

Climate Change, Migration and International Law in Southeast Asia

Benoît Mayer¹

1. Introduction

Environmental factors have always constituted a strong, though often indirect inducement to migration.² Climate change, through its impacts on local environments, is likely to result in an increase in human migration. Despite great scientific uncertainty as to the actual or future impact of climate change on migration, it is often referred to a controversial estimate according to which, by 2050, 250 million persons would have been displaced because of climate change.³ This figure at least gives an idea of the projected scope of “climate migration.”

The circumstances in which climate change may lead to migration are very diverse. Populations may move due to sudden-onset natural disasters (e.g. cyclones, drought) or because of slow-onset environmental changes (e.g. sea-level rise, desertification). In most cases, however, migration results from the socio-economic phenomena that climate change exacerbates (e.g. famine, land degradation, lack of economic opportunities). Response measures to climate change may also cause migration, for instance through displacement and resettlement induced by large development projects carried out partly as a way of mitigating climate change or of adapting to it (in particular hydroelectric projects), or possibly through the “push” and “pull” factors that the transformations toward a green economy induces.

Early normative studies on climate change-induced migration have submitted that no existing legal framework addresses the needs of environmental migrants in a satisfactory way.⁴ To respond to what they identified as a new and dangerous phenomenon, these studies urged states to adopt an appropriate international regime for the protection of climate migrants. These studies have two main limitations that are highlighted in this chapter. On the one hand, they tend to assume that climate migration is a discrete phenomenon calling for “solutions,” despite the irreducible variety of the causal links between climate change and migration. On the other hand, these studies apply a top-down approach that lacks adequate considerations for regional contexts. To contribute in resorbing these limitations of existing literature, this chapter is an attempt at downscaling the debate on possible responses to climate migration while giving due attention to the various forms of “climate migration.” This chapter looks at climate migration and international law in the context of Southeast Asia, defined by reference to the 10 current Member States to the ASEAN.

¹ PhD candidate, Faculty of Law, National University of Singapore, bnt.mayer@gmail.com

² Etienne Piguet, ‘From “Primitive Migration” to “Climate Refugees”’: The Curious Fate of the Natural Environment in Migration Studies’ (2013) 103 *Annals of the Association of American Geographers* 148.

³ Norman Myers, ‘Environmental Refugees: An Emergent Security Issue’ (2005).

⁴ See in particular Frank Biermann and Ingrid Boas, ‘Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees’ (2010) 10 *Global Environmental Politics* 60; Bonnie Docherty and Tyler Giannini, ‘Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees’ (2009) 33 *Harvard Environmental Law Review* 349.

The chapter is constituted of three additional sections. Section 2 identifies several regional scenarios of climate migration. Section 3 exposes some difficulties with conceiving a governance of climate migration. Lastly, section 4 analyses some prospects for regional responses to climate migration in Southeast Asia.

2. Climate Change and Migration in Southeast Asia

Southeast Asia is particularly concerned by climate migration. On the one hand, migration (both within and across international borders) is “an established structural feature of the region.”⁵ Historically, migration accounts for the ethnic diversity of each state of the region. To date, a third of the population of Singapore and Brunei was born in a country other than that in which they live, and the Philippines and Vietnam are major sources of migrant workers for many developed countries. On the other hand, climate change is having important consequences in Southeast Asia. In particular, sea-level rise threatens coastal communities, while some extreme weather events (e.g. cyclones, storm surge, heavy precipitations and droughts) may become more severe. Warming may also affect food production and vector-borne diseases such as dengue.⁶ Rapid economic development and urbanization often add concomitant stress on fragile environments. The Internal Displacement Monitoring Centre estimated that 81% of the persons displaced by sudden natural disasters in the world between 2008 and 2012 were in Asia.⁷

In what follows, I identify four particular scenarios of climate migration in Southeast Asia, whereby migration follows from typhoons, floods, economic impacts or response measures. These scenarios are not intended to present a comprehensive picture of climate migration in the region, but they are believed to reflect the diversity of climate migration and to provide a factual background for the more theoretical discussions of the following sections.

2.1. Climate change, typhoons, and migration

Several states in Southeast Asia are particularly exposed to typhoons, which may result in significant human displacement.⁸ When typhoon Haiyan (locally called Yolanda) hit Tacloban and other regions of the Philippines on 8 November 2013, it killed more than 6.000 people and displaced an estimated 4 million. In the Warsaw Conference of the Parties to the UN Framework Convention on Climate Change (COP 19) a few weeks later, the chief

⁵ Graeme Hugo, ‘The Future of Migration Policies in the Asia-Pacific Region, Background Paper for the World Migration Report’ 5 <http://publications.iom.int/bookstore/free/WMR2010_migration_policies_asia-pacific.pdf>.

⁶ See generally IPCC, AR5, chapter 24 “Asia.”

⁷ Michelle Yonetani, ‘Global Estimates 2012: People Displaced by Disasters’ (Internal Displacement Monitoring Centre & Norwegian Refugee Council 2013).

