to which these climate change refugees can be returned. Thus, the second of Schuck’s proposals fails to provide a reasonable solution.

With the first and second of Schuck’s methods dismissed, states are left with two ways in which they can meet their obligations to climate change refugees. Both of these routes revolve around the provision of membership in a state, either on a temporary or a permanent basis. Thus, states must ensure that climate change refugees are provided membership into a state with safe physical space in which to live.
3.2 A Permanent Homeland

As is often the case with political refugees, a permanent homeland would be normatively preferable for climate change refugees. There are several reasons why provision of a homeland on a permanent basis would be desirable. From the perspectives of the states that would be extending admission, settling climate change refugees one time reduces any economic costs associated with fulfilling their obligations to them. Providing membership one time and one time only eliminates the need to process and relocate the population multiple times and incur any costs associated with taking such action.

For the climate change refugees themselves, creating a new life in a foreign state is an extremely costly proposition. First and foremost, the economic costs associated with building a life in a new state only for it to be uprooted again would be onerous. Moreover, the psychological toll associated with the loss of a homeland and subsequent repeated movements could prove to be severely damaging. In that vein, the World Health Organization has already stated concerns about the development of Post Traumatic Stress Disorder (PTSD), a severe anxiety disorder, and related psychological disorders, such as depression and self-destructive behaviors, among victims of climate change and related disasters, such as climate change
refugees. As such, stability will be important for populations that experience upheaval in order to mitigate the psychological risks associated with their need to begin anew in a foreign state.

Thus, at this point in the discussion it is clear that states can only fulfill their moral duties to the Tuvaluans and other climate change refugees through the provision of a safe place to live. Furthermore, it seems that opting to allow climate change refugees to remain in a state on a permanent basis would be preferable to merely providing them with a temporary refuge. Accordingly, it is imperative to establish which party or parties have the responsibility of providing refugees with a safe place to live.

3.3 Who Ought to Provide for Refugees

In the previous section, I established that the only manner in which the moral duty to climate change refugees can be fulfilled is through the provision of a safe, permanent homeland. But which party or parties must discharge this duty? Carens explains, “The underlying moral view is that the arrival of the refugees implicates us directly and

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57 See the submission by the World Health Organization (WHO), in collaboration with the International Organization for Migration (IOM), World Vision (WV), the United Nations High Commissioner for Refugees (UNHCR) and the International Federation of Red Cross and Red Crescent Societies (IFRC), “Protecting the Health of Vulnerable People from the Humanitarian Consequences of Climate Change and Climate Related Disasters,” 6th Session of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention (AWG-LCA 6), Bonn, June 1-12, 2009, 6.
immediately in their fate.” Stated a different way, just by the refugees entering a state, the state itself has a new sort of moral responsibility where previously there was one of a lesser degree.

In some ways, the implication of a state in the fate of refugees simply by virtue of their arrival may seem unjust on the part of certain states, particularly states that neighbor an area from which refugee flows originate. Nevertheless, Carens highlights two distinct reasons why nearby states are expected to bear a disproportionate burden of protecting refugees. First, “those states are the ones to which the refugees are most likely to flee, and this triggers the states’ responsibility not to return the refugees to a place where they will be at great risk.” Second, Carens mentions that repatriation, or eventually returning refugees to their states of origin once conditions in the state return to being safe, is “the morally preferable solution, and the likelihood of repatriation is increased if refugees settle nearby, at least initially.”

Carens’ logic, when applied to the situation of climate change migrants such as the Tuvaluans who have no chance of returning to their homeland, seems to provide no reason why neighboring states should bear a disproportionate burden of permanent resettlement. In reality, this “permanent, non-reversible displacement” due to climate

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58 Carens, Ch. 8, 14.
59 Ibid, Ch. 8, 14.
60 Ibid, Ch. 8, 14.
change has yet to be seen and by extension grasped by states and their citizens.\textsuperscript{61} While the Tuvaluans may first reach a nearby state and seek temporary refuge, there is no apparent reason why they must remain there, according to Carens’ theory. Since there is no hope that they will be able to return to their state of origin, Carens argues that “as the likelihood of repatriation diminishes, the moral case for keeping refugees nearby also weakens.”\textsuperscript{62} Nevertheless, Carens provides a discussion of other factors that should be considerations when assigning refugees with a more permanent home, which, in turn, may provide a justification for climate change migrants seeking permanent membership in nearby states.

3.4 Considerations in Determining Responsibility

Among the considerations that Carens lists are: the size of the state in relation to the number of refugees, the population density of the state, the economic capacity of the state (including its relative wealth and the ability to generate new jobs), the similarity of culture, religion and identity, and any causal connections that may exist.\textsuperscript{63} As far as the similarity of culture, religion, and identity criterion is concerned, this appears to provide some reason for neighboring states to have a special obligation to refugees. Two neighboring states are far

\textsuperscript{61} Leckie, 18.
\textsuperscript{62} Carens. Ch. 8, 16.
\textsuperscript{63} Carens, Ch. 8, 17-18.
more likely to have similar identities than two states that are halfway across the globe from one another. Furthermore, for states like Tuvalu with a unique native culture, cultural extinction is a distinct possibility once there is no longer a common territory to unite their citizens. As such, finding a state with similar attributes (which is likely to be a neighboring state) should be emphasized when the loss of an entire nation’s identity is at stake. I take up a more in-depth discussion of cultural extinction in Section 4.4.

3.5 The Difficulty of Determining Causality

Carens’s final criterion – causal connections – seems reasonable to assess in certain refugee situations. Bell points out, however, that in the case of climate change refugees, such an assessment may be impossible. Climate change is the result of greenhouse gas emissions for which developed countries are nearly entirely to blame. In a cruel twist of fate, however, these developed countries will likely not be the most severely impacted.64 Rather, it is the poor and least developed states, such as the island nations that are mentioned in the first chapter, that will be affected first and most severely.65

64 Bell, 139.
65 Warner, 6.
3.6 The Developed States As Responsible Parties

At first glance then, these developed nations, with whom the blame for climate change ultimately rests, should bear the burden of climate change migration. Ultimately, the force behind the movement is linked to, and dependent upon, the actions of these parties. Simply put, were there no climate change, there would be no climate change refugees. Despite this apparently straightforward causal relationship, however, it may be harder to assign blame than this line of reasoning seems to suggest.

