International Law and the (De)Politicisation of Climate Change and Migration: Lessons from the Pacific

Giulia Jacovella*

This Article analyses how alarmist narratives have framed human mobility in relation to climate change as a new and potentially dangerous phenomenon. Instead of recognising migration as a form of adaptation to environmental changes, politicians in the Global North have further securitised state borders. Consequently, the international community has been pushed towards finding a technical, legal solution to this ‘threat’. The analysis of legal cases from the Pacific Islands shows that the anthropogenic causes of climate change and migration have been depoliticised and relegated to the realms of science and law, where the voices of communities from the Global South are often marginalised. Environmental migrants are thus brutalised, silenced and victimised, while their lands become territories for the experimentation of climate change laws and policies. Nevertheless, the populations of the Pacific reclaim their agency and empowerment as active makers of their own destiny, despite the power dynamics and inequalities still shaping North-South relations and underpinning environmental law and science.

I. INTRODUCTION

The disappearing islands ... embody not a located tragedy of importance in itself but a mere sign of the destiny of the planet as a whole. Tuvalu becomes a space where the fate of the planet is brought forward in time and miniaturised in space, reduced to a performance of rising seas and climate refugees played out for those with most control over the current and future uses of fossil fuels.

Carol Farbotko¹

---

*Giulia Jacovella works as a Teaching Fellow at SOAS, University of London where she tutors law students enrolled onto Global Commodities Law. She received an MA in Environmental Law and Sustainable Development with Distinction from SOAS and she graduated with a BA in Politics and International Relations from LUISS University, Rome.

As Farbotko emphasises in this quote, several political issues are involved in climate change as a discourse and phenomenon. Media coverage of natural hazards has increased dramatically in recent times and environmentally-induced migration (in short, environmental migration) has suddenly become a potential security threat for the wealthier countries in the Global North. In this Article, the expression ‘environmental migration’ is used to simplify the complex phenomenon of human mobility, the root causes of which lie, at least in part, in environmental factors, especially in climate change related events.

This Article argues that environmental migration and climate change have gradually been depoliticised and framed in an apparently neutral legal debate and security concern. This marginalises the voices of the communities and countries in the Global South that are more deeply and directly affected by climate change. De-politicisation, in Hay’s words, ‘serves to insulate politicians and their choices, immunising them from responsibility, accountability and critique’. In fact, de-politicisation in this context mainly consists of presenting technical solutions to complex problems and, as analysed in this Article, of delegating environmental and social issues, which are political in nature, to the realms of science and law.

By building on existing literature, case law and data, this Article aims to deconstruct environmental migration in order to understand its legal, political and economic underpinnings and their consequences in terms of human rights, identity and climate justice. In particular, the analysis of legal cases from the

---

2 A Foucauldian meaning of discourse is adopted here as ‘ways of constituting knowledge, together with the social practices, forms of subjectivity and power relations which inhere in such knowledges and relations between them’ as in Chris Weedon, Feminist Practice and Post-Structuralist Theory (Basil Blackwell 1987) 108.

3 In this Article, Global North and Global South are considered as two discursive categories. The first envisages countries and regions like Europe, the United States of America, Australia and New Zealand that are economically ‘wealthy, technologically advanced [and] politically stable’. The second category refers to countries and regions like Africa, India, China, Brazil and South East Asia that are economically vulnerable, dependent on raw materials and politically and economically influenced by the Global North as in Lemuel E Odeh, ‘A Comparative Analysis of Global North and Global South Economies’ (2010) 12(3) Journal of Sustainable Development in Africa 338. See also Lorraine Elliot, ‘Climate Migration and Climate Migrants: What Threat, Whose Security?’ in Jane McAdam (ed), Climate Change and Displacement: Multidisciplinary Perspectives (Hart Publishing 2010).


5 Colin Hay, Why We Hate Politics (Polity Press 2013) 92.

6 ibid.

7 Anneelen Kenis and Matthias Lievens, ‘Searching for the Political in Environmental Politics’ (2014) 23(4) Environmental Politics 531.
Pacific Islands highlights how the Global North has framed and depoliticised climate change and environmental migration by using the old colonial repertoire of vulnerability, helplessness, danger and ‘blackness’. It has thus failed to recognise that environmental migration is an important form of adaptation, which should be accompanied by other measures, such as non-discriminatory immigration policies and stronger commitments by highly industrialised countries and emerging economies to change their patterns of consumption and end fossil fuels dependency.

According to the International Panel on Climate Change, adaptation means ‘an adjustment in natural and human systems’ in response to climate change. Migration is part of this process. It must not be considered as a failure of mitigation, which refers to ‘an anthropogenic intervention to reduce the sources or enhance the sinks of greenhouse gases’. Conversely, both adaptation and mitigation strategies should work in synergy to include and empower local communities.

Section 2 of this Article introduces the discourse of environmental migration by tracing the ambiguous relationship between man and nature. In particular, it looks at how this relationship is influencing and depoliticising the current legal debate on the kind of protection that the international community should ascribe to environmental migrants. Section 3 analyses two legal cases regarding an I-Kiribati and a Tuvaluan family who have sought to be recognised as ‘climate refugees’ in New Zealand. It explores the contrasting claims of Pacific governments and people with regard to the ‘refugee’ label. It also highlights how the Pacific populations and migrants have become commodities in the eyes of the Global North. Section 4 investigates climate justice claims against an ongoing (eco)colonial experimentation. It also briefly analyses the Pacific

---

11 Hereinafter IPCC.
13 ibid.
Islands’ attempt to influence and re-politicise the debate through the ‘loss and damage’ mechanism under International Environmental Law.

II. ENVIRONMENTAL MIGRANTS AND INTERNATIONAL LAW

By starting from a brief excursus on the relationship between man and nature, this Section conceptualises the development of the environmental migration discourse in the Global North as a political construct tied to a so-called ‘crisis of nature’.\(^\text{14}\) It is argued that, by exclusively focusing on legal definitions and solutions, the international community depoliticises climate change and victimises environmental migrants as the ‘human face of climate change’.\(^\text{15}\)

2.1 Nature, Society and Security

Williams has successfully explored the evolution of the relationship between man and nature and how this has been marked by a continuous process of ‘Othering’ and abstraction.\(^\text{16}\) In attempting to define ‘nature’, he recognises that the very ‘idea of nature contains … an extraordinary amount of human history’.\(^\text{17}\) It is difficult to separate nature from humanity (and vice versa) because they are deeply interrelated, both on a physical and conceptual level. Humanity has always attributed its fears, desires and visions of the world to nature, the quintessential ‘Other’. This has led to a binary tension between a romanticised idea of nature to be contemplated and protected and nature as a ‘neutral environment’ to be the object of scientific research, with its resources exploited for the benefit of humankind.\(^\text{18}\) This tension has been reflected in both International Environmental Law\(^\text{19}\) and Migration Studies.\(^\text{20}\) In particular, the


\(^\text{16}\) Raymond Williams, ‘Ideas of Nature’ in Raymond Williams, Problems of Materialism and Culture (Verso London 1980) 67. ‘Othering’ is a concept used to describe identity formation. It is a multidimensional process based on the production of dichotomies, e.g. in the affirmation of oneself against the ‘Other’. See Sune Q Jensen, ‘Othering, Identity Formation and Agency’ (2011) 2(2) Qualitative Studies 63.

