

Administering an International Climate Migration Lottery

Hana Nasser*

Abstract

Experts predict that millions of people will need to migrate internally and across borders due to global warming. Currently, international legal frameworks do not extend the same legal protections to climate migrants as are afforded refugees and asylum seekers. While international law recognizes the right to asylum based on political persecution, there is no international right to migrate based on climate-based harms that states are legally bound to observe. This Comment proposes a climate migration lottery (CML) that would be administered internationally to address current and future climate-based migration. Under this proposal, receiving states would agree via a treaty to admit their fair share of the total pool of climate migrants selected through the lottery. Migrants from countries with a high susceptibility to having large portions of territory rendered uninhabitable by climate change would be eligible to enter the CML. This comment argues that a CML can alleviate the strain on regions in developing states that must accommodate internally displaced persons as well as the burden on countries that are near low-lying Pacific island states that will experience significant rates of displacement due to sea level rises.

* B.A., University of Illinois Urbana-Champaign, Ph.D., University of Virginia, J.D. Candidate at the University of Chicago. I would like to thank my comment editors, Amara Shaikh and Tyler Lawson for their feedback and guidance. Professor Nicole Hallett provided detailed comments on drafts and helped me sharpen the argument. Professor Tom Ginsburg provided valuable feedback on the comment's proposed design for a climate migration lottery.

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I. INTRODUCTION

The term “environmental refugee” was first introduced in 1980 by the United Nations Environment Program to refer to those who migrate due to uninhabitable living conditions stemming from environmental factors such as soil erosion and natural disasters.¹ Since then, the Intergovernmental Panel on Climate Change (IPCC) has claimed “that the single greatest impact of climate change could be on human migration.”² The reality of a warming planet and the environmental calamities it will engender has broad scientific consensus.³ Currently, there are several international agreements where states agree to reduce greenhouse gas emissions and coordinate with other states to address climate change related natural disasters.⁴ Despite these international efforts to stem rising temperatures, experts predict that the effects of climate change will persist, prompting mass displacement due to rising sea levels and mass migration due to uninhabitable living conditions in many parts of the world.⁵

This Comment proposes an international lottery for addressing climate-induced migration. Under this proposal, countries would agree through a treaty to admit their fair share of the climate change migrants that are selected from a lottery administered by the International Organization for Migration. This approach to climate-induced migration has advantages over plans that extend refugee protections to those displaced due to climate change. Lotteries, as explained below, also have the advantage of empowering climate migrants to make decisions about how to adapt to climate change. A “staggered migration”⁶ approach such as a lottery would enable a gradual percentage of people to move across borders over time in response to climate change. Such a strategy is more sustainable than one that extends refugee status to those at risk of climate-induced displacement since extending refugee status might lead to a large outflow of migration from developing nations that would compromise these nations’ ability to adapt to the environmental effects of warming.⁷

¹ Susan Martin, *Climate Change, Migration, and Governance*, 16 GLOBAL GOVERNANCE 397 (2010).

² OLI BROWN, *MIGRATION AND CLIMATE CHANGE* 9 (2008), <https://perma.cc/GQF5-QYA6>.

³ *Scientific Consensus: Earth’s Climate is Warming*, NASA, <https://perma.cc/7LFU-4VDG> (last visited Jan. 14, 2024).

⁴ See, e.g., Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104; Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 162.

⁵ Nicole Greenfield, *Climate Migration and Equity*, NATURAL RESOURCES DEFENSE COUNCIL (May 9, 2022), <https://perma.cc/Q6WW-WQHZ>; WHITE HOUSE, *REPORT ON THE IMPACT OF CLIMATE CHANGE ON MIGRATION* (2021), <https://perma.cc/UZF4-2F6W>.

⁶ Jane McAdam, *Environmental Migration Governance*, UNIVERSITY OF NEW SOUTH WALES LAW RESEARCH PAPER SERIES, No. 2009-1, at 8 (2009).

⁷ See Giovanni Bettini, *Climate Barbarians at the Gate? A Critique of Apocalyptic Narratives on ‘Climate Refugees,’* 45 GEOFORUM 63 (2013), <https://perma.cc/Q335-S2YW>.

The sections that follow detail the international legal mechanisms available for administering a CML and provide normative and legal background on existing lottery systems. Section II outlines key trends in climate migration and the difficulty of establishing a causal link between climate change and migration. Section III analyzes potential legal mechanisms for establishing a CML. Section IV outlines whether the existing refugee and asylum system can accommodate the claims of climate migrants, as well as legal issues stemming from statelessness and sinking island states. Section V provides information on the ethics and mechanics of migration lotteries. It also explores the normative arguments for and against lotteries.

II. CLIMATE CHANGE AND MIGRATION

A. Climate Migration Trends

A report by the New York Times indicates that by 2070 about 19% of the planet could be considered a “barely livable hot zone.”⁸ Further, the World Bank Groundswell reports that “216 million people could become climate migrants within their own countries by 2050.”⁹ Estimates suggest that in Africa, there may be close to 113 million “internal climate migrants” by 2050.¹⁰ Climate change can produce both “sudden onset” and “slow onset” factors that lead to displacement.¹¹ Slow onset events take place gradually overtime and include events such as “droughts, rising seas, desertification, and melting permafrost.”¹² Rapid onset events refer to events that are sudden and extreme natural disasters such as hurricanes and floods.¹³ Experts also claim that the effects of climate change on migration will not follow a “linear pattern.”¹⁴ Populations within a region will experience the effects of climate change to different degrees depending on factors

⁸ Abrahm Lustgarten, *The Great Climate Migration*, N.Y. TIMES, (July 23, 2020), <https://perma.cc/VC6E-43EJ>.

⁹ Kerilyn Schewel, *Who Counts as a Climate Migrant?*, RELIEFWEB, (July 20, 2023), <https://perma.cc/Z4E9-PG3R>.

¹⁰ However, according to Schewel, one must bear in mind that estimates released by global agencies tasked with making predictions often reflect the “worst-case scenarios” in order to garner attention to the issue of climate change-related displacement. *Id.*

¹¹ John Podesta, *The Climate Crisis, Migration, and Refugees*, BROOKINGS, (July 25, 2019), <https://perma.cc/N5MS-3FG4>.

¹² Sanjula Weerasinghe, *What We Know About Climate Change and Migration*, CENTER FOR MIGRATION STUDIES, (February 2021), <https://perma.cc/RM7T-8N5T>.

¹³ Laura Schäfer et al., *Slow-onset Processes and Resulting Loss and Damage – An Introduction*, GERMANWATCH 4, (Jan. 2021), <https://perma.cc/5WKL-2W7P>.

