Governing "Climate Migration"

Benoît Mayer

Faculty of Law, National University of Singapore, 469G Bukit Timah Road, 259776,

Singapore

e-mail: bmayer@nus.edu.sg

Abstract This chapter engages with the current political and academic debate on the governance of "climate migration." It highlights the difficulties of ascribing a unique cause to migration and questions the relevance of distinguishing "climate migration" from other forms of migration. It then exposes the opportunities and challenges of this concept for international cooperation. Finally, it assesses the potential of different policy options. Despite the difficulties related to the attribution of migration to a unique driver, the concept of "climate migration" appears as a powerful communicative strategy to trigger important international and domestic actions with regard to climate change adaptation and to the protection of the rights of migrants, even though a specific legal regime remains unlikely and perhaps undesirable.

Keywords Climate migration, governance, multi-causality, norm entrepreneurship.

Introduction

Every society comprises migrants. Individuals migrate in response to a multitude of factors – political, economic, social, cultural, demographic or environmental. The impacts of climate change on the environment and societies are therefore likely to have consequences on the way people migrate or do not migrate.

Since the late 1980s, a literature has developed on a new issue, first labeled "environmental migration" (i.e. migration attributed to environmental factors), but soon refurbished as "climate migration" (i.e. environmental migration that can be attributed to climate change) as climate change was attracting an increasing amount of public attention. Norman Myers ventured to predict the number of "environmental refugees" in the coming decades: 150 millions (Myers 1993), 200 millions (Myers 2002), or 250 millions (Myers 2007). Climate change affects the probability of slow-onset environmental changes (desertification, land degradation, sea-level rise) and sudden-onset events (cyclone, storm surge, etc.), and both of them may have an impact on migration. Walter Kälin distinguished between five scenarios leading to environmental migration: 1) "*sudden-onset disasters*, such as flooding, windstorms […] or mudslides caused by heavy rainfalls"; 2) "*slow-onset environmental degradation* caused, inter alia, by rising sea levels, increased salinisation of groundwater and soil, long-term effects of recurrent flooding, thawing of permafrost, as well as droughts and desertification"; 3) "so-called '*sinking' small island states*"; 4) areas designated by governments as "*high-risk zones* too dangerous for human habitation on account of environmental dangers"; and 5) displacement following "*unrest seriously disturbing public order, violence or even armed conflict*" that "may be triggered, at least partially, by a decrease in essential resources due to climate change" (Kälin 2010). The concept of "climate migration, more specifically, reflects a growing understanding that, climate

change affecting a large array of human activities, climate change governance needs to expand beyond, in particular beyond *in situ* adaptation.

On this understanding of climate change-induced migration, political scientists and lawyers suggested solutions directed to address the vulnerability of "climate migrants," mostly conceived as forced and international migrants. By analogy to the Convention relating to the Status of Refugees adopted in Geneva in 1951 (Refugee Convention), Biermann & Boas proposed an international "climate refugee" convention to "prepar[e] for a warmer world" (Biermann and Boas 2010). A group of French lawyers even designed a ready-to-sign project of convention (CRIDEAU 2008). Discussions were initiated in multiple domestic or regional political constituencies, although the adoption of a multilateral treaty never really appeared as a realistic option (Mayer 2011, McAdam 2011).

A more cautious, "skeptical" school came to dominate the literature (Morrissey 2009). This school has three main credos. Firstly, it insists on the diversity of the migration strategies that are affected by climate change. In particular, internal migration (i.e. within a state) must be distinguished from international migration (i.e. across international borders). Both raise significantly different legal issues, as internal migrants remain within the jurisdiction of a same state responsible for the realization of their human rights, whereas international migrants need to be admitted to a third country. In most circumstances, the effects of climate change are limited to internal migration (EACH-FOR 2009, UNU 2012), and they are particularly unlikely to trigger significant long-distance migration flows. The exception relates to the hypothesis that small, low-lying island developing states such as the Maldives or Tuvalu may become uninhabitable because of sea-level rise, drought, more extreme and frequent weather events, and the impact of the acidification of the ocean.