⁸ e.g. Graeme Hugo and Douglas K Bardsley, ‘Migration and Environmental Change in Asia’ in Etienne Piguet and Frank Laczko (eds), *People on the Move in a Changing Climate* (Springer Netherlands 2014) 39–40 <http://link.springer.com.libproxyl.nus.edu.sg/chapter/10.1007/978-94-007-6985-4_2> accessed 19 May 2014.

representative of the Philippines made an emotional speech associating the Haiyan with climate change.⁹

Yet, weather and climates are distinct concepts. A change in the climate is a change in the probability of certain weather patterns. Therefore, a single weather event can never be fully “attributed” to climate change, even when the probability of such event changes. This makes it difficult to determine whether or not a person displaced by a typhoon is a “climate migrant.” Other typhoons stroke Tacloban before any significant anthropogenic interference in the climate system, for instance one, in 1912, which killed an estimated 15.000 people in a region that was then much less densely inhabited.¹⁰ In fact, the fifth report of the IPCC is all but clear on the influence of climate change on the frequency or the severity of typhoons in Southeast Asia.¹¹

2.2. Climate change, floods, and migration

The Fourth IPCC report had considered that “[p]rojected sea-level rise could flood the residence of millions of people living in the low lying areas of South, South-East and East Asia such as in Vietnam, Bangladesh, India and China.”¹² Graeme Hugo and Douglas Bardsley considered that, because of climate change, a third of the population of Southeast Asia is “at risk of coastal flooding and its associated impact,” in particular “concentrated in Indonesia, the Philippines, Vietnam, Myanmar and Thailand, mainly in the megacities of Jakarta, Manila, Ho Chi Minh City and Bangkok which are located in low-lying coastal areas.”¹³

Climate change is not an isolated cause of flooding, which may also have to do with the impacts of other anthropogenic activities, for instance through urbanization and deforestation (increasing water runoff) and the construction of dams (reducing sediment inputs in delta regions). Just like typhoons, floods could occur before climate change: not all floods are necessarily the consequence of climate change, and, in fact, the causal link is almost always very difficult to establish.

Not all floods cause migration, and not always in the same conditions. During temporary urban floods such as in Bangkok (2011) or Jakarta (2013), many remained in their homes, sometimes just moving on a higher floor of the same building. Households whose revenues depend from agriculture tend to migrate more in reaction to floods. Studies on the Mekong region (Vietnam and Cambodia) have suggested that seasonal labour migration to towns is a common practice during the flooding season, but “[s]uccessive flooding events can destroy crops and drive people to migrate [permanently] in search of alternative livelihoods.”¹⁴

⁹ Henry Fountain and Justin Gillis, ‘Typhoon in Philippines Casts Long Shadow Over U.N. Talks on Climate Treaty’ *The New York Times* (11 November 2013) <<http://www.nytimes.com/2013/11/12/world/asia/typhoon-in-philippines-casts-long-shadow-over-un-talks-on-climate-treaty.html>> accessed 19 May 2014.

¹⁰ ‘15,000 Die in Philippine Storm’ *The Washington herald* (30 November 1912) 1.

¹¹ IPCC, AR5, chapter 24 “Asia”, section 24.3.1 (2014).

¹² IPCC AR4, WG2, chapter 10, “Asia”, section 4.3.1.

¹³ Hugo and Bardsley (n 8) 39.

¹⁴ Koko Warner, Olivia Dun and Marc Stal, ‘Field Observations and Empirical Research’ (2008) 31 *Forced Migration Review* 13, 14. See also Olivia Dun, ‘Migration and Displacement Triggered by Floods in the Mekong Delta’ (2011) 49 *International Migration*

2.3. Climate change, its economic consequences, and migration

Rather than as a direct consequence of an environmental impact of climate change, many people migrate because of economic changes that can be related to the impacts of climate change. Thus, lower agricultural productivity or increased natural hazards contribute to incentivize rural households to seek alternative livelihood or to diversify their sources of revenues through migration.

This causal link between migration and climate change is indirect and relatively difficult to establish. The stories told by individual migrants almost never mention climate change, and rarely even mention environmental factors: migrants usually focus on what they perceive on the lacking economic opportunities that affect them more directly. However, on a holistic perspective, it is likely that the impacts of climate change exacerbate economic factors of migration in many countries of Southeast Asia. The economic consequences of climate change contribute not only to accelerate urbanization, but also to incentivize temporary or permanent international labour migration. Economic disparities within and among the countries of Southeast Asia multiplies the economic incentive to migrate, for cities or neighbouring countries offer significantly better economic opportunities than some of the rural areas affected by slow-onset environmental changes or recurrent sudden natural disasters.

2.4. Climate change, response measures, and migration

Often ignored, as if it could invariably be justified, the impacts of response measures may also include forced migration. With a rapidly growing demand for energy, countries in Southeast Asia are considering multiple hydroelectric projects, among others on the Mekong River. Measures that encourage the production of biofuel in Indonesia, Malaysia, Thailand and the Philippines contribute to an increasing competition of land use, which, in a context of poor land titling, encourages land-grabbing and the eviction of small landowners by biofuel companies.¹⁵ Forest conservation measures may also contribute to this increasing competition for land use.

Through the Clean Development Mechanism (CDM) and other forms of international finance, developed countries fund emission limitation and reduction projects in developing countries, sometimes as a way to comply with their own emission limitation commitments.¹⁶ Indonesia, Vietnam, Malaysia, Thailand and the Philippines are important recipients of

200.; Paula Nuorteva, Marko Keskinen and Olli Varis, 'Water, Livelihoods and Climate Change Adaptation in the Tonle Sap Lake Area, Cambodia: Learning from the Past to Understand the Future' (2010) 1 Journal of Water and Climate Change Vol 87; M Keskinen and others, 'Climate Change and Water Resources in the Lower Mekong River Basin: Putting Adaptation into the Context' (2010) 1 Journal of Water and Climate Change 103.