¹⁴ Caroline Zickgraf, *Where Are All the Climate Migrants? Explaining Immobility amid Environmental Change*, MIGRATION POLICY INSTITUTE (Oct. 4, 2023), <https://perma.cc/2QSY-GC3L>.

such as how dependent they are on agriculture to sustain a living and how close they live to a coastline.¹⁵ Resource differentials between communities will make some more likely to adapt to their surroundings than others. Those who are impoverished will likely lack the means to migrate as a response to environmental calamity.¹⁶

B. Establishing a Causal Link between Climate Change and Migration

Experts claim that climate-induced displacement is multi-causal.¹⁷ International efforts to address climate change-related migration are often hampered due to the difficulty of pinpointing a clear causal relationship between the environmental effects of climate change and displacement that leads to migration. Climate change can often be a “force multiplier” for the existing socioeconomic reasons why individuals choose to migrate. For example, famine and drought are closely linked to political violence and forms of persecution that would make one eligible for refugee protection under existing international frameworks.¹⁸ This facet of the climate migration issue makes it difficult for countries to plan adaptation strategies since multi-causality makes obtaining accurate numerical projections needed for preparation more challenging.¹⁹

Further, governments worry that acknowledging environmental harms as a legal reason for migrating will open the floodgates to migration claims based on uninhabitable living conditions as well as poverty and crime. Being able to articulate a clear causal link between climate change and the need to migrate is important for garnering international attention and institutional momentum for addressing climate change-related migration. According to Lauren Nishimura, the efficacy of “transnational advocacy networks” for addressing harms depends on the ability of these networks to articulate a “short, clear causal chain and an identifiable responsible party, neither of which is true of climate change-induced migration.”²⁰

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ NANSSEN INITIATIVE, AGENDA FOR THE PROTECTION OF CROSS-BORDER DISPLACED PERSONS IN THE CONTEXT OF DISASTERS AND CLIMATE CHANGE, Vol 1, at 6, (2015), <https://perma.cc/D6KL-Z89G> (arguing “climate change [is] an important, but not the only factor . . .”).

¹⁸ Lauren Nishimura, *Climate Change Migrants: Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies*, 27 INT’L J. OF REFUGEE L. 107, 111 (2015) (arguing that distinguishing between economic migrants and climate migrants is challenging and can lead to the law drawing arbitrary distinctions).

¹⁹ *Id.* at 120.

²⁰ *Id.* at 109.

C. Existing International Initiatives to Address Climate Change Induced Migration

1. The Cancun Agreements

The U.N. Framework Convention on Climate Change (UNFCCC) is responsible for managing a global response to the effects of climate related harms.²¹ The UNFCCC currently has 198 parties and is considered the “parent treaty” to the Paris Climate Agreement and Kyoto Protocol.²² All three legal frameworks aim to mitigate the effects of anthropogenic climate change by regulating the emission of greenhouse gas emissions.²³ The UNFCCC has pursued migration as an adaptation strategy to climate change. The Cancun Adaptation Framework emerged from climate negotiations in Cancun and establishes migration as an adaptation strategy to the effects of climate change. Other scholars concur with this framing of climate migration. Jane McAdam, for example, has written extensively about why migration should be pursued as one tool among many to address the global impact of climate change.²⁴ Migration, based on her fieldwork, should be deprioritized since many local communities in countries at risk for climate change displacement prefer adapting to changing conditions and remaining in their homes. Thus, the Cancun Adaptation Framework is a promising means of implementing this vision of mitigating the threats of climate change since it conceives of migration as an adaptation strategy.

2. Guiding Principles on Internal Displacement

Experts predict that in the short term much of the migration due to climate change will occur internally.²⁵ The Guiding Principles were issued by the UNHCR on July 22, 1998. The goal of the Principles is to address “grey areas” and existing gaps in international legal protections for those who are internally displaced.²⁶ Specifically, the Guiding Principles state that “internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence.”²⁷ The Guiding Principles have been

²¹ *About the Secretariat*, UNFCCC, <https://perma.cc/4GKG-UKJY> (last visited Jan. 14, 2024).

²² *Id.*

²³ *See id.*

²⁴ *See, e.g.,* McAdam *supra* note 6; Jane McAdam, *Swimming Against the Tide: Why a Climate Change Displacement Theory is not the Answer*, INT’L J. REFUGEE L. (2011).

²⁵ *See Climate Change Could Force 216 Million People to Migrate Within Their Own Countries by 2050*, WORLD BANK (2021), <https://perma.cc/TN98-7URC>.

²⁶ Dennis McNamara, *Guiding Principles on Internal Displacement*, UNHCR 3 (1998), <https://perma.cc/8MEC-Q762>.

²⁷ *Id.* at 5.

held as a significant milestone for addressing climate induced displacement because it is one of a few international legal instruments on migration that directly address the harms of “natural or human-made disasters.”²⁸

III. CLIMATE MIGRATION LOTTERY: POTENTIAL LEGAL MECHANISMS

This section proposes a design for a CML that would be administered by the International Organization for Migration (IOM), the U.N. agency responsible for international migration. The IOM would first create a pool of eligible applicants by soliciting applications from prospective migrants from countries identified as most at risk for climate change-related displacement. Following this, the IOM would establish a Climate Migration Visa Clearing House. Under this proposal, countries would sign onto an international treaty that puts in place a burden sharing framework between states to admit a percentage of the total pool of climate migrants via the Clearing House lottery.

A. International Legal Organizations for Administering a CML

1. The International Organization for Migration

The IOM, a U.N.-affiliated organization²⁹, is well-suited to coordinate international efforts to administer a CML.³⁰ According to Antoine Pecoud, “[IOM]’s role and visibility in the global politics of migration have increased, which has culminated in IOM’s elevation to a UN-related organization status in 2016.”³¹ As an actor within the “inter-agency humanitarian system,” it is responsible for coordinating agencies to address a wide range of crises and also partners with UNHCR on its Refugee Coordination Model.³² It currently has a presence in 100 countries and supports the migration efforts of 175 member

²⁸ *Id.*

²⁹ The exact nature of the relationship between the U.N. and IOM is unclear; while it has “been presenting itself as ‘the U.N. migration agency’, IOM does not hold the full membership status.” Antoine Pecoud, *What Do We Know About the International Organization for Migration*, 44 J. ETHNIC & MIGRATION STUD. 1621, 1625 (2018).