Secondly, this "skeptical" school rejects a simple and direct causal link through which climate change would force individuals to migrate. In 2001, Richard Black already opposed the "multiple and overlapping causes of most migration streams" to Myer's alarmist predictions (Black 2001). Just as there is no purely "natural" disaster, the impacts of climate change depend on the social, political, economic, demographic and cultural factors that define a society's vulnerability. Nor does any more-or-less "natural" disaster determine a migratory behavior: different societies and different individuals react in various ways to the same events. Rather than the driver of a specific form of migration, the impact of climate change appears now as one in a cluster of causes; rather than purely "forced migration," climate migration may range on a continuum between voluntary and forced migration (Hugo 1996).

Thirdly, and largely as a consequence of this, the "skeptical" school questions our capacity to identify individual "climate migrants," as would be necessary if a personal status was to be granted. An influential report to the British Foresight agency concludes that "the range and complexity of the interactions between the [multiple economic, social and demographic] drivers means that it will rarely be possible to distinguish individuals for whom environmental factors are the sole driver ('environmental migrants')" (Foresight 2011).

This credo makes it virtually impossible to conceive the governance of climate migration by analogy with that of international protection of refugees through the conference of an individual status. Under the Refugee Convention, a refugee is a person who (1) "is outside the country of his nationality" or habitual residence, and (2) "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, … is unable or … unwilling to avail himself of the protection of that country" (1951

art. 1(A)(2)). Climate migrants do not normally qualify, even the few who cross an international border, because it is difficult to conceive climate change as a form of persecution and, if this was the case, such "persecution" could not be related to one of the five grounds enumerated in the Convention (McAdam 2012), and in most cases there would likely be reasonable internal flights alternatives. The legal definition of a "refugee" can however be extended to other individuals, fleeing for instance situations of generalized violence, as has been done regionally in particular in Africa, Latin America and Europe (McAdam 2007); a further extension to other forced migrants could certainly be considered – but this would only address a small part of the issue, letting aside the vast majority of internal migrants affected by the impacts of climate change.

In what follows, I question the possible responses that international governance can realistically bring to address climate migration. This requires a more thorough look at certain difficulties that relate to "climate migration," a concept that appears as impractical, arbitrary, yet promising.

Conceiving Climate Migration: From Ethics to Norm Entrepreneurship

Practical and Conceptual Difficulties

It is difficult to reconcile the concept of "climate migration" with the understanding that migrations result from a multitude of factors (Lee 1966). The above-mentioned report to the Foresight agency concluded that "[e]nvironmental change is equally likely to make migration less possible as more probable" (Foresight 2011), in particular because environmental stress may decrease the resources available to a population and consequently deprive individuals

from the capacity to invest in the costs of migrating – travel expenses, dangers, temporary unavailability of income (Brown 2007). On the other hand, the same environmental stress may increase the need for income diversification. Which tendency will prevail– less migration because of resource deprivation or more migration for resource diversification – depends on the complex circumstances that define each case at the domestic, local and individual scale. Similarly, insecurity may be a factor of migration in some cases, but the fear of land-grabbing or theft may also force individuals to remain or rapidly return in the vicinity of their property after an environmental disaster. More generally, the ability and propensity of individuals displaced by a disaster to return to their place of origin depends, among others, on social resilience (e.g. the reconstruction of infrastructures in the place of origin) and on the capacity of the displaced individuals to integrate in the place of destination.

Following the earthquake that stroke Lisbon in the mid-18th century, French philosopher Rousseau (1756) disputed Voltaire's blame of the Providence; accordingly, "it was hardly nature who assembled there twenty-thousand houses of six or seven stories." Natural disasters result from a combination of physical elements on which humans have no direct control (although they have an indirect control on global anthropogenic climate change) and social elements that define the vulnerability of a society. Future numbers of migrants who can be attributed to climate change depend on many political, economic, social, cultural and demographic factors. In particular, demographic growth will have an influence on the number of persons affected by any environmental change, and so will also any policies that have an impact on the distribution of a population within a territory (Hugo 2011). Development also plays an important role: a country such as Bangladesh is vulnerable to sea-level rise because of its exposure (low altitude of most of its territory) but also because it does not have financial capacities comparable to the Netherlands to build dykes and seawalls. In some countries, the

adverse effects of climate change may significantly impact the economy, thus further increasing the country's vulnerability to climate change.

