

The Evolution of UNFCCC and Climate Change Displacement: A Case Study of Conferences of the Parties (COPS)

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ABSTRACT

Climate change refers to the ongoing increase of average temperatures across our planet and the corresponding effects. It's estimated that our planet's temperature will increase, on average, by 1.5 to 5.8 degrees Celsius by the year 2100. As this occurs, among other consequences, sea levels are expected to rise, extreme precipitation events are expected to increase in intensity and frequency, and mean precipitation levels are expected to decrease, leading to drought. This, in turn, will force many to move elsewhere as their communities are encroached on by the ocean, flooded, or unable to obtain drinking water. While migrant projections vary drastically between researchers, it's clear this will be a significant international issue. The United Nations Framework Convention on Climate Change (UNFCCC) addresses significant international issues related to climate change in their annual Conference of the Parties or COP. The first COP convention occurred in Berlin in 1995, with the most recent (COP28) taking place in Dubai 2023.

This paper seeks to explore how the past 28 COP conventions have contemplated and addressed climate change and environmental displacement concerns – as a low priority or a principal adaptation solution. In exacting the current weight climate displacement holds in the eyes of the UNFCCC, proponents of international climate displacement policy solutions can hold the entity accountable and ensure their interests have a spot at the table. Additionally, increased attention to displacement on the COP agenda is indicative of potential solutions, such as the creation of a “climate refugee” status or international policies and/or agreements to address migrants.

This analysis begins by laying out the issue of climate change, its effects leading to displacement, and the projections of what climate displacement may look like in the future. Background information on the purpose and framework for the UNFCCC and its COPs will also be provided. Then, this paper will address the lack of current international policy governing climate displacement, past attempts to do so, and the need for an international response. Lastly, an analysis will be done specifically for the UNFCCC COP framework and how it's tackled climate displacement over the years.

TABLE OF CONTENTS

INTRODUCTION.....	36
I. BACKGROUND	37
A. CLIMATE CHANGE AND THE EFFECTS OF CLIMATE CHANGE LEADING TO DISPLACEMENT	37
B. CLIMATE DISPLACEMENT PROJECTIONS	38
C. ORIGIN OF UNFCCC AND CONFERENCE OF THE PARTIES	41
II. PURPOSE.....	45
A. THE LACK OF INTERNATIONAL POLICY	45
B. PAST ATTEMPTS AT ADDRESSING CLIMATE DISPLACEMENT.....	47
C. THE NEED FOR AN INTERNATIONAL FRAMEWORK.....	51
IV. CASE STUDY	53
A. THE QUANTITY OF PAST COPs ADDRESSING CLIMATE DISPLACEMENT.....	53
B. THE EXTENT TO WHICH PAST COPs HAVE ADDRESSED CLIMATE DISPLACEMENT	53
C. TRENDS IN COP CLIMATE DISPLACEMENT DISCUSSIONS.....	57
D. COP28 AND THE FUTURE OF CLIMATE DISPLACEMENT	59
CONCLUSION	62

INTRODUCTION

Climate change refers to the ongoing increase of average temperatures across our planet and the corresponding effects.¹ It's estimated that our planet's temperature will increase, on average, by 1.5 to 5.8 degrees Celsius by the year 2100.² As this occurs, among other consequences, sea levels are expected to rise, extreme precipitation events are expected to increase in intensity and frequency, and mean precipitation levels are expected to decrease, leading to drought.³ This, in turn, will force many to move elsewhere as their communities are encroached on by the ocean, flooded, or unable to obtain drinking water.⁴ While migrant projections vary drastically between researchers, it's clear this will be a significant international issue.⁵ The United Nations Framework Convention on Climate Change (UNFCCC) addresses significant international issues related to climate change in their annual Conference of the Parties or COP.⁶ The first COP convention occurred in Berlin in 1995, with the most recent (COP28) taking place in Dubai 2023.⁷

This paper seeks to explore how the past 28 COP conventions have contemplated and addressed climate change and environmental displacement concerns – as a low priority or a principal adaptation solution. In exacting the current weight climate displacement holds in the eyes of the UNFCCC, proponents of international climate displacement policy solutions can hold the entity accountable and ensure their interests have a spot at the table. Additionally, increased attention to displacement on the COP agenda is indicative of potential solutions, such as the creation of a “climate refugee” status or international polices and/or agreements to address migrants.

This analysis begins by laying out the issue of climate change, its effects leading to displacement, and the projections of what

¹ NASA, *What is Climate Change?*, <https://climate.nasa.gov/what-is-climate-change/> (last visited March 17, 2024).

² LAWRENCE A. PALINKAS, GLOB. CLIMATE CHANGE, POPULATION DISPLACEMENT, AND PUB. HEALTH 4 (Springer, 2020).

³ *Id.*

⁴ NASA, *The Effects of Climate Change*, <https://science.nasa.gov/climate-change/effects/#:~:text=Earth%20Will%20Continue%20to%20Warm,and%20rainfall%20from%20tropical%20cyclones> (last visited April 28, 2024).

⁵ See *id.* (stating how the number of projected climate displaced persons ranges from 20 to 200 million by 2050); See Joanna Apap & Sami James Harju, *The Concept of 'Climate Refugee': Towards a Possible Definition*, *European Parliamentary Rsch. Serv.* (2023), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698753/EPRS_BRI\(2021\)698753_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698753/EPRS_BRI(2021)698753_EN.pdf). (“Institute for economics and peace predicts that in the worst-case scenario, 1.2 billion people could be displaced by 2050 due to natural disasters and other ecological threats.”).

⁶ UNFCCC, *Conference of the Parties (COP)*, <https://unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-cop> (last visited April 28, 2024).

⁷ *Id.*

climate displacement may look like in the future. Background information on the purpose and framework for the UNFCCC and its COPs will also be provided. Then, this paper will address the lack of current international policy governing climate displacement, past attempts to do so, and the need for an international response. Lastly, an analysis will be done specifically for the UNFCCC COP framework and how it's tackled climate displacement over the years.

I. BACKGROUND

A. CLIMATE CHANGE AND THE EFFECTS OF CLIMATE CHANGE LEADING TO DISPLACEMENT

Anthropogenic pumping of greenhouse gases (GHGs) into this planet's atmosphere has contributed and will continue to contribute to exacerbated climate change.⁸ Climate change is, "a long-term change in the average weather patterns that have come to define Earth's local, regional, and global climate."⁹ GHGs and their ability to trap heat within the atmosphere contribute to such change.¹⁰ The Intergovernmental Panel on Climate Change (IPCC), a United Nations agency dedicated to assessing the science of climate change, estimates that by 2100 the Earth will have increased in average temperature by 1.5 to 5.8 degrees Celsius.¹¹

With climate change comes an increase in more intense natural disasters, such as floods, hurricanes, wildfires, and mudslides.¹² Climate change also contributes to more long-term environmental issues such as desertification, drought, increased precipitation events, and rising sea levels.¹³ These effects are felt globally, with some regions particularly at risk. For example, sea levels are expected to rise 0.26 to 0.98 meters within this century, taking away coastline or completely submerging low lying areas such as islands.¹⁴

These natural disasters and long-term environmental effects force people to leave their communities for their immediate safety and ongoing well-being. While most are internally displaced within

⁸ See Eugene A. Rosa et al., The Human (Anthropogenic) Driving Forces of Global Climate Change, in American Psychological Ass'n, *Climate Change and Society: Sociological Perspectives* 32 (Riley E. Dunlap & Robert J. Brulee eds., 2015).

⁹ NASA, *supra* note 1.

¹⁰ AMERICAN, *supra* note 8.

¹¹ Palinkas, *supra* note 2; IPCC, *About the IPCC*, <https://www.ipcc.ch/about/> (last visited Apr. 28, 2024).

¹² United Nations, *Refugees*, <https://www.un.org/en/global-issues/refugees#:~:text=An%20increasing%20numbers%20of%20people,was%20only%2061%25%20in%202010> (last visited March 17, 2024); LAWRENCE, *supra* note 2.

¹³ *Id.*

¹⁴ Palinkas, *supra* note 2 (Islands at risk include Tuvalu, Fiji, the Solomon Islands, the Marshall Islands, and the Maldives).

their state's own borders, many are also displaced internationally to neighboring states or beyond.¹⁵ Displacement due to climate change is not a rare or insignificant phenomenon. Since 2008, over 376 million people have been displaced internally due to floods, windstorms, earthquakes, and drought, equating to one person being displaced every second.¹⁶ Additionally, in 2016, "there were three times as many people displaced by sudden onset disasters, most of which was climate or weather-related, as were displaced by conflict."¹⁷ Calculating exact numbers of those displaced due to climate change internationally has been complicated, due to a lack of data.¹⁸

Aggravating the scale of forced displacement is climate change's ability to indirectly displace communities through socio-economic deprivation.¹⁹ In addition to natural disasters and long-term environmental effects, climate change affects social, political, and economic migratory drivers.²⁰ For example, pre-dating Syria's civil conflict and consequent refugee displacement was a three-year drought leading to high food prices, large-scale movement from rural to urban centers, and increased social and economic tension.²¹ Also contributing to migration is economic loss from climate related disasters due to destroyed infrastructure, higher levels of unemployment, and lost income from businesses. "Total reported losses from disasters are estimated at 3.8 trillion in [the twenty first century] with 74% caused by extreme weather alone."²²

B. CLIMATE DISPLACEMENT PROJECTIONS

Considering the combination of increasingly frequent and powerful natural disasters with long-term environmental degradation and the corresponding socio-economic disputes, it is no surprise consensus exists that climate change will be a large motivating factor of displacement in the years to come.²³ The IPCC emphasized this correlation of climate and displacement in its very first assessment report in 1990 and continues to cite this link in all

¹⁵ United Nations, *supra* note 12.

