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THE PARIS AGREEMENT, FORCED MIGRATION, AND AMERICA'S CHANGING REFUGEE POLICY

Alice R. O'Connell

I. Introduction

In October of 2016, the United Nations (“U.N.”) Framework Convention on Climate Change met the threshold of ratification votes required to enact into force a set of international rules and regulations colloquially referred to as the Paris Agreement (“Agreement”).¹ This Agreement sought to strengthen the global response to climate change by outlining the expectations for research, industry, and policy that each ratifying party to the convention would be expected to uphold.² The Agreement entered into force thirty days after the date of ratification, representing a high-water mark in international cooperation on the subject of global climate change.³

According to the U.N. Framework’s official website, the United States (“U.S.”) signed onto the Paris Agreement on April 22, 2016.⁴ Their ratification was approved by the U.N. on September 3, 2016, and the accords formally went into force for the U.S. on November 4, 2016.⁵

However, there is a degree of controversy surrounding the U.S.’ continued participation in the Paris Agreement. On June 1, 2017, President Donald Trump announced that the U.S. would be withdrawing from any participation in the Paris Agreement.⁶ Citing “wildly unfair environmental standards” to be imposed upon American businesses and workers, the President expressed an interest in negotiating a better deal for the U.S. with regard to their role in the continuing climate change discussion.⁷ As of this article’s publication, however, no such deal has been established.

The U.S. sits at something of a crossroads with the international community on the matter of climate change and the nation’s role in stemming its tide. This lack of legal and political clarity could well spell disaster for a demographic of individuals who stand to lose the most from the implications of global climate change. This article will seek to establish a legal definition of climate migrancy as it pertains to domestic and international standards.

¹ U.N. Doc. FCCC/CP/2015/L.9/Rev/1 (Dec. 12, 2015).

² *Id.*

³ *Id.*

⁴ PARIS AGREEMENT - STATUS OF RATIFICATION, U.N. Framework Convention on Climate Change, http://unfccc.int/paris_agreement/items/9444.phpc (last visited Nov. 27, 2018).

⁵ *Id.*

⁶ Michael D. Shear, *Trump Will Withdraw U.S. From Paris Climate Agreement*, N.Y. TIMES (June 1, 2017), https://www.nytimes.com/2017/06/01/climate/trump-paris-climate-agreement.html?_r=0.

⁷ *Id.*

II. History and Background

A. The United Nations Refugee Convention of 1951

Early attempts to define the boundaries of what legally constituted a refugee were spearheaded by the U.N. at the Refugee Convention of 1951 (“Refugee Convention”).⁸ The U.N. Refugee Agency today describes the core principle of the Refugee Convention as the “key legal document that forms the basis of [their] work.”⁹ The U.N. further emphasizes the core principle of non-refoulement that comprises the central message of the convention; it states that a refugee should not be returned to a country “where they face serious threats to their life or freedom.”¹⁰

The Office of the U.N. High Commissioner for Refugees (“UNHCR”) notes in its introduction to the currently available transcript of the resolution that the Refugee Convention was originally intended to deal with the fallout from World War II.¹¹ The resolution was originally limited in scope to events that took place prior to its passage and specifically within European nations. It was later expanded by a 1967 protocol that amended the original resolution, removing the previously established limitations and granting universal international coverage to the Refugee Convention.¹² Since then, participating regions have adopted and amended the 1967 standard to suit their individual international needs and interests. All the same, the standards established within the original document and its subsidiaries retain a significant influence upon modern understandings of refugee legal status and discourse.

Critically, Article I of the 1951 Refugee Convention endorses a single definition of the term “refugee.”¹³ The original text couched the language in the retrospective, defining a refugee as any person who “as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” was unable or unwilling to return to their country of origin.¹⁴ Once the temporal restrictions within this definition were lifted, the newly-broadened standard served as the watermark for international policymaking bodies for decades to come. Indeed, it remains today the functionally employed definition of the U.S.’ own refugee code, as well as the definition utilized by many other member nations who subscribe to the U.N.’s principles on refugee standards.¹⁵

⁸ *The 1951 Refugee Convention*, UNHCR, <https://www.unhcr.org/en-us/1951-refugee-convention.html> (last visited Nov. 28, 2018).

⁹ *Id.*

¹⁰ *Id.*

¹¹ UNHCR, CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES, <https://www.unhcr.org/en-us/3b66c2aa10> [hereinafter *UN Refugee Protocol*].

¹² *Id.* at 2.

¹³ *Id.* at 3.

¹⁴ *Id.* at 14.