\(^\text{17}\) ibid.

\(^\text{18}\) ibid; Kenis and Lievens (n 7).

assertion of man’s dominion over the ‘natural environment’ has been considered as the direct result of human progress, the rejection of determinism and the increasing role of an economy based on a capitalist conception of accumulation of wealth. This absolute control over the environment has created the widespread belief that human displacement could not be caused by natural factors.

Despite the fact that environmental migration has always existed in human history as a form of coping strategy to deal with inhospitable environments, the concept has only recently gained renewed interest in light of the climate change discourse. Beck calls this a new ‘synthesis of nature and society’ that can exacerbate inequalities and vulnerabilities. Indeed, according to the IPCC Fourth and Fifth Assessment Reports, there is a strong possibility for a projected increase in human and other marine and terrestrial species’ migratory movements as a direct consequence of climate change. Therefore, the focus on environmental factors causing displacement and forced migration has become the epicentre of ‘apocalyptic’ and sensationalist narratives, such as those of Myers & Kent, Biermann & Boas and the authoritative Stern Review commissioned by the government of the United Kingdom (UK).

These narratives, whose dramatic tones are by no means ‘normatively neutral’, tend to provide high estimates of roughly about 200 million people being displaced by climate change to pressurise the international community into

---

21 ibid.
22 Michele Klein Solomon and Koko Warner, ‘Protection of Persons Displaced as a Result of Climate Change’ in Michael B Gerrard and Gregory E Wannier (eds), Threatened Island Nations: Legal Implications of Rising Seas and a Changing Climate (CUP 2013); Gregory White, Climate Change and Migration: Security Borders in a Warming World (OUP 2011) 56; Piguet (n 20).
23 Beck (n 10) 171.
24 IPCC (n 12).
30 Bettini (n 26) 68.
adopting a particular agenda. Moreover, environmental and humanitarian non-governmental organisations (NGOs) like Greenpeace, Friends of the Earth, Environmental Justice Foundation and Christian Aid have been advocating, often uncritically, for a ‘refugee-like’ protection for persons displaced as a result of climate change.32

Therefore, Farbotko and Lazrus have studied how representations, especially those related to ‘climate refugees’, are ‘neither static nor innocent’ but characterised by ‘fluid, ongoing claims of inclusion and exclusion’.33 These claims ‘depend on the interests of those engaged with them’.34 In fact, there is a lack of scientific evidence behind the high estimates of these potential refugees, especially in the Pacific. The aforementioned campaigns have not resulted in a stronger political commitment by highly polluting countries to fight global warming and promote sustainable development, even less so to open state borders to environmental migrants.35 On the contrary, mainstream political discourses in the Global North and emerging economies have primarily interpreted these sensationalist narratives of the forecasted millions of people on the move as a security threat.36 Consequently, there is a perceived need for tighter border controls.

White has explored the nexus between security, climate change and migration.37 He highlights that the environment is perceived as a threat and that this

31 François Gemenne, ‘How They Became the Human Face of Climate Change. Research and Policy Interactions in the Birth of the “Environmental Migration” Concept’ in E Piguet and others (eds), Migration and Climate Change (CUP 2011).
33 Farbotko and Lazrus (n 14) 386.
34 ibid.
35 Jane McAdam, ‘Conceptualizing Climate Change-Related Movement’ in Climate Change, Forced Migration and International Law (OUP 2012) 32-3.
36 Elliot (n 3); Stephen Castles, ‘Afterword: What Now? Climate-Induced Displacement after Copenhagen’ in McAdam (ed) (n 3).
37 Gregory White, ‘The Securitization of Climate-Induced Migration’ in White (n 22).
perception is applied to environmental migrants, who are considered to be potentially dangerous invaders. It is worth noting that both the environment and migrants are perceived as outsiders, as the ‘Other’ par excellence. A politics of anxiety, or what Bettini calls ‘the mobilisation of fear and sense of urgency’,

has reinforced the trend toward a very restrictive interpretation of humanitarian obligations and international conventions, especially the 1951 Convention Relating to the Status of Refugees and the 1949 International Labour Organization (ILO) Migration for Employment Convention.

It is clearly easier and more beneficial for politicians and policy-makers to enact security measures rather than addressing the underlying causes of migration and the relationship between climate change, environmental degradation and human mobility. Such discriminatory policies win over the electorate, while draining resources away from mitigation and adaptation strategies. Instead of challenging the anthropogenic causes of climate change and the political and economic system that sustains and reproduces these dynamics – i.e. a consumerist, polluting society that demands the perpetual production and destruction of commodities – the international community focuses on legal solutions to deal with environmental migration. This is symptomatic of the international community’s lack of consensus on the extent to which environmental factors could constitute the root cause for internal displacement and/or migration, or whether they simply have a multiplier effect on pre-existing instabilities.

### 2.2 The Endless Debate on Definitions

Several terms are used to identify human mobility triggered by environmental hazards, including climate change-related events. The most common expressions utilised in this context comprise, for instance, ‘environmental/ecological migrants’, ‘environmentally-induced migration/displacement’ and ‘climate change/environmental refugees’. In the context of environmental migration, clear legal definitions are paramount as they underpin (or impinge) the type of legal protection, level of recognition and empowerment that the international

---

38 Bettini (n 26).
40 (Revised) C97, 1 July 1949.
41 White (n 22).
42 ibid.
43 McAdam (n 35) 24.
44 ibid 25.
45 White (n 22) 4; Maxine Burkett, ‘Climate Refugees’ in Jahid Hossain Bhuiyan and others (eds), Routledge Handbook of International Environmental Law (Routledge 2013) 717.
community should ascribe to a seemingly growing proportion of the global population. The manner in which a phenomenon is framed can result in different interpretations and contrasting solutions. Consequently, due to a sociological, epistemological and methodological fracture among scholars from several disciplines (including Climate Change, Environmental Law, Refugee Law, Migration and Psychology), there is a legal impasse regarding how to define and frame environmental migration.

The expression ‘environmental refugees’ gained international attention with the publication of the United Nations Environmental Programme (UNEP) report in 1985. This ‘new’ category of people included, according to El-Hinnawi, groups or individuals who are forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life.