¹⁶ Apap, *supra* note 5.

¹⁷ Palinkas, *supra* note 2.

¹⁸ *Id.* at 203 (Mentions how the UNHCR tracks refugees across international borders but does not note if the movement is climate motivated).

¹⁹ See United Nations, *supra* note 12.

²⁰ Palinkas, *supra* note 2, at 205 ("In 2022, 84% of refugees and asylum seekers fled from countries highly vulnerable to climate change.").

²¹ *Id.* at 6.

²² *Id.*

²³ Elizabeth Ferris, *Research on climate change and migration where are we and where are we going?*, 8 Migration Stud. 612, 612-13, 619 (2020).

subsequent reports.²⁴ Furthermore, it's been found that there is "roughly a 50% increase in global displacement risk for every degree of global warming."²⁵

To comprehend the significant role climate will play in future displacement, it's important to acknowledge that the effects will be widespread.²⁶ Even now, the global impact of climate displacement is evident, as shown by Bangladesh and the horn of Africa.²⁷ Bangladesh has suffered from climate induced cyclones and floods, as well as other more long-term environmental issues.²⁸ Accordingly, "4.1 million people were displaced as a result of climate disasters in 2019."²⁹ In the future these existing issues will worsen, possibly displacing 13.3 million people in this region alone, by 2050.³⁰ The Horn of Africa has similarly faced migration due to climate change.³¹ The region encompasses the countries of Somalia, Kenya, and Ethiopia which are experiencing increases in extreme heat events with decreasing average rainfall.³² The effect on agriculture, local economies, and social stability has already caused internal and international displacement.³³ By 2050, it's estimated that up to 1.5 million people in this region may migrate due to water scarcity.³⁴ Both Bangladesh and the horn of Africa, while far apart spatially, are experiencing and will experience climate induced displacement of their communities.

While climate displacement will be experienced globally, some groups remain more at risk than others - notably coastal regions and low-lying areas.³⁵ In this century, an estimated 6,000 to 17,000 square kilometers of coastal land will be lost to rising sea levels,

²⁴ *Id.* at 613.

²⁵ Pui Man Kam et al., *Global warming and population change both heighten future risk of human displacement due to river floods*, *Envtl. Res. Letters* 1, 1 (2021).

²⁶ Ferris, *supra* note 23 at 616-17 (A study by the World Bank's Global Knowledge Partnership on Migration and Development (KNOMAD) researched the three widespread regions of sub-Saharan Africa, South Asia, and Latin America, finding that up to 140 million people from these areas may be forcibly displaced from climate change by 2050).

²⁷ See Mizran R. Khan et al., *High-density population and displacement in Bangladesh*, 372 *Sci.* 1290, 1290 (2021); See Kristina Lindvall et al., *Health Status and Health Care Needs of Drought-Related Migrants in the Horn of Africa – A Qualitative Investigation*, 17 *Int'l. J. Env'tl. Res. Pub. Health* 5917 (2020).

²⁸ Khan, *supra* note 27.

²⁹ *Id.* (Approximately 2.5% of the population was displaced).

³⁰ *Id.* (Approximately 18% of Bangladesh's coastline could be flooded by 2080).

³¹ See Lindvall, *supra* note 27.

³² See *Id.* at 5917-18.

³³ *Id.* at 5918-19 (Notes how exact numbers of displacement due to climate change cannot be calculated due to difficulties in differentiating socioeconomic, political, and environmental migratory drivers).

³⁴ *Id.* at 5919.

³⁵ Apap, *supra* note 5 (Rising sea levels could cause entire countries, like the Netherlands, to flood entirely, displacing the state's entire population).

displacing between 1.6 and 5.3 million people.³⁶ In addition to certain locations being at risk, so are certain people, with those from “low-skilled households strongly dependent on agricultural production” being most vulnerable to climate migration.³⁷ Developing nations in general are more vulnerable to the impacts of climate change, as many base their economies on climate sensitive industries such as fishing and agriculture and lack the resources to prepare for its effects.³⁸

Projections for future climate displacement show an upward trend, based on recent increases in the total number of displaced people and an ever-increasing global average temperature.³⁹ While estimates vary between researchers, the total number of climate displaced persons by 2050 generally ranges from 20 to 200 million.⁴⁰ Worst-case scenario predictions have even reached numbers as high as 1.2 or 2 billion.⁴¹ Most of this movement will occur internally within developing nations, while movement across borders will occur predominantly from one developing nation to another.⁴² Such displacement can itself be a cause of increased conflict and socio-economic tension.⁴³

Higher projections may be influenced by a growing global population and increased populations living in at risk areas. While there are currently 7.6 billion people on this planet, that number is estimated to reach 9.8 billion by 2050.⁴⁴ One billion of this 9.8 is

³⁶ *Id.*

³⁷ Etienne Piguet, *Linking climate change, environmental degradation, and migration: An update after 10 years*, 13 WIREs Climate Change 8 (2022).

³⁸ Piya Abeygunawardena et al., *Poverty and Climate Change: Reducing the Vulnerability of the Poor through Adaptation*, (World Bank Grp., 2002). <https://documents1.worldbank.org/curated/en/534871468155709473/pdf/521760WP0pov er1e0Box35554B01PUBLIC1.pdf>.

³⁹ *Id.* (“Since 2020, there has been an annual increase in the total number of displaced people due to disaster compared with the previous decade of 41% on average.”).

⁴⁰ Palinkas, *supra* note 2 (IPCC had placed estimates around 150 million by 2050).

⁴¹ Apap, *supra* note 5; *See also id.* at 203 (“[T]he numbers of people projected to be displaced by climate change events range from 20 million to two billion by the end of the century.”).

⁴² Jessica Owley, *Climate-Induced Human Displacement and Conservation Lands*, 58 Hous. L. Rev. 665, 682-83 (2021).

⁴³ Apap, *supra* note 5 (Links displacement to increased conflict by exacerbating competition for food, water, and jobs and increasing pre-existing ethnic tension and gender violence). *See also* Ferris, *supra* note 23 at 618 (“[W]hile the direct relationship between climate change and conflict is not conclusive, models indicate that climate change causes migration which in turns fuels conflict.”).

⁴⁴ United Nations, *World population projected to reach 9.8 billion in 2050, and 11.2 billion in 2100*, <https://www.un.org/en/desa/world-population-projected-reach-98-billion-2050-and-112-billion-2100#:~:text=Calendar-,World%20population%20projected%20to%20reach%209.8%20billion%20in%202050%2C%20and,Nations%20report%20being%20launched%20today> (last visited March 23, 2024).

expected to be living in low-lying coastal zone,⁴⁵ while others may live in areas prone to climate related disasters such as wildfires.⁴⁶ Even if these at-risk communities were to be relocated, they would not be guaranteed protection from climate change's effects⁴⁷. Often refugees or forcibly displaced are located in "climate change hotspots" that may lead to "secondary displacement."⁴⁸

Lastly, while future climate displacement numbers may increase, return rates may decrease.⁴⁹ Once a person is displaced, they face three scenarios: temporary and short-term displacement, temporary but longer-term displacement, or permanent displacement.⁵⁰ The first two temporary scenarios are in response to immediate threats that have ceased or for situations in which infrastructure had been destroyed then rebuilt.⁵¹ Temporary displacement is more common for natural disasters, such as hurricanes, and their related destruction, although some may move permanently when balancing factors like physical ability to return and economic and social incentive.⁵² Permanent displacement is due to the inability to return or voluntarily remaining to avoid future vulnerable conditions.⁵³ Climate change and its long-term effects, such as sea level rise, increased temperatures, and drought, will continue to make more areas uninhabitable and eliminate the ability to return to those areas.⁵⁴

C. ORIGIN OF UNFCCC AND CONFERENCE OF THE PARTIES

To address increasing concern over climate change and its global effects, 156 countries created an international treaty, the United Nations Framework Convention on Climate Change

⁴⁵ Celia McMichael et al., *A review of estimating population exposure to sea-level rise and the relevance for migration*, 15 *Envtl. Res. Letters* 2 (2020).

⁴⁶ Geoffrey Colin L. Peterson et al., *Trends in Fire Danger and Population Exposure along the Wildland-Urban Interface*, 55 *Envtl. Sci. Tech.* 16257, 16257 (2021) (Found a 121.2% population increase in high-danger Wildland-Urban Interface areas between 1990 and 2010).

⁴⁷ United Nations, *supra* note 12; see UNHCR, *How climate change impacts refugees and displaced communities* (Jan. 26, 2024), <https://www.unrefugees.org/news/how-climate-change-impacts-refugees-and-displaced-communities/>.

⁴⁸ UNHCR, *supra* note 47.

⁴⁹ United Nations, *supra* note 12 ("In the 1990s, on average 1.5 million refugees were able to return home each year. Over the past decade that number has fallen to around 385,000." States how in 2020, only 1% of specifically refugees and asylum seekers fleeing from countries highly vulnerable to climate change returned).

⁵⁰ Palinkas, *supra* note 2, at 5.

⁵¹ *Id.*

⁵² *See Id.* at 5-6, 21-23, 44, 48.