¹⁵ REFUGEE ACT OF 1980, PUB. L. NO. 96-212, 94 STAT. 102 § 1:6 (1980) (codified as amended in scattered sections of 8 U.S.C.) [hereinafter *Refugee Act of 1980*].

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The convention and its subsequent renditions do place limits upon that straightforward definition. For example, the definition exempts individuals who may have committed war crimes, individuals who benefit “from the protection or assistance of a United Nations agency other than the UNHCR,” and refugees who have “status equivalent to nationals in their country of asylum.”¹⁶ Still, these exceptions are still firmly couched in the original persecution based standard. At the time of its writing, the 1951 Refugee Convention served as a seminal advancement in the rights and interests of displaced persons. However, while that standard remains a flagship legal principle in the modern world of international law, its language has begun to show its age in significant and problematic ways.

B. The Refugee Act of 1980

Today, American legal understanding of refugees and their legal standing is derived in large part from the Refugee Act of 1980. The passage of this act marked the first time that federal law instituted a system for the processing and admission of refugees based upon the U.N. definition of persecution.¹⁷ Prior to the institution of this Act, the U.S. tended to admit only refugees from countries in the Middle East, or Communist states.¹⁸ This change allowed them to adapt elements of the U.N. 1951 Refugee Convention relating to the status of refugees. The Refugee Act of 1980 broadened the then-poorly-established standards and opened the door for a more generalized understanding of the sorts of individuals who qualified for refugee status in America and the ways in which they were processed and admitted to the country.¹⁹

However, the standards of classification established in the Refugee Act of 1980 and later elaborated upon in subsequent legislation remains narrow. Specifically, the Immigration and Nationality Act classifies a refugee as “a person who is unwilling or unable to return to his or her home country because of a ‘well-founded fear of persecution’ due to race, membership in a particular social group, political opinion, religion, or national origin’.”²⁰ This definition couches its language deeply in the original 1951 Refugee Convention, which continues to serve as the modern standard.

Critically, this standard remains narrower than a mere examination of whether a person is “unwilling or unable” to return to his or her home country. The Immigration and Nationality Act specifically requires that an individual be seeking asylum due to persecution. This standard excludes individuals who might find themselves unwilling or unable to return to their home country for any myriad of reasons beyond persecution. Specifically, it fails to account for the possibility that an individual may be seeking refuge due to displacement caused by a natural disaster or other climate-related incident.

¹⁶ *UN Refugee Protocol*, *supra* note 11.

¹⁷ *Refugee Act of 1980*, *supra* note 12.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 8 U.S.C.A. § 1101 (West 2014).

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Andrew E. Shacknove of the University of Chicago observed that the definitions of refugee status adopted by the U.N. and by extension the U.S. are predicated on an implicit four-part argument: first, that a bond of trust existed between the citizen and the state from which they are seeking refuge; second, said bond was severed or disconnected; third, persecution and alienage are “always the physical manifestations of this severed bond;” and finally, that those manifestations are “necessary and sufficient conditions for determining refugeehood.”²¹ In other words, Mr. Shacknove suggests that current conceptions of refugeehood necessarily require that an individual’s relationship with their state of origin be harmed in a specific and observable way.

Standardization certainly makes for more straightforward legal classification; in the eyes of American courts, clear and specific standards are far more straightforward to apply across a variety of legal situations. However, said ease of use comes at the cost of equity. By presupposing an injured relationship between the alien and their state of origin as a necessary requirement for refugee status, the current refugee standard unnecessarily restricts access to the rights and interests of refugee status to other individuals who may be fleeing their homes for reasons that extend beyond persecution. Any number of scenarios may prompt an individual to flee their country of origin in search of safer horizons; limiting the applicability of the refugee standard with such a prerequisite comes with too high an equity cost to warrant retention.

In a recent publication, Mr. Shacknove identifies the most immediate and apparent example of a class of individuals who fall through the cracks of the current standard.²² He insists that persecution is “just one manifestation” of the absence of physical security, and emphasizes for example that natural disasters are often dismissed as points of genesis for refugee status precisely because they are not political in nature.²³ Floods and hurricanes do not threaten to erode or break the connection between citizen and state in the traditional sense nor do these natural disasters inspire displacement by way of a well-founded fear of persecution.

They do, however, certainly instill a well-founded fear all their own. It is undeniable that an individual may be prompted (or indeed, may be required) to flee their country of origin due to the effects of a natural disaster. Why, then, does the current refugee standard fail to acknowledge such an individual as such under the current standards established in the U.S. and abroad? As Mr. Shacknove astutely illustrates, the legitimacy of any refugee policy is undeniably compromised where refugee status is refused to worthy claimants. The currently employed definition of what constitutes a refugee fails to meet this baseline test, and as such is insufficient.