In fact, it is unrealistic to attempt to tease out specific causality and assign differing levels of blame among the developed states. In an ideal situation, one would be able to proportionally assign culpability in some manner that would specify exactly how much of the refugee flow is the responsibility of each state so that the implicated states would have the obligation of providing a safe homeland for their fair share of refugees. In reality, however, such an attempt to assign blame and responsibility would be futile. Indeed, the many forms of emissions, as well as their disparate and highly debatable impacts and interaction with geographic and environmental conditions that are beyond the control of a state, make it challenging if not impossible to
isolate and attempt to quantify and compare the harm inflicted by various state actors.

3.7 The Inability to Hold Undeveloped Victim States Responsible

Beyond looking to the actions of the parties behind the change in climate, a discussion of climate change migration would be incomplete without acknowledging the factors relating to the migrants themselves and their states of origin that may contribute to their need for a new homeland. Most notably, economic factors may come into play and interact with climate change, leaving the state’s government unable to avoid the rendering of states like Tuvalu uninhabitable. In the case of Tuvalu, a relatively undeveloped nation, there simply is a lack of resources for the government to attempt to take drastic and costly measures in an effort to save the state. Indeed, the states that are projected to be most severely impacted by climate change and resulting forced migration are likewise in a position of lacking financial resources. Are these states, then, to blame for not being able to circumvent abandonment of their states once conditions become unlivable?

Holding the undeveloped affected states accountable for the need to find a new homeland would be improper for two reasons. First,
these states are not exclusively responsible for their economic positions that even further expose them to vulnerability. Indeed, “[m]uch of the economy of vulnerable states is often largely controlled by western-owned, western-based transnational companies.”\(^6^6\) Moreover, one must also concede that Tuvalu’s lack of economic wherewithal to invest in any sort of technology that could hold destruction of the island state at bay would hardly be a relevant point if the underlying conditions—the damaging changes in the environment—were not first present. Indeed, it seems unfair to hold the victim accountable for being unable to prevent a harm for which it is not causally responsible.

Furthermore, as is discussed in the 2006 World Bank report aptly titled “Not If But When,” even if the affected states could afford to take drastic adaptation measures, they would be ultimately futile. Such measures would only prolong the inevitable extreme climate change events (though the World Bank stops short of asserting that movement of the people who inhabit the states will be necessary).\(^6^7\)

As such, it may not be reasonable to point the finger at any one state for forcing climate change refugees from their homeland. Even attempting to point the finger at a particular developed state seems


difficult, as today, “in our globalised, privatized, and free trade world it is increasingly difficult to isolate politics in one country and place blame on individual states alone.”\textsuperscript{68} Instead of taking steps to specifically assign blame, developed states as a whole must be held responsible to some degree and “rise to the occasion and carry out their duty to humanity.”\textsuperscript{69} One way in which that may unfold—a proportional refugee sharing system for developed and capable states—is discussed in the following section.

\textsuperscript{68} Ibid, 46.
CHAPTER 4
A PROPORTIONAL REFUGEE RESETTLEMENT SYSTEM

4.1. Problems with the Current Refugee Settlement System

In previous sections, I have established that the unique moral duty that exists towards political refugees also extends to climate change refugees. In order to meet this obligation to climate change refugees, other states, particularly the most well-developed that have contributed to the circumstances of the movement (i.e., those with large greenhouse gas emissions) must provide a homeland for them. But how can we differentiate between specific developed states, determine which of these states should permit the entry of climate change refugees, and ensure that the obligation is met? The task seems to be nearly impossible to complete. Indeed, merely looking to the political refugee admission patterns yields the knowledge that many states go to great lengths to avoid fulfilling the duty that they brought upon themselves by joining the 1951 Convention and Protocol Relating to the Status of Refugees and are legally obligated to carry out.

Carens discusses that, in response to an explosion of refugee claimants in the 1980s, techniques of exclusion emerged as a response on the part of states faced with what was deemed to be an excessive
influx of refugees. While the Convention and Protocol Relating to the Status of Refugees is a great humanitarian achievement in which states voluntarily imposed obligations on themselves in order to provide assistance for the most vulnerable populations, the resulting system is far from perfect. Indeed, some states, namely those that can afford to extend aid, have shirked their responsibilities under the Convention by their inaction in some of the most pressing cases, and there is no real mechanism for redress. For example, affluent liberal democratic states have been shown to use deceptive tactics to avoid extending protection to refugees. As a result, states that are, in comparison to the affluent liberal democratic states, much less able to protect refugees without incurring a burden on their own society, are left absorbing an unfair share of refugees. Furthermore, the states that are most capable of absorbing refugee population often still spend vast amounts of money on refugees. Instead of using these expenditures to absorb the refugees, the states use the funds in an attempt to find reasons to discriminate between various refugee populations.\(^7\)

Caney echoes concerns over ensuring compliance with pieces of international law such as the 1951 Convention. Under the Convention, compliance is technically optional, and, despite tactics that may be employed like diplomatic pressure, there are currently no

\(^7\) Carens, 5-7.
formal sanctions to ensure adherence. As such, those who are “obligated” to extend aid are, in reality, “given the choice of whether they will in fact perform their duties.” While this alone certainly does not preclude states from fulfilling their duties under the Convention, there is no assurance that such a fulfillment will occur, leaving the refugees in a position of continued insecurity.

4.2 A New System to Ensure States’ Fulfillment of Obligations to Refugees

What, then, can be done to ensure that the Convention signatories fulfill their duties? The restructuring of the international refugee admission system, specifically by forming an overarching institution that has a mechanism to ensure compliance, is in order. With that in mind, Caney calls for the creation of a supra-state system, whereby global institutions “ensure that states treat outsiders fairly” and admit refugees. Nevertheless, one could imagine practical constraints that may stand in the way of the realization of such a system, most prominently a disinclination on the part of states to relinquish some of their power and agree to be bound by certain regulations over which they have no discretion. Nevertheless, the practical implications of such an institution are clear: a formal

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71 Caney, 160.
72 Ibid.
enforcement of the Convention and a more effective system for assessing refugee claims that prevents states from making arbitrary discriminations.