It can be deduced that environmental migration has been considered ‘forced’ instead of voluntary and triggered by both environmental and anthropogenic factors. The latter include, for instance, development projects such as dam and infrastructure building, intensive agriculture, deforestation and aerosol and greenhouse gas emissions. However, this UNEP report is arguably neglecting the economic, political and social dimensions of migration. Critics also point to the fact that the very terms ‘environmental refugees’ or ‘environmental migrants’ are inaccurate for their monocausal nature. This is due to the fact that such categories consider environmental factors as the main, if not the only, driver of migratory movements. Therefore, it would be more accurate to speak

---

47 McAdam (n 3).
48 Essam El-Hinnawi, Environmental Refugees (UNEP 1985).
49 ibid 4.
51 Jane McAdam, “Protection” or “Migration”? The “Climate Refugee” Treaty Debate’ in McAdam (n 35).
of ‘mixed migration’, which includes economic, social and political factors.\(^{53}\) Moreover, the concept of ‘mixed migration’ acknowledges the migrants’ agency and so stands at an intermediate point between the voluntary-forced spectrum.\(^{54}\)

There has been widespread reluctance on the part of the international community to broaden the category of refugees to include those displaced by natural hazards, as it emerges more clearly from the analysis of legal cases in the Pacific.\(^{55}\) In fact, the Refugee Convention and its related 1967 Protocol provide a rather narrow definition of refugee as someone who:

\begin{quote}
\textit{[O]wing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is \textit{outside the country} of his nationality and is unable ... to avail himself of the protection of that country; or who, not having a nationality ... is unable ... to return to it.}\(^{56}\)
\end{quote}

Drafted and ratified in the aftermath of the Second World War, this Convention was conceived to protect political refugees. Other types of forced migrants, especially economic and environmental migrants, were not considered. The five grounds on which an asylum seeker can claim to be a refugee are coupled with the requirement of being outside the country of origin due to persecution and/or being stateless. It is clear that this definition is not compatible with the phenomenon of migration related to environmental changes, as many environmentally-displaced people tend to move short distances or remain within their country of habitual residence, while many others even lack the resources to move at all. This phenomenon has been called the ‘immobility paradox’.\(^{57}\)

Therefore, the 1998 Guiding Principles on Internal Displacement\(^{58}\) (GPs) have been envisaged to protect Internally Displaced Persons (IDPs), who have not

---


\(^{54}\) ibid.

\(^{55}\) See Section 3.

\(^{56}\) Art 1(2) (n 39) (emphasis added).

\(^{57}\) Findlay (n 4); E Piguet and others (eds) (n 31) 7.

crossed state borders, by applying International Humanitarian Law and Human Rights Law.\textsuperscript{59} They acknowledge, among the causes of displacement, ‘armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters’.\textsuperscript{60} Despite being a valuable framework for the protection and enhancement of human rights, they neither bind nor impose positive obligations on states. The GPs can be considered as a starting point, but certainly not as a comprehensive instrument to protect environmental migrants, as they do not cover slow-onset environmental degradation or the subsequent loss of livelihoods. The International Organisation for Migration (IOM) has also expanded its definition to include both internal displacement and cross-border migration, but this has been criticised as being too broad and therefore difficult to apply.\textsuperscript{61}

The fact that the international community predominantly focuses on apparently neutral and technical legal definitions raises the question of whether the anthropogenic causes of climate change and their impacts on human mobility and security are being overlooked and depoliticised. This legal debate nonetheless remains highly political in that it \textit{de facto} silences the voices of the affected communities, especially when they belong to the Global South.\textsuperscript{62} Moreover, the proposals analysed in the following Section are not fully supported by the Pacific Islands and other Small Island Developing States (SIDS) whose claims are analysed more in depth in the remaining Sections. Instead, the following proposals reflect the contrasting interests of a Western society and its attempt to co-opt climate change, migration and vulnerability into institutionalised hegemonic legal frameworks. As Kenis and Lievens ironically point out in relation to depoliticised discourses on environmental problems, tackling these issues nowadays means creating ‘consensus, usually around managerial and technocratic solutions that remain within the parameters of what currently exists’.\textsuperscript{63} This leaves no room for other grassroots approaches.

2.3 Tackling the ‘Problem’?

The Climate Change and Migration Coalition (CCMC) has reviewed some proposals whose basic presumption is that there is a legal gap that needs to be

\textsuperscript{59} ibid Principle 2.

\textsuperscript{60} ibid Principle 1 (emphasis added).

\textsuperscript{61} Frank Laczko and Christine Aghazarm (eds), \textit{Migration, Environment and Climate Change: Assessing the Evidence} (IOM 2009).

\textsuperscript{62} See Section 4.

\textsuperscript{63} Kenis and Lievens (n 7) 531.
filled in order to protect people fleeing slow-onset climate change. There are three main approaches that respectively aim to: 1) amend the 1951 Refugee Convention; 2) add a protocol to the 1992 United Nations Framework Convention on Climate Change; or 3) create a new international treaty. However, these legal solutions are controversial and difficult to realise. An amendment to the Refugee Convention may lead to a renegotiation of the whole convention because State Parties might not be willing to spend their resources on protecting a legally undefined group of people. Moreover, there is the risk of draining current resources away from political refugees, traditionally considered the ‘legitimate’ refugees, to a higher number of environmental/climate change refugees, including IDPs.

The other two approaches may require decades of negotiations to reach an agreement. Significant time will also be needed in order to garner a sufficient number of signatory parties and for the agreement to enter into force. An additional protocol to the UNFCCC is also problematic because it would deny the multiplicity of factors underpinning migration, as it would consider climate change as the main driver of mobility. Most importantly, these approaches fail to consider migration as a form of coping strategy and adaptation measure; instead they tend to victimise and disempower people in the same way as alarmist narratives. There is an urgent need to find a legal solution, but this should be accompanied by a concrete political commitment to fight climate change and the increasing economic and social inequalities between the North and the South. Furthermore, some scholars have criticised International Law and current media coverage of environmental migration as instruments that legitimise and perpetuate hegemonic Western ideologies and power dynamics, hence ill-suited to represent the reality of the Global South, especially that of the Pacific Islands. There is therefore the need to elaborate

---

64 Climate Change and Migration Coalition & Climate Outreach and Information Network, Legal Protection, Climate Change and Migration <http://climatemigration.org.uk/wp-content/uploads/2014/01/Legal_protection_key_research.pdf/> accessed 16 August 2014; J McAdam, ‘Refusing “Refuge” in the Pacific: (De)constructing Climate-Induced Displacement in International Law’ in Piguet and others (eds) (n 31).


68 ibid 374-80.

more nuanced solutions which take into account national and regional peculiarities, instead of a one-size-fits-all approach. The case of the Pacific Islands further highlights the tension between attempts to depoliticise climate change and migration through the recourse to established legal frameworks and labels, and the resistance by the populations and governments of the Pacific to be described by and represented in Western terms and symbols.

III. ENVIRONMENTAL MIGRANTS AND THE PACIFIC ISLANDS

This Section focuses on the Pacific Islands, identified as a broad geographical zone that stretches in the Pacific Ocean from below the Tropic of Cancer up above the Equator. This area, referred to as the South Pacific, comprises island nations historically grouped into three regions – Melanesia, Micronesia and Polynesia. Each state is made up of several tropical islands and islets of volcanic origins, which usually stand only a few metres above sea level and are particularly vulnerable to global warming. By using two recent case-studies as a starting point, this Section discusses how the ‘refugee’ label is perceived and utilised in an apparently contradictory manner by local communities in the Pacific. It also explores how the recourse to de-politicisation and framing in both cases has led to the commodification of islanders.

3.1 Case Law: The ‘First Climate Refugee’

3.1.1 From Kiribati

On 8 May 2014, the Court of Appeal of New Zealand upheld the decision made by the High Court on 26 November 2013 in Ioane Teitiota v The Chief Executive of the Ministry of Business Innovation and Employment and that of the Immigration and Protection Tribunal in AF (Kiribati). The Court held that the 1951 Refugee Convention does not include climate change among the five grounds causing refugeehood and, in Justice John Priestley’s words, ‘[i]t is not for the High Court of New Zealand to alter the scope of the Refugee Convention ... Rather that is the task ... of the legislatures of sovereign

70 Cournil (n 67) 380-82.
71 Sue Ferran, Human Rights in the South Pacific: Challenges and Changes (Routledge 2009).
74 [2013] NZHC3125/2013, hereinafter High Court.
75 [2013] NZIPT800413, hereinafter AF (Kiribati).
states’. Therefore, the application for leave to appeal to the High Court was dismissed and Ioane Teitiota and his family are now likely to be deported to Kiribati.

