Teitiota v. New Zealand - A Ground-breaking Human Rights Case, or the First of Many?

By

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Table of Contents

Abstract

In 2015, Ioane Teitiota applied for asylum in New Zealand under the term "climate refugee". Soon after he brought the case to the High Court of the United Nations High Commissioner for Refugees , however the claim was denied by both courts. Although very little was done for Mr. Teitiota, this case opened the door for a conversation about climate refugees on an international scale. This research will examine what impacts, if any, did the case of Teitiota v. New Zealand have on international law. Through the application of Normative and Constructivist theory, a legal analysis as well as three interviews were performed in order to gain a better understanding of possible avenues for expansion in international law to protect climate refugees. This thesis also examined how norms are adopted by the international community, and if the norm of "climate refugees" has potential of following this route.

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Introduction

The decision surrounding the Teitiota v. New Zealand court case has been deemed as one of the most ground-breaking cases in the conversation of "climate refugees" (Amnesty International, 2020). The case was popularized in 2016, which was an interesting political and social climate for topics of climate change and displacement. For years, courts have worked to protect the rights of those displaced from their country of origin due to persecution. However, a new conversation concerning those who are not being personally persecuted, but severely impacted by the pollution and emissions of larger nation states, has been brought to the international community.

Climate change and its impacts have become more prevalent in recent years, bringing much more attention to how vulnerable populations may be disproportionately impacted (IPCC, 2021). While developing countries tend to be the lowest emitters, they are the ones who are experiencing the more severe effects of climate change (World Economic Forum, 2017). Not only are they experiencing environmental changes due to the pollution of nations, in the form of floods, inundation, droughts, but they are also the places where most refugees have found asylum. This creates a disproportionate burden for developing nations, and as climate change worsens, it is likely that they will suffer the most, especially due to the rise in climate refugees (World Economic Forum, 2017).

Climate refugees, while not legally acknowledged, are individuals who are seeking asylum due to the negative and life-threatening impacts of climate change. A popularized case of a climate

refugee is that of Ioane Teitiota, a man from the Island Tarawa in Kiribati, located in the Pacific Islands. In 2015, Teitiota, while already living in New Zealand, applied for asylum there under the term of a climate refugee, after being arrested for expired work visas. Along with his lawyer, Michael Kidd, Teitiota presented a case showing that the right to life or himself and his family would be threatened were they to be deported back to South Tarawa, where the impacts of climate change are especially severe (Berhman et al, 2020).

Despite his plea, the New Zealand courts denied his claim, and deported him and shortly after his wife and children, back to Tarawa. Teitiota and Kidd eventually brought the case to the United Nations High Commissioners for Refugees (UNHCR). Although the High Court acknowledged the possibility of climate refugees and the suffering of people due to climate change, they denied the case put forward on behalf of Teitiota (Berhman et al, 2020).

This case will be the center of this research which will examine the impacts it may have had on international refugee and human rights law. Furthermore, this research will examine what if not this case may expand international law to protect those displaced due to climate change. By applying a normative constructivist lens, we will look at the creation of norms on an international scale, and how the acceptance of climate refugees could perhaps be a norm in the international community.

By performing a legal analysis of eight relevant pieces of literature, as well as three semistructured interviews with experts in this area of study, we hope to develop a clear understanding of this case, and the implications it may have on international law. We will

explore the court's reasoning for denying Teitiota's claim, what potentially could be an area of expansion and protection for climate refugees, and what would happen if nothing in this area of law were to change.

Although the case was rejected by multiple levels of government, the impact it has had, and will have, on international law may still be of great significance. The case of Teitiota v. New Zealand is the first of its kind, both in content and publicity. While the Human Rights Committee continues to deny this case, it has not gone without any benefits. The case has pointed out some serious flaws in laws surrounding climate migration and has brought a lot of public attention to the matter. While Teitiota and his family may not be pleased with the decision made by the government of New Zealand as well as the HRC, the case has opened the door to the question of what will happen when climate change causes mass displacement and how will we protect the rights of these individuals

Literature Review

Climate change, and its potential impacts, are one of the most pressing issues in our world right now. While the list of associated impacts is an extremely long one, an emerging concern is that of 'climate refugees' - individuals whose lives are disrupted and who are increasingly feeling the pressure to abandon their place of origin due to the impacts of climate change.

This paper will use two frameworks - Constructivist Theory and Normative Theory - as lenses with which to explore and better understand this issue of climate refugees, and the legal frameworks in place which could provide them with protection. As a focus point, we will use a

current and possibly precedent-setting case, Teitiota v. New Zealand, a situation in which an individual has applied for, and has been denied, asylum on the basis of climate impact in his place of living. The use of these frameworks will highlight the complex nature of this emerging world-wide concern and explore various factors that impact international attempts to address it.

2.1 Constructivist Theory of Norm Dynamics

Throughout this research, both Normative and Constructivist theory will be applied to the case of Teitiota v. New Zealand, and climate refugees. Normative and Constructivist theories come in many different varieties and can be interpreted in many ways. However, by pairing the two together through normative constructivism, we can more effectively examine complex issues surrounding climate refugees within international law.

As stated by Marshall, in a very basic sense, normative theory alone concerns itself with what is right, wrong, desirable or undesirable within society (Marshall, 2018). E.R Winkler expanded upon this by saying that normative theory examines the most ethical ways to solve issues and applies a "plurality of approaches and ways of conceptualizing problems within the field of applied ethics" (Winkler 1998). Essentially, Normative theory is about the upkeep of norms, and how norms may be applied to solve ethical or moral issues, whether on a small, domestic scale or on the international scale. Due to the nature of the topic being examined throughout this paper, it is significant to understand how normative theory behaves within international relations. Similar to basic normative theory, normative theory within international relations attempts to explain "the nature of law" through the use of principles, morals and values accepted generally by the international community (Marshall, 2018).

According to the Second Edition of *Constructivism: Theory, Perspectives and Practices,* on an elemental level, constructivist theory refers to the construction of knowledge and learning. It examines both what one knows, but also how one has come to learn what we know (Fosnot, 2005). Within international relations, constructivist theory argues that the "the social world is one of our making", stated by Onuf (1989). Constructivist theory within international relations, as proposed by Theys (2018), examines how leading nations and peoples continue to shape and reshape our international relations through their interactions and actions (Theys, 2018)

By applying these two theories we gain a comprehensive picture on how both norms are created and reflect morals within the international community. Through the combining of these two theories into normative constructivism, we can begin to see that "the moral principles we ought to accept are the ones that agents would agree to or endorse were they to engage in a hypothetical or idealized process of rational deliberation." (Carla 2021). Essentially what this means is that in an ideal and completely rational world, the morals we would upkeep would be the ones which our international community seems as ethical. However, as we do not live in an idealized society, this is often not the case, and international law is much more complex. Regardless, this definition of normative constructivism allows us to better look at why seemingly moral changes to international law, such as that of including climate refugees under its protections, are not in action.

Through a normative constructivism lens, we can begin to see that much more than morality is needed to encourage the adoption of norms within international law. Finnemore and

Sikkink explore the concept of norms and constructivist theory in much more detail. They explain that norms are created once large international players sign on to them and socialize other nation states to do the same (Finnemore et al, 1998). While this theory of norm adoption will be examined in full later, it is essential that we situate these theories before we begin to examine the complexities associated with the debate surrounding the adoption of climate refugees.

