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**Moving beyond Refugee Law:
Putting Principles on Climate
Mobility into Practice**

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MOVING BEYOND REFUGEE LAW: PUTTING PRINCIPLES ON CLIMATE MOBILITY INTO PRACTICE

Keynote Address: Refugee Law Initiative Conference
‘Improving the Global Refugee Regime: From Theory to Practice?’

30 June 2022

Jane McAdam*

1. INTRODUCTION

It was a sunny Sydney afternoon in late 2006 when the phone call came through from a community radio station. Would I do an interview about environmental refugees?

Sure, that’s easy, I thought. There’s no such thing.

As an international refugee lawyer, my touchstone was the 1951 Refugee Convention. As we know, on its face, people fleeing environmental impacts don’t meet the definition of a refugee. Furthermore, a number of court cases over the years had expressly held that the Refugee Convention did not extend to people fleeing disasters or other ‘natural’ hazards.

But this radio interview was to plant a seed that was to become the roots of my future work – what legal protection *does* exist for people displaced in the context of disasters, environmental degradation and climate change? Are there truly *legal* gaps, or are there gaps in our thinking about how existing legal frameworks might apply? And is refugee law – or even international protection – the appropriate lens through which to view the issue? What other bodies of law and policy might also be relevant?

Today I would like to take you on a Contiki tour of some of these issues. As I do so, I will try to situate my reflections in light of the conference theme – namely, how do we move from theory to practice in improving the global protection regime, and what is the role of *international protection* in the context of climate change and disasters, as opposed to other strategies?

2. BACKGROUND

Last year, there were close to 24 million internal displacements linked to disasters.¹ Climate change amplifies the frequency and severity of extreme weather events, meaning that disasters will worsen and displacement will likely grow. In fact, scientists say that even if carbon emissions are reduced, the degree of ‘baked in’ climate change means that things will get worse before they get better. This means that we are likely to see more and more people on the move.

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¹ Internal Displacement Monitoring Centre (IDMC), *Global Report on Internal Displacement 2022: Children and Youth in Internal Displacement* (IDMC 2022) 12.

But as the Internal Displacement Monitoring Centre acknowledges, we still don't have great data about movement in this context.² A lot of the numbers are based on proxy indicators, such as housing loss. When people are evacuated, many don't get counted in the official figures because they shelter with family or friends, rather than in evacuation centres. We have an even muddier picture of cross-border displacement. We don't have good ways of identifying who is moving away from the impacts of climate change and disasters, partly because people's reasons for movement are always multifaceted; partly because we don't have visa categories for disaster- or climate-related movement, making it difficult to count people;³ and partly because there is often a time lag between initial (internal) displacement, and subsequent movement elsewhere, which may also affect how people describe their motivations for moving.

Without accurate information, authorities and communities cannot adequately plan, prepare or respond to disasters. In some contexts, the multi-jurisdictional nature of disaster responses (shared between national and local authorities, for instance) means that gaps, overlaps and confusion may arise. International guidelines have not addressed these problems in any depth, noting only that there is a need for cooperation where multiple actors are involved.

That said, we have certainly come a very long way in the 15 years when I first started working in this field. Our understandings are now much more nuanced and sensitive to local and regional variations, and we more clearly appreciate how climate change factors in as a driver of movement. There have been cases brought before UN treaty bodies, UN resolutions, lobbying for an ICJ advisory opinion, and a new working group established within the International Law Commission to examine the legal implications of sea-level rise, including with regard to displacement, migration and planned relocations. One of the most significant achievements has been the inclusion of language and action lines on climate mobility in multiple instruments, including the Sendai Framework for Disaster Risk Reduction, the Agenda for Sustainable Development, and the Global Compact for Safe, Orderly and Regular Migration. All this has been aided by the creation in 2012 of the Nansen Initiative on Disaster-Induced Cross-Border Displacement, and its successor the Platform on Disaster Displacement, which have served as institutional focal points and coordinating bodies to fill gaps, frame key messages and facilitate regional efforts.