The current resettlement system exists such that some states shirk their responsibilities while other, less affluent states are often left picking up their slack. Accordingly, Schuck proposes a system whereby all states, or at least all those who are “qualified” insofar as they possess the resources that are necessary to provide refugees with a safe homeland, participate in sharing the burden of absorbing refugee flows. With a newly formed international organization at the helm, Schuck calls for a quota system, whereby states are assigned a number of refugees they are expected to resettle. Quotas would be based upon the state’s relative wealth and contingent upon the state being respectful of human rights, as placing refugees in a situation in which their safety would once again be placed in jeopardy is in no party’s best interest. After the quotas are established, states would have the ability to “trade” quotas by essentially paying other states to take in the population assigned to them.

Another feature of Schuck’s proposed system is that it would be regional in nature. That is, refugees would be assigned to states that are nearest to their point of origin. The rationale for regional arrangements is twofold. First, Schuck asserts that regional
arrangements would invoke historical responsibility for localized refugee flow, that is, extending aid to neighboring states in peril. Nevertheless, as I have previously mentioned, this historical pattern has been tied to repatriation, which would render this justification irrelevant when dealing with climate change refugees like the Tuvaluans. More importantly and relevant to the climate change migration discussion, however, Schuck argues that resettling refugees in a state that is within a close proximity to their state of origin would also allow for greater commonality of identities and value. Additionally, such an arrangement would minimize the economic costs associated with transporting refugees to distant states.\textsuperscript{73}

Schuck’s system, though radical in comparison to the current arrangement, has a number of pragmatic benefits. First, it would directly combat the issues of “free riding” that currently occur among states, whereby only some states incur the costs associated with resettling refugee populations while others contribute less than their fair share. Indeed, assuming all of the components of Schuck’s system, namely the supra-state institution to oversee and ensure compliance, could be implemented, free riding would be impossible. Whether through absorbing the refugees themselves or a portion of the economic costs associated with doing so, each state would have a predictable and manageable obligation (as compared to the current possibility that

\textsuperscript{73} Schuck, 248-249.
refugees could attempt to enter a state in numbers that are large enough to pose a national security issue. Furthermore, with the existence of an overarching supra-state organization, the obligation of states would be a much more enforceable one.

Second, Schuck’s system would allow for a maximization of protection resources. It would draw new resources into the system and better utilize the resources that currently exist.\textsuperscript{74} Further, it would eliminate the current state expenditures that are directed towards discriminating against and preventing refugees from entering the state. Instead, the resources could be targeted at protecting the refugees instead.

Third, Schuck’s system would foster an increased protection of human rights. By having a formal accountability mechanism, it would ensure that the rights and obligations that currently exist under international law are actually enforced. In other words, refugees will actually gain admission into states and receive protection, as opposed to being strategically excluded.

Fourth, Schuck’s system would allow for a better understanding of the political constraints that states face.\textsuperscript{75} In short, having a standardized system of assessing the capabilities of states to take in refugees would promote an understanding of states’ true resources.

\textsuperscript{74}\textit{Ibid}, 270-271.
\textsuperscript{75}\textit{Ibid}, 271.
This would be helpful, as opposed to the current arrangement in which states may intentionally misrepresent their capacities in order to evade the extension of aid.

Finally, a quota system would create administrative simplicity, according to Schuck. Just how “simple” such a system would prove to be is uncertain. Nevertheless, Schuck’s system would create relative simplicity vis-à-vis the current system that is full of inconsistencies, both among states in terms of the numbers of refugees they admit, and within states as far as the types of refugees that are admitted and excluded.76 Still, given the practical considerations, namely the need for states to opt into such an arrangement in order to be bound by its obligations, the creation of an independent international institution to oversee refugee flows and ensure states’ compliance with the 1951 Convention seems highly improbable. Indeed, states ceding authority to another institution that would go on to dictate obligations to them seems quite unlikely.

4.3 Critiques of a Proportional Burden-Sharing System

Despite its merits, Shuck’s proposal has some practical limitations, as well. First, the subsequent market for permits does seem to literally attach a price to the safety of refugees, a fact that some parties may consider to be morally repugnant. Still, states have

76 Ibid, 271-272.
already set a precedent to pay other states to protect refugees. 

Pertaining to the humanitarian crisis in Rwanda, some relatively wealthy states contributed funds to the first-asylum states (i.e., the states that the refugees first reached when fleeing Rwanda) to support their protection efforts.\textsuperscript{77} This past behavior of states in no way justifies the facet of Schuck’s system that equates the safety of a refugee with a monetary figure. Nevertheless, the proposed scheme is not an altogether new introduction into the current refugee resettlement scheme. Furthermore, it may actually work to encourage more acts of resettlement than currently take place. 

Second, Schuck’s quota system does appear to create a formal forum in which it is acceptable for states to make assessments of refugees’ prospects based upon the likelihood that the refugees will return home. By making such assessments, states may be disinclined to permit certain refugees from entering in the first place. A potential result of such assessments could be unfair treatment of refugees who have little hope of safely returning to their state of origin. 

Schuck counters this claim by arguing, “the problem of discriminatory refugee selection is not a new one, and the proposed burden-sharing scheme should not be faulted for failing to offer a neat solution that earlier efforts could not manage to devise.”\textsuperscript{78} 

\textsuperscript{77} \textit{Ibid}, 285.  
\textsuperscript{78} \textit{Ibid}, 286-287.
points out that the problem of discriminating based upon the probability that refugees will return home currently exists. Therefore, Schuck’s system ought not to be blamed for the inclusion of this flaw and should not be discounted because of it. Indeed, as previously mentioned, discrimination between refugees is currently a routine practice in many affluent liberal democracies, and considerations of the likelihood that certain migrants will return home already take place. In short, the problem already exists, and the practical benefits of Schuck’s proposal discount any harms that it creates or fails to effectively address.

