

Filling a Gap, Not Closing It: International Human Rights Law, Non-Refoulement, and the Protection of Pacific Islanders Displaced by Slow-Onset Sea-Level Rise

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Abstract

This article asks to what extent international human rights law, through the principle of non-refoulement, can fill the protection gap left by the 1951 Refugee Convention for Pacific Islanders displaced across international borders by slow-onset sea-level rise. It argues that non-refoulement can and does provide a genuine, doctrinally distinct pathway to protection that does not require the applicant to be recognized as a Convention refugee, but that this pathway fills only the narrowest part of the gap: the prohibition on removal itself. Drawing on the UN Human Rights Committee's decisions in *Teitiota v. New Zealand* and *Daniel Billy et al. v. Australia*, and on the doctrinal literature that has grown up around both cases, the article shows that the practical reach of non-refoulement for slow-onset harm depends on three unresolved variables: how risk is aggregated across multiple sub-threshold harms, whether "imminence" or "foreseeability" is applied as the operative legal standard, and how the evidentiary burden of proving future risk is allocated between claimant and state. It concludes that non-refoulement is a necessary but structurally insufficient response: it can prevent the worst individual outcome, forced return to a disappearing homeland, without ever supplying the status, rights, or durable solution that genuine protection from climate displacement requires.

Keywords: non-refoulement, 1951 Refugee Convention, climate displacement, Pacific Islanders, sea-level rise, *Teitiota v. New Zealand*, international human rights law

1. Introduction

Pacific Island states, including Kiribati, Tuvalu, and the Marshall Islands, face a distinctive and, in the long run, existential form of climate harm. Unlike sudden-onset disasters, sea-level rise is slow, cumulative, and scientifically well-modeled, yet its precise local timeline and threshold of irreversibility remain probabilistic rather than fixed. For citizens of these states who cross an international border seeking safety, the 1951 Refugee Convention offers no straightforward answer: its definition of a refugee requires a well-founded fear of persecution linked to race, religion, nationality, membership of a particular social group, or political opinion. Rising seas persecute no one; they are not an "agent" in the sense the Convention demands, and Pacific Island governments are not themselves the source of the harm their citizens face.

This produces what has become a well-established finding in the literature: a protection gap. The question this article addresses is not whether that gap exists, but to what extent international human rights law, through the principle of non-refoulement, can fill it. Non-refoulement means that no one should be returned to a place where they may face cruel, inhuman, or degrading treatment, punishment, or torture. The principle is enshrined in Article 33 of the 1951 Convention, which prohibits the expulsion or return of a refugee to territories where their life or freedom would be threatened, but it also exists independently in international human rights law, where it can prevent removal wherever returning a person would lead to a serious violation of their fundamental rights. Critically, this human-rights-based version of non-refoulement applies to all

people, regardless of citizenship, nationality, or migration status, and does not require the person to qualify as a refugee under the 1951 Convention at all.

Yet even where a non-refoulement claim succeeds, it does not, by itself, confer refugee status or any other durable legal status. A person protected from removal on this basis may still be left in a form of legal limbo: unable to be returned, but without a recognized right to remain, to work, or to reunite with family. This tension between protection from removal and protection through status is central to the analysis that follows.

The UN Human Rights Committee's 2020 decision in *Teitiota v. New Zealand* is the necessary starting point for this inquiry, because it is the first authoritative body to hold that climate-related harm can, in principle, trigger non-refoulement obligations under the International Covenant on Civil and Political Rights (ICCPR), even though Ioane Teitiota himself lost his case. This article asks: **to what extent can international law and the principle of non-refoulement fill the protection gap left by the 1951 Refugee Convention for Pacific Islanders displaced by slow-onset sea-level rise?** To answer this question, the paper first examines the limitations of the Refugee Convention, then analyzes the potential of non-refoulement through the *Teitiota* and *Billy* decisions and the scholarship surrounding them, then turns to the specific evidentiary difficulty posed by slow-onset harm, and finally evaluates how far non-refoulement actually reaches as a form of protection.