³⁰ According to Pecoud, the organization emerged in the post-war period when states needed an entity to coordinate the logistics of managing the displacement of millions of refugees from Europe but also did not want to compromise their sovereign right to exclude, they thus conceived of the IOM as a kind of “travel agency.” *Id.* at 1624.

³¹ *Id.* at 1621.

³² *Refugee Coordination Model*, UNHCR, <https://perma.cc/T5K3-XE7T> (last visited Jan. 14, 2024).

states.³³ To date, the Migration Protection and Assistance Division of the IOM has assisted 1.7 million migrants who wished to return to their countries.³⁴

The IOM seeks to follow the guidelines for safe and dignified migration as outlined in the Global Compact for Safe, Orderly and Regular Migration.³⁵ The IOM follows 10 “guiding principles” in its approach to “return, readmission, and sustainable reintegration:” “active protection and upholding of migrant rights,” “gender responsible, child and vulnerability sensitive perspectives,” “do no harm,” “migrant agency,” “accountability,” “confidentiality,” “safe environment for return,” “sustainability of reintegration,” “whole of government approach,” and “partnership and cooperation.”³⁶ The Migration Crisis Operational Framework (MCOF) of the IOM provides movement assistance to “individuals or groups who are going, either temporarily or permanently, to a place of origin . . . within one country or across an international border.”³⁷

2. UNHCR

The UNHCR, which has authority to administer global refugee flows and process asylum and resettlement applications, has historically dealt with issues of political persecution and mass displacement stemming from ethnic and political violence within sending countries. Indeed, scholars note that the current international framework put in place by the UNHCR cannot accommodate the claims of climate migrants. This is because a “refugee” under international law is someone with “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”³⁸ Further, according to Lauren Nishimura, the UNHCR lacks the mandate and resources to address the complexity of climate migration, which often stem from multi-causal “push factors” such as drought, famine, and natural

³³ INTERNATIONAL ORGANIZATION FOR MIGRATION, <https://perma.cc/R6Z5-SNH8> (last visited Jan. 14, 2024).

³⁴ *Migrant Protection and Assistance*, INTERNATIONAL ORGANIZATION FOR MIGRATION, <https://perma.cc/GX2F-6CHY> (last visited Jan. 14, 2024).

³⁵ These principles are currently non-binding on the state. *See*, INTERNATIONAL ORGANIZATION FOR MIGRATION <https://perma.cc/3C8N-FNS5> (last visited Jan. 14, 2024).

³⁶ *Id.*

³⁷ *Addressing the Mobility Dimensions of Crises: IOM’s Migration Crisis Operational Framework*, INTERNATIONAL ORGANIZATION FOR MIGRATION, <https://perma.cc/SG8W-Y68F> (last visited Jan. 14, 2024).

³⁸ Nishimura, *supra* note 18, at 107.

disasters.³⁹ There is currently no binding legal convention promulgated by UNHCR that would require states to recognize climate refugees.⁴⁰

B. Criteria for Eligibility

A climate migration lottery would need to develop a framework for deciding which countries have eligible applicants for selection. Some criteria that parties could consider when deciding which countries should be prioritized for inclusion would be: (i) the overall likelihood that global warming would render a significant portion of the state from which the migrant is applying uninhabitable, (ii) current levels of internal displacement and the strain that such displacement places on a country's infrastructure, (iii) whether the migrant applying for admission is from a Pacific Island State that is at risk of disappearing, and iv) whether the migrant applying for admission is from a country at risk of severe drought or famine.⁴¹

A treaty or convention that seeks to establish a climate migration visa lottery system that allocates a certain number of migrants among states could rely on existing international organizations dedicated to addressing climate change issues to formulate a list of countries that would be included. The Intergovernmental Panel on Climate Change (IPCC) has published reports on the effects of climate change on migration and has assessed "regional vulnerabilities" to climate change.⁴² For example, in a report on small islands, the IPCC noted that climate change poses a unique risk "to low-lying coastal areas on islands and atolls," through processes such as "coastal erosion"⁴³ and acknowledges that "small islands do not have uniform climate change risk profiles."⁴⁴

³⁹ *Id.* at 123.

⁴⁰ See Bonnie Docherty & Tyler Giannini, *Confronting a Rising Tide*, 33 HAR. ENV. L. REV. 363 (2009).

⁴¹ I outline these four criteria because they correspond well with efforts to fix a definition of a "climate refugee" to garner legal protection. A report issued by UNHCR notes that countries should prioritize those individuals who cannot return to their country of origin since it would be "(i) legally impermissible; (ii) not feasible; or (iii) unreasonable in terms of humanitarian considerations." WALTER KÄLIN & NINA SCHREPFFER, PROTECTING PEOPLE CROSSING BORDERS IN THE CONTEXT OF CLIMATE CHANGE: NORMATIVE GAPS AND POSSIBLE APPROACHES 61 (2012).

⁴² IOM *Migration Research Series No. 31: Migration and Climate Change*, INTERNATIONAL ORGANIZATION FOR MIGRATION (Feb. 15, 2008), <https://perma.cc/JTN9-7PDZ>.

⁴³ LEONARD A. NURSE & ROGER F. MCLEAN, CLIMATE CHANGE 2014—IMPACTS, ADAPTATION, AND VULNERABILITY: PART B: REGIONAL ASPECTS 1620 (Thomas Spencer & Kazuya Yasuhara eds., 2014), <https://perma.cc/WS7A-ZQJF>.

⁴⁴ *Id.* at 1616.

C. Climate Migration Visa Clearing House

Under this proposal for a CML, the IOM could set up a centralized application system online where migrants could apply for entry into the CML. Caitlin M. Sussman notes that a potential mechanism for international cooperation on climate migration could be facilitated through the existing Model International Mobility Convention (MIMC).⁴⁵ The MIMC “proposes a framework” for addressing the “protection gap” that exists in the current migration and refugee framework, wherein some migrants are not covered under asylum and other binding humanitarian legal regimes.⁴⁶ A CML could potentially utilize the MIMC’s “Mobility Visa Clearing House,” which the MIMC envisions as a website that would be “accessible by State Parties . . . and individuals.”⁴⁷ The website could be a centralized location for participating states’ migration lottery applications. States could tailor the application based on their individual needs.