When I look back over the past decade, there has definitely been a huge shift – when the Nansen Initiative was formed, for instance, there were still those querying if there was even a need for such focused attention on this subject. That said, a decade has passed and hundreds of millions of people have been displaced during that time. A resurgence of nationalistic political parties and anti-migration sentiments around the world haven't helped the cause. While legal frameworks are starting to adapt, they won't provide the answers on their own. And there are many people, including politicians and policymakers, who no doubt still see climate-related displacement as a problem of the future alone, rather than of the here and now.

² Andrea Milan, 'Does the Data on Climate and Disaster Displacement Add Up?', Kaldor Centre Virtual Conference 2021 (20 October 2021) <<https://www.youtube.com/watch?v=6Ij9fJWJDe4>> accessed 6 June 2022.

³ Although note the new humanitarian visa created by Argentina in May 2022 for people displaced by disasters in Mexico, Central America, and the Caribbean: Julie Watson, 'Climate Migration Growing but Not Fully Recognized by World' (*AP News*, 29 July 2022) <<https://apnews.com/article/mexico-droughts-immigration-united-nations-natural-disasters-175988903af187bf08fa89f8f13ac8e2>> accessed 26 September 2022. See also Daria Mokhnacheva, *Implementing the Commitments related to Addressing Human Mobility in the context of Disasters, Climate Change and Environmental Degradation* (Platform on Disaster Displacement, April 2022) <<https://disasterdisplacement.org/portfolio-item/implementing-the-commitments>> (accessed 6 June 2022).

3. THE ROLE OF REFUGEE LAW

As we have come to understand more about how climate change interacts with other drivers of movement, so we have been able to articulate more clearly when and how refugee law might apply. While many people moving in the context of disasters and climate change will not be refugees, some will be – and it is important to ensure that decision-makers appreciate when, how and why this may be so.⁴

In October 2020, UNHCR issued a document seeking to clarify the application of refugee law in the context of climate change and disasters. It emphasized the importance of understanding climate change impacts within a broad social and political context, noting that these impacts:

are often exacerbated by other factors such as poor governance, undermining public order; scarce natural resources, fragile ecosystems, demographic changes, socio-economic inequality, xenophobia, and political and religious tensions, in some cases leading to violence. As a result of these negative impacts of climate change and disasters, combined with social vulnerabilities, people may be compelled to leave their country and seek international protection.⁵

Rather than focusing narrowly on the disaster or event itself, it is important to ‘recognize the social and political characteristics of the effects of climate change or the impacts of disasters or their interaction with other drivers of displacement.’⁶ As Matthew Scott has argued, it is essential that we appreciate ‘the deeply social nature of disasters, within which existing patterns of discrimination and marginalisation are exacerbated’,⁷ which, in turn, can affect people’s exposure and vulnerability to hazards. This means that there is really no such thing as a ‘natural’ disaster: disasters are always contingent on underlying social, economic, political and environmental factors.

The Refugee Convention may therefore be relevant in a disaster context where: (a) certain individuals or groups are persecuted by the government (such as having humanitarian assistance withheld or being targeted for undertaking disaster-relief work);⁸ (b) where secondary impacts, such as ‘increases in gender-based violence in temporary shelters,

⁴ A long line of superior court decisions from the 1990s reflected the misapprehension that disasters are wholly natural and discrete events that, by their nature, cannot engage the Refugee Convention: see eg *Canada (Attorney General) v Ward* [1993] 2 SCR 689; *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225; *Horvath v Secretary of State for the Home Department* [2001] 1 AC 489.

⁵ UNHCR, ‘Legal Considerations regarding Claims for International Protection Made in the context of the Adverse Effects of Climate Change and Disasters’ (1 October 2020) para 2.

⁶ *Ibid.*, para 5.

⁷ Matthew Scott, ‘Finding Agency in Adversity: Applying the Refugee Convention in the Context of Disasters and Climate Change’ (2016) 35(4) *RSQ* 26, 28; Matthew Scott, *Climate Change, Disasters and the Refugee Convention* (CUP 2020). The UN Office for Disaster Risk Reduction’s definition of ‘disaster’ reflects this approach: <<https://www.undrr.org/terminology/disaster>> accessed 6 June 2022.