2.2 Norm Creation and Upkeep

As brushed upon in the previous section on normative/constructivist theory, researchers have identified three steps to the creation or norms, titled the life cycle of norms. These steps are Norm Emergence, Norm Cascade, and Internalization (Finnemore et al, 1998). With the idea of climate refugees and the expansion of humanitarian law to allow climate refugees to follow these three steps, there is a far greater possibility of legal protection for those displaced due to climate change.

Norms emerge from "norm entrepreneurs" who are individuals attempting to convince a critical mass to accept a new norm. Norm entrepreneurs apply pressure to "norm leaders," who are typically nation states who hold significant power within society, with the intention of acquiring their support (Finnemore et al, 1998). Once enough support is generated as nation states acknowledge the validity of the norm brought to their attention, the norm becomes more normal.

Norm leaders then further progress by trying to socialize with other states to become "norm followers" (Finnemore et al, 1998). Once enough support has been generated, the norm reaches a tipping point. The tipping point leads quickly into the second step of norm adoption, which is the Cascade (Finnemore et al, 1998). A cascade occurs when an adequate number of nation states uptake the norm brought to them by norm leaders which causes the norm to spread throughout the international community at an accelerated speed, finalizing it as a common norm. Internalization occurs when norms are widely accepted by the international community. The norm has become so widely accepted that conformity is essentially an automatic response (Finnemore et al, 1998).

If we examine the creation of a norm such as the term 'refugee' itself, we can see that it follows this same pattern of uptake. During the rise of Nazism in the 1930's, a large number of peoples were displaced from Germany. Due to the pressure caused by the large mass of people seeking refuge (the norm entrepreneurs), countries neighboring Germany, such as France, Denmark, Switzerland, and the Netherlands (norm creators), began to take in refugees. Once these countries accepted refugees, the international community followed suit as the UNRRA created six large refugee camps in Palestine, Syria, and Egypt (norm followers).

This example shows us that there is a possibility for climate refugees to become a norm within international human rights law if enough pressure is put on norm leaders by norm entrepreneurs. If a significant amount of norm leaders were to be accumulated, a cascade effect would be experienced, solidifying the definition of a climate refugee under human rights law.

2.3 The United Nations - Policy and Influence on Climate Refugees

The United Nations is an international Court of Justice and sets the precedent on many international policies through the multiple conventions and committees which nation states sign on to follow certain policies (The United Nations. (n.d.). About Us). Because there are little to no existing norms related to climate refugees, we will now explore the tension between where we are currently situated within policy and law concerning climate refugees and where we may be heading.

The United Nations is responsible for the majority of international norms in law and policy through these conventions, as countries often sign on to these norms in order to preserve their desired outward identity and perception of others. There have been multiple attempts by the UN to create norms to address the issue of climate migration, the most influential being the 1951 Refugee Convention and COP21.

The *1951 Refugee Convention* was a multilateral treaty which defined what a refugee is and what sets of rights the individuals seeking asylum would hold. With this convention, a refugee was defined as "someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion" (The UN Refugee Agency 1951). *COP21* (the 21st Conference of the Parties) is a convention involving the world leaders working to negotiate an agreement to limit greenhouse gas emissions and keep planetary warming below 2 degrees. The agreement refers to migration and mobility and calls for States to promote the rights of migrants and respect their right to mobility (Rhodes, 2016).

Although much of our current policy is based on what was established during these conventions, there are many criticisms of its outdated nature and the lack of commitment it really received. Millbank (2000) points out that the Convention was created within, and for, another era and that its continued use creates a few problems. The definition, he states, is outdated and offers no right of assistance to refugees unless the refugee reaches a signatory country (Millbank, 2000). In addition, the UN has no way of really enforcing the policies set at the Convention, which means there is no real obligation on countries not to expel these citizens or to share the burden between their states (Millbank, 2000). This last issue seems to be fairly common across all conventions run by the United Nations. For example, during COP21, the United States, under President Trump, announced that it would be withdrawing from the Paris Agreement, regardless of the fact that they are the world's second largest emitter of pollution. The Paris agreement, however, can only encourage, not mandate, the obligations for emissions reduction (Sprinz et al., 2017). Situations such as this illustrate why it seems that the United Nations struggles to pave the way for new norms, such as climate refugees, to be created.

When we begin to examine the specific sections of the UN and how they may be able to help shape the policy for climate refugees, we see that there may be a need for reshaping of the system as a whole. Phillip Warren writes about the issue of which sections of the United Nations, if any, are best suited to address the issue of climate migration and expresses frustration with the lack of accountability within the United Nations. He has examined different policies implemented by the UN, including those developed at COP21, and states that, although various bodies of the United Nations system could likely address climate migration, there would need to be significant changes to the power allotted to the different sections of the UN (Warren, 2016).

He begins with an examination of the **General Assembly** which functions as the main policymaker and as the primary democratic body of the United Nations. However, Warren points out that the General Assembly's role is limited by its "narrow mandate in the UN Charter." (Warren, 2016). Under the Charter, while the General Assembly can discuss and make recommendations to members of the Security Council or the United Nations, these must, however, be within the scope of the Charter and related to security and international peace (Warren, 2016). He then examines the **Office of the UN High Commissioner for Refugees**, whose primary role is to provide international protection for refugees. However, in order to aid migrants, they would have to qualify as refugees under the current refugee convention definition which, as touched on before, leaves many people out (Warren, 2016).

Lastly, Warren looks at the **UN Security Council**, whose main responsibility is maintaining international peace. The council includes fifteen voting member states, five of which are permanent member states who have the power to veto the Security Council's actions. Regarding issues of climate change, the current voting member states have been consistently split, resulting in few motions being passed on the issue. While the United Nations Security Council is the only section of the United Nations who can enforce policies set by the UN, it is typically only allowed to respond to a breach of international law and threats to international peace and security (Warren, 2016). Another large influence for climate refugee policy is the aforementioned UNHCR, the committee who denied Teitiota's right for asylum after the case was brought to the United Nations. The UNHCR focuses on climate action and how we can address this growing concern. The UNHCR has publicly recognized how environmental change is a driver for refugee movements and works to support refugees in three main areas - law and

policy, operations, and by improving their own footprint (The UN Refugee Agency, n.d.). Although when Teitiota brought his claim to the UNHCR, they acknowledged the consequences of climate change on refugees, the committee decided to deny his right to asylum. It was determined that in his case, despite the severity of the situation in his home country of Kiribati, there were enough protection measures put in place for him and his family to remain there and not be in danger. The UNHCR did, however, acknowledge that the claim set forward by Teitiota "sets forth new standards that could facilitate the success of future climate change-related asylum claims" (The UN Human Rights Office of the High Commissioner, n.d.).

With a lack of accountability, cooperation, and recognition of modern dangers, it is difficult for any meaningful policies to be put in place which would address the mass movement of people resulting from the pressures of climate change while distributing the related costs and impacts in a fair way. Although there exists multiple branches of the UN which are dedicated to the protection of refugees as well as multiple conferences which have been held on the very issue, there remains very little in the way of solid policy concerning climate refugees. While various bodies of the U.N. system could potentially address forced climate migration, none of them can do so effectively without a dramatic change to their current structure, scope, and authority (Warren, 2016). The main players involved with refugee policy have much to do in order to establish parameters for effective policy that provides meaningful support for those being displaced due to climate change. Without a push from such branches and initiatives of the UN, it is unlikely that there will be any established norm for climate refugees, and consequently likely little protection for those in similar situations to Teitiota. Such a push, however, is inhibited by the currently constructed norms and behaviours that define the relationships,

interactions, and practices of member states. Change from the established and entrenched norms towards new norms that recognize and address modern and anticipated challenges is difficult.

