

NHSMUN50

National High School Model United Nations



LEGAL

BACKGROUND GUIDE



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Hello and welcome to NHSMUN 2024!

My name is Samuel Smith (He/Him), and I am so excited to be your Session I Director of the United Nations Legal Committee. Over the past several months, my co-director Shaan and I have been working hard to bring you this fantastic background guide (if I do say so myself). Both of us are very passionate about digital privacy rights and climate refugees, and we hope you are equally interested in addressing these two crucial issues. These topics are incredibly nuanced and will challenge your research and debating skills in committee.

A little bit about myself: I am a Junior at Ithaca College, a small liberal arts college in Upstate New York. I currently study physics and minor in mathematics and piano performance. Eventually, my aspirations are to be an engineer. When not playing with gravity and quantum mechanics, I am a varsity diver and swim competitively on the club swim team. If you could not already tell, I love sports, so over the summer you will often find me playing pickup soccer with friends or aimlessly exploring on my bike.

This is my second year on NHSMUN staff and my fourth year participating in NHSMUN! For NHSMUN 2023, I was the Assistant Director for the United Nations Convention Against Corruption. Also, in my previous life as a high school delegate, I attended NHSMUN with my high school delegation. Although my delegation would travel to other conferences, NHSMUN was always my favorite and most looked forward to. I hope you have the same love for NHSMUN that I did and still do. My co-director Shaan and I are here to create the most educational and fun experience, so if anything related to the committee or background guide comes up, feel free to reach out and ask!

After a rigorous topic selection process, Shaan and I are excited to announce that Topic A is “The Human Right to Privacy in Digital Spaces” and Topic B will be “The Legal Status of Climate Refugees.” Because these two topics are quite broad, we recommend that strongly focus your research on the legal aspects of each. Keeping this in mind will make sure the research and solutions you produce are both thorough and remain under the committee mandate. With that said, be realistic, be creative, and enjoy researching these fascinating topics.

Have fun, and I look forward to seeing you all for the 50th NHSMUN conference!

Best,

Samuel Smith (He/Him)
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Terry Wang
Ellie White

Hello and welcome to NHSMUN 2024!

My name is Shaan Pathak (he/him) and I am beyond excited to be the Director of the United Nations Legal Committee for Session II. Sam, my co-director, and I are passionate about the two topics in Legal this year. We have been working hard to create a really educational background guide, and we hope it helps drive your research before committee.

I am a second-year student at the University of California-Berkeley (go bears!!!), double majoring in Business and Legal Studies. After school, I hope to pursue a business or law career, though I haven't decided yet. Outside of NHSMUN, I am a member of Berkeley Model United Nations and a member of an education-focused consulting club at Berkeley. I love working out, playing/watching sports, traveling, cooking, and doing random things with my friends in my free time.

This is my second year serving on NHSMUN staff and participating in NHSMUN overall. While I never had the privilege of attending NHSMUN as a delegate, I was involved with Model UN throughout high school. Last year, I was also a dais member of the Legal committee, but as an assistant director. I truly enjoyed every minute of my experience as an AD in legal last year and wanted to come back for a second time, but now as a director. Sam and I's goal is to hopefully create as fulfilling a NHSMUN experience as we have had in the past. We want to make the most educational and engaging experience possible while also having some fun along the way, so if you have any questions leading up to the conference, feel free to reach out. We will answer any questions you may have!

After much thought and deliberation, Sam and I are excited to announce that Topic A will be "The Human Right to Privacy in Digital Spaces" and Topic B will be "The Legal Status of Climate Refugees." Both topics are incredibly complex yet broad at the same time. To make your research easier, it will be essential to focus on the legal aspects of each topic. What does international law say about the right to privacy? What legal rights are currently given to those displaced by climate change? These are just a few questions we encourage you to consider when starting your research. Overall, it will be important to keep research and solutions within the mandate of the Legal Committee, which is slightly different than many other UN committees. With that said, we are confident that you all will be able to create creative solutions and engage in thought-provoking discussions throughout the conference!

Have fun, and I look forward to seeing you all in March!

Best,

Shaan Pathak (he/him)
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NHSMUN 2024, Session II
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Table of Contents

A Note on the NHSMUN Difference	5
A Note on Research and Preparation	7
Committee History	8

The Human Right to Privacy in Digital Spaces 9

Introduction	10
History and Description	11
Current Status	23
Bloc Analysis	27
Committee Mission	30

Legal Status of Climate Refugees 31

Introduction	32
History and Description	33
Current Status	47
Bloc Analysis	52
Committee Mission	54

Research and Preparation Questions	56
Important Documents	57
Works Cited	58

A Note on the NHSMUN Difference

Esteemed Faculty and Delegates,

Welcome to NHSMUN 2024! We are Dennis Zhang and Christian Hernandez, and we are this year's Secretary-General and Director-General. Thank you for choosing to attend NHSMUN, the world's largest and most diverse Model United Nations conference for secondary school students. This year is particularly special as NHSMUN celebrates its **50th Anniversary**, and we are thrilled to welcome you to our hometown, New York City, this March for this landmark year!

As a space for collaboration, consensus, and compromise, NHSMUN strives to transform today's brightest thinkers, speakers, and collaborators into tomorrow's leaders. Our organization provides a uniquely tailored experience for all through innovative and accessible programming. We believe that an emphasis on education through simulation is paramount to the Model UN experience, and this idea permeates throughout numerous aspects of the conference:

Realism and accuracy: Although a perfect simulation of the UN is never possible, we believe that one of the core educational responsibilities of MUN conferences is to educate students about how the UN System works. Each NHSMUN committee is a simulation of a real deliberative body so that delegates can research what their country has said in the committee. Our topics are chosen from the issues currently on the agenda of that committee (except historical committees, which take topics from the appropriate time period). We also strive to invite real UN, NGO, and field experts into each committee through our committee speakers program. Moreover, we arrange meetings between students and the actual UN Permanent Mission of the country they are representing. Our delegates have the incredible opportunity to conduct first-hand research, asking thought-provoking questions to current UN representatives and experts in their respective fields of study. These exclusive resources are only available due to IMUNA's formal association with the United Nations Department of Global Communications and consultative status with the Economic and Social Council. No other conference goes so far to deeply immerse students into the UN System.

Educational emphasis, even for awards: At the heart of NHSMUN lies education and compromise. Part of what makes NHSMUN so special is its diverse delegate base. As such, when NHSMUN distributes awards, we strongly de-emphasize their importance in comparison to the educational value of Model UN as an activity. NHSMUN seeks to reward students who excel in the arts of compromise and diplomacy. More importantly, we seek to develop an environment in which delegates can employ their critical thought processes and share ideas with their counterparts from around the world. Given our delegates' plurality of perspectives and experiences, we center our programming around the values of diplomacy and teamwork. In particular, our daises look for and promote constructive leadership that strives towards consensus, as real ambassadors do in the United Nations.

Debate founded on strong knowledge and accessibility: With knowledgeable staff members and delegates from over 70 countries, NHSMUN can facilitate an enriching experience reliant on substantively rigorous debate. To ensure this high quality of debate, our staff members produce detailed, accessible, and comprehensive topic guides (like the one below) to prepare delegates for the nuances inherent in each global issue. This process takes over six months, during which the Directors who lead our committees develop their topics with the valuable input of expert contributors. Because these topics are always changing and evolving, NHSMUN also produces update papers intended to bridge the gap of time between when the background guides are published and when committee starts in March. As such, this guide is designed to be a launching point from which delegates should delve further into their topics. The detailed knowledge that our Directors provide in this background guide through diligent research aims to increase critical thinking within delegates at NHSMUN.

Extremely engaged staff: At NHSMUN, our staffers care deeply about delegates' experiences and what they take away from

their time at NHSMUN. Before the conference, our Directors and Assistant Directors are trained rigorously through hours of workshops and exercises both virtual and in-person to provide the best conference experience possible. At the conference, delegates will have the opportunity to meet their dais members prior to the first committee session, where they may engage one-on-one to discuss their committees and topics. Our Directors and Assistant Directors are trained and empowered to be experts on their topics and they are always available to rapidly answer any questions delegates may have prior to the conference. Our Directors and Assistant Directors read every position paper submitted to NHSMUN and provide thoughtful comments on those submitted by the feedback deadline. Our staff aims not only to tailor the committee experience to delegates' reflections and research but also to facilitate an environment where all delegates' thoughts can be heard.

Empowering participation: The UN relies on the voices of all of its member states to create resolutions most likely to make a meaningful impact on the world. That is our philosophy at NHSMUN too. We believe that to properly delve into an issue and produce fruitful debate, it is crucial to focus the entire energy and attention of the room on the topic at hand. Our Rules of Procedure and our staff focus on making every voice in the committee heard, regardless of each delegate's country assignment or skill level. Additionally, unlike many other conferences, we also emphasize delegate participation after the conference. MUN delegates are well researched and aware of the UN's priorities, and they can serve as the vanguard for action on the Sustainable Development Goals (SDGs). Therefore, we are proud to connect students with other action-oriented organizations to encourage further work on the topics.

Focused committee time: We feel strongly that face-to-face interpersonal connections during debate are critical to producing superior committee experiences and allow for the free flow of ideas. Ensuring policies based on equality and inclusion is one way in which NHSMUN guarantees that every delegate has an equal opportunity to succeed in committee. In order to allow communication and collaboration to be maximized during committee, we have a very dedicated administrative team who work throughout the conference to type up, format, and print draft resolutions and working papers.

As always, we welcome any questions or concerns about the substantive program at NHSMUN 2024 and would be happy to discuss NHSMUN pedagogy with faculty or delegates.

Delegates, it is our sincerest hope that your time at NHSMUN will be thought-provoking and stimulating. NHSMUN is an incredible time to learn, grow, and embrace new opportunities. We look forward to seeing you work both as students and global citizens at the conference.

Best,

Dennis Zhang
Secretary-General

Christian Hernandez
Director-General

A Note on Research and Preparation

Delegate research and preparation is a critical element of attending NHSMUN and enjoying the debate experience. We have provided this Background Guide to introduce the topics that will be discussed in your committee. We encourage and expect each of you to critically explore the selected topics and be able to identify and analyze their intricacies upon arrival to NHSMUN in March.

The task of preparing for the conference can be challenging, but to assist delegates, we have updated our [Beginner Delegate Guide](#) and [Advanced Delegate Guide](#). In particular, these guides contain more detailed instructions on how to prepare a position paper and excellent sources that delegates can use for research. Use these resources to your advantage. They can help transform a sometimes overwhelming task into what it should be: an engaging, interesting, and rewarding experience.

To accurately represent a country, delegates must be able to articulate its policies. Accordingly, NHSMUN requires each delegation (the one or two delegates representing a country in a committee) to write a position paper for each topic on the committee's agenda. In delegations with two students, we strongly encourage each student to research each topic to ensure that they are prepared to debate no matter which topic is selected first. More information about how to write and format position papers can be found in the NHSMUN Research Guide. To summarize, position papers should be structured into three sections:

I: Topic Background – This section should describe the history of the topic as it would be described by the delegate's country. Delegates do not need to give an exhaustive account of the topic, but rather focus on the details that are most important to the delegation's policy and proposed solutions.

II: Country Policy – This section should discuss the delegation's policy regarding the topic. Each paper should state the policy in plain terms and include the relevant statements, statistics, and research that support the effectiveness of the policy. Comparisons with other global issues are also appropriate here.

III. Proposed Solutions – This section should detail the delegation's proposed solutions to address the topic. Descriptions of each solution should be thorough. Each idea should clearly connect to the specific problem it aims to solve and identify potential obstacles to implementation and how they can be avoided. The solution should be a natural extension of the country's policy.

Each topic's position paper should be **no more than 10 pages** long double-spaced with standard margins and font size. **We recommend 3–5 pages per topic as a suitable length.** The paper must be written from the perspective of your assigned country and should articulate the policies you will espouse at the conference.

Each delegation is responsible for sending a copy of its papers to their committee Directors via [myDais](#) on or before **February 23, 2024**. If a delegate wishes to receive detailed feedback from the committee's dais, a position must be submitted on or before **February 2, 2024**. The papers received by this earlier deadline will be reviewed by the dais of each committee and returned prior to your arrival at the conference.

Complete instructions for how to submit position papers will be sent to faculty advisers via email. If delegations are unable to submit their position papers on time, please contact us at info@imuna.org.

Delegations that do not submit position papers will be ineligible for awards.

Committee History

The Legal Committee, otherwise known as the Sixth Committee of the United Nations General Assembly, was one of the original United Nations (UN) bodies founded in 1945. Following international disillusionment when the UN's forerunner, the League of Nations, failed to prevent World War II, the new UN was formed when 26 states pledged to fight against the Axis Powers of Italy, Germany, and Japan. On 26 June 1945, the Charter of the United Nations was signed by 50 states at the United Nations Conference on International Organization in San Francisco.¹ Included in the Charter of the United Nations was the description of the General Assembly, the primary body for international debate that includes six main committees, each with its own unique function. All member states are represented in the General Assembly and, consequently, on the Legal Committee.² All Member States of the United Nations are represented in this committee.

The Legal Committee is the United Nation's primary forum for legal considerations.³ Article XIII of the UN Charter states that the "General Assembly shall initiate studies and make recommendations for the purpose of...encouraging the progressive development of international law and its codification."⁴ The Legal Committee was established as the vehicle to fulfill this objective for the General Assembly. Since its formation, the Committee has created various other permanent bodies and ad hoc committees as a means to address issues of international law as they arise.⁵ While these specialized bodies deal with very specific material, the Legal Committee as a whole tends to consider more general questions of international law. Like all General Assembly committees, the Legal Committee makes recommendations to the Security Council. Thus, the purview of the Committee is such that it has no power to mandate its recommended treaties and resolutions. Nonetheless, an affirmation of a certain policy by the Committee can help shape international norms and institutionalize policies.

While other committees address economic, political, or cultural issues, the Legal Committee provides and negotiates the legality of various economic, political, and cultural frameworks. The Legal Committee fills a unique role in the United Nations by developing the legal framework in which all other international initiatives operate.

Based on the reports of its subcommittees, the Legal Committee finds solutions to challenging international issues and makes recommendations to the Security Council and General Assembly. Some landmark resolutions drafted by the Legal Committee include the 1961 Vienna Convention on Diplomatic Relations, the 1979 International Convention Against the Taking of Hostages established in response to the Iran hostage crisis, and the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism.⁶ While many treaties and resolutions are formed after a specific event, such as the 1979 Iran hostage crisis, others are responses to ongoing legal concerns on the global stage.

The Legal Committee was formed under the assumption that, as the international environment shifts, international law must progress alongside it. With this idea in mind, the goal of the Committee's resolutions is to establish and adjust international law as new legal issues arise and gaps in current legal frameworks become apparent.

1 "History of the United Nations," *United Nations*, accessed 13 May 2011, <http://www.un.org/aboutun/history.htm>.

2 *Charter of the United Nations* (Geneva: United Nations, 1945).

3 "Sixth Committee," *United Nations*, accessed 13 May 2011, <http://www.un.org/en/ga/sixth/index.shtml>.

4 *Charter of the United Nations*. Geneva: United Nations, 1945.

5 "Sixth Committee."

6 "Sixth Committee."



LEGAL

NHSMUN 2024



TOPIC A: THE HUMAN RIGHT TO PRIVACY IN DIGITAL SPACES

Photo Credit: Kippelboy

Introduction

The right to digital privacy is in urgent need of legal protection at an international level. As the use of the internet increases, cases of privacy violations continue to rise. The use of the internet has increased in the last 20 years. January 1, 1983, is commonly considered the day the internet was invented.¹ From its origin, it took until 2005 to reach one billion users.² While it took 22 years to reach one billion users initially, it only took 18 more to reach the five billion people who use it today.³

Since 1948, the human right to privacy has been one of the most important rights that is protected by the United Nations. Focusing on privacy in developing new laws is important. Doing so leads to safer and more effective laws and accountability measures. Protection of privacy is even more important in online spaces. While the internet has connected more low-income people worldwide, it can be equally discriminatory and dangerous. Poor data collection regulations can lead to minorities, children, and other vulnerable groups being targeted and exploited by corporations and governments.

Legal, also known as the Sixth Committee of the UN General Assembly, is the assembly where issues about international laws are discussed and debated. It is important to note that although the Legal committee cannot impose regulations, other UN committees accept and enforce its resolutions. Delegates within the Legal committee must examine current legal frameworks for online use and envision new ways to protect privacy online. According to the UN Charter, Legal's main job is to "encourage the progressive development of international law."⁴

The human right to privacy in digital spaces is present in many sectors. It also has many stakeholders. These include citizens, local governments, and international organizations. However, it is ultimately a question of the law, and should be addressed accordingly. The legal aspect of the topic revolves around the common misuse of online tools and the internet. Addressing the topic through legal frameworks is crucial because abuse, discrimination, and privacy violations are against human rights law. The right to privacy should be equally protected online. Current gaps in international law allow human rights

violations to go unpunished. This background guide serves to provide an overview to delegates of the numerous areas of debate that are relevant to this topic.

Digital privacy is a relatively new issue. Therefore, understanding the history and current status of the topic is crucial. Most of this background guide is dedicated to discussing several of the most important debate topics. First is an overview of pre-existing international privacy laws, both general and online. Knowledge of these laws will help delegates understand the successes and failures of current approaches. Other topics outlined include government violations of privacy and internet regulations. The discussion of government privacy violations also highlights the role of private companies in this issue. Many governments have also been accused of using advanced surveillance software on citizens. A lack of online protections- especially for children, represents another challenge for digital privacy. Extensive protections are essentially non-existent in the digital space. This leads to children's personal data being collected and sold by large tech companies.

When reading this background guide, delegates are encouraged to carefully evaluate the examples, case studies, and existing laws. While the legal focus of this committee allows for creativity and innovation to create privacy laws, solutions should be realistic. This committee will challenge delegates to research further. A stronger understanding of the topic will promote productive debate, more informed negotiations, and, most importantly, comprehensive legal policies to address online privacy.

1 Caitlin McLean, "Who Invented the Internet? Everything You Need to Know about the History of the Internet," USA Today, June 7, 2023, <https://www.usatoday.com/story/tech/2022/08/28/when-was-internet-created-who-invented-it/10268999002/>.

2 Jakob Nielsen, "One Billion Internet Users," *Nielsen Norman Group*, December 18, 2005, <https://www.nngroup.com/articles/one-billion-internet-users/>.

3 "Digital Around the World," *Datareportal*, accessed July 10, 2023, <https://datareportal.com/global-digital-overview>.

4 United Nations, United Nations Charter, October 24, 1945, <https://www.un.org/en/about-us/un-charter/full-text>.

History and Description

The Right to Digital Privacy

From 2022 to 2023, worldwide internet users rose by 250 million, reaching 5.18 billion.⁵ Digital technology, including the internet, has provided many benefits worldwide. These include opportunities for self-empowerment, strengthening justice systems, and boosting individual productivity.⁶ However, the internet also allows actors to intercept communication, track individuals, and collect personal data.⁷ Such acts can violate the human right to privacy. Online human rights abuses especially affect women, children, elderly people, and people with disabilities. These are groups that already face discrimination.⁸ Children and elderly people are often targets online because they are less informed on the dangers of the internet. Women are disproportionately harassed and stalked. However, despite a clear need for greater protection, creating a strong legal framework to protect individuals has proven difficult. Only a few United Nations resolutions in the last ten years specifically target the right to digital privacy.

Since 1948, the UN and similar organizations have recognized the human right to privacy. These recognitions appear in documents such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In the Declaration of Human Rights, article 12 states that no person “shall be subjected to arbitrary interference with his privacy.”⁹ Arbitrary interference is defined as any interference that is not proportional to the reason for the interference.¹⁰ Simply, this means that privacy violations should be justified in their intensity. Article 12 also states that any interference

or attack on a person’s privacy should be prosecuted by law.¹¹

The International Covenant on Civil and Political Rights also expands the right to privacy.¹² Article 17 of the Convention states that no one should be subjected to “arbitrary or unlawful interference [of their] privacy.”¹³ Because privacy on the internet is very different from the real world, applying existing international privacy laws online can be difficult for the international community. However, there is a lack of privacy laws specific to the digital space. This is an issue that must be fixed to maintain privacy and safety.

In 2023, the UN General Assembly adopted resolution 77/211, which specifically targets the right to privacy online.¹⁴ This resolution calls on countries to ensure that digital privacy is fairly regulated by addressing existing privacy violations. It also highlights the importance of regulating businesses that collect private user data. Finally, the resolution discusses improving an individual’s control of their online image. Digital privacy can be defined as “the protection of the information of private citizens who use digital mediums.”¹⁵ For the average individual, this refers to internet use. Resolution 77/211 aims to address this gap through the following clauses. First, any laws for online privacy must be consistent with international human rights obligations.¹⁶ Second, states should take preventative action to protect the safety of children and women online.¹⁷ Third, countries must quickly help people whose rights to privacy have been violated.¹⁸

The resolution also addresses any private businesses responsible for collecting, storing, or using personal or private data. First, businesses must inform their users how their

5 Datareportal, “Digital Around the World.”

6 UN General Assembly, Resolution 77/211, The right to privacy in the digital age, A/RES/77/211, ¶ 8 (January 5, 2023), <https://digitallibrary.un.org/record/3999709?ln=en>.

7 A/RES/77/211, 2.

8 A/RES/77/211, 2.

9 UN General Assembly, Universal Declaration of Human Rights, Article 12, (December 10, 1948), <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>.

10 UN General Assembly, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue* (Geneva: April 17, 2013), A/HRC/23/40, <https://digitallibrary.un.org/record/756267?ln=en>.

11 Universal Declaration of Human Rights, 4.

12 UN General Assembly, International Covenant on Civil and Political Rights, Article 17, (March, 23, 1976), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

13 International covenant on Civil and Political Rights, Art. 17.

14 A/RES/77/211.

15 “What Is Digital Privacy?,” Easy Tech Junkie, accessed August 31, 2023, <https://www.easytechjunkie.com/what-is-digital-privacy.htm>.

16 A/RES/77/211, 8.

17 A/RES/77/211, 8.

18 A/RES/77/211, 9.

private data is being used.¹⁹ Data should only be collected if the user has been informed and consented. Second, any automated decision-making or machine-learning should include human rights protections if they use collected data. Computer machine learning is a form of Artificial Intelligence (AI) in which computers are trained to make decisions like a human.²⁰ Third, any user should be able to withdraw consent or delete data if they suspect it is incorrect or, more importantly, obtained illegally.²¹ These recommendations and guidelines are a first step towards online privacy, but existing regulations will require more detail to protect online privacy successfully. As internet users continue to rise, proper protection of people already affected by poor online privacy is increasingly important.

While the UN can suggest and recommend actions for countries to take, there have been few enforceable laws that require agents to prioritize digital safety. Even in cases where companies or individuals are held liable for privacy invasions, the punishment is not enough to deter future action. In April 2019, a Canadian online regulator accused Meta—the parent company of Facebook—of exposing the privacy data of millions of its users.²² The Privacy Commissioner of Canada investigated Facebook for sharing data with a third-party application called “thisisyourdigitallife.” The investigation found that Facebook failed to provide evidence and specific details on the current information-handling practices it uses. This is a violation of the Canadian *Personal Information Protection and Electronic Documents Act*, which requires transparency in corporations’ data sharing policies.²³

Although legal action in Canadian courts is still pending in this case, it highlights the absence of enforced international law

towards digital privacy. Even if Facebook is found guilty of the charges brought against them, little change will be made. The head of the Canadian Federal Privacy Watchdog has stated that “historically there have been very small penalties — in the tens of thousands of dollars” in such cases.²⁴ As one of the largest corporations in the world, penalties ranging in thousands of dollars are a minimal amount to Meta. Harsher penalties must be enforced on private entities and government bodies that infringe international rights to privacy. Although fines can be large, claims are often ruled in favor of corporations. Very few cases have successfully received substantial fines from companies like Meta.