Nevertheless, the risk of denying refugee status because of this factor is quite problematic and should not be overly discounted. For the political refugee, this could result in being sent back to confront the possibility of death. For the climate change refugee, it is more problematic. With no physical homeland to which to return, they would be placed at risk of existing in a perpetual condition of statelessness, without the essential rights or protections that stem from state membership.

4.4 The Problem of Cultural Extinction

Cultural extinction is another important factor that must be considered in light of Schuck’s quota system – or any method of
resettlement, for that matter – when dealing with climate change refugees like the Tuvaluans. As previously mentioned, Tuvaluans have their own language, their own community system, their own music, their own sports — in short, Tuvaluans have an identity that is found in no other place in the world. Accordingly, cultural extinction is a distinct possibility should Tuvaluans no longer have a common homeland to unite them. The uniqueness of the Tuvaluan culture, combined with the third smallest population in the world, makes it quite feasible that Tuvaluan culture could disappear along with the Tuvaluan territory. To the extent that their cultural identity can realistically be preserved, however, Schuck’s system does not provide any guidance for taking measures to keep such a population together. Indeed, under Schuck’s system, Tuvaluan climate change refugees could be divided up and parceled out among numerous states around the world. What, then, should be done in a situation such as this? Should steps be taken to preserve the Tuvaluan culture?

Will Kymlicka argues that principles of justice ought to be sensitive to cultural identities. Accordingly, minority cultures may be entitled to special protections in the interest of preserving their identities, such as allowing the use of their own language or educating their children in a manner that is consistent with their culture.79 In

other words, special consideration ought to be extended to certain minority groups in order to ensure their continued existence.

With the Tuvaluans in mind, it appears to be crucial to keep such a population within the same borders in order to ensure that cultural extinction does not result from their forced migration or, at the very least, to minimize this risk as much as possible. If parceled out among numerous states, it seems highly unlikely that the small number of Tuvaluans would be able to continue to practice their culture and sustain their identity once they no longer reside within the same borders.

Does the imperative of keeping the Tuvaluans together in order to preserve their culture, then, mean that all states are morally obligated to absorb a group of climate change refugees like the Tuvaluan population in its entirety? Surely not. While the need to prevent cultural extinction does seem to make it especially crucial that they are resettled together, not all states would have the capability to admit the entire population. Indeed, there are certain conditions, though they are restrictive, that would legitimize a state’s refusal of refugees, including climate change refugees such as the Tuvaluans. Accordingly, these legitimate conditions of exclusion are taken up in the next chapter.
CHAPTER 5

THE LEGITIMATE GROUNDS OF REFUGEE EXCLUSION

5.1 The Right of States to Set Their Own Immigration Policies

Since states have control over their physical territory, setting an immigration policy is typically left to the discretion of the state. Simply put, it is within the purview of the state to determine who is to be granted membership and who is to be excluded. Still, as Nagel points out, “states are entitled to be left to their own devices, but only on the condition that they do not harm others.”\(^80\) In some cases, excluding those who wish to immigrate to a state can be seen as just that—harmful to others.

According to Walzer, “everyone must have a place to live, and a place where a reasonably secure life is possible.”\(^81\) Nevertheless, no international organization is currently capable of enforcing such a right, even among refugees. As Walzer discusses, the principle of asylum can bridge the gap between recognizing the right to a safe place to live and ensuring that individuals are actually able to reside in reasonably secure environments.\(^82\) According to international law, as dictated by the procedures laid out in the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status

\(^{\text{80}}\) Nagel, 130.  
\(^{\text{81}}\) Walzer, 50.  
\(^{\text{82}}\) Ibid, 50.
of Refugees, refugees can claim asylum when they have escaped their persecutory homeland and have found their way to a temporary safe haven in the form of a foreign state. Asylum seekers cannot be deported from the foreign state so long as the only state to which they can be sent is the same one that is engaging in the persecutory behaviors from which the asylum seekers are attempting to flee. This stipulation helps to explain why Australia, for example, has taken extreme steps to keep asylum seekers offshore and away from the state’s sovereign territory.

5.2. Mechanisms of Exclusion

Currently, Australia detains over 1,200 asylum seekers in a multi-million dollar detention center, often referred to as the “Gitmo of Australia,” located in a remote part of Christmas Island. Technically, the asylum seekers that are currently housed in the detention facility on Christmas Island have never reached Australian territory in order to make their claim on state membership.83 Australia’s actions provide a clear example of a state utilizing controversial and extreme measures to mediate refugees’ access to protection and avoid extending protection to refugees.

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Indeed, in extreme cases such as those involving asylum seekers, Nagel points out that the “denial of the right of immigration may constitute a failure to respect human rights or the universal duty of rescue.”

Nevertheless, on some occasions, states may be unable, or at the very least unwilling, to admit outsiders who are fleeing a regime that is threatening their safety. In other words, a state may balance the refugees’ right to a life in a reasonably secure environment against its own interests.

5.3 Balancing a Refugee’s Needs and a State’s Duty to Its Citizens

Since climate change refugees are at risk for facing imminent danger should they be deported to their state of origin, I proffer that only the most compelling reasons — those that are reasonably tied to the maintenance of a safe living environment for native citizens — provide legitimate grounds for denying asylum. Only inability, not disinclination, can justify turning away refugees. Such morally acceptable grounds for denying asylum that hinge on a state’s inability to admit refugees can be divided into two categories: (1) those that fall under “the high cost exception” and (2) those that are captured by the “the high volume exception.”

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84 Nagel, 130.
5.4 The High Cost Exception

Walzer suggests that a state ought to provide positive assistance to those in need when the "risks and costs of giving it are relatively low." Specifically in the case of granting asylum, a state would be justified in refusing to admit refugees if allowing them to enter the state comes at a cost to its members that is equally as high as the cost refugees would incur should they be deported. Simply put, a state cannot be expected to protect refugees at the expense of its citizens. This situation is what I will call "the high cost exception." After all, a state cannot be compelled to sacrifice its own citizens’ safety for the well being of outsiders. The state may choose to act nobly and do so in some instances, but self-sacrifice cannot form the baseline of the expectations of states.