New Zealand thus officially closed the doors to other requests by migrants from the Pacific Islands, particularly those from Kiribati and Tuvalu, for refugee status. These so-called ‘sinking island-states’ are experiencing increasing environmental degradation due to rising ocean levels, storm surges, severe droughts, flooding and contamination of drinking water by salt water. These factors exacerbate existing socio-economic instabilities linked to overcrowding, lack of job opportunities for a growing population and limited infrastructure development.

In this case, Ioane Teitiota moved to New Zealand in 2007 with his wife because they had lost their arable lands due to seawater infiltration, high tides and coastal erosion. When their residence permits expired, they remained ‘illegally’ in New Zealand, where their three children were born. In 2010, Mr Teitiota filed a claim before the Immigration and Protection Tribunal (IPT) seeking to be recognised as a climate change refugee and, as such, avoid refoulement. However, both the IPT and the High Court had adopted James Hathaway’s definition of persecution as characterised by human agency causing a ‘systemic violation of core human rights’. Both courts found that this I-Kiribati family suffered from the same environmental problems experienced by many others in Kiribati and other Pacific Islands. Therefore, this family was not persecuted by an identifiable agent under any of the five Convention grounds. Justice Priestley also noted that:

[W]ere they to succeed [in their submissions] and be adopted in other jurisdictions, at a stroke, millions of people who are facing medium-term economic deprivation, or the immediate consequences of natural disasters or warfare, or indeed presumptive hardships

---

76 ibid [51].
77 Court of Appeal (n 73).
78 AF (Kiribati) (n 75) [13]-[19].
80 ibid [26]-[27].
81 High Court (n 74) [42]-[43].
83 AF (Kiribati) [53]-[54].
84 ibid [75].
85 ibid.
caused by climate change, would be entitled to protection under the Refugee Convention.\textsuperscript{86}

In his decision to migrate to New Zealand, the appellant had in fact undertaken a ‘voluntary adaptive migration’ strategy, even though with some degree of compulsion, despite the Kiribati Government’s efforts to adopt measures to protect its citizens.\textsuperscript{87} Moreover, it was found that Mr Teitiota and his family could not be recognised as protected persons under either the 1984 Convention Against Torture\textsuperscript{88} or the 1966 International Covenant on Civil and Political Rights\textsuperscript{89} (ICCPR).\textsuperscript{90} They could not be protected as IDPs as they had crossed the borders of Kiribati.\textsuperscript{91} By having lived illegally in New Zealand, they were also prevented from applying for an immigration permit on humanitarian grounds.\textsuperscript{92}

Mr Teitiota’s claim that the whole international community, as the emitter of greenhouse gases, should be considered as indirectly persecuting the Pacific Islands\textsuperscript{93} was dismissed by the Court of Appeal as falling outside the scope of the 1951 Convention. Although the Court added that ‘[n]o-one should read this judgment as downplaying the importance of climate change’ as it is ‘a major and growing concern for the international community’,\textsuperscript{94} it is evident that neither national and international judiciaries nor politicians are willing to seriously tackle this problem. This has a negative impact on human security and the enjoyment of economic, cultural and social rights, especially in the most severely affected regions of the Global South.

3.1.2 From Tuvalu

This second case concerns a family from Tuvalu who had moved to New Zealand in 2007 for similar reasons. However, they were granted residence visas on humanitarian grounds in a decision taken by the IPT on 4 June 2014 in

\textsuperscript{86} High Court (n 74) [51].
\textsuperscript{87} AF (Kiribati) (n 75) [88].
\textsuperscript{88} Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force on 26 June 1987) 1465 UNTS 85.
\textsuperscript{90} AF (Kiribati) (n 75) [97].
\textsuperscript{91} ibid [45]-[48].
\textsuperscript{92} High Court (n 74) [43].
\textsuperscript{93} ibid [55].
\textsuperscript{94} Court of Appeal (n 73) [41].
AD (Tuvalu). This family had lived unlawfully in New Zealand, their visas having expired twice between 2009 and 2012, but they sought to regularise their status. Their children were also born in New Zealand. In filing the protection claim before the IPT, the appellant-parents expressed their fears regarding rising sea levels, climate change, lack and contamination of drinking water, loss of land and the impacts that these events could have on their offspring. Their claims to be recognised as refugees or protected persons were dismissed in light of AF (Kiribati). The difference with the previous case is that the husband’s family had already obtained permanent residence visas in New Zealand. They had established solid ties and integrated within the communities they had settled into, including the Tuvaluan Christian Church. Therefore, in taking its decision, the IPT considered the following criteria listed in Section 207 of the Immigration Act 2009:

(a) There are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand;

and

(b) It would not in all the circumstances be contrary to the public interest to allow the appellant to remain in New Zealand.

The IPT also observed that ‘the best interest of the children’ had to be read in light of the state’s obligation under Article 3 of the 1989 United Nations Convention on the Rights of the Child. It thereby found that the family, both the parents and their children, met the requirements of the Act and were entitled to residence visas on humanitarian grounds. However, the Tribunal refused to acknowledge that their lives would be jeopardised if they returned to Tuvalu. It identified climate change and environmental problems as a cause of general humanitarian concern, but it clearly stated that such factors were not absolute determinants. Rather, they had to be considered in conjunction with an eventual disruption of extended family ties, had the decision been negative. Consequently, this case does not constitute a legal precedent for climate refugees, nor does it imply that families and individuals suffering from the

96 ibid [35].
97 AC (Tuvalu) [2014] NZIPT 800 517-520 [14]-[18].
98 AD (Tuvalu) (n 95) [6].
99 ibid [19]-[24].
100 Hereinafter ‘the Act’.
101 AD (Tuvalu) (n 95) [17]-[18] (emphasis added).
102 ibid [23]-[26].
103 ibid [32]-[33].
same problems should be granted humanitarian visas, as evidenced by \textit{AF (Kiribati)}.\footnote{Jane McAdam, ‘No “Climate Refugees” in New Zealand’ \textit{(Planet Policy Blog}, 13 August 2014) <www.brookings.edu/blogs/planetpolicy/posts/2014/08/13-climate-refugees-new-zealand-mcadam} accessed 17 August 2014.}

3.2 Adopting or Resisting the Label?

These cases represent the most recent, but not unique, examples of environmental migrants seeking protection abroad because their lives have been threatened by climate change-related events. Although migration has been recognised as a form of adaptation, restrictive immigration policies have prevailed. Environmental stressors and the emerging rights to safe drinking water\footnote{\textit{AD (Tuvalu)} (n 95) [14].} and a healthy environment\footnote{\textit{AF (Kiribati)} (n 75) [60]-[71].} have not been taken into consideration in the final judgments. Instead, it is apparent that an economic bias has underpinned both court decisions. In particular, Justice Priestly has observed that the economic conditions in New Zealand and Australia are more favourable than those in Kiribati.\footnote{High Court (n 74) [54].} This consideration implicitly suggests that migration is triggered exclusively by economic circumstances, not by an environmental or socio-political correlation of push and pull factors.