²¹ Andrew E. Shacknove, *Who is a Refugee?*, 95 ETHICS 274, 274–284 (1985).

²² *Id.* at 279.

²³ *Id.*

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C. The “Well-Founded Fear” Standard and US Immigration Law

The U.S. refugee standard has been well examined in domestic courts. In *I.N.S. v. Cardoza-Fonseca*, the appellant sought an overturn of the decision of the Board of Immigration Appeals, arguing that she was eligible for consideration for asylum.²⁴ The Supreme Court held that in order to show a “well-founded fear of persecution,” an alien seeking asylum need not prove that it was “more likely than not” that they would have been persecuted in their home country.²⁵ In the opinion of the Court, Justice Stevens explained that the 1980 Immigration and Nationality Act provided two separate methods through which an “otherwise deportable alien who claims that he will be persecuted if deported can seek relief.”²⁶ Specifically, Justice Stevens mentioned Section 243(h) of the act, which requires the Attorney General to withhold deportation of an alien who demonstrates that his “life or freedom would be threatened on account of one of the listed factors if he is deported.”²⁷ The Court urged that this standard and the “well-founded fear” standard are separate entities that are mutually exclusive of each other; the rules that govern one do not necessarily govern the other in tandem.²⁸

In other words, the rules governing deportation of aliens do not necessarily affect the initial classification of individuals under the well-founded fear standard. Though there may be exceptions and legal loopholes that allow an individual to escape deportation despite their lack of legal refugee status, the fact remains that the refugee standard is overly narrow in and of itself due to its overemphasis on the historical wording and context from which the current standard is derived.

There is a clear difference between the way the U.S. Government treats formally ascribed refugees – those fleeing a well-founded fear of persecution – or non-refugee aliens that fail to meet the U.N.-inspired standard. This discrepancy stands at odds with what is increasingly being seen as the clear and present threat of climate change. An increasingly convincing body of evidence points to climate change as having an inevitable and dramatic effect on ecological and social systems the world over.²⁹ Scientists and researchers alike fear that the “unprecedented” challenges presented by the advent of climate change based threats may outstrip the current constraints of the international community’s legal framework.³⁰ Climate change may well cause problems that the current international legal system is not equipped to solve.

“The vulnerability. . . of people to climate change depends on the extent to which they are dependent on natural resources and ecosystem services,” writes

²⁴ *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

²⁵ *Cardoza-Fonseca*, 480 U.S. at 423.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 423–24.

²⁹ Jon Barnett, *Security and Climate Change*, 13.1 GLOBAL ENVTL. CHANGE 7 (2003).

³⁰ *Id.* at 8.

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Jon Barnett in his examination of political security and climate change, “the extent to which the resources and services they rely on are sensitive to climate change, and their capacity to adapt to changes in these resources and services.”³¹ Barnett and contemporaries that share his viewpoint express concerns over the international community’s collective ability to respond to the unique challenges presented by a changing climate landscape. His particular focus is in matters of security – how do states ensure that their own residents remain safe in the face of climate-fueled events?

However, the concerns of Mr. Barnett can be extended beyond the boundaries of dangers to domestic security. The standards established in the 1951 U.N. Refugee Convention that were later adopted by countless prominent members of the international community clearly emphasize the need to address concerns related to persecution-fueled migration. However, the increased likelihood of climate-related disasters across the globe is accompanied by a tangentially increasing likelihood that individuals may be displaced by such disasters. As currently construed, the international refugee standard is not equipped to handle this requisite increase.

As of 2014, there were approximately fourteen million refugees in the U.S.³² Top countries of origin included Afghanistan, Syria, Somalia, Sudan, the Democratic Republic of the Congo, and Myanmar.³³ All of these refugees were subject to some sort of well-founded fear of persecution, as the U.N.-adopted standard dictates. Notably, the most frequent countries of origin for American refugees share certain characteristic defects with regard to domestic violence, strife, and persecution. This makes a great deal of sense; politically and socially unstable nations would naturally produce the conditions necessary for the fraying of the connection between citizen and state that Andrew Shacknove identified as the prerequisite requirement for a finding of persecution.