Nonetheless, there are some estimates of the numbers of individuals displaced by sudden-onset natural disasters. The Internal Displacement Monitoring Centre (IDMC) estimates that between 2008 and 2012, an average of 29 million persons had been displaced each year (143.9 million persons in five years) by such rapid-onset natural disasters, although not all countries reported (Yonetani 2013). 82% of these persons were in Asia, 9% in the Americas, and another 9% in Africa. Moreover, 16.7% were displaced due to geophysical disasters (e.g. earthquakes, tsunamis) that are not a priori related to the climate, while the remaining 83.3% were displaced by weather-related disasters, comprising 62.4% displaced by hydrological disasters (e.g. floods, wet mass movements), 20.2% by meteorological disasters (e.g. storms), and 0.7% by climatological disasters (e.g. extreme winter conditions, heat waves, etc.) (Yonetani 2013). These statistics are produced by estimating the numbers of persons displaced following a disaster, thus ignoring the contribution of different factors in creating a "natural disaster."

On the other hand, however, this approach cannot readily be applied to measure the consequences of the diffuse economic impact of slow-onset environmental disasters such as sea-level rise, land degradation, desertification or droughts. If some contend that environmental degradation may have consequences on security, possibly making conflict escalation more likely through increased competition for essential resources, the number of additional migrants that can be attributed to environmental degradation would also be particularly difficult to measure – and identifying individual migrants would be virtually impossible. Often, the migratory impact of environmental changes is statistical (increased numbers) but cannot be established at the individual level through an individual status determination procedure.

Beside the difficulty of attributing individual migrants to a "natural disaster," there is a difficulty in attributing a "natural disaster" to climate change. A media and political discourse has attributed super-typhoon Haiyan, that stroke the Philippines in November 2012, to climate change, although scientific evidence only suggest that cyclones might become less frequent but more violent (IPCC 2014, 216-217 (sect. 2.6.3), 913-614 (sect. 10.6.1.5)). Nor can climate change be considered as the cause of the 2010 monsoon floods in affected China that IDMC identifies as the greatest displacement (15.2 million persons) between 2008 and 2012 (Yonetani 2013). Beside the inevitable element of scientific uncertainty of the climate models, the scientific community only asserts that "global monsoon precipitation will likely strengthen" (IPCC 2014 1234 sect. 14.2.5): saying that the *probability* of such floods is increasing does not mean that a specific flood is *caused* by climate change. In other words, the statistical concept of climate (change) does not allow for the binary determination or whether or not a disaster is caused by climate change, and, even less, whether or not an individual is a "climate migrant."

Therefore, "climate migration," as individuals displaced because of climate change and who can be distinguished from economic migrants and treated differently, is an impractical concept. Dramatic but controversial forecasts of small island developing states being submerged by sea-level rise draw a wrong picture of environmental changes as direct, isolable factors of migration, letting little to no place for human agency (Farbotko 2005, Gemenne 2010, Kälin 2010). Whereas refugees are often opposed to "voluntary" economic migrants, environmentally induced displacement is not distinct from economic migration: most "climate migrants" *are*, indeed, economic migrants, as economic factors are the most proximate cause of their flight. This should not, however, mean that environmental change does not "force" people to move, but rather that the dichotomy between "voluntary" economic migrants and

"forced" refugees is artificial: economic conditions leading to migration, be they triggered by an environmental change or not, can be and often are tragic.

Discourse Inconsistencies

The concept of climate migration is not only impractical: it is also arbitrary. No valid ethical discourse seems able to plead for a governance of climate migration, rather than for responses to larger issues. To support this claim, three narratives can be identified: one on the protection of the rights of climate migrants as migrants (rights narrative), another one on the responsibility of polluting states for the adverse impacts of climate migration (responsibility narrative), and a last one conceiving climate migration as a security issue (security narrative) (Mayer 2012a). Each of these three narratives is rooted in a different disciplinary background and leads to a different justification for an engagement of the international community, but none of them identifies climate migration as a unique issue needing a specific form of governance.