Given the fact that refugees are often fleeing violence and threats to physical safety, a situation feasibly could arise in which an asylum seeker flees State A and attempts to enter State B, but (1) State A has the capacity to inflict serious harm on the citizens of State B, and (2) State B reasonably suspects that admitting refugees from State A will cause such retaliation. Given that State B’s admittance of refugees from State A involves both an implicit acknowledgement by State B that State A has violated human rights and a denunciation of State A’s behavior, a retaliatory act of some form would not be outside

85 Walzer, 33.
the realm of possibility. Nevertheless, I would caution that State B must have some compelling evidentiary basis for the belief that State A will retaliate. A state’s concern that an attack will occur that is rooted in mere suspicion or speculation does not provide sufficient grounds for the exclusion of refugees. After all, in order to be deemed a refugee, the threat to the safety of the individual must be based in evidence. Therefore, it seems appropriate to hold the state to that same standard.

What about costs beyond those that are aimed at safety? Here it is crucial for a state to distinguish between threats to the necessities of its citizens’ lives and threats to luxuries, or those aspects of life that are not crucial to survival. When assessing the costs that a state will incur upon admittance of refugees in order to warrant the state’s refusal to grant asylum, a state should only consider costs that constitute threats to necessities. Though such a stance may be extreme in general immigration cases, asylum seekers must be treated as a different class of migrants. As Walzer points out, the denial of asylum “would require [a state] to use force against helpless and desperate people.” Since deportation of refugees may be functionally equivalent to a death sentence, granting asylum must be prioritized over costs sustained to citizens’ luxuries.

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86 Ibid, 51.
But what should the state deem to be a necessity and what is a luxury? Certainly food, shelter, and security are necessities, though in a modern society this list is not exhaustive. Luxuries may, perhaps, be more easily identifiable as those parts of life that, when weighed against the danger faced by asylum seekers, fail to be deemed of equal significance. One example of a luxury cost that may be incurred by admitting refugees is the loss of a state’s unoccupied or sparsely populated land. Suppose State C holds vast territory, but it only occupies a small part of it (as, interestingly, is the case in Australia) or even that State C has some small parts of unoccupied land. Is empty space within a state a necessity, as a state could argue it is? Generally speaking, I would offer that it is not. Even if there are some individuals who, as Walzer puts it, “have come to ‘need’ hundreds or thousands of empty miles for the life they have chosen,” space on such a scale is not more morally imperative than the need for asylum seekers to be protected.\footnote{Ibid, 47.}

Another example of a cost that is perhaps more controversial is the loss or the alteration of a culturally homogeneous society. Though maybe a larger issue for societies that are less diverse, a state may, for various reasons, wish to preserve its ethnic or religious balance (or imbalance, as the case may be) in order to protect its national identity. Excluding migrants from different backgrounds, then, may be the only
way to ensure that the state’s homogeneity remains intact. Once again, Australia seems to provide a fitting example of a state with a desire to remain a homogeneous nation. In an attempt to defend the now defunct “White Australia” policy, the Australian minister of immigration stated, “We seek to create a homogenous nation. Can anyone reasonably object to that? Is not this the right of every government, to decide the composition of the nation? It is just the same prerogative as the head of a family exercises as to who is to live in his own house.”

In reality, a state could view homogeneity as normatively preferable for a variety of reasons. One reason may be that having citizens of similar backgrounds will lessen the potential for religious or ethnic tensions within a state’s border. Another reason, perhaps, may be that linguistic uniformity would allow citizens to engage with one another, leading to a strong sense of community and an active and involved citizenry. Another reason, though one a state may be disinclined to make its official stance, could simply be rooted in discriminatory sentiments.

Whatever the justification may be, however, the desire to have a homogenous nation is generally a luxury or a falsehood. Perhaps the only culturally related exception that would justify the exclusion of a refugee population would be if a state had good reason to believe that,

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88 Ibid, 46.
due to their different identities, the asylum seekers and the native citizens would be likely to engage in some sort of serious conflict if they were to reside within the same borders. Such a situation would pose a threat to the state’s security, and, accordingly, the state would seem to be justified in refusing to admit the refugees. Apart from this rare instance, however, a state’s cultural homogeneity is appropriately viewed as a luxury and any threats to it cannot be seen to impose a cost that is morally comparable to the danger faced by refugees forced to return to their homeland.

5.5 The High Volume Exception

Another concern that a state may have is that the number of refugees seeking protection is sufficiently large such that their admission could alter the ways of life of its citizens. If the asylum seekers ask for protection in a volume that is high enough to significantly alter the lives of citizens, then the state should not be required to admit them. This situation is what I will refer to as “the high volume exception.”

Once again, it is imperative to examine and attempt to distinguish between the various ways in which citizens’ lives may be altered. If the concern is largely economic, for instance, that admitting a certain number of unskilled refugees may take some jobs away from
unskilled natives (but not so many jobs that citizens are generally unable to provide for themselves and their dependents), I would argue that the refugees ought to be admitted. Any economic consequences should then be left to the navigation of fiscal and monetary policymakers. Though economic concerns are of great importance to a state (and may be sufficient to constitute a denial of admission to outsiders through the typical channels of immigration), they cannot be deemed to take moral precedence over the needs of refugees.

On the other hand, admitting refugees could also create a situation that would significantly alter those aspects of citizens’ lives that are integral to survival. For instance, suppose that, by admitting a certain number of refugees, a state’s sanitation system would buckle under the increased strains placed upon it. Here, a state would be dealing with an alteration to citizens’ lives that would threaten their health and ultimately their existence, simply by virtue of the state’s inability to absorb a high volume of refugees. Such a situation would fall under the high volume exception, and a state would not be expected — or I would argue, even encouraged — to grant asylum to the full number of individuals who are seeking it, as doing so may only result in another crisis. In summary, as was the case with the high cost exception, distinguishing how a certain number of refugees will
impact necessities from how the refugees will alter non-essential ways of life is crucial.