The U.S. Refugee Admissions Program (“USRAP”) is required each year to review the refugee situation or emergency refugee situation to project the extent of possible participation of the U.S. in resettling refugees, and to discuss the reasons for believing that the proposed admission of refugees is justified by humanitarian concerns, grave humanitarian concerns or is otherwise in the national interest.³⁴ “Annually,” the USRAP public web page explains, “processing priorities are established to determine which of the world’s refugees are of special humanitarian concern to the United States. Fulfilling a processing priority enables a refugee applicant the opportunity to interview. . . but does not guarantee acceptance.”³⁵ As of the conclusion of 2017, the priorities currently in use included the following: “cases that are identified and referred to the program by the

³¹ *Id.* at 8–9.

³² AMERICAN IMMIGRATION COUNCIL, AN OVERVIEW OF U.S. REFUGEE LAW AND POLICY (2015).

³³ *Id.*

³⁴ *The United States Refugee Admissions Program*, U.S. CITIZENSHIP & IMMIGR. SERV., <https://www.uscis.gov/humanitarian/refugees-asylum/refugees/united-states-refugee-admissions-program-usrap-consultation-worldwide-processing-priorities> (last updated May 05, 2016).

³⁵ *Id.*

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UNCHR, a United States Embassy, or a designated non-governmental organization;” “groups of special humanitarian concern identified by the U.S. refugee program”; and “family reunification cases”.³⁶ The site further emphasizes that refugees must “generally be outside their country of origin.”

Taken in a vacuum, these standards would seem to suggest some modicum of legal ground for the climate refugee to stand upon. However, the fact remains that the priorities are largely still routed through the U.N. proper or through the well-founded fear standard that the U.S. adopted from the U.N.’s own rules. Indeed, USRAP’s own “refugee eligibility determination” page explains that during the admissions interview “all relevant evidence” is examined to determine if the applicant, amongst other things, meets the definition of refugee.³⁷ Here, still, the U.N. standard reigns; and so long as it continues to do so aliens seeking refuge from climate-related disasters will continue to encounter marked legal resistance to their attempts to relocate.

This is not to say that the U.S. and other interested parties are unaware of the threats that climate change presents. On June 1, 2017, an article was published in the Louisville Courier-Journal regarding the potential advent of domestic climate refugees. “The United States can expect massive population shifts as the weight of climate change bears down and sea levels rise perhaps six feet by the end of the century,” wrote reporter James Bruggers.³⁸

“As many as 13 million Americans living in coastal areas could be flooded out by 2100,” Bruggers emphasizes, citing research completed by University of Georgia demographer Mathew E. Hauer.³⁹ Hauer’s model suggested that coastal Americans may seek refuge in inland states such as Indiana, Kentucky, Ohio and Tennessee. Specifically, Bruggers reports that heavily populated areas such as Miami, New Orleans and New York could be solely responsible for over three million domestic climate refugees.⁴⁰

Indeed, the U.S. has already begun to resettle domestic climate migrants.⁴¹ In 2016, the Federal Government allocated a \$48 million federal grant to focus on the resettlement of the former residents of Isle de Jean Charles in southeastern Louisiana.⁴² This grant arrived in virtual tandem with another \$1 billion dollar, thirteen-state series of grants designed to help communities adapt to climate change threats. While the majority of that money was spent on shoring up currently existing communities, at least a portion of it (the portion designated for

³⁶ *Id.*

³⁷ *Refugee Eligibility Determination*, U.S. CITIZENSHIP & IMMIGR. SERV., <https://www.uscis.gov/humanitarian/refugees-asylum/refugees/refugee-eligibility-determination> (last updated Apr. 8, 2013).

³⁸ James Bruggers, *Rising Sea Levels Could Create American Climate Refugees*, USA TODAY (June 1, 2017, 2:48 PM), <https://www.usatoday.com/story/news/nation-now/2017/06/01/rising-sea-levels-climate-refugees/362544001/>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Coral Davenport & Campbell Robertson, *Resettling the First American ‘Climate Refugees’*, N.Y. TIMES (May 2, 2016), <https://www.nytimes.com/2016/05/03/us/resettling-the-first-american-climate-refugees.html>.

⁴² *Id.*

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Isle de Jean Charles) was allocated with the specific intention of relocating an entire community struggling with the impacts of climate change.⁴³

The *Times* article cites a study conducted by the U.N. University Institute for the Environment and Human Security, alongside the International Organization for Migration, which states that “between 50 million and 200 million people – mainly subsistence farmers and fishermen – could be displaced by 2050 because of climate change.”⁴⁴ “The changes are underway and they are very rapid,” said Interior Secretary Sally Jewell at the time of the article’s publication. “We will have climate refugees.”⁴⁵

Walter Kaelin, the head of the U.N. research organization the Nansen Initiative, emphasized this reality by suggesting that it would not be enough to simply respond once the disasters inevitably arrived. “You don’t want to wait until people have lost their homes,” he said in an interview, “until they flee and become refugees. The idea is to plan ahead and provide people with some measure of choice.”⁴⁶