Firstly, the rights narrative often relates to a broader humanitarian discourse, conceiving the governance of climate migration as essentially a question of international solidarity. It puts forward the need for the protection of climate migrants. It proposes in particular an analogy between refugees and climate migrants, suggesting either to expand to the latter the protection that benefits to many of the former, or to create an alternative system of protection. Many such works call for an ambitious engagement of the international community to protect environmental migrants (Bell 2004, Brindal 2007). However, what this narrative really looks at is not climate migrants, but forced migrants. Limiting a new instrument to "climate migrants" (beside being impractical) would reproduce the arbitrary distinction between refugees and other forced migrants. A rights narrative addresses vulnerability, but the cause of vulnerability is

irrelevant. If this narrative focuses on international migration, then Betts's argument for a protection of "survival migrants" is more coherent (Betts 2013); if it turns to internal migration, then it should propose mechanisms to reinforce the protection of internal migrants. Furthermore, the rights narrative cannot ignore that migrants are generally *not* the most vulnerable in a society, as the poorer often lacks the resources necessary to move (Foresight 2011) – this issue of the "invisibility" of more vulnerable non-migrants is well known in other situations of forced migration (Lubkemann 2008). In a humanitarian perspective, many climate migrants should certainly be of concern, but any governance endeavor limited to climate migrants would be arbitrary: other migrants in a similar situation of vulnerability and arguably, even more, those "trapped in place," should also be of concern.

Secondly, the responsibility narrative highlights the inequity that result from the poor, who benefit the less from greenhouse gas emissions, being the most severely affected by anthropogenic climate change. There are multiple technical hurdles to the legal argument that Tuvalu and Palau considered to bring to the International Court of Justice and that the inhabitants of Kivalina, an Alaskan village displaced because of the melting of a natural sea wall, brought before American courts against multinational companies (Ielemia 2007, Kysar 2011). The ethical argument, however, is relatively straightforward, even through its modalities such as the discounting of past emissions, the possible excuse of ignorance, or the level of excusable emissions are subject to debates (Shue 1999, Caney 2005). Migration might be one of the adverse effects of climate change, and it was identified as such during recent international negotiations on loss and damage associated with the adverse impacts of climate change (UNFCCC 2012). Yet, arguments for the responsibility of greenhouse gas emitters do not lead specifically to the governance of climate migration. The responsible parties ought arguably to cease their wrongful conduct and to repair the harm they already caused (see by analogy ILC

2001), but responsibility can in no case justify the imposition of specific norms on the injured parties. How to respond to migration through climate change adaptation policies should be within the sovereign prerogatives of each state, as long as this state complies with its general international obligations such as under international human rights law. Specific humanitarian standards may desirable, as the rights narrative suggests, but they should not be specific to climate migration, as mentioned above.

Thirdly, the security narrative, constructed by military and intelligence research, approaches climate migration in a very different way by putting forward the interests of powerful actors (generally states, but also possibly corporations) rather than their ethical duties. This narrative contends in particular that states should act early in order to prevent future political instability, and that they should cooperate in order to avoid illegal migration and the concomitant development of issues such as drug or human trafficking, failing states and wars affecting commercial interests overseas, and international terrorism (e.g. Söderblom 2008). In other words, states should cooperate because this is in their own, well-understood interests. This narrative may come along with an incentive to militarization, although some have tried to reframe climate migration as rather a "human security" issue (Elliott 2010). Here again, however, it is not evident how climate migration appears as a different sort of issues from other humanitarian situations leading to migration, most obviously in cases of non-climate-related environmental disasters. When a state goes through a spiral of environmental, economic, political and military issues leading to its failure to protect its population, the contribution of climate change to this spiral is irrelevant in terms of international security. At most, by possibly making such scenarios more likely, climate change calls for more attention to larger security issues.

Because the concept of climate migration is both impractical and arbitrary, Betts (2013) and Nicholson (forthcoming) have suggested abandoning it altogether. Consistency would dictate the definition of different issues: the rights narrative suggests a governance of migration or forced migration; the responsibility narrative calls for a commitment of greenhouse gas emitters toward mitigation and compensation, arguably not only through adaptation but also through a substantial loss and damage mechanism; and the security narrative calls for international cooperation reflective of our growing complex interdependence.