2.4 New Zealand - Policy and Position

While it at first glance appears as though the government of New Zealand may be creating very limiting qualifications for those who may enter under the term ‘climate refugee’, it is important to understand why this may be.

A report done by Amnesty International shows that the world's richest countries, such as the US, China and Russia, are doing the least for refugees. According to this report, 85% of refugees are being hosted in developing countries, showing that wealthier countries are doing very little for the protection of the world’s vulnerable populations (Amnesty International, n.d.**)**. If the term ‘climate refugee’ was adopted, there would be an influx of migration, which would likely be shared disproportionately between countries as it is now. Smaller, developing countries would therefore be unequally and unfairly burdened with the majority of said refugees.

New Zealand is one of few countries that has begun to accept migrants under the term “climate refugee” although their conditions for doing so are specific and hard to meet. New Zealand has a close relationship with the Pacific Islands, including Kiribati where Teitiota and his family are from. Through their Pacific Access Category, New Zealand has created a permanent residency quota for 650 migrants from these areas. However, the conditions one must meet to qualify for this limited number of spots is extensive and limits who would be eligible (Higuchi, 2019).

At the same time, some islanders simply do not want to move and think that becoming a refugee should be their last case scenario. According to Dempter (2020) New Zealand, in 2017, created an experimental humanitarian Visa for those who lived on the Pacific Islands, in order to provide a way of safe migration for those being displaced due to climate change. However, after six months of this initiative, it was dropped due to the lack of interest from the Pacific Islanders, who did not wish to migrate (Dempter, 2020). For many of them, migration is seen as a last resort, and they instead pushed for the government's cooperation in the reduction of emissions and for support in mitigation efforts to address climate change concerns (Dempter, 2020).

2.5 Mitigation or Migration

Within the existing literature, there is also a large debate over whether the best way to deal with the mass migration which may result from climate change is mitigation or the increased protection for climate refugees. For example, Oli Brown emphasizes the need for the international community to fully acknowledge the issue of climate migrants. He states that while it is unclear what effect this will have, there needs to be some form of international recognition of climate migrants in order to "cement the issue on the international agenda" (Brown, 2008). Valadez has a similar conclusion to his works suggesting that by imposing "global moral obligations on self-governing political bodies" we would be making a commitment to the acceptance of refugees and recognizing the responsibilities which self-governing political communities have (Valadez, 2012).

However, other scholars such as Jane McAdam (2011) argue that mitigation efforts are being established too late to be of any meaningful help. They state that, while mitigation strategies are possible for wealthier countries, those who are experiencing more severe consequences of climate change are typically poorer countries. Such countries do not have the sufficient resources or support to create or execute programs which will push mitigation efforts fast enough to protect them sufficiently (McAdam, 2011). Migration, in their opinion, is the only realistic solution and this would mean that vulnerable peoples will be relying on the protection of the international community.

2.6 Who Holds Responsibility

An important question to ask is who holds responsibility for the impacts of climate change being felt by vulnerable populations such as that of Kiribati. While island nations such as Kiribati are experiencing the most severe impacts of climate change, they are also some of the smallest polluters in the world. This begs us to ask, if they are not responsible for the damage being done, who is, and what obligations should they hold?

Many scholars have argued that, in order to effectively adapt to the rapidly changing climate and the impacts it is having, nation states need to assume clear and specific roles (Mees et al, 2015). This must be done in order to protect those who are vulnerable, such as those living on the Pacific Islands, and who may not have the means to protect themselves (Reckien et al, 2019). An important question to ask related to this is - should responsibility for these vulnerable populations be an individual or collective effort? Mees and Driessen (2015) view responsibility as being divided among governance entities and stated that local governments hold the highest

responsibility. They argue that private entities, such as businesses and individuals, hold fewer responsibilities over climate change than governments do (Meese et al, 2015). While Reckien and Petkova agree with the general conclusion that Meese and Driessen arrived at, they emphasize the need to acknowledge the vulnerability of different social groups. They argue that adaptation cannot be seen as a "one size fits all" issue and must be specific to the group in question. In addition, they say, their persecutors need to be thought of in a similar manner (Reckien et al, 2019).

A paper written by Baslari, Dresser and Leaning echo the findings of Reckien and Messe and the international community about the need to create a body of the United Nations dedicated to the issue of climate change. They state that, unless larger governments step up and accept responsibility for migrants, millions will be displaced due to climate change and it will be impossible to provide them all with protection. Bayes (2017), however, took a different, qualitative approach when examining the question of who holds responsibility when it comes to climate change. Bayes organized their paper "around three distinct aspects of dealing with extreme climatic events – vulnerability as part of making the preparedness and response process fragile (past), climate change as a hazard driver (present) and rehabilitating the climate refugees (future)." Using these parameters, they calculated which country produces the most CO2 per capita and who had the largest impact of displaced peoples. They then used this equation to determine which country should accept the most refugees and found that Australia should be responsible for taking in the greatest number of refugees, followed by the US, then Canada, Saudi Arabia, and so on (Balsari et al., 2018).

The main commonality between the relevant literature on who holds responsibility for the impacts being experienced by vulnerable populations is the view that it is an international issue. Due to this, it needs to be dealt with in partnership between large nation states and the United Nations. Also, each case will be unique, so it is important that they are dealt with as such and not all handled in the exact same manner. Balsari, Dresser and Leaning provide an interesting take on this issue, calling out specific countries and suggesting we hold them by different standards due to the impacts they are having on our environment. Regardless, it is necessary that the international community take responsibility for the effects of climate change and take necessary steps to ensure that vulnerable, low polluting nations are protected.

2.7 Conclusion

As mentioned earlier, it appears that we are mired in a clumsy transition from established norms of identity and behaviours that were created in another era to a world having newer norms that recognize and address modern challenges. This transition is made more difficult by the increasing complexity of the issues to be addressed as well as the apparent reluctance of those with greater means and power to take the lead and possibly the lion's share of the effort needed.

Methods

Multiple methods of research will be used to examine the case of Teitiota v. New Zealand and whether it will have significant impacts on international refugee law moving forward. Firstly, a review of relevant literature was done, followed by a legal analysis of eight relevant documents. This was done to organize the facts already known concerning this case and its impact on international law and create a deep understanding of both the case and its implications.

This research was done through a normative constructivist lens. This was done in order to understand not only the creation of norms in international law, but also how these norms are upheld by the international community. Finally, interviews with three experts in this field of study were conducted to inform the gaps discovered through both the literature review as well as the legal analysis. The interviews as well as the papers used for the legal analysis were coded using Nvivo to identify the common themes through each and organize them in order to create a thorough understanding of the implications of this case.

3.1 Literature Review Rationale

In order to obtain the relevant information concerning the future of climate refugees within international refugee law, this study will use a scoping review to analyze relevant literature. A scoping review refers to an approach of evidence synthesis in which an overview of relevant literature is done without attempting to produce an answer to the research question at hand. A scoping review is often used to examine key concepts of literature, identify types of evidence, look at how research is done in a field, and analyze gaps in the available knowledge (Munn et al., 2018). This is beneficial to this research as it will illuminate the complexities of the climate refugee issue and provides insight into various perspectives of the matter. A scoping review is beneficial when looking at characteristics of certain fields, which will help this research uncover similar characteristics between this case and other similar refugee law cases (Munn et al., 2018). This will be conducted in a qualitative framework as we will be examining the content of text regarding climate refugees and the case study we will be examining, rather than any numerical content it is related to.