2. The Protection Gap Left by the 1951 Convention

Regional instruments on refugees complement the 1951 Convention and build on its definition, referring to a number of "objective" circumstances that force people to leave their countries of origin. The 1951 Convention was originally designed to find solutions for those displaced across Europe during the Second World War: it initially covered only people who became refugees as a result of events occurring before 1 January 1951, and was focused on events in Europe. These geographical and temporal limitations were removed by the 1967 Protocol, which expanded the Convention's scope of application. The refugee definition it provides applies to people who flee persecution linked to their individual circumstances, and also to people who flee armed conflict and violence, but it was never designed specifically for environmental displacement.

Scholars generally agree that the 1951 Refugee Convention does not provide a straightforward form of protection for people displaced solely by climate change. They differ, however, in their assessment of whether existing human rights law, and particularly the principle of non-refoulement, can effectively address this protection gap.

Guy Goodwin-Gill's *The Global Compacts and the Future of Refugee and Migrant Protection in the Asia-Pacific Region* examines the legal and political frameworks for protecting refugees in the Asia-Pacific region, together with states' responses to refugee movements from the Indochina refugee crisis of the mid-1970s to more recent events (Goodwin-Gill, 2018). Goodwin-Gill argues that states which are not parties to the 1951 Convention but nonetheless provide asylum to refugees implicitly recognize the existence and relevance of the international refugee protection regime, despite their refusal to join the Convention. Although the Convention's definition of a refugee remains dominant, regional human rights treaties have modified it in response to displacement crises the Convention does not cover.

The Asia-Pacific region hosts around 1.5 million refugees. Although the region currently experiences no large-scale mass movements, it is home to two of the world's largest refugee-producing countries, Myanmar and Afghanistan, and to two of the world's three largest populations of stateless persons. The refugee protection regime in the region rests on two sets of obligations: granting asylum and burden-sharing among states. Of these, the norm of granting asylum is highly institutionalized and widely accepted, while the norms governing burden-sharing remain weak and largely discretionary (Goodwin-Gill, 2018).

Jane McAdam's *Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement* offers the most influential analysis of the landmark decision of the UN Human Rights Committee in *Teitiotia v. New Zealand* and its significance for protecting people forced to leave their countries because of climate change (McAdam, 2020). Teitiotia, a citizen of Kiribati, sought refugee status in New Zealand, arguing that rising sea levels and environmental degradation in his homeland made life there dangerous and untenable. New Zealand's courts rejected his claims, and he appealed to the UN Human Rights Committee, arguing that his deportation back to Kiribati would violate his right to life under Article 6 of the ICCPR. The Committee formally rejected Teitiotia's complaint, concluding that at the time of his deportation the risk was not "sufficiently immediate", but at the same time, for the first time, it explicitly acknowledged that the consequences of climate change and environmental degradation may, in principle, give rise to a state obligation not to deport a person where doing so would expose them to a real risk of violation of the right to life or of inhuman treatment.

McAdam's central contribution is to analyze the extent to which this decision extends the principle of non-refoulement beyond the scope of traditional refugee law, where it is primarily applied to cases of persecution by a specific agent, such as a state or a group (McAdam, 2020). Climate change is not persecution in this sense, which makes the application of classical criteria, namely reality, personal nature, and the immediacy or imminence of the risk, problematic in this context.

Her argument is not, however, without weaknesses. McAdam accepts the Committee's framework as a starting point rather than fundamentally challenging it: she works mainly within the logic of the Teitiotia decision, criticizing how the Committee applied the imminence standard, without questioning the underlying premise that an individual complaint against a particular deporting state is a suitable tool for climate migration in general. Harsher critics such as Behrman and Kent go further, arguing that the Teitiotia decision was presented by many researchers as a significant step forward in creating a protection regime for the growing number of people displaced by climate change, whereas in reality the human rights framework has structural limitations: it is designed for individual harm caused by specific state action, not for the gradual, collective, and non-agentic degradation of the environment (Behrman & Kent, 2020). In this sense, McAdam can be read as working to "fix" the non-refoulement model rather than questioning whether the model is suitable in principle.

A related limitation is that McAdam underestimates how thin protection remains even where a claim succeeds. Even if the Committee had found a violation of Article 6 in the Teitiotia case, this would have provided protection from deportation for one individual,

but it would not have created legal status in the host country, a right to family reunification, or a mechanism for mass rather than individual relocation.