⁵³ *Id.* at 5.

⁵⁴ Sarah Kaplan, *World is on Brink of Catastrophic Warming, U.N. Climate Change Report Says*, *The Washington Post* (Mar. 20, 2023), <https://www.washingtonpost.com/climate-environment/2023/03/20/climate-change-ipcc-report-15/>.

(UNFCCC), at the 1992 United Nations Conference on the Environment and Development in Rio de Janeiro, Brazil.⁵⁵ The UNFCCC went into effect in 1994, with 196 total countries joining.⁵⁶ Article II of the treaty states its objective as to achieve the, “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interferences with the climate system.”⁵⁷ The creation of such a treaty was difficult in the 1990s given the discord over climate change’s existence and uncertainty over its future implications.⁵⁸ Yet, with acknowledgement of its existence, came the realization that climate change is a pervasive phenomenon operating on global, regional, and local levels.⁵⁹ Additionally, to effectively mitigate its effects or successfully adapt to them, there would need to be global cooperation among a variety of stakeholders, such as policymakers, private sectors, nongovernmental organizations (NGOs), researchers, and governments.⁶⁰

Two years after the UNFCCC’s formation, they developed an annual forum called the Conference of the Parties (COP),⁶¹ to meet its objectives and, “further international discussions about stabilizing GHG in the atmosphere.”⁶² COPs are authorized to use their negotiated decisions to establish rules for implementing UNFCCC’s textual provisions.⁶³ This intergovernmental platform is now the most attended meeting organized by the United Nations (UN), with dignitaries, heads of government, delegates, NGOs, and media taking part.⁶⁴ During COPs, parties actively review the past year’s progress and make decisions promoting the UNFCCC’s

⁵⁵ GUNNAR SJÖSTEDT & ARIEL MACASPAC PENETRANTE, CLIMATE CHANGE NEGOTIATIONS: A GUIDE TO RESOLVING DISPUTES AND FACILITATING MULTILATERAL COOPERATION 63-64 (2013).

⁵⁶ Mostafa Mahmud Naser & Prafula Pearce, *Evolution of the International Climate Change Policy and Processes: UNFCCC to Paris Agreement*, Env’t. Sci. (2022).

⁵⁷ United Nations Framework Convention on Climate Change, Article 2, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107.

⁵⁸ Naser, *supra* note 56.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ SJÖSTEDT, *supra* note 55, at 113.

⁶² Naser, *supra* note 56.

⁶³ Antto Vihma, *Climate of Consensus: Managing Decision Making in the UN Climate Change Negotiations*, 24 RECIEL 58, 61 (2014) (Notes that when it comes to implementing COP decisions, each state’s individual laws determine whether they can do so with or without separate legislation).

⁶⁴ United Nations Climate Change, *How COPs are organized – Questions and answers*, <https://unfccc.int/process-and-meetings/conferences/the-big-picture/what-are-united-nations-climate-change-conferences/how-cops-are-organized-questions-and-answers#about-COPs> (last visited March 26, 2024).

implementation,⁶⁵ such as developing international law through rules and standards and establishing global goals.⁶⁶ These decisions act as international obligations but are not legally binding, as the UNFCCC does not contain language expressing how member states will be bound.⁶⁷ More implicitly, the forum promotes global awareness and learning and facilitates information sharing and transparency among governments.⁶⁸ Outside of COP, UNFCCC has established third party institutions which also contribute to furthering international climate policy,⁶⁹ although certainly not on the same scale.

Every year the COP location rotates between 5 UN regional groups: Africa, Asia-Pacific, Eastern Europe, Latin America and the Caribbean, and Western Europe/Other.⁷⁰ The forum is guided by Rules of Procedure specifying the event's structure including transparency, voting, and the roles of COP officials.⁷¹ For example, the Rules of Procedure state that general decisions made during COP negotiations must be, "taken by consensus."⁷² These rules are not formally adopted but are consistently followed.⁷³ The central administrators in COP planning and implementation are the COP president, presiding officers, the UNFCCC secretariat, COP subsidiary bodies, the COP bureau, and the parties themselves. The COP president is a senior official or minister from that year's hosting COP region.⁷⁴ The roles of the president, during the negotiations, are to help reach consensus, ensure rules and procedures are being complied with, and organize the negotiations in collaboration with the UNFCCC secretariat.⁷⁵ The UNFCCC

⁶⁵ Christine Wamsler et al., *Enabling new mindsets and transformative skills for negotiating climate action: Lessons from UNFCCC conferences of the parties*, 112 *Env't. Sci. Pol'y* 227, 228 (2020).

⁶⁶ Richard Kinley et al., *Beyond good intentions, to urgent action: Former UNFCCC leaders take stock of thirty years of international climate change negotiations*, 21 *Climate Pol'y* 593, 595 (2020).

⁶⁷ Vihma, *supra* note 63; SCOTT CARRARO & JAIME DE MELO, *TOWARDS A WORKABLE AND EFFECTIVE CLIMATE REGIME*, 156-57 (2015).

⁶⁸ Kinley, *supra* note 66.

⁶⁹ Vihma, *supra* note 63, at 60 (Examples: The Green Climate Fund, the Standing Committee, the Technology Executive Committee, and Technology Center and Network).

⁷⁰ United Nations Climate Change, *supra* note 64.

⁷¹ United Nations Climate Change, *Rules of Procedure*, <https://unfccc.int/process/bodies/constituted-bodies/wim-excom/rules-of-procedure> (last visited Mar. 26, 2024).

⁷² *Id.*; see also Vihma, *supra* note 63, at 62-3 (Describes how "consensus" is unclear in the context of COPs and does not mean unanimity. For example, at one point the consensus requirement only needed 195 countries to be in agreement. Due to this ambiguity, there had been a push for majority voting instead, and more recently, a push for a three-quarter vote for approval if consensus is unable to be met).

⁷³ United Nations Climate Change, *supra* note 64.

⁷⁴ SJOŠTEDT, *supra* note 55, at 171.

⁷⁵ United Nations Climate Change, *supra* note 64; Vihma, *supra* note 63, at 65.

secretariat works with the president, presiding officers, and subsidiary bodies to ensure the convention and all its moving parts runs smoothly.⁷⁶ COP subsidiary bodies act in an advisory manner while the COP bureau handles procedural and organizational issues.⁷⁷

In addition to the actual COP convention, outside climate policy side events run parallel to the negotiations. These side events are put together by non-party COP stakeholders such as the scientific community, the private sector, local governments, media, and civil society organizations.⁷⁸ Stakeholders put on panels and presentations to influence COP negotiations and its agenda and raise awareness on particular topics.⁷⁹ A case study from COP13 and COP14 found a little under 400 official side events had been arranged to accompany these events, with surveys showing COP participants found them useful for their work.⁸⁰ COP side events are important for brainstorming possible negotiation topics and generating and spreading information. They can be indicative of COP trajectory as, “historically, new items were introduced at COP side-events before being discussed in the formal negotiations.”⁸¹

When evaluating COPs’ effectiveness over the years it seems to be agreed that while certain aspects of the events’ functioning is flawed,⁸² holistically, COP and its resulting decisions have been incredibly important for global climate governance.⁸³ Over the years, there’s been a rise in participation, money, sessions, documents, and decisions in the negotiations,⁸⁴ with the most recent 2023 COP28 yielding approximately 85,000 participants and 200 negotiating parties.⁸⁵ Some of the COP framework’s biggest successes have

⁷⁶ United Nations Climate Change, *History of the Convention*, <https://unfccc.int/process/the-convention/history-of-the-convention#Essential-background> (last visited March 26, 2024); United Nations Climate Change, *supra* note 64 (“[T]he secretariat’s main task during COPs is to efficiently manage the negotiations so that delegates are in the right place, at the right time, equipped with the necessary documents, with all the facilities that they require.”).

⁷⁷ United Nations Climate Change, *supra* note 76.

⁷⁸ Kathleen A. Mar et al., *Learning and community building in support of collective action: Toward a new climate of communication at the COP*, 14 WIREs 1-2 (2023).

⁷⁹ *Id.*

⁸⁰ Mattias Hjerpe & Björn-Ola Linnér, *Functions of COP Side-Events in Climate-Change Governance*, 10 Climate Pol’y 167, 168, 178 (2011).

⁸¹ *Id.* at 178.

⁸² See generally Kinley, *supra* note 66; See also Vihma, *supra* note 63.

⁸³ Vihma, *supra* note 63 (While addressing COPs limitations, the article also acknowledges that, “the COP and its decision-making process have been and will likely remain a crucial element in global climate governance.”).

⁸⁴ *Id.* at 58.

⁸⁵ United Nations Climate Change, *COP28 Agreement Signals “Beginning of the End” of the Fossil Fuel Era*, <https://unfccc.int/news/cop28-agreement-signals-beginning-of-the-end-of-the-fossil-fuel->

been the Kyoto Protocol from COP3 in 1997 and the Paris Agreement from COP21 in 2015.⁸⁶ Both these international treaties targeted *mitigation* of GHGs through developed country leadership but show how COP could provide a suitable structure for doing the same in regard to adaptation.

II. PURPOSE

Evidently, climate change and its effects on human mobility is a critical issue that should be addressed sooner rather than later, possibly through a framework such as the UNFCCC and COPs. This section will discuss the current legal gap facing those forcibly displaced due to climate change or natural disasters, insufficient past attempts at fully filling this gap, and the need for an international solution.