The problem is that neither the rights, nor the responsibility narratives are very effective on their own as both are ethical arguments about what actors *should* do – and actors do not always do what they should. In particular, these two narratives are grounded in cosmopolitan ethics or "global justice" theories that are yet to be fully endorsed by sovereign states: international governance remains grounded on the concept of sovereign states pursuing their own interests, the rebirth of autocratic monarchs "owing" their country. Within the climate regime, for instance, the responsibility narrative is less influential than the interests of each state (Posner and Weisbach 2010); it is in particular on a purely voluntary basis that states commit (or not) to contribute to mitigation, only vaguely guided by an ambiguous principial language of the UN Framework Convention on Climate Change, referring to "equity" and "their common but differentiated responsibilities and respective capabilities" (art. 3.1). The recent negotiations on a loss and damage mechanism show the fierce opposition of developed states to anything approaching compensation, despite compelling ethical arguments.

On the other hand, the security narrative is able to create a political momentum by "speaking to states' interests," that is, by explaining why states could be motivated in doing something that happens also to be ethically sound. James Hathaway (1990) demonstrated that the international refugee regime was not developed out of pure generosity (how could the limitation of the definition of a refugee to persons persecuted on a specific ground be explained?), but rather because of the conjunction of a humanitarian narrative with a persuasive interpretation of states' interests, generating a shared willingness to "govern disruptions of regulated international migration in accordance with the interests of states," "a compromise between the sovereign prerogative of states to control immigration and the reality of coerced movements of persons at risk." Hathaway's conception of the rationale of the refugee regime suggests an alternative analogy with climate migration, not on the substance by pleading for the expansion of a regime already running out of political support, but rather on the method of constructing a political support, a momentum for change, by joining ethical arguments with an interpretation of states' own interests.

Despite its logical inconsistencies, the case for climate migration appears as a magical recipe for norm entrepreneurs (Mayer forthcoming). There is no essential reason why migrants should be protected rather than other vulnerable people, but migrants attract more attention, if only because of the fear that they may be approaching "us." Nor is there any reason to focus on climate migrants specifically – other environmental migrants are most obviously in a similar situation of human suffering – but anything related to climate change attracts a unique degree of public attention, and, possibly, of engagement. By joining the deep-rooted fears of migration with the existential uncertainties raised by climate change, climate migration has an immense marketing potential.

Climate change fuels fears that, if well directed by skillful norm-entrepreneurs, may be overcome through fair international cooperation. Similar moments of doubt, such as the end of the Second World War, led to great progress for international governance – including the formalization of the international refugee regime. The same could be done today, in response to climate change, with regard to larger populations of unprotected migrants or other vulnerable individuals throughout the world. Climate migration might not be a practical or consistent concept, but it is a popular one – it is a concept that may trigger a first step toward fairer international cooperation.

The Challenges of Governing Climate Migration

Reconciling the Fair and the Realistic

Governing climate migration poses a broad challenge: how to reconcile the sovereign rights of states with the human rights of climate migrants – or, more broadly, of any migrants or anyone affected by climate change? Meaningful preliminary steps have been made to realize the rights of all migrants and to promote cooperation with regard to climate change, but new steps need to be conceived.

The control of migration has generally been conceived as the preserve of states, despite some ethical arguments for an opening of international borders (Carens 1987). A Report of the UN High Commissioner for Human Rights on the relationship between climate change and human rights clearly recognized that persons affected by climate change "would often not have a right of entry" to another state (OHCHR 2009). As noted before, the refugee regime has arguably been developed as the exception that reinforces the rule. The Universal Declaration of Human

Rights (1948), however, confers to everyone "the right to freedom of movement and residence within the borders of each State," although the International Covenant on Civil and Political Rights (1966) allowed for restrictions of this right "which are provided by law [and] are necessary to protect national security, public order …, public health or morals or the rights and freedoms of others."