Nor does McAdam examine states' positive obligations to mitigate climate change, as opposed to their negative obligation not to expel someone once displacement has occurred. This question became central in the subsequent case of *Daniel Billy et al. v. Australia* (2022), brought by Torres Strait Islanders, in which the Committee acknowledged a violation of Article 17 (private and family life) and Article 27 (culture), but notably failed to establish clearly that states bear a positive obligation to take measures specifically to mitigate climate change, beyond adaptation measures, a significant limitation of that decision. In other words, the key question of whether it is even possible to hold a specific state responsible for a global process remained open in both 2020 and 2022, and McAdam's article barely addresses it.

International Protection, Disasters and Climate Change is not a single-authored article but a collective analytical document produced by the Refugee Law Initiative (RLI) at the University of London, an explanatory note accompanying the RLI Declaration on International Protection in the Context of Disasters and Climate Change, adopted in 2024. Its sixteen co-authors, including Cantor, Weerasinghe, Wood, and Kălin among others, bring together leading researchers and practitioners to provide practical guidance for decision-makers on how to apply existing refugee and human rights law to cases involving disasters and climate change (Cantor et al., 2024).

The authors advance three main claims. First, international protection is not the primary tool for addressing climate and disaster displacement: migration law should be the principal mechanism for cross-border mobility in most cases, with international protection engaged only where migration mechanisms are unavailable or insufficient. Second, they examine the termination of refugee status, arguing that sustainable protection requires not merely the end of the triggering event, but the restoration of functioning infrastructure and state institutions. Third, they offer a detailed analysis of the threshold of "severity" required for non-refoulement under human rights law, including the controversial "predominant cause" approach applied in the jurisprudence of the European Court of Human Rights, which sets a higher threshold of protection where the main cause of harm is attributed to "nature" rather than to human action, an approach the authors criticize as poorly adapted to disaster cases specifically (Cantor et al., 2024).

Despite this ambition, the document leaves several problems unresolved rather than solving them. The question of imminence, for instance, has been reformulated rather than answered: the authors directly reference Foster and McAdam's argument that imminence is not a legal test but simply a matter of evidence, namely that the further the risk lies in the future, the more compelling the evidence must be (Foster & McAdam, 2022). Formally, this is an elegant response to McAdam's 2020 criticism of the Teitiota decision, but in substance the underlying problem does not disappear; it merely takes a different form, since the document does not specify how much evidence is sufficient, leaving the determination to the discretion of individual decision-makers.

A further limitation is that the document remains almost entirely built around individual status determination. Despite acknowledging at the outset that disasters give rise to mass movements, citing 336.7 million cases of internal displacement between 2009 and 2022 from sudden-onset disasters alone, its legal methodology remains case-by-case.

The mechanism of prima facie group recognition, the standard tool used by UNHCR in situations of mass influx, is practically unaddressed.

Planned relocation likewise remains a blind spot in states' obligations. The authors explicitly acknowledge that it is unclear whether states are obliged under international law to implement such a measure. Even years after *Teitiota*, in which the Committee noted that Kiribati might attempt to relocate its population, the document still does not formulate a positive obligation to do so. This means the central problem of disappearing states such as Tuvalu and Kiribati remains a legal vacuum as of 2024.

Causation and attribution present a similar pattern: named but not resolved. In discussing the predominant-cause doctrine, the authors themselves acknowledge that establishing a particular state's responsibility for a particular weather event is "an extremely difficult exercise," citing the climatological literature on attribution science, but the analysis goes no further, leaving unresolved the same problem that Weerasinghe (2020) and, to a lesser extent, McAdam (2020) also left open.

Read together, these works reveal a shared pattern. The 2024 RLI Declaration is, in effect, the next step in the same scholarly tradition as McAdam's article: it tries to close precisely the gaps McAdam exposed in 2020, but in essence reproduces the same structural caution. Both works remain within the existing legal framework, offering neither a new treaty, nor a sui generis status for climate migrants, nor a solution to the problem of mass and collective displacement. Where McAdam and the RLI authors work at the level of doctrine, Goodwin-Gill works at the level of institutional and political diagnosis, asking why the law does not work even where it formally exists (Goodwin-Gill, 2018). This is a valuable addition, but it leaves open the gap between what the law says and why states do not comply with it.

The Convention, therefore, creates a protection gap, but the gap is not absolute. Its application depends on the particular circumstances of displacement.