A. THE LACK OF INTERNATIONAL POLICY

The administrative process of determining if an individual qualifies for refugee status under international, regional, or national law is called Refugee Status Determination (RSD).⁸⁷ Generally, the host country will carry out the RSD process, but occasionally the United Nations High Commissioner for Refugees (UNHCR) will take over.⁸⁸ While there are protections and guidelines in place for displaced climate refugees within a state's own borders,⁸⁹ the same cannot be said for those seeking RSD internationally. Not only is there a lack of international law addressing climate refugees, but also the absence of an institution taking initiative to draft, implement, and amend, if needed, such legislation.⁹⁰ Consequently, few proposed policies to address the issue have been acted on and,⁹¹ as will become apparent, the existing international refugee laws are inadequate for the circumstances of a climate refugee.

The most prominent existing refugee legislation failing to accommodate climate refugees is the 1951 Refugee Convention.

era#:~:text=In%20a%20demonstration%20of%20global,1.5°C%20within%20reach (2023).

⁸⁶ Naser, *supra* note 56; Kinley, *supra* note 66 at 594 (The Kyoto Protocol was the first international GHG emission reduction treaty created, setting emission targets for developed countries. The Paris Agreement expanded on the Kyoto Protocol by creating specific reduction pledges by all countries, to be increased every five years).

⁸⁷ UNHCR, *Refugee Status Determination*, <https://www.unhcr.org/us/what-we-do/protect-human-rights/protection/refugee-status-determination> (last visited April 12, 2024).

⁸⁸ *Id.* (UNHCR conducts the RSD when the host country is not a party to the 1951 Refugee Convention).

⁸⁹ Palinkas, *supra* note 2, at 160. (Example: the United Nations Guiding Principles on Internal Displacement).

⁹⁰ SIMON BEHRMAN & AVIDAN KENT, CLIMATE REFUGEES: BEYOND THE LEGAL IMPASSE 7 (Routledge ed., 2018).

⁹¹ Palinkas, *supra* note 2, at 149.

This legislation was enacted following World War II and the major displacement that followed.⁹² Since its enactment, the 1951 Refugee Convention was amended once by the 1967 Protocol which took away geographic and time-based limitations for refugee qualifications.⁹³ The 1951 Refugee Convention is respected by 146 countries while the 1967 Protocol covers 147 countries.⁹⁴ Together, these documents guide UNHCR and host country RSDs by defining what a “refugee” is.⁹⁵ The Convention states a refugee, “is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”⁹⁶ As natural disasters and climate change do not appear to directly persecute or discriminate, it’s unlikely a climate refugee would be seen as a legally protected “refugee” under this definition.⁹⁷ The Convention also lays out what legal protections are offered a “refugee,” including a right to judicial justice, education, work, documentation, etc.⁹⁸ As climate refugees are not protected by the 1951 Refugee Convention, they are legally considered migrants and are not entitled to these opportunities and rights.⁹⁹

A New Zealand case illustrates this legal gap well. The case concerned the Teitiotia family, who had moved from their home in Kiribati, an island in Oceania, to New Zealand in 2007.¹⁰⁰ The family moved due to concern over sea level rise impacting their small island and the increase in extreme weather events.¹⁰¹ Additionally, the sea level rise was ruining water supply and crops which led to malnutrition.¹⁰² The Teitiotia’s, when faced with deportation because of expired work visas, tried getting refugee status under Article I of the 1951 Refugee Convention.¹⁰³ The debate over their status made its way up to the Supreme Court of New Zealand where it was ultimately held that the family did not

⁹² UNHCR, *The 1951 Refugee Convention*, <https://www.unhcr.org/us/about-unhcr/who-we-are/1951-refugee-convention> (last visited April 12, 2024).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 (adopted 28 July 1951, entered into force 22 April 1954).

⁹⁷ *See id.* (Does not mention climate change, natural disasters, or any sort of environmentally related displacement).

⁹⁸ *Id.* (Being a refugee under the convention elicits the principle of non-refoulement. This concept protects a refugee from being expelled from the host country against their will.)

⁹⁹ Palinkas, *supra* note 2, at 161.

¹⁰⁰ Mariah Stephens, *The Great Climate Migration: A Critique of Global Legal Standards of Climate Change-Caused Harm*, 23 Sustainable Dev. L. & Pol’y 16, 16 (2023).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

qualify under the refugee definition as there was no “actual, imminent harm.”¹⁰⁴ This case not only illustrates how climate refugees are not protected under current international law, but that current international law disallows for climate migration as an adaptive solution because it requires for the harm to have already occurred or be sufficiently “imminent.”¹⁰⁵

With projections of displacement due to climate change and natural disasters increasing in the next century, this legal gap isolating climate refugees will only become larger and more apparent. As it’s unlikely the 1951 Refugee Convention will be amended,¹⁰⁶ global climate refugee policy may have to evolve elsewhere.

B. PAST ATTEMPTS AT ADDRESSING CLIMATE DISPLACEMENT

There is already international and regional legislation which, at first glance, seem to provide protections to climate refugees. However, a closer study often reveals that the interpretation of the legislation’s language does not do so or that the legislation falls short of offering such protections. This section will analyze first international and then regional existing migration legislation and the extent to which they cover climate refugees.

An earlier framework for protecting climate displaced people came from the Nansen Initiative (currently referred to as the Platform on Disaster Displacement), launched by Norway and Sweden’s governments in 2012 and signed by 104 states.¹⁰⁷ This initiative demonstrated the willingness of its parties to attempt filling the legal gap for climate refugees at regional and sub-regional levels.¹⁰⁸ Cultivated consensus led the initiative’s states to implement a Protection Agenda at the Humanitarian Summit of Istanbul in 2016.¹⁰⁹ The Agenda works as a toolbox for the states in preventing climate displacement, preparing in anticipation of future displacement, and improving a state’s response for when its citizens are displaced internationally or internally.¹¹⁰ While neither legally

¹⁰⁴ *Id.* at 17. (“While [Teitiota] could list all of the potential disasters and dangers that could affect his family from a changing climate, the court defines ‘imminence’ as risk to life that is ‘at least likely to occur,’ and Teitiota could not specifically say with certainty which harms were likely to occur and when.”).

¹⁰⁵ *Id.*

¹⁰⁶ Behrman & Kent, *supra* note 90, at 5.

¹⁰⁷ Ferris, *supra* note 23, at 615; Apap, *supra* note 5; Behrman & Kent, *supra* note 90, at 5.

¹⁰⁸ Behrman & Kent, *supra* note 90, at 6; *but see* Fran Woodworth, *Exclusion of Climate Migrants from the Global Compact on Refugees*, 29 *Geopolitics* 118, 119 (2023) (States that while the Nansen Initiative has benefitted climate displacement by providing a framework to work from, “[it] does not define, operationalize, or enforce state responsibilities.”).

¹⁰⁹ Apap, *supra* note 5.

¹¹⁰ *Id.* (Contributed to the agenda of COP21 in 2015).

binding or international, this Agenda, “supports the integration of effective practices by states and regional players into their own legal frameworks, in accordance with their specific context.”¹¹¹

In the same year, 2016, the United Nation’s General Assembly adopted the New York Declaration on Refugees and Migrants at the High Level Plenary Summit on Refugees and Migrants.¹¹² This Declaration, supported by all 193 UN member states, did not explicitly target climate refugees, instead focusing generally on increasing global responsibility for refugees and migrants and fostering global cooperation.¹¹³ However, it did notably recognize the nexus between natural disasters, climate change, and migration and other migratory factors such as economics or politics.¹¹⁴ This recognition, while not enough to fill the climate refugee legal gap itself,¹¹⁵ shows a possible shift in global thinking to expand upon what the term “refugee” encompasses.¹¹⁶ The Declaration also demanded the creation of two legally non-binding Global Compacts – one for refugees and one for migrants.¹¹⁷

The Global Compact on Refugees, crafted in 2018 by the UN General Assembly, is similar to the New York Declaration in that it provides a framework for greater responsibility sharing and cooperation.¹¹⁸ More specifically, it determines four key objectives: (1) Ease the pressure on refugee host countries (2) Enhance refugee self-reliance (3) Expand access to third country solutions and (4) Support conditions in countries of origin for return in safety and dignity.¹¹⁹ The Compact on Refugees also acknowledges the role of climate change and natural disasters in migration but does not effectuate anything beyond this acknowledgement.¹²⁰ No additional legal protections are recommended nor is the 1951 Refugee Convention definition of “refugee” expanded on or challenged.¹²¹

¹¹¹ *Id.*

¹¹² Woodworth, *supra* note 108, at 118-19.

¹¹³ Behrman & Kent, *supra* note 90, at 6; Woodworth, *supra* note 108.

¹¹⁴ Behrman & Kent, *supra* note 90, at 110-11.

¹¹⁵ Walter Kälin, *The Global Compact on Migration: A Ray of Hope for Disaster-Displaced Persons*, 30 Int’l J. Refugee L. 664, 664-65 (2018) (“While the 2016 New York Declaration for Refugees and Migrants expressed the willingness to address the needs of ‘migrants in countries that are experiencing natural disasters’, it failed to mention the needs of those forced to flee from disaster-affected countries.”).

¹¹⁶ See Behrman & Kent, *supra* note 90, at 6.

¹¹⁷ Apap, *supra* note 5.

¹¹⁸ United Nations, *supra* note 12.