Regional digital privacy laws exist, including in the European Union (EU) and African Union (AU). The EU’s General Data Protection Regulation (GDPR) is a set of regulations to protect data of EU citizens, primarily from the private sector.²⁵ In early 2022, Belgium ruled that the targeted online advertising agency *IAB Europe*, had violated user privacy.²⁶ Among the several violations, IAB Europe failed to make its privacy policy understandable or transparent. Because the law was only implemented in 2018, the overall success of the GDPR is currently unknown. However, it includes important data privacy protections that did not exist internationally before its introduction. Other prominent international data privacy protections have failed to provide the detail and specificity included in the GDPR. Article 4 of the GDPR states personal data is “any information relating to an identified or identifiable natural person.”²⁷ Common identifiable information includes first and last names, email addresses, physical addresses, and online usernames.²⁸ Under the GDPR, data protection is prioritized for individuals, so this definition excludes the data

19 A/RES/77/211, 9.

20 Sara Brown, “Machine learning, explained,” *MIT*, April 21, 2021, <https://mitsloan.mit.edu/ideas-made-to-matter/machine-learning-explained>.

21 A/RES/77/211, 9.

22 “Privacy Commissioner Seeks Federal Court Order against Facebook to Enforce Pipedata,” Norton Rose Fulbright, accessed August 31, 2023, <https://www.nortonrosefulbright.com/en-mh/knowledge/publications/048073d2/privacy-commissioner-seeks-federal-court-order-against-facebook-to-enforce-pipedata>.

23 “Privacy Commissioner Seeks Federal Court Order against Facebook to Enforce Pipedata,” Norton Rose Fulbright

24 Tiffany Hsu and Ian Austen, “Canada Says Facebook Broke Privacy Laws with ‘superficial’ Safeguards,” *The New York Times*, April 25, 2019, <https://www.nytimes.com/2019/04/25/technology/facebook-canada-privacy.html>.

25 European Union, “General Data Protection Regulation,” accessed July 9, 2023, <https://eur-lex.europa.eu/eli/reg/2016/679/oj>.

26 Martin Braun, “Belgian Data Protection Authority Rules IAB Cookie Consent Framework Violates the GDPR,” *WilmerHale*, February 7, 2022, wilmerhale.com/de-de/insights/blogs/wilmerhale-privacy-and-cybersecurity-law/20220207-belgian-data-protection-authority-rules-iab-cookie-consent-framework-violates-the-gdpr.

27 European Union, “General Data Protection Regulation: Article 4,” accessed July 12, 2023, <https://gdpr-info.eu/art-4-gdpr/>.

28 Robert Bateman, “When Does the GDPR Not Apply?” *TermsFeed*, last updated July 1, 2023, <https://www.termsfeed.com/blog/gdpr-exemptions/>.

of organizations or groups.

An example that highlights the GDPR's commitment to protecting individuals is Meta in Ireland. In May 2023, Ireland fined Meta USD 1.35 billion under GDPR.²⁹ Ireland's action came after Meta was caught unlawfully transferring and storing European users' data in the US.³⁰ As such, some aspects of the GDPR have allowed for significant data privacy protection and accountability from organizations, which was relatively unheard of in the past.

The African Union Convention on Cyber Security and Personal Data Protection was another major data privacy bill adopted in 2014.³¹ In Article 13, the Convention provides several basic principles for personal data processing. These include the requirements that data collection is transparent, consent for data processing must be given, and gathered data should be relevant to the intended use.³² Like the GDPR, this Convention is relatively new, and its effectiveness is unclear.

Some sections lack specific details and accountability measures

29 Jedidiah Bracy, "Meta fined GDPR-record 1.2 billion euros in data transfer case," *LAPP*, May 22, 2023, <https://iapp.org/news/a/meta-fined-gdpr-record-1-2-billion-euros-in-data-transfer-case/>.

30 Jedidiah Bracy, "Meta fined GDPR-record 1.2 billion euros in data transfer case."

31 African Union, "Convention on Cyber Security and Personal Data Protection," July 27, 2014, <https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection>.

32 Convention on Cyber Security and Personal Data Protection, p. 19.

33 Convention on Cyber Security and Personal Data Protection, p. 19.

34 Convention on Cyber Security and Personal Data Protection, p. 17.

35 Tony Roberts, et al, "Surveillance Law in Africa: a Review of Six Countries," *Brighton: Institute of Development Studies*, (October 2021), <https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/16893>.

36 Roberts et al, "Surveillance Law in Africa: a Review of Six Countries."

for upholding data privacy rights. An example is in Article 12, which establishes National Protection Authorities for each African Union member country.³³ These authorities are tasked with responding to any personal data issues within its borders. As government bodies, these authorities will be responsible for addressing all federal data privacy concerns. However, how this would be done is not specified. One notable responsibility of the protection authority is to undertake audits of private entities that process personal data.³⁴

A major flaw of both the AU and EU data privacy laws is that they provide broad and generic instructions for countries to follow. For example, an independent review of Egypt's national privacy laws found that courts often lack authorization for surveillance operations.³⁵ Egyptian privacy law does not require concrete reasonings or protections when surveilling citizens. This is despite the AU laws being in place. Among other factors, such requirements are crucial for robust legal privacy protections.³⁶ Without further debate and specific



Surveillance video cameras.

Credit: Pawel Zdziarski

international laws, their success has been and will continue to be limited.

Government Privacy Violations and Surveillance

On July 6, 2023, France passed a new justice bill that allows French police to spy on suspected criminals.³⁷ The bill states that police can spy on anyone suspected of crimes punishable by at least five years in jail. These include suspected terrorism and murder. Forms of spying allowed include location data and remotely activating cameras and microphones. This French justice reform bill exemplifies the challenging balance between ensuring public safety and upholding the human right to privacy. Many French human rights groups have strongly opposed this new law. They have raised concerns about what evidence is required to implement surveillance. Without transparency, there are no safeguards to prevent this system from being used on people who do not pose a violent threat. Surveillance violates an individual's right to privacy regardless of the reasons behind surveillance. Government surveillance and the use of personal data play a key role in the overall protection of digital privacy rights.

In March 2023, the Federal Bureau of Investigation (FBI) of the US was caught purchasing location data from data brokers.³⁸ Location data is any data identifying an individual's specific location. This can include latitude and longitude, and direction and time of travel. Such data is often collected through a mobile device or phone.³⁹ Data brokers are businesses that buy, process, and sell data from many individual sources. These sources can include online advertising and social media platforms. Buying location data goes against the US Constitution's Fourth Amendment, which states citizens have the right to be protected "against unreasonable searches and

seizures."⁴⁰ The FBI has claimed to have a court-authorized process for obtaining and using the data. Despite this, it has been unclear about its actions.⁴¹

The collection of location data is not illegal. In fact, anyone who has ever permitted location access to an application has released their data online. Whether it is maps, weather, or dating apps, most internet users have released their location data. Many US citizens were upset at this privacy violation when news broke about the US obtaining their personal data. While the FBI has not stated its motives, other governments worldwide, including France and China, have allowed similar privacy violations to increase national security.⁴² Armed with even limited location data, it is easy to pinpoint an individual's home, workplace, and daily routine. Without proper transparency and independent oversight, the ability to surveil citizens can escalate past national security.

Governments using online data for surveillance is a serious matter. While police departments may find accessing personal data useful, it is invasive and revealing. When determining how to regulate how governments can use data, delegates should aim to suggest specific and universal laws. In 2013, the Electronic Frontier Foundation and a group of other Non-Governmental Organizations (NGOs) published a report outlining important international principles for protecting human rights in online surveillance.⁴³ The report called attention to the need for a state to consider necessity, proportionality, transparency, and oversight in any digital surveillance. Proportionality refers to matching the intrusiveness of the response to the severity of the crime. Transparency ensures that the public is fully informed about security acts. Finally, oversight establishes an independent public accountability group.

One of the most important changes in surveillance in the last

37 "France set to allow police to spy through phones," *Le Monde*, July 6, 2023, https://www.lemonde.fr/en/france/article/2023/07/06/france-set-to-allow-police-to-spy-through-phones_6044269_7.html.

38 Ashley Belanger, "FBI finally admits to buying location data on Americans, horrifying experts," *Arstechnica*, March 9, 2023, <https://arstechnica.com/tech-policy/2023/03/fbi-finally-admits-to-buying-location-data-on-americans-horrifying-experts/>.

39 "Location data," *Information Commissioner's Office*, accessed August 1, 2023, <https://ico.org.uk/for-organisations/direct-marketing-and-privacy-and-electronic-communications/guide-to-pecr/communications-networks-and-services/location-data/>.

40 "Bill of Rights," *Encyclopedia Britannica*, June 30, 2023, <https://www.britannica.com/topic/Bill-of-Rights-United-States-Constitution>.

41 Belanger, "FBI finally admits to buying location data on Americans, horrifying experts."

42 "China: Police 'Big Data' Systems Violate Privacy, Target Dissent," *Human Rights Watch*, November 19, 2017, <https://www.hrw.org/news/2017/11/19/china-police-big-data-systems-violate-privacy-target-dissent>;

43 Necessary and Proportionate, *International Principles on the Application of Human Rights to Communications Surveillance*, July 10, 2013, <https://necessaryandproportionate.org/july-2013-principles/#fn:4>.

ten years has been the Pegasus software, created by the Israeli private intelligence firm NSO Group.⁴⁴ Pegasus is a data collection and surveillance software platform.⁴⁵ Additionally, the software is zero-click and targets mobile devices. Zero-click means that the software may be installed without the mobile device owner having to click on any links containing the Pegasus software.⁴⁶ Instead, the software can be installed simply via a call to the phone.⁴⁷ Even the most secure mobile platforms, such as Apple's iOS and Google's Android, are vulnerable to these attacks. Once installed on a device, Pegasus can access location data, view all messages being sent or received, and change the device's security settings. Most concerningly, all of this can be done without the user ever knowing. The NSO Group states that they sell Pegasus to countries and organizations to track dangerous criminals and terrorists.⁴⁸ In practice, Pegasus has often been used to track journalists and political opponents.⁴⁹ In some cases, this has seriously violated human rights and freedoms.

According to Forbidden Stories, an organization focused on reporting journalist surveillance, over 200 journalists have had Pegasus unknowingly installed on their phones.⁵⁰ Khadija Ismayilova is an Azerbaijani journalist who left the country in 2021. She did so after being targeted by the government for reporting on corruption. She later discovered that her phone had been regularly infected with Pegasus for almost three years.⁵¹ Being a target of spyware as a journalist can be extremely detrimental to one's career and can even lead to threats on their lives.

Journalists are constantly communicating with news sources, which can be easily monitored by Pegasus. As journalists are rarely serious criminals or terrorists, spying on them clearly violates existing privacy laws. There are no legal arguments for security that can excuse these violations. While the NSO group will not release information about their clients, the software is estimated to be active in 40 countries. Additionally,

44 Samuel Greengard, "Pegasus (spyware)," *Encyclopedia Britannica*, May 9, 2023, <https://www.britannica.com/topic/Pegasus-spyware>.

45 Greengard, "Pegasus (spyware)."

46 Ryan Gallagher, "'Zero-Click' Spyware Emerges as a Menacing Mobile Threat," *Bloomberg*, October 13, 2022, <https://www.bloomberg.com/news/newsletters/2022-10-13/-zero-click-spyware-emerges-as-a-menacing-mobile-threat>.

47 Greengard, "Pegasus (spyware)."

48 Phineas Rueckert, "Pegasus: The New Global Weapon for Silencing Journalists," *Forbidden Stories*, July 18, 2021, <https://forbiddenstories.org/pegasus-the-new-global-weapon-for-silencing-journalists/>.

49 "Massive Data Leak Reveals Israeli NSO Spyware Used to Target Activists, Journalists, and Political Leaders," Amnesty International, July 19, 2021, <https://www.amnesty.org/en/latest/press-release/2021/07/the-pegasus-project/>.

50 Phineas Rueckert, "Pegasus: The New Global Weapon for Silencing Journalists," *Forbidden Stories*, July 18, 2021, <https://forbiddenstories.org/pegasus-the-new-global-weapon-for-silencing-journalists/>.

51 Rueckert, "Pegasus: The New Global Weapon for Silencing Journalists."

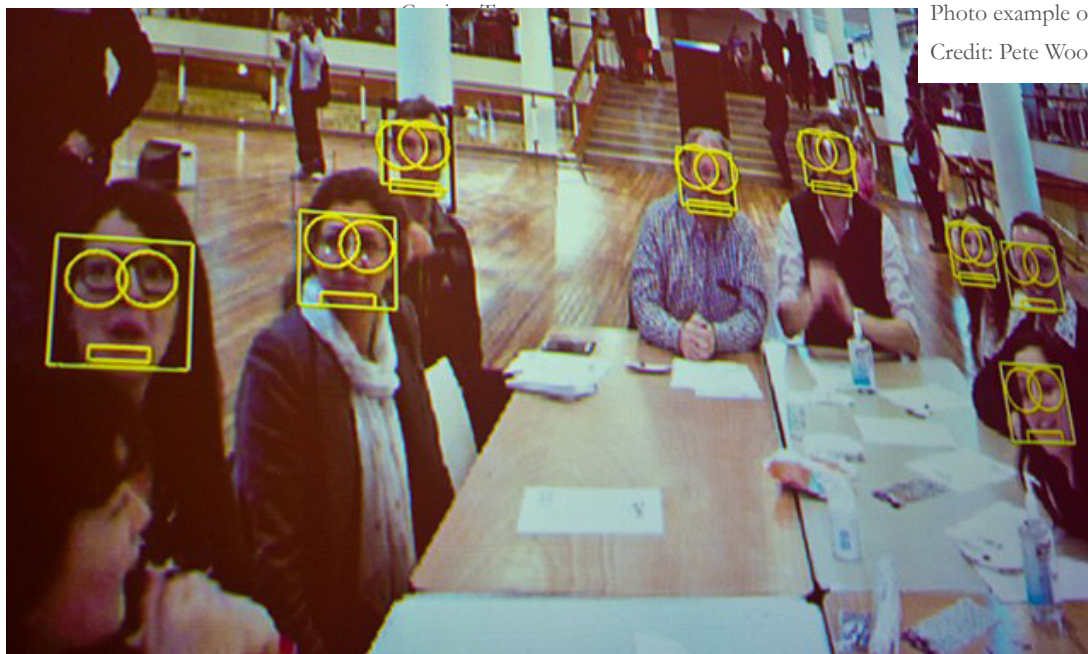


Photo example of facial recognition software.

Credit: Pete Woodhead

individuals in over 50 countries are targeted.⁵² Countries using the software range from democratic governments in India and Mexico to more autocratic governments in Saudi Arabia and Bahrain.⁵³ Other large intelligence companies are based in strong democratic states like Italy and the United States.⁵⁴ Limiting the software exports of these secretive companies may be one way to regulate the surveillance economy. Surveillance software presents a difficult legal challenge.

While the cons of allowing this software to operate without regulation are clear, their benefits cannot be ignored. In 2016, the Mexican drug cartel leader Joaquín “El Chapo” Guzmán Loera was caught through Pegasus.⁵⁵ To ensure such software is used sparingly and safely, international regulations must be created with pathways to hold spyware users accountable.

Facial recognition is a quickly developing technology that governments can use to violate privacy. Facial recognition technology uses sensors or cameras to identify unique facial features that make up a person’s identity.⁵⁶ The use of facial recognition in private places is not new. However, the technology has become more common in public locations. Some of the most egregious privacy violations from facial recognition cameras were found in China, Russia, and the United Arab Emirates.⁵⁷ In China, facial recognition cameras were used in bathroom stalls to prevent toilet paper theft.⁵⁸ In 2021, Russia began using facial recognition to detain journalists and activists participating in peaceful protests.⁵⁹ This presents serious privacy concerns as private companies or public organizations can collect and store facial data on thousands of people.

Facial recognition data is the most disputed aspect of the technology. Improper storage of facial data can lead to serious violations of privacy.⁶⁰ Photos of one’s face could allow any malicious actor to stalk, identify, and search online for identification. This, in turn, could be used to steal one’s identity. The misuse of facial data can also occur from its intended uses. For example, gender and skin color can affect the accuracy of a facial recognition program. One study found that facial recognition was 35 percent more inaccurate in women with darker skin than in men with light skin.⁶¹ When used for law enforcement, this can lead to false arrests. Whether it is through unintended uses or inaccuracies within the current system, gaps in such software must be addressed. Concerning the role of law enforcement, there must be regulations placed on using facial recognition software. Lawmakers at the national and international levels must be wary of the legal precedent set if facial recognition data is used to prosecute or identify individuals. For example, if facial recognition software is normalized in legal settings, strong regulations must exist to avoid inaccurate identification. Regulations must also address the security concerns that poor data storage could lead to. Finally, regulations must address how facial recognition software can lead to constant surveillance.

Countries can also use facial recognition technologies to target minority or opposition groups. For example, China has extensively used facial recognition to identify members of the oppressed Uyghur population.⁶² In 2022, the private facial recognition firm Clearview AI, was sued for selling facial data on more than 20 million individuals to private businesses.⁶³ To

52 Samuel Greengard, “Pegasus (spyware).” *Encyclopedia Britannica*, May 9, 2023, <https://www.britannica.com/topic/Pegasus-spyware>.

53 Rueckert, “Pegasus: The New Global Weapon for Silencing Journalists.”

54 Steven Feldstein, “Governments Are Using Spyware on Citizens. Can They Be Stopped?” *Carnegie Endowment for International Peace*, July 21, 2021, <https://carnegieendowment.org/2021/07/21/governments-are-using-spyware-on-citizens.-can-they-be-stopped-pub-85019>.

55 Elias Groll, “Spy vs. Spy, El Chapo Edition,” *Foreign Policy*, January 11, 2019, <https://foreignpolicy.com/2019/01/11/spy-vs-spy-el-chapo-edition-guzman-narco-flexispy-hacking/>.

56 Clare Stouffer, “What is facial recognition and how does it work?” *Norton*, July 21, 2023, <https://us.norton.com/blog/iot/how-facial-recognition-software-works>.

57 <https://www.comparitech.com/blog/vpn-privacy/facial-recognition-statistics/>

58 <https://edition.cnn.com/2017/03/20/world/china-toilet-paper-thieves-face-recognition-trnd/index.html>

59 <https://www.amnesty.org/en/latest/press-release/2021/04/russia-police-target-peaceful-protesters-identified-using-facial-recognition-technology/>

60 “7 Biggest Privacy Concerns Around Facial Recognition Technology,” *Liberties*, October, 2022, <https://www.liberties.eu/en/stories/facial-recognition-privacy-concerns/44518>.

61 Steve Lohr, “Facial Recognition Is Accurate, if You’re a White Guy,” *The New York Times*, February 19, 2018, <https://www.nytimes.com/2018/02/09/technology/facial-recognition-race-artificial-intelligence.html>

62 Drew Harwell and Eva Dou, “Huawei tested AI software that could recognize Uighur minorities and alert police, report says,” *The Washington Post*, December 8, 2020, <https://www.washingtonpost.com/technology/2020/12/08/huawei-tested-ai-software-that-could-recognize-uighur-minorities-alert-police-report-says/>.

63 Ryan Mac and Kashmir Hill, “Clearview AI settles suit and agrees to limit sales of facial recognition database,” May 9, 2022, <https://www.nytimes.com/2022/05/09/technology/clearview-ai-suit.html>.

create its software, Clearview used social media data to build its database, scraping photos from Facebook, Instagram, and LinkedIn.⁶⁴ Canada and Australia have banned the software, while Britain and Italy have fined Clearview for millions of dollars over privacy violations. The original lawsuit, brought by the American Civil Liberties Union, made the case that the software unfairly targets minorities, victims of domestic violence, and undocumented immigrants.⁶⁵ This is because such individuals are less likely to have access to information on data policies and may not understand the vague terms and conditions used by organizations. To protect these groups and those with limited technological knowledge, the collection of facial data and the development of facial recognition software must have clear boundaries and regulations.

While there have been previous attempts at creating international regulations on data use and privacy, none have been widely effective. With governments using invasive programs for security measures, there is a lack of incentive to restrict such software. Violations of privacy law must be balanced with the potential benefit of surveillance. However, this is a difficult threshold to determine. Additionally, human rights violations to surveil people of interest can set a dangerous precedent. Without international law explicitly defining the extent of legal data use by governments, the international community risks allowing a future of censorship and extreme surveillance. Previous United Nations reports have emphasized that public surveillance measures should be “strictly necessary and proportionate”.⁶⁶ Similarly, data should only be stored for appropriate periods of time. Despite these requests, current laws and resolutions do not define what is

considered necessary, appropriate, and proportionate.

Datafication

While the number of threats to data privacy rises, adopting privacy-specific laws remains poor. Another issue affecting millions worldwide is using data to create digital profiles, sometimes called “datafication.”⁶⁷ A digital profile includes online connections and interactions, behaviors, information about personal characteristics, affiliations, and criminal records.⁶⁸ These profiles can be used for several purposes. These include advertising, credit limits for borrowing loans and hiring job applicants.⁶⁹ For advertising, individual data targets specific ads based on online searches and activity.⁷⁰ For credit limits, banks use digital profiles to help them determine if a loan applicant will default or fail to repay a loan. For example, in 2015, Facebook began allowing banks to analyze an individual’s Facebook friend network.⁷¹ In other words, if an individual’s online friends were considered untrustworthy, the individual themselves may be judged as untrustworthy. This blurs the lines between online activity and real-life consequences. By allowing for this intrusive use of data without informing users of this use, Facebook infringed on the rights of its users.

Algorithms are programs designed to take a data set and automatically decide based on its content.⁷² Algorithms are the key to processing these vast amounts of data in each profile. Decisions that algorithms make can include selecting the ads and content that one sees on a social media platform.⁷³ Many large-scale algorithms are so complex that even the creators of such algorithms do not fully understand their decisions

64 Mac, “Clearview AI settles suit and agrees to limit sales of facial recognition database.”

65 Mac, “Clearview AI settles suit and agrees to limit sales of facial recognition database.”

66 “Spyware and Surveillance: Threats to Privacy and Human Rights Growing, UN Report Warns,” OHCHR, September 16, 2022, <https://www.ohchr.org/en/press-releases/2022/09/spyware-and-surveillance-threats-privacy-and-human-rights-growing-un-report>.

67 Ulises A. Mejias and Nick Couldry, “Datafication,” *Internet Policy Review*, November 29, 2019, <https://policyreview.info/concepts/datafication>.

68 “Digital profiling,” *TechTarget*, accessed August 19, 2023, https://www.techtarget.com/whatis/definition/digital-profiling?Offer=abt_pubpro_AI-Insider.