¹⁵ See e.g. D Diop and others, 'Assessing the Impact of Biofuels Production on Developing Countries from the Point of View of Policy Coherence for Development' [2013] Tanzania Field Mission. Draft Version; S Kumar, Pujan Shrestha and P Abdul Salam, 'A Review of Biofuel Policies in the Major Biofuel Producing Countries of ASEAN: Production, Targets, Policy Drivers and Impacts' (2013) 26 Renewable and Sustainable Energy Reviews 822.

¹⁶ See in particular Kyoto Protocol to the United Nations Framework Convention on Climate Change 1997 12.

international funds on climate change mitigation. Yet, neither CDM nor REDD-plus come with social safeguards on involuntary displacement similar to those adopted by multilateral development banks since the 1990s.¹⁷ From hydroelectric power to biofuel and forest conservation, climate finance may have grave consequences on the human rights of many affected groups, in particular through involuntary resettlement, land-grabbing, eviction, and other forms of forced migration.

2.5. The difficulty of conceiving “climate migration”?

These four scenarios reflect the diversity of what can fall within the scope of “climate migration.” They bear witness that climate change may exacerbate very different forms of migration. “Climate migration” may relate to temporary or permanent migration, to the migration of individual or groups, to voluntary or forced migration, etc. It is generally internal migration, as migrants only go as far as they need to go,¹⁸ but climate change may sometimes have some statistical effect on international migration. None of these scenarios is proper to climate change: typhoons, floods, economic factors or diverse policies could induce migration even in the absence of climate change.

Lastly, it is virtually impossible to distinguish individual “climate migrants” through any of these scenarios. In particular, a typhoon or a flood that cause migration can never be “attributed” to climate change, which is only about the likelihood of such events. Likewise, the economic consequences of climate change intermingle with a variety of other circumstances and they cannot be isolated as the unique cause of migration. Response measures are determined by decisions between multiple political options: they are not a proximate or foreseeable consequence of climate change. The influence of climate change on migration often appears clearly in statistical works, but not in individual cases.

3. Responding to Climate Migration

Climate migration has attracted growing public attention. This international debate, first focused on migration from small island developing states, turned to discussions on migration triggered by sudden disasters or slow-onset environmental changes, including through the economic consequences of climate change; less attention has yet been devoted to the impact of response measures on migration. It is of particular importance, when conceiving possible governance responses to climate migration, to keep in mind the conceptual difficulties highlighted above: the diversity of scenarios of climate migration, the fact that climate change exacerbates pre-existing migration scenarios but does not create new forms of

¹⁷ See in particular World Bank, OP 4.12 Involuntary Resettlement, December 2001.

¹⁸ This is a significant difference between “climate migrants” and refugees. Refugees flee persecution or war, which generally affect them in the whole of their state of origin. Therefore, a refugee generally does not have any viable internal flight alternative. To the contrary, environmental phenomena rarely coincide with states borders. When they only affect part of a state’s territory, resettlement within one’s state of origin is in principle possible. In principle, the exception concerns small countries whose territory may be entirely affected by an environmental change (in particular small island developing states), or arguably countries whose population exceeds their carrying capacity (although this requires a delicate definition of a threshold of “carrying capacity”). In practice, the actual flows of international migrants tend to be the best indicator of the need for international migration.

migrations, and the indistinctiveness of individual “climate migrants.”¹⁹ This section contemplates possible responses to climate migration at a global scale in the perspective of Southeast Asia, whereas next section discusses regional responses in Southeast Asia.

3.1. Climate migration and vulnerability

Climate change will exacerbate some forms of vulnerability triggered through migration, in particular through forced migration. This, however, does not suffice to justify specific responses to climate migration. Nations presumably have a duty to help those in need. Yet, it does not appear clearly that “climate migrants” (whomever this label designates) may be construed as a coherent category of individuals in need for protection.²⁰ Because of the variety of scenarios through which climate change exacerbates migration, not all “climate migrants” appear to be equally vulnerable or to have the same needs for protection. For instance, temporary and permanent migration calls for very different forms of assistance.

A central conceptual issue is that “climate migrants” do not appear to be necessarily more vulnerable than “climate non-migrants” (i.e. individuals affected by climate change but who do not migrate) or non-climate related migrants – a solid ground to question the relevance of the concept of “climate migration.”²¹ On the one hand, climate change will not only affect migrants, but also those who are not able or not willing to migrate. Inability or unwillingness to migrate may follow for instance from lacking the financial or social means necessary to migrate, or simply from a strong attachment to one’s home. Thus, an important scientific report on “migration and global environmental change” highlighted that “millions of people will be unable to move away from locations in which they are extremely vulnerable to environmental change.”²² The climate-affected non-migrants, or individuals “trapped in place,” might often be the most vulnerable.