D. Lottery Selection

There have been several proposed designs for immigration visa lotteries. Moraga and Rapoport, for example, propose a system of “trade immigration quotas.”⁴⁸ Under their proposal, the international community could administer a marketplace where states could buy and sell their immigration quotas. Market-based systems have been proposed by scholars such as Gary Becker, who notes that immigration to liberal cities in America often burdens these cities’ welfare systems. He proposes that the government “auction” visas to the “highest bidder” to attract those with the means and ability to migrate, thus putting less of a strain on the state.⁴⁹ According to Moraga and Rapoport, “[t]he matching mechanism is essential because . . . migrants have preferences over their destinations and destination countries have preferences over the origin (and, possibly, other characteristics) of the immigrants they receive.”⁵⁰

Another potential mechanism for lottery selection is to establish a quota that each participating state would have to take in from the total pool of climate

⁴⁵ Caitlan M. Sussman, *A Global Migration Framework Under Water: How Can the International Community Protect Climate Refugees?* 2.1 CJIL ONLINE 41, <https://perma.cc/3ZH6-DBBX>.

⁴⁶ Model International Mobility Convention (MIMC), *About The Convention*, COLUMBIA.EDU <https://perma.cc/Z3GU-QGAU> (last accessed Jan. 14, 2024).

⁴⁷ Model International Mobility Convention (MIMC), *International Convention on the Rights and Duties of All Persons Moving from One State to Another and of the States They Leave, Transit or Enter* (2017), <https://perma.cc/S3PF-9Q9X>.

⁴⁸ Jesús Fernández-Huertas Moraga & Hillel Rapoport, *Tradable Immigration Quotas*, 115 J. PUB. ECON. 94, (2014).

⁴⁹ Gary Becker, *An Open Door for Immigrants*, WALL STREET JOURNAL (Oct. 14, 1992).

⁵⁰ Moraga & Rapoport, *supra* note 48, at 95.

migrants. For example, given a pool of 100,000 potential migrants, the U.S. would take in a larger percentage than countries that wish to participate but have limited infrastructure and capacity to accommodate migrants. Like the U.S. visa diversity lottery, a CML could also have caps for the number of migrants that would be eligible from any one state. For example, under the diversity visa program, only 7% of lottery recipients can be from a single state. A CML could establish a similar threshold with varying levels based on the projected amount of displacement that a given country is likely to face due to climate change.

IV. CLIMATE MIGRATION LOTTERY: LEGAL ANALYSIS

A. Governing Climate Migration under International Law⁵¹

Essam El-Hinnawi, working for the U.N. Environment Program, coined the phrase “environmental refugee” to describe persons who “have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environment disruption.”⁵² While this definition recognized that migration is spurred by environmental causes, there are currently no binding international legal instruments that call on states to protect climate migrants. Still, there exist several legal avenues under international law that one could draw upon to claim a right to migrate because of the environmental effects of climate change. This is partly due to the increasing recognition in international law of the “permeability of rights,”⁵³ wherein certain protections based on potential economic harms are construed to follow from legally recognized political rights violations.⁵⁴

B. 1951 Refugee Convention and 1967 Protocol

The 1951 Refugee Convention is one of the few binding instruments of international law on migration that states broadly observe. Under the Convention, a refugee is someone who has a “well-founded fear of being persecuted” based on a set of protected characteristics, and due to “such fear, is unwilling to avail himself of the protection of that country.”⁵⁵ According to the Migration Data Portal, several international agencies, “including IOM and UNHCR,” are critical

⁵¹ According to Pecoud, there is no international legal framework for governing migration. *See* Pecoud, *supra* note 29, at 1626.

⁵² Diane C. Bates, *Environmental Refugees? Classifying Human Migrations Caused by Environmental Change*, 23 *POP. & ENV.* 466 (2002).

⁵³ Jason M. Pobjoy, *Treating Like Alike: The Principle of Non-Discrimination as a Tool to Mandate the Equal Treatment of Refugees and Beneficiaries of Complementary Protection*, 34 *MELB. U. L. REV.* 181 (2010).

⁵⁴ Michelle Foster, *Non-Refoulement on the Basis of Socio-Economic Deprivation: The Scope of Complementary Protection in International Human Rights Law*, *N. Z. L. REV.* 266, note 25 (2009).

⁵⁵ Convention Relating to the Status of Refugees, July 28, 1951, 189 *U.N.T.S.* 137, art 1.

of using the term “refugee” to refer to climate migrants. These agencies fear that applying the term “refugee” to the climate context risks diluting the legal force of the current refugee regime.⁵⁶ The 1967 Protocol extended the protections of the 1951 Convention, which originally applied to European refugees, universally.⁵⁷ The Convention also laid out principles of non-discrimination such as the application of refugee and asylum principles without regard to “sex, age, disability, sexuality, or other prohibited grounds.”⁵⁸ Importantly, the 1967 Convention also protects refugees’ rights within a sending country such as “access to the courts” and the ability to work and go to school.⁵⁹

1. Teitiota v. New Zealand

Teitiota v. New Zealand is considered a watershed case for climate migration because the international court ruled that Teitiota was entitled to remain in New Zealand due to the deteriorating conditions in Kiribati.⁶⁰ Since 2000, Ioane Teitiota and his family “struggled with living on” land that could not support them.⁶¹ They were able to migrate to New Zealand to acquire work, where they then had three children. After failing to renew their visa, the family risked being deported back to Kiribati.⁶² Their lawyer, Michael Kidd, filed a claim under Section 198 of the Immigration Act 2009 of New Zealand, attempting to establish that the Teitiotas were “climate refugees.”⁶³ Under New Zealand immigration law, refugees are entitled to protection based on the 1951 Refugee Convention, and other international humanitarian laws such as the Convention Against Torture, and the 1966 International Covenant on Civil and Political Rights.⁶⁴ At the trial, experts testified on the uninhabitable conditions awaiting the Teitiota family. Simon Behrman and Avidan Kent note that the evidence included “detailed coastal

⁵⁶ See *Environmental Migration*, MIGRATION DATA PORTAL (Sep. 2023), <https://perma.cc/FE74-6TPJ>.

⁵⁷ See United Nations Convention and Protocol Relating to the Status of Refugees, art. IA(2), July 28, 1951, U.S.T. 6259, 189 U.N.T.S. 137, <https://perma.cc/RX5M-XGDB> [hereinafter Refugee Convention and Protocol]; Simon Behrman & Avidan Kent, *The Teitiota Case and the Limitations of the Human Rights Framework*, 75 QUESTIONS INT’L L. 25 (2020) (noting the decision according to authors is “widely hailed as heralding a major development in the jurisprudence on climate refugees.”)

⁵⁸ Refugee Convention and Protocol, *supra* note 57.

⁵⁹ *Id.*

⁶⁰ Shaindl Keshen & Steven Lazickas, *Non-refoulement: A Human Rights Perspective*, 74 J. INT’L AFFS. 21 (2022).