69 Monique Mann, and Tobias Matzner, “Challenging algorithmic profiling: The limits of data protection and anti-discrimination in responding to emergent discrimination,” *Big Data & Society* 6, no. 2 (2019), <https://doi.org/10.1177/2053951719895805>.

70 Jon Stojan, “The Power and Pitfalls of Digital Ads in Political Campaigns,” *USA Today*, May 31, 2023, <https://www.usatoday.com/story/special/contributor-content/2023/05/31/the-power-and-pitfalls-of-digital-ads-in-political-campaigns-jared-kamrass-explains-precision-target/70261339007/>.

71 Robinson Meyer, “Could a Bank Deny Your Loan Based on Your Facebook Friends,” *The Atlantic*, September 25, 2015, <https://www.theatlantic.com/technology/archive/2015/09/facebooks-new-patent-and-digital-redlining/407287/>.

72 “Algorithm,” *Merriam-Webster*, accessed July 31, 2023, <https://www.merriam-webster.com/dictionary/algorithm>

73 Tor Richardson-Golinski, Amelia Harshfield, and Advait Deshpande, “Our Actions Determine What We Read and See Online. Algorithms Are Only a Part of That Process,” *Rand Corporation*, February 7, 2020, <https://www.rand.org/blog/2020/02/our-actions-determine-what-we-read-and-see-online-algorithms.html>.

anymore. As algorithm technology matures, poor regulation could further impact already vulnerable populations. Similarly, manual limitation must be placed into algorithms to ensure that the privacy and safety of users is not compromised.

Artificial Intelligence, also known as AI, is one of the newest technology sectors. The AI industry has recently become the subject of online privacy concerns. Like algorithms, AI systems are complex and vary based on their specific functions. As a result, analyzing their effectiveness is very difficult. AI tools can also be trained to process many forms of media, including text and images. While the full power of these systems has not been achieved, AI is already a powerful technology that can identify specific individuals from anonymized data.⁷⁴ Anonymizing data involves stripping any direct or indirect personal identifiers from data.⁷⁵ Studies found that AI models could still determine an individual's identity roughly 50 percent of the time if tested.⁷⁶ This may make privacy regulations such as the GDPR obsolete, as the requirements that companies anonymize data no longer protect privacy. Many revealing data already exists on the internet, like age, gender, voting records, and health data. As digital feats continue to increase and evolve, international regulations must also expand.

Like algorithms, examples of AI creators not understanding outputs have become much more common. In 2022, Google fired Blake Lemoine, an AI engineer. Lemoine claimed that Google's LaMDA Large Language Model (LLM) was sentient.⁷⁷ Sentience refers to an entity's ability to regard itself and its surroundings. It must be able to recognize its state and acknowledge its place in its environment.⁷⁸ LLMs are a new form of AI trained on extensive datasets and can convincingly mimic human writing. After working with LaMDA, Lemoine became convinced that it could be sentient. Lemoine had

months of experience working with LaMDA. Lemoine even told the Washington Post, "If I did not know exactly what it was, which is this computer program we built recently, I would think it was a seven-year-old, eight-year-old kid that happens to know physics."⁷⁹ This is a startling experience. The circumstances of Google firing Lemoine can also be considered suspicious. If AI sentience is possible, strict legal regulations will be necessary to protect human rights. However, security and privacy concerns must be addressed even if AI cannot reach sentience. AI models like ChatGPT and Bard have started an ethical and security debate.

LLMs are just one subset of transformer-based AI, which can be defined as AI that learns information in the same ways that a human brain does. Other recent AI models have been trained using images or other numerical data. Industries such as medicine and the military have poured significant money into AI. In 2015, a group of researchers at a hospital in New York decided to train an AI model on patient data.⁸⁰ The model was trained on over 700,000 patient records, using hundreds of variables. The resulting AI was quite good at predicting what ailments a patient likely had. However, while the algorithm was quite accurate, it could not explain the diagnoses it gave. Examples like this highlight how there are still some gaps in the expertise and real-life applications of AI. As a result, transparency for AI is crucial to protecting privacy. As AI becomes more powerful and accessible, its use will rise. Similarly, its access to user data will increase. International law, therefore, must have clear expectations for what types of data algorithms and AI training sets are allowed to use, as well as regulate the future development of these technologies.

Another major concern with developing new technologies is that they pose potentially significant challenges for creating

74 Dario Casella, "AI and privacy: Everything you need to know about trust and technology," *Ericsson*, August 1, 2022, <https://www.ericsson.com/en/blog/2022/8/ai-and-privacy-everything-you-need-to-know>.

75 "Anonymisation and Pseudonymisation," *London's Global University*, accessed August 19, 2023, <https://www.ucl.ac.uk/data-protection/guidance-staff-students-and-researchers/practical-data-protection-guidance-notices/anonymisation-and>.

76 Nikk Ogasa, "How AI can identify people even in anonymized datasets," *ScienceNews*, January 25, 2022, <https://www.sciencenews.org/article/ai-identify-anonymous-data-phone-neural-network>.

77 Leonardo De Cosmo, "Google Engineer Claims AI Chatbot Is Sentient: Why That Matters," *Scientific American*, July 12, 2022, <https://www.scientificamerican.com/article/google-engineer-claims-ai-chatbot-is-sentient-why-that-matters/>.

78 Janet Pauketat, "The Terminology of Artificial Sentience," *Sentience Institute*, November 22, 2021, <https://www.sentienceinstitute.org/blog/artificial-sentience-terminology>.

79 Leonardo De Cosmo, "Google Engineer Claims AI Chatbot Is Sentient: Why That Matters," *Scientific American*, July 12, 2022, <https://www.scientificamerican.com/article/google-engineer-claims-ai-chatbot-is-sentient-why-that-matters/>.

80 Will Knight, "The Dark Secret at the Heart of AI," *MIT Technology Review*, April 11, 2017, <https://www.technologyreview.com/2017/04/11/5113/the-dark-secret-at-the-heart-of-ai/>.

privacy laws. From artificial intelligence chatbots like ChatGPT to facial recognition software, these new technologies are constantly evolving. As new international laws are passed to protect digital privacy, the rapid advancement of these technologies cannot be ignored. This is because if laws developed now do not account for how technologies may change, they will become useless relatively quickly.

Small AI research groups are only a fraction of the business of algorithms. Giant tech companies such as Google, Meta, and TikTok have created several well-known algorithms. Instagram is one of the most famous algorithms. Much of the interaction on the site comes from a continuous stream of posts and videos. In May 2023, Instagram released some of the variables of their algorithm, such as liking a post or sharing a post with your friends. Despite doing this, the exact algorithm is kept secret.⁸¹ At such a large scale, the Instagram algorithm is extremely powerful. A single user on Instagram can reach hundreds of millions of people worldwide. With such a reach, ensuring transparency is necessary to protect users' privacy online. It is predicted that Instagram will reach 2.5 billion active users by the end of 2023.⁸² With both the rise of AI and such a large database of users, it is increasingly important that protections are placed on such platforms.

TikTok and YouTube are two other examples of large algorithms. TikTok's algorithm is revolutionary in holding a user's attention for hours straight. YouTube and TikTok offer content to different crowds. YouTube's content is longer and more in-depth, while TikTok's content is usually fast-paced at 60 to 90 seconds per video. Both platforms rely heavily on recommending relevant videos to keep a user's attention. This retention involves collecting extensive data, such as watch time and who users follow, to form a recommendation. The

adaptive technology of TikTok allows the app to personalize each user's experience. In 2021, TikTok's algorithm was so effective that it began to create dangerous feedback loops. Users, especially young users with depression, began to be recommended content that magnified those feelings.⁸³ YouTube has also faced legal issues with its algorithm. For example, the YouTube creator Jake Paul has become a millionaire through targeting unsafe videos at young children.⁸⁴ His videos, which regularly receive millions of views, have caused major controversies on the site.⁸⁵ Because he markets himself to a young audience, YouTube recommends his videos to kids. Paul has then used this to his advantage as videos with edgy content often receive more attention and are promoted by the YouTube algorithm. Regarding privacy, these large-scale algorithms can quickly spread dangerous or private information. Regulating their scope and reducing their opacity is crucial for protecting online privacy.

The collection of "big data," a term that refers to data sets containing high volume and detail, is now common practice on the internet. Online activity, including website visits, social media use, and mobile applications, collect extensive user data.⁸⁶ All this information creates a detailed path of the user's internet use. Data can then be processed and used to create digital profiles. Governments also collect extensive data and use it to assist law enforcement.⁸⁷ The data governments collect often comes from welfare applications, which may include food programs, health care, and housing support. This practice creates a dangerous cycle because applicants for welfare may already be under higher surveillance from law enforcement agencies. In 2020, Kenya enacted the Data Protection Act (DPA) regulating online privacy and data processing.⁸⁸ The DPA regulates how much sensitive data government organizations can process. Clear regulations

81 "Mia Sato, "Here's how Instagram recommends the content you see," *The Verge*, May 31, 2023, <https://www.theverge.com/2023/5/31/23744125/instagram-algorithm-recommendation-posts-reels-stories-shadow-banning>.

82 Daniel Ruby, "77 Instagram Statistics 2023 (Active Users & Trends)," DemandSage, accessed August 31, 2023, <https://www.demandsage.com/instagram-statistics/>.

83 Ben Smith, "How TikTok Reads Your Mind," *The New York Times*, December 5, 2021, <https://www.nytimes.com/2021/12/05/business/media/tiktok-algorithm.html>.

84 CT Jones, "Logan Paul's Biggest Controversies: A Timeline," *Rolling Stone*, July 10, 2023. <https://www.rollingstone.com/culture/culture-news/logan-paul-controversies-timeline-1234785537/>

85 Jones, "Logan Paul's Biggest Controversies: A Timeline."

86 Mary Madden, Michele Gilman, Karen Levy and Alice Marwick, "Privacy, Poverty, and Big Data: A Matrix of Vulnerabilities for Poor Americans," *Washington University Law Review* 95, no. 1 (January 1, 2017), <https://journals.library.wustl.edu/lawreview/article/id/3193/>.

87 Madden, "Privacy, Poverty, and Big Data: A Matrix of Vulnerabilities for Poor Americans."

88 "Data security and privacy laws develop across Africa," *Baker McKenzie*, April 28, 2022, <https://www.bakermckenzie.com/en/newsroom/2022/04/data-security-and-privacy-laws-across-africa>.

are urgently needed as these privacy violations go against promoting economic equity.

Because algorithms base their decisions on the information fed to them, they can reflect biases in the data they intake. When a person or algorithm assumes something about an individual because of a feature they have, it is called profiling. People can be profiled because of their race, gender, ethnicity, or several other characteristics. For this reason, algorithms profiling can be very dangerous. The practice of using algorithms to predict behavior is not illegal.⁸⁹ However, it becomes ethically problematic if those predictions are used to deny access to goods and services or increase surveillance on a person or community. The GDPR and other international laws do not discuss this issue. Such decisions made using algorithms breach one’s right to share such information, as they are gathered by alternate means. Outputs from algorithms may not legally qualify as personal data, which must be connected to an individual. This loophole allows companies to bypass laws restricting the use of algorithms by anonymizing data.

Reputable research studies call for a “right to reasonable

⁸⁹ Maddalena Favaretto, Eva De Clercq and Bernice Simone Elger, “Big Data and discrimination: perils, promises and solutions. A systematic review,” *Journal of Big Data* 6, no. 12 (February 5, 2019), <https://doi.org/10.1186/s40537-019-0177-4>.

⁹⁰ Mann and Matzner, “Challenging algorithmic profiling: The limits of data protection and anti-discrimination in responding to emergent discrimination.”

⁹¹ Mann and Matzner, “Challenging algorithmic profiling: The limits of data protection and anti-discrimination in responding to emergent discrimination.”

⁹² UN Children’s Fund, Convention on the Rights of the Child, November 20, 1989, <https://www.unicef.org/child-rights-convention/convention-text-childrens-version>.

inferences” to be included in international privacy laws.⁹⁰ A “right to reasonable inferences” would prevent using algorithmic outputs as substitutes for concrete data. If such a right were to be established, algorithms would not be allowed to estimate personal data for official use. Such protections would offer a first step in combating rising tech-related legal issues. However, this right would still fail to protect some cases of discrimination.⁹¹ Anti-discrimination is very important for upholding the right to digital privacy. All algorithms should also be regulated and subject to accountability measures.

Protecting Children Online

Children are one of the most protected groups by international human rights law. The Convention on the Rights of the Child recognizes and upholds children’s right to privacy.⁹² Article 16 of the Convention includes protecting a child’s home, family, and communications. Nonetheless, specific privacy laws protecting children have been largely unsuccessful or do not exist in many countries. Children often cannot provide consent for their data to be tracked online. Therefore, it is

Children online.
 Credit: David Shankbone



much more important to protect children’s privacy online. Meta was recently investigated for misleading parents about their ability to control their children’s online behavior.⁹³ It was also found that Meta did not accurately declare the extent to which they were selling data of children under 18.⁹⁴ According to Datareportal, of the 1.63 billion global Instagram users, roughly 130 million are less than 18 years old. This example, among others, demonstrates the need for strong and independent laws to protect minors on the internet that include concrete preventative measures.

Understanding the digital profiles of children online is crucial in protecting children’s privacy. Digital profiles are either self-created (a social media account), created by a service (shopping or website data collection), or issued by a government. All three types are vulnerable to attack as they often contain sensitive information. In 2022, a study of US identity fraud found that 1 in 43 children were victims of identity fraud, an increase from the previous year.⁹⁵ Identity theft is using someone’s personal data for deception or financial gain.⁹⁶ Examples of identity fraud may include false credit card or loan applications, fraudulent withdrawals from bank accounts, or fraudulent use of phone numbers or online accounts.⁹⁷

Resolving identity fraud is expensive, and the total cost of dealing with identity theft was over USD 1 billion per year or USD 1,128 per case.⁹⁸ Most cases of identity fraud come from social media posts made by children. On average, 70,000 social media posts per year are made about or by a child, before they turn 18.⁹⁹ The social media industry is for-profit. Because of this, companies sell data and create digital profiles to maximize

profits.¹⁰⁰ Without proper protection under the law, digital profiles and identities create risks for abuse and theft. User control of digital identities is significant, as online identities are increasingly tied to financial decisions and job hiring. The increasing rate of identity theft and fraud is concerning. On top of imposing financial burdens, identity theft is dangerous to the safety and wellbeing of children. International laws must be created and hold an increased responsibility to protect youth from falling prey to the exploitative parts of the internet.

Informed consent to data collection and tracking is another important step to protect children online. Websites must ask you to accept their terms of service before making an account. However, these are often long legal documents that are rarely read. Informed consent can be defined as providing an individual, clear, and transparent information before they participate in something or give up their rights.¹⁰¹ For children, especially those who are not yet mature enough to consent, informed consent is necessary for online activity. However, from a moral and legal standpoint, it can be difficult to truly gain consent from children too young to understand their actions. Informed consent is a complicated concept to establish with children. The current lack of regulations fails to even attempt to address this hurdle.

In 2023, Microsoft was fined USD 20 million in a settlement with the US government for illegally collecting sensitive information from children who signed up for Microsoft accounts.¹⁰² The data collected included biometric data and the child’s image.¹⁰³ Biometric data recognizes human

93 Makena Kelly, “FTC pushes to ban Meta from profiting off children’s data,” *The Verge*, May 4, 2023, <https://www.theverge.com/2023/5/3/23709892/ftc-meta-ban-monetizing-child-data-privacy-order>.

94 Makena Kelly, “FTC pushes to ban Meta from profiting off children’s data.”

95 Frank Hersey, “Children’s digital identities are easier to defraud, harder to fix,” *BiometricUpdate.com*, November 16, 2022, <https://www.biometricupdate.com/202211/childrens-digital-identities-are-easier-to-defraud-harder-to-fix>.

96 “Identity theft and identity fraud,” *United States Department of Justice*, accessed July 31, 2022, <https://www.justice.gov/criminal-fraud/identity-theft/identity-theft-and-identity-fraud>.

97 “Identity theft and identity fraud,” *United States Department of Justice*.

98 Frank Hersey, “Children’s digital identities are easier to defraud, harder to fix,” *BiometricUpdate.com*, November 16, 2022, <https://www.biometricupdate.com/202211/childrens-digital-identities-are-easier-to-defraud-harder-to-fix>.

99 “Who babysits your children’s data?” *Internet Health Report 2019*, April, 2019, <https://internethealthreport.org/2019/who-babysits-your-childrens-data/>.

100 Gabrielle Berman and Kerry Albright, *Children and the Data Cycle: Rights and Ethics in a Big Data World*, (UNICEF, June 2017, p. 12), https://www.unicef-irc.org/publications/pdf/IWP_2017_05.pdf.

101 “Informed consent,” *Cornell Law School*, accessed August 19, 2023, https://www.law.cornell.edu/wex/informed_consent.

102 Max Matza, “Microsoft to pay \$20m for child privacy violations,” *BBC*, June 6, 2023, <https://www.bbc.com/news/world-us-canada-65817558>.

103 Lesley Fair, “\$20 million FTC settlement addresses Microsoft Xbox illegal collection of kids’ data: A game changer for COPPA compliance,” *Federal Trade Commission*, June 5, 2023, <https://www.ftc.gov/business-guidance/blog/2023/06/20-million-ftc-settlement-addresses-microsoft-xbox-illegal-collection-kids-data-game-changer-coppa>.

characteristics based on physical or behavioral traits.¹⁰⁴ For children under 13, the signup process did not ask for a parent’s consent until after it had asked for a phone number. Furthermore, it fully failed to inform them that profile photos will be shared externally.¹⁰⁵ While the settlement required Microsoft to delete unneeded information within two weeks, they are not the only company to infringe on children’s privacy and fail to require informed consent when collecting data.

Delegates should consider how new legal frameworks for digital privacy can make informed consent more achievable. International law must also consider at what age children should be legally able to give their own informed consent. Defining such an age for informed consent has proven difficult. The GDPR requires parental consent for children under 13 years old.¹⁰⁶ However, this is below the age of adulthood in most countries. Furthermore, most 12-year-old children still may not understand the full repercussions of making online accounts. However, picking an age of consent will not fully protect children online. Websites still make their terms of service very difficult to read, even for adults. Since not accepting terms of service means being denied access to a service, most adults will still accept without reading such contracts. Without full transparency, parents or their children may be signing away unrestricted access to very private data. Defining what transparent and accessible terms of service are is very important for data privacy. Solutions to this may include encouraging decision-making bodies to require websites to explain data collection types in easily understandable words. It may also look like websites being required to explicitly share the organizations with whom data is shared.

International law should also encourage teaching digital literacy to children. UNICEF defines digital literacy as “the knowledge, skills and attitudes that allow children to be both safe and empowered in an increasingly digital world”.¹⁰⁷

Once children become adults, not being able to control their online identity will impact their right to privacy. Therefore, children must be educated of the specific ways in which they can engage with the internet safely. This can include teaching them how their actions on the internet can affect their lives going forward.

Newer international privacy laws, including the GDPR, recognize consent as a pressing issue and include requirements for stricter checks. As things stand, private companies can obtain such consent in any way they see fit. This is a challenge, as organizations will do whatever they can to receive consent. In 2022, Human Rights Watch (HRW) released an alarming report on how Educational Technology (EdTech) companies around the world tracked young children.¹⁰⁸ Companies referenced in the report include Stoodi in Brazil and Extramarks in Saudi Arabia.¹⁰⁹ With the onset of the COVID-19 pandemic, schools shifted online for most students. The global market for EdTech software grew rapidly. In this report, HRW looked into over 160 EdTech programs. It found that nearly all collected sensitive data without child or parent consent.¹¹⁰ The data types collected included device information, the social networks of users, and video recordings.¹¹¹ Some EdTech programs found to be data harvesting were endorsed by national governments. This is concerning, as one’s government should be the agency that protects its people from breaches of human rights. Rather, national governments appear to endorse such actions. Legal action is necessary, both against the private sector but also to ensure governments work towards protecting children’s rights.

For children, the existence of personal data online can have serious consequences for their future. Some international laws that address the preservation of data online exist, including Article 17 of the GDPR. This states that under certain circumstances, people should have the right to data erasure

104 “Biometric Data,” Innovatrics, accessed August 31, 2023, <https://www.innovatrics.com/glossary/biometric-data/>.

105 Max Matza, “Microsoft to pay \$20m for child privacy violations.”

106 Gabrielle Berman and Kerry Albright, *Children and the Data Cycle: Rights and Ethics in a Big Data World*.

107 “Digital Literacy for Children - 10 Things to Know,” UNICEF Office of Global Insight & Policy, accessed September 1, 2023, <https://www.unicef.org/globalinsight/documents/digital-literacy-children-10-things-know>.

108 Human Rights Watch, *Children’s Rights Violations by Governments that Endorsed Online Learning During the Covid-19 Pandemic*, (May 25, 2022), https://www.hrw.org/report/2022/05/25/how-dare-they-peep-my-private-life/childrens-rights-violations-governments#_ftn30.

109 *Children’s Rights Violations by Governments that Endorsed Online Learning During the Covid-19 Pandemic*.

110 *Children’s Rights Violations by Governments that Endorsed Online Learning During the Covid-19 Pandemic*.

111 *Children’s Rights Violations by Governments that Endorsed Online Learning During the Covid-19 Pandemic*.

or the “right to be forgotten.”¹¹² Some key circumstances are when data was collected illegally if data has been processed and is no longer needed, or if data was processed to offer online services to children. While Article 17 of the GDPR includes important first steps, its reach is not global and further international regulations and protections must be implemented. Furthermore, there is no real method to enforce the articles of the GDPR. As such, action remains absent. Parents and children should have easy access to view all data online and track the transmission of that data to third parties. Enforcing transparency and empowering individuals to inform themselves of their online identities is crucial for upholding the right to digital privacy.

Several large companies have violated children’s privacy in the last five years, including YouTube, Microsoft, and Amazon. In 2019, YouTube faced a USD 170 million fine after failing to obtain consent to collect data from children using their service.¹¹³ YouTube used data collected from children using the platform to create profiles used to advertise to them. YouTube earned millions of dollars from showing targeted advertisements to children based on their identification information.¹¹⁴ The US was able to fine YouTube under the Children’s Online Privacy Protection Rule (COPPA). COPPA allows the US government to impose regulations on online services targeted at children under 13.¹¹⁵ While this is a positive step forward, successful uses of laws such as this are relatively rare. YouTube and EdTech companies are all responsible for extensively sharing sensitive data collected from children. Online data exists in a massive ecosystem, making regulation very difficult. Therefore, it is integral that international law protects existing data and regulates the volume of data collected. New laws must attempt to minimize the non-consensual sharing of data and limit the passive collection of data from large companies to uphold the privacy of children online.

Current Status

Artificial Intelligence

Excitement around artificial intelligence (AI) tools in the last two years has created a new online industry focused on the new technology. These AI tools are able to generate extremely detailed and human-like outputs. However, the speed at which new developments have quickly outpaced the number of regulations around AI. The most controversial use of generative AI is image generation. In 2022, several image generation tools, including DALL-E, Imagen, and Midjourney, were released.¹¹⁶ Like text generation tools, these allow users to generate high-quality images with a simple text prompt.