On the other hand, from a migration perspective, the cause of migration does not matter as much as the conditions in which migration occurs, in particular the reception of migrants in the putative host society. In other words, whether or not a flood may be related to climate change is irrelevant in assessing the vulnerability of the persons affected. Environmental disasters unrelated to climate change cause similar types of human sufferings: hundreds of thousands were killed and several millions were displaced in Southeast Asia in the aftermath of the 2004 Indian Ocean tsunami, a disaster that had nothing to do with climate change. “Environmental migration” certainly extends beyond “climate migration.” Economic deprivation may also force migration, whether or not it is exacerbated by climate change or other environmental phenomena. Some migration experts have consequently called for a

¹⁹ Yet, they have often been overseen in the normative literature on climate migration. See Benoit Mayer, ‘Constructing “Climate Migration” as a Global Governance Issue: Essential Flaws in the Contemporary Literature’ (2013) 9 McGill Journal of International Sustainable Development Law and Policy 87.

²⁰ Benoit Mayer, ‘Fraternity, Responsibility and Sustainability: The International Legal Protection of Climate (or Environmental) Migrants at the Crossroads’ (2012) 56 Supreme Court Law Review [Canada] 723.

²¹ Calum Nicholson, ‘Climate Change and the Politics of Causal Reasoning: The Case of Climate Change and Migration’ (2014) 180 Geographical Journal 151.

²² Foresight, ‘Migration and Global Environmental Change: Final Project Report’ (The Government Office for Science, United Kingdom 2011) 9.

protection of all “survival migrants” or responses addressing “crisis migration,” notwithstanding the cause of migration.²³

3.2. Climate migration and common but differentiated responsibilities

Rather than a question of international solidarity, it is possible to consider climate migration as a question of responsibility. It is the position taken by developing countries from the outset of climate negotiations that, “[s]ince developed countries account for the bulk of the production and consumption of environmentally damaging substances, they should bear the main responsibility in the search for long-term remedies for global environmental protection.”²⁴ During the 1992 Earth Summit, Malaysia’s Mahathir bin Mohamad was particularly prominent in calling for the responsibility of the West: “[t]he pittance they offer is much less than the loss of earnings by the poor countries and yet it is made out as a generous concession.”²⁵ Despite its ambiguities, the principle of common but differentiated responsibilities may be construed as highlighting a special, causal responsibility of industrial states to repair the injury they have been causing to developing states through excessive emissions of greenhouse gas.²⁶

Migration first entered climate negotiations as a form of adaptation,²⁷ but it was also under consideration within the on-going work programme on loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change.²⁸ Assessing the damages resulting from climate change suggests an approach in terms of responsibilities, whereby responsible states would be called to indemnify the states disproportionately affected by climate change. However, responsibility fails to justify the definition of new obligations that affected states would have vis-à-vis their own citizens. The damages suffered by a state as a consequence of climate change are generally diffuse and relate to an increase exposure to weather hazards (increased likelihood of specific weather patterns) rather than to specific human or material damages: such damages can hardly be asserted in terms of damages suffered by specific individuals. Even if this could be done, the law on diplomatic protection does not define any obligation for a state

²³ Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (Cornell University Press 2013); Susan F Martin, Sanjula Weerasinghe and Abbie Taylor, *Humanitarian Crises and Migration: Causes, Consequences and Responses* (Routledge 2014).

²⁴ G77, ‘Caracas Declaration’ paras II–34.

²⁵ Mahathir bin Mohamad, Prime Minister of Malaysia, Report of the United Nations Conference on Environment and Development, vol. III: Statements by the Heads of State or Government at the Summit Segment of the Conference, doc. A/CONF.151/26/Rev.1 (Vol. III), at 233.

²⁶ See Benoit Mayer, ‘Conceiving the Rationale for International Climate Law’ <<http://papers.ssrn.com/abstract=2432856>> accessed 13 May 2014.; Lavanya Rajamani, *Differential Treatment in International Environmental Law* (Oxford University Press 2006) 155.

²⁷ Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention (COP16) 2010 para 14(f).

²⁸ UNFCCC, Decision 3/CP.18, ‘Approaches to Address Loss and Damage Associated with Climate Change Impacts in Developing Countries That Are Particularly Vulnerable to the Adverse Effects of Climate Change to Enhance Adaptive Capacity’ para 7.

to transfer any compensation received from another state, to the injured person²⁹ – let alone to commit to specific policies. While climate change responsibility should support financial transfers between states, it does not justify any interference in the sovereignty of the injured states, including in the right of such states to decide how to respond to climate change in accordance with unspecific human rights standards.

3.3. Climate migration as a political momentum

If “climate migrants” are not necessarily the most vulnerable individuals and climate change responsibility does not justify interference in the domestic affairs of injured states, the project of governing climate migration appears as somewhat arbitrary. Rather than a protection of climate migrants, one could be inclined to a protection of all vulnerable migrants and to a compensation of the states most affected by climate change.