3.2 Legal Analysis

An analytical legal research approach was conducted of eight relevant papers. This is a qualitative research approach which involves the assessment of information relative to the research being conducted. These papers spanned court documents and notes from the case, as well as research pieces published by scholars. This research approach was chosen in order to find the most relevant literature, and compile it together, along with new applicable details in the interest of gaining a sufficient understanding of this case.

3.3 Analytical Framework

Both theories, constructivist and normative, will be incorporated into the research methods of this paper. Constructivist research emphasizes interviews and observations for data collection, as its theories focus on the experience of the individuals. This would highlight the perspectives of Teitiota and his family, the members of the UNHCR who will be interviewed, as well as the viewpoints of other experts within this field. Normative theory will be incorporated into the methodology as there will be an emphasis on the norms and values of each international actor and their approaches to cultural change. Using normative theory, there will be a better understanding of the gap between the rules within international refugee law and what is supposed to happen, and the norms, meaning what actually does happen.

3.4 Data Collection

There will be an emphasis during the scoping review to identify the gaps in relevant research. In order to identify gaps in the available literature, this research will follow the six form

of research problems identified by Jacob (2011). This includes *Provocative Exception, Contradictory Evidence, Knowledge Void, Methodological Conflict, and Theoretical Conflict. Provocative Exception* refers to research findings that contradict widely accepted conclusions. *Contradictory Evidence* is closely related to *Provocative Exception*, in that "if results from studies allows for conclusions in their own right but are contradictory when examined from a more abstract point of view". *Knowledge Voids* simply refer to cases where knowledge may not exist in the field of study, but similar research may exist in a related field and can be translated to benefit that which is lacking research. *Methodological Conflict* refers to situations where the methodologies of research are conflicting and do not create a basis of understanding for the research issue at hand. Finally, *Theoretical Conflict* is when one phenomenon is "being explained through various theoretical models" meaning that these theoretical models may conflict with one another, creating confusion in the research.

By using Jacobs model of research problems, the gaps in literature surrounding climate refugees, and the case of Teitiota V. New Zealand will be clearer to not only identify but organize and explain. This is necessary when thinking of how data will be collected and used to create questions meant to fill these gaps.

3.5 Data Storage

In order to store and sort this data, NVivo will be used. NVivo stored the literature chosen to be included in this research and aided in the sorting of said literature by reoccurring themes in the literature. Through the creation of themes and codes (meaning the specific characteristics of each theme above and then the definitions of these characteristics), NVivo will

allow specific passages from relevant literature to be sorted into these categories. This is done in order for the data to be analyzed and organized in such a way that will allow the gaps to be identified much more easily.

3.6 Case Study Rational

The case of Teitiota V. New Zealand will be examined through an illustrative case study in order to more thoroughly understand the significance of the case. An illustrative case study examines an event in great detail to illustrate what it looks like, and to make an unfamiliar problem familiar. Teitiota V New Zealand is a unique case, not only in its content but also in its media coverage and is one of the first documented cases of a claim for asylum under the term 'climate refugee' that was brought to the United Nations for consideration. The case has already begun to make the term climate refugee more familiar to the public, however much of the complexities with refugee law are still very unknown. This case has brought about much discussion about climate refugees and their place in international refugee law. It brought the issue of mass movement to the attention of the public and created a space for discussion about where this could lead us in the future.

Moreover, by examining one case, this research will have a mode of comparison between other similar cases and the policy concerning such cases, specifically refugee policies. This will allow for a better understanding of the path this case is on, and how it may make a difference in international law, or what may need to take place for it to follow other similar cases that created change in policy.

3.7 Interviews

Three interviews will have been conducted for this research with scholars in the field of international law and refugees. These interviews benefited the research as they filled in gaps found in the relevant literature. Due to the early stages of climate refugee law, it is difficult to find literature that may answer all uncertainties surrounding the subject, therefore having experts speak on the subject in an informal setting will be the greatest benefit. The specific interviewees include Mark Baker-Jones, director of *Te Whakahaere,* Aotearoa New Zealand's only climate advisory firm. Baker-Jones is a lawyer who has worked as a climate policy advisor to the Australian Government. Avidan Kent has also been chosen for an interviewee. He is an Associate Professor in International Law at the University of East Anglia. He is also the founder of Covenor of UEA's International Law Research group, and has researched topics spanning from international environmental law, International Courts, and Climate-Induced Migration. Lastly, Ivanka Bergova was selected as an interviewee as she is a professor in the Political Science Department at Georgia State University. Bergova a Ph.D candidate, writing her dissertation on the topic of climate migration and climate refugees, focusing on immigration law and policy.

The interviews are semi-structured in order to allow for specific questions to be asked but also to create space for personal opinions to be provided as well. The interview questions will be influenced by the gaps found in the document analysis and the interviews will attempt to fill the gaps identified.

3.8 Conclusion

In order to examine the impacts of the Teitiota V. New Zealand case on international refugee law, multiple research methods will be used. Firstly, a review of relevant literature through a scoping review structure, followed by a case study, both of which will help identify the gaps in relevant literature and research. These identified gaps will influence the questions asked during interviews, which are aimed at adding relevant information into the discussion.

Results

4.1 Current International Refugee Law Status

Since the case of Teitiota v. New Zealand began in 2015, there have been no legal changes to either the definition of a refugee or to international norms on the acceptance of climate refugees. However, there has been international recognition of the validity concerning the impacts of climate change on human livelihood and on the legitimacy of climate refugees in general. For example, McAdam points out that

> In late 2019, the United Nations Human Rights Committee accepted, in principle, that it is unlawful for states to send people to places where the impacts of climate change expose them to life-threatening risks or a risk of cruel, inhuman, or degrading treatment (McAdam, 2020).

Regardless of this acknowledgment by international bodies, tangible legal change is not . likely to happen without further pressure. Whether this be from further conversation surrounding this issue or from an influx in climate induced movement, international refugee law will continue to follow the restrictive definition of a refugee set out in the Refugee Convention.

4.2 Hindrances Within the Context of the Case

Through the research conducted, there have been a few hindrances which have been identified in the Teitiota v. New Zealand case as well as an understanding of why it was not accepted by New Zealand courts or the UNHCR high court. One main barrier as to why the court did not accept the claim put forward by Teitiota concerned the ongoing efforts being made by the government of Kiribati to combat the impacts of climate change. An issue with the current legal refugee framework is that climate refugees can only be protected under current law if their own government is not employing appropriate mitigation efforts to combat the impacts of climate change (International Covenant on Civil and Political Rights, 2012). There are very few places, if any, whose government would allow them to suffer without any intervention. This includes the government of Kiribati, who have been attempting to mitigate the impacts of climate change through sea walls, government water purifying plants, and investing into mitigation projects (Government of Kiribati, 2019). However, no matter how many adaptation efforts they adopt, it is unlikely to reduce the severe impacts Kiribati has been experiencing such as inundation, land and resource loss, and increased violence. PHD candidate Ivanka Hristova Bergova stated that:

> There's only so much that you can do to assist the island as it is only several meters above water. If we continue to have the same sort of impact that we have had on our environment and the climate in, say, 10 years, it does not matter how many resources you pour into the island and the government, water is still going to be an issue, the lack of clean water is still an issue, the fact that sea levels are rising is still an issue (Bergova, 2022)

However, due to the fact that the island of Kiribati will be largely uninhabitable in 10-15 years' time (McAdam, 2020), the High Court has stated that this is a sufficient amount of time for the government to make necessary changes to aid the citizens experiencing impacts of climate change (International Covenant on Civil and Political Rights, 2012).