3. The Potential of Non-Refoulement

If the 1951 Convention does not recognize someone as a refugee, can human rights law nonetheless prevent that person from being returned? Human rights law and refugee law are separate legal regimes with different triggers. The 1951 Refugee Convention requires a "well-founded fear of being persecuted" for one of five specific reasons: race, religion, nationality, membership of a particular social group, or political opinion. If someone does not fit that definition, for instance because they face generalized environmental degradation rather than targeted persecution, refugee law offers them nothing.

Non-refoulement under human rights law works differently. It does not ask whether someone is a "refugee"; it asks the narrower question of whether returning a person would expose them to a real risk of irreparable harm, specifically a violation of the right to life under Article 6 of the ICCPR, or the prohibition on torture and inhuman treatment. If the answer is yes, the state that removes them is itself in breach of its own obligations, regardless of whether the person qualifies as a refugee. In principle, then, human rights law can function as a backstop for people the Refugee Convention does not cover.

Teitiota v. New Zealand (UN Human Rights Committee, 2020) illustrates both the promise and the limits of this backstop. Ioane Teitiota argued that rising sea levels, freshwater contamination, and the scarcity of habitable land made it unsafe for him to

return to Kiribati. After New Zealand's domestic courts rejected his refugee and protection claims, he brought an individual communication before the UN Human Rights Committee, arguing that New Zealand's decision to deport him violated his right to life under Article 6 of the ICCPR.

The Committee did not dismiss the claim as categorically outside its jurisdiction; instead, it engaged with the substance, accepting in principle that environmental degradation and climate change can create conditions serious enough to trigger non-refoulement obligations under Article 6, even in the absence of a "persecutor" in the traditional sense. This was the significant part of the decision: for the first time at this level, it opened the door to climate-related non-refoulement claims succeeding in future cases.

Teitiota nonetheless lost his case. The Committee found that New Zealand had not violated Article 6 on the facts before it, reasoning that the risk to his life was not sufficiently imminent: conditions in Kiribati, while deteriorating, had not yet reached a level at which his life was in real and immediate danger at the time of removal. The Committee noted that Kiribati still had around ten to fifteen years before conditions might become truly uninhabitable, allowing time for both the Kiribati government and the international community to act, including through possible relocation measures.

This combination of outcomes, a principle won but a case lost, is precisely why the decision is treated as both landmark and limited. On the one hand, the Committee legally established that climate change can in principle generate non-refoulement obligations under the ICCPR, a precedent that did not previously exist. On the other, Teitiota himself was left unprotected: the threshold the Committee set, requiring a near-term, foreseeable, life-threatening risk, was high enough that his own facts did not clear it. This is precisely what McAdam's critique targets: the Committee opened a door in theory while setting a threshold, imminence, that is very difficult to satisfy for slow-onset climate harms, which by nature unfold gradually rather than presenting an immediate, dateable threat (McAdam, 2020).

What Teitiota ultimately demonstrates is that non-refoulement functions as a shield against removal rather than a status. It does not require the state to recognize the claimant as anything in particular, no "climate refugee" category, no residency grant, and none of the bundle of rights that flow from refugee status under Article 1A(2) of the Convention, such as work authorization, travel documents, or family reunification. It imposes only a negative obligation on the removing state: not to send a person somewhere they face a real risk of irreparable harm.

Emanuele Sommario's *When Climate Change and Human Rights Meet: A Brief Comment on the UN Human Rights Committee's Teitiota Decision* (2021) offers the most granular reading of why Teitiota lost despite the door being opened. He walks through the four separate harms the Committee assessed, namely land-dispute violence, water scarcity, crop failure, and sudden-onset flooding, and shows that the Committee evaluated each of them separately rather than cumulatively. Endorsing McAdam's critique directly, he argues this was the decisive error: refugee law has long accepted that persecution can arise from the cumulative effect of several sub-threshold harms, and the European Court of Human Rights applies the same logic under Article 3 (Sommario, 2021). By assessing each strand of harm separately, the Committee artificially lowered the aggregate severity of Teitiota's situation.