This objection holds in a perfect world where ethical concepts guide international governance. In the real world, however, new norms are adopted through complex processes, where ethical ideas and states’ interests are the object of contradictory arguments. Norm entrepreneurs and their organizational platforms play a particular role in pushing critical states to adopt and promote new norms,³⁰ and so do the intrinsic and extrinsic conditions in which political arguments are made and challenged.³¹

Despite its arbitrariness, climate migration may be an opportunity for a successful communication strategy just because it responds to public moral sentiments. The apparent newness of climate migration overcomes aid fatigue; it attracts considerable political attention and possibly resources because new problems require new solutions. Climate migration can thus be approached as essentially a marketing operation, the *rebranding* of forced migration and humanitarian assistance in the language of the time. By linking two of the main contemporary global concerns – climate change and migration –, the concept of climate migration is a magic recipe for public attention.³²

3.4. Opportunities and limits for a global governance of climate migration

While climate migration builds political momentum, the difficulty remains to define a workable solution that could benefit from this dynamic. Jane McAdam justly questioned “the utility – and, importantly, the policy consequences – of pinning ‘solutions’ to climate change-related displacement on a multilateral instrument, in light of the likely nature of movement, the desires of communities affected by it, and the fact that a treaty will not, without wide ratification and implementation, ‘solve’ the humanitarian issue.”³³ Climate migration is not

²⁹ ILC, ‘Draft Articles on Diplomatic Protection’ 19., recognizing only a “[r]ecommended practice” to do so. See also PCIJ, Series A, No. 2, ‘Mavrommatis Palestine Concessions (Greece v. United Kingdom)’ 12..

³⁰ See Martha Finnemore and Kathryn Sikkink, ‘International Norm Dynamics and Political Change’ (1998) 52 *International Organization* 887.

³¹ Neta Crawford, ‘Homo Politicus and Argument (Nearly) All the Way down: Persuasion in Politics’ (2009) 7 *Perspectives on Politics* 103.

³² Benoit Mayer, “‘Environmental Migration’ as Advocacy: Is It Going to Work?’ (2014) 29 *Refuge: Canada’s Journal on Refugees* 27.

³³ Jane Mcadam, ‘Swimming against the Tide: Why a Climate Change Displacement Treaty Is Not the Answer’ (2011) 23 *International Journal of Refugee Law* 2, 2.

only a multifaceted phenomenon; it is also a contested political concept. Four trends of advocacy can be distinguished, promoting respectively humanitarian assistance, the rights of the migrants, climate change cooperation, and international security.³⁴ Each of these normative enterprises consider responses to climate migration as a first step, but each normative enterprise goes in different directions. Thus, the “solutions” they propose to climate migration vary significantly and cannot always be reconciled.

Possible responses range from an international treaty to informal bilateral cooperation. Several academic works proposed an international convention that would be inspired by the international regime on refugee protection,³⁵ but climate change generally exacerbates migration scenarios that have little resemblance with flows of refugees (i.e. international, forced, long-term migration).³⁶ Despite the significant political impetus raised by climate migration, the ratification of a treaty would face significant obstacles.³⁷ Soft-law instruments have sometimes been seen as practical alternatives, in particular on the ground of the success of the Guiding Principles on Internal Displacement. Thus, the on-going “Nansen initiative,” convened by the governments of Norway and Switzerland, may soon propose some guidelines on responses to international disaster-induced displacement.³⁸

States may also make use of existing climate finance to carry on migration programs. However, the principle that international finance should cover the “incremental costs” of adaptation results in a significant hurdle for recipient states that must demonstrate the causal relation between climate change and migration. In addition, the funds made available for adaptation are relatively limited (about 4.4 billion USD/year) and tightly controlled by donor states (less than half a billion USD/year is channelled through multilateral institutions).³⁹ While states have committed to “mobilize USD 100 billion per year by 2020 to address the needs of developing countries,”⁴⁰ these funds are most likely to focus on climate change mitigation projects with global benefits rather than on helping developing countries to bear the costs of adapting to climate change. Moreover, through conditions associated in particular with bilateral financial support, there is a risk that donor countries may impose their own policy priorities over developing states. With regard to migration, developed states may be tempted to direct climate finance toward programs that support the management of international migration and the containment of migrants in the Global South, rather than programs that promote the rights or wellbeing of the migrants and other stakeholders.

There is also a danger that ill-founded yet powerful fears of migration (as causing political turmoil in the Global South or significantly exacerbating international migration to the Global North) could push some countries to further invest in control “solutions” such as fencing international borders and investing in military capacities while neglecting international

³⁴ Mayer, “Environmental Migration” as Advocacy: Is It Going to Work?” (n 32).

³⁵ See e.g. Biermann and Boas (n 4); Docherty and Giannini (n 4).

³⁶ See *supra* note 18.

³⁷ Angela Williams, ‘Turning the Tide: Recognizing Climate Change Refugees in International Law’ (2008) 30 Law & Policy 502, 517.

³⁸ Walter Kälin, ‘From the Nansen Principles to the Nansen Initiative’ (2012) 41 Forced Migration 48.

³⁹ Barbara Buchner and others, ‘The Landscape of Climate Finance’ iv <<http://climatepolicyinitiative.org/sgg/files/2011/10/The-Landscape-of-Climate-Finance-120120.pdf>>.

⁴⁰ *Cancun Agreements* (n 27).

development and further restricting international migration opportunities. Such policies are based on the false assumption that migration can be contained. Gregory White has shown that controlling migration is often perceived as having low costs, despite its high actual costs, and that it has a high political payoff, despite its low long-term efficacy.⁴¹

4. Prospects for Regional Responses in Southeast Asia

The debate on the governance of climate migration has prevalently been conceived as a debate on global governance. This approach has its limits. In particular, the predetermined and asymmetrical interests of developed and developing states, as presumably donor and receiving states, hinder international cooperation. Another issue is that most of the debate originates from Western countries, which results in governance proposals that are ill-fitted to regional circumstances.⁴² In what follows, I suggest some elements of reflection on the relevance of regional responses to climate migration in Southeast Asia.