Another hindrance of the case put forward by Teitiota's lawyer Michael Kidd was the lack of physical violence being experienced by Teitiota and his family on their island. While claims have been made through testimonies concerning the violence being experienced on the Pacific Islands, it has not been deemed substantial enough to warrant legal interference (Bergova, 2021). One testimony given by John Corcoran, a doctoral candidate conducting research on climate change in Kiribati, stated that unemployment was high within South Tarawa. Moreover, the population of the island had increased from 1,641 in 1947 to 50,000 in 2010 (International Covenant on Civil and Political Rights, 2012). Corcoran also stated that this influx in population alongside the scarcity of land had caused social tensions to rise, increasing the number of violent fights which occasionally lead to injury or even death (International Covenant on Civil and Political Rights, 2012). Regardless of the claims made by Mr. Teitiota himself as well as the testimony given by Mr. Corcoran, the courts did not accept this as sufficient evidence of lifethreatening violence and therefore it was not sufficient in supporting Teitiotas claim (International Covenant on Civil and Political Rights, 2012).

Another hindrance to the case comes from the claims made by the High Court that Mr. Tietiota did not supply sufficient evidence that his livelihood would be impacted due to poor living conditions in Kiribati (International Covenant on Civil and Political Rights, 2012). Teitiota claimed that his family was suffering from reduced quality and quantity of clean drinking water which was negatively impacting their physical health (Bergova, 2021). One of Teitiota's children even developed a serious blood poisoning due to the presence of a foreign bacteria in his body, which caused boils to appear all over his skin (International Covenant on Civil and Political Rights, 2012). Regardless of this, New Zealand as well as the High Committee found that

Teitiota's claims were without merit and insufficient in the eyes of international refugee law (Bergova, 2021). Concerning the lack of portable or clean water in Kiribati, the UNHCR stated that Mr. Teitiota needed to show that

> the supply of fresh water [was] inaccessible, insufficient or unsafe so as to produce a reasonably foreseeable threat of a health risk that would impair his right to enjoy a life with dignity or cause his unnatural or premature death (International Covenant on Civil and Political Rights, 2012).

While what was communicated by Mr. Teitiota and his lawyer Michael Kidd at the time was not seen as sufficient, further research concerning water quality on the Pacific Island has been done and has shed further light on its absence. For example, Kiribati has three main water sources, boreholes, rain, and water from a government purifying center (Save Kiribati, n.d.). Most boreholes and groundwater are contaminated due to human waste and rainwater collection is sparse due to a lack of resources. Moreover, it is quite expensive for individuals to connect to the clean water supply in Kiribati, leaving very few other options for citizens to access clean drinking water (Save Kiribati, n.d.). The World Bank has recognized the lack of clean drinking water in Kiribati and, in 2019, approved a US$15 million plan to support the government of Kiribati to strengthen the clean water supply (The World Bank, 2019). However, the plan is expected to be completed in 2027, which seems insufficient when paired with the estimated 10–15-year timeline of Kiribati's inhabitability (The World Bank, 2019).

4.3 Normative/Constructivist Theory in Relation to the Case

Normative and Constructivist theory, as previously mentioned, are used in unison in this legal analysis in order to have an understanding of how norms are created as well as upheld.

Norms are created in three main steps - *Norm Emergence*, *Norm Cascade*, and lastly *Norm Internalization* (Finnemore et al, 1998). These definitions will be explored further shortly. However, what is important to note is that norms are adopted when many nation states recognize the legitimacy of the norm being created. For the case of climate refugees, while there may not have been any legal changes due to the case of Teitiota v. New Zealand, there have been changes in the social awareness of climate refugees.

Developments outside of international law bodies such as the UN, UNHCR, or IOM have occurred in the hopes of providing climate refugees with some form of protection. For example, Humanitarian Visas are now being examined as a possible way forward in the protection of climate refugees after New Zealand attempted to do so in 2017 (Randall, 2017). As we can see, social awareness concerning the issue of climate refugees creates greater likelihood that laws will eventually shift to reflect the concerns of the general public. The case of Teitiota v. New Zealand was one which obtained quite a lot of the public's attention, perhaps due to its popularization in 2016, an interesting time in, specifically, American politics. Due to the enforcement of the Paris Agreement, as well as an increase in natural disasters which occurred in that same year, the mindset that climate change would be a future issue rather than an issue which called for immediate attention changed. People became more aware of the immediate impacts of climate change due to the record-breaking global temperatures, and the disasters that came along with them. This change in public opinion, mixed with the political climate perpetuated by former President Trump, created an opening for a more serious conversation concerning the impacts of climate change on our planet, as well as the start of a new norm. Ivanka Hristova Bergova expanded upon this during our interview, stating that:

> It was also at that critical time where climate change was a really big thing along with Trump's presidency... with him pulling out of the Paris Climate Agreement. So, at that point in time, it was really sort of a perfect storm to give attention to the plight of people that were facing climate disasters. And the case kind of blew up from there coming from the High Court, sort of affirming what the administrative agencies in New Zealand said that, you know, this individual, this family did not really qualify for asylum. Interestingly, when you look at the decisions, and the arguments for those decisions, they are essentially saying, we sort of recognize the climate change can lead a person to seek asylum, but because of the way things are defined in international law, it sort of has to be this complex calculation of what other factors may need to be present in order for this person to receive asylum in New Zealand (Bergova, 2016).

Although to date no legal changes have been made, we should not discount the power of awareness. The simple fact that this case has become popularized in the media and is being examined by many scholars and researchers is an improvement and creates some of the pressure necessary to influence larger-scale changes. It is conversation and awareness that tend to create change, as once the public is concerned about an issue it pushes our governments to adapt our laws to represent the public's needs, as previously stated.

4.4 Refugee Law or Human Rights Law – A Possible Path Forward

If the definition of a refugee is unable to be adapted to the changing forces behind immigration, then we must examine which other bodies of our legal system could potentially expand to include climate refugees. The concept that perhaps instead of attempting to change or update refugee law to include climate refugees, human rights law could be expanded to provide them with protection was brought up during an interview with Mark Backer-Jones. Refugee law, as previously touched on, is a section of human rights law in which the protection nation states need to provide to refugees is outlined (Nicholson et al, 2017). For the case put forward by Teitiota, this was an obstacle, as the state of Kiribati was attempting to mitigate the impacts of

climate change, whether successfully or not. Due to the mitigation efforts being made by the state, Teitiota could not legally be considered a refugee, as previously established.

Human rights law, however, establishes obligations which states should respect once they join parties to international treaties. Human rights law is more general and already encompasses refugee law, allowing for potential expansions to be made. Moreover, human rights law encompasses the definition of non-refoulement which, as previously established, requires a state to not send individuals back to their country of origin where they could be exposed to cruel, inhuman, or life-threatening treatment (Nicholson et al, 2017). The already established existence of the non-refoulement principle creates an opportunity for it to be applied to climate refugees in future cases in a more legally binding legitimate sense. As well as this, human rights law states that individuals must have access to clean water and adequate housing, two things which were brought up as concerns for Teitiota and his family were they to return to Kiribati. It was stated by Burson et al., that

> Regional human rights courts and the UN treaty bodies recognize positive duties as an inherent part of a wide range of human rights beyond the right to life, including the right to protection of the family and private life, the right to security of the person, the right to property, as well as the rights to adequate food, housing, and education (Burson et al, 2018).

This provides further framework for potential change if enough pressure were to be applied to governments to encourage this to take place. An existing example of the potential for human rights law to provide protection for climate refugees comes from the Immigration Act of 2009, which allows for “appeal against liability for deportation on exceptional humanitarian grounds” (Baker-Jones, 2015). While this act may appear to be insignificant, it further shows us that there is room for the expansion of protection for climate refugees within human rights law.