More than the right to move, however, it is often the many others rights of the migrants that are at issue: right to health, education, decent conditions of living, to certain economic opportunities, etc. Both the UN Human Rights Council and the Conference of the Parties to the UN Framework Convention on Climate Change (COP) recognized the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights (HRC 2008, 2009, 2011, UNFCCC 2010). Migrants, as human beings, are protected under international human rights law like anyone else; foreigners benefit from all human rights with the sole exceptions of the right to vote and to be elected and the right to enter a country (OHCHR 2009). The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families was adopted in 1990 in order to emphasize the human rights of all migrants, including those who lack regular documentation. It is significant that, after twenty-three years, no more than forty-seven states ratified this convention (as of January 2014). Regarding internal migrants, the Guiding Principles on Internal Displacement adopted by the UN Commission on Human Rights in 1998 clarified and promoted state human rights obligations, and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa adopted in Kampala in 2009 and entered into force on 6 December 2012 (Kampala Convention) is an important development in a regional context.

The lack of capacities of local governments may however significantly hinder the realization of human rights, in particular by limiting the implementation of programs of humanitarian assistance that are costly but indispensable. This might be specifically the case for developing states that are particularly vulnerable to the adverse effects of climate change, whose capacities may shrink while needs expand. The general reliance of international human rights law on the obligation of each state to protect the persons within its jurisdiction is inadequate to address the circumstances where the impacts of climate change may affect a state as a whole. Existing mechanisms of humanitarian assistance and aid to development are of paramount importance, but they are also strikingly insufficient, attached with detrimental conditions and extraneous political priorities, and contingent to inconsistent levels of public attention (Fassin 2012, GHA 2013).

Linking migration with climate change, however, suggests that the human rights of migrants could more efficiently be implemented through international cooperation. Climate change is by essence a global issue, the substantiation of our growing complex interdependence (Singer 2004). It is also by essence a moral issue, through which the action of some cause harm to others, although in a complex manner (Gardiner 2011). The wide gap between the "haves" and the "not-haves" in terms of historical or present emissions and the concentration of most of the physical and social impacts on the "not-haves" ground a compelling case for not only a form of international solidarity, but also for a full-fledged causal (tort-like) responsibility. The ethical responsibility of greenhouse gas emitters substantiates demands for international cooperation in the realization of human rights, not as a "soft duty" of humanitarian assistance, but as a "hard duty" of compensation: aid is a due, not a charity.

Yet, such ethical arguments are unlikely to have a substantial political impact on their own. NGOs, intellectuals and some politicians play an important role in raising public awareness, and public opinions may contribute to frame international politics. The success of the International Campaign to Ban Landmine in the 1990s, despite the economic interests of weapons-exporting developed states, evidences the ability of relatively powerless actors, as "norm entrepreneurs," to impact public opinion and thus to shape international relations (Wexler 2003). Yet, the interests at stake with regard to climate change far exceed the concessions that some developed states made with regard to the exportation of landmines. Ethical arguments, even if accompanied with a high degree of pathos, will not suffice to convince any democratic government to make the economic sacrifices necessary to fully compensate affected countries. An advocacy that is solely based on the rights of climate migrants and the ethical obligations of other states towards them is unlikely to lead to anything else than an increase in humanitarian assistance. Some American scholars argue that ethical arguments impede international negotiations and should be avoided: rather, states should openly seek their own interests (Posner and Weisbach 2010). This is a dead-end, for rational, profit-seeking states are likely *not* to participate in a climate treaty, preferring to free ride over the sacrifices of other states.

The flaw in the arguments based on states interests is that these "interests" are assumed to be known, uncontroversial givens. There is in particular a tendency to equate "interests" with "rational economic interests" that economists can calculate. Yet, the economic value of avoiding climate change is difficult to evaluate, not only because of scientific uncertainty and contingence to a range of other processes such as development, but also because there is no agreement as to how future costs should be discounted (Nordhaus 2007). Furthermore, states are also prone to take non-economic interests into account, especially when discussing an issue

such as climate change with potential tremendous security consequences. Unaddressed disasters may conceivably contribute to induce famines, extreme poverty, epidemics, failing states, conflicts and terrorism, which will have consequences in the whole of an interdependent world. Just like there is no one rational magical formula to discount future events, there is also no such formula to measure existential risks. How much a state is willing to invest today in order to address such undefined future security risks depends on a complex process of political deliberation in particular social and cultural settings. The current divergence between the European Union and the United States in climate negotiations reflects different political deliberation rather than radically different economic interests.