⁸ See *AF (Kiribati)* [2013] NZIPT 800413, paras 55–70; *AC (Tuvalu)* [2014] NZIPT 800517–520, paras 84–6, 97. In *Refugee Appeal No 76374* [2009] NZRSAA 83, the New Zealand Refugee Status Appeals Authority found that the applicant was a refugee because she had been targeted for coordinating disaster relief after Cyclone Nargis in Myanmar. See also examples in David J Cantor, ‘Law, Policy, and Practice concerning the Humanitarian Protection of Aliens on a Temporary Basis in the Context of Disasters’ (Background Paper, Nansen Initiative on Disaster-Induced Cross-Border Displacement, 2015) 17.

discrimination in assistance and solutions, shortcomings in evacuation procedures, etc’,⁹ give rise to a conventional refugee claim; (c) where the adverse impacts of disasters or climate change intersect with or amplify persecution for a Convention reason;¹⁰ or where (d) Convention refugees (persecuted for reasons unrelated to the disaster) flee across a border.

Last year, a report released by the White House recommended that the United States assess how climate change may intersect with the criteria for refugee status, including those:

- based on environmental defence or climate change activism;
- where there is no viable internal relocation alternative because of the impacts of climate change;
- people have relief from climate change impacts denied or withheld on the basis of a protected characteristic, such as race or ethnicity; and
- where climate change may impact the State’s willingness or ability to protect individuals fleeing persecution.¹¹

It also recommended the creation of a specific legal pathway for humanitarian protection for people facing serious threats to their life because of climate change, noting that the US has a compelling national interest to strengthen protection in this context.

So, when it comes to the application of refugee law (and, indeed, complementary protection under human rights law), there is no need to reinvent the wheel, create new principles or make things overly complicated. Rather, the trick is to show decision-makers how to apply existing refugee law principles to the facts at hand. Climate change and disasters provide a context in which the Refugee Convention (and complementary protection) may be engaged; what is important is to examine their effects on people, rather than the nature of those events per se.

We also need to bear in mind that not everything that interferes with the enjoyment of a human right will necessarily amount to a violation of that right. That only occurs when the State, as duty bearer, violates its obligations with respect to a rights holder.

4. THE ROLE OF HUMAN RIGHTS LAW: *TEITIOTA V NEW ZEALAND*

On that point, I want to mention the matter of *Teitiota v New Zealand* which was the subject of a claim before the UN Human Rights Committee.¹² The case concerned Mr Teitiota from the low-lying Pacific atoll country of Kiribati. He had sought protection in New Zealand on the basis that life at home was becoming increasingly precarious as a result of insufficient fresh water, overcrowding, inundation, erosion, and land disputes, owing to the effects of climate

⁹ Elizabeth Ferris, ‘Disasters and Displacement: What We Know, What We Don’t Know’ (*Brookings Planetpolicy*, 9 June 2014) <<http://www.brookings.edu/blogs/planetpolicy/posts/2014/06/09-climate-change-natural-disasters-ferris>> accessed 6 June 2022.

¹⁰ See generally Sanjula Weerasinghe, *In Harm’s Way: International Protection in the context of Nexus Dynamics between Conflict or Violence and Disaster or Climate Change*, UNHCR Legal and Protection Policy Research Series, PPLA/2018/05 (2018).

¹¹ The White House, *Report on the Impact of Climate Change on Migration* (October 2021) <<https://www.whitehouse.gov/wp-content/uploads/2021/10/Report-on-the-Impact-of-Climate-Change-on-Migration.pdf>> accessed 26 September 2022.

¹² *Teitiota v New Zealand*, Communication No 2728/2016, Human Rights Committee, UN doc CCPR/C/127/D/2728/2016, 24 October 2019. For a detailed analysis, see Jane McAdam, ‘Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of *Non-Refoulement*’ (2020) 114 *American Journal of International Law* 708.

change and sea-level rise. By the time his case was heard, he had been living in New Zealand for about a decade with his wife and three children. He and his wife had originally arrived on three-year work permits which had expired, and they had missed important deadlines to regularize their status. In 2011, Mr Teitiota was stopped for a traffic incident and his visa status became apparent. By that time, it was too late to apply for a visa extension or permission to remain on humanitarian grounds.