Moreover, another example previously examined are the Visas being provided to citizens of the Pacific Islands by the New Zealand government. While these Visas were not intended to be for climate refugees, they do provide individuals looking to migrate away from the Pacific Islands with a viable opportunity to do so. This program is run through under Human Rights law rather than refugee law, which emphasizes the fact that this may be the more viable area of law which can be expanded to protect climate refugees in the future (Randall, 2017).

Another pressing question when thinking of potential expansion of humanitarianism is who holds the responsibility once a policy has been adapted and whether it would be enforced internationally or domestically. Due to a general lack of framework provided by the international community concerning the treatment of climate refugees, this would allow further room for human rights laws to be applied to climate refugees. While this could prove to be another obstacle for the protection of climate refugees, if the protection and acceptance of climate refugees were to become a norm, this would allow domestic governments greater selfdetermination regarding how they would like to handle climate refugees.

4.5 Norm creation and upkeep – Re-examining normative/constructivist theory

As brushed upon in the previous section on normative/constructivist theory, researchers have identified three steps to the creation or norms, titled the life cycle of norms. These steps are Norm Emergence, Norm Cascade, and Internalization (Finnemore et al, 1998). With the idea of climate refugees and the expansion of humanitarian law to allow climate refugees to follow these three steps, there is a far greater possibility of legal protection for those displaced due to climate change.

Norms emerge from “norm entrepreneurs” who are individuals attempting to convince a critical mass to accept a new norm. Norm entrepreneurs apply pressure to “norm leaders,” who are typically nation states who hold significant power within society, with the intention of acquiring their support (Finnemore et al, 1998). Once enough support is generated as nation states acknowledge the validity of the norm brought to their attention, the norm becomes more normal. Norm leaders then further progress by trying to socialize with other states to become “norm followers” (Finnemore et al, 1998). Once enough support has been generated, the norm reaches a tipping point. The tipping point leads quickly into the second step of norm adoption, which is the *Cascade* (Finnemore et al, 1998). A cascade occurs when an adequate number of nation states uptake the norm brought to them by norm leaders which causes the norm to spread throughout the international community at an accelerated speed, finalizing it as a common norm. *Internalization* occurs when norms are widely accepted by the international community. The norm has become so widely accepted that conformity is essentially an automatic response (Finnemore et al, 1998).

If we examine the creation of a norm such as the term ‘refugee’ itself, we can see that it follows this same pattern of uptake. During the rise of Nazism in the 1930’s, a large number of peoples were displaced from Germany. Due to the pressure caused by the large mass of people seeking refuge (the norm entrepreneurs), countries neighboring Germany, such as France, Denmark, Switzerland, and the Netherlands (norm creators), began to take in refugees. Once these countries accepted refugees, the international community followed suit as the UNRRA created six large refugee camps in Palestine, Syria, and Egypt (norm followers).

This example shows us that there is a possibility for climate refugees to become a norm within international human rights law if enough pressure is put on norm leaders by norm entrepreneurs. If a significant amount of norm leaders were to be accumulated, a cascade effect would be experienced, solidifying the definition of a climate refugee under human rights law.

Discussion

5.1 Expansion Likelihood

While possibilities for legal expansion seem to exist within Human Rights Law, the most pressing question seems to be how likely this expansion really is. There are a few primary reasons we can point to when thinking about why expansion is unlikely. As outlined in a paper written by Avidan Kent and Simon Behrman the issues experienced by Teitiota were simply not unique or drastic enough for immediate intervention by the Human Rights Committee.

The first possibility of protection seen under Human Rights Law is held within the principle of *"non-Refoulement"*. The principle of non-refoulement states that a country must avoid "the forcible return of refugees or asylum seekers to a country where they are liable or subjected to persecution" (Behrman et al, 2020)**.** However, under Human Rights Law, the issues facing Teitiota and his family do not qualify as persecution. This is due to the fact that the exact same situation is being experienced by numerous others throughout not only the world, but specifically the island of Kiribati. The Tribunal argued that Teitiota did not show the courts sufficient evidence that "his situation was materially different from that of every other resident of Kiribati" (International Covenant on Civil and Political Rights, 2012). This posed a large issue with the inclusion of climate refugees within Human Rights Law, as it still requires some form of

persecution if one is to receive asylum. While Teitiota and others may claim that he and his family were experiencing persecution due to climate change, this is legally not accepted. Climate change does not necessarily impact one family different from another who live in the same area, and while both may be experiencing negative impacts, one family cannot be referred to as a climate refugee while the other does not hold the same title. While it could have potentially been argued that the entirety of Kiribati was in need of asylum, this was not feasible as many residents had no intention or want of migration.

Another large reason as to why an expansion into humanitarian law may not be feasible is the timeline Kiribati has been given for habitability. Kiribati is assumed to be uninhabitable within the next 10-15 years, which was deemed as too far into the future and too speculative to require immediate action (McAdam, 2020). While efforts have been made by the government of Kiribati, the government of Kiribati also purchased a section of land in Fiji due to the failure of some of their mitigation efforts (Pala, 2021). While this land is currently intended to provide an extra source of food for the peoples of Kiribati, Anote Tong, the president of Kiribati at the time, stated that they were “looking for a place that could hold 60,000 or 70,000 people (Pala, 2021). Regardless, the Human Rights Committee asserted that the timeline given to Kiribati allows time for Kiribati, with the assistance of the international community “to take affirmative measures to protect and, when necessary, relocate its population” (Lyon, 2020). This raises further questions about whether the possibility of something warrants the suffering of those struggling. While there may be a possibility that the government of Kiribati and the international community may find mitigation solutions for the impacts of climate change, should a family's wish to relocate depend on this?

Moreover, the question of "if not this case, then what" is still left unresolved. If the Human Rights Committee acknowledges the impacts climate change is having on communities, and that there is a great likelihood of climate induced migration in the future (International Covenant on Civil and Political Rights, 2012), why does this case not warrant this protection? According to Teitiota, his family, and testimonies, Kiribati is experiencing a lack of clean drinking water, the land is being destroyed by erosion and floods and is largely unable to be used for agriculture, as well as a lack of space for residents (International Covenant on Civil and Political Rights, 2012). It was also stated by the Tribunal that, in contrast to what was being said by Mr. Teitiota and his wife, there was no evidence provided to show that there was a prospect of death for the family (International Covenant on Civil and Political Rights, 2012). However, a report done by UNICEF states that, due to the impacts of climate change on the island of Kiribati, there will be a considerable impact on women's and children's rights. The same report also outlines the fact that Kiribati has the highest child mortality rates in PICTS group, and "has not been able to meet international child mortality reduction targets" (Anderson et al, 2017). Moreover, since being deported back to the Pacific Island, one of Teitiotas children has developed a blood poisoning, assumed to be from the lack of clean drinking water (International Covenant on Civil and Political Rights, 2012). This further questions the decision of the court and begs the question of what else is necessary for an individual to experience before they are offered the protection they seek under Human Rights Law. This sentiment was echoed by Avidan Kent during our interview, as he stated

> They don't know if they have a future there or not. The case described extremely difficult life conditions, showing up in lack of territory... it's very crowded, no water... He describes a very, very, very difficult life condition. I think it's ridiculous that they think that this is not enough to reach the threshold that is required for the protection of the right to life, because the right to life is not just having a roof over your head. It's much wider than that (Kent, 2022).