In both cases, de-politicisation has occurred on several levels. Firstly, de-politicisation is present in the way climate change related events have been represented.\footnote{Kenis and Lievens (n 7) 535.} By framing the Pacific Islands as inevitably and relentlessly disappearing due to rising oceans, the phenomenon of climate change is positioned above the realms of politics and collective choice.\footnote{Hay (n 5) 67, 81.} Secondly, the attempt to depoliticise climate change and migration is evident in the recourse to the law as the proper instrument to adjudicate environmental and humanitarian problems and assess the necessity to migrate from low-lying atolls to mainland New Zealand. Thirdly, de-politicisation appears in the courts’ strict compliance with well-established international norms and national immigration policies, leaving no space for innovative interpretations. Consequently, as argued by Kenis and Lievens, de-politicisation manifests itself ‘when the exercise of hegemonic power and the antagonisms that result from it are covered up’,\footnote{ibid.} as these legal cases demonstrate.
Moreover, these cases have been framed by Western media as worthy of the label ‘first climate refugees’,\(^{111}\) despite the courts’ firm rejection of altering the scope of the 1951 Refugee Convention. These cases are thus interesting because, by seeking a refugee-like protection, they openly contradict the general tendency of the populations and governments of the Pacific Islands and other SIDS to actively challenge and resist the label of ‘climate/environmental refugee’.\(^ {112}\) In fact, the term ‘refugee’ evokes in the collective imaginary a series of negative connotations, such as helplessness, lack of dignity and victimisation of an uncontrolled ‘flow’ or ‘wave’ of indistinct people fleeing the South and ready to invade the North.\(^{113}\)

On a broader level, the labels of climate/environmental refugee or migrant are problematic as they position the individuals they refer to as ‘racially Other to various forms of Western, European and/or global subjectivity’.\(^{114}\) Baldwin has called this process ‘racialisation’, which is based on ‘naturalisation, the loss of political status and the trope of ambiguity’.\(^{115}\) Not only do these potential migrants risk losing their civil and political rights, especially if their homelands cease to be habitable, but they also lack a clear legal status. Most importantly, they become displaced from modernity because they are geopolitically constructed as an ‘effect of nature’, something primordial in the eyes of a ‘white subjectivity’, which is apparently detached from the natural environment.\(^{116}\)

The governments of Tuvalu and Kiribati are aware of the fact that many recognised political refugees must endure protracted situations in refugee camps, with little hope of accessing durable solutions.\(^{117}\) Consequently, the affected islanders and their governments prefer to be seen as ‘active, valued


\(^{112}\) Examples are provided in Section 4.

\(^{113}\) Karen E McNamara and Chris Gibson, “We Don’t Want to Leave Our Land”: Pacific Ambassadors at the United Nations Resist the Category of “Climate Refugee” (2009) 40 GeoForum 479; Carol Farbotko, We Don’t Want to Be Labelled Victims: Contestations and Effects of Climate Refugee Narratives (ICID+18 2010).

\(^{114}\) Baldwin (n 8) 632.

\(^{115}\) ibid.

\(^{116}\) ibid.

\(^{117}\) McAdam (n 64) 116.
members of a community’ who can bring a positive contribution to their host countries, such as Australia and New Zealand.\footnote{ibid.} Above all, SIDS want to make their voices heard in the relevant international forums and media because hegemonic discourses in the Global North overstate the security threat represented by environmental migrants, including the spread of diseases and terrorism,\footnote{Hannah Brock, Climate Change: Drivers of Insecurity and the Global South (Oxford Research Group 2012) 5, 11.} while downplaying the anthropogenic causes of climate change, as analysed in Section 2.

3.3 The Commodification of Pacific Populations

Why, then, are some migrants willing to turn to the courts and adopt the ‘refugee’ label? It can be argued that proving the reality of climate change before a divided and sceptical international community can constitute a barrier that requires islanders to paradoxically ‘offer themselves as evidence to a doubting public’ to foster ‘meaningful discussions about avoidance or mitigation responses’.\footnote{Tanja Dreher and Michelle Voyer, ‘Climate Refugees or Migrants? Contesting Media Frames on Climate Justice in the Pacific’ [2014] Environmental Communication 16.} A superficial analysis of Ioane Teitiota and AD (Tuvalu) could therefore interpret their requests for asylum as measures of last resort to avoid living in poverty and environmental degradation, while seeking to improve their quality of life through education and work opportunities abroad. In this sense, although the judgment of the High Court in Ioane Teitiota was procedurally fair, it is questionable in terms of substantive justice. In fact, it failed to take into account: 1) the suffering borne by Mr Teitiota’s family, especially by his children, were they to be returned to Kiribati where they have never lived; and 2) the historical pattern of migration among Pacific countries.\footnote{Graeme Hugo, ‘Climate Change-Induced Mobility and the Existing Migration Regime in Asia and the Pacific’ in McAdam (ed) (n 3) 23-26.}

It is by no means suggested that a refugee-like protection would have been desirable. However, it is clear that the courts’ discretion is indeed broad; they can produce completely different judgments regarding very similar situations.

A nuanced understanding of these two cases could nonetheless interpret seeking asylum from climate change as a strategy that relies on victimisation, as the same hegemonic framework and language of alarmist narratives is used. Although this ‘strategy’ keeps the impact of climate change on human security on the political and legal agenda, it is debatable if publicity should be gained in this way. New Zealand represents the sceptical Global North that requires evidence in the form of victims to prove the existence of climate change and its...
impact on human rights. Therefore, the peoples of the Pacific Islands are invited to ‘sacrifice’ themselves as test subjects before the eyes of their powerful neighbours.

The commodification of the Pacific Islands and their inhabitants appears as a fundamental component of mainstream environmental migration narratives and as a necessary symbolisation (or technical simplification, hence de-politicisation) to be offered to the legal international community. Environmental migrants are framed as ‘refugee commodities’, reproduced by the media for mass consumption in the Global North. They can be envisaged as barbarians-invaders, a security threat or humanitarian concern. For ‘Western environmental activists’, they are seen as ‘victim-commodity, providing news value, political point-scoring, and a human embodiment of climate change evidence’. The following Section continues this analysis by highlighting the attempts of Pacific communities to re-politicise climate change by claiming climate justice and advancing concrete proposals.

IV. VOICES FROM THE PACIFIC

This concluding Section explores some initiatives promoted by the Pacific Islands in recent years in order to re-politicise climate change. The way the Pacific populations perceive climate change and migration differs greatly from the Western iconography of natural disasters, loss and dispossession, which is still rooted in colonial and (eco)colonial visions of the world.