As journalist Kenneth Weiss explained, all Mr Teitiota wanted was a visa extension, but what he got ‘was an attorney who decided to present Teitiota as a casualty of climate change—and to set out to change international law.’¹³ After three years of unsuccessful attempts before the New Zealand tribunal and courts, Mr Teitiota was detained and issued with a deportation order. He lodged a complaint with the UN Human Rights Committee the same day, arguing that New Zealand would violate his right to life if it removed him, and requested suspensive effect (which was denied). He was removed to Kiribati within a few days, and his family followed shortly thereafter.¹⁴

The core of Mr Teitiota’s complaint was that ‘the effects of climate change and sea level rise forced him to migrate’ from Kiribati to New Zealand. He argued that the situation at home had become ‘increasingly unstable and precarious due to sea level rise caused by global warming.’ He said that fresh water supplies were scarce because of saltwater contamination, there was overcrowding, and the erosion of habitable land had resulted in ‘a housing crisis and land disputes that have caused numerous fatalities.’ In sum, Kiribati had become ‘an untenable and violent environment’ for him and his family.¹⁵

The Human Rights Committee accepted that ‘without robust national and international efforts’, ‘the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the *non-refoulement* obligations of sending states’.¹⁶ It emphasized that the right to life includes ‘the right of individuals to enjoy a life with dignity’,¹⁷ and noted that ‘the conditions of life ... may become incompatible with the right to life with dignity before the risk is realized’, meaning that protection should be forthcoming before the situation is imminently life-threatening.¹⁸ However, on the facts, the Committee found that the requisite threshold was not met.

The case is nevertheless significant because of the Committee’s explicit recognition that the impacts of climate change may themselves be a bar to removal. The Committee also recognized that States have a ‘continuing responsibility’ in future cases to take into account ‘new and updated data on the effects of climate change and rising sea levels’,¹⁹ which means that future claims may have a greater chance of success. In fact, even now, a different individual might already have a valid protection claim.

Even without formal precedential value, strategic litigation like *Teitiota* has an important role to play: it can highlight legal gaps or uncertainties, and develop the jurisprudence. As Guy

¹³ Kenneth R Weiss, ‘The Making of a Climate Refugee’, *Foreign Policy* (28 January 2015) <<https://foreignpolicy.com/2015/01/28/the-making-of-a-climate-refugee-kiribati-tarawa-teitiota>> accessed 6 June 2022.

¹⁴ *Teitiota* (n 12) para 4.4.

¹⁵ *ibid* para. 2.1.

¹⁶ *ibid* para 9.11.

¹⁷ *ibid* para 9.4.

¹⁸ *ibid*.

¹⁹ *ibid* para 9.14.

Goodwin-Gill said recently: ‘domestic courts have considerable potential as “agents of development”’, which makes it all the more important that decision-makers are ‘increasingly familiar with international law, but also that the courts are provided with the best evidence of the applicable law, [and] of commonly accepted interpretations’ – especially because ‘their decisions, as organs of the State, can amount or contribute to practice for customary international law purposes’.²⁰ Litigation, even if (or perhaps especially if) unsuccessful may foster the urgency required for policy change.²¹

At the same time, it is essential to understand the particular domestic framework in which jurisprudence is developed, as that may colour the direction in which it goes. For instance, in New Zealand, decision-makers have the power to grant a residence visa where there are ‘exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh’ for someone to be deported.²² Where this possibility exists, there may be less of an imperative to push the boundaries of international protection – although that said, New Zealand has been a global leader on protection in the context of climate change and disasters, notably through the decisions of Bruce Burson.

5. BEYOND INTERNATIONAL PROTECTION

In any case, we should not expect the international protection regime to hold all the answers or to have to do all the work. As many have advocated for a long time now, we need a toolkit of responses, which includes humanitarian and compassionate responses, as well as proactive opportunities for migration. These are not mutually exclusive but complementary.