¹¹⁹ *Id.* (to meet these objectives, the Global Refugee Forum was held in 2023, becoming the world’s largest ever international assembly on refugees. This Forum led to 1,600 pledges to support refugees and host countries, 43 commitments by governments, \$2.2 billion in financial commitments by states, and \$250 million pledged by the private sector).

¹²⁰ Woodworth, *supra* note 108.

¹²¹ *Id.*

After some debate,¹²² the Global Compact on Migration also recognized the relationship between climate change, natural disasters, and the challenges they pose to displacement.¹²³ Like the Compact on Refugees, this Compact declines offering climate displaced people “refugee” status under international or even regional law.¹²⁴ Its reference to the nexus of climate and migration in Objective 2 focuses on the prevention and planning of climate displacement,¹²⁵ while Objective 5 is a little more ambitious in defining some temporary protections - such as work permits - for those climate displaced.¹²⁶ The recognition of the climate migration nexus opens up the door for future policy intervention and action.¹²⁷ Although these compacts are not sufficient alone, as they are meant as broader frameworks covering other important migration issues, they may act as a steppingstone for future international efforts.¹²⁸

More recently, the International Organization for Migration (IOM), another UN agency, created the Institutional Strategy on Migration, Environment, and Climate Change 2021-2030.¹²⁹ This document is not an international agreement but a plan outlining how the IOM itself will support national and local government response to international and internal climate migration by advising on policy, developing approaches, and advancing understanding on the issues.¹³⁰ This Strategy encourages domestic innovations, but the global scale of climate displacement requires a global, shared response.

While international legislation has addressed climate migration to some extent, so have regional agreements and treaties. For example, in 2009, 55 member states of the African Union created

¹²² Kālin, *supra* note 115, at 665 (describes how preceding the final Global Compact on Migration, several states were against including the issue of climate-based migration in the agreement. In the end, supporters from Africa, Latin America, the Pacific, and the European Union convinced others that the Compact’s goal of safe and orderly migration could not happen without addressing the issue).

¹²³ *Id.*

¹²⁴ *Id.* at 667.

¹²⁵ *Id.* at 665-66. (Some actions it includes are “enhancing data and knowledge on migration that may result from sudden- or slow-onset environmental events; helping people at risk to stay in their countries through adaptation and resilience strategies; integrating displacement considerations into disaster preparedness strategies and cooperative arrangements with neighboring and other relevant countries to prepare;” etc.).

¹²⁶ *Id.* at 666.

¹²⁷ *Id.* at 665.

¹²⁸ *Id.* at 667 (brings up the possibility for the Migration Compact to be “the centre of gravity for future discussions and actions on disaster- and climate change-related human mobility.”).

¹²⁹ International Organization for Migration, *Institutional Strategy on Migration, Environment and Climate Change 2021-2030* (2021), https://environmentalmigration.iom.int/sites/g/files/tmzbd11411/files/documents/IOM-Institutional-Strategy-MECCC_0.pdf.

¹³⁰ *Id.*

the legally binding Kampala Convention to protect internally displaced victims of climate change and natural disasters.¹³¹ Responding to the drought, floods, and food insecurity throughout the region, the legislation targets “the promotion and strengthening of regional and national measures aimed at preventing or mitigating, prohibiting, and eliminating the causes of internal displacement, as well as offering definitive solutions.”¹³² Part of this process includes defining environmentally displaced persons, identifying their rights, and prescribing responsibility to the states to address these rights.¹³³ Unfortunately, a study conducted in 2023 reviewing the Kampala Convention’s success found that high rates of internal displacement due to violence overshadowed attention to climate displacement, reducing the force of the Convention.¹³⁴

Another regional example is the 1984 Cartagena Declaration. Due to increased migration in and around central America, Latin American and Caribbean governments signed a legally nonbinding agreement to protect international migrant rights.¹³⁵ Most significantly, the agreement extended the “refugee” definition from the 1951 Refugee Convention to “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights, or other circumstances which have seriously disturbed public order.”¹³⁶ Initially, it would appear that by taking away the persecution requirement, climate refugees may fall under this agreement’s protection, as natural disasters seriously disturb “public order.”¹³⁷ However, no language in the Declaration expresses the intent to cover climate refugees and the concept of “public order” has been narrowly interpreted.¹³⁸ Additionally, in practice, the Declaration has not been followed to

¹³¹ Alfredo dos Santos Soares, *Displaced by Environmental Disasters: Evaluating the Kampala Convention’s (In)effectiveness Ten Years After it Came into Force*, 14 *Revista Catalana de Dret Ambiental* 3 (2023); Woodworth, *supra* note 108.

¹³² Soares, *supra* note 131, at 11, 18.

¹³³ *Id.* at 20–21 (“Under Article 1(k) [of the Convention], environmentally displaced persons are all persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence as a result of or to avoid the effects of natural or human-made disasters, including climate change, and who have not crossed an internationally recognized State border.”).

¹³⁴ See *Id.* at 3, 30.

¹³⁵ Óscar Pajuelo, *Between Disbelief and Indifference: Are the “Environmentally Displaced” Refugees Under the Extended Definition of the Cartagena Declaration?*, 1 *Internacia: Revista de Relaciones Internacionales* 8 (2020).

¹³⁶ *Id.* at 9.

¹³⁷ *Id.* at 5–6.

¹³⁸ *Id.* at 9–10 (some interpretations require for the disturbance of “public order” to be man-made).

allow for the protection of people displaced by climate or natural disasters.¹³⁹

C. THE NEED FOR AN INTERNATIONAL FRAMEWORK

The lack of an international solution to climate migration, including legal protection, in combination with the inadequacies of the current refugee and climate refugee framework, illustrate the need for such an international solution. Moreover, the use of international environmental law to address the climate refugee legal gap, while not a new idea,¹⁴⁰ seems to be a more pressing issue due to the time sensitive nature of climate change.¹⁴¹

There are a few reasons why climate migration should be addressed internationally rather than regionally or locally. The first is that climate change's effects and natural disasters are global and not limited to certain portions of the planet.¹⁴² In 2022, 148 of the world's countries were subject to natural disasters.¹⁴³ Additionally, crafting an official international definition of "climate refugee" will prevent unclear patchwork definitions and further the process for giving protections to a clearly identified group.¹⁴⁴ Currently, terms vary from "environmental refugee" to "climate refugee" to "environmental migrant" to "climate displaced person."¹⁴⁵ Lastly, as seen through the ineffectiveness of the Kampala Convention, leaving regions solely responsible for climate refugees has its own risks.¹⁴⁶ For instance, a region may prioritize other regional problems as it does not have the ability or resources to stay attentive to all.¹⁴⁷ Both scholars and other pieces of global refugee legislation agree that climate migration requires international cooperation.¹⁴⁸

¹³⁹ *Id.* at 8 (for example, Haitians fleeing their country from earthquakes and hurricanes in 2012 were not protected under the Cartagena Declaration in receiving Latin American countries).

¹⁴⁰ See Behrman & Kent, *supra* note 90, at 9.

¹⁴¹ Pui, *supra* note 25.

¹⁴² Saber Salem & Armin Rosencranz, *Climate Refugees in the Pacific*, 50 *Env'tl. L. Rep.* 10540, 10540 (2020) ("It is therefore logical to argue that climate change is undeniably a global phenomenon, which demands global actions.").

¹⁴³ Apap, *supra* note 5, at 6.

¹⁴⁴ *Id.* at 4 (additionally, the lack of a universal definition makes it difficult, "to measure exactly the number of existing and potential displacement flows.").

¹⁴⁵ *Id.*

¹⁴⁶ Soares, *supra* note 131, at 3, 30.

¹⁴⁷ George Palattiyil et al., *Global Trends in Forced Migration: Policy, Practice and Research Imperatives for Social Work*, 65 *Int'l Soc. Work* 1111, 1115 (2022) (Found that countries such as Kenya, Ghana, Bangladesh, etc. which are at risk of climate change, lack the political resources to handle international climate migration protections).

¹⁴⁸ Naser, *supra* note 56; see also Ferris, *supra* note 23, at 616-17; United Nations, *supra* note 12.

A platform for international discussions on climate migration can be found through the UNFCCC and its corresponding COPs.¹⁴⁹ COPs and their multilateral processes are effective in developing international law, establishing globally agreed upon goals, enabling data sharing, encouraging accountability, promoting awareness, and more.¹⁵⁰ These negotiations have already led to significant successes in international environmental law, such as the Kyoto Protocol and Paris Agreement.¹⁵¹ International law for climate migration could similarly be addressed by COPs to create a universal definition of “climate refugee,” the criteria for what constitutes climate migration, and ““common but differentiated responsibilities,”” for states in addressing climate migration.¹⁵² COPs are suitable for setting up this future framework as they can provide the means for research, finance, resources, and “coordination of different social, economic, and administrative sectors,” necessary for effective and sustainable implementation.¹⁵³ Other principles of UNFCCC and COPs, such as having parties take each other’s specific circumstances into account during negotiations, are valuable in crafting an international solution.¹⁵⁴ Furthermore, current global migration legislation alludes to UNFCCC as being the proper vehicle for such a task.¹⁵⁵ It is important to note that constructing an international solution presents many obstacles, such as a lack of data and possible opposition by host countries.¹⁵⁶

The rest of this paper is dedicated to reviewing how the past 28 COPs have addressed climate migration and the extent to which they’ve addressed the issue. It’s significant that COPs have already acknowledged the nexus between climate change and migration as seen through their past actions.¹⁵⁷ Recent COP events have

¹⁴⁹ Behrman & Kent, *supra* note 90, at 107. (Describes how the UNFCCC and Global Compact on Migration are, “of crucial significance in order to advance policies and practices to tackle challenges linked to climate migration, primarily as they are the main vehicles in which both global developments on climate change and migration are taking place.”).