4.1 Claiming Climate Justice

Through the analysis of interviews with ambassadors from seven Pacific Islands, McNamara and Gibson have highlighted the ambassadors’ firm resistance to both the ‘refugee’ label and the international community’s exclusive focus on migration. In fact, adaptive migration has a long history in the Pacific due to the relevance of remittances in their national economies. The interviewed ambassadors fear that the international community, including many sympathising NGOs, might perceive the Pacific Islands and other SIDS as a lost cause. This perception constitutes one of the main aspects underpinning de-politicisation; by considering a phenomenon as ‘unavoidable destiny’, politicians and the international community deny both theirs and the islanders’ capacity to take action and ‘shape outcomes’. Therefore, the only solutions

---

122 Farbotko and Lazrus (n 14) 386.
123 McNamara and Gibson (n 113).
124 Hugo (n 121) 23-6.
125 Hay (n 5) 67.
according to a questionable cost-benefit analysis \(^{126}\) could be either the establishment of a protection regime, resettlement or the adoption of market-based instruments to deal with climate change and migration. However, these ‘solutions’ do not challenge one of the causes of climate change: the structure of polluting, consumerist capitalist societies.

The interviewed ambassadors and the Chair of the Alliance of Small Island States (AOSIS) instead advocate for a serious discussion on mitigation. For example, they recommend a discussion on how to reduce the carbon footprints of countries like China, Russia, India, Japan and the United States, the latter having not yet ratified the Kyoto Protocol to the UNFCCC.\(^{127}\) According to McNamara and Gibson, the result of their interviews was that:

\[
\text{[A]lbeit marginalized at the scale of international environmental security and diplomacy, ambassadors from small island Pacific states directed serious conceptual challenges to the manner in which places, peoples and environmental ‘problems’ are categorized in global geopolitics.}^{128}\]

The common ground between environmental NGOs, human rights NGOs and the governments and populations of the affected countries is that there is a global distributive injustice. This happens when the countries that have historically caused less pollution are those most strongly impacted by climate change and environmental degradation.\(^{129}\) This constitutes another relevant dimension of the environmental migration phenomenon, namely climate or environmental (in)justice. It should be recalled that the Pacific Islands are heavily dependent on the ecosystem for their survival. In particular, the atolls can adapt dynamically to climate change if their coral reefs manage to grow vertically.\(^{130}\) This implies that a rise in sea temperature and ocean acidification can be fatal for coral bleaching and the subsequent adaptation of the atolls. Moreover, islands’ economies mainly rely on fishing, in addition to tourism and limited agriculture.\(^{131}\) The IPCC has reported that migratory fish stocks are

---

\(^{126}\) For a critique see Fiona R Cameron, ‘Saving the “Disappearing Islands”: Climate Change Governance, Pacific Islands States and Cosmopolitan Dispositions’ (2011) 25(6) Continuum 873.


\(^{128}\) McNamara and Gibson (n 113) 482 (emphasis added).


\(^{130}\) Lilian Yamamoto and Miguel Esteban, Atoll Island States and International Law: Climate Change Displacement and Sovereignty (Springer 2013) 105-06.

\(^{131}\) ibid 113.
moving northward and this is having a negative impact on the already fragile Pacific economies.\textsuperscript{132}

In light of this, islanders are reclaiming their right to be considered as agents and makers of their own destiny. They do not want to be considered merely as victims of climate change because vulnerability does not equate to helplessness or hopelessness.\textsuperscript{133} They are asking the international community to provide scientific, technological, financial and humanitarian assistance when necessary so that they can mitigate the effects of climate change and plan an eventual ‘migration with dignity’ if they are compelled to leave their lands.\textsuperscript{134} However, resettlement is only partially contemplated as a last resort because the majority of the islanders simply do not consider relocation as ‘an acceptable future scenario’.\textsuperscript{135}

The meaning of the land in the Pacific is something that is extremely difficult to describe through the use of ‘colonial languages’.\textsuperscript{136} The word \textit{fenua} (or \textit{fanua} and \textit{fonua} depending on the country) refers to land, people, island, territory and placenta and denotes a mutual relationship between humans and ‘Mother Nature’.\textsuperscript{137} However, this attachment to land does not entail that islanders should be perceived as rooted ‘plants’, contrary to the Western romanticised conception of indigenous people and islanders from the Tropics.\textsuperscript{138} It is the sense of belonging which is under threat in ‘climate refugee’ narratives, which usually imply the urgent need for recognition, protection and relocation.

It is evident that buying land in other countries, which is what Kiribati and the Maldives are allegedly doing in Fiji and Australia,\textsuperscript{139} is not the preferred solution. It denies the cultural importance attributed to the islanders’ territories and to their sense of identity. Most recently, the Solomon Islands have planned to relocate the entire town of Choiseul (Taro Island) to the nearby mainland, by partially benefiting from a United States’ funding program for Asia and the


\textsuperscript{133} Dreher and Voyer (n 120) 12-13.

\textsuperscript{134} ibid; Ilan Kelman, ‘Hearing Local Voices from Small Island Developing States for Climate Change’ (2010) 15(7) Local Environment 605.

\textsuperscript{135} McNamara and Gibson (n 113) 479.

\textsuperscript{136} ibid; John Campbell, ‘Climate-Induced Relocation in the Pacific: The Meaning and Importance of Land’ in McAdam (ed) (n 3).

\textsuperscript{137} ibid.

\textsuperscript{138} Farbotko and Lazrus (n 14).

\textsuperscript{139} McAdam (n 35).
Jackson Kiloe, the Premier of Choiseul Province, approved the project because, in his words, it ‘followed the way of our tradition – talking with people, listening to people and reflecting the desires of the people’. However, Philip Haines, project manager of this strategy, noted that a strong component has been the fact that Choiseul was only established after the Second World War; hence the sense of belonging of the community is not as strong as in other areas and townships.

4.2 (Eco)Colonialism

Another important aspect to consider is that the poorest and most vulnerable regions in the world lack the economic and technological instruments to deal with climate change. This is a consequence of several factors, which cannot be explored in depth in this Article. However, in the case of the Pacific Islands, colonialism constitutes a fundamental legacy that still persists today and has shaped current migratory movements. As Otomo and Humphreys write, ‘European colonialism was premised on the exploitation of natural resources and on the maintenance of global trade in raw materials’. This has gradually led to forced urbanisation, displacement, deforestation, intensive farming, soil erosion and, in Papua New Guinea, to a change in the rainfall pattern.

Banaba represents an excellent example of such indiscriminate exploitation. The British Phosphate Company (BPC) largely exploited Banaba, incorporated into the Gilbert and Ellice Islands Protectorate (Kiribati and Tuvalu today) at the beginning of the Twentieth Century. When BPC left, its industrial plants had not been decommissioned and, as such, were full of asbestos fibres: ‘[t]he island had been devastated, huge amounts of land removed and toxic waste left...’

---

144 Stephen Castles and Raúl Delgado Wise (eds), Migration and Development: Perspectives from the South (IOM 2007) 263.
145 Humphrey and Otomo (n 19) 13.
146 David Lamb, Regreening the Bare Hills (Springer 2011) 8, see also ch 1.
147 Campbell (n 136) 71-75.
Most importantly, the Banabans had lost sovereignty over their territory after the Empire ordered their forced relocation to another island. After the Second World War, many Pacific Islands’ territories were instead utilised by France, the UK and the US to test hydrogen bombs, with an escalation during the 1950s-60s. These experiments undoubtedly caused vast damage to islands’ ecosystems, including the complete destruction of some atolls. In particular, this long exploitation by ‘outsiders’ dramatically increased the islands’ vulnerability to extreme weather events.