5.2 Mitigation vs. Migration

Throughout interviews, the question of mitigation vs. migration was brought up in order to develop a more thorough understanding of what scholars in this field may suggest as a possible path for moving forward. The general consensus between the scholars was that it is a very individual issue and needs to be dealt with as such. For example, the experience of the IKiribati peoples is unique to them and will not be the same as those who are experiencing climate impacts in other countries. These peoples also have different wishes for what will happen to them and, as previously stated, some view migration as a last resort. It is complicated further by the lack of resources and aid that many of these vulnerable nations have and the option of mitigation may be an unlikely solution.

Ivanka Bergova, however, is of the mindset that, although it is not our decision and should be in the hands of the individual, we do not currently have the proper resources to effectively mitigate the impacts of climate change. She explained that, due to this unlikelihood, other nations should step in and be prepared to provide assistance when the time comes. During the interview she stated that:

> At this point in time, I don't think we're able to move very far away from it, unless there's something absolutely revolutionary in terms of energy… If there's something that comes out on the market in the next four or five years, I think, there's a lot of potential in helping these island states mitigate the damages that they're experiencing. That sort of on the global scale. More narrowly, it in terms of the region, I think I'm of the opinion that it would be a good idea for other countries like Australia and New Zealand to think about allowing visas for people from those countries and investing in the education centers in those countries. Many of them migrate to New Zealand or Australia as seasonal workers, [and] are usually unskilled workers. There is a very big deficit in an education, and just allowing them to get that education and actually migrate back and forth or be a temporary worker or seasonal worker, that could also be a really good way to assist them. But it's, it's a really loaded question (Bergova, 2022).

In a similar vein, Avidan Kent explained that he believes that we really have no place in deciding what these vulnerable peoples may want or need. He explained that, although we should be prepared to accept them, it is far too complicated of an issue for the international community to assume what is best for them. He explained that:

> You really need to look at every in each island or coastal area and decide whether, physically, it's doable, whether physically, you should invest in adaptation or in migration. So, there is no one answer for this. It's really site specific. It really is a technical question. And each area should be addressed very specifically, there is no "one solution fits all". Many of the Islands will tell you "No, this is our ancestor's area, this is where we were born. Our families, our ancestors are all from here, our culture is embedded in this place, we're not moving". And rightfully so I think. They would be assimilated into other cultures, communities, and the old cultural structure might break, the old language, education… It's not an easy thing to do. So, I cannot bring myself to tell them you need to migrate. We don't have the rights to tell anyone whether they should do mitigation [or] adaptation, it's not going to happen. What we must do, though, is to facilitate options.

What we can see from this is the importance of providing these vulnerable populations with options and allowing them to choose what may be best for their well-being. While cases such as these require special and unique attention, the international community must not assert complete authority. Ultimately, the decision for whether or not the peoples of I-Kiribati wish to migrate must be left to them. However, it is also important that we do not base the decision of one individual on the decision of another. For example, one argument which was made by the High Court against Teitiota's migration, was that others from Kiribati were experiencing the same impacts yet did not wish to migrate. This creates a difficult issue moving forward as it should not be an "all or nothing" decision and each individual must be able to choose what will be best for them.

5.3 Who is Responsible - Revisited?

As previously examined, there has been quite a lot of speculation regarding who holds responsibility for the damage which has been done to Kiribati. While climate change itself was the cause of what happened in Kiribati, it is known that humans have a large impact on the increased damages which are being caused by climate change.

Kiribati itself is only responsible for 0.6% of the world's greenhouse gas emissions (IBERDROLA, n.d.), however as we have seen throughout this report, they are experiencing some of the most severe impacts from climate change. Large nation states produce much more than these small island nations, however experience much fewer consequences and side effects from this (Clark, 2002). For example, The United States are responsible for 28% (EESI, 2018), however they are not experiencing anywhere near the same impacts from these emissions as those who inhabit the Pacific Islands. Moreover, these larger nation states, despite their emissions, are likely not the ones who will be accepting migrants when the time comes for IKiribati people to migrate away from the Pacific Islands. Developing and poor countries have been shouldering the burden of the refugee crisis for years and continue to do so. While poorer countries tend to produce the most refugees, sitting at approximately 86%, they are also the ones who accept the highest percentage of the world's refugees, providing asylum to approximately 72% of them (Clark, 2002). This causes the burden of hosting displaced people to be put back on the countries who are experiencing the most emigration, rather than distributing the burden equally through industrialized countries. This seems to be the pitfall of Human Rights Laws, as those who are already vulnerable seem to be bearing the brunt of the impacts of the refugee crisis and will likely continue to do so without much protection from our international community.

This is the difficulty with climate change, as it leaves much unknown about the scale of its impacts, but also who should be held responsible for said impacts, as it is worldwide phenomena, even if some countries are experiencing it more firsthand right now. In their paper *The Teitiota Case and the limitations of the human rights framework***,** Avidan Kent and Simon Behrman summarize this complex issue by saying:

> Human rights have developed precisely out of the need to protect people from these types of behaviours, otherwise the need for them would not arise in the first place. But this is what makes the effects of climate change novel. We are not dealing with harm that has been intended; at worst, it has been recklessly caused. Moreover, the perpetrators are not so easy to identify, at least not on an individual basis (Behrman, 2020).

Where this leaves us is unclear. If the international community is not able to point out perpetrators of climate change in order to hold someone accountable, who holds responsibility for those who are being so severely impacted by the pollution happening largely in other countries? The notion of responsibility when it comes to countries taking ownership of environmental degradation requires that a nation be culpable before they bear responsibility for any harm. This leaves very little room for any pressure to be put on high-emitting countries to aid those countries most severely impacted by their emissions. Without a legal change which views high-polluting countries as responsible or culpable, it is unlikely that they will be held accountable. Once again, a re-framing of our legal stances is necessary to make impactful change. This leaves very little room within international law for change to occur, so it will likely be pushed to domestic law and left up to individual governments to decide what support they will or will not provide to those suffering from their emissions. In his paper, Mark and Melanie Baker-Jones address this complex issue, stating that

> Mr. Teitiota's argument is that the world's carbon emitters are his persecutors. While agents of persecution may be state as well as non-state actors, states that emit greenhouse gasses do so typically to advance their own economic development, not to cause direct

> negative impacts on other states… It therefore cannot be valid to say that Mr Teitiota had suffered some indirect form of persecution because climate change is caused by humans (Baker-Jones, 2015).

5.4 What Will Happen with No Change

Due to the difficulties that exist concerning the adaptation of Human Rights Law to include climate refugees under its protection, and the limited possibility of expanding the standing definition of a refugee, it is important to think about what will happen if no changes are made and climate refugees are not recognized under international law.

Due to the fact that climate change is a conflict multiplier (Brown, 2009), there is a very real likelihood that by doing nothing in international law for climate refugees, they will eventually fit into the current definition of a refugee. As aforementioned, increased violence has already been reported on the island of Kiribati by John Corcoran, due to the scarcity of land and resources. It has also been shown that South Tarawa, where Teitiota and his family currently reside, are experiencing especially high social tensions. This seems to be due to the fact that over 40,000 people are living on only 15km of land, while also experiencing the impacts of limited drinking water and improper waste management (Ketchoyian, 2011).

South Tarawa is one of the most densely populated islands amongst the 33 which are encompassed in Kiribati (Ketchoyian, 2011). The likelihood of further violence will seemingly increase within the next decade, as the continual rise of sea levels as well as the reduction of rainfall predicted by scientists will further negatively affect the land of South Tarawa, and the entirety of Kiribati (Ketchoyian, 2011). Not only would sea level rise decrease the already scarce land which presides in Kiribati, but a lack of rainfall mixed with storm surges will likely

contribute to further salt contamination of fresh water and crops (Ketchoyian, 2011). Due to all of these impacts, the increase in violence is eminent, meaning that the people of Kiribati will finally experience sufficient persecution to be categorized as refugees.