⁶¹ Behrman & Kent, *supra* note 57, at 25-26.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 27.

erosion, increased storm surges and flooding, [and] contamination of relatively scarce sources of potable water.”⁶⁵

The *Teitiota* decision did not explicitly conclude that the 1951 and 1967 refugee conventions apply to climate refugees. The decision has also prompted confusion about key aspects of international asylum law, particularly whether “imminence” is a requirement for the application of non-refoulement.⁶⁶ In their decision, the New Zealand court clarified the imminence standard. According to the court, the “imminence” requirement is similar to the “real chance” standard, which sits “above mere speculation” but “below . . . the civil balance of probability.”⁶⁷ Further, while the decision uses the term “refugee” to describe the plight of those like Teitiota, it does not alter existing international law on refugees.⁶⁸

Currently, under human rights law, imminence is not a requirement that one has to demonstrate to gain protection from certain harms.⁶⁹ Under the International Covenant on Civil and Political Rights (ICCPR), states are prohibited from “return[ing] . . . persons to their country of origin or to a third country where they may be subject to such treatment.”⁷⁰ However, the instrument does not require that such a harm be “imminent” for it to have legal force. In the climate migration context, this means that the principle laid out by the decision is one of “real risk” rather than “imminent harm.” An international visa clearing house for a migration lottery could potentially draw on this legal standard when deciding which climate migrants’ claims to prioritize.

2. Complementary protection mechanisms

While not a “term of art defined in any international instrument,”⁷¹ “complementary protection” refers to various ways that states may be obligated to protect those who migrate despite their lack of classification as refugees. According to a U.N. report that surveyed several non-Convention–related

⁶⁵ *Id.*

⁶⁶ Michelle Foster & Jane McAdam, *Analysis of ‘Imminence’ in International Protection Claims: Teitiota v New Zealand and Beyond* 71 INT’L & COMPAR. L.Q. 975 (2022) (noting that imminence refers to how immediate the harm is likely to be).

⁶⁷ *AF Kiribati* [2013] NZIPT 800413 (citing *AI (South Africa)* [2011] NZIPT 80050 at [80]-[85]).

⁶⁸ *Id.*

⁶⁹ Foster & McAdam, *supra* note 66, at 976 (“neither refugee law nor human rights law imposes an imminence requirement”).

⁷⁰ *Human Rights Instruments*, ASYLUM INSIGHT, <https://perma.cc/ZBH8-PCD5> (last accessed Jan. 14, 2024).

⁷¹ U.N. High Comm’r for Refugees, Ruman Mandal (External Consultant), *Protection Mechanisms Outside of the 1951 Convention (“Complementary Protection”)* (2005), <https://perma.cc/CF2C-MQCW>.

migration protections globally, several states have laws that allow for migrant protection not based on the Refugee Conventions.⁷² Further, a U.N. Working Group studying the existence of non-Convention protections outlined situations of “man-made” disasters that include “mass forcible expulsions, economic and social factors threatening the physical integrity and survival, structural problems of development; man-made ecological disturbances and severe environmental damages.”⁷³

State recognition of “complementary protection mechanisms” is promising despite it not being codified. Indeed, the UNHCR has in the past provided humanitarian assistance to those affected by environmental disasters, though this has fallen short of direct resettlement assistance.⁷⁴ One example of a legal instrument that attempts to codify the complementary protection mechanism is the OAU Convention.⁷⁵ The OAU Convention governs refugee issues in Africa. The scope of inclusion for refugee status in this Convention is much broader than the 1951 and 1967 Conventions, with the OAU stating that the term can apply to one who “owing to . . . events seriously disturbing public order . . . is compelled to leave his place of habitual residence.”⁷⁶ According to one report, despite the genesis of this protection in the unique post-colonial history of Africa, the terminology used to include refugees in the OAU Convention has the potential to inspire “universal application.”⁷⁷

C. Non-Refoulement Principle

The principle of non-refoulement stems from Article 33 of the U.N. Refugee Convention.⁷⁸ Under the principle, expulsion is a prohibited state action.⁷⁹ States are prohibited from sending an individual back to a country where that person has

⁷² *Id.*

⁷³ A/41/324, ¶¶ 30-40, *cited in* Mandal, *supra* note 71, at note 12 (citing U.N. Doc. A/41/324, ¶¶30-40).

⁷⁴ *Id.* at 6.

⁷⁵ See Organization of African Unity [OAU], Convention Governing the Specific Aspects of the Refugee Problems in Africa art. 1(2), Sept. 10, 1969, 1001 U.N.T.S. 39. [hereinafter OAU Convention].

⁷⁶ *Id.*

⁷⁶ RUMA MANDAL, PROTECTION MECHANISMS OUTSIDE OF THE 1951 CONVENTION (“COMPLIMENTARY PROTECTION”) UNHCR at 14, (2005), <https://perma.cc/8PUH-8MQX>.

⁷⁸ See U.N. High Comm’r for Refugees, The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, REFWORLD (Jan. 31, 1994), <https://perma.cc/RM4T-PCZM>.

⁷⁹ *Id.*

a well-founded fear of persecution, death, or other forms of “irreparable harm.”⁸⁰ The principle “applies to any form of removal or transfer of persons, regardless of their status.”⁸¹ Under the principle of non-refoulement, an individual’s citizenship status cannot be a basis for denying them protection in a country.⁸² Further, courts have varying interpretations of what constitutes an “irreparable harm” or a violation of human rights that would be grounds for protection under Article 33. The U.N. cites several violations, such as various forms of cruel and unusual punishment, and “severe violations of” protected characteristics that would trigger the principle of non-refoulement.⁸³

In *Ahani v. Canada*, the UNHCR claimed that states would violate their international obligations under the non-refoulement principle if they were to send someone back to their country where they faced a substantial risk of torture.⁸⁴ To come to their decision, the international court considered the “causal link” between the violent harm faced by the returnee and the act of deportation.⁸⁵ In *Judge v. Canada*, the court noted that the relevant inquiry for whether Canada could be accountable under international law for deporting someone to the U.S. where he would face the death penalty was whether “by deporting him to a country where he was under sentence of death, *Canada established the crucial link in the causal chain that would make possible the execution.*”⁸⁶ Likewise, in *Soering v United Kingdom*, the European Court of Human Rights noted that states can be held responsible for

⁸⁰ U.N. High Comm’r for Refugees, The Principle of non-Refoulement under International Law, <https://perma.cc/RXB9-UDYQ> (last accessed Oct. 21, 2024); U.N. Convention Relating to the Status of Refugees art. 33(1), opened for signature July 28, 1951, 189 U.N.T.S. 150. Article 33 also provides exceptions to non-refoulement based on security concerns, *id.* art. 33(2):

“The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.”