It can be argued that this kind of colonial experimentation still underpins current climate change discourses in the form of ‘eco-colonialism’. It is difficult (and outside the scope of this Article) to speak on behalf of the populations of the Pacific Islands because, contrary to mainstream narratives that perceive these states as being homogeneous, their societies are stratified and complex. There is nevertheless the tendency, especially in the Global North, to consider these islands as laboratories for climate change laws and policies. It is assumed that it is easier to evaluate the causes and impact of climate change in closed spaces, rather than on vast continents. DeLoughrey has called this assumption the ‘myth of isolation’. Others have referred to this experimentation as the ‘canary in the coal-mine’, where the caged bird was released into mines to verify the existence of noxious gases during colonial times. This powerful metaphor explains the renewed interest in the historically marginalised and exploited populations of the Pacific Islands. This time, the interest arises from using the Pacific Islands to determine environmental migration, whether the islands are ‘drowning’ and the eventual consequences for the rest of the planet. This was also evaluated by the IPT and the High Court of New Zealand in AF (Kiribati) and AD (Tuvalu).

International Environmental Law (IEL) plays an important role. IEL has become increasingly dependent on science and economics to adjudicate environmental problems. It therefore requires continuous proof of climate change claims. However, international environmental laws and policies resemble more
economic, market-based mechanisms than effective tools to deal with environmental, social, economic and political issues. Most importantly, Pacific Islands and SIDS are hardly listened to in the relevant international forums, as analysed in the following Section.

4.3 Negotiating Climate Change

Environmental science, upon which Environmental Law has been built, is produced almost exclusively by Western scientists, due to their comparatively abundant financial resources which are often lacking in the Global South. Barnett and Campbell have also argued that ‘the hegemony of natural science approaches to climate change, and of modelling in particular, marginalises other approaches to generating knowledge about climate change’. This impedes any action taken at the local level by island communities since they do not feel involved in a process that directly affects them and their own territories. The Global Environmental Facility (GEF), a financial mechanism under the UNFCCC, has been utilised to promote adaptation in the Pacific. However, it has largely failed in achieving this goal. Nunn has noted that donors’ funding for climate change policies has been provided to Pacific Islands under the condition that local governments implement ‘top-down environmental legislation’. This strategy has generally proved to be highly dysfunctional, apart from the case of the Cook Islands, which have close ties with New Zealand and healthier economic conditions. In particular, such an approach has only marginally reached local and peripheral communities and, in most cases, has not been deemed culturally acceptable.

On the international stage, the AOSIS has been vocal in negotiating the right of island and coastal states to actively participate in the determination of climate and development policies within the UN. AOSIS is a coalition of ‘44 low-lying and coastal countries’, including the Pacific Islands, which are highly

---

158 Barnett and Campbell (n 151).
159 ibid 3.
160 ibid 4.
161 Patrick D Nunn and others, ‘Beyond the Core: Community Governance for Climate-Change Adaptation in Peripheral Parts of Pacific Island Countries’ (2014) 14 Regional Environmental Change 222.
162 ibid 227.
163 ibid.
vulnerable to the impact of climate change. It has been quite successful in advancing the interests of SIDS under the UNFCCC. For instance, the Alliance was successful in framing the Cancun Adaptation Framework in 2010.\(^{165}\) In the final text of the Cancun Agreements, Paragraph 14(f) acknowledges ‘climate change induced displacement, migration and planned relocation’ and requires further measures to be taken at the national, regional and international levels, according to the principle of common but differentiated responsibilities (CBDR).\(^{166}\) Moreover, Paragraph 25 recognises the need to ‘reduce loss and damage associated with the adverse effects of climate change’.\(^{167}\)

The establishment of an international mechanism for ‘loss and damage’ (L&D), one of AOSIS most important aims, has been accepted and drafted by the international community at the 19\(^{th}\) Conference of the Parties (COP) to the UNFCCC, held in Warsaw in November 2013.\(^{168}\) This instrument has been designed as an insurance against natural disasters, slow-onset degradation and vulnerability to climate change. These aims are to be achieved through dialogue, coordination, technical guidance and support, best practices and the collection and sharing of data, including gender-disaggregated data.\(^{169}\) From the Pacific Islands’ perspective, this could represent a partial economic solution to compensate the inhabitants for the material loss of their livelihoods, as it creates alternatives to migration for those who cannot or are unwilling to move. Environmental migration could be seen as triggered by a concrete loss or damage (of water, land, coastline, housing etc.); therefore, the right to migrate could be considered as a component of the L&D mechanism in the form of non-economic compensation.\(^{170}\)

\(^{165}\) Yanamoto and Esteban (n 130) 105-11.


\(^{167}\) ibid.


\(^{169}\) ibid.

Nevertheless, L&D in its present form does not include any clauses regarding migration and/or liability. It also does not mention that the contributions to the fund, which should finance this mechanism, should be provided on the basis of greenhouse gas emissions, as originally contemplated by AOSIS. The final draft merely ‘calls on developed country Parties to channel a substantial share of public climate funds to adaptation activities’. It is worth noting that the original proposal advanced by AOSIS also incorporated several principles of IEL, which do not appear in the final text. These were Principle 21 of the Stockholm Declaration (Principle 2 of the Rio Declaration) regarding states’ responsibility not to cause environmental damage to other jurisdictions; Principle 13 of the Rio Declaration ‘to develop further international law regarding liability and compensation’; the polluter-pays principle; CBDR; the precautionary principle; equity and international solidarity.

This unnoticed disappearance is not casual. Some of these principles, especially the polluter-pays and the liability regime, are not politically and practically tenable as they would entail a ‘judicial court on climate change’. The Warsaw mechanism on L&D thus resembles another market-based instrument to deal with the impacts of climate change, or a kind of a ‘third way’ between mitigation and adaptation. It therefore risks the further weakening of the islanders’ position during future negotiations, to the advantage of big emitters. Cameron has analysed how the current division between large and small states becomes centralised during climate negotiations as reflecting developed-developing opposition and North-South inequalities. She refers to AOSIS as being positioned on a ‘reform-oriented civic environmentalism’, which aims to advance its ‘marginalised interests … on the main stage of climate diplomacy’. However, as demonstrated by L&D, the ‘main stage’ remains in the hands of the most powerful states.

---

172 Decision 2/ CP. 19, (n168).
173 AOSIS (n 171) 2.
176 Cameron (n 126) 878.
177 ibid.
In conclusion, IEL, Humanitarian Law and Human Rights Law are necessary but insufficient instruments to deal with the phenomenon of human mobility in the context of climate change. In particular, as examined in this Article, de-politicisation is used to hide highly political decisions by relegating them to the domains of science and law. It is therefore important to re-politicise these topics because politics has ‘the capacity for agency and deliberation in situations of genuine collective choice’. 178 Instead of a one-size-fits-all approach to environmental migration, there is an urgent need to effectively discuss and challenge current national development strategies and immigration policies in both the North and South. Bilateral and regional agreements could represent a first step toward a more comprehensive understanding of the anthropogenic causes of environmental degradation, natural disasters and human mobility. Most importantly, local communities and affected populations have the right to frame and participate in the current international legal debate in their own terms, which greatly differ from the negative images and measures proposed by the Global North.