What happens, though, to the refugees in cases where the number of refugees meets the high volume exception? Walzer suggests that “when the number increases, and we are forced to choose among the victims, we will look, rightfully, for some direct connection with our own way of life.” 89 In short, a state must find a way to differentiate amongst the refugees in order to determine which individuals to admit and which to turn away.

5.6 The Need to Differentiate Between Refugee Populations

Walzer asserts that if differentiation is necessary, a state has a special obligation to those refugees that a state has helped to turn into a refugee population. In other words, if the state has created or added to the circumstances in which the individuals are persecuted, “the injury [the state has] done them makes for an affinity” between the state and the refugees. 90 An example of such a relationship can be found in the Hmong refugee population in the United States. The Hmong, a Southeast Asian semi-nomadic population, are historically located in Laos and China. After the Hmong helped US military operatives during the Vietnam War (believing that a homeland would

89 Ibid. 49.
90 Ibid. 49.
be extended to them in return), they suffered brutal attacks at the hands of the Pathet Lao Communist government. Many Hmong subsequently fled to refugee camps in Laos, and, starting in 1975, they were resettled in Fresno, California, where they currently number around 35,000.91

Furthermore, Walzer claims that a state has a special duty to help those refugees who are in danger because they are similar, ideologically or ethnically, to those who are citizens of the state.92 Beyond these two reasons, Walzer argues that a state cannot be required to admit certain refugees over others who are equally needy.

Arguably there may be a need for the international community to adopt a standard procedure for determining which refugees to admit when a state is unable to protect all who seek its help. Nevertheless, exactly what such a procedure would entail or how a state should seek outside aid in order to absorb all of the refugees that are seeking admission is a topic that goes beyond the scope of this thesis. Still, the number of refugees likely to be involved in most asylum cases is sufficiently small such that the population can be easily absorbed and the political community will remain largely unaltered.93

92 Ibid, 49.
93 Ibid, 51.
5.7 Assessing a Hypothetical Exclusion of Tuvaluan Climate Change Refugees in Light of the Legitimate Grounds of Exclusion

As previously mentioned in the introduction, Tuvaluans have attempted to reach out to two states, Australia and New Zealand, with little success. While New Zealand has agreed to admit seventy-five Tuvaluans per year, the government has made explicit statements that such action is not tied to climate change. Meanwhile, the Tuvaluan government’s pleas to Australia have been entirely fruitless. Admittedly, the dramatic changes that are anticipated to occur in Tuvalu have not yet taken place; the government is currently able to protect its citizens and the living conditions are currently stable. As such, deeming Australia and New Zealand as failing to fulfill any moral obligation to the Tuvaluans would be premature.

Nevertheless, what if the stances of Australia and New Zealand persist, even as Tuvaluans must flee their state? Would Australia and New Zealand’s refusal to admit the Tuvaluan population be justifiable? Examining their actions — or more aptly, inactions — in light of the high volume and high cost exceptions seems to indicate that continued refusal to admit them would be morally unjustifiable.

At first glance, it appears simple to rule out the high volume exception. After all, Tuvaluans number under 12,000, which is hardly
comparable to the 300,000 migrants Australia admitted between 2008 and 2009 alone. It scarcely seems reasonable to believe that these 12,000 Tuvaluans will alter the way of life in either of these or in most other states in some meaningful and damaging manner. Indeed, the Tuvaluans are so numerically insignificant that it appears almost odd that the states in question or some other state entirely has not already offered to proactively resettle the population or, at the very least, formalize an agreement to admit them in the future.

Nevertheless, it is important to keep in mind that the Tuvaluans are far from the only individuals who experts expect will be affected by forced climate change migration. Though predictions are shaky for various reasons, recall that current estimates indicate that, at the current rate, 50 to 200 million individuals will be forced to leave their homeland due to climate change by 2080. Indeed, New Zealand is “already experiencing significantly increased levels of migration” from states that are anticipated to be affected.94 Thus, Australia and New Zealand’s responses to the pleas of the Tuvaluan government, though initially appearing to be unsympathetic, unfeeling, or even selfish, can be understood as acts of self-preservation. If the states agree to take in the Tuvaluans now, they could potentially be flooded with climate

change refugees from other states in the years to come. Furthermore, it can be seen as reasonable for states to avoid formally committing to admit climate change refugees like the Tuvaluans at some unknown point in the future. First, the guarantee of resettlement in a particular part of a state is liable to incite a great deal of domestic debate over the choice of location, the fairness to the specific area being burdened with absorbing the refugee population, and so forth. Second, with uncertainty over the timeline, demographic, and political circumstances may change drastically by the time any forced migration occurs, such that the agreement no longer seems fair.

What, then, is to be done to protect the Tuvaluans and the other climate change refugees that will emerge? Certainly Australia and New Zealand alone cannot shoulder the burden that climate change refugee movement as a whole will create. Indeed, other states can reasonably expect that they will be needed to absorb some of the climate change refugee population. With that in mind, Schuck’s quota system that takes causal responsibility in mind seems to theoretically provide a sound manner in which such an absorption could occur. Regardless of the specific method in which this would take place, however, the climate change refugee population as a whole must be divided among other states in a manner such that no individual state will be overly burdened by the number of climate change refugees
entering its borders. Focusing on the Tuvaluan case alone, however, denying the admission of the entire population to enter a state with comparable means as Australia or New Zealand’s does not seem to meet the criteria of or be justified by the high volume exception.

Assume then that (1) some sort of equitable manner of dividing climate change refugees were to be determined, and (2) a state like Australia or New Zealand were faced with the question of granting admissions to the Tuvaluans population in its entirety. Would the high cost exception morally permit the state to avoid taking in the Tuvaluans? Would the risks and costs associated with the resettlement of the Tuvaluans justify their exclusion? The answer to both of these questions seems to be a definitive “no.”

The first consideration mentioned in the discussion of the high cost exception, the risk of retaliatory actions taken by the state of origin, is irrelevant to the discussion of climate change refugees. Indeed, as far as the Tuvaluan government is concerned, admission of the Tuvaluans is strongly encouraged by Tuvaluan officials. Thus, any concern over the security of the state would be misplaced in this discussion.