After only a few weeks of being publicly available, it became clear that AI image generation tools presented a copyright problem for artists. To create realistic images, these programs used publicly available artwork as training data. This means that the tools find any freely visible art on the internet and use it as the basis for the AI’s art style. As a result, a heated online legal debate about artwork ownership has been sparked. Many artists have sued AI companies for violating their copyright on their material.¹¹⁷ There are two main reasons AI art is problematic for artists. First and foremost is the issue of AI companies scraping artist data without consent. Second, no systems are currently in place to credit an artist after a piece of AI art has been generated. This means that no acknowledgment is made to credit original works regardless of the similarity between AI-generated and handmade works. While there already exist extensive copyright laws, it has been difficult to apply them to AI generated artwork. Delegates should be mindful of how these laws must be updated to address these concerns.

Generative AI is so powerful and novel that many of its users look past the personal data risks it poses. As mentioned

112 European Union, “General Data Protection Regulation: Article 4,” accessed August 19, 2023, <https://gdpr-info.eu/art-17-gdpr/>.

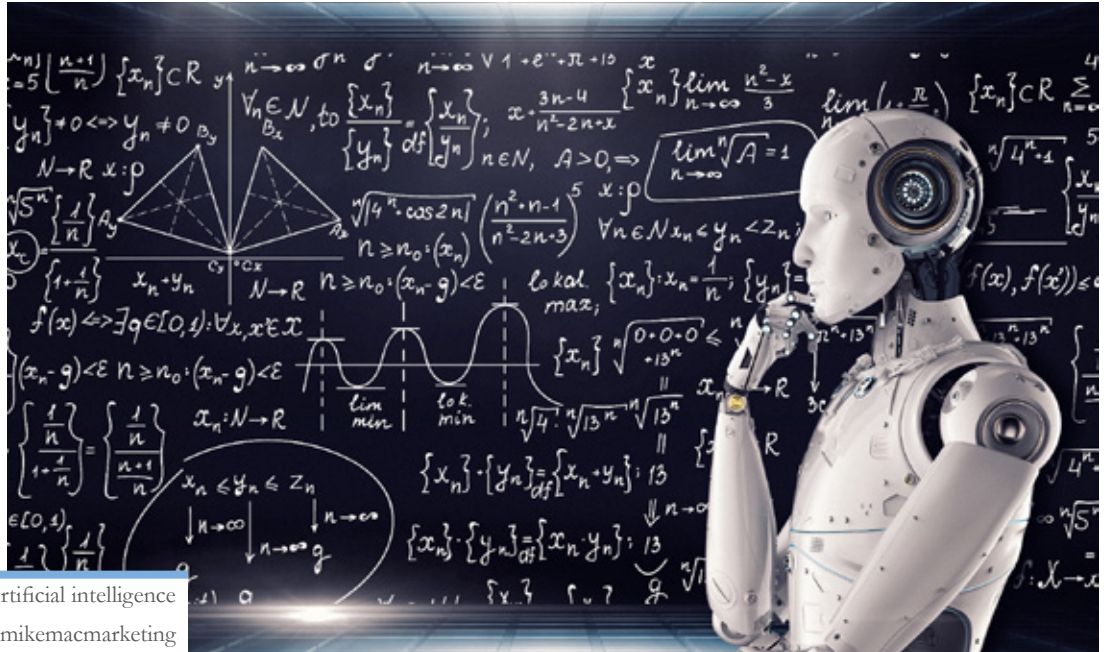
113 “Google and YouTube Will Pay Record \$170 Million for Alleged Violations of Children’s Privacy Law,” *Federal Trade Commission*, September 4, 2019, <https://www.ftc.gov/news-events/news/press-releases/2019/09/google-youtube-will-pay-record-170-million-alleged-violations-childrens-privacy-law>.

114 “Google and YouTube Will Pay Record \$170 Million for Alleged Violations of children’s Privacy Law.”

115 “Google and YouTube Will Pay Record \$170 Million for Alleged Violations of Children’s Privacy Law.”

116 James Vincent, “Anyone can use this AI art generator - that’s the risk,” *The Verge*, September 15, 2022, <https://www.theverge.com/2022/9/15/23340673/ai-image-generation-stable-diffusion-explained-ethics-copyright-data>.

117 Theo Farrant, “From lawsuits to tech hacks: Here’s how artists are fighting back against AI image generation,” *Euronews*, March 27, 2023, <https://www.euronews.com/culture/2023/03/27/from-lawsuits-to-tech-hacks-heres-how-artists-are-fighting-back-against-ai-image-generatio>.



Artificial intelligence
 Credit: mikemacmarketing

before, the more data available to train AI models, the more powerful those models can be. Developers of these models have gone to great lengths to compile more data than their competitors. In July 2023, Google, the developer of AI technologies including Bard, Cloud AI, and Google Translate, revised their privacy policy.¹¹⁸ The revision now allows Google to use publicly available information to improve and build its AI tools.¹¹⁹ This decision by Google allows for a significant amount of personal information to now be used as training data. Once personal data is used to train AI, it is permanently embedded in the networks that form the backbone of models. While personal data forms only a small fraction of the data used, its presence further limits the control individuals hold over their own data.

Google’s decision to give themselves access to the entire public internet is not new. OpenAI, the creators of ChatGPT and DALL-E, were sued over their data collection practices. The lawsuit comes after OpenAI illegally scraped personally

identifiable data from millions of internet users.¹²⁰ Some of the data illegally collected included identifying personal data from children. This OpenAI lawsuit exemplifies how AI developers do everything they can to gain a competitive advantage. The lawsuit also brings up the black-box nature of AI.¹²¹ Once the data collected has been used for the model, very few safeguards exist to prevent further privacy violations.

As AI rapidly develops, its tendencies for unpredictable behavior and outputs have become clear. Without users intending to, text prompts for these AI tools have resulted in outputs that are racist, dangerous, and include very sensitive information.¹²² During a recent convention on AI tools, an individual prompted an AI chat tool to share credit card information.¹²³ While an AI chat tool normally would not share this information, it was easily manipulated into doing so. This raises questions over why the information was so easy to find for the tool, as well as how easy it was for the tool to be manipulated into doing something that it wasn’t supposed

118 Chase DiBenedetto, “Google could use public data for AI training, according to new policy,” *Mashable*, July 4, 2023, <https://mashable.com/article/google-privacy-using-public-data-for-ai>.

119 Mariella Moon, “Google’s updated privacy policy states it can use public data to train its AI models,” *Engadget*, July 4, 2023, <https://www.engadget.com/googles-updated-privacy-policy-states-it-can-use-public-data-to-train-its-ai-models-095541684.html?guccounter=1>.

120 Ryan Clarkson, “OpenAI Complaint” (California, June 28, 2023), <https://clarksonlawfirm.com/wp-content/uploads/2023/06/0001.-2023.06.28-OpenAI-Complaint.pdf>.

121 Clarkson, “OpenAI Complaint,” p. 14.

122 Melissa Heikkila, “Three ways AI chatbots are a security disaster,” *MIT Technology Review*, April 3, 2023, <https://www.technologyreview.com/2023/04/03/1070893/three-ways-ai-chatbots-are-a-security-disaster/>.

123 Shannon Bond, “What happens when thousands of hackers try to break AI chatbots,” *NPR*, August 15, 2023, <https://www.npr.org/2023/08/15/1193773829/what-happens-when-thousands-of-hackers-try-to-break-ai-chatbots>.

to be able to do.¹²⁴ Another concern is that AI can also be prompted to write malicious code, such as viruses and other hacking programs, without much difficulty.¹²⁵ The safeguards implemented by the developers of these tools clearly are not sufficient in limiting their capabilities.

Authors of the lawsuit cite potential safeguards to improve AI safety and privacy. First is to increase transparency by disclosing what data goes into their models and how it is gathered. The methods of how data is gathered online are an important point. Web scraping software, the automated programs that gather online data, do not discriminate between personal and public information.¹²⁶ Large tech companies like Google and Meta and startups like OpenAI have web scraping tools that continuously roam the internet collecting data. Additionally, the lawsuit calls on increased accountability for AI companies that collect data. AI developers should be held accountable for the outputs of their tools as well as any consequences for collecting private data. International laws being developed now must address how AI can risk privacy and one's right to work. These concerns are tied back to the lack of AI development and behavior regulations.

Case Study: Luxembourg vs. Amazon

A significant challenge for international privacy law is assessing its effectiveness. Many of the current regulations were passed only a few years ago. Because of this, how effective current international privacy law is has yet to be determined. However, the GDPR, one of the most prominent and up to date digital privacy regulations, has been around long enough. The legal cases, fines, and actions taken because of the GDPR are examples of how the current approach to privacy law has succeeded and failed.

In July 2020, Luxembourg, a member of the EU and party

to the GDPR, fined the tech giant Amazon USD 812 million over GDPR violations.¹²⁷ This fine came after Amazon mishandled user data in ways that violated privacy regulations in the GDPR. As one of the largest fines caused by GDPR, Luxembourg demonstrated its commitment to upholding data privacy online. This is also a good sign of general commitment to better privacy practices, as Luxembourg has a history of having low taxes and supporting large corporations.

Amazon has long been a one-stop shop, replacing physical retailers in groceries, pharmaceuticals, department stores, and more. Amazon's site is used worldwide, and its data is often quite sensitive, including medical, shopping, and other identifiable data.¹²⁸ A data breach for Amazon and companies like it could be catastrophic as they have detailed data on hundreds of millions of customers. In the past, Amazon has been accused of risky behavior in handling user data.¹²⁹

Amazon was also accused of not being able to completely erase a user's data.¹³⁰ A former employee exposed that Amazon would likely be unable to identify all locations of an individual's data. Article 17 of the GDPR states that a "right to be forgotten" must be upheld.¹³¹ The "right to be forgotten" represents the principle that a person can request to have their data deleted online at any time. This includes one's right, under reasonable circumstances, to have all user data fully deleted. These many cases of faulty privacy practices suggest that Amazon prioritizes growth over user privacy measures. Putting growth over privacy and user experience is common among big tech companies. Clear regulations, many of which appear in the GDPR, should be directed at these large companies responsible for vast amounts of data. However, given Amazon's scale and reach, Luxembourg was justified in its fine for poor privacy practices.

While this historic fine has broken many standards, it also

124 Bond, "What happens"

125 Lucas Ropek, "ChatGPT IS Pretty Good at Writing Malware, It Turns Out," *Gizmodo*, January 20, 2023, <https://gizmodo.com/chatgpt-ai-polymorphic-malware-computer-virus-cyber-1850012195>.

126 Sara Morrison, "The tricky truth about how generative AI uses your data," *Vox*, July 27, 2023, <https://www.vox.com/technology/2023/7/27/23808499/ai-openai-google-meta-data-privacy-nope>.

127 Vincent Manancourt, "With Amazon fine, Luxembourg emerges as Europe's unlikely privacy champion," *Politico*, July 30, 2021, <https://www.politico.eu/article/amazon-fine-luxembourg-europe-privacy-champion/>.

128 Vincent Manancourt, "Millions of people's data is at risk" - Amazon insiders sound alarm over security," *Politico*, February 24, 2021, <https://www.politico.eu/article/data-at-risk-amazon-security-threat/>.

129 Manancourt, "Millions of people's data is at risk" - Amazon insiders sound alarm over security."

130 Manancourt, "Millions of people's data is at risk" - Amazon insiders sound alarm over security."

131 "Right to be Forgotten," *Intersoft Consulting*, accessed August 20, 2023, <https://gdpr-info.eu/issues/right-to-be-forgotten/>.

demonstrates some of the flaws within the GDPR. The GDPR has several structural issues that have prevented it from reaching its full potential. One crucial issue is that the European headquarters for the largest Silicon Valley Companies, such as Apple, Twitter, and Meta, are located in Ireland. Because the GDPR is effective across Europe, individual countries must respond and enforce the regulations. Specifically, even if another country fines a company under the GDPR, the national data protection authority of the country where the company is headquartered must complete the process. This means that although Luxembourg fined Amazon, Ireland's Data Protection Commission (DPC) is responsible for processing the fine.¹³²

When Luxembourg filed the case, the Irish DPC received over 10,000 complaints.¹³³ Ireland has been slow to process these complaints. As a result, large fines against Amazon, Meta, Microsoft, and Google are still being processed.¹³⁴ The slow pace puts less pressure on these tech companies. Also, the additional time allows companies to negotiate fines or reach alternative settlements with national authorities.

Another failure of the current fine system is how often high-paying fines are reduced. Experts have often pointed out that the current process for delivering fines is long and drawn out.¹³⁵ Extra time always benefits corporations, allowing them to put legal resources into building new and stronger arguments against punitive action. Decisions like fines should be quick and imposed within a reasonable time frame. Due to data breaches and other poor data practices having such harmful consequences. This allows corporations ample time to have fines lowered or dismissed, defeating such regulations' purpose. Another factor regarding speed and efficiency for fines is the cooperation between national Digital Protection Authorities (DPAs).¹³⁶ DPAs are countries' mechanisms for enforcing internet privacy laws. These DPAs may have

certain priorities based on national policy. This means they may struggle to cooperate, which can slow down complaint decisions substantially. Resolving bottlenecks in the process and streamlining DPA operations could drastically improve the effectiveness of GDPR.

The final major structure issue highlighted in this case is the scale of the fines imposed. For Amazon and other large corporations, even fines of USD 1 billion can be written off as business expenses. The GDPR allows for fines of up to 4 percent of a company's annual revenue. If Amazon were to be fined the full 4 percent, they would be forced to pay over USD 15 billion.¹³⁷ Meanwhile, the fine brought by Luxembourg is roughly 0.1 percent of their annual revenue, almost 40 times less. For the GDPR to be respected by European companies, the fines must be significant enough to not be ignored. The only downside to being fined is a slight hit to a company's reputation. It is clear that between preventing companies from negotiating down fines to larger fines themselves, the current system is not a success. Both Luxembourg's successes and failures can inform how methods of enforcement can be recommended from the Legal committee to decision-making bodies.

Sustainable Development Goals

The United Nations Sustainable Development Goals (SDGs), as part of the 2030 Agenda, are essential guides for decisions made at the UN. Three of the 17 total SDGs are especially relevant to this committee: SDGs 9, 10, and 16. Understanding these goals and their influence on achieving this topic is key.

SDG 9 is the first relevant goal of this committee. Its goals include building resilient infrastructure, promoting inclusive and sustainable industrialization, and fostering innovation.¹³⁸ As the internet becomes a focal point for many industries, ensuring that these industries remain inclusive, resilient, and

132 Julia Tar, "New Irish law might make data protection procedures confidential," *Euractiv*, June 26, 2023, <https://www.euractiv.com/section/data-privacy/news/new-irish-law-might-make-data-protection-procedures-confidential/>.

133 Luca Bertuzzi, "MEPs call for infringement procedure against Ireland," *Euractiv*, May 30, 2021, <https://www.euractiv.com/section/data-protection/news/european-parliament-calls-for-infringement-procedure-against-ireland/>.

134 Manancourt, "With Amazon fine, Luxembourg emerges as Europe's unlikely privacy champion."

135 Luca Bertuzzi, "10 years after: The EU's 'crunch time' on GDPR enforcement," *LAPP*, June 28, 2022, <https://iapp.org/news/a/10-years-after-the-eus-crunch-moment-on-gdpr-enforcement/>.

136 Bertuzzi, "10 years after: The EU's 'crunch time' on GDPR enforcement."

137 Jack Kennedy, "Explainer: Amazon's €746m fine from Luxembourg's data regulator," *Silicon Republic*, August 3, 2021, <https://www.siliconrepublic.com/enterprise/amazon-746m-fine-luxembourg-data-protection>.

138 "SDG 9," *United Nations Department of Economic and Social Affairs*, accessed August 20, 2023, <https://sdgs.un.org/goals/goal9>.

innovative is crucial. Building resilient infrastructure online can take many forms. Relevant to this committee and topic, the most important factors are secure data storage and online activity free from backdoors used for surveillance. Promoting inclusive and sustainable industrialization will require new regulations for AI. It will also require that laws ensure children have a protected voice in online spaces. Finally, fostering innovation will include regulations against tech giants and maintaining transparency for emerging technologies. Emerging technologies are new technologies that are only beginning to be developed. These can include facial recognition and AI generation tools. For these reasons, SDG 9 includes important guidelines for where digital privacy online matters the most and what can be done to protect it.

SDG 10 is another relevant goal, which seeks to reduce inequality within and among countries.¹³⁹ Because so much commerce now happens on the internet, ensuring equality online is very important. This is relevant to digital privacy in several ways. First, equality among countries requires each country to have an equal standing in global markets, including markets online. Maintaining an online presence is expensive, so many countries have fallen behind in taking advantage of the internet. For example, countries without strong online digital protection legislation see more illegal online activity, which harms its citizens and economy. Second, targets 10.3 and 10.4 aim to reduce individual inequality by offering new opportunities and fighting discrimination.¹⁴⁰ This is directly tied to discriminatory algorithms, children's data protection, and governments buying privately collected user data. SDG 10 highlights the institutional issues that can be targeted to improve privacy online.

SDG 16 is the final goal that is relevant to this topic. This goal seeks to promote peaceful and inclusive societies for sustainable development. It also looks to provide access to justice for all and build effective, accountable, and inclusive institutions at all levels.¹⁴¹ These goals are essential for properly protecting online privacy. Access to justice is applicable in data rights cases. Building institutions through which an individual

can demand deletion or gain access to their data is a crucial factor in improving data privacy. Additionally, accountability is key to protecting online privacy across private and public institutions. For public organizations and governments, independent accountability is a proven way to ensure human rights are adequately considered. This is especially important in cases like Pegasus, which violated the human right to privacy. While these three SDGs represent this committee's most relevant goals, all 17 goals should be used to influence solutions.

Bloc Analysis

Points of Division

The necessity of data privacy is very new, and many countries still lack adequate legal protections. While it benefits most countries to pass stronger laws, their capacity varies. Because supporting and maintaining protective measures is expensive, lower-income countries in Africa, Southeast Asia, and Latin America currently have limited legal protections. This range in privacy protection adoption is one of the two key points of division that separate blocs. However, separating country policy on the issue of protecting data privacy is difficult. The Internet is a potent tool for surveillance and national security interests. As a result, many countries do not support complete protection. It is therefore crucial to have a clear understanding of country policy. This means knowing a country's economic, social, and government priorities. All three factors determine the nuanced position countries take on the issue of data privacy protections.

Looking closer at where countries fall in their adoption of privacy protection will aid in understanding the global landscape. According to the United Nations Conference on Trade and Development (UNCTAD), countries fall into one of three groups.¹⁴² The first group comprises countries with legislation in place and makes up 71 percent of the world. The second group comprises countries drafting legislation,

139 "SDG 10," *United Nations Department of Economic and Social Affairs*, accessed August 20, 2023, <https://sdgs.un.org/goals/goal10>.

140 "SDG 10," *United Nations Department of Economic and Social Affairs*.

141 "SDG 16," *United Nations Department of Economic and Social Affairs*, accessed August 20, 2023, <https://sdgs.un.org/goals/goal16>.

142 UNCTAD, "Data Protection and Privacy Legislation Worldwide," accessed July 2, 2023, <https://unctad.org/page/data-protection-and-privacy-legislation-worldwide>.

with roughly 9 percent of the world. Finally, about 15 percent of countries lack adequate data privacy protection altogether. Countries with protection include Argentina, Australia, Japan, South Africa, the UK, and the US, among many others. However, among the 137 countries with legislation, the success and restrictiveness vary dramatically. Germany, for example, as part of the EU, is under the jurisdiction of the GDPR. A second example is Egypt, which has legislation that selectively protects data but allows authorities to undertake surveillance.¹⁴³

The second important point of division is the level of protection countries are willing to support at an international level. In this aspect, it is much more difficult to determine where a country's policy will fall. However, considering three factors—economic, social, and government priorities—it can be formed. Elements that could be influential include if a country is currently at war if a country's economy relies on internet services, or if social norms do not prioritize privacy. For example, China has a very robust internet security infrastructure but has vast facial recognition networks and online trackers to maintain national security. According to the 2022 Freedom House Internet Freedom Index (IFI), China scored a 9/100.¹⁴⁴ A significant factor in this is the lack of national laws that prosecute violations of human rights, particularly the human right to privacy.

These two points of division, when combined, create four potential voting blocs. The first are countries that strongly support privacy regulations and have already enacted legislation themselves. The second includes countries that have enacted legislation but support only limited international regulations. The third includes countries without or drafting legislation but do support strong international regulations. Finally, the last bloc of countries lacks national legislation and does not support new international regulations. Countries in each bloc are not always separated geographically or politically, so a complete understanding of a country's policy is crucial.

Countries With Existing Privacy Laws That Support Stronger International Privacy Law

All countries in this bloc have passed laws protecting online privacy. Also, they generally fall higher on the Internet Freedom Index and support stronger privacy laws at an international level. Most of these countries have robust data privacy laws. Even with this, they recognize the importance of new international legal frameworks. Rapid technological improvements require new and updated laws, which these countries are happy to develop. Major countries in this bloc include Canada, Costa Rica, Estonia, Iceland, Japan, Georgia, Germany, and Taiwan. These countries have IFI scores above 70 and have passed domestic privacy laws.¹⁴⁵ For European countries, much of their legislation is based on the GDPR. Additionally, a major factor in the IFI is how strongly a country upholds privacy rights. A higher score in this category indicates fewer user privacy rights violations. Countries in this bloc score higher in the index, which indicates their willingness to support stronger privacy rights laws.¹⁴⁶

The solutions that this bloc supports are some of the most effective in protecting user data. One important solution is regulating how companies handle data. This includes deleting old and unused data as well as respecting user requests to delete inaccurate or incomplete data. Costa Rica's General Telecommunications Law has implemented a version of these solutions.¹⁴⁷ The law requires companies wishing to collect data to obtain consent. Countries in this bloc also support solutions targeting transparency in handling and selling data to third parties. In general, this bloc will be the first to develop new regulations. They will also be the first to update old laws to address emerging concerns.

Countries With Existing Privacy Laws That Support Limited International Privacy Laws

Similar to the last bloc, the countries in this bloc have passed domestic privacy legislation of some kind. However, they do not support the same level of international regulation as the

143 "Collection & Processing," *DLA Piper*, accessed August 20, 2023, <https://www.dlapiperdataprotection.com/index.html?t=collection-and-processing&c=EG>.

144 "China," *Freedom House*, accessed August 20, 2023, <https://freedomhouse.org/country/china/freedom-net/2022>.

145 "Countries," *Freedom House*, accessed October 8, 2023, <https://freedomhouse.org/countries/freedom-net/scores>.

146 *Freedom House*, "Countries."

147 "Costa Rica," *Freedom House*, accessed August 20, 2023, <https://freedomhouse.org/country/costa-rica/freedom-net/2022>.

previous bloc. Important countries in this bloc include China, France, Hungary, Kenya, the Philippines, the UK, and the US. On the IFI index, these countries are usually on the higher end, with scores upwards of 60 points.¹⁴⁸ These countries do not uphold privacy rights as well as most countries in the first bloc. Many of these countries also struggle to maintain integrity in independent oversight organizations. An example is France, a country party to the GDPR, which recently passed new measures allowing police surveillance. This means that decisions to restrict privacy by the government are not always reviewed by a third party. In general, countries in this bloc are willing to support international privacy laws as long as their scope is limited.