¹⁵⁰ Kinley, *supra* note 66.

¹⁵¹ *Id.*

¹⁵² Behrman & Kent, *supra* note 90, at 9.

¹⁵³ Palinkas, *supra* note 2, at 149.

¹⁵⁴ United Nations Climate Change, *supra* note 64.

¹⁵⁵ Behrman & Kent, *supra* note 90 at 107. (The New York Declaration shows that only the 2030 Agenda for Sustainable Development framework can address climate migration drivers); *Id.* (The 2030 Agenda for Sustainable Development recognizes the UNFCCC, “as the primary international, intergovernmental forum for negotiating the global response to climate change.”).

¹⁵⁶ Apap, *supra* note 5, at 2, 5; ADEROMOLA ADEOLA, THE PALGRAVE HANDBOOK OF DEMOCRACY, GOVERNANCE AND JUSTICE IN AFRICA 363 (2022).

¹⁵⁷ ADEROMOLA, *supra* note 156, at 362 (refers to another scholar’s view that isolating climate from migration is detrimental).

indicated the desire to fill the climate refugee legal gap, perhaps within their own structure,¹⁵⁸ and other intergovernmental organizations also appear to have chosen UNFCCC to do so.¹⁵⁹ Even if the UNFCCC and future COPs do not establish the final solution, the discussions and steps made during their processes are sure to be foundational in creating one.¹⁶⁰

IV. CASE STUDY

A. THE QUANTITY OF PAST COPs ADDRESSING CLIMATE DISPLACEMENT

The UNFCCC official website contains an expansive database for past COPs 3 to 27.¹⁶¹ For each COP event, the website makes available the event's agenda, relevant documents and reports, and all negotiated decisions.¹⁶² An analysis of this data reveals that 10 of the 25 included COP events explicitly address climate migration in either their negotiations or final decisions. These 10 COP events are COP16, COP18, COP20, COP21, COP22, COP23, COP24, COP25, COP26, and COP27. COP14, COP15, and COP19 indirectly addressed climate migration but not in a definitive manner. Additionally, it can be inferred COPs 1 and 2 did not address climate migration, as even COP3 primarily dealt with Conference logistics, and outside sources confirm COP28 did address the issue.¹⁶³ In conclusion, 11 of the 28 past COP events have explicitly referenced climate migration.

B. THE EXTENT TO WHICH PAST COPs HAVE ADDRESSED CLIMATE DISPLACEMENT

This section offers a breakdown of the extent to which each of these 11 COP events have addressed climate displacement, including the additional 3 which indirectly addressed climate displacement.

COP14 – This event did not include migration in its final negotiations or formal decisions. However, migration and

¹⁵⁸ Behrman & Kent, *supra* note 90, at 9.

¹⁵⁹ *Id.* (COP21 established a task force to address climate migration. The membership of the task force (United Nations Development Programme, International Organization for Migration, etc.) implies that the UNFCCC is the leader on this issue, with other organizations acting in more supportive roles.)

¹⁶⁰ Vihma, *supra* note 63, at 60.

¹⁶¹ See United Nations Climate Change, *Conferences of the Parties (COP)*, <https://unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-cop> (last visited April 14, 2024).

¹⁶² *Id.*

¹⁶³ Alice Baillat, *COP28: What did it say about displacement and climate change?*, IDMC (Dec. 13, 2023), <https://www.internal-displacement.org/policy-analysis/cop28-what-did-it-say-about-displacement-and-climate-change/>.

displacement were referred to as possible areas for adaptation funding support in the draft negotiations text.¹⁶⁴

COP15 – This event did not include migration in its final negotiations or formal decisions either.¹⁶⁵ However, two Draft Protocols to the Convention were presented ahead of the Convention, containing proposals to address climate migration in developing countries.¹⁶⁶ First, Tuvalu’s government proposed a provision requiring developing countries, vulnerable to climate change, to find financial support for adaptive solutions to protect climate displaced people.¹⁶⁷ Second, Costa Rica’s government proposed a provision requiring developing countries, vulnerable to climate change, to create adaptation plans addressing internal and international climate displacement.¹⁶⁸

COP16 – Prior to the Convention, Grenada’s government proposed a provision requiring developed countries to provide developing countries, particularly those vulnerable to climate change, with financial, technological, and capacity building support to carry out their adaptive solutions.¹⁶⁹ These solutions include protecting climate refugees.¹⁷⁰ During the actual Convention, climate migration issues were integrated into the UNFCCC and COP framework for the first time.¹⁷¹ Out of COP16 came the Cancun Adaptation Framework which recognized the nexus of climate and migration by inviting all the convention’s parties to undertake, “measures to enhance understanding, coordination and cooperation with regard to climate induced displacement, migration and planned relocation.”¹⁷² Planned relocation refers to the

¹⁶⁴ Koko Warner, *Human Migration and Displacement in the Context of Adaptation to Climate Change: The Cancun Adaptation for Framework and Potential for Future Action*, 30 Env’t. & Plan. C: Gov’t Pol’y 1061, 1065 (2012).

¹⁶⁵ UNFCCC, Report of the Conference of the Parties on its fifteenth session, held in Copenhagen from 7 to 19 December 2009, U.N. Doc. FCCC/CP/2009/11/Add.1 (March 20, 2010).

¹⁶⁶ UNFCC, Draft protocol to the Convention presented by the Government of Tuvalu under Article 17 of the Convention, U.N. Doc. FCCC/CP/2009/4 (Dec. 7-18, 2009) (draft Protocols must be distributed by the Secretariat to the Convention’s parties at least 6 months in advance of the event and may be considered for adoption).

¹⁶⁷ *Id.* at 10.

¹⁶⁸ UNFCC, Draft protocol to the Convention prepared by the Government of Costa Rica to be adopted at the fifteenth session of the Conference of the Parties, U.N. Doc. FCCC/CP/2009/6 (Dec. 7-18, 2009).

¹⁶⁹ UNFCC, Proposed protocol to the Convention submitted by Grenada for adoption at the sixteenth session of the Conference of the Parties, U.N. Doc. FCCC/CP/2010/3, (Jun. 2, 2010).

¹⁷⁰ *Id.* at 5.

¹⁷¹ Behrman & Kent, *supra* note 90 at 108.

¹⁷² UNFCC, Work undertaken by the Conference of the Parties at its fifteenth session on the basis of the report of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, U.N. Doc. FCCC/CP/2010/2 (Feb. 11, 2010); Kälén, *supra* note 115, at 664.

organized resettlement of communities in response to climate change related threats.¹⁷³

COP18 – In this convention’s final decisions were next steps for addressing loss and damage from climate change in developing countries.¹⁷⁴ The convention acknowledged it needed to first understand these losses and damages better.¹⁷⁵ Moreover, it included as “loss” the patterns of migration or displacement due to climate change.¹⁷⁶

COP19 – While climate migration was not explicitly referenced, COP 19 established the Warsaw International Mechanism (WIM) to handle climate change and disaster related loss and damage in developing countries.¹⁷⁷ As noted above, COP18 had established climate migration as such a “loss” or “damage.”

COP20 – In negotiations, Parties discussed adopting a provision requiring the establishment of a climate displacement unit to provide support for emergency relief, assist in providing organized migration and planned relocation, and undertake compensation measures.¹⁷⁸

COP21 – COP21 produced the Paris Agreement. Although this Agreement predominantly addressed mitigation of GHGs, it also recognized climate change as a trigger for migration and called for states to take into consideration climate migrants and the states’ obligations for these migrants when addressing climate change.¹⁷⁹ Included in these obligations, is a state’s need to protect the rights of climate migrants.¹⁸⁰ In addition to the Paris Agreement, COP21 called for a specific task force dedicated to displacement to be formed by the Executive Committee of WIM.¹⁸¹ This task force would develop recommendations for minimizing and addressing climate displacement.¹⁸² It would be made up of states from the

¹⁷³ See Ferris, *supra* note 23, at 617.

¹⁷⁴ UNFCCC, Report of the Conference of the Parties on its eighteenth session, held in Doha from 26 November to 8 December 2012. Part one: Proceedings, U.N. Doc. FCCC/CP/2012/8 (Feb. 28, 2013).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ See UNFCCC, Report of the Conference of the Parties on its nineteenth session, held in Warsaw from 11 to 23 November 2013, U.N. Doc. FCCC/CP/2013/10/Add.3 (Jan. 31, 2014).

¹⁷⁸ UNFCCC, Report of the Conference of the Parties on its twentieth session, held in Lima from 1 to 14 December 2014, U.N. Doc. FCCC/CP/2014/10 (Feb. 2, 2015).

¹⁷⁹ See Apap, *supra* note 5.

¹⁸⁰ Behrman & Kent, *supra* note 90, at 5.

¹⁸¹ *Id.* at 108.