Are there any other necessities, those aspects of the state that are crucial to its citizens’ survival, that the presence of the Tuvaluans could threaten in a state with the capabilities of Australia or New
Zealand? Would food scarcity, a breakdown in the public health system, or vast unemployment that would leave citizens in a position in which their housing and livelihood were in question result from granting Tuvaluans admission? That would be highly unlikely.

On the other hand, Tuvaluans could threaten to take over currently unoccupied territory of a state or more densely populate land that is currently sparsely populated. In fact, if the Tuvaluan refugees were to take up residence in the part of a state that is currently uninhabited (such as the currently uninhabited portion of Australia, for instance), they could, in theory, create a “Tuvaluan settlement” of sorts in which the refugee population could live together and continue to keep their culture alive. In doing so, the Tuvaluans would both: (1) cause the state to lose currently unoccupied land, and (2) bring another cultural influence into the state’s society, assuming there is no strong Tuvaluan tradition currently present.

Would either the prospect of the loss of empty space or the introduction of a new culture meet the criteria of the high cost exception and allow the state to be morally justified in turning the Tuvaluans away? As for the first element, the loss of empty space, a state possessing unoccupied territory is a luxury, at least when weighed against need for climate change refugees to be protected.
Thus, the loss of empty space cannot be used to morally justify the exclusion of Tuvaluans from a state.

The second element, the threat to cultural homogeneity, if it currently exists within the state, or at the very least the introduction of a new culture into society, is seemingly less clear. As previously stated, if the desire of the state in excluding the Tuvaluans is simply to preserve its national identity, it cannot meet the burden of the high cost exception, as the preservation of national identity for its own sake is best viewed as a luxury in light of the extreme hardships faced by climate change refugees.

If, however, the state had reason based in evidence that the juxtaposition of Tuvaluan culture with the native culture would have serious negative consequences, perhaps instigate an ethnic conflict, for example, the exclusion of the climate change refugees in order to prevent the influence of their culture on domestic society could be justified by the high cost exception. Indeed, a state cannot be reasonably expected to jeopardize its national security and the safety of its own citizens in order to admit refugees, and there exists the possibility that the Tuvaluans’ culture could clash violently with the prevailing culture in a state like Australia or New Zealand. With that in mind, apart from this possibility in which the admission of Tuvaluans would cause the state to fall victim to bitter cultural
conflicts, the high cost exception could not be used as a moral justification for placing Tuvaluans in a condition of infinite danger by excluding them from a state.

Thus, let us assume that: (1) some mechanism could be put in place in order to prevent climate change refugees from flocking to a state in numbers that would satisfy the high volume exception (i.e., if burden-sharing could be equitable), and (2) the culture of the climate change refugees could not reasonably thought to clash with the prevailing culture(s) in the state to the extent that a serious conflict would result. With those two assumptions, a state would not be morally justified in excluding climate change refugees. Certainly, any other concerns that a state could cite as reasons to deny admission would fail to be as imperative as the need of climate change refugees to have membership in a state.
CHAPTER 6

CONCLUSION

6.1 Summary of Findings

As compared to political refugees, climate change refugees are in equal, if not greater, danger. For climate change refugees like the Tuvaluans, literal landlessness, combined with the absence of a government to offer the protection associated with membership in a state, makes the probability of death a near certainty. As such, it is morally imperative that climate change refugees be provided with a safe homeland, preferably together if cultural extinction is as distinct a possibility as it is for the Tuvaluans. With that in mind, only the most pressing concerns of a state can justify denying admission to climate change refugees.

Despite the apparent moral necessity of states admitting refugees like the Tuvaluans, the fact remains that there are currently no formal protections in place for them. True, the international community has not yet witnessed forced abandonment of a state due to climate change. Nevertheless, at least as far as Tuvalu is concerned, the likelihood that climate change will render the entire state unlivable is quite high. Efforts to formally address the risks faced by the Tuvaluans, including attempts by the Tuvaluan government to preempt an emergency mass exodus and solidify an agreement with
another state to admit the population, have been unsuccessful. These failures beg the question – what ought to be done to protect the Tuvaluans and all climate change refugees? Thus, I will conclude this discussion by highlighting several policy recommendations to proactively address forced climate change migration.

6.2 Recognizing Climate Change Refugees’ Insecurity

The danger faced by climate change refugees is undeniable. As it currently stands, opponents of taking formal action before any signs of forced climate change movement are visible argue that there are groups, namely political refugees, who are more deserving of protection. In fact, there appears to be a sentiment within the United Nations that climate change refugees are not as vulnerable as political refugees. In the words of a Manager of Treaty in the United Nations Secretariat, “These people are certainly not refugees like political or religious refugees, they certainly are migrants, but most countries these days do not permit migrants who do not essentially contribute to the economic life of the country.”

Surely humanitarian crises that are currently unfolding must be addressed. Nevertheless, handling current instability and recognizing future instability are not mutually exclusive. As such, steps ought to be taken to educate officials about the likelihood and scope of forced

95 McNamara, 17.
climate change migration in order to dispel the myth that the plight of the climate change refugee is different, namely less dangerous, than that of the political refugee.

6.3 Agreeing Upon a Formal Title and Definition for Forced Climate Change Migrants

Second, in order to promote consistency within discourse and international policymaking, a term and a definition must be adopted to modify this group of migrants. In relation to the appropriate term, I have used “climate change refugee” throughout my discussion, which, I believe most appropriately describes migrants who: (1) are forced to leave their state due to changes in environmental conditions and, as a result, are best classified as involuntary migrants, and (2) must leave their state in order to avert the certainty or high likelihood of death. Nevertheless, a plethora of terms is currently floating around discussions, both scholarly and diplomatic. In order to ensure that discussions are consistent and those involved are fully aware of the specific population that is to be discussed, an appropriate title for these involuntary migrants must be developed and the discourse needs to be standardized.

As far as a definition is concerned, according to the Senior Inter-Regional Advisor with the United Nations Secretariat, “The whole
issue of environmental refugees is not something that’s easily defined. What you’re seeing a lot of is other factors such as civil war and strife. So right now you don’t have a clear-cut definition of what an environmental refugee is, because it’s been caused by so many of these other things.”