Migration opportunities may enable people to move in their own time and on their own terms, rather than being displaced and finding themselves dependent on the international community for protection and assistance. Migration can provide a livelihood diversification strategy, reduce pressure on limited resources and build resilience. The 2021 White House report recognized that migration is not only ‘an important form of adaptation to the impacts of climate change’, but sometimes ‘an essential response’.²³ The *Global Compact for Safe, Orderly and Regular Migration* commits States to considering the development of ‘national and regional practices for admission and stay ... such as by providing humanitarian visas, private sponsorships, access to education for children, and temporary work permits’.²⁴

As David Cantor and others have shown, in some regions, standard migration laws that facilitate movement for reasons of work, family, education and so on, may also enable people to move in the context of climate change.²⁵ In disaster situations, many countries have

²⁰ Guy S Goodwin-Gill, ‘Strategy and Strategic Litigation’ (Keynote Address, Global Strategic Litigation Council Annual Conference, 12 April 2022) <<https://www.kaldorcentre.unsw.edu.au/news/guy-s-goodwin-gill-strategy-and-strategic-litigation>> accessed 6 June 2022.

²¹ ‘Political will in relation to climate change has not been strong and much litigation concerning climate change has been about catalyzing action’: Liz Fisher, Eloise Scotford and Emily Barritt, ‘Why Understanding the Legally Disruptive Nature of Climate Change Matters’ (*OUPblog*, 22 April 2015) <<http://blog.oup.com/2015/04/legally-disruptive-nature-of-climate-change/#sthash.mRtXuuGq.dpuf>> accessed 6 June 2022.

²² Immigration Act 2009 (NZ) s 207.

²³ The White House (n 11) 10.

²⁴ Global Compact for Safe, Orderly and Regular Migration, UNGA res 73/195 (19 December 2018) Objective 5, para 21(g).

²⁵ See eg David J Cantor, ‘Environment, Mobility, and International Law: A New Approach in the Americas’ (2021) 21 *Chicago Journal of International Law* 263; Jane McAdam and Jonathan Pryke, *Climate Change, Disasters and Mobility: A Roadmap for Australian Action* (Kaldor Centre for International Refugee Law, Policy

expedited visa applications or applications for permanent residency from people from affected States.²⁶ Free movement arrangements can also facilitate admission and stay in the aftermath of disasters.²⁷

Of course, adequate safeguards and oversight mechanisms are needed to ensure that migrants are not exploited. As Carol Farbotko and colleagues have argued, migration as adaptation ‘can individualize responsibility for adaptation and reproduce the structural inequities which contribute to vulnerability in the first place’.²⁸ It is essential that migrants and their families are adequately protected and granted a domestic legal status that enables them to access essential support and assistance when required.

This brings me to the final part of my address, which examines how governments in the Pacific region are proactively trying to harness climate mobility to create greater certainty, enhance resilience and secure protection now and into the future.

6. CLIMATE MOBILITY IN THE PACIFIC

Pacific leaders have declared that ‘climate change remains the single greatest threat to the livelihoods, security and wellbeing of the peoples of the Pacific’.²⁹ Every Pacific country has seen people move in response to disasters, and this will likely increase as the long-term effects of climate change take hold.

While many Pacific communities regard moving away from home as an option of last resort, Pacific governments recognize that if movement becomes necessary, considered and proactive responses have the best chance of ensuring that people can move in a safe, dignified and rights-respecting manner.

In February this year, I was appointed to lead a small team to develop a draft regional framework on climate mobility for the Pacific – and I would like to acknowledge my colleagues Dr Tamara Wood, Betty Barkha, Sophie Offner and Trish Tupou for all their work. The Framework is being developed under the auspices of a Joint Working Group on Climate Mobility, chaired by Tuvalu and Fiji, and the Pacific Climate Change Migration and Human Security programme (PCCMHS). It has been an enormous privilege to work with Pacific governments, affected communities and other stakeholders to develop the draft Framework. I should stress that my comments today are personal reflections and do not necessarily represent the views of Pacific governments or others engaged in the process.

Brief 10, October 2020); Bruce Burson and Richard Bedford, *Clusters and Hubs: Toward a Regional Architecture for Voluntary Adaptive Migration in the Pacific* (Discussion Paper, The Nansen Initiative on Disaster-Induced Cross-Border Displacement, 9 December 2013).

²⁶ For examples, see Nansen Initiative on Disaster-Induced Cross-Border Displacement, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, vol 2 (2015) 42–3; Cantor (n 25) 298–310.