4.1. Specific regional circumstances

Some specificities of Southeast Asia need to be taken into consideration. In particular, Southeast Asian states have not generally been keen to ratify international conventions on human rights law. Brunei, Malaysia, Myanmar and Singapore are among the few states that have not ratified the 1966 Covenants on Economic, Social and Cultural Rights on Civil and Political Rights. Indonesia and the Philippines are the only ASEAN member states to have ratified the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The record of ASEAN member states is poor with regard to the protection of refugees – let alone other forced migrants. This is important because the protection of “climate migrants” has sometimes been justified explicitly or implicitly by analogy with the protection of refugees. Amongst ASEAN Member States, Cambodia and the Philippines are the only ones that have ratified the 1951 convention relating to the status of refugees. These considerations suggest that ASEAN member states would be unlikely to access a treaty on the protection of climate migrants as has been proposed.

Moreover, the debate on the governance of environmental migration cannot ignore the region’s perspective on international law. Theoretical propositions on “Asian values” have suggested regional specificities, such as a greater emphasis on economic and social rights and more attention to social harmony, traditional order, and economic growth.⁴³ In this debate, culture-centrism, political opportunism, and regional prides have perhaps led to extreme positions on both sides. As informed observers suggested, Southeast Asia’s distinctiveness regarding human rights does not stem from an essential cultural particularism, but rather from the region’s “will to differ” and to “evolve[e] on its own path,”⁴⁴ or even from a certain

⁴¹ Gregory White, *Climate Change and Migration: Security and Borders in a Warming World* (Oxford University Press 2011).

⁴² Benoit Mayer, ‘Environmental Migration in the Asia-Pacific Region: Could We Hang Out Sometime?’ (2012) 3 *Asian Journal of International Law* 101.

⁴³ Jack Donnelly, *Universal Human Rights in Theory and Practice* (Cornell University Press 2003) 110; 5BS Chimni, ‘Third World Approaches to International Law: A Manifesto’ (2006) 8 *International Community Law Review* 3; Simon SC Tay, ‘Human Rights, Culture, and the Singapore Example’ (1995) 41 *McGill Law Journal* 743.

⁴⁴ Tay (n 43) 768. See also BS Chimni, ‘Asian Civilizations and International Law: Some Reflections’ (2011) 1 *Asian Journal of International Law* 39, 40–41.

“public mood ... of disgruntlement with the west.”⁴⁵ One may or may not agree with the argument on “Asian values,” and one would probably disagree with the way it might have been used to justify certain illiberal policies, but the development of this discourse and its relative success in regional political spheres reflect a particular defiance toward international governance. This defiance needs to be taken into consideration in approaching possible response to climate migration.

4.2. Possible regional leadership

Global governance is not necessarily the best approach for responses to climate migration. Angela Williams suggested that “an alternative system for addressing the plight of those displaced by climate change may be better coordinated by way of regional agreement, operating under an international umbrella framework.”⁴⁶ I suggested elsewhere that a resolution of the UN General Assembly could give the tone of such a framework while encouraging the adoption of more substantive responses through bilateral or regional negotiations.⁴⁷ Francois Crepeau, the UN Special Rapporteur on the Human Rights of Migrants, recommended that “States should devise and implement regional migration policies and strategies to facilitate international climate-change-induced migration, where needed, including through the negotiation, conclusion and implementation of regional migration agreements.”⁴⁸ Given the regional context of defiance vis-à-vis global institutions, regional governance is arguably a strong candidate in Southeast Asia.

The underlying assumption in support of regional response to climate migration is that states would have a greater incentive to cooperate on resettlement programs or domestic policies on migration that are more clearly defined and concern states with which they have tighter relations. Mutual support would not be purely altruistic: it would also aim at pursuing common interests between donor and receiving states, such as avoiding undocumented international migration, international criminality, political turmoil, or economic crises. Regional cooperation would also give more place to experimentation and to the identification of good practices.⁴⁹

Following Europe, Southeast Asia is certainly the second most integrated region. As an “imagined community”⁵⁰ in the making, ASEAN has gone relatively far in dealing with the rights of migrants as well as with the protection of the environment. Although the limits of regional cooperation can easily be pointed out, Koh Kheng-Lian and Nicholas Robinson

⁴⁵ Joanne R. Bauer and Daniel A. Bell, “Introduction” in Joanne R. Bauer and Daniel A. Bell eds., *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999), 3 at 4.

⁴⁶ Williams (n 37) 518.

⁴⁷ Benoit Mayer, ‘The International Legal Challenges of Climate-Induced Migration: Proposal for an International Legal Framework’ (2011) 22 *Colorado Journal of International Environmental Law and Policy* 357.

⁴⁸ François Crépeau, ‘Report of the Special Rapporteur on the Human Rights of Migrants’ (United Nations General Assembly 2012) A/67/299 para 93(f).

⁴⁹ Williams 2008, p. 521.