Sommario's most distinctive contribution is procedural rather than doctrinal: he suggests that Teitiota's litigation strategy was suboptimal and proposes two concrete alternatives. First, greater emphasis on personally experienced socio-economic deprivation, rather than general country conditions, since the Committee has shown itself more receptive to individualized suffering than to statistical or collective risk. Second, bringing the claim through the Convention on the Rights of the Child rather than the ICCPR alone, since CRC jurisprudence applies a broader and more flexible standard of "harm" that better captures children's heightened vulnerability (Sommario, 2021). Even so, his analysis remains largely confined to litigation tactics and does not interrogate whether the underlying "real risk, personal in nature" standard is structurally suited to slow-onset, population-wide harms at all.

Amina Maneggia's *Non-Refoulement of Climate Change Migrants: Individual Human Rights Protection or 'Responsibility to Protect'? The Teitiota Case Before the Human Rights Committee* (2020) is more conceptually ambitious. She asks whether the individual-rights framework is even the right lens for cases like Teitiota's, or whether they are better understood through Responsibility to Protect (R2P), a doctrine developed for mass atrocity prevention and oriented around collective and state responsibility rather than individual litigation (Maneggia, 2020). Her argument, in essence, is that non-refoulement under the ICCPR is built for a paradigm in which one state is asked not to expose one person to harm elsewhere; climate displacement does not fit that shape, since the harm in Kiribati is not caused by New Zealand, and no single respondent state bears responsibility for the underlying degradation. Her argument is nonetheless vulnerable on its own terms, since R2P has no binding legal force and has struggled even in its home domain to generate consistent state action.

Joyce De Coninck and Anemoon Soete's *Non-Refoulement and Climate Change-Induced Displacement: Regional and International Cross-Fertilization?* shifts the register again, from single-case doctrinal critique to comparative institutional analysis, asking whether regional human rights systems apply non-refoulement to climate and environmental harms in compatible or divergent ways (De Coninck & Soete, 2022). Their analysis tests whether the Teitiota principle, non-refoulement without refugee status, travels consistently across systems or fragments regionally. If regional systems apply genuinely different thresholds, the practical content of "the shield without the status" varies enormously depending on which forum a claimant can access.

Taken together, these works confirm this article's central distinction: non-refoulement may prevent removal without transforming the individual into a refugee under the 1951 Convention. It genuinely can protect someone the Refugee Convention would never recognize, but each author shows, in a different way, how thin and unstable that protection remains. None of them addresses what happens after a successful non-refoulement finding: even in the best case, non-refoulement only forbids removal, creating no obligation to grant status, work rights, or a path to permanence. A "won" case therefore still leaves the person in legal limbo, not removable, but also not a refugee, not a resident, and not entitled to the Convention's bundle of rights.

4. Why Slow-Onset Sea-Level Rise Creates a Difficult Test

A natural assumption, shared by many early commentators on Teitiota, is that international protection law requires harm to be imminent before non-refoulement is triggered. Anderson, Foster, Lambert, and McAdam's 2019 article directly challenges

this assumption. Their study, the first sustained examination of the concept, identifies imminence as an emerging trend, invoked either implicitly or explicitly as a potential barrier to refugee status or complementary protection, and critiques its validity as a tool for assessing states' protection obligations. Their central claim is that neither the refugee law test of well-founded fear of persecution, nor the human rights test of real risk of irreparable harm, contains an inherent temporal requirement: imminence has crept into decision-making through practice, not because it is logically required by the legal standard itself (Anderson et al., 2019). This matters enormously for slow-onset sea-level rise, because if imminence were treated as a hard legal threshold, virtually no gradual climate-displacement claim could ever succeed, given that the harm from sea-level rise unfolds over decades rather than days.

Foster and McAdam's 2022 follow-up article, written specifically in response to the confusion generated by Teitiota, makes an important doctrinal correction: the Committee never actually held that imminence is required on the merits. They show that the Committee's reference to a ten-to-fifteen-year timeframe was widely misread as establishing an imminence test, when in fact the Committee's own language distinguishes between two separate inquiries: imminence as an admissibility or standing requirement, and the substantive real-risk assessment on the merits, which is governed by foreseeability rather than temporal immediacy (Foster & McAdam, 2022).

If foreseeability, rather than imminence, is the correct legal standard, the decisive question shifts to evidence: what must a claimant show to establish that future, not-yet-realized environmental degradation constitutes a real, foreseeable risk? De Coninck and Soete's comparative work on the burden and standard of proof in non-refoulement cases is directly relevant here (De Coninck & Soete, 2022). Applying their framework to a hypothetical Pacific Islander claimant, categories of evidence can be ranked by probative weight, as set out in Table 1 below.