⁸¹ Principle of non-Refoulement under International Law, *id.* at 1.

⁸² *Id.* (“The prohibition applies to all persons, irrespective of their citizenship, nationality, statelessness, or migration status, and it applies wherever a State exercises jurisdiction or effective control, even when outside of that State’s territory.”).

⁸³ *Id.*

⁸⁴ *See Ahani v. Canada*, Communication No. 1051/2002, U.N. Doc. CCPR/C/80/D/1051/2002 (2004).

⁸⁵ *Id.*

⁸⁶ *Judge v. Canada*, UNHRC, Communication No. 829/1998, CCPR/C/78/D/829/2002 (2004) (emphasis added).

violating the principle of non-refoulement if the deportation of the migrant “has as a direct consequence” the migrant being subject to “proscribed ill-treatment.”⁸⁷

V. INTERNATIONAL BURDEN SHARING

An international climate change lottery would need to be based on a burden sharing framework that draws on the notion of “common but differentiated responsibilities,” an established standard in environmental law based in Principle 7 of the 1992 Rio Declaration.⁸⁸ “Differential treatment”⁸⁹ among potential climate migrants is necessary to achieve equity in international responses to climate migration. Equity, unlike equality, is a principle that seeks to tailor responses based on the particular needs of individuals that are the product of historical and political forms of marginalization and deprivation. Humanitarian aid, according to Philippe Cullet, is premised on equity since it seeks to empower “weaker actors.”⁹⁰

The Paris Climate Agreement is a useful model for how legal regimes can incentivize state actors to cooperate collectively to address climate migration. International responses to large scale calamities are often rife with collective action problems. This is because, unlike national sovereigns, who have the capacity to punish, international actors lack the requisite “sticks” to motivate action and primarily rely on “carrots.” However, the Paris Agreement does propose a legal mechanism that could function as de facto punishment. For example, according to one scholar, the “agreement’s real innovation . . . is to embed . . . a framework of ‘pledge and review.’”⁹¹ This mechanism promotes transparency and the ability for states to “name and shame.”⁹² Countries would be able to access whether other states’ “pledges are comparable with their own . . . and . . . whether countries’ actual contributions meet or fall short of their pledges.”⁹³

The coordination of large-scale international action on global issues requires both incentives for cooperation as well as “gradual normative shifts” that may

⁸⁷ *Soering v. United Kingdom*, 161 Eur. Ct. H.R. (ser. A) (1989), reprinted in 11 Eur. Hum. Rts. Rep. 439 (1989), 28 ILM 1063 (1989).

⁸⁸ Philippe Cullet, *Common but Differentiated Responsibilities*, in RESEARCH HANDBOOK ON INTERNATIONAL ENVIRONMENTAL LAW 161 (Malgosia Fitzmaurice, David M. Ong, & Panos Merkouris eds., 2010).

⁸⁹ *Id.* at 165.

⁹⁰ *Id.*

⁹¹ Scott Barrett, *Coordination vs. Voluntarism and Enforcement*, 113 PROC. NAT’L. ACAD. OF SCI. (2016).

⁹² Behnam Taebi and Azar Safari, *On the Effectiveness and Legitimacy of ‘Shaming’ as a Strategy for Combatting Climate Change*, SCI ENG ETHICS 1289, 1291 (2017).

⁹³ *Id.* However, Barrett notes that there is little evidence that this mechanism has proved useful.

spur action.⁹⁴ Effective burden sharing, according to Keohane and Oppenheimer, requires that states perceive the arrangement to be fair.⁹⁵ A climate migration lottery would thus need to be sensitive to states' perceptions of global inequality being unduly burdened relative to other countries to receive climate migrants. The "pledge and review" instrument of the Paris Agreement is one legal mechanism that could be incorporated into a climate migration lottery. While the legal mechanism does not render the agreement binding on states, under Article 13 and 14 of the Paris Agreement, "the key Pledge and Review provisions,"⁹⁶ countries "take stock" of whether they are meeting requirements "every five years beginning in 2023."⁹⁷ The Paris Agreement calls on countries to share communications about "anthropogenic emissions . . . prepared using good practice methodologies accepted by the [IPCC]."⁹⁸

VI. THE ETHICS AND MECHANICS OF VISA LOTTERIES

Simply put, a lottery is a randomized selection process wherein outcomes are not subject to predetermined criteria "on the part of any decision maker."⁹⁹ Law and public policy are rife with examples where randomized processes are used by actors to make legal enforcement decisions, allocate resources, and distribute public service burdens, such as service in the military and jury selection.¹⁰⁰ For example, Akil Amar notes that lottery voting, which involves selecting a political representative based on randomly drawing a single vote rather than aggregating a total, is appropriate to generate "cross-sectional ideals" in democratic settings where one prefers equal and proportionate ethnic and racial representation.¹⁰¹

⁹⁴ Robert O. Keohane & Michael Keohane, *Paris: Beyond the Climate Dead End Through Pledge and Review?* *Open Access Repository*, 4 *POL. & GOVERNANCE* 142–51 <https://perma.cc/4WQE-BFPS>.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104, <https://perma.cc/S2LT-6NQ9>.

⁹⁹ Peter Stone, *The Logic of Random Selection*, 37 *POL. THEORY* 375, 378 (2009).

¹⁰⁰ See Ronen Perry & Tal Zarsky, 'May the Odds Be Ever in Your Favor': *Lotteries in Law*, 66 *ALA. L. REV.* 1035, 1041 (2015); GUIDO CALABRESI & PHILIP BOBBITT, *TRAGIC CHOICES* (1978). The U.S. and UK both use randomized processes to select juries. See *Jury Vetting*, CROWN PROSECUTION SERVICE, <https://perma.cc/4E5B-WXPE> (last accessed Jan. 14, 2024).

¹⁰¹ Selecting representatives "behind a veil of ignorance," according to him, protects the minority vote by eliminating incentives for gerrymandering districts. Akil Amar, *Choosing Representatives by Lottery Voting*, 93 *YALE L. J.* 1283 (1984).