¹⁸² UNFCCC, Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, U.N. Doc. FCCC/CP/2015/10 (Jan. 29, 2016); *Id.* (“[T]he Taskforce will identify legal, policy and institutional challenges, good practices and lessons learned, and provide opportunities to parties to the Climate Convention to articulate their questions and needs, and to share their experiences.”).

global north and south, organizations with broad mandates, such as the International Labour Organization, and organizations working solely on human mobility, such as UNHCR.¹⁸³

COP22 – This Convention analyzed the report prepared by the Task Force on Displacement.¹⁸⁴ The report contained key achievements by the Force, such as a meeting it held for various stakeholders to share relevant information and knowledge related to climate migration and displacement.¹⁸⁵ It also crafted its recommendations for COP22, including the encouragement of member states to continue incorporating climate displacement into their planning and actions and encouraging assistance by outside multilateral entities, such as the IOM.¹⁸⁶ The Convention included the recommendation in its final decisions.¹⁸⁷

COP23 – Included on the Convention's agenda were discussions over the report produced by the executive committee of WIM.¹⁸⁸ The report promoted the sharing of information and knowledge between stakeholders, promoted contributions to climate migration international policy, and included findings, such as the percent of developed country parties conducting climate risk analysis for displacement and migration (33%).¹⁸⁹ The Convention also established the InsuResilience Global Partnership for Climate Disaster Risk Finance and Insurance Solutions, which indirectly touches on climate migration by seeking to reduce it, among other natural disaster impacts, by helping vulnerable communities recover.¹⁹⁰

COP24 – The Convention encouraged the executive committee for WIM to continue its work on climate migration, displacement, and planned relocation.¹⁹¹ Included in the supplementary Annex were recommendations to: (1) Foster better collaboration across convention stakeholders, the Paris Agreement, and other platforms

¹⁸³ Behrman & Kent, *supra* note 90, at 109 (includes developing member states particularly vulnerable to climate change).

¹⁸⁴ *Id.* at 108-09.

¹⁸⁵ UNFCCC, Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, U.N. Doc. FCCC/SB/2016/3 (Oct. 14, 2016).

¹⁸⁶ *Id.*

¹⁸⁷ UNFCCC, *Report of the Conference of the Parties on its twenty-second session, held in Marrakesh from 7 to 18 November 2016*, U.N. Doc. FCCC/CP/2016/10 (Jan. 31, 2017).

¹⁸⁸ UNFCCC, Provisional agenda and annotations, U.N. Doc. FCCC/SBSTA/2017/5 (Aug. 25, 2017).

¹⁸⁹ UNFCCC, *Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts*, U.N. Doc. FCCC/SB/2017/1/Add.1, (Nov. 1, 2017).

¹⁹⁰ Apap, *supra* note 5.

¹⁹¹ UNFCCC, *Report of the Conference of the Parties on its twenty-fourth session, held in Katowice from 2 to 15 December 2018*, U.N. Doc. FCCC/CP/2018/10/Add.1, (Mar. 19, 2019).

and programs to better understand climate migration (2) Allow for safe climate migration by considering migrant needs and (3) Increase communication between convention groups and other stakeholders, “to avoid duplication on climate change aspects.”¹⁹²

COP25 – The Task Force on Displacement presented its plan of action to continue gathering information around climate migration and make it available for parties and other stakeholders, to find funding, and help parties and other stakeholders assess climate displacement risks and impacts.¹⁹³ The Convention also reiterated the need for states to protect the rights of climate migrants, same as COP21.¹⁹⁴

COP26 – COP26 reiterated the need for states to protect the rights of climate migrants, as in COP21 and COP25, and gave a small update on the Executive Committee of WIM continuing its work.¹⁹⁵

COP27 – The Convention, in remembrance of the Paris Agreement’s call for funding to assist developing countries in addressing their loss and damage, created such a fund and recognized forced displacement as a form of “loss.”¹⁹⁶ COP27 also renewed the third plan of action by the Task Force on Displacement and created the Sharm el-Sheikh Implementation Plan which emphasized the increased concern and effects of climate displacement.¹⁹⁷ In addition to addressing climate migration through COP’s official framework, side events were discussing these issues as well.¹⁹⁸

COP28 – This most recent Convention continued in addressing climate migration.¹⁹⁹

C. TRENDS IN COP CLIMATE DISPLACEMENT DISCUSSIONS

This look at the COP timeline demonstrates the slow trend in the organization to acknowledge and address climate displacement.²⁰⁰

¹⁹² *Id.*

¹⁹³ Owley, *supra* note 42, at 680-81.

¹⁹⁴ UNFCCC, *Report of the Conference of the Parties on its twenty-fifth session, held in Madrid from 2 to 15 December 2019*, U.N. Doc. FCCC/CP/2019/13, (Mar. 16, 2020).

¹⁹⁵ UNFCCC, *Report of the Conference of the Parties on its twenty-sixth session, held in Glasgow from 31 October to 13 November 2021*, U.N. Doc. FCCC/CP/2021/12, (Mar. 8, 2022).

¹⁹⁶ UNFCCC, *Report of the Conference of the Parties on its twenty-seventh session, held in Sharm el-Sheikh from 6 to 20 November 2022*, U.N. Doc. FCCC/CP/2022/10, (Mar. 17, 2023).

¹⁹⁷ *Id.*

¹⁹⁸ Apap, *supra* note 5. (The Global Centre for Climate Mobility created the Climate Mobility Pavilion to, “discuss policy solutions for climate mobility and displacement.”).

¹⁹⁹ Baillat, *supra* note 163.

²⁰⁰ See Kira Vinke et al., *Migration in the Context of Climate Foreign Policy*, DGAP 5 (2023).

Climate displacement has been identified by the IPCC as potentially the most serious effect of climate change since the 1990s, yet the subject was not formally addressed by the UNFCCC until COP16 and the Cancun Adaptation Framework in 2010.²⁰¹ While the initial acknowledgement took some time, subsequent COP action has been gradually moving forward. Concrete action and decisions in COPS 21 and 22 illustrated the consensus of parties that the topic needed to be addressed, and this has evolved over time into the UNFCCC “recommending its parties to formulate law and policies to address climate related displacement by taking into account their human rights obligation.”²⁰² While recent COP attention has been on climate migrant human rights and protection, this was not always the case. There’s been shifts in COP dialogue from displacement mitigation to displacement adaptation to, currently, human rights and protection of climate migrants.

Mitigation focuses on preventing climate change and its effects - such as displacement - by minimizing the cause (emissions).²⁰³ Earlier COP conventions led to mitigating actions, such as the Kyoto Protocol and Paris Agreement, to reduce GHG emission intensity.²⁰⁴ Adaptation focuses on planning around and adjusting to climate change’s effects.²⁰⁵ These plans are much more varied than narrowly mitigating GHG emissions.²⁰⁶ Since the 1990s, the UNFCCC has realized they could not focus solely on mitigation, but that international cooperation in the form of adaptation was required.²⁰⁷ The focus on adaptation had led to discussions on using UNFCCC funds to financially assist migration host countries and developing planned relocations, referring to the movement of communities in anticipation of harm.²⁰⁸

In contrast to mitigation and adaptation, “protection related regulation is aimed at addressing the vulnerable position of migrants and their rights.”²⁰⁹ Not only did COP21 establish a task force which demonstrated the intent to take responsibility for climate refugees, but the agreement directly called for parties to acknowledge their common obligation in protecting these climate migrant rights.²¹⁰ Succeeding COPs have built on the commitments made in

²⁰¹ *Id.*

²⁰² GIOVANNI SCIACCALUGA, INTERNATIONAL LAW AND THE PROTECTION OF “CLIMATE REFUGEES”, 147, 149 (2020).

²⁰³ Behrman & Kent, *supra* note 90, at 6.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Owley, *supra* note 42, at 676.

²⁰⁷ UNFCCC, *supra* note 164.

²⁰⁸ Behrman & Kent, *supra* note 90, at 7; Ferris, *supra* note 23, at 617.

²⁰⁹ Behrman & Kent, *supra* note 90, at 7.

²¹⁰ *Id.* at 9; UNFCCC, *supra* note 182.

COP21,²¹¹ although it should be noted that climate migrants are still not considered “refugees” and no COP agendas, negotiations, or decisions have broached the topic.

Additionally, there’s a trend of COP negotiations and decisions influencing outside organization action and global outlook. For example, after COP16 acknowledged the nexus between climate change and displacement, the Nansen Initiative to better manage climate migrants was implemented in 2012 by Norway and Sweden’s governments.²¹² COP22, which followed COP21’s call for climate migrant protections, had over 20 side events dedicated to climate migration, whereas COP20 the preceding year had 0 such side events.²¹³ Furthermore, after COP24 and its discussion on how host countries may accommodate climate migrants, the Global Compact for Migration in 2018 included climate migration in its second objective.²¹⁴ Overall, the UNFCCC’s gradual increase in addressing climate migration and its influence on third parties represents the beginning of a legal system potentially fit to fill the legal gap currently faced by climate refugees.²¹⁵

D. COP28 AND THE FUTURE OF CLIMATE DISPLACEMENT

COP28 illustrates the steps made by the UNFCCC in addressing climate migration and displacement. The 28th negotiation session was at Dubai’s Expo City in December 2023.²¹⁶ As with each “most current” session, negotiations were guided by increased available research and studies on the topic of displacement.²¹⁷ While many of the conference’s main accomplishments were not related, at least directly, to climate refugees,²¹⁸ two accomplishments did address climate displacement – the Global Stockade and the operationalization of the loss and damage fund.²¹⁹

The Global Stockade is a well-rounded assessment of how effective the world and the conference’s parties have been at

²¹¹ See Apap, *supra* note 5, at 4 (discusses how COP24 built on COP21).