While this alleviates the pressure for the international community to adapt to the changing world and expand either refugee or human rights law to include climate refugees, this brings little hope for Teitiota and his family. Teitiota and many others will likely live in dangerous and potentially life-threatening conditions until conditions are deemed bad enough and they warrant protection under refugee law, which is little comfort to them. While the conversation which this case has started is incredibly important, it does not seem to outweigh the negatives associated with leaving these people in a country where they feel as though their livelihoods are being threatened. Without more immediate actions by our international community, it is a concern that these individuals will suffer greatly and be provided with little to no support until their situation is bad enough that attention is paid.

5.5 Gaps in Literature

The complexity of this case and the conversation of climate refugees is remarkable. While many questions lie within the policy surrounding climate refugees and where they may find protection, there are many questions that have still been left untouched.

A large one which was brought up by former Kiribati president, Anote Tong, when speaking of whether or not the I-Kiribati people could migrate to the land purchased in Fiji concerned that of citizenship and rights if they were to mass migrate (Doyle, 2014). The international community has never seen an entire population move to another nation in modern

times, and similarly to the issue of climate refugees, and it is legally ill equipped to deal with such an event. If an entire population were to leave their country of origin and move to another nation-state, would they keep their cultural identity, or would they assimilate into that of where they migrated too? While these are not issues we have solutions to yet, the conversation has been started, and there have been ideas for mitigating this impact. During the interview with Avidan Kent, he explained that:

> From the legal point of view, we need to establish some sort of compensation mechanism to maintain or develop the law that they will keep the rights over the same maritime territory, even if the islands are no longer there. Even if the state is no longer there, you need to think about securing their cultural rights wherever they go to. So, these are all the things that you will have to think [about] and you will have to plan (Kent, 2022).

On a similar page, another fascinating question also brought up during the interview with Avidan Kent lies in the waters surrounding the Pacific Islands, which account detrimental to the economy of Kiribati, as it is a source of income for both the economy and many individuals. Were the people of Kiribati to migrate once the land becomes uninhabitable, the ownership of said waters would be brought into question. While they would have once belonged to the government of Kiribati, if the land no longer exists, would their claim to the water be nullified? Kent explained the severity of this issue, saying that:

> This is a lot of money, the fishing rights, exploration for resources rights, this is a lot of money. But once and if it happens, if the islands are going underwater, and you are moving all the people away from there, these islands will no longer legally be considered as states... All these people, they don't just lose their homes, they also lose a lot, a lot, a lot of resources (Kent, 2022).

The final main gap in our current understanding of expanding law to include climate refugees resides in the fact that if there were to be changes, it would likely be on a domestic level. Were this the case, the interpretation of laws will vary between countries, and many will likely not

create policies which welcome climate refugees openly. Within the current definition of a refugee, many countries do not accept them as frequently as may be necessary, especially developed countries. Many of the criteria for accepting a refugee are based on their economic benefit to one's nation, which creates barriers for those who do not have transferable skills which would fit into the host country's economy. If a mass migration were to happen with climate refugees, this would be a common theme. Many individuals from Kiribati do not have the education or skills which would be beneficial to the workforce of accepting countries, and therefore countries may not view these individuals as investments, and rather as burdens. As Ivanka Bergova stated in our interview:

> They're extremely strict with who they want to accept in the country. And yet they don't. It's a really big issue for them. And they've been cutting away at asylum rights and refugee rights, or asylum and refugees. Anything to do with that they've been cutting away for three decades at this point. So, the idea of letting in climate migrants is maybe not that appealing to certain officials in certain governments (Bergova, 2022).

To accept a migrant, you must be willing to provide them with some form of financial security. If a country were to accept many migrants, it would cost quite a large sum, which many of the developing countries who have been accepting these migrants thus far do not have. Therefore, unless there was some form of structure set by the international community concerning the acceptance and support of climate refugees, it is extremely unlikely that nations will offer up these supports without further pressure. Kent stated during our interview that

> Migration is very, very expensive... You need to give them resources, they need shelter, they need education, they need health [care], these are not cheap things to provide. It's not only for them to pay for the migrants, but also for the countries that are hosting them to provide. And this is implying a certain compensation mechanism that I argue in many places that need to be created (Kent, 2022).

What Kent is stating seems to hold a lot of truth. The common theme throughout all of the issues associated with, not only this case but climate refugees in general, is the lack of and need for legal frameworks nations must follow. Unless the international community takes the necessary steps and proactively plans for the inevitable mass migration, many of these concerns will be left until the last possible moment to be dealt with. To summarize the implications that are associated with this, Mark Baker-Jones stated during our interview that:

> If you wait until you have a climatic event, or series of events or incidents that require a decision to be made, the decision is going to be the wrong one.... The longer we leave it, the worse it's going to essentially get. My view is that if we're going to address this issue of displaced people, you have to do it at a time when it's not really a threat because then you will make the best and most logical decisions (Baker-Jones, 2022).

5.6 Conclusion

Much is still very unclear in terms of this case and its impacts on international law. However, examining the possible expansion of Human Rights Law, as well as our understanding of who holds responsibility for the impacts of climate change, opens the door to further conversation. It is necessary that the international community understands not only the role in which nation states play in climate change, but also what responsibilities they hold to the nations who are suffering. Although the conversation has been started due to the case of Teitiota v. New Zealand, much is still left unanswered, and once the peoples of Kiribati begin migrating, more questions will present themselves. This is why it is absolutely crucial that the international community consider how they will handle a mass migration. If we do not think about these questions now, we will be fatally ill prepared when the displacement of peoples becomes more common and dramatic.

Conclusion

The case of Teitiota v. New Zealand was indeed the first of its kind, but not in the typical sense. While it did not, and likely will not, be the cause of any legal change, it was the beginning of an extremely important conversation. The international community, as well as countless scholars, are examining the idea of climate refugees, and where they may find protection. However, due to the restrictive definition of a refugee set by the convention, there is little room for expansion under refugee law, therefore another route must be further examined. Whether this expansion be under Human Rights law as we have examined throughout this paper, or in an entirely different section of international law, it is necessary to consider. Human Rights law, while it comes with its own set of roadblocks, is the most likely area of international law for expansion. Expanding through Human Rights law will provide an opportunity for nation states to adopt climate refugees as a norm. Eventually, if the norm leaders that are necessary adopt this term, we may see a cascade effect and find this norm adopted by the entirety of the international community.

This case can be seen as a steppingstone for legal protections of those who are or will be displaced due to the impacts of climate change. However, it is a reality that climate change is moving rapidly. International law may not be able to adapt in time to address the evolving threats presented due to climate change. Individuals such as Teitiota and his family may continue to suffer from climate change impacts, and eventually experience enough persecution as to be considered a “traditional” refugee. Although the High Court stated that protection could be provided to Teitiota and his family once their island is uninhabitable, this leaves very little hope for them right now. Teitiota, his family, and all of those who are suffering from the impacts of

climate change do deserve protection, whether this be from the international community, or their own local governments. While this case has been called “groundbreaking” and a “landmark” decision, very little has been done for Teitiota and his family. The conversation which has been started by this case may eventually lead to necessary changes within international law, this is very little comfort to Teitiota. His family and himself, as well as thousands of other I-Kiribati peoples are still experiencing life-threatening effects of climate change. Despite the efforts being made by their government, will continue to suffer unless immediate and drastic changes are made in order to protect these vulnerable individuals.

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