V. CONCLUSION

This Article has briefly presented the much discussed phenomenon of environmental migration by analysing how two Pacific Islands cases have been framed and (de)politicised. In fact, the international community aims to neutralise the radical potential of climate change discourses and environmental migration narratives by predominantly focusing on technical solutions and definitions. The current debate on climate change demands consistent evidence to convince highly polluting countries of the necessity of a drastic cut on the usage of fossil fuels. This would imply an unwanted restructuring of consumerist and highly polluting societies and compensation to the ‘victims’ of climate change-related events in the name of climate and environmental justice.

The Pacific Islands fulfil the purpose of proving the existence of climate change; they act as laboratories for the experimentation of climate laws and policies. In the collective imaginary, reinforced by hegemonic narratives produced and reproduced in the Global North, islanders have been objectified and transformed into the ‘first’ potential climate refugees. The populations and governments of the Pacific are nonetheless challenging this postcolonial (and eco-colonial) framing by advancing their proposals on climate change and asking for the necessary assistance to plan an eventual migration with dignity. They thereby reclaim their agency and decisional power in shaping both mitigation and adaptation strategies. A more nuanced understanding of the

178 Hay (n 5) 77.
factors underpinning human mobility and climate change is urgently required in order to foster a meaningful discussion on current development and immigration policies.
BIBLIOGRAPHY

BOOKS
Barnett J and Campbell J, Climate Change and Small Island States: Power, Knowledge, and the South Pacific (Earthscan 2010)
Brock H, Climate Change: Drivers of Insecurity and the Global South (Oxford Research Group 2012)
Burkett M, ‘Climate Refugees’ in Bhuiyan JH and others (eds), Routledge Handbook of International Environmental Law (Routledge 2013)
Campbell J, ‘Climate-Induced Relocation in the Pacific: The Meaning and Importance of Land’ in McAdam J (ed), Climate Change and Displacement: Multidisciplinary Perspectives (Hart Publishing 2010)
— — and Delgado WR (eds), Migration and Development: Perspectives from the South (IOM 2007)
Castles S, ‘The Protection of “Environmental Refugees” in International Law’ in Piguet E and others (eds), Migration and Climate Change (CUP 2011)
El-Hinnawi E, Environmental Refugees (UNEP 1985)
Farbotko C, We Don’t Want to Be Labelled Victims: Contestations and Effects of Climate Refugee Narratives (ICID+18 2010)
Ferran S, Human Rights in the South Pacific: Challenges and Changes (Routledge 2009)
Gemenne F, ‘How They Became the Human Face of Climate Change. Research and Policy Interactions in the Birth of the “Environmental Migration” Concept’ in Piguet E and others (eds), Migration and Climate Change (CUP 2011)
Harvey D, Capital’s Relation to Nature’ in Seventeen Contradictions and the End of Capitalism (Profile Books Ltd 2014)
Hay C, Why We Hate Politics (Polity Press Cambridge 2013)
Hugo G, ‘Climate Change-Induced Mobility and the Existing Migration Regime in Asia and the Pacific’ in McAdam J (ed) Climate Change and Displacement: Multidisciplinary Perspectives (Hart Publishing 2010)
Laczko F and Aghazarm C (eds), Migration, Environment and Climate Change: Assessing the Evidence (IOM 2009)
Lamb D, Regreening the Bare Hills (Springer 2011)
McAdam J, ‘Conceptualizing Climate Change-Related Movement’ in Climate Change, Forced Migration and International Law (OUP 2012)
— — ‘“Protection” or “Migration”? The “Climate Refugee” Treaty Debate in Climate Change, Forced Migration and International Law (OUP 2012)
— — ‘Refusing ‘Refuge’ in the Pacific: (De)constructing Climate-Induced Displacement in International Law’ in E Piguet and others (eds), Migration and Climate Change (CUP 2011)

—— (ed), Climate Change and Displacement: Multidisciplinary Perspectives (Hart Publishing 2010)
Piguet E and others (eds), Migration and Climate Change (CUP 2011)
Solomon MK and Warner K, ‘Protection of Persons Displaced as a Result of Climate Change’ in Gerrard MB and Wannier GE (eds), Threatened Islands Nations: Legal Implications of Rising Seas and a Changing Climate (CUP 2013)
Stern N, The Economics of Climate Change: The Stern Review (CUP 2007)
Weedon C, Feminist Practice and Post-structuralist Theory (Basil Blackwell 1987)
White G, Climate Change and Migration: Security Borders in a Warming World (OUP 2011)
Williams R, Problems of Materialism and Culture (Verso 1980)
Yamamoto L and Esteban M, Atoll Island States and International Law: Climate Change Displacement and Sovereignty (Springer 2013)

JOURNAL ARTICLES
Cameron FR, ‘Saving the ‘Disappearing Islands’: Climate Change Governance, Pacific Islands States and Cosmopolitan Dispositions’ (2011) 25(6) Continuum 873
Dreher T and Voyer M, ‘Climate Refugees or Migrants? Contesting Media Frames on Climate Justice in the Pacific’ [2014] Environmental Communication 16
Findlay AM, ‘Migrant Destinations in an Era of Environmental Change’ (2011) 21(1) Global Environmental Change 51
Jensen SQ, ‘Othering, Identity Formation and Agency’ (2011) 2(2) Qualitative Studies 63
Kenis A and Lievens M, ‘Searching for the Political in Environmental Politics’ (2014) 23(4) Environmental Politics 531
Manzo K, ‘Imagining Vulnerability: The Iconography of Climate Change’ (2010) 42(1) Area 96
McNamara KE and Gibson C, “‘We Don’t Want to Leave Our Land’: Pacific Ambassadors at the United Nations Resist the Category of “Climate Refugee”’ (2009) 40 Geoforum 475
Nunn PD and others, ‘Beyond the Core: Community Governance for Climate-Change Adaptation in Peripheral Parts of Pacific Island Countries’ (2014) 14 Regional Environmental Change 222
Piguet E, ‘From “Primitive Migration” to “Climate Refugee”: The Curious Fate of the Natural Environment in Migration Studies’ (2013) 103(1) Annals of the Association of American Geography 148
Tacoli C, ‘Crisis or Adaptation? Migration and Climate Change in a Context of High Mobility’ (2009) 21(2) Environment & Urbanisation 513

CASES
AC (Tuvalu) [2014] NZIPT 800517-520
AD (Tuvalu) [2014] NZIPT 501370-371
AF (Kiribati) [2013] NZIPT 800413

INTERNATIONAL LAW SOURCES AND TREATIES
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force on 26 June 1987) 1465 UNTS 85
Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137
International Covenant on Civil and Political Rights (adopted on 16 December 1966, entered into force on 23 March 1976) 999 UNTS 171
International Labour Organization Migration for Employment Convention, (Revised) C97, 1 July 1949

STATUTES
Immigration Act 2009 [New Zealand], 2009 No 51, 16 November 2009

REPORTS
WEBSITES AND OTHER SOURCES
—— ‘Proposal to the AWG-LCA Multi-Window Mechanism to Address Loss and Damage from Climate Change Impacts’
BMT Group, ‘Relocation Only Option For Solomon Islands Provincial Capital to Combat Tsunami and Climate Change Risks’ (BMT, 15 August 2014)
—— ‘Christian Aid Report 2007: The Human Face of Climate Change’ (Christian Aid, 2007)
Climate Change and Migration Coalition & Climate Outreach and Information Network, Legal Protection, Climate Change and Migration