As many countries in this bloc participate in some form of surveillance, the solutions supported by the bloc are less restrictive for governments. Countries worldwide have various reasons to surveil, ranging from suspected terrorism to obtaining information on political opposition. Therefore, this bloc would be less supportive of international laws that target surveillance. It is primarily because these countries see restricting surveillance as harming their national security efforts that they do not wish to support such laws. However, with stronger oversight mechanisms, surveillance can be done in a safe way that maintains human rights.

Other solutions favored in this bloc include requirements for how data should be anonymous as well as stronger protections for minors online. For example, the US has been concerned about data privacy laws being too restrictive for businesses.¹⁴⁹ Instead, the US has proposed solutions such as opt-out agreements for data collection that would be more beneficial. While opt-out agreements have seen some success, their preference towards such solutions suggests that the country's priorities may lie in protecting the industry before pushing for stronger privacy regulations. These decisions can often be motivated by a country's political beliefs and represent one reason countries may wish to have only limited privacy protections.

Countries Without or Drafting Privacy Laws and Support Stronger International Law

The countries in this bloc are drafting or have not yet passed privacy laws. While these countries do not yet have laws, they recognize the importance of establishing strong international privacy laws. Countries in this bloc include Iraq, Kenya, and Pakistan. Many in this bloc are considered developing countries, so some lack the financial capacity to pass privacy laws. Also, some countries in this bloc have low IFI scores.¹⁵⁰

Because they have lacked major privacy laws until today, most countries in this bloc will seek to model their regulations based on the existing ones created by the first and second blocs. While the second bloc's policies may affect the decisions countries in this bloc make, similar to the first bloc, solutions such as increased transparency in data handling and requiring informed consent are generally appealing to this bloc. Most of these countries are most interested in promoting national sovereignty, protecting citizens, and improving national security. Therefore, privacy law that not only protects their citizens, but also minimizes the risk of harm to the country itself, is especially appealing to this bloc.

Countries Without Strong Privacy Laws that Do Not Support International Privacy Regulations

This final bloc comprises countries that have not passed comprehensive online privacy laws. These countries are also against stronger international privacy regulations. Some countries in this bloc include Saudi Arabia, Bangladesh, Sudan, and Kazakhstan. Many of the states in this bloc have extensive surveillance operations. For example, article 25 of Sudan's National Security Law was amended and reformed but continues to allow lawful spying on its citizens. Laws containing government surveillance exemptions are quite common in countries throughout these four blocs. However, in this bloc most countries are less willing to give up the decision for unrestricted access to impartial third parties or national courts.

148 Freedom House, "Countries."

149 UN General Assembly, *Summary record of the 10th meeting: 3rd Committee*, (New York: November 17, 2020), A/C.3/75/SR.10, <https://digitallibrary.un.org/record/3907390?ln=en>.

150 Freedom House, "Countries."

The countries in this bloc favor only minimal regulation. As many are small nations, international surveillance operations are one area this bloc sees as infringing on sovereignty. To promote their independence and national security, these do not support independent oversight organizations. This is clear by the deficient scores in the IFI of these countries.¹⁵¹ In general, states in this bloc see the internet as a powerful national security tool and do not wish to have that power revoked by international privacy laws. Other solutions, such as anonymizing data and transparency of data collection, are unlikely to exist due to their high cost of enforcement.

Committee Mission

The right to privacy in digital space is a broad topic with many potential areas of concern to debate. When considering this issue, delegates should consider the documents listed and take creative liberties when envisioning solutions. Because the issue of privacy online is relatively new, the list of possible solutions is far from limited. However, solutions should accommodate and agree with the many country policies on this topic. Delegates should use this to research and create long-lasting, robust solutions.

As a committee dedicated to debating international law and how it needs to be expanded or changed, delegates in the Legal committee have a unique opportunity to challenge themselves to think of ways to improve international digital privacy law. It is crucial to note that, as a UN General Assembly committee, the Legal committee cannot directly act on its decisions. Any resolutions passed in the committee have no binding powers. Instead, actions that the Sixth Committee wishes to take come as recommendations to other appropriate UN committees and organizations. For example, a major topic of this background guide focused on protecting children online. Resolutions wishing to address this pressing issue might recommend specific actions UNICEF could take. Alternatively, more technical elements of this topic, such as cross-border data sharing, might be directed to the International Telecommunications Union (ITU), as its mandate better reflects those issues. The UN Human Rights Council (UNHRC) may also be a relevant

UN body if delegates wish to expand how the right to privacy is defined, and what exactly violates that right. Legal may also wish to appeal to regional organizations such as the African or European Unions to make stronger regulations. It could also directly address its suggestions towards national governments.

While this topic is broad, delegates should always consider its scope. The topic is worded specifically to address the human right to privacy online. This does mean that existing privacy rights laws, such as the Declaration of Human Rights, are relevant and should be discussed and applied. However, solutions should specifically address how existing legal documents could be improved and what new legal measures should exist. Due to the limited number of existing legal frameworks for online privacy, delegates must have a strong understanding of existing privacy legislation - generally and specifically online. To conclude, this topic will challenge delegates to amend, debate, and create new online privacy legal frameworks that are specific yet cover the many necessary factors.

¹⁵¹ Freedom House, "Countries."



LEGAL

NHSMUN 2024

TOPIC B:
LEGAL STATUS OF CLIMATE REFUGEES

Photo Credit: Takver from Australia

Introduction

As climate change intensifies, its impacts are seen around the world. Global temperatures are rising — in fact, researchers predict that global temperatures will likely set new record highs within the next five years. This is due to a combination of naturally occurring meteorological events and greenhouse gasses that trap heat within the atmosphere.¹ The increasing temperatures set off many events, such as rising sea levels, increases in extreme weather events, and losses in agriculture and farmland. Combined, these effects can have devastating impacts on communities. One of the most significant effects will be the displacement of millions around the world. Increased flooding and water and food shortages will force many out of their homes. The UN High Commissioner for Refugees found that around 21.5 million people have been displaced due to climate change since 2008 in Europe alone.² However, this number is likely to sharply increase shortly. Some researchers predict that 1.2 billion people could be displaced by climate change within the next 30 years.³ That is almost 15 percent of the current global population.

For over 70 years, legal structures have been in place to protect refugees and their search for asylum. The 1951 Convention Related to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees created foundational definitions for the classification of a refugee, as well as the basic rights entitled to them. These two documents have helped guide refugee policy since their creation. In 2022, 108.4 million people were displaced from their homes. Most of those people were internally displaced, meaning they were forced to leave their homes out of fear for their lives but did not leave their country. Meanwhile, 35.3 million were classified as refugees, meaning someone who left their country of origin, with 10.6 million more looking for a place to live.⁴ When someone is seeking refuge in another country, they are referred to as “seeking asylum.”

Current legal structures provide refugees the ability to flee poor living conditions and help them start a new life abroad. Usually, their living conditions must fulfill certain conditions for an individual to be considered a refugee. Usually, these

conditions are limited to violating one’s human rights, living in a war zone, or putting one’s life at risk due to government persecution.⁵ Notably, these conditions do not include natural disasters or forced displacement due to climate change. As a result, those displaced by climate change have a much different experience. This is a startling gap in the legal system. As climate change inevitably worsens, more individuals will lose their livelihoods at the hands of the environment. Whether through flooding in communities or extreme weather events, millions have been displaced due to the direct effects of climate change. These individuals hold the title of “Climate Refugees.” Nonetheless, the international legal definition of refugee does not include those displaced by climate change. No country currently offers permanent asylum to climate refugees, meaning that these people may have nowhere to go in the case of disaster.⁶

This lack of consideration is concerning because of the substantial impact that climate change has had on the global refugee population. There is little legal guidance in the

1 “Global Temperatures Set to Reach New Records in next Five Years.” World Meteorological Organization, May 17, 2023. <https://public.wmo.int/en/media/press-release/global-temperatures-set-reach-new-records-next-five-years>.

2 Charlotte Elton, “Climate Change May Force Millions to Migrate towards Poles,” *Euronews*, 2023, <https://www.euronews.com/green/2023/06/20/climate-change-will-displace-millions-of-people>.

3 Elton, “Climate Change May Force Millions to Migrate towards Poles.”

4 “Refugee Statistics: USA FOR UNHCR.” UN Refugees, accessed August 15, 2023, <https://www.unrefugees.org/refugee-facts/statistics/>.

5 “Asylum and Refugee Status,” UN Human Rights Council, accessed September 11, 2023, <https://help.unhcr.org/faq/how-can-we-help-you/asylum-and-refugee-status/>.

6 Julie Watson, “Climate Change Creates Migrants. Biden Considers Protections,” AP News, April 20, 2021, <https://apnews.com/article/joe-biden-climate-climate-change-rising-sea-levels-immigration-59e47e0a9e3ad183a5dc4a6d8cb5f576>.

international community in terms of how protection for climate refugees at the national level should be provided. This includes ways national governments can create laws to help displaced people within their countries and frameworks to accept refugees from abroad. The lack of legal protections for climate refugees at any level is a major concern, as more than a billion people could be left without a home in just a few decades. The high number of people that could be affected and the lack of integral legal definitions on the subject make this issue very pressing to address before it is too late.

In this committee, delegates will debate ways to design legal standards that protect climate refugees. This may include creating a framework to legally recognize those displaced by climate change. It may also entail providing legal protection for states lost to climate change. The ultimate goal should be to classify climate refugees within international law formally. Delegates must also consider the competing interests between various countries on this issue. Ultimately, delegates will need to collaborate with many countries that offer different perspectives. This collaboration will allow delegates to create substantive resolutions that ultimately create a better future for climate refugees and the global community.

History and Description

Relationship between Climate Change and Displacement

The effects of climate change are worsening, risking people's lives worldwide. The world is affected by this issue, but the regions with the largest refugee burden will be those most impacted by the climate disaster in general. These regions include coastal and island states in the Pacific, Southeast Asia, and other parts of the globe. Approximately 90 percent of those displaced by climate change come from the countries

most affected by the climate emergency.⁷ Human displacement is one of the most severe effects of climate change, and the trend is quickly worsening.

Climate displacement can be defined as the movement of people away from their homes due to a natural disaster.⁸ Displacement is different from migration because migrants can choose to move. In contrast, displaced people are forced away from their homes against their will. They don't have a choice.⁹ With the effects of global climate change becoming more severe, more refugees are being displaced due to environmental problems. Yet, these refugees have no protection. Climate refugees are not formally defined within the international community and are vulnerable to climate change and displacement impacts.

Internally displaced people (IDP) and refugees are two types of people who can be displaced by climate change. IDPs are people who are displaced within their own country. Refugees are people who are forced to leave their countries. In 2020, the total number of internally displaced people from climate change was twice that of those leaving as refugees.¹⁰ This illustrates that the issue is more nuanced than applying to just those with the climate refugee label. In addition, climate-related problems such as storms and flooding can cause three times more internal displacements than violent conflicts in a year.¹¹ Internal displacement has long-lasting impacts in countries all over the world. In 2022, Pakistan faced devastating flooding that submerged over 33 percent of the country. Roughly 33 million individuals were impacted.¹² While the initial flooding broke news stories and garnered large media attention, this attention did not last. Although the floods themselves were incredibly harmful, little attention was paid to the consequences that continue to this day. Since 2022, around 8.2 million people have been displaced within Pakistan due to the floods.¹³ This marks the world's largest

7 Rep. *CLIMATE ACTION*. United Nations High Commissioner for Refugees, n.d.

8 Nicole Greenfield. "Climate Migration and Equity." Climate Migration, May 9, 2022. <https://www.nrdc.org/stories/climate-migration-equity>.

9 Sajid Raihan. *Displacement and Migration from Climate Hot-Spots in Bangladesh: Causes and Consequences*. United Nations Framework on the Convention of Climate Change, 2012.

10 Betsy Reed. "Climate Disasters 'caused More Internal Displacement than War' in 2020." The Guardian, May 20, 2021. <https://www.theguardian.com/global-development/2021/may/20/climate-disasters-caused-more-internal-displacement-than-war-in-2020>.

11 Reed. "Climate Disasters"

12 "Devastating Floods in Pakistan," UNICEF, accessed September 1, 2023, <https://www.unicef.org/emergencies/devastating-floods-pakistan-2022>.

13 "Pakistan," IDMC - Internal Displacement Monitoring Centre, accessed September 1, 2023, <https://www.internal-displacement.org/>



Melbourne Global climate strike on Sep 20, 2019.

Credit: Takver from Australia

climate-displacement event in over a decade. Even now, as the global north countries move on from the tragic events of the 2022 floods, communities and people in Pakistan continue to suffer the consequences of climate change. Although IDPs remain within their own country, their lives change drastically. They are left to restart their lives without housing, support, resources, or legal protections. Pakistani victims of the 2022 floods have been unable to access adequate resources to move on from the devastating disaster. Rather, their identities and situations are legally non-existent. Projected calculations suggest that 117.2 million people will be forcibly displaced or stateless in 2023, according to the UNHCR.¹⁴ Among this population, over 70 percent come from the world’s most climate-vulnerable countries.¹⁵

There are two categories of displacement caused by climate change. These categories are slow-onset displacement and rapid-onset displacement.¹⁶ Slow onset displacement describes environmental processes that displace people over some

time. Conditions such as drought and rising sea levels can cause displacement. These events impact people by gradually harming their quality of life until their standard of living forces them to leave.¹⁷ This form of displacement has a huge long-term impact. By 2050, between 4.8 and 5.7 billion people could live in water scarce areas for at least one month per year.¹⁸ This is over 75 percent of the total global population. In addition, over 800 million people living in coastal cities could be put in immediate danger from sea level rise by 2050.¹⁹ The effects of slow-onset displacement are gradual but potentially affect most of the world population.

At the same time, defining under what circumstances a person may be a victim of slow-onset displacement is remarkably hard. This is because their long-time scale makes it difficult to legally pinpoint the moment where it became necessary to leave. Unlike rapid-onset events such as hurricanes or tsunamis that can instantly destroy a community, slow onset events are rarely the sole cause for displacement. In such cases, people

countries/pakistan.

14 “Global Appeal 2023,” Global Focus, accessed September 1, 2023, <https://reporting.unhcr.org/globalappeal>.

15 “2023: A Moment of Truth for Global Displacement,” UNHCR Spotlight, accessed September 1, 2023, <https://www.unhcr.org/spotlight/2023/01/2023-a-moment-of-truth-for-global-displacement/>.

16 Jayawardhan, Shweta. “Vulnerability and Climate Change Induced Human Displacement.” *Consilience: The Journal of Sustainable Development* 17, no. 1 (January 1, 2017): 103–142.

17 Jayawardhan. “Vulnerability”

18 Ibrahim Thiaw. Rep. *Drought in Numbers 2022*, 2022. <https://www.unccd.int/sites/default/files/2022-06/Drought%20in%20Numbers%20%28English%29.pdf>.

19 “Sea Level Rise and Coastal Flooding.” C40 Cities, November 12, 2021. <https://www.c40.org/what-we-do/scaling-up-climate-action/adaptation-water/the-future-we-dont-want/sea-level-rise>.

may leave before living conditions become immediately unsustainable.²⁰ However, climate change indirectly leads to the circumstances that often push individuals to move. Numerous droughts over a while are one possible reason for this displacement. In that case, a single drought is unlikely to be the sole cause for people to leave their homes. However, repeated droughts over a decade would cause many to starve or even wars to be fought over water access. Those co-factors could be just as relevant in causing people to leave their homes. In this case, lawmakers may not see the environmental cause—the droughts—behind the more traditional cause for seeking asylum—a violent conflict.

As seen with this example, there are often many causes for displacement from slow-onset events. Because other environmental factors play a role in individuals leaving, legal definitions do not always extend to this form of displacement. This may cause people leaving their homes to be categorized as migrants rather than refugees, having left for reasons outside of environmental necessity. Since environmental necessity is only labeled in cases of extreme natural disasters, the urgency of this form of displacement is minimized. This is one of many ways the global community ignores and takes the climate refugee crisis lightly. Delegates should consider ways that the scale of a slow-onset displacement event can be reflected in their formal guidelines for providing asylum to climate refugees.

The other category of climate change displacement is rapid-onset. Rapid-onset displacement is caused by events that happen very suddenly. People displaced by these conditions experience hurricanes, tsunamis, landslides, and more. They often cannot prepare for these events, and warnings are minimal. In these cases, their homes may be quickly uninhabitable or destroyed.²¹ One example of rapid-onset displacement can be seen by Hurricane Katrina in 2005. Hurricane Katrina hit the Southern coast of the United

States. In the immediate aftermath of the hurricane, over 1 million civilians were displaced.²² However, rapid-onset events can also be caused by the build-up impacts of slow onset events.²³ For example, years of gradual sea level rise (slow-onset) can cause a flood that demolishes a city, displacing the residents. This is a situation that described the tragedy of the Pakistan floods. Rapid-onset displacement is often taken more seriously than slow-onset.

These causes are not currently seen as reasons for which someone can seek asylum under international law. Without acknowledging the urgency of this situation and updating legal regulations to match, little will be done to help climate refugees find safety. To address the direct consequences of climate change, there must be an emphasis placed on these definitions of displacement. Similarly, protocols and measures must be passed regarding action in such cases.

Climate change has a complex relationship with human displacement. Countless factors may affect one's chances of being displaced by a climate event, and the rapidly changing nature of the environment means that patterns of climate displacement are often unpredictable.²⁴ It is also important to consider the social conditions affecting a refugee. There are many ways that a civilian could be pushed to the tipping point of displacement. Researchers have also begun debating the possible connection between conflict and climate change regarding displacement.²⁵ Specifically, climate change may cause armed conflict over resources such as water. The Legal committee will have to consider whether or not those individuals are climate refugees. The link between climate change and displacement will require consideration when addressing the climate refugee crisis.

Between 2009 and 2019, Pakistan has been the 8th most impacted country by climate change.²⁶ Inversely, the country only contributes to 0.9 percent of global greenhouse gas

²⁰ Jayawardhan. "Vulnerability".

²¹ Jayawardhan. "Vulnerability".

²² "Facts for Features: Katrina Impact." The Data Center. Accessed July 25, 2023. <https://www.datacenterresearch.org/data-resources/katrina/facts-for-impact/>.

²³ *Synthesizing the State of Knowledge to Better Understand Displacement Related to Slow Onset Events*. Internal Displacement Monitoring Centre, 2018. <https://unfccc.int/sites/default/files/resource/WIM%20TFD%20I.2%20Output.pdf>

²⁴ Caitlin Sturridge, and Kerrie Holloway. Rep. *Climate Change, Conflict and Displacement: Five Key Misconceptions*. ODI, 2022.

²⁵ Sturridge and Holloway. *Climate Change, Conflict*

²⁶ David Eckstein, Vera Künzel, and Laura Schäfer, "Global Climate Risk Index 2021," GermanWatch, accessed September 1, 2023, https://www.germanwatch.org/sites/default/files/Global%20Climate%20Risk%20Index%202021_1.pdf.

emissions.²⁷ Countries that do not directly cause climate change are often the ones that face the largest burden. The relationship between climate change and displacement is a clear example of this burden. The current absence of legal frameworks acknowledging or addressing this relationship concerns the global community.

Legal Background

In 1951, the United Nations defined a refugee in the *Convention Relating to the Status of Refugees*.²⁸ This convention was significant for developing a definition for certain migrants. These migrants would require special protection due to their situation. According to the convention, the term refugee applies to “anyone who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality[...]and is unable[...] or[...]unwilling to return to it.”²⁹ Initially, there were many restrictions behind who could fit the definition of refugee that was established. The convention stated that the fear of persecution must have been “as a result of events occurring before January 1, 1951” and in Europe.³⁰ In other words, the convention was designed to provide special protection for Europeans struggling in World War II’s aftermath. The convention was amended 16 years later, in 1967, with the *Protocol Relating to the Status of Refugees*. The main change to the convention was removing geographical and time limitations from the refugee classification.³¹ Instead of being confined to Europeans before 1951, the term refugee could now be applied to anyone displaced due to various kinds of persecution.

Various protections were given to all those who were

considered refugees due to the 1951 Convention. For example, if a country determined that a person qualified for refugee status, they would be required to provide asylum to that person, whether in that country or another state that could provide safety and welfare.³² Another important principle protects refugees by prohibiting countries from transferring refugees to a place that would threaten their life or their rights, whether their home country or a different hostile region.³³ This principle is known as the “non-refoulement” principle. With additional guidelines for treating and protecting refugees outside of their own country, the two documents create a legal framework for protecting refugees. However, the definition of a refugee under the convention and protocol involves persecution against a person. Because this is the case, the non-refoulement principle does not apply to climate refugees.³⁴

There have been limited attempts by regional organizations to provide legal protection for climate refugees, though little has been published at the UN level. In 1969, the African Union (AU) published the *Convention Governing the Specific Aspects of Refugee Problems in Africa*, widening the refugee definition set in the 1951 Convention.³⁵ This was a binding document for all states in the African Union, meaning that all members committed to the rules set in the convention. The convention formally defines refugee status in the same way as the 1951 Convention.³⁶ However, it also states the following about refugee classification, “Refugee’ shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”³⁷ While this statement does

27 “Pakistan - Updated Nationally Determined Contributions 2021,” United Nations Framework Convention on Climate Change, accessed September 1, 2023, <https://unfccc.int/NDCREG>.

28 *Synthesizing the State of Knowledge to Better Understand Displacement Related to Slow Onset Events*

29 *Synthesizing the State of Knowledge to Better Understand Displacement Related to Slow Onset Events*

30 *Synthesizing the State of Knowledge to Better Understand Displacement Related to Slow Onset Events*.

31 UN General Assembly, *Protocol Relating to the Status of Refugees*, RES 2198, January 31 1967, https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.2_108.pdf

32 Tyler Bergeron, “No Refuge for ‘Climate Refugees’ in International Law,” *Lewis & Clark Law School* (blog), January 20, 2023, <https://law.lclark.edu/live/blogs/200-no-refuge-for-climate-refugees-in-international>.

33 The principle of non-refoulement under international human” OHCHR, accessed July 20, 2023, <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.

34 *Climate Refugees Are Refugees and Deserve UN Recognition* (Afrikaan Sahara, 2022), <https://scholarworks.seattleu.edu/cgi/viewcontent.cgi?article=1266&context=suurj>.

35 Bergeron, “No Refuge”

36 Bergeron, “No Refuge”

37 *Convention Governing the Specific Aspects of Refugee Problems in Africa* (The African Union, 1969).

not protect climate refugees explicitly, climate-related events can undoubtedly disturb public order.

Nonetheless, the AU Convention does not directly address the status of climate refugees nor set clear expectations for African Union states regarding providing asylum to climate refugees.³⁸ It has also not been used to provide asylum for climate refugees. In addition, as just a regional document, the convention cannot influence the legal status of refugees internationally.³⁹ Despite these drawbacks, the AU Convention is important as it is one of the few documents worldwide that expands the criteria for asylum. Furthermore, it is a potential inspiration for how international law could be written to protect climate refugees.