Despite the fact that other factors such as civil war or strife and environmental change are not mutually exclusive, the lack of a clear-cut definition of climate change migration appears to be a major roadblock to creating an agreement in the United Nations. Does the potential conflation of many unfortunate circumstances mean that a clear-cut definition of involuntary climate change migration would be impossible to craft? I would argue that it would not be. Indeed, political refugees, who are classified as such for reasons of persecution, often leave states in which economic strife, civil wars, and other dangerous circumstances are rampant. Nevertheless, a clear definition of what constitutes a political refugee was able to be adopted, and states routinely turn to the definition embodied by the 1951 Convention and Protocol Relating to the Status of Refugees to assess the claims of asylum seekers. Why, then, can the same not be done for climate change refugees like the Tuvaluans?

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96 Ibid, 16.
6.4 Formalizing Protection of Climate Change Refugees

Third, policymakers should seek to craft an agreement that is comparable to the 1951 Convention and Protocol Relating to the Status of Refugees. Under current international law, protection gaps exist such that, if left unremedied, only a small fraction of all climate change refugees would be protected. Indeed, the existing Convention would only apply “where the victims of natural disasters flee because their government has consciously withheld or obstructed assistance in order to punish or marginalize them on one of the five grounds (contained in the 1951 Convention)... [S]uch cases are likely to be few.”

Are the chances that states would adopt a “Convention and Protocol Relating to the Status of Climate Change Refugees” necessarily slim? According to a Regional Environmental Affairs Officer for United Nations Environmental Program, “As of yet we haven’t started doing anything on this issue... For environmental refugees to be included in [a] mandate, you need all the sort of political backups.” As of now, the “political backups” to which the Officer refers are simply non-existent. Nevertheless, there appears to be reason to believe that formal agreements and recognitions of climate change refugees could occur.

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97 IASC, 10
98 McNamara, 18.
Two pieces of international legislation give hope that a binding mandate pertaining to climate change refugees can be fashioned. According to the Finnish Aliens Act, protection is explicitly guaranteed to foreign nationals who cannot return to their home country because of environmental disaster. Specifically, a residence permit is granted “on the basis of humanitarian protection” to an alien “provided he or she cannot return to his or her country of origin... as a result of an environmental catastrophe or a bad security situation which may be due to an international or an internal armed conflict or a poor human rights situation.”99 Interestingly, the Finnish Aliens Act clearly places climate change refugees and political refugees on equal footing in terms of the necessity of granting them admission. Thus, the Finnish Aliens Act can be seen to support my assertion in Chapter 2 that both groups of migrants ought to be viewed as equally deserving and in need of a state’s aid.

Further, the Swedish Aliens Act includes “an individual who is unable to return to the country of origin because of an environmental disaster” under the classification of “Person Otherwise in Need of Protection,” which, it is worth noting, is an explicit acknowledgement of the necessity of extending aid to those who must flee their state due

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to environmental conditions.” Further, the only restriction of the law that may occur is stated to occur in cases where Sweden’s absorption capacity is exhausted. Thus, the Swedish Aliens Act can also be seen to offer support for the restrictive nature of the grounds I have offered to legitimate the exclusion of climate change refugees, in addition to providing an example of what a formal protection of climate change refugees might look like.

6.5 Crafting Opportunities for Proactive Evacuation of Areas in Danger

Fourth, even if a formal Convention proves to be elusive or cannot be crafted in the near future, increasing employment opportunities could help to start evacuating the areas most in danger of becoming uninhabitable in the future. At the sixtieth session of the United Nations General Assembly in 2005, the President of Kiribati, another island nation in similar danger of becoming uninhabitable due to climate changer, urged the member nations to consider relocation though means such as an employment agreement. Tuvalu’s arrangement with New Zealand, whereby up to seventy-five Tuvaluans

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101 IASC, 12
can enter New Zealand for employment each year, provides an example of what such an arrangement might look like.

Reducing greenhouse gas emissions is another crucial step that tackles the fundamental reason for climate change and forced migration. While current predictions indicate that states becoming uninhabitable and citizens being forced to flee their homeland are a foregone conclusion, the statistics are predicated on the continuation of current behaviors. If current practices are ameliorated, however, the scale of the anticipated movement, as well as the rapidity with which the changes are expected to occur, could be mitigated. As such, fewer people may have to experience the trauma of fleeing their homeland, and those who do need to be resettled may be more easily admitted, as the threat of a resulting “flood of climate change refugees” would be less severe.

6.6 Implementing Interventions to Mitigate Damage

Finally, in the states that experts expect to be affected, investing in resilience measures is vital. Among the measures that could be taken, investing in irrigation systems, agricultural practices, income diversification, and disaster risk management are the most pressing.103 Indeed, if implemented effectively, these measures could result in fewer citizens turning to migration as a matter of survival.

103 Warner, 7.
6.7 Final Remarks

Given that (1) a legal agreement in the international community may prove to be elusive and (2) that a seemingly amicable agreement has arisen between Tuvalu and New Zealand of its own accord, is an international binding mandate truly needed to deal with climate change displacement? If a Convention and Protocol Relating to the Status of Climate Change Refugees cannot be crafted, will climate change refugees truly be at risk? Will various regional agreements be adequate?

Perhaps if the only state that is expected to generate climate change refugees were Tuvalu, the current regional system would be sufficient. Unfortunately, a flood of environmental refugees across the Asia-Pacific region may occur within the coming decades, and people are already leaving the states that experts anticipate will be the most severely impacted. Thus, Australia and New Zealand, as well as many other states, can reasonably expect that climate change refugees will seek to enter their borders in the future, and capable states will be needed to absorb some of the climate change refugee population.

With that in mind, an international mandate would simultaneously clarify and regulate the process that could conceivably result if climate change progresses at its current pace. The only question that remains, then, does not center on whether an agreement
is needed to protect what may prove to be the most helpless migrants
to have ever been seen on the international stage; this thesis has
already answered that question. Instead, the real question is whether
such an agreement will actually be reached before the floods—of rising
sea levels and the resulting refugees—set in.


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