Guido Calabresi and Philip Bobbitt note that lotteries are appropriate in political decision-making when “the limits of mindful choice are reached.”¹⁰²

A. Existing Visa Lottery Systems

This section outlines existing migration lottery systems that might serve as useful models for a CML. I start with the New Zealand Pacific Access Category (PAC) since it is targeted at island states that will likely have a large amount of climate induced displacement in the future. I next detail the U.S. Diversity Visa (DV) program. This program is a useful model for a CML since it combines a random selection model with a quota. Models that combine random selection with a quota are appropriate to allocate visas for a CML since sending countries will experience climate change to different degrees.¹⁰³

1. New Zealand PAC and climate refugee visa

The government of New Zealand administers a visa lottery through its New Zealand Pacific Access Program.¹⁰⁴ Under the program, residents from Kiribati, Tuvalu, Tonga, or Fiji between the ages of eighteen and forty-five are eligible to register a ballot provided they pay a fee of about \$840. Those selected for admission are invited to apply for residency in New Zealand and are entitled to “live, work, and study” in the country.¹⁰⁵ According to the New Zealand immigration website, the quota for the PAC has been increased for 2023 and between “75 to 150 Kiribati citizens, 75 to 150 Tuvaluan citizens, 250 to 500 Tongan citizens and from 250 to 500 Fijian citizens” are potentially eligible for visas.¹⁰⁶ Eligibility to participate in the visa lottery is restricted to those with the skills to support themselves in New Zealand.¹⁰⁷

¹⁰² Perry & Zarsky, *supra* note 100, at 1042, quoting CALABRESI & BOBBITT, *supra* note 100.

¹⁰³ See *Climate Change and Migration: Improving Methodologies to Estimate Flows*, INTERNATIONAL ORGANIZATION FOR MIGRATION (2008), <https://perma.cc/F272-C9SD> (noting that some areas of the world are more susceptible to negative environmental impacts due to global warming, and that some of the effects of global warming such as drought do not lead to patterns of international migration).

¹⁰⁴ New Zealand also has a temporary visa program for residents of Tuvalu and Kiribati. The Recognised Seasonal Employer Limited Visa allows for a temporary stay in New Zealand to work in the country’s horticulture and viticulture industries. See *Pacific Access Category Resident Visa*, NEW ZEALAND IMMIGRATION, <https://perma.cc/N75Q-J5E4> (last accessed Jan. 14, 2024).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

New Zealand considers its PAC visa system part of its strategy to address the ecological threats to the livelihood of those in Pacific Island nations.¹⁰⁸ In 2017, the labor-led government proposed a “climate refugee visa” for Pacific Islanders, the first of its kind in the world.¹⁰⁹ The Prime Minister, Jacinda Arden, claimed that New Zealand would try to accommodate about 100 Pacific Island climate refugees per year.¹¹⁰ The proposal was a break from the government’s earlier policy, which did not grant asylum to those displaced due to a rise in sea-levels.¹¹¹ However, the climate refugee visa plan was dispensed with only six months after it was announced by the government.¹¹² Pacific Islanders did not want to participate in the new climate refugee program because “[t]hey saw gaining refugee status as a last resort.”¹¹³

2. U.S. Diversity Green Card Lottery

Section 203(c) of the Immigration and Nationality Act (INA) authorizes the government to determine which countries had a low rate of immigration in the previous fiscal year and grant individuals from these countries diversity visas (DV). To be eligible for a DV, an individual must possess at least a high school education and two years of work experience within the past five years.¹¹⁴ According to the INA, “Immigrant visa numbers made available under subsection (c) (relating to diversity immigrants) shall be issued to eligible qualified immigrants strictly in a random order established by the Secretary of State for the fiscal year involved.”¹¹⁵ Under the DV program, 55,000 individuals from countries with low rates of immigration to the U.S.¹¹⁶ are eligible to enter the State Department lottery

¹⁰⁸ See, e.g., U.N. Hum. Rts. Off. of the High Comm’r, *UN Human Rights Case Opens Door to Climate Change Asylum Claims*, (Jan. 21, 2020), <https://perma.cc/W8PB-38CW> (describing *Teitiota v. New Zealand*, wherein the New Zealand government rejected climate induced displacement as grounds for granting asylum).

¹⁰⁹ Jonathan Pearlman, *New Zealand Creates Special Refugee Visa for Pacific Islanders Affected by Climate Change*, STRAITS TIMES (Dec. 9, 2017) <https://perma.cc/8KH8-JE3F>.

¹¹⁰ Helen Dempster & Kayly Ober, *New Zealand’s “Climate Refugee” Visas: Lessons for the Rest of the World*, CENTER FOR GLOBAL DEVELOPMENT (January 10, 2020) <https://perma.cc/H7W8-8UX4>.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Instructions for the 2025 Diversity Visa Immigration Program*, UNITED STATES DEPARTMENT OF STATE, <https://perma.cc/7Z43-RHRR>.

¹¹⁵ See Section 203(c) of the Immigration Nationality Act, <https://perma.cc/9SAY-MEVX>.

¹¹⁶ For AY2025, the following countries are not eligible to participate in the DV program: Bangladesh, Brazil, Canada, The People’s Republic of China (including mainland and Hong Kong born), Colombia, Dominican Republic, El Salvador, Haiti, Honduras, India, Jamaica, Mexico, Nigeria, Pakistan, Philippines, Republic of Korea (South Korea), Venezuela, and Vietnam. For a complete list of the countries that are eligible see UNITED STATES DEPARTMENT OF STATE, *supra* note 114.

for admission to the U.S.¹¹⁷ Section 203(c) states that no more than 7% of the total number of diversity visas granted in a fiscal year shall go to any one foreign country.¹¹⁸

B. Normative Arguments for and against Lotteries

1. Fairness

According to Rufaida Al Hashmi, arguments in the normative scholarship that favor migration lotteries can be divided into the “weak fairness” view and the “strong fairness” view.¹¹⁹ The weak fairness view, according to Al Hashmi, defends migration lotteries when the population of potential migrants all have a roughly equal moral claim to enter a given country. In this situation, a migration lottery gives everyone an equal chance of being selected and is fair because it treats “relevantly like cases . . . alike.”¹²⁰ The “strong view” posits that even when certain groups of migrants are more deserving than others based on humanitarian need and the exigency of their circumstances, a lottery is still a fair method to allocate scarce migration opportunities. John Broome, for example, argues that even those lotteries that do not allocate spots to those that most deserve them can be construed as fair since the process gives lottery participants “surrogate satisfaction.”¹²¹ That is, a sense that one had a chance of acquiring the good at issue is, in some instances, sufficient to mitigate the unfairness of the process.¹²²

2. The “Sanitizing” effect of lotteries¹²³

Government decision-making about which groups of migrants to admit is often subject to conscious and unconscious biases related to the migrants’ race and ethnicity. Fatma Marouf examines the role of implicit bias within immigration courts in the U.S. and finds that immigration judges are uniquely susceptible to making decisions based on implicit bias since they have large caseloads and need to adjudicate claims swiftly.¹²⁴ Further, unlike other courts, the decisions of

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Rufaida Al Hashmi, *Lotteries and Immigration*, 39(2) J. APPL. PHIL. 2, 257 (2022).