⁵⁰ Simon Tay, Robert G Patman and Betty Mason-Parker, ‘Interdependence, States and Community: Ethical Concerns and Foreign Policy in ASEAN’ in David B MacDonald (ed), *The Ethics of Foreign Policy* (Ashgate 2007).

justly pointed out that ASEAN “has been remarkably successful in shaping a common regional environmental policy framework.”⁵¹

4.3. Possible regional responses to migration

In 2007, the heads of states and government of the 10 ASEAN Member States adopted the Declaration on the Protection and Promotion of the Rights of Migrant Workers. If the declaration is relatively short and unsubstantial, and stops very short from international human rights standards, it does however call receiving states to “[i]ntensify efforts to protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers,” and to “provide migrant workers ... with adequate access to the legal and judicial system of the receiving state.”⁵² The following year, a Committee on the implementation of the ASEAN Declaration was established. Lastly, the ASEAN Forum on Migrant Labour was established to convene a transnational dialogue between the different stakeholders.

While the Declaration stops very short from international human rights standards, its existence and that of the Committee and the Forum witnesses some important trends in Southeast Asia. ASEAN has been the forum for some discussions on the protection of migrants, in countries that have not otherwise accepted far-reaching human rights obligations. Intra-regional international labour migration is an important phenomenon, and sending countries – in particular Indonesia and the Philippines – have played an active role for the promotion of the rights of their nationals abroad. The very existence of the Declaration, the Committee and the Forum reflects a strong will of ASEAN Member States to affirm their continued relevance, even as all Member States are not able to agree on substantial protection standards.

ASEAN has also made some efforts in promoting human rights generally. In particular, the ASEAN Human Rights Declaration was adopted in November 2012. This Declaration recognizes migrant workers as “an inalienable, integral and indivisible part of human rights and fundamental freedoms.”⁵³ It also highlights “the right to freedom of movement and residence within the borders of each State” and “the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements.”⁵⁴ Implementation remains however largely desultory in several Member States, in particular with regard to the latter provision on a right to asylum.

4.4. Possible regional responses to climate change

ASEAN has also been interested in regional environmental issues generally. One of the main concerns in this domain, in particular for Malaysia and Singapore, regards haze pollution. The 2002 ASEAN Agreement on Transboundary Haze Pollution, ratified by 9 Member States, has yet to be ratified by Indonesia, the main emitter of haze pollution. Many other

⁵¹ Koh Kheng-Lian and Nicholas A Robinson, ‘Strengthening Sustainable Development in Regional Inter-Governmental Governance: Lessons from the ASEAN Way’ (2002) 6 Singapore Journal of International & Comparative Law 640, 643.

⁵² ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, signed on 13 January 2007 in Cebu, Philippines by the Heads of State/Government, <http://www.asean.org/19264.htm>, para. 5 and 9.

⁵³ ASEAN Human Rights Declaration, 19 November 2012, Phnom Penh, Cambodia, para. 4.

⁵⁴ Ibid. paras. 15 and 16.

instruments have been adopted on diverse environmental issues ranging from sea turtle conservation and protection to environmental education or from health to heritage parks.⁵⁵

With regard more specifically to climate change, ASEAN has mostly served as a forum to establish a common position of its 10 Member States before international negotiations. The positions that it has reflected do not generally differ substantially from the position of the G77 (a coalition of developing countries), of which all ASEAN Countries are members. In particular, ASEAN statements have emphasized the principle of common but differentiated responsibilities, insisted on the differentiated obligations of developed states in mitigating climate change mitigation and financing climate change adaptation, and called for efficient international cooperation with regard to the latter.⁵⁶ Several ASEAN countries have also strong interest in DCM and REDD projects as a source of substantial revenues.

4.5. Possible regional responses to climate migration

What role could international cooperation play in addressing climate migration in Southeast Asia? ASEAN appears as a non-negligible forum for regional cooperation, although the “ASEAN way” is often characterized by incomplete achievements, multiple declarations without much implementation, and, even more, low standards of human rights protection. Unlike the European Union, ASEAN Member States have little in common; they feature a great level of cultural, economic and political heterogeneity which results in substantial differences in what each Member State conceives as its national interest.

On the other hand, climate migration may be a theme of interest for ASEAN Member States, as the territories of some of them include some of the most concerned regions of the world. While ASEAN Member States failed to define cooperative solutions to past forced migration (for instance with regard to Rohingya refugees), they may progressively realize the mutual benefits that can be drawn from regional cooperation with regard to migration. Most importantly, if ASEAN is ever to become a genuine imagined community, a common identity will come along with a sense of transboundary solidarity.

Other relevant regional forums have played an important role in setting the issue of climate migration on national agendas. In particular, in 2010, the Asian Development Bank (ADB) launched a preliminary research to identify the “policy options to support climate-induced

⁵⁵ See the documents compiled in Kheng Lian Koh (ed), *ASEAN Environmental Law, Policy and Governance: Selected documents, Volume I* (World Scientific 2009); Kheng Lian Koh (ed), *ASEAN Environmental Law, Policy and Governance: Selected documents, Volume II* (World Scientific 2013).