The U.S. is also considering the extension of domestic protections to U.S. nationals.⁴⁷ This further cements the reality of the situation: the U.S. Government is, to some degree, well aware of the likely increase in climate migrancy that is due to occur in the coming years. Still, U.S. nationals are afforded similar, if lesser, rights and protections as U.S. citizens. They, too, are exempt from any sort of refugee processing that might otherwise disqualify them from seeking refuge in the U.S. proper for failing to meet the U.N. standard. Domestic refugees are not constrained by international rules or regulations. They need not face any well-founded fear (of persecution or otherwise) to justify their decision to move across the country. Still, this article and others like it demonstrate a clear and undeniable acknowledgement of the imminent risk posed by the continuing effects of climate change. Further, it demonstrates specifically that researchers are concerned about the impacts that climate change may have on the residents of coastal towns, cities and states. The citizens of Miami and New York may take solace in the fact that there are inland options that they can relocate to without fear of being barred by archaic refugee standards. Residents of island or coastal nations that lack the requisite inland landmass of the U.S. and its contemporaries face a greater threat, with fewer protections available to them.

D. The Paris Agreement and Forced Migration

According to the UNCHR, an annual average of twenty-one and one half million people have been forcibly displaced by “weather-related sudden onset

⁴³ *Id.*

⁴⁴ Davenport & Robertson, *supra* note 41.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Daniel Cusick & Adam Aton, *Puerto Ricans Could be Newest U.S. Climate Refugees*, *Sci. Am.* (Sep. 28, 2017) <https://www.scientificamerican.com/article/puerto-ricans-could-be-newest-u-s-climate-refugees/>.

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hazards. . . each year since 2008.”⁴⁸ Climate change (and the resulting climate migrancy) is an emerging threat – and the UNCHR’s statements on the subject have made their developing interest in the subject clear.⁴⁹

The U.N. and its member states have presented remarkable initiative with regard to the implementation and ratification of the Paris Agreement.⁵⁰ The UN’s last major climate initiative, commonly referred to as the Kyoto Protocol, took eight years to enter into force.⁵¹ The Paris Agreement, by contrast, entered into force a scant year after its legal conception.⁵² Legal authorities have described the Paris Agreement as a “diplomatic accomplishment of the highest order”.⁵³ New changes in the way that international policymakers attempted to address the concerns presented by continuing climate phenomena dominate discussion, and the world looks to the United Nations to serve as something of an arbiter for the expected policies that major world powers will be expected to enact and enforce in their own territories.⁵⁴

What motivated the rapidity behind the ratification of this cornerstone piece of international law? Reasonable minds differ as to precisely why the accords have proven so amicable where other similar attempts have failed to capture the interest of so many involved parties.⁵⁵ Some experts point to the moderate aims of the agreement’s various proposals, describing the solutions suggested as a collective “Goldilocks solution” that sits somewhere in the happy medium between overly stringent and undereffective.⁵⁶

Still, some key differences exist between the Paris Agreement and prior attempts to address climate change. Unlike previous political attempts such as the Copenhagen Accord, the Paris Agreement is a fundamentally legally binding instrument.⁵⁷ While the Paris Agreement is sparse in terms of actually addressing climate migration itself, it nevertheless represented a step forward for US foreign policy with regard to acknowledging the dangers of climate change and their impact on at-risk communities that are more likely to produce climate migrants.⁵⁸

⁴⁸ *Frequently asked questions on climate change and disaster displacement*, UNHRC (Nov. 6, 2016), <https://www.unhcr.org/news/latest/2016/11/581f52dc4/frequently-asked-questions-climate-change-disaster-displacement.html>.

⁴⁹ *Id.*

⁵⁰ Calvin Nguyen, *The Paris Agreement After 2016*, GEO. ENVTL. L. REV. ONLINE 1 (2016).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See Bonnie Smith, *Adapting the Paris Agreement* (Apr. 18, 2016), ENVTL. L. REV. SYNDICATE, <https://www.nyuelj.org/2016/04/adapting-the-paris-agreement/>.

⁵⁵ See Daniel Bodansky, *The Paris Climate Change Agreement: A New Hope?*, 110 AM. J. INT’L L. 288, 289 (2016).

⁵⁶ *Id.*

⁵⁷ *Id.* at 290.

⁵⁸ See Kristen Lambert, *The Paris Agreement: Spotlight on Climate Migrants*, YALE: FORESTRY & ENVTL. BLOG (Dec. 29, 2015), <https://environment.yale.edu/blog/2015/12/the-paris-agreement-spotlight-on-climate-migrants/>.