More recently, the UN adopted legal measures to help climate refugees without changing the formal definition of refugee in the 1951 Convention. In 2013, Ioane Teitiota applied for protection in New Zealand.⁴⁰ Teitiota was from Kiribati, a small Pacific island country located northeast of New Zealand.⁴¹ According to climate scientists, even if all climate goals are met, Kiribati will likely be unlivable by the end of the century. This is because rising sea levels threaten the country's water sources and livable land.⁴² Teitiota's request for asylum in New Zealand was denied because there were no life-threatening conditions caused by climate change at the time.⁴³

Teitiota filed a complaint to the UN Human Rights Committee, claiming that New Zealand violated his right to life by returning him to Kiribati. The committee upheld the decision made by New Zealand.⁴⁴ However, it also stated, "the effects of climate change in receiving States may expose individuals to a violation of their rights, thereby triggering the non-refoulement obligations of sending states."⁴⁵ The non-

refoulement obligations of states ensure that the individual is not returned to the place they fled if returning would endanger them. While this ruling may not necessarily guarantee asylum rights to those displaced by climate change, it does suggest that returning a person to the country they fled due to environmental conditions could violate their fundamental rights. Like the AU Convention, this reading of the ruling has not been tested but could be used as a starting point for how international law could protect climate refugees.

The recent United Nations Human Rights Committee ruling raises many questions for the future of those displaced by the changing climate. While it provides some safety against the deportation of people back to dangerous environmental conditions, it doesn't formally define rights for climate refugees or any specific structures under international law. There is still substantial disagreement among legal scholars about the legal status of climate migrants/refugees. To concretely protect climate refugees, a firm expansion of what is considered a refugee to include natural disasters and the effects of climate change must occur.⁴⁶ Countries worldwide have been approaching this issue in varying ways. For example, the United States recently began a study to identify options to protect those displaced by climate change and how to incorporate climate migration into their refugee policy.⁴⁷

Repatriation and Challenges to Recognition of Climate Refugees

There has undoubtedly been some progress regarding improving protections for climate refugees. However, climate refugees continue to have much less support within the international community compared to other types of refugees, such as those displaced by conflict or political oppression.

38 Bergeron, "No Refuge."

39 Bergeron. "No Refuge."

40 "People Urgently Fleeing Climate Crisis Cannot Be Sent Home, UN Rules," *BBC News*, January 20, 2020, <https://www.bbc.com/news/world-asia-51179931>.

41 "People Urgently Fleeing Climate Crisis."

42 Caleb Ray, "Rejecting Reality: Kiribati's Shifting Climate Change Policies," *Climate Security in Oceania*, December 31, 2019, <https://sites.utexas.edu/climatesecurity/2019/12/31/kiribati-policy-shift/>.

43 Mariya Aleksandrova, Benjamin Schraven, and Diogo Serraglio, *The Implications of the UN's Ruling on "Climate Refugees"*, February 24, 2020, https://www.idos-research.de/uploads/media/German_Development_Institute_Aleksandrova_Schraven_Serraglio_24.02.2020.pdf.

44 Aleksandrova, "The Implications of the UN's Ruling."

45 International Covenant on Civil and Political Rights, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016* § (2016).

46 "Here's How International Law Can Protect People Fleeing Environmental Disaster," *World Economic Forum*, March 16, 2023, <https://www.weforum.org/agenda/2023/03/as-people-flee-environmental-disasters-how-can-international-law-help-them/>.

47 Elizabeth Ferris, "Climate Migrants Can't Wait for Global Frameworks," *Wilson Quarterly*, 2021, https://www.wilsonquarterly.com/quarterly/_/climate-migrants-cant-wait-for-global-frameworks.

There are various motives behind the lack of recognition of climate refugees at an international level.

There are many examples of countries that can host climate refugees that oppose their recognition. One example can be seen in the United States. Soon after gaining office in 2021, President Joe Biden and his administration published a report about the experiences of climate refugees. This report compelled all those who were capable to develop strategies designed to safely accommodate climate migration.⁴⁸ This report was seen as hope that the US would take the first steps to recognize and grant asylum to climate refugees. However, many have criticized this report for not going far enough to declare explicit support for the recognition of climate refugees.⁴⁹ Most of the solutions discussed by the administration involve domestic policies rather than international agreements.⁵⁰ Some examples of these ideas include applying Temporary Protected Status (TPS) to climate refugees and improving general national asylum laws.⁵¹

To make matters worse, in the same report, the US rejects the idea that protection of climate refugees is necessary. The report outlines, “The United States does not consider its international human rights obligations to require extending international protection to individuals fleeing the impacts of climate change.”⁵² Within the United States and many other countries, there is a clear divide between domestic and international policies, slowing the protection of climate refugees across the globe. Therefore, international law pushing countries to begin the process of protecting climate refugees may be necessary.

Another example of a country that has opposed full recognition of climate refugees is Australia. Like the United States, Australia is a developed country that could support climate refugees if their status was fully protected. In

addition, it is located relatively close to particularly vulnerable countries, such as Tuvalu and Kiribati. In 2019, 16 of these Pacific Island Countries held discussions with Australia and New Zealand at what is known as the Pacific Island Forum. These discussions were held over a new document known as the Tuvalu Declaration. This Declaration initially involved numerous provisions to follow environmental law and reduce emissions. It also included some parts designed to guarantee protections for those displaced by climate change. Ultimately, however, the declaration was watered down due to Australia and New Zealand’s opposition to parts of the declaration related to reducing emissions and providing asylum to climate refugees.

Leaders of the island countries were disappointed and even brought to tears when they heard of Australia and New Zealand’s opposition to the most progressive suggestions in the Tuvalu declaration.⁵³ The two countries had reservations about the impacts of the declaration’s changes to their economies. This shows how different countries have different priorities regarding climate change and climate refugees. Some countries will experience a significant exodus of people as they become refugees due to unsustainable environmental conditions. However, other countries believe they will have to accommodate the refugees without any economic incentive.

Though not through the process of granting asylum to climate refugees, Australia and New Zealand have attempted to ease the effects of climate change on citizens of Pacific Island Countries through more traditional immigration processes. An example of this is the Pacific Access Category, a visa that New Zealand provides to 500 Fijians, 500 Tongans, 150 Tuvaluans, and 150 I-Kiribati through an annual visa.⁵⁴ Australia followed suit with the Pacific Engagement Visa, which would authorize 5000 workers from Pacific Island Countries to get pathways to

48 Erol Yayboke, Catherine Nzuki, and Sierra Ballard, “The White House Report on Climate Migration, Explained,” CSIS, 2021, <https://www.csis.org/analysis/white-house-report-climate-migration-explained>.

49 Yayboke, “The White House Report”

50 Caitlan Sussman, “A Global Migration Framework Under Water: How Can the International Community Protect Climate Refugees?” *Chicago Journal of International Law* 2, no. 1 (n.d.),

51 Sussman, “A Global Migration Framework”

52 *REPORT ON THE IMPACT OF CLIMATE CHANGE ON MIGRATION* (Washington: White House, October 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/10/Report-on-the-Impact-of-Climate-Change-on-Migration.pdf>.

53 Julia Hollingsworth, “Pacific Islands Wanted More Action on the Climate Crisis. Australia Said No,” CNN, August 16, 2019, <https://www.cnn.com/2019/08/16/australia/australia-pacific-islands-climate-crisis-intl-hnk/index.html>.

54 Immigration New Zealand, “Pacific Access Category,” accessed September 15, 2023, <https://www.immigration.govt.nz/about-us/media-centre/common-topics/pacific-access-category>.

permanent residency in Australia.⁵⁵

The examples of the countries above are representative of general struggles within the international community to legally recognize climate refugees. Numerous reasons exist as to why there has been such little legal progress regarding the protection of refugees. One of the main reasons is that climate displacement is a very complex issue. There are multiple causes of climate displacement. For this reason, proving the link between migration and the environment is challenging for scholars. In addition, legal action depends on the “type and severity” of environmental problems.⁵⁶ There is no legal solution for climate displacement that can apply to every climate refugee. For example, rapid-onset displacement and slow-onset displacement each require action, but a definition for climate refugees needs to recognize both. These different forms of displacement require different or broader legal classifications. Slow-onset events may cause people to move in anticipation of a more complex situation or wait in their home countries. As things stand, any movement in this situation is considered voluntary and would result in an individual being classified as a migrant rather than a refugee.⁵⁷ This makes it hard to afford the same protections given to many refugees as defined within the 1951 Refugee Convention.

Rapid-onset displacement is often easier to identify to classify individuals as refugees. Rapid-onset events force people to leave quickly, and both the terms “refugees” and “stateless” are used to describe these. There are also more than 20 labels and definitions that have been used up to this point to classify those displaced by climate change. None have been generally adopted as a definition by the broader international community. Because of this lack of clarity, it is hard to come to a general agreement on a legal definition. Overall, there is a lack of uniformity in the classification of refugees due to the

complexity of the situation that they come from.⁵⁸ It is for this reason that legal proposals for the official protection of climate refugees have failed up to this point. To fully address this issue, a formal definition that encompasses all types of climate refugees needs to be developed by the committee.

Cultural Loss and Problems Faced by Climate Refugees

While those displaced by climate change seek better conditions, they often have to withstand immense trauma throughout the process. There are many struggles faced by these people as they search for legal protection within the international community.

One of the most prominent problems facing the refugee community as they search for stability is cultural loss. Some climate refugees will never be able to return to their homes, and, as a result, risk losing their identity. Seeking a safer place to call their home, many refugees leave behind places that have had a cultural significance for centuries, along with the traditions that came with them.⁵⁹

One prominent example of this can be seen in the Marshallese people. The Marshallese are people who originate in the Marshall Islands. The Marshall Islands is a country made up of a collection of tiny island chains located about halfway between Australia and Hawaii.⁶⁰ Risks to the existence of the Marshall Islands have grown in recent years due to its geographical position. The Marshall Islands is situated just 2 meters above sea level on average, and the islands that make up the country have very little ability to withstand even small increases in sea level.⁶¹ Two-thirds of all Marshallese people now live in the United States, having left their homes in anticipation of severe damage to the country.⁶² Unfortunately, their culture is at risk due to the dramatically different way of life in the United

55 Gil Rickey, “Can the Pacific Engagement Visa Support Climate Displaced Peoples?” Policy Forum, December 12, 2022, <https://www.policyforum.net/can-the-pacific-engagement-visa-support-climate-displaced-peoples/>.

56 Francesca Rosignoli, “Seeking Recognition for Climate Refugees. Are States the Only Game in Town?” Georgetown Journal of International Affairs, March 11, 2023, <https://gji.georgetown.edu/2023/03/15/seeking-recognition-for-climate-refugees-are-states-the-only-game-in-town/>.

57 Rosignoli, “Seeking Recognition”.

58 Rosignoli, “Seeking Recognition”.

59 Victoria Herrmann, “Climate Change Poses a Threat to Cultural Heritage,” Scientific American Blog Network, May 16, 2019, <https://blogs.scientificamerican.com/observations/climate-change-poses-a-threat-to-cultural-heritage/>.

60 “Marshall Islands,” Pacific RISA, May 17, 2021, <https://www.pacificrisa.org/places/republic-of-the-marshall-islands/>.

61 Alison Heslin, “Climate Migration and Cultural Preservation: The Case of the Marshallese Diaspora,” *Loss and Damage from Climate Change*, 383–91 (2019).

62 Heslin, “Climate Migration and Cultural Preservation”

States. For example, Marshallese culture places importance on ocean navigation, spear-fishing, and handicrafts from local crops.⁶³ Given that the United States operates very differently from the Marshall Islands, the Marshallese people risk losing essential aspects of their heritage. In addition, returning to the islands has become increasingly difficult in recent years, mainly due to price and flight length. As time goes on, the problem will get even worse. Sea-level rise could make travel back to the Marshall Islands impossible. The loss of the islands themselves would be one of the most devastating aspects of cultural loss to the Marshallese people.⁶⁴

There has been some action by the United States government to protect the Marshallese people. Published in the 1980s and amended more recently, the United States created agreements with countries such as the Marshall Islands, Palau, and the Federated States of Micronesia. These agreements are known as the Compacts of Free Association.⁶⁵ These compacts provide economic, military, educational, and many other forms of assistance to the countries. Most importantly, the compacts allow many citizens of the island states to reside in

the United States indefinitely without US visas or immigrant status.⁶⁶ These compacts were not originally created due to displacement caused by climate change. However, it may be possible that they can help preserve the cultures of people whose original countries may soon be lost by allowing for free movement between the two countries.

At the same time, the US is a large country. The distance between settlements, as well as the distance to the Marshall Islands, may still cause issues in protecting the culture of the Marshallese. Additionally, Marshallese people represent just one group of people that have begun to experience cultural erasure as more people become displaced from their homes due to the climate. A legal question is raised regarding cultural loss from climate refugees. There are already established frameworks to prevent the destruction of cultural property through warfare or criminal means.⁶⁷ However, the legal committee must develop frameworks to protect cultural heritage and property that may be lost from climate change.

Many countries have begun to adopt measures designed to offer support for climate refugees. Given that these people face

63 Heslin, "Climate Migration and Cultural Preservation"

64 Heslin, "Climate Migration and Cultural Preservation"

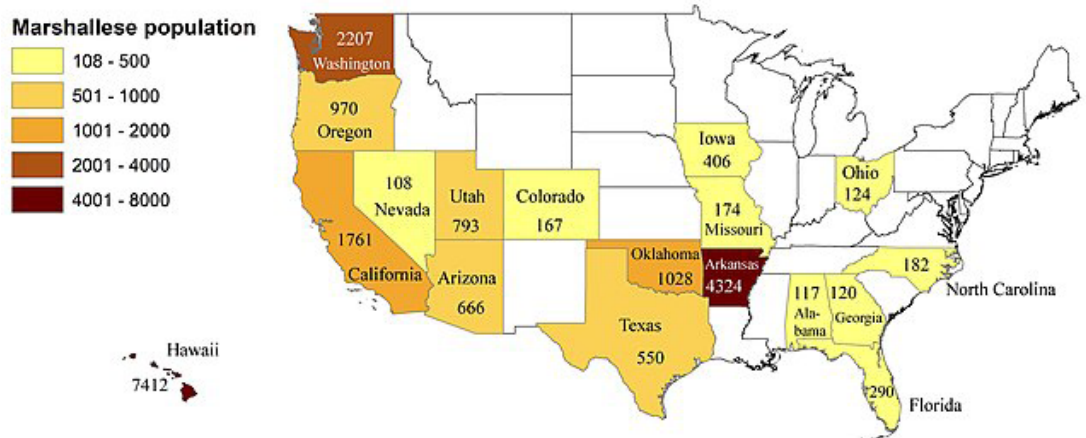
65 *The Compacts of Free Association* (2023), <https://crsreports.congress.gov/product/pdf/IF/IF12194>.

66 "Non-Citizens - Citizens of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands," MN Department of Human Services, June 2021, https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=CM_0011032701.

67 Patty Gerstenblith, *Cultural Heritage and Mass Atrocities*, (Los Angeles: Getty Publications, 2022), chapter 21: Protecting Cultural Heritage: The Ties between People and Place, <https://www.getty.edu/publications/cultural-heritage-mass-atrocities/part-4/21-gerstenblith/>.

Marshallese by US State 2010.
 Credit: Climate Mobilities Researcher

Caption Text
 Credit:



numerous struggles aside from a lack of general protection, some countries have tried to support them. Some of the most expansive considerations have been taken by countries that are threatened by climate change themselves, such as Tuvalu. In 2021, a Tuvalu government minister named Simon Kofe made headlines when he addressed the United Nations knee-deep in the ocean, saying, “We are sinking.”⁶⁸ Aside from the physical threat posed by climate change, rising sea levels threaten to destroy the identity of a culturally rich country.

Australia and Fiji have offered land for the relocation of Tuvalu, but Australia would only grant land in exchange for Tuvalu’s fishing rights.⁶⁹ The Tuvaluan government rejected this, since fishing rights are culturally and economically important to Tuvalu. Meanwhile, Fiji itself faces the same challenges with climate change and rising sea levels, making it an unrealistic option in the long term.⁷⁰

Attempting to maintain its culture, Tuvalu created a plan known as the Future Now Project, with three main parts. The first part encourages the world to collaborate on climate change solutions. These solutions revolve around Tuvaluan cultural values such as communal living, shared responsibility, and being a good neighbor. The second part of the project involves using international law to maintain Tuvalu’s statehood and maritime boundaries even if their land becomes submerged underwater. The third and most ambitious part of the plan is creating what is known as a digital country. One aspect of this involves transporting governmental and administrative services into the cloud. This means making sure that all of the resources required to run the Tuvaluan government are stored online. Accomplishing this goal would allow elections to be held and government bodies to continue their functions. The Tuvaluan government has also begun digitally recreating the geography of Tuvalu. The final part of this plan is the most important to maintaining Tuvalu’s identity, but arguably the most difficult to accomplish. The government of Tuvalu

is examining ways to use virtual and augmented reality systems to allow numerous generations of Tuvaluan citizens to continue to exist as a culture. These systems would allow Tuvaluans and the rest of the world to visualize important aspects of Tuvaluan culture, including essential holidays and other traditions. Tuvaluan people would also be able to interact with each other digitally in a way that is most similar to interactions on their current islands. The ultimate goal of this digital plane is to preserve important aspects of Tuvaluan culture, including language, customs, and traditions.⁷¹

Another issue that climate change refugees face is a lack of support for their mental health. Becoming forcibly displaced from one’s home due to the climate is undeniably a traumatic experience, and many refugees must deal with the idea of never returning home.⁷² Health data also supports that climate displacement is associated with higher levels of mental health problems. For example, a study found that immigrants from Mexico to the United States had higher rates of depression compared with those who had never left Mexico.⁷³ As millions of people are displaced from their homes in the future due to climate change, risks to mental health will only grow. Effective legal structures could help alleviate many mental burdens and stress refugees face. This means it is up to the legal committee to effectively do its job.

Past Solutions

Currently, many different processes and structures are designed to help individuals displaced by climate change. However, most of these processes are either regional or non-binding, meaning that international law has little to no real solutions for climate refugees. The international community has passed several non-binding measures to encourage further progress. The past decade has seen substantial improvement in protecting people displaced by climate change. However, this has only resulted in broad recommendations and calls to

68 “Tuvalu Minister to Address COP26 Knee Deep in Water to Highlight Climate Crisis and Sea Level Rise.” The Guardian, November 8, 2021. <https://www.theguardian.com/environment/2021/nov/08/tuvalu-minister-to-address-cop26-knee-deep-in-seawater-to-highlight-climate-crisis>.

69 Kalolaine Fainu. “Facing Extinction, Tuvalu Considers the Digital Clone of a Country.” The Guardian, June 27, 2023. <https://www.theguardian.com/world/2023/jun/27/tuvalu-climate-crisis-rising-sea-levels-pacific-island-nation-country-digital-clone>.

70 Fainu. “Facing Extinction”

71 Fainu. “Facing Extinction”

72 German Velez, Balkozar Adam, Olivia Shadid, and Lauren Schooner. “The Clock Is Ticking: Are We Prepared for Mass Climate Migration?” *Psychiatric News*, March 24, 2023. <https://psychnews.psychiatryonline.org/doi/10.1176/appi.pn.2023.04.4.3>.

73 Velez, “The Clock Is Ticking”

action rather than specific legal policy solutions.

One example of a recent initiative is the Nansen Initiative, which was an initiative started by the Norwegian and Swiss governments in 2012.⁷⁴ This initiative recognized the lack of legal processes to protect and assist those displaced by climate change. The ultimate goal was to reach an agreement on how to best approach the problem of displacement from climate change.⁷⁵ Discussions were hosted with governments in vulnerable regions such as the Pacific Islands, Central America, and the Horn of Africa.⁷⁶ Ultimately, the initiative resulted in the signing of a non-binding agenda by 109 countries committing to filling legal protection gaps for those displaced by climate change.⁷⁷ Unfortunately, there has not been substantial progress since the passing of that agenda.

Another example of a non-binding international agreement is The Global Compact for Safe, Orderly, and Regular Migration, which was created in 2018 at a conference in Marrakesh, Morocco.⁷⁸ Broadly, the compact recognizes that there could be links between climate change and refugees. According to the compact, these societies are going through complex changes that have many implications for migration processes.⁷⁹ The compact does not legally protect climate refugees but recognizes that climate change is a factor in causing displacement. In addition, this compact outline 23 goals for individual action, based on existing frameworks within international law.⁸⁰ Some of the goals involve ensuring legal identity and upholding policies of non-refoulement for all.⁸¹ An essential part of the compact advocates for improving the

accessibility of migration pathways.⁸² However, in the Global North, there are powerful disagreements on accommodating refugees. As a result, there are no legal obligations or structures in place to enforce this recommendation.⁸³

At the regional level, some organizations have been able to create binding agreements that ensure some protection for climate refugees. One of the only examples of binding legal protections for climate refugees is the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons, otherwise known as the Kampala Convention.⁸⁴ This convention is the only binding agreement on internally displaced people anywhere in the world.⁸⁵ Over 30 African countries have ratified this convention so far. This convention is unique because it is legally binding and clearly mentions “natural or human-made disasters, including climate change,” as a basis for IDP protection.⁸⁶ Unfortunately, limited progress has followed the Kampala Convention in the 14 years since its publication. At the national level, states have not successfully implemented the recommendations in the convention, and only five African countries have ratified any laws on the matter at all.⁸⁷

Another notable regional legal document is the Cartagena Declaration, which was adopted in 1984 by a group of countries centered in Latin and Central America.⁸⁸ Unlike the Kampala Convention, this declaration is not legally binding, but has been followed by more progress on the national level. The Cartagena Declaration similarly defines refugees to the Convention Governing the Specific Aspects of Refugee

74 Walter Kalin, *The Nansen Initiative: Building Consensus on Displacement in Disaster Contexts*, (2015), https://ora.ox.ac.uk/objects/uuid:b4df1465-08bc-4474-925a-7416ba1fd98e/download_file?safe_filename=kaelin%2B-%2BEnglish.pdf&file_format=application%2Fpdf&type_of_work=Journal+article.

75 Kalin, *The Nansen Initiative*.

76 Ana Martin Gil et al, “How Can We Protect ‘Climate Refugees?’”, Baker Institute, 2022, <https://www.bakerinstitute.org/research/how-can-we-protect-climate-refugees>.

77 Gil, “How Can We Protect ‘Climate Refugees.’”

78 “Global Compact for Safe, Orderly and Regular Migration (GCM),” OHCHR, accessed July 26, 2023, <https://www.ohchr.org/en/migration/global-compact-safe-orderly-and-regular-migration-gcm>.

79 “Protecting Climate Migrants: A Gap in International Asylum Law,” Earth Refuge, August 4, 2021. <https://earthrefuge.org/protecting-climate-migrants-a-gap-in-international-asylum-law/>.

80 “Global Compact for Safe, Orderly and Regular Migration (GCM).”

81 “Global Compact for Safe, Orderly and Regular Migration (GCM).”

82 Afrikaan Sahra, “Climate Refugees Are Refugees and Deserve UN Recognition,” *Seattle University Undergraduate Research Journal* 6, no. 8 (2022): 1–12. <https://scholarworks.seattleu.edu/cgi/viewcontent.cgi?article=1266&context=suurj>.

83 Sahra, “Climate Refugees Are Refugees.”

84 Gil. *How Can We Protect “Climate Refugees.”*

85 Gil. *How Can We Protect “Climate Refugees.”*

86 Gil. *How Can We Protect “Climate Refugees.”*

87 Rep. *THE KAMPALA CONVENTION: KEY RECOMMENDATIONS TEN YEARS ON*, 2019. <https://www.icrc.org/en/document/kampala-convention-key-recommendations-ten-years>.