⁵⁶ See in particular ASEAN Declaration on the 13th Session of the Conference of the Parties (COP) to the UN Framework Convention on Climate Change (UNFCCC) and the 3rd session of the Conference of the Parties serving as the Meeting of the Parties (CMP) to the Kyoto Protocol, Singapore, 20 November 2007, in Koh, *ASEAN Environmental Law, Policy and Governance* (n 55) 829.; ASEAN Leaders’ Statement on Climate Change to the 17th Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) and the 7th Session of the Conference of the Parties serving as the Meeting of Parties to the Kyoto Protocol, 2011, in *Ibid* 1311.

migration,⁵⁷ and a report was published two years later.⁵⁸ In partnership with the International Organization for Migration, the ADB established the Asia-Pacific Environment and Migration Network in 2012, as essentially a network of researchers. It has been suggested that the ADB could “provide financial expertise and capacity [and] use [its] convening power [to] support programs and projects.”⁵⁹ It should not belong to multilateral development banks, which are largely controlled by donor states, to define responses to climate migration; such organizations may however play an important role “through political leadership, financial assistance and technical support.”⁶⁰

4.6. Possible regional responses to concomitant factors of vulnerability

If Southeast Asian states are to do something about climate migration, for instance through ASEAN, *what* exactly could they do? The question is a thorny one, given the diverse forms of migration exacerbated by climate change. For one, Southeast Asian states certainly need to push for international cooperation on climate change mitigation, as a way to reduce anthropogenic interference with the climate system. Southeast Asian states also need to promote adaptation to climate change, with a particular attention to the most vulnerable communities and individuals. Beyond, they should foster human development as a way to alleviate social vulnerability. Opportunities need to be made available for those who could benefit from individual migration, in particular through internal and international labour migration, and institutions need to be developed in order to ensure the effective protection of the rights of migrants. In a regional context where the rights of migrants are not systematically recognized or effectively protected, there is a real danger that some states could further take advantage of a worsening of the conditions of some populations within their own countries or in neighbouring countries; this risk should be avoided by promoting a sense of common identity and solidarity within and among peoples.

Rarely has mankind been able to forecast future events as it is able to do – despite significant scientific uncertainty and the contingency to response measures – regarding the consequences of climate change. States need to take advantage of such exceptional foresight, including for what regards future migration scenarios. For instance, as recommended by the UN Special Rapporteur on the Human Rights of Migrants, “States should devise and implement local and national migration policies and strategies to facilitate internal climate-change-induced migration, where needed, including through building urban infrastructure that is sustainable, flexible and inclusive in order to accommodate internal migrants.”⁶¹ To ensure that the rights of the migrants are protected, “States should support civil society organizations that give a voice to such vulnerable populations, including migrants or potential migrants, with a view to ensuring their meaningful participation in all the deliberations regarding their future as

⁵⁷ Asian Development Bank, “Policy Options to Support Climate-Induced Migration” (December 2009), online: <http://www2.adb.org/Documents/TARs/REG/43181-REG-TAR.pdf>

⁵⁸ Asian Development Bank, ‘Addressing Climate Change and Migration in Asia and the Pacific’ (2012).

⁵⁹ Robert Dobias, ‘ADB’s Role in Addressing Climate Change and Migration’ (Seminar on ‘Climate Change, Migration and Human Security in Southeast Asia’, Singapore, 27 May 2011) <http://www.rsis.edu.sg/nts/events/docs/Bob_Dobias.pdf>.

⁶⁰ Crépeau (n 48) 93(g).

⁶¹ Ibid 93(e).

citizens and/or migrants.”⁶² Education is also certainly an important strategy to take into consideration, not only to allow putative migrants to work elsewhere, but perhaps most importantly to facilitate the encounters between migrants and host communities. More generally, Southeast Asian states should put their laws and institutions in order, with specific concerns for the protection of the rights of migrants, in order to get ready for growing influxes of internal and international migrants in the coming years and decades.

All in all, the debate on climate migration calls for new attitude toward migrants. It calls us to reconceive migration, not as a social anomaly, but as a perfectly normal phenomenon – migration happens in all human societies and at all times. Each Southeast Asian country, by its ethnic and cultural diversity, testifies of the central role that migration played in our history. Remaining faithful to its history and traditions, Southeast Asia needs to build a collective identity, based on regional cooperation and humanity, which make it possible for migration to occur in the best conditions for the receiving and sending communities as well as for migrants themselves.

5. Conclusion

Climate change is likely to have significant consequences on migration within and perhaps across countries throughout Southeast Asia. Four representative scenarios were in particular discussed, whereby migration stems from floods, cyclones, economic impacts, or response measures to climate change. These scenarios evidence the irreducible diversity of the forms of migration that climate change exacerbates, and also shows that, though climate change increases the number of migrants, it does not create new forms of migration. “Climate migrants” can rarely be distinguished from other migrants, and they should arguably not be treated differently from other individuals with similar needs. Rather than genuinely a new issue, climate migration is a wake-up call drawing attention on the shortcomings of the existing governance of migration. This wake-up call needs to be heard in Southeast Asia, where the protection of the human rights of migrants often remains insufficient.

There is no one-size-fits-all “solution” to climate migration. Climate change mitigation and adaptation, as well as regional cooperation on development, are necessary but insufficient responses. The creation of new opportunities for putative migrants should come along with stronger norms and mechanisms for the protection of the rights of all migrants in the region. A financial support from industrial states is required in application of the principle of common but differentiated responsibilities, and it could be channelled by multilateral development banks. Climate finance may help developing states in Southeast Asia to bear the incremental costs incurred because of climate change, but it should not impose excessive conditions or constraints on injured states.

⁶² Ibid 93(d).