²¹² SCIACCALUGA, *supra* note 202, at 103.

²¹³ Behrman & Kent, *supra* note 90, at 108.

²¹⁴ Apap, *supra* note 5.

²¹⁵ SCIACCALUGA, *supra* note 202, at 155-56.

²¹⁶ IOM, *Human Mobility at COP 28*, <https://environmentalmigration.iom.int/human-mobility-cop-28> (last visited April 28, 2024).

²¹⁷ Ferris, *supra* note 23, at 618.

²¹⁸ Steve Turton, Unpacking COP28: Key Outcomes from the Dubai climate talk, and what comes next, UNDRR (Dec. 18, 2023), <https://www.preventionweb.net/news/unpacking-cop28-key-outcomes-dubai-climate-talks-and-what-comes-next#:~:text=After%20months%20of%20intense%20talks,what%20people%20can%20adapt%20to> (Describes some of COP28’s main accomplishments which focus on methane emissions, sustainable food systems, forest protection, and renewable energy).

²¹⁹ Baillat, *supra* note 163; UNFCCC, *supra* note 189.

mitigating and adapting to climate change.²²⁰ Additionally, it creates a roadmap for the parties to follow to reach the Paris Agreement's objectives.²²¹ Included in this assessment and plan are references to the vulnerability of climate refugees, the actions already taken to meet their needs, and a call for future action on the part of governments and institutions to minimize and address the issue.²²²

The more significant of the two accomplishments is the operationalization of the loss and damage fund. The concept of a loss and damage fund was adopted at COP27.²²³ The decision was made in response to a call by developing nations for support from bigger emitters (developed nations) to help prepare for climate disasters and respond to their effects.²²⁴ It's been established that included in "loss and damages" is the displacement of a nation's people either internally or internationally.²²⁵ COP28 put this fund into operation by clarifying the duties of developed nations and accumulating monetary promises to make up the fund.²²⁶ Duties of a developed nation consist of taking a leadership role in delivering both financial and technical assistance to developing nations.²²⁷ Technical assistance includes engaging with countries to help implement climate migration measures and policies, prior to a disaster occurring, for both internal and international migration.²²⁸ Going forward, the success of the loss and damage fund hinges on its implementation.²²⁹

Furthermore, since COP27, there has emerged a new layer of complexity. While the UNFCCC has shifted its perspective on migration to one of adaptation and had hoped to work this perspective into the implementation of the loss and damage fund, there existed some pushback from Pacific Islands.²³⁰ Due to a culture deeply attached to the land and concern over the negative consequences to island nations from funded relocation, groups from

²²⁰ Baillat, *supra* note 163.

²²¹ *Id.*

²²² *Id.*

²²³ UNFCCC, *supra* note 189.

²²⁴ Lucia Wirthova, *Environmentally driven migration in EU discourse: norms, policies and realities*, 6 UCL Open Environment 11 (2024).

²²⁵ See UNFCCC, *supra* note 189.

²²⁶ Mark Nevitt, *Climate Change and The Specter of Statelessness*, 35 Geo. Env't L. Rev. 331, 343 (2022); Turton, *supra* note 216 (as of December 2023, parties have pledged approximately 700 million USD towards the fund. This is dwarfed by the estimated 580 billion USD in damages faced by vulnerable countries due to climate change by 2030).

²²⁷ Nevitt, *supra* note 226, at 349-50.

²²⁸ *Id.*

²²⁹ See Hossein Ayazi & Elsadig Elsheikh, *Climate Refugees: Facts, Findings, and Strategies for 'Loss and Damage'*, Othering & Belonging Inst. 6 (2023).

²³⁰ HAMDY HASSAN ET AL., FROM RIO TO DUBAI: CLIMATE CHALLENGES AND GLOBAL COLLABORATION, 8 (2024).

the Pacific region spoke out at COP27, demanding a seat at the negotiation table.²³¹ Consequently, COP28 included in its sessions the newly formed Alliance of Small Island Developing States (AOSIS).²³²

In addition to the official steps taken at COP28 to address climate migration, multiple side events ran parallel to the negotiations in which climate migration and displacement were front and center.²³³ To illustrate this, during the two week span of COP28, there was not a single day, “where human mobility was not the focus of a side event or mentioned by a negotiator during a negotiation session as one of the greatest impacts of climate change on people and communities.”²³⁴ While the formal COP presidency hosted the event, “Together for Inclusive Solutions: Human Mobility on the Climate Frontlines,” there were numerous other side events, hosted by third parties, on the subject.²³⁵ Some of them include, “What Next for the Pacific Regional Framework for Climate Mobility,” “Action and Support to Avert, Minimize, and Address Displacement Related to the Adverse Effects of Climate Change,” and “Ensuring Human Rights for Migrants and Displaced Individuals in the Context of Climate Change.”²³⁶

The next COP session, COP29 will take place in November 2024 in Baku, Azerbaijan.²³⁷ These events become more important as time goes on. The magnitude of climate displacement depends on the policies implemented now, not only to mitigate climate change but to preemptively address its effects.²³⁸ A hopeful sign is the increase in discussion of the nexus between climate and migration amongst stakeholders and scholars.²³⁹ The field of research related to the topic has not only grown in the number of publications but also in the scope and diversity of their methods and data.²⁴⁰ Mirroring global discussion, publications have similarly evolved into viewing migration as an adaptive strategy.²⁴¹ Likewise, the

²³¹ Wirthova, *supra* note 224; Nevitt, *supra* note 226, at 335; *Id.* (discusses Pacific Islander’s “staying with dignity” alternative to relocation).

²³² Nevitt, *supra* note 226, at 335.

²³³ Baillat, *supra* note 163.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ UNFCCC, UN Climate Change Conference Baku – November 2024, <https://unfccc.int/cop29> (last visited April 28, 2024).

²³⁸ SCIACCALUGA, *supra* note 202, at 148.

²³⁹ Behrman & Kent, *supra* note 90 at 104; *see* Piguet, *supra* note 37.

²⁴⁰ Piguet, *supra* note 37, at 1 (this study shows that scientific publications focusing on the link between climate and migration have increased substantially since 2009, averaging 40 articles a year).

²⁴¹ *Id.*

world at large has progressed to evaluating climate litigation through a more human focused lens.²⁴²

While global perspective, academia, and COPs have evolved, there still exists the legal gap for climate refugee protections.²⁴³ The current status of the COP framework in addressing the issue is juvenile, but it is growing and is possibly a framework able to establish the guidelines, recommendations, and perhaps binding provisions needed to fill the gap.²⁴⁴

CONCLUSION

It is clear that climate change and natural disasters are already affecting the movement of people both within a state and beyond its borders.²⁴⁵ While difficult to give definite projections of future climate displacement numbers due to the complex relationship between climate and other migratory drivers,²⁴⁶ the numbers are expected to be high.²⁴⁷ Despite current climate displacement and high future projections, climate refugees are not currently offered any international protections.²⁴⁸ Going forward, it would be beneficial to have an international framework working to fill this gap.

This paper analyzed the UNFCCC and its COPs as the potential international framework given the conference's high attendance, its success in addressing global climate related issues in the past, and other organizations identifying its central role in combatting the issue.²⁴⁹ The analysis revealed that 11 of the 28 COP sessions have directly addressed climate displacement in either their negotiations or formal decisions, with the first acknowledgment occurring at COP16 in the Cancun Adaptation Framework. Since COP16, subsequent COP sessions have taken further steps such as COP21 in which states recognized their obligations to climate refugees and a task force was created to advise of ways to minimize and address

²⁴² Apap, *supra* note 5 (Urgenda v. The Dutch Government in 2019 became the first successful tort climate case against a government based on human right violations).

²⁴³ *Id.*

²⁴⁴ SCIACCALUGA, *supra* note 202, at 9 (offers a more hopeful outlook by declaring that, "if there is a legal framework . . . to address climate migration . . . that legal framework is the UNFCCC."); *but see* Behrman & Kent, *supra* note 90, at 104 (offers a more critical approach to the UNFCCC by pointing out that the framework, "was never one to deliver quick and meaningful results," and the journey to address climate migration, "is expected to be long and bumpy, and possibly fruitless.").

²⁴⁵ Apap, *supra* note 5.

²⁴⁶ *Id.*

²⁴⁷ Palinkas, *supra* note 2.

²⁴⁸ Behrman & Kent, *supra* note 90, at 7.

²⁴⁹ United Nations Climate Change, *supra* note 85; Naser, *supra* note 56; Behrman & Kent, *supra* note 90, at 107.

climate displacement.²⁵⁰ COP27 and COP28 went on to implement a loss and damage fund for providing financial and technical assistance to developing nations from developed nations to help with internal and international climate displacement.²⁵¹

The increase in discussion of climate displacement at COP conferences is a significant step towards building an international climate displacement framework. What's more is that the shift to viewing climate displacement through an adaptation focused lens²⁵², rather than a mitigation focused lens will foster an approach that benefits developing countries and their citizens. Undoubtedly, the road to filling the climate refugee legal gap is a long one, but this paper illustrates that the UNFCCC and its corresponding COPs are leading the way on this journey.

²⁵⁰ Behrman & Kent, *supra* note 90, at 5; UNFCCC, *supra* note 182.

²⁵¹ UNFCCC, *supra* note 196; Nevitt, *supra* note 226, at 349-50.

²⁵² See UNFCCC, *supra* note 174.