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The Paris Agreement was initially ratified in late 2015, with the assent of 195 member nations.⁵⁹ It was described as a “historic breakthrough” for acquiring the assent of member nations normally renowned for their disinterest in Climate Initiatives, such as China and India.⁶⁰ The ratification of the accords represented a nine-year ordeal that was met with universal acclaim in the international community. It also represented a watershed moment in the United States’ specific interaction with the topic of climate change and climate migration – a subject that had not truly been breached since the 1980 Refugee Act, if at all. All the same, a number of barriers remained between US foreign policy and true legal and political readiness for the emergence of the climate migration issue – and the state soon proved that it was intent to take a step back before moving further forward.

III. Discussion

Previous attempts to establish forward-thinking climate change based refugee policy have often failed to address the issue of climate migration.⁶¹ The Paris Agreement, specifically, considered but did not address the topic of forced migration.⁶² As such, proposals for how, exactly, states might address the rising threat of climate migration have varied widely.

Even settling on a proper definition for the term ‘climate migrant’ has proven difficult for the international academic and legal communities.⁶³ A generally accepted baseline definition refers to individuals whose “movement is triggered” in substantial part “by the effects of climate change”.⁶⁴ This definition is overly broad; it allows for the inclusion of both individuals who are displaced by single, catastrophic events such as great storms or floods or famines, as well as for the inclusion of individuals who are forced to move by the more gradual, continual effects of climate change such as the rising of sea levels to the detriment of coastal settlements.⁶⁵

This definition would likely be sufficient to overcome the limitations of the currently utilized language of the UN charter as well as the US Refugee Act of 1980. By expanding the definition of what constitutes a refugee to include individuals fleeing the effects of climate change as well as those fleeing the effects of persecution, the law would be suitably broadened so as to not disadvantage potential asylum seekers on account of a linguistic technicality that did not consider the possible effects of climate change science that, at the time of the law’s passage, was either poorly formed or not established at all.

⁵⁹ Coral Davenport, *Nations Approve Landmark Climate Accord in Paris*, N.Y. TIMES (Dec. 12, 2015), <https://www.nytimes.com/2015/12/13/world/europe/climate-change-accord-paris.html>.

⁶⁰ *Id.*

⁶¹ See Phillip Dane Warren, Note, *Forced Migration After Paris COP21: Evaluating the Climate Change Displacement Coordination Facility*, 116 COLUM. L. REV. 2103 (2016).

⁶² *Id.* at 2106.

⁶³ See Claire DeWitte, *At Water’s Edge: Legal Protections and Funding for a New Generation of Climate Change Refugees*, 16 OCEAN & COASTAL L.J. 211, 221-22 (2010).

⁶⁴ Lambert, *supra* note 58, at 2110.

⁶⁵ *Id.*

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Pundits agree that multilateral global action is required to mitigate the harm done to the climate migrants of the future.⁶⁶ “The efforts of individual states are not enough to stem the negative impact of climate change,” wrote University of Denver legal scholar Jeremy M. Bellavia in the summer of 2016.⁶⁷ That being said, it is easy to see how the unilateral actions of major international powers such as the United States might serve to influence the decision-making bodies like the United Nations that hope to satisfy the requirement for multilateral action that scholars agree will be necessary.

Unfortunately, the United States of 2017 seems disinclined to acquiesce to the interests of the global community when it comes to issues of climate science – including issues of climate migration.⁶⁸ While recent reports suggest that President Trump might be more inclined to ‘rejoin’ the Paris Agreement, the United States government has made no formal indication that it intends to abide by the standards set forth by the Paris Agreement or any similar climate change document.⁶⁹ President Trump has in previous instances expressed a passing interest in ‘renegotiating’ the terms of the Paris Agreement to more appropriately suit America’s supposed interests.⁷⁰ However, leaders of other relevant world powers, such as France’s Emmanuel Macron, have stated that they would not be willing to renegotiate the terms of the deal (which has already been ratified and put into effect).⁷¹

Indeed, current US foreign and domestic policy interests seem to be geared against the relaxing or broadening of any standard of acceptance for refugees or other international parties interested in relocating to the United States.⁷² The White House has remained steadfast in its focus upon border security policies, including the divisive wall promised during the current president’s 2016 presidential campaign.⁷³ In fact, the white house is using the wall’s construction as a requirement for the signing of any legislative solution that attempts to provide legal status for 800,000 immigrants currently living in the United States who were brought illegally to the country as Children (a demographic colloquially known as Dreamers, after the Obama initiative that first attempted to grant them protections).⁷⁴

If anything, it seems more likely that the current administration would attempt to further curtail the types of individuals who qualified for refugee status, instead

⁶⁶ See Jeremy M. Bellavia, Article, *What Does Climate Justice Look Like for the Environmentally Displaced in a Post Paris Agreement Environment? Political Questions and Court Deference to Climate Science in the Urgenda Decision*, 44 DENV. J. INT’L L. & POL’Y 453 (2016).