¹²⁰ Jon Elster, *Taming Chance: Randomization in Individual and Social Decisions*, in SOLOMONIC JUDGEMENTS: STUDIES IN THE LIMITATION OF RATIONALITY 36, 113 (1989).

¹²¹ John Broome, *Fairness*, 91 PROCEEDINGS OF THE ARISTOTELIAN SOCIETY 87 (1990).

¹²² *Id.* at 99.

¹²³ I borrow this distinction between fairness justifications for lotteries and notion of “sanitizing justifications” from Al Hashmi, *supra* note 119, and PETER STONE, *THE LUCK OF THE DRAW* (2011).

¹²⁴ See Fatma E. Marouf, *Implicit Bias and Immigration Courts*, 45 NEW ENG. L. REV. 417 (2011).

immigration judges are reviewed by a federal court only 2% of the time.¹²⁵ Thus, decisions in the immigration context can contain “anti-foreign sentiments” that are not properly redressed.¹²⁶

Lotteries are useful in the migration context because their randomized nature “sanitizes”¹²⁷ the decision-making process of these implicit biases. In the migration context, where governments have to make admission decisions that involve differently situated groups vying for a finite number of visas, a randomized selection process “[supplies] an unbiased means of settling ties.”¹²⁸ According to Anna Law, the U.S. diversity visa lottery is an example of how random selection can lead to diversity in migration over time.¹²⁹ The diversity lottery was initially touted by policymakers as allowing more immigration from more “desirable countries” while leaving in place quotas for migrants from “less desirable” countries.¹³⁰ Eventually, the lottery system came to primarily benefit migrants from Eastern European and African countries with low rates of immigration.¹³¹

C. Climate Change, Global Inequality, and the Duty to Receive Migrants

A CML based on a treaty where states commit to receive a certain percentage of the total pool of climate migrants can address the global justice concern that the largest emitters of greenhouse emissions are the countries that are not likely to experience the greatest environmental calamities resulting from climate change.¹³² Peter Singer provides a normative justification for why developed countries should shoulder more of the burden of addressing climate change based on the historical principle.¹³³ On this view, we need to analyze present global wealth inequalities as the culmination of centuries of disproportionate appropriation of the “atmospheric sink” by wealthy nations.¹³⁴ The “atmospheric

¹²⁵ *See id.*

¹²⁶ *Id.* at 448.

¹²⁷ STONE, *supra* note 123.

¹²⁸ *Id.* at 15.

¹²⁹ Anna O. Law, *The Diversity Visa Lottery: A Cycle of Unintended Consequences in United States Immigration Policy*, 21 J. AM. ETHN. HIST. 3 (2002).

¹³⁰ *Id.* at 15–16.

¹³¹ *Id.* at 23 (“The neutral mathematical formula devised by the Department of State to determine which were the adversely affected countries produced a list that in addition to Italy and Ireland included many African and European countries, and a few Asian countries.”).

¹³² Raphael Nawrotzki, *Climate Migration and Moral Responsibility*, 17 ETHICS POL’Y ENV. 69 (2014).

¹³³ Peter Singer, *One Atmosphere*, in CLIMATE ETHICS (Stephen Gardiner, Simon Caney, Dale Jamieson, & Henry Shue, eds.) 187 (2010).

¹³⁴ *Id.* at 188.

sink” refers to the earth’s limited ability to absorb man-made emissions of carbon dioxide as a common resource, or sink.”¹³⁵ Singer and others that subscribe to this view argue that it justifies developed states reducing their emissions and bearing an economic cost in the form of reducing industrial activity.¹³⁶

Others have applied “the duty to rescue” to characterize the ethical imperative for the largest contributors to global warming to admit climate migrants.¹³⁷ The duty to rescue refers to the moral position that if we encounter someone in grave danger and can save that person from the situation then we should do so if it would not result in significant costs to ourselves.¹³⁸ According to David Miller, there are situations where “multiple rescuers are present” such that the duty to rescue can be allocated among them.¹³⁹ A CML that apportions migrants based on a state’s capacity to receive migrants and their relative contribution to the problem of climate change would recognize both that some states are positioned to “rescue” those displaced by environmental calamities while tailoring the burden based on a country’s overall level of emissions.

VII. CONCLUSION

This paper set out to formulate a legal design for an international climate migration lottery. There is broad consensus that a significant degree of migration due to climate change is inevitable. This paper argues that lotteries are particularly well-suited to address the realities of climate-related migration. Countries that face climate change-related environmental calamities need to adopt resilience and adaptation strategies. A CML facilitates this goal since it would allow a select number of migrants to enter a lottery. This would prevent an influx of migration out of a country that could be enabled through a broader climate refugee regime. Mass migration could compromise developing nations’ ability to build up infrastructure to adapt to global warming.

A CML would also insulate migration decisions from biases that could make countries select migrants based on racial and socioeconomic characteristics. This would mean that the citizens of the most impoverished countries that are vulnerable to climate change would not receive adequate protection, further perpetuating global inequality. Further, New Zealand is an example where Pacific

¹³⁵ Stephen M. Gardiner, *Ethics and Global Climate Change*, 114 *ETHICS* 580 (2004).

¹³⁶ *See id.* at 579 (“[T]here is a surprising convergence of philosophical writers on the subject: they are virtually unanimous in their conclusion that the developed countries should take the lead role in bearing the costs of climate change, while the less developed countries should be allowed to increase emissions for the foreseeable future.”).

¹³⁷ David N. Hoffman, Anne Zimmerman, Camille Castelyn & Srajana Kaikini, *Expanding the Duty to Rescue to Climate Migration*, 8 *VOICES IN BIOETHICS* 1 (2002).

¹³⁸ David Miller, *The Nature and Limits of the Duty to Rescue*, 17 *J. MOR. PHIL.* 320 (2020).

¹³⁹ *Id.* at 322.

Island states refused to accept a visa program that was marketed as a “refugee visa,” since this perpetuated a victim narrative of island inhabitants. A CML, because it would not be tied to the existing asylum regime, would be marketed as an adaptation strategy to climate change, which provides agency to those wishing to migrate to do it on their own terms.