Evidence type	Strength for a real-risk / foreseeability finding
Current, already-observed harm (existing flooding, salinization, crop failure)	Strongest — requires no probabilistic inference
Scientific projection models (IPCC sea-level trajectories, local hydrology)	Strong for foreseeability, but historically discounted by the Committee as insufficiently personal
Loss of habitable land / freshwater scarcity	Moderate — quantifiable and often already partly realized, but the Committee demanded evidence of severity threatening survival, not mere hardship
State adaptive capacity	Cuts against the claimant — the Committee treated ongoing adaptation measures as reducing real risk, regardless of their actual demonstrated effectiveness

Table 1. Evidentiary hierarchy for a slow-onset sea-level-rise claim, applying De Coninck and Soete's (2022) burden-of-proof framework.

Read against this evidentiary framework, Teitiota's failure is best explained not as a matter of the risk being insufficiently imminent, but as follows: the Committee accepted the foreseeability of Kiribati's long-term uninhabitability, yet placed the burden on the claimant to show that Kiribati's stated adaptive measures were inadequate, and treated the mere existence of a national adaptation programme, without independent assessment of its actual effectiveness, as sufficient to defeat that burden. This raises an unresolved analytical question central to this article: if foreseeability is the correct standard, and scientific, population-level projection evidence is legitimate proof of future risk, does Teitiota correctly apply that standard, or does it show the Committee implicitly reintroducing a temporal-imminence requirement through the back door, by treating a state's claimed, but not independently verified, adaptive capacity as an automatic risk-reducer?

5. Synthesis: Mapping the Width of the Protection Gap

Bringing the literature together, the protection gap identified by the 1951 Convention can be understood as varying along four axes.

The factual axis (Cantor et al., 2024; Sommaro, 2021): the gap narrows wherever a recognizable human agent is present, such as discriminatory disaster response, environmental "weaponization," or persecutory land disputes, and widens for "pure," agentless environmental degradation, which is precisely the weakest point of Teitiota's own claim.

The institutional and doctrinal axis (Weerasinghe, 2020; De Coninck & Soete, 2022): the gap narrows where broader regional refugee definitions, such as the OAU Convention or the Cartagena Declaration, or more generous regional human rights jurisprudence apply, and widens where only the narrower 1951 Convention or a stricter regional standard, such as the European Court of Human Rights' predominant-cause doctrine, governs.

The evidentiary and temporal axis (Anderson et al., 2019; Foster & McAdam, 2022; De Coninck & Soete, 2022): the gap narrows if foreseeability, supported by scientific projection evidence, is accepted as sufficient proof of future real risk, and widens if courts and treaty bodies implicitly, even if not explicitly, revert to demanding temporal imminence or heavily individualized proof of harm.

The implementation axis (Goodwin-Gill, 2018; Maneggia, 2020): even where the gap is doctrinally narrow, actual protection depends on institutional will, domestic incorporation, and burden-sharing among states, none of which current non-refoulement doctrine can compel.

6. How Far Does Non-Refoulement Actually Reach?

Refugee status is a bundle of entitlements: recognition, the right to remain, socio-economic rights such as work, education, and welfare, family reunification, and, eventually, a durable solution through local integration, resettlement, or safe return. Non-refoulement under human rights law recovers only the first of these, and even that recovery is conditional on successfully proving, case by case, a real and foreseeable risk. It does not confer any legal status: a successful claimant is left in a form of legal limbo, unremovable but without a defined right to remain, work, or reunite with family. It does not require persecution or any human agent at all, which is precisely what allows it to reach climate harm, but this same feature means it offers no bar to less severe forms of environmental hardship that fall short of a real risk to life.

Non-refoulement also does not address mass or group displacement: it operates claim by claim against one respondent state, and creates no mechanism analogous to *prima facie* refugee recognition for an entire displaced population. Nor does it allocate responsibility among states for the underlying harm. Maneggia's proposal to view the problem through the lens of Responsibility to Protect, rather than individual human rights litigation, is a direct response to this mismatch (Maneggia, 2020); R2P better captures that scale, but, being itself non-binding, does not resolve the underlying enforcement deficit.