88 Gil. *How Can We Protect “Climate Refugees.”*

Problems in Africa. The Declaration defines refugees as those who “have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”⁸⁹ So far, 15 countries within Latin America have implemented practices within the Cartagena Declaration into their national law, meaning that the Cartagena Declaration has been highly successful in prompting legislative change.⁹⁰ Some prominent examples of the success of the Cartagena Declaration in action can be seen in Mexico and Argentina. 12 years ago, the Mexican government passed the “Law on Refugees, Complementary Protection and Political Asylum.”⁹¹ This law uses the definition of refugee as created in the Cartagena Declaration, and people displaced by climate change have been able to gain protection from Mexico because of the laws. Haitian civilians who were displaced by the 2010 earthquake and Hurricane Matthew in 2016 could obtain refugee status based on the statement of “other circumstances which have seriously disturbed public order.”⁹²

Aside from legal documents that outline specific structures, “soft” law resolutions have also been influential in terms of past solutions to this topic. Soft law resolutions include guidance and advice from the international community towards various states. These are often passed in the absence of more structured or binding legal guidelines.⁹³ One example is a task force from the 2015 Paris Agreement Climate Conference. The Paris Agreement is a climate treaty that is legally binding in the international community.⁹⁴ However, the task force created from this conference does not have any legally binding power. Instead, the task force was created to “develop recommendations to avert, minimize, and address

displacement in the context of the adverse effects of climate change.”⁹⁵ In other words, the goal of the task force is to guide and help those who are displaced by climate change. Some of the recommendations that the task force has made include addressing individuals displaced due to climate change, facilitating their travel and integration, and improving natural disaster preparedness.⁹⁶ Overall, soft law agreements can do nothing more than guide national governments to follow and have no legal basis within the international community.

It is up to delegates in the Legal committee to develop frameworks for international law to build upon the existing progress and recommend the creation of formal recognition of climate refugees. Doing so will allow climate refugees to achieve asylum.

Questions of Statehood for Countries Lost to Climate Change

One of the most complicated issues regarding climate refugees is the status of countries that might be lost to climate change. While legal protections for refugees themselves are important, consideration of the status of the countries themselves is necessary. Not many countries are at risk of being completely lost, but a small category of countries are highly vulnerable. These countries are known as Small Island Developing States or SIDS. At the moment, there are 58 states identified as SIDS, and these collections of countries are located in three types: the Caribbean, the Pacific, and the AIS (Atlantic, Indian Ocean, and South China Sea).⁹⁷ SIDS are expected to be heavily affected by climate change. Events such as cyclones, storm surges, droughts, coral bleaching, and invasive species are hurting their ecosystems and societies.⁹⁸ However, the biggest threat to these countries is slow-

89 Rep. *Cartagena Declaration on Refugees*. Cartagena, Colombia, 1984.

90 Valentina Canepa. “Can Regional Refugee Definitions Help Protect People Displaced by Climate Change in Latin America?” *Refugees International*, May 19, 2023. <https://www.refugeesinternational.org/can-regional-refugee-definitions-help-protect-people-displaced-by-climate-change-in-latin-america/>.

91 Gil. *How Can We Protect “Climate Refugees”*.

92 Gil. *How Can We Protect “Climate Refugees”*.

93 Counter-terrorism & human rights soft law, hard consequences - OHCHR, 2019. <https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/SR/UNSRCTbrieferSoftLaw.pdf>.

94 “The Paris Agreement.” *Unfccc.int*. Accessed August 20, 2023. <https://unfccc.int/process-and-meetings/the-paris-agreement>.

95 “Protecting Climate Migrants: A Gap in International Asylum Law: Earth Refuge,” *Earth Refuge*, August 4, 2021, <https://earthrefuge.org/protecting-climate-migrants-a-gap-in-international-asylum-law/>.

96 “Protecting Climate Migrants.”

97 “Small Island Developing States (SIDS),” *ITU*, accessed July 25, 2023, <https://www.itu.int/en/ITU-D/LDCs/Pages/SIDS.aspx>; “About Small Island Developing States,” *United Nations*, accessed July 25, 2023, <https://www.un.org/ohrlls/content/about-small-island-developing-states>.

98 “The State of Climate Ambition: Snapshots for Least Developed Countries (Ldcs) and Small Island Developing States (SIDS) - World,”



Rally for the climate crisis.
 Credit: John Englart

onset sea level rise.⁹⁹ Numerous SIDS could completely disappear as sea levels increase. A UN panel predicted that five countries could be entirely uninhabitable by the end of the century.¹⁰⁰ These countries are the Maldives, Tuvalu, the Marshall Islands, Nauru, and Kiribati.¹⁰¹ Aside from the half million people that will be displaced, an even larger question remains around the statehood and sovereignty of these states. However, this question does not just apply to countries that could be completely lost to climate change. This also applies to countries that could lose significant portions of their territory due to sea-level rise, such as Bangladesh and Belize.¹⁰² Their borders may change completely if parts of their land become completely flooded.

There is no universally accepted definition of a “state” within the international community. However, the meaning that is usually considered the most agreed upon is from the 1933 Montevideo Convention on the Rights of Duties of States.¹⁰³ The Montevideo Convention states that a state has

four aspects: a defined territory, a permanent population, a government, and the capacity to interact with other states.¹⁰⁴ Unfortunately, being completely submerged underwater would mean that some states would no longer have a defined territory.¹⁰⁵ Delegates may seek to re-evaluate the definition of a state to be more inclusive of states that may no longer have a territory to live upon. With countries like Tuvalu already examining how to sustain their state without land, this will be a pressing issue that delegates may need to consider alongside developing frameworks for recognizing climate refugees.

Another issue regarding statehood revolves around claims over maritime territories around the physical land of a state. The maritime claims of a country could change if its land borders do. An important document to answer this question is the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS is the most comprehensive global document that establishes rules over the use of the oceans and its resources.¹⁰⁶ For these reasons, there has been substantial

ReliefWeb, January 17, 2023, <https://reliefweb.int/report/world/state-climate-ambition-snapshots-least-developed-countries-ldcs-and-small-island-developing-states-sids>.

99 “About Small Island Developing States.”

100 “As Oceans Rise, Are Some Nations Doomed to Vanish?” France 24, October 10, 2022, <https://www.france24.com/en/live-news/20221010-as-oceans-rise-are-some-nations-doomed-to-vanish>.

101 France 24, “As Oceans Rise, Are Some Nations Doomed to Vanish?”

102 Bruce Burson, Walter Kälin, and Jane McAdam, “Statehood, Human Rights and Sea-Level Rise,” *Yearbook of International Disaster Law Online* 4, no. 1 (2023): 265–80, https://doi.org/10.1163/26662531_00401_013.

103 France 24, “As Oceans Rise, Are Some Nations Doomed to Vanish?”

104 France 24, “As Oceans Rise, Are Some Nations Doomed to Vanish?”

105 France 24, “As Oceans Rise, Are Some Nations Doomed to Vanish?”

106 “Overview - Convention & Related Agreements,” United Nations, accessed July 26, 2023, https://www.un.org/depts/los/convention_

discussion on adapting international law so that countries lost under the ocean could maintain their statehood.

In the past, there are numerous examples of groups that have operated as non-state sovereign entities.¹⁰⁷ This means these groups did not have statehood but were still able to self-govern and exercise their autonomy. For example, the Inuit, a group of indigenous peoples from the northern Arctic regions, live in cohesive groups that occupy territory without maintaining formal statehood.¹⁰⁸ The Inuit have worked out agreements with the governments of many of the territories that they are indigenous to. These agreements have created virtual enclaves for Inuit people. For example, the Canadian province of Nunavut is independently governed by the Inuit people despite being a legal territory of Canada.¹⁰⁹ Likewise, the country of Greenland is an autonomous country for and by the Inuit within the Kingdom of Denmark. These people have the right to autonomy and self-governance under the national laws of the countries that formally control their land.

There are also examples of state entities that have maintained some level of sovereignty after losing territory. One example of this is the Holy See. Today, the Holy See refers to the jurisdiction of the Catholic Church in Rome, otherwise known as the Vatican. For much of history, the Holy See controlled territory but was annexed by Italy in the 19th century. What was left was an entity without territory but with substantial influence, such as the Catholic Church. As a result, the international community continued to recognize the Holy See, even before a microstate was later formed to be under the jurisdiction of the Holy See, otherwise known as the Vatican.¹¹⁰

There are ways that vulnerable states could maintain their sovereignty if they eventually lose statehood. However, another question within this topic is how countries can maintain full statehood and territorial control even if some or all of their land is submerged underwater. A vital component is maritime territory for countries whose physical land may be lost. As previously stated, the use of the oceans and their resources is regulated by the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS sets standards for control over maritime territories through exclusive economic zones, or EEZs.¹¹¹ Within a country's EEZ, a state has full rights to explore, exploit, conserve, and manage the resources of the sea.¹¹² These exclusive zones extend 200 miles out to sea from the country's baseline, which is a line along the coast.¹¹³ A concern is that if a country's land borders become submerged underwater, there would be no coast from which to measure the baseline. In that case, a country's former territorial waters would become international waters, and the state would lose economic rights over the area.¹¹⁴ One solution could be to freeze the baselines that have already been drawn.¹¹⁵ In that case, the changing land borders of a country would not affect its exclusive economic zones. Members of the Pacific Islands Forum, an organization of coastal states and larger countries such as Australia, have already voiced support for this idea. They claimed that existing maritime zones should still apply in spite of sea level rises and coastal changes.¹¹⁶ This is only one of many solutions that have been proposed. However, this solution depends on a country having statehood. The terms of UNCLOS can only be applied to states.¹¹⁷ If a country disappears, it loses statehood based on existing definitions and may not be able to claim any exclusive economic zone

agreements/convention_overview_convention.htm.

107 Ben Juvelier, "When the Levee Breaks: Climate Change, Rising Seas, and the Loss of Island Nation Statehood," *Denver Journal of International Law & Policy* 46, no. 1 (January 2017),

108 Juvelier, "When the Levee"

109 Juvelier, "When the Levee"

110 Juvelier, "When the Levee"

111 "Maritime zones and boundaries," National Oceanic and Atmospheric Administration, accessed July 26, 2023, <https://www.noaa.gov/maritime-zones-and-boundaries>.

112 "Maritime zones and boundaries."

113 "Maritime zones and boundaries"

114 Andrea Caligiuri, "Sinking States: The Statehood Dilemma in the Face of Sea-Level Rise," *Questions of International Law*, 2022.

115 Caligiuri, "Sinking States"

116 *Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise*, August 6, 2021, <https://www.forumsec.org/2021/08/11/declaration-on-preserving-maritime-zones-in-the-face-of-climate-change-related-sea-level-rise/>.

117 Ben Juvelier, "When the Levee Breaks: Climate Change, Rising Seas, and the Loss of Island Nation Statehood," *Denver Journal of International Law & Policy* 46, no. 1 (January 2017),

anymore.¹¹⁸

Island states have been seeking ways to claim statehood even if their physical territory sinks. In 2022, leaders of Pacific Island Countries launched the “Rising Nations” Initiative, an initiative aimed at preserving the sovereignty, culture, and rights of Pacific Island states as climate change intensifies.¹¹⁹ The initiative accomplishes this goal in three steps: knowledge, partnerships, and activity.¹²⁰ The knowledge aspect of the involves discussion with academic experts to deepen understanding about future policy and climate adaptation.¹²¹ The partnership part of the initiative involves creating coalitions with countries and international organizations to voice the importance of these issues.¹²² The final part of the initiative consists of the creation of a campaign to increase awareness of climate displacement among policymakers and global citizens.¹²³ Kausea Natano, Prime Minister of Tuvalu, explained the idea behind the initiative, which was to continue recognizing their country even if it is underwater “because that is our identity.”¹²⁴ Some experts have already begun thinking on how to accomplish this goal. According to one climate mobility expert, “you could have land somewhere, people somewhere else, and government in the third place.”¹²⁵ However, this would first require a legal declaration by the UN and, afterward a treaty between a host state and the threatened state.¹²⁶

There are also some very innovative solutions proposed that would require special legal consideration. All of these solutions have the goal of maintaining national identity, even if its general territory is submerged underwater. One solution that has been discussed is the creation of artificial islands. Previous

international law has said that an artificial island cannot be considered a state.¹²⁷ However, this applies to creating a new state from an artificial island. Different circumstances arise when artificial islands are created to maintain the identity of a state whose normal territory is lost. An argument could be made to formally recognize artificial islands under the basis of low-tide elevation.¹²⁸ Low tide elevation describes land above water at low tide but below water at high tide. Arguments have been made that low tide elevations could be classified as a territory.¹²⁹ In other words, a piece of land submerged under water at high tide still constitutes a country’s territory. If this is the case, then artificial islands could be classified as the territory of a state.

Notably, there has been general silence from the international community on formally recognizing artificial islands as territory from a lost state.¹³⁰ Another possibility that has been discussed is the idea of leasing territories. Leasing territories involves providing temporary land ownership to another entity in return for a payment. A lease between two states has three traditional components. One component is the amount of territory that is being transferred. The second component is the duration of the lease.¹³¹ The final component is the amount of payment for the lease. It has not yet been resolved within the international community whether or not territory leased from another state is sufficient for the legal recognition of a country.¹³² At most, this is a temporary solution, given that leases are not permanent. However, there is a limited example of leasing territories that is happening.

One of the few examples of leasing is occurring in Kiribati. Kiribati is in the process of temporarily purchasing land from

118 Juvelier, “When the Levee Breaks”

119 Pia Sarkar, “Drowning Island Nations: ‘This Is How a Pacific Atoll Dies.’” AP News, September 23, 2022, <https://apnews.com/article/ united-nations-general-assembly-drowning-island-nations-75f5390daf98d1d385da7dd4a869ac09>.

120 “Rising Nations Initiative,” United Nations, accessed August 20, 2023, <https://sdgs.un.org/partnerships/rising-nations-initiative>.

121 “Rising Nations Initiative.”

122 “Rising Nations Initiative.”

123 “Rising Nations Initiative.”

124 Amelie Bottollier-Depois, “As Oceans Rise, Are Some Nations Doomed to Vanish?” Phys.org, October 10, 2022, <https://phys.org/ news/2022-10-oceans-nations-doomed.html>.

125 Bottollier-Depois, “As Oceans Rise.”

126 Bottollier-Depois, “As Oceans Rise.”

127 Imogen Saunders, “Artificial Islands and Territory in International Law,” *Vanderbilt Journal of Transnational Law* 52, no. 643 (2019), <https://cdn.vanderbilt.edu/vu-wp0/wp-content/uploads/sites/78/2019/07/12052304/Imogen-Saunders.pdf>.

128 Saunders, “Artificial Islands and Territory in International Law.”

129 Andrea Caligiuri, “Sinking States: The Statehood Dilemma in the Face of Sea-Level Rise,” *Questions of International Law*, 2022.

130 Caligiuri, “Sinking States”

131 Caligiuri, “Sinking States”

132 Caligiuri, “Sinking States”

Fiji. The country is buying the land to increase food production for the citizens of the state. As it stands, the purchasing of the land does not give sovereign rights to Kiribati.¹³³ However, whether or not leasing territories can maintain the territory of a lost state has yet to be determined.

Maintaining statehood is an issue that remains unanswered for states that could be lost to climate change. Critical legal questions remain, such as how sea level rise will affect maritime rights, how to maintain sovereignty when territory is lost, and whether artificial or leased lands can count as states. However, the larger question remains whether land should even be a requirement for statehood. These are all crucial issues that the Legal committee must consider.

Current Status

Case Study: Teitiota vs. New Zealand

Specific examples of legal disputes regarding the status of climate refugees have been limited up to this point. However, in 2020, an international organization made its first-ever ruling on a dispute over someone seeking asylum after being displaced due to climate change.¹³⁴ The UN Human Rights Committee (UNHRC) ruled over *Teitiota vs. New Zealand*. The decision of the case is considered to represent one of the most significant developments regarding protections for those displaced by climate change.

Ioane Teitiota was a citizen of Kiribati, a low-lying island state in the Pacific. For years, he and his family lived in a vulnerable position to any climate events. On Teitiota's home island of Tarawa, elevation is less than 10 feet high (3 meters) above sea level at its highest point. This means that his home was

frequently flooded by rising tides, sea levels, or rainfall.¹³⁵ Even general climate conditions made his life very difficult. Teitiota's home lacked chairs or any modern appliances, and his family's water supply came from rainfall or the ground.¹³⁶ Groundwater was often contaminated, meaning his family dealt with frequent sickness and health problems. Overall, the environment forced him and his family to live in very hazardous conditions.

In 2007, Teitiota made the difficult decision to leave Kiribati, fleeing with his family to New Zealand where they could hopefully find stability and safety.¹³⁷ He was able to obtain temporary work visas, allowing him to stay in the country. Between 2007 and 2015, Teitiota and his family lived in New Zealand. Unfortunately, their visas ran out in 2010, which resulted in Teitiota and his family being at risk of being deported.¹³⁸ To prevent deportation, Teitiota applied for refugee status in New Zealand under the 1951 Refugee Convention on the basis that the island of Tarawa in Kiribati could become utterly uninhabitable in the near future, putting the lives of himself and his family at risk.¹³⁹ Unfortunately, New Zealand courts rejected Teitiota's asylum request. According to New Zealand courts, Teitiota did not show evidence of conditions that "are so perilous that his life will be placed in jeopardy, or that he and his family will not be able to resume their prior subsistence life with dignity."¹⁴⁰ The courts also stated that the Kiribati government had not failed to take the steps necessary to protect Teitiota and his family from harm.¹⁴¹ Given that Teitiota himself noted that his home could be uninhabitable in 10 to 15 years, the courts believed both that the threat to life was not imminent and that the Kiribati government still had time to ensure sufficient living conditions for him and his family. Therefore, Teitiota's request

133 Caligiuri, "Sinking States"

134 "Historic Un Human Rights Case Opens Door to Climate Change Asylum Claims," OHCHR, January 21, 2020, <https://www.ohchr.org/en/press-releases/2020/01/historic-un-human-rights-case-opens-door-climate-change-asylum-claims>.

135 Tim McDonald. "The Man Who Would Be the First Climate Change Refugee." BBC News, November 5, 2015. <https://www.bbc.com/news/world-asia-34674374>.

136 McDonald. "The Man Who Would"

137 Simon Behrman. "The Teitiota Case and the Limitations of the Human Rights Framework." QIL QDI, November 30, 2020. <http://www.qil-qdi.org/the-teitiota-case-and-the-limitations-of-the-human-rights-framework/>.

138 Behrman. "The Teitiota Case"

139 Mélissa Godin. "Climate Refugees Cannot Be Sent Home, U.N. Rules." Time, January 20, 2020. <https://time.com/5768347/climate-refugees-un-ioane-teitiota/>.

140 Buchanan, Kelly. *New Zealand: "Climate Change Refugee" Case Overview*. Global Legal Research Directorate, 2015. <https://tile.loc.gov/storage-services/service/ll/lglrd/2016295703/2016295703.pdf>.

141 Buchanan. *New Zealand*"



Poster indicating sea-level rise in Tarawa, Kiribati.

Credit: Erin Magee/DFAT

for asylum was denied.¹⁴² It is important to note that the 1951 Convention defines a refugee as someone who is forced to leave a country under a well-founded fear of persecution if they were to stay. In its ruling, the New Zealand government applies a unique definition to persecution. This definition is known as the “Hathaway Concept of Persecution.” The Hathaway concept of persecution is outlined by a “violation of basic human rights [...due to...] failure of state protection.”¹⁴³ In other words, a government would have to fail or pass a policy that violates human rights for persecution to be applied. For Teitiota to meet the persecution standard, the Kiribati government would have failed in some specific way. According to New Zealand, this standard was not met. For this reason, Teitiota’s request for asylum was ultimately denied under the definition of refugee within the 1951 Refugee Convention.

In response to the ruling by the New Zealand legal system in 2015, Teitiota brought his case to the UN Human Rights Committee. While UNHRC rulings are non-binding, they can be a guiding authority for governments worldwide. He claimed

that New Zealand was violating his right to life by sending him back to Kiribati.¹⁴⁴ After five years of deliberation, in 2020, the Human Rights Committee ruled in favor of New Zealand, saying that New Zealand was not violating Teitiota’s right to life by returning him to Kiribati. The committee analyzed available evidence and concluded that sufficient protection measures were put in place by Kiribati at the time to ensure that its citizens were not in imminent danger. For example, Kiribati had implemented a program known as the National Adaptation Programme of Action.¹⁴⁵ This plan “aimed to improve water supply management, implement coastal management protections, and introduce population settlement planning.”¹⁴⁶ In other words, Kiribati had numerous measures to temporarily reduce the risk to its citizens in the face of climate change. Although these policies existed, they were not effective, which was the reason that Teitiota fled in the first place.

While the outcome for Teitiota and his family may have been disappointing, the decision by the UNHRC in *Teitiota vs. New Zealand* can also be seen as progress. The decision

142 Buchanan, *New Zealand*”

143 Simon Behrman. “The Teitiota Case and the Limitations of the Human Rights Framework.” QIL QDI, November 30, 2020. <http://www.qil-qdi.org/the-teitiota-case-and-the-limitations-of-the-human-rights-framework/>.

144 Mariya Aleksandrova, “A Real Game Changer? The Implications of the UN’s Ruling,” German Development Institute, 2020, https://www.idos-research.de/uploads/media/German_Development_Institute_Aleksandrova_Schraven_Serraglio_24.02.2020.pdf.

145 Shaindl Keshen, “Non-Refoulement: A Human Rights Perspective on Environmental Migration from Small Island Developing States,” *Columbia University Journal of International Affairs*, April 13, 2022,

146 Keshen, “Non-Refoulement”

included essential principles that could protect millions of climate refugees in the future who flee dangerous conditions. Specifically, an important part of the original 1951 Refugee Convention is the principle of non-refoulement. Non-refoulement refers to the prohibition of a government from returning a refugee to a country where their life or freedom could be threatened.¹⁴⁷ This principle applies where a person has a fear of persecution or where a person faces a genuine risk of irreversible harm.¹⁴⁸ The UNHRC ruling outlined that in the future, countries could violate people's rights via the non-refoulement principle if they return someone to a country where climate change poses an immediate threat.¹⁴⁹ While Kiribati was not deemed to pose a direct threat to Teitiota, climate change may cause it and many other countries to pose a real danger in the future. However, according to the ruling itself, if the international community does not come together to address this, individuals will be exposed to conditions that violate their human rights.¹⁵⁰ The decision furthered, "Given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized."¹⁵¹ Living a life with dignity requires a person to live freely and without fear of some crisis affecting them. If someone's home could be completely submerged under water within a few years, that person may not be able to live with dignity even before their house is flooded. The existential fear of having life destroyed would destroy living with dignity. In other words, the effects of climate change may soon violate a person's right to life. In that case, a person could not be deported back to a country where the environmental conditions would be dangerous.

As previously stated, this ruling is non-binding, as is every

ruling by a general UN committee. Therefore, while this ruling can guide the policies of individual countries, it cannot force any country to follow the standards it sets. However, it can be used as a guide to develop policies both internationally and domestically that will help to offset the incoming crisis of climate refugees.