⁶⁷ *Id.*

⁶⁸ Shear, *supra* note 6.

⁶⁹ *Climate Change: Trump Says US ‘Could Conceivably’ Rejoin Paris Deal*, BBC NEWS (Jan. 11, 2018), <http://www.bbc.com/news/world-us-canada-42642331>.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See Michael D. Shear, *White House Makes Hard-Line Demands for Any ‘Dreamers’ Deal*, N.Y. TIMES (Oct. 8, 2017), <https://www.nytimes.com/2017/10/08/us/politics/white-house-daca.html>.

⁷³ *Id.*

⁷⁴ *Id.*

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of expanding the definition as this article proposes. It would not be the first time that the Trump administration attempted to limit refugee intake; one of the President's first major acts manifested in the form of an executive order that suspended the entire refugee resettlement program for a period of three months and further indefinitely banned the resettlement of refugees from Syria and other nations.⁷⁵ This executive order was issued despite the already stringent requirements imposed upon individuals seeking refuge in the United States.⁷⁶ The resettlement process lasted up to 36 months in length, and involved screenings from various organizations in the interest of maintaining domestic security.⁷⁷

The President's 'travel ban', as it has become colloquially known throughout the various news media that have covered its announcement and attempted implementation, has sustained a contentious and divisive life cycle.⁷⁸ Additionally, the legality of the ban remains in question.⁷⁹ The travel ban itself has a fixed duration and it would not be likely to impact future climate migrant populations. However, it remains representative of a sea change in White House foreign policy with regard to the handling of refugees by the United States. When combined with a congressional atmosphere that some pundits are describing as divisive, it is difficult to imagine a Trump-led U.S. Government that concerns itself with the rising threat of climate migration.⁸⁰

IV. Analysis

The United States Federal Government is currently poorly equipped to address a potential increase in global climate migration. First, it is not legally capable of differentiating between climate migrants and traditional refugees fleeing from prejudice or persecution. Second, nationalist and anti-immigration sentiment prevails in the executive and legislative branches, limiting the effectiveness of government intervention. Finally, existing disaster response protocols fail to appropriately address the main concerns likely to be amplified by climate change.

As previously stated, the current American legal understanding of what it means to be a refugee fails to take into account the possibility that individuals might be fleeing their country of origin for reasons other than persecution.⁸¹ Critically, the original UN charter did not recognize the environment as an agent

⁷⁵ David Miliband, *Donald Trump's Un-American Refugee Policy*, N.Y. Times (Jan. 27, 2017), <https://www.nytimes.com/2017/01/27/opinion/donald-trumps-un-american-refugee-policy.html>.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Robert Barnes, *Supreme Court Allows Full Enforcement of Trump Travel Ban While Legal Challenges Continue*, WASH. POST (Dec. 4, 2017), https://www.washingtonpost.com/politics/courts_law/supreme-court-allows-full-enforcement-of-trump-travel-ban-while-legal-challenges-continue/2017/12/04/486549c0-d5fc-11e7-a986-d0a9770d9a3e_story.html?utm_term=.33260f9accd0.

⁷⁹ *Id.*

⁸⁰ Cathleen Decker, *Republicans face a divisive fight over immigrants that could define the party's future*, L.A. TIMES (Sep. 5, 2017), <http://www.latimes.com/politics/la-na-pol-gop-daca-analysis-20170905-story.html>.

⁸¹ UN Refugee Protocol, *supra* note 11, at 14.

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capable of persecution.⁸² This, despite the fact that the UN itself has explored the links between human mobility and climate change.⁸³ In 2014 alone, 19 million people from over 100 countries were forced to flee their homes for reasons linked to climate change.⁸⁴

A change in the definition of refugees would likely require a baseline acknowledgement of the phenomena driving the possibility of climate migration in the first place. However, the current federal government remains belligerent in its opposition to the notion of climate science.⁸⁵ Immediately upon the assumption of power by the current administration, the United States Environmental Protection Agency removed any reference to climate change or global warming from its public website.⁸⁶ In Mexico alone, 700,000 citizens must relocate due to natural resource depletion.⁸⁷ Despite this, climate migrants continue to lack pathways of migration to safe havens or legal protections once they arrive there.⁸⁸ Until the definitional understanding of what it means to be a refugee changes, that is likely to remain the case.