²⁷ Protection Agenda (n 26) 43–4; Tamara Wood, *The Role of Free Movement of Persons Agreements in Addressing Disaster Displacement: A Study of Africa* (Platform on Disaster Displacement, May 2018); Ama Francis, *Free Movement Agreements and Climate-Induced Migration: A Caribbean Case Study* (Sabin Center for Climate Change Law, Columbia University, September 2019).

²⁸ Carol Farbotko and others, ‘A Climate Justice Perspective on International Labour Migration and Climate Change Adaptation among Tuvaluan Workers’ (2022) 2(1) *Oxford Open Climate Change* kgac002, 2 (fn omitted).

²⁹ 2018 Boe Declaration on Regional Security (Pacific Islands Forum) para 1.

The draft framework is a comprehensive document which seeks to guide Pacific governments on a broad range of actions to help them plan for and manage the movement of people within and from the region, while simultaneously identifying strategies to build people's adaptive capacity to remain in their homes for as long as possible – which is what most would prefer to do. We were asked to consider a wide range of issues, including climate change, disaster risk reduction, the environment, migration (including internal migration and labour mobility schemes), planned relocation, human rights (including labour rights), statelessness and citizenship. The Framework is grounded in core Pacific values of trust, respect and care – for people, knowledge, land and sea. It draws on laws, policies and practices from the Pacific region, while also taking inspiration from a range of global and regional frameworks and guidelines. It emphasizes that at all times, the culture, heritage and human rights of individuals and communities must be safeguarded, and the needs of vulnerable or marginalized groups acknowledged and protected.

In June 2022, we held consultations in Fiji with governments, civil society and other stakeholders to discuss the first draft of the Framework. We are now working on a final draft which will be presented to governments in August for further consultation and (hopefully) eventual endorsement.

7. REGIONAL APPROACHES: CHALLENGES AND OPPORTUNITIES

Regional approaches to climate mobility are essential. Indeed, one of the core conclusions of the Nansen Initiative was just how crucial the role of regional and sub-regional actors is in complementing national efforts to find solutions.³⁰ The Pacific Regional Framework on Climate Mobility is a world first.³¹ While it offers an exciting opportunity to conceptualize and articulate a regional vision on climate mobility, it is also challenging, especially in a region as diverse as the Pacific where countries' geographies, capacities and opportunities for planned movement differ greatly. Some Pacific countries are low-lying atoll nations, others are comprised of low and high islands, some have special ties with other countries that permit movement, others do not. Australia and New Zealand are also part of the region, and their laws and policies will likely play a large role in determining how extensive cross-border mobility can be.

While different regional frameworks and approaches can take inspiration from each other, they are not directly transferable. In the Americas, for instance, there is a long history of people crossing borders to escape the impacts of a disaster. By contrast, Pacific geography – described as a sea of islands – has only one land border, between Papua New Guinea and Indonesia.

Pacific people's past experiences of migration or relocation, their religious beliefs, their age and their connections to land and sense of identity all affect how they view mobility as a response to climate impacts. For example, some older people say that they never want to leave

³⁰ Walter Kälin, Envoy of the Chairmanship of the Nansen Initiative, *The Nansen Initiative: Global Consultation: Conference Report* (Geneva, 12–13 October 2015) 11.

³¹ There are other regional instruments which examine aspects of climate mobility, but they do not approach as comprehensively: eg Kampala Ministerial Declaration on Migration, Environment and Climate Change (Intergovernmental Authority on Development, the East African Community, and States of the East and Horn of Africa, 29 July 2022); *Protection for Persons Moving across Borders in the context of Disasters: A Guide to Effective Practices for RCM Member Countries* (November 2016); South American Conference on Migration, *Regional Guidelines on Protection and Assistance for Persons Displaced across Borders and Migrants in Countries affected by Disasters of Natural Origin* (2018) <<https://perma.cc/3PHH-WE5Z>> accessed 6 June 2022.

their homes.³² Others are worried about the social, emotional, spiritual and cultural losses that come with dislocation from land, which go to the heart of identity and well-being. In many Pacific languages, the word for ‘land’ is synonymous with ‘placenta’. Land is something to which people belong, rather than something they own, and people’s sense of identity and well-being is inextricably linked to place. At the same time, people’s ability to stay at home may in part be aided by mobility options – for instance, access to labour opportunities in other places may allow people to achieve greater security to support their lives at home.³³