Proposed Solutions

Recently, international scholars and policy experts have discussed future ways to expand protections for climate change refugees. Specifically, the international community has proposed alternatives to the 1951 Convention to set new standards governing the treatment and definition of refugees. In this case, new conventions have included explicit provisions to help climate refugees not recognized under previous guidelines. One example of a collaborative effort is the 2017 Model International Mobility Convention (MIMC), which was proposed by policy experts from around the world and hosted by Columbia University.¹⁵² The MIMC Convention creates a legal framework the international community could use to address the issues discussed.

According to Columbia University, "[the Convention] fills key gaps in international law that leave many people unprotected by establishing the minimum rights afforded to all people who cross state borders.¹⁵³ These gaps include the legal protection of climate refugees, who are not protected under current international law (the 1951 Refugee Convention). The provisions of the Convention could be made much stronger if ratified at a more international level, such as within the UN.¹⁵⁴ One of these provisions includes creating a right to family unification for refugees.¹⁵⁵ This could help people who are separated from their families due to climate change to

¹⁴⁷ Keshen, "Non-Refoulement"

¹⁴⁸ Michelle Foster, "ANALYSIS OF 'IMMINENCE' IN INTERNATIONAL PROTECTION CLAIMS: TEITIOTA V NEW ZEALAND AND BEYOND," *International and Comparative Law Quarterly*, 2022, <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/analysis-of-imminence-in-international-protection-claims-teitiota-v-new-zealand-and-beyond/47FFB9D55B9840D200DAE271784EC95C>.

¹⁴⁹ Rob Picheta, "Climate Refugees Cannot Be Sent Back Home, United Nations Rules in Landmark Decision," CNN, January 20, 2020, <https://www.cnn.com/2020/01/20/world/climate-refugees-unhrc-ruling-scli-intl/index.html>.

¹⁵⁰ Picheta, "Climate Refugees Cannot Be Sent Back Home"

¹⁵¹ Picheta, "Climate Refugees Cannot Be Sent Back Home"

¹⁵² Caitlan Sussman, "A Global Migration Framework Under Water: How Can the International Community Protect Climate Refugees?" *Chicago Journal of International Law* 2, no. 1 (n.d.).

¹⁵³ "Model International Mobility Convention," Columbia Journal of Transnational Law, Accessed August 20, 2023, <https://www.jtl.columbia.edu/model-international-mobility-convention>.

¹⁵⁴ Sussman, "A Global Migration Framework"

¹⁵⁵ *Model International Mobility Convention*.

be reunited with them.¹⁵⁶ Another legal provision within the convention established what is known as a “responsibility-sharing” mechanism. A responsibility-sharing mechanism would commit countries to pledge a given amount of funding and many resettlement visas for refugees according to a formula.¹⁵⁷ Resettlement visas are official authorizations from worldwide governments that allow refugees to “resettle” into different countries outside of their homes.¹⁵⁸ While resettlement visas are temporary legal solutions, they can provide short-term protection to those who need it. These are just two examples of the solutions outlined in this convention, but there are many more that exist. General solutions that have been discussed include the expansion of humanitarian visas, the improvement of temporary-protected status measures, and the creation of entirely new definitions for climate refugees.¹⁵⁹ Delegates should consider promoting both of these solutions at the UN level, and seeing how they might be applied by UN Organizations such as the UNHCR.

Aside from creating an entirely new convention, some scholars have also proposed that the 1951 Convention itself could be amended. The original 1951 Convention has already been amended through the 1967 Protocol Relating to the Status of Refugees. As previously stated, the 1967 Protocol amended the 1951 Convention by removing geographic and time limitations to the definition of a refugee.¹⁶⁰ Some experts have proposed that amendments could add provisions that include those displaced by climate change within the refugee definition. However, there are various arguments made against revising the 1951 Convention, with the Head of the Migration, Environment and Climate Change Division at the UN Migration Agency stating that revisions to the 1951 Convention could undermine the legal status of current

refugees.¹⁶¹ Specifically, they believe that creating a new class of refugees while so many people are currently displaced by conflict or other persecution could delay the ability of current refugees to find legal help. Other opponents believe that revising the convention would be overly time-consuming. Overall, there is a lack of political interest in implementing the Convention as it stands, so revising it would be even more burdensome on member states.¹⁶² As a result, while adjusting the 1951 Convention has been commonly proposed as a solution to the legal status of refugees, various obstacles make implementing this solution difficult.

While legal scholars have made specific policy suggestions, some also say that social and political obstacles make implementing these suggestions difficult, as shown above.¹⁶³ Because of this, some of them say that the strongest solutions to the climate refugee crisis will come from expansions of rights within international law. This includes environmental law, refugee law, and human rights law.¹⁶⁴ There are multiple ways to expand international law to cover those displaced by climate change. As stated earlier, the most general framework regarding the treatment of refugees was created in the 1951 Convention Relating to the Status of Refugees. One of the main requirements for classification as a refugee under the convention is having a “well-founded fear” of persecution.¹⁶⁵ Importantly, persecution requires some mistreatment by another human entity, such as a government or non-state actor.¹⁶⁶ According to a report by the UN Human Rights Council, this could happen when a state “discriminates in its provision of assistance or protection or uses climate change impacts and events as a pretext to persecute certain persons.”¹⁶⁷ Climate change could cause governments to act in a discriminatory way towards certain people. For example,

156 Sussman, “A Global Migration Framework”

157 Sussman, “A Global Migration Framework”

158 “Resettlement Assistance,” International Organization for Migration, accessed August 20, 2023, <https://www.iom.int/resettlement-assistance>.

159 *ENVISIONING A WAY FORWARD: Climate Displacement Legal Strategy Convening* (International Refugee Assistance Project, 2023).

160 “The 1967 Protocol,” Kaldor Centre, June 1, 2023, <https://www.kaldorcentre.unsw.edu.au/publication/1967-protocol>.

161 “Protecting Climate Migrants.”

162 “Protecting Climate Migrants”

163 Sussman, “A Global Migration Framework”

164 Sussman, “A Global Migration Framework”

165 UN General Assembly. *Convention Relating to the Status of Refugees*, RES 429V, July 28 1951, <https://www.unhcr.org/sites/default/files/legacy-pdf/3b66c2aa10.pdf>

166 Andre de Lima Madureira. “International Refugee Law: Definitions and Limitations of the 1951 Refugee Convention.” LSE Human Rights, December 3, 2020. <https://blogs.lse.ac.uk/humanrights/2016/02/08/international-refugee-law-definitions-and-limitations-of-the-1951-refugee-convention/>.

167 *The Slow Onset Effects of Climate Change and Human Rights Protection for Cross-Border Migrants*. Agenda Items 2-3, 2018.

if a drought caused resource scarcity, that could prompt a government to withhold resources from their citizens. This action could be considered persecution, and cause these people to be considered official refugees under the 1951 Convention.¹⁶⁸ Another way that the 1951 Convention could be used is through the intersection of climate change and conflict. Climate change may have influenced up to 20 percent of conflict risk over the past century, and intensifying climate change could increase the risk of armed conflict around the world.¹⁶⁹ If climate change causes conflict and thus makes it so a government cannot protect its citizens, the citizens could have valid claims of persecution, ultimately qualifying them for refugee status.¹⁷⁰ These represent some ways refugees could be protected. While these represent a start, ultimately, a solution must consider climate refugees which would not fit into these categories.

Sustainable Development Goals

The Sustainable Development Goals (SDGs) are a collection of 17 interconnected goals for the international community to achieve by 2030. These goals address 17 overarching ideas that must be accomplished on our way to a better future. Each goal includes specific frameworks and steps to take to achieve them.¹⁷¹ Members of the UN adopted the SDGs in 2015 as part of the 2030 Agenda for Sustainable Development. SDGs cover many topics, from poverty to peace and security to climate change. The Legal Status of Climate Refugee involves almost every one of these 17 goals. Still, there are three SDGs in particular that delegates should focus on to guide research both before and during the conference. Delegates are encouraged to consider what legal frameworks must be put in place to address the successful implementation of the SDGs.

The first SDG to focus on regarding this topic is SDG 1: “No Poverty.” While complete poverty eradication by 2030 seems unrealistic, this goal sets the foundation for ensuring a base level of well-being for everyone worldwide. Overall, this

goal aims to effectively protect the most vulnerable citizens around the world, including increasing access to essential human services, including food, water, and shelter, and even providing support against climate-related disasters. Countless people around the world are pushed into poverty due to climate disasters, as their entire livelihoods can be destroyed in a short time. This state of poverty is what ultimately causes people to leave their homes as climate refugees, seeking asylum abroad. An overarching focus behind the creation of solutions for this topic involves the reduction of global poverty, even if solutions are focused on the legal aspects of the topic.

Delegates in Legal must also remember SDG 10: “Reduced Inequalities.” SDG 10 focuses on reducing inequalities in and within countries. This includes social inequality and economic inequality. Some of the targets for SDG 10 involve promoting political inclusion for everyone, sustaining income growth for the bottom end of the socioeconomic ladder, and facilitating safe migration of people.¹⁷² The legal status of climate refugees is very closely related to SDG 10 because of the disproportionate impacts of climate-related disasters on specific countries and the impacts these disasters have on certain people. For example, countries like the Maldives, Fiji, and the Solomon Islands risk losing their territories due to climate change. Countries like Bangladesh and the Philippines risk losing large cities home to tens of millions of people as rising sea levels cause severe flooding. In addition, those who are displaced from these states will fall farther behind the rest of the world as they are left without a national identity or home. Overall, climate change will only increase wealth inequalities between various states and citizens of the world. Creating legal solutions to this topic will help bridge the gap between developing and developed countries, as many developing countries may lack the means to support themselves and their citizens without outside assistance.

SDG 16: “Peace, Justice, and Strong Institutions,” is the final SDG to consider. SDG 16 describes promoting global

¹⁶⁸ Sussman. “A Global Migration Framework”

¹⁶⁹ Kaia Hubbard. “How Climate Change May Increase Global Conflicts - U.S. News & World Report.” US News, October 29, 2021. <https://www.usnews.com/news/best-countries/articles/2021-10-29/how-climate-change-may-increase-global-conflicts>.

¹⁷⁰ Sussman. “A Global Migration Framework”

¹⁷¹ “Introduction to the Sdgs - Sustainable Development Goals.” IUPUI. Accessed August 15, 2023. <https://sdg.iupui.edu/about/introduction-to-the-sdgs>.

¹⁷² “Reduce Inequality within and among Countries,” United Nations, accessed August 20, 2023, <https://www.un.org/sustainabledevelopment/inequality/>.

institutions that are both peaceful and inclusive.” An aspect of this involves the accommodation of those who are less fortunate and providing ways for them to prosper. Climate refugees are some of the most disadvantaged people in the world, having no home but also no legal status. One of the targets of this SDG is for the international community to provide legal identity to everyone.¹⁷³ This goal intersects to give some legal status to climate refugees, who currently have none.

It is important to note that the goals listed above are not the only SDGs that will be important to consider for the topic and potential solutions. Overall, it will be essential to remember that every one of the 17 SDGs relates to this topic in some way, and considering the SDGs in their entirety will be valuable to develop a well-rounded understanding of the topic.

Bloc Analysis

Points of Division

Protections for general refugees have been intensely debated for years internationally. Many countries have been overwhelmed by refugees, while others have limited the ability for refugees to settle within their borders, and many are experiencing mass emigration as well. With how strong disagreements are about the situation of general refugees, it is no surprise that the legal status of climate refugees is also incredibly divisive. Varying levels of action at the domestic and international levels further complicate this lack of agreement. As a result, there will be disagreements on how to best approach this issue in committee.

Different motives will guide member states of the Legal committee’s policies regarding protections for climate refugees, ultimately causing points of division. The main point of division will be how to accommodate the millions of

refugees displaced in the future due to climate change. Some states will eagerly advocate for strong protections for these refugees, while others maintain more isolationist policies to prevent large influxes of climate refugees. Many countries are somewhere in the middle of this divide.

One index that can help Delegates locate their country’s general stance on refugees and migrants is the Migrant Acceptance Index (MAI), most recently published by Gallup in 2019. Countries receive a score from one to nine within the index, in which nine signifies widespread acceptance of migration and one signifies limited acceptance of migration.¹⁷⁴ While delegates can use this to guide which countries they will likely align with, these blocs do not formally determine alliances and partnerships. They do not show a country’s entire set of policies regarding expanding the legal recognition of climate refugees, either. It will be necessary for delegates to dive deeper into their own country’s policies to fully determine what stance they will take during debate.

Countries Expanding Domestic Protections for Climate Refugees

Countries within this bloc are supportive of refugees coming into their territory. Some have long histories of accepting refugees, while others do not. Generally, countries in this bloc will have a score in the MAI ranging between five and nine, though there can be some exceptions. According to the MAI, some examples of these countries are Canada, Iceland, and New Zealand. Importantly, no state has officially offered unconditional asylum to climate refugees, meaning that progress overall has been limited.¹⁷⁵ However, these countries have expressed an interest in expanding protections for climate refugees in the future.

Many countries that are most proactive in expanding protections for climate refugees are very developed, wealthy states with the infrastructure required to support an influx of migrants. One example is New Zealand. Located in very close

¹⁷³ “Peace, Justice and Strong Institutions,” United Nations, accessed August 14, 2023, <https://www.un.org/sustainabledevelopment/peace-justice/>.

¹⁷⁴ Neli Esipova, Julie Ray and Anita Pugliese. “World Grows Less Accepting of Migrants.” Gallup.com, July 7, 2023. <https://news.gallup.com/poll/320678/world-grows-less-accepting-migrants.aspx>.

¹⁷⁵ Julie Watson. “Climate Change Is Already Fueling Global Migration. the World Isn’t Ready to Meet People’s Changing Needs, Experts Say.” PBS, July 28, 2022. <https://www.pbs.org/newshour/world/climate-change-is-already-fueling-global-migration-the-world-isnt-ready-to-meet-peoples-needs-experts-say>.

proximity to vulnerable island states, including Tuvalu, Nauru, and Kiribati, New Zealand has been active in the process of expanding protections for climate refugees. New Zealand has been a leader in the Pacific region regarding adaptation to climate-related displacement. Some of their projects have involved providing disaster relief and installing renewable energy projects.¹⁷⁶ For example, the New Zealand government has a Disaster Response Partnership with many Pacific nations. This partnership allows various NGOs to apply for funding from the government to provide humanitarian assistance.¹⁷⁷ This funding also helps with the ability of NGOs to engage in response activities after a natural disaster. In 2017, the country also introduced an experimental humanitarian visa. However, the initiative was dropped soon after implementation, and the New Zealand government has received backlash for its denial of the refugee status of Teitiota, on the fact that the conditions in Kiribati were not considered to be life-threatening at the time.

Another country that has made very substantive progress in expanding legal protections for climate refugees is Argentina. Argentina has been very ambitious in helping climate refugees, many displaced from regions within South and Central America. In 2022, the Argentine government created a special humanitarian visa to provide temporary asylum to people displaced by natural disasters.¹⁷⁸ This visa will allow refugees from Mexico, Central America, and the Caribbean to stay in the country for up to three years.

Overall, the countries in this bloc are some of the most progressive regarding protections for climate refugees. However, even these countries have not yet ratified fully guaranteed protections for climate refugees, and their status is still unclear.

Countries Not Expanding Domestic Protections for Climate Refugees

Countries within this bloc are likely reluctant to expand protections for climate refugees for various reasons. Many countries in this bloc will receive a MAI score between one and four. Some examples of these countries include North Macedonia (1.49), Hungary (1.69), and Israel (1.87). These countries are resistant to accepting refugees at all.

However, many countries that have scored high on the MAI will also be in this bloc, since the MAI score refers to the acceptance of refugees in general. Many governments have differing attitudes regarding general refugees and climate refugees, given that climate refugees have no legal status at the moment. While MAI can provide good guidance, it will be necessary for delegates to look further than just the MAI score to determine actual country policy. In addition, while many Western countries have supported climate refugees, others have been some of the most prominent critics against expanding legal protections for climate refugees. Many Western governments, such as the United States have rejected the idea of climate-based migration, using support for it as reasons for restrictive immigration policies.¹⁷⁹ For example, European governments have repeatedly refused to grant asylum to people fleeing the impacts of climate change. Germany recently expressed disagreement with a ruling by the United Nations Human Rights Committee that countries could not deport people fleeing threats from climate change that constitute a violation of the right to life.¹⁸⁰ The right to life involves both physically maintaining life and the ability to live with security and without discrimination.¹⁸¹ This disagreement by Germany can be connected to a general increase in anti-immigrant rhetoric and border tightening in many countries.¹⁸² An additional reason for this could be the already heavy refugee burden that many countries are facing

176 “Climate-Induced Migration in the Pacific: The Role of New Zealand.” NZAIA. Accessed August 12, 2023. <https://www.nzaia.org.nz/ghoshandorchiston.html>.

177 “NZ Disaster Response Partnership,” New Zealand Ministry of Foreign Affairs and Trade, accessed August 20, 2023, <https://www.mfat.govt.nz/en/aid-and-development/working-with-the-aid-programme/funding-opportunities/nz-disaster-response-partnership/>.

178 Watson, “Climate Migration Growing”

179 Idowu Ajibade, Meghan Sullivan, and Melissa Haeffner, “Why Climate Migration Is Not Managed Retreat: Six Justifications,” *Global environmental change : human and policy dimensions*, November 2020, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7577247/>.

180 Ajibade, “Why Climate Migration”

181 “International Standards,” OHCHR, accessed August 20, 2023, <https://www.ohchr.org/en/special-procedures/sr-executions/international-standards>.

182 Ajibade, “Why Climate Migration”

from other refugee crises. Many countries lack the resources and infrastructure to comfortably support a further influx of refugees. They are thus limiting the possibility that a future influx of refugees shows up at their borders.

It is also possible to look at the MAI to provide some guidance on a country's general opposition to refugees. However, it is important to note many countries that receive high scores on the Migrant Acceptance Index have expressed opposition to climate refugees. Nations such as the United States and Germany are proof of this, and it is important to look very closely at country policy regarding climate-based displacement to uncover these differences.

Countries that are Faced with a Mass Climate Refugee Exodus

Countries within this bloc are likely to be powerful advocates for official legal recognition of climate refugees, as well as other protection measures. These are countries whose citizens may already be leaving in masses to escape climate change or whose citizens may soon be forced out. These countries and their governments want to protect their national identities and the human rights of their citizens as they emigrate. Out of all the blocs, this one will push for the most ambitious solutions designed to help their nations and citizens. These states will likely work very closely with countries expanding protections for climate refugees to ensure long-term stability and security for their citizens.

While most countries within this bloc agree in their general support for climate refugee recognition, their focus will vary based on their situation. Some countries may choose to prioritize specific solutions over others. There are two general categories in which countries in this bloc will fit. The first category involves countries whose existence isn't directly threatened by climate change, but where climate change still threatens to displace many citizens within a country and force them to leave. These countries often have the most significant raw numbers of people fleeing due to climate change, and many

are very densely populated, with large urban centers located in vulnerable areas. Examples of these countries include Bangladesh, Afghanistan, the Philippines, and Haiti.¹⁸³ The cities of Dhaka, in Bangladesh, and Manila, in the Philippines, are home to tens of millions of people, which could lead to an extreme amount of displaced people. Another category involves countries that not only have a threat of mass refugee exodus, but also risk losing their country entirely. Examples of these countries include Pacific Island states such as Tuvalu, Nauru, and Kiribati.¹⁸⁴ These countries face an immediate risk of their territory being permanently flooded as sea levels rise. Given that these nations are very small, low-lying island states, the threat is real.

While the two categories of countries under this bloc align in terms of many of their policies, the countries whose existence is directly threatened will likely be primarily concerned with issues of statehood. Disagreements may arise regarding priorities to cover in solutions and debate. It will be important for this bloc to gain clarity on how to approach this issue to have the best chance of passing substantial resolutions.

Committee Mission

As one of the six General Assembly committees, the Legal Committee is influential in global governance. Because the focus of the Legal Committee is international law, any topic can be discussed. The only limitation is that the focus has to be on international law rather than the topic policy itself. This means that resolutions should focus on legal structures to guide policy. Overall, the Legal Committee is an important body to improve legal systems and fix unjust norms. The world is changing, and the law must adapt to create stability despite the change.

An important legal issue to address is the status of climate refugees. Currently, climate refugees have no legal status. They now do not fall under current definitions of a refugee. Without clear legal structures, the process of protecting

¹⁸³ Ylenia Gostoli, "Five Countries Most Affected by Climate Displacement," TRT World, October 20, 2021, <https://www.trtworld.com/magazine/five-countries-most-affected-by-climate-displacement-50919>.

¹⁸⁴ Andrea Woo, "The Island Nation of Tuvalu Could Disappear. the Government Is Building a Digital Replica in Its Place," The Globe and Mail, July 30, 2023, <https://www.theglobeandmail.com/canada/article-the-island-nation-of-tuvalu-could-disappear-the-government-is-building/>.

climate refugees is challenging. The Legal committee has the responsibility to provide recommendations around this issue. This involves creating legal protections for climate refugees and protecting states that may be lost due to climate change.

It is important to understand that the Legal committee cannot make binding decisions alone. It also can't implement specific policy solutions. What Legal can do is make legal recommendations for other bodies. The resolutions and recommendations of the Legal committee are taken in high regard and influence future action by other UN bodies. Delegates should consider informing international law so that other organizations can create specific solutions. Other committees can act within their powers to follow the guidance of Legal. Examples include the United Nations High Commissioner for Refugees (UNHCR), the United Nations Human Rights Council (UNHRC), the United Nations Environmental Agency (UNEA), and national governments. Overall, delegates in Legal can improve the future of climate refugees. Creating new legal frameworks designed to protect climate refugees will be critical to accomplish this.

The world is close to a new refugee crisis, the scale of which has never been seen before. It is up to the Legal committee to ensure something is finally done and prevent an incoming disaster.

Research and Preparation Questions

Your dais has prepared the following research and preparation questions as a means of providing guidance for your research process. These questions should be carefully considered, as they embody some of the main critical thought and learning objectives surrounding your topic.

Topic A

1. Is your country a member of any regional or international agreement on data protection? (Such as the EU's GDPR)
2. What percentage of your country actively uses the internet?
3. What laws have been proposed or recently adopted to address digital and AI privacy in your country?
4. Does your country's legislation allow government surveillance or spying? If so, how is this surveillance regulated and what accountability measures are in place?
5. What response methods does your country have in place for a cyber threat attack on privacy?
6. What is your country's legal stance on the government's user data collection? Have laws been passed on this topic, or are they in the process of being drafted?
7. Have there been any incidents of data breaches, identity theft, or any sort of privacy violations in your country recently? If so, how were these addressed?

Topic B

1. What legal frameworks should be created to recognize those displaced by climate change? How should climate refugees be defined within international law?
2. How can the statehood and culture of countries that may soon be entirely lost to climate change be protected? What legal steps has your state taken to preserve its culture and heritage from these threats?
3. How can we ensure the legal recognition of climate refugees based on the unique challenges that distinguish them from other refugees?
4. How do climate refugees fit into your country's legal refugee policy? Has your state been expanding protections for them?
5. How is your country affected by climate displacement? Do climate conditions make it vulnerable to a mass exodus of refugees, or does it face a large influx of refugees?
6. How has your country voted on recent legal UN resolutions and declarations regarding climate displacement?
7. What regional blocs or intergovernmental organizations is my country a member of that have addressed climate displacement concerns? If so, what policies or declarations have they made?

Important Documents

Topic A

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Topic B

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