Further, the federal government is plagued by a lack of support for and understanding of the specific topic of climate migration.⁸⁹ In keeping with the definition provided by the Refugee Act of 1980, the State Department only serves to recognize the circumstances of refugees fleeing persecution.⁹⁰ The State Department claims that the United States is responsible for two thirds of all refugees that settle in neither their country of origin or their country of initial flight.⁹¹ However, the department emphasizes that the percentage of refugees who are permitted to do this are very small, and represent only those who face the highest risk.⁹² The state department emphasizes that total resettlement is a solution for 'only a few' who are so in danger of persecution that returning to their home country is literally or logistically impossible.⁹³

The United States (and other countries and entities including the UN) do have systems and safeguards currently in place intended to mitigate the potential increase of climate migrants.⁹⁴ Systems of national preparedness have been put into place with the intent of equipping the nation to confront all manner of potential

⁸² *5 Facts on Climate Migrants*, INSTITUTE FOR ENV'T. AND HUMAN SEC (Nov. 26, 2015), <https://ehs.unu.edu/blog/5-facts/5-facts-on-climate-migrants.html>.

⁸³ Lambert, *supra* note 58.

⁸⁴ *Id.*

⁸⁵ The United States Environmental Protection Agency (hereinafter EPA). "This page is being renovated." EPA. January 20, 2017.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Bureau of Population, Refugees, and Migration*, STATE DEP'T, <https://www.state.gov/j/prm/>.

⁹⁰ *Refugee Admissions*, STATE DEP'T, <https://www.state.gov/j/prm/ra/index.htm>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Presidential Policy Directive 8: National Preparedness*, DEP'T. OF HOMELAND SEC. (Mar. 30, 2011), <https://www.dhs.gov/presidential-policy-directive-8-national-preparedness>.

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catastrophes, man-made and natural.⁹⁵ Theoretically, these frameworks as designated are meant to be “built upon scalable, flexible, and adaptable coordinating structures” in order to allow room for improvement and adaptability to the ever-changing threats that might face the United States and its citizens.⁹⁶

However, intervening bodies such as the UN and the US are met with controversy for their focus on the areas of on-site disaster relief instead of disaster prevention.⁹⁷ Research has showed that globally only one percent of all development aid goes towards what is known as ‘disaster risk reduction’ or DRR.⁹⁸ Traditional means of responding to disasters – such as on-site relief efforts and reconstruction interests – are beginning to be supplemented by more innovative explorations of prevention, but progress is slow.⁹⁹ An unwillingness to bend from traditional responses to natural disasters might limit future ability to adapt to the newly increased demands of climate change and migration.

Ideally, major international relief actors such as the United States would mitigate the risks of an increase in climate migration by adapting their current policies to suit the imminent changes. Truth be told, the US never formally committed to the Paris Accords in the first place – at least not in the way that the constitution might require.¹⁰⁰ Article II, section 2 of the United States constitution requires that the President receive the advice and consent of the Senate before making treaties.¹⁰¹ However, then-President Barack Obama adopted the Paris Agreement without engaging with this constitutionally required process.¹⁰² This accelerated adoption of the Paris Agreement allowed President Trump to likewise unilaterally withdraw the agreement’s acceptance.

That being said, clear incongruities exist between the United States’ current domestic and foreign policy trends and the likely increase in climate change related political and legal concerns including climate migration. The current legal framework for refugee processing and aid simply has no answer for a world where climate migration presents a serious and prescient issue on an international stage. The United States is a major political entity that directly influences the trends in international law and policy with its legal and political decision making. As such, if the United States continues to fail to acknowledge and adapt the risks posed by climate change, remaining incongruities in the framework of international refugee law will create a host of problems for a world where climate migration has become a real and pressing reality.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Mark Tran, “UN Urged to Create Global Fund for Disaster Prevention,” *GUARDIAN* (Oct. 1, 2012), <https://www.theguardian.com/global-development/2012/oct/01/call-for-global-fund-disaster-prevention>.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Press Release, Tanya Somander, White House, The United States Formally Enters the Paris Agreement. (Sept. 3, 2016), <https://obamawhitehouse.archives.gov/blog/2016/09/03/president-obama-united-states-formally-enters-paris-agreement>.

¹⁰¹ U.S. Const. art. II, § 2, cl. 2.

¹⁰² Tran, *supra* note 97.