Some Pacific countries’ approaches to mobility have shifted over time – from outward-focused advocacy on ‘migration with dignity’, to a more inward focus on resilience-building and internal migration. Indeed, despite the extreme risks posed by climate change in the Pacific, ‘voluntary immobility’ may be a deliberate political and cultural choice to stay in place and maintain connections to home.³⁴ There have also been some interesting practices emerging during the pandemic. For instance, many Tuvaluans left the main island (which was most at risk of a COVID outbreak) and returned to ancestral lands in the outer islands.³⁵ Customary land tenure – which is sometimes seen as an impediment to relocation – in fact facilitated mobility.

Another challenge is how to reflect fundamental principles of dignity and protection in a way that aligns with Pacific values, such as reciprocity, responsibility and respect for peoples and land; fairness, equality and protection of the most vulnerable; and participation, empowerment and consensus-building.³⁶ While some Pacific countries embrace the language of human rights, others tend to regard this as an externally imposed, western construct.

Finally, while we commonly think of regional approaches as demanding harmonization, the Pacific often refers to unity in diversity. Collaboration, coordination and cooperation can be means of implementing regional priorities, while also leaving flexibility for individual States to tailor their own responses attuned to national priorities. In turn, national approaches can be supported by on-going regional dialogue to share effective practices and lessons learned. In that sense, regional cooperation is a way for Pacific countries to address common challenges and promote the advancement of all Pacific peoples.

8. CONCLUSION

Returning, then, to the question I posed at the beginning of this talk: how *do* we move from theory to practice in improving the global protection regime, and what is the role of international protection in the context of climate change and disasters, as opposed to other strategies?

Well, in response to the second question, I hope it has been apparent from my remarks that international protection *can* have a role to play here. Even though there’s no such thing as a

³² Jane McAdam *Climate Change, Forced Migration, and International Law* (OUP 2012) 116.

³³ See McAdam and Pryke (n 25).

³⁴ Carol Farbotko and Celia McMichael, ‘Voluntary Immobility and Existential Security in a Changing Climate in the Pacific’ (2019) 60 *Asia Pacific Viewpoint* 148; Carol Farbotko and others, ‘Relocation Planning Must Address Voluntary Immobility’ (2020) 10 *Nature Climate Change* 702.

³⁵ Carol Farbotko, ‘Making Place in Virus-Free Space’ (2021) 59 *Geographical Research* 182; Carol Farbotko and Taufieki Kitara, *Urban–Rural Re-relocation as a Response to the COVID-19 Pandemic: The Case of Tuvalu* (Toda Peace Institute, Policy Brief No 106, April 2021) <https://toda.org/assets/files/resources/policy-briefs/t-pb-106_farbotko-kitara.pdf> accessed 6 June 2022.

³⁶ See eg 2050 Strategy for the Blue Pacific Continent (Pacific Islands Forum).

‘climate refugee’ as a matter of law, there is such a thing as a refugee whose circumstances are made worse because of climate change. Decision-makers and policymakers need to be educated about the kinds of scenarios in which protection needs may arise. Both international refugee law and human rights law contain principles that affect what States can and cannot do when they are faced with people whose lives or well-being are at risk from the adverse impacts of disasters or climate change, and these principles should continue to evolve in light of changing circumstances.

When it comes to the first question, the past 15 years have provided a case study in moving from theory to practice. Research on climate mobility has gone from a niche topic into a burgeoning area of scholarship, policy development and practice. The voices, knowledge and advocacy of affected communities have been crucial to this, with regions like the Pacific leading the way with progressive policies and practices, and a world-first climate mobility framework. On the one hand, this is no cause for celebration: it reflects that fact that people are being displaced right now, and are urgently seeking solutions to prevent future forced movement. On the other hand, we are seeing creative, innovative and evidence-based strategies emerging, aimed at building resilience so that people can stay in place where possible, while also fostering safe opportunities for migration when necessary or desired.

In conclusion, while international refugee law and human rights law can certainly provide some protection for those impacted by disasters and climate change, a more sustainable approach lies in a suite of options that afford people agency to decide if, when and where they move.