Nor does non-refoulement provide any pathway that is consistent across jurisdictions. De Coninck and Soete's comparative analysis shows that regional human rights systems apply materially different thresholds, meaning the practical content of "protection without status" depends on which forum, if any, a claimant can access (De Coninck & Soete, 2022). Finally, non-refoulement cannot guarantee that even a state formally bound by these obligations will apply them. As Goodwin-Gill's analysis of the Asia-Pacific region demonstrates, the deeper obstacle in the region most relevant to Pacific Islanders is often not the absence of applicable norms, but their non-incorporation into domestic law and the arbitrary treatment of non-citizens in practice (Goodwin-Gill, 2018).

To what extent, then, can international human rights law and the principle of non-refoulement fill the protection gap left by the 1951 Convention for Pacific Islanders displaced across borders by slow-onset sea-level rise? The honest answer is: at one narrow point, and only conditionally. Non-refoulement does something the Refugee Convention structurally cannot: it protects a person from removal without requiring proof of persecution, a Convention ground, or refugee status, and Teitiota confirms this is not merely theoretical. But its reach is bounded by unresolved doctrinal questions, unresolved evidentiary questions, and structural limitations that no amount of doctrinal refinement can cure: no status, no durable solution, no mechanism for mass displacement, no allocation of responsibility among states, and dependence on domestic incorporation and political will.

The better way to characterize non-refoulement's relationship to the protection gap is not that it fills the gap, but that it punctures it: it carves out a single, individually litigated exception at the point where the consequence of leaving the gap unaddressed would be most morally intolerable, namely the forced return of a person to a place where their life is at real and foreseeable risk. For Pacific Islanders facing the slow, near-certain, but not-yet-complete submersion of their homelands, that puncture matters. It may be the difference between removal and safety for an individual claimant who can meet its demanding evidentiary burden. But it is not, and was never designed to be, an answer to climate displacement as a phenomenon.

7. Conclusion

This article set out to test a single question: whether international human rights law, through the principle of non-refoulement, can fill the protection gap left by the 1951 Refugee Convention for people displaced by the slow-onset impacts of climate change. The answer that emerges from the case law and the surrounding scholarship is neither a simple yes nor a simple no, but a qualified one, and the qualification itself is the substantive finding.

Teitiota v. New Zealand demonstrated that the gap is not, as it might first appear, total. The UN Human Rights Committee's acceptance that climate degradation can in principle trigger a state's obligations under Article 6 of the ICCPR opened a genuine, doctrinally distinct route to protection, one that asks nothing about persecution, Convention grounds, or refugee status, and asks only whether removal would expose a person to a real and foreseeable risk of irreparable harm. *Billy v. Australia* confirmed that this route is not merely theoretical: a state can be held responsible for climate-related human rights harm. In this narrow but real sense, non-refoulement does something the 1951 Convention structurally cannot.

Yet the same two cases, read alongside the decade of commentary that followed *Teitiota*, show why this opening cannot be mistaken for a closing of the gap. The Committee's failure to aggregate *Teitiota*'s separate harms, its conflation of an admissibility-stage imminence test with a foreseeability-based merits standard, and its willingness to let unverified state adaptation measures defeat an otherwise well-evidenced claim together reveal a doctrine still working out its own internal logic rather than a settled body of law. More fundamentally, even a successful claim delivers only the negative guarantee of non-removal: no status, no residence rights, no family reunification, no durable solution, and no mechanism capable of responding to displacement at the scale that slow-onset sea-level rise will eventually produce.

The more accurate way to characterize non-refoulement's relationship to the 1951 Convention's protection gap, then, is not that it fills the gap, but that it punctures it: it carves out a single, individually litigated exception at precisely the point where inaction would be most difficult to justify. That puncture is not nothing. For an individual claimant able to meet its demanding evidentiary burden, it may be the difference between removal and safety. But it was never designed to, and cannot, serve as a general answer to climate displacement. Supplying that answer will require instruments the law reviewed here does not yet provide: durable legal status, mechanisms for group and mass protection, and a framework for allocating responsibility for a harm that no single respondent state created and no single non-refoulement claim can undo. Until such instruments exist, the protection gap identified by scholars from McAdam to the authors of the 2024 RLI Declaration will remain what it has been since *Teitiota*: narrowed, but not closed.

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