As long as states' interests are opposed to their ethical obligations, these ethical obligations will be left behind. It may therefore be advisable for norm entrepreneurs to focus on re-interpreting the interests of states in terms that are at least *roughly* ethical. Linking climate migration to security may appear as a promising strategy to trigger change. Under the influence of this discourse, the UN Security Council has already discussed the impact of climate change on international peace and security and requested a report of the Secretary General on this topic. The same discourse, however, has also been used to justify US military investments in Africa (Hartmann 2010) or India to fence part of its border with Bangladesh – but containment is not a sustainable response to humanitarian crises. Contemporary history shows that no crisis is set to remain purely domestic. The neglecting of the Afghan humanitarian crisis by the rest of the world over the last decades of the 20th Century allowed the development of a terrorist movement that led to the worst terrorist attacks in the United States. It is rather through an intense and responsible investment in human development that the international community may reduce threats to international peace and security.

Possible Steps Forward

Some form of international governance might be both realistic and desirable – and, indeed, is already being discussed. Proposals for an international treaty that would be inspired by the Refugee Convention and would establish an individual status for international climate migrants, or forced migrants more generally, are not amongst such realistic and desirable steps. It is unlikely that states will agree to bind themselves to provide international protection to an unknown number of future migrants. Many states that have ratified the Refugee Convention are increasingly reluctant to comply with the specific obligations that it defines. Furthermore, whereas it is in Asia that climate change has the impact on migration, few Asian states are party to the Refugee Convention – even fewer would possibly ratify a convention protecting any broader categories of migrants (Mayer 2012b).

The adoption of a treaty promoting the rights of internal migrants is less unlikely, as the recent entry into force of the Kampala Convention shows, and it might be desirable. As it would be impossible and arbitrary to distinguish "climate migrants" within the flow of internal migrants, such a treaty should extend to all internal migrants. Such a treaty would essentially interpret and repeat the existing obligations of states under treaty and customary international human rights law, rather than create brand new rights and obligations – for it is common ground that international human rights law lays down the basic principles that should be implemented while addressing climate migration (Crépeau 2012). A new treaty could play an important role in setting the agenda or advocating for domestic policies, but "soft law" instruments (like a resolution of the UN Human Rights Council or of the UN General Assembly) could play the same role without requiring the long and difficult process of signature and ratification by states (Mayer 2011). Indeed, the "Nansen initiative towards a protection agenda for people displaced

across borders due to natural disasters and the adverse effects of climate change," established by a few states in October 2012 as a consultative process, may be taking the direction of promoting some sort of guiding principles on disaster-induced migration (Kälin 2012).

While the adoption of such instruments may be promising, a word of caution is necessary. As explained above, the concept of "climate migration" is essentially arbitrary. Following a rights narrative, it would be arbitrary to limit protection to migrants attributed to climate change, as the cause of migration should be indifferent, or to limit protection to migrants, as the most vulnerable are often unable to migrate. Following a responsibility narrative, the international community should certainly organize a form of reparation for states and individuals affected by climate change, but this reparation does not justify an interference with the way a state decides to adapt to climate change. There is something profoundly disturbing in the possibility that the international community may impose arbitrary humanitarian priorities upon developing countries. There would in particular be important costs of opportunity if scarce domestic resources were focused on climate migrants rather than being more equitably distributed among all of those who need assistance within the state (migrants and non-migrants), or if these resources were all diverted to address present humanitarian crises rather than dedicating some resources to promote long-term sustainable development and resilience to climate change.

The advocacy for international regulation often lies on two assumptions according to which, firstly, the states affected are reluctant to protect climate migrants within their jurisdiction, and, secondly, that international law can do something about it. Both assumptions are questionable. On the one hand, the need for protection of climate migrants often results from the lack of capacities rather than from the unwillingness of a state to protect its population. It must be kept in mind that the impacts of climate change in developing states such as the Maldives,

Bangladesh and Nigeria do not only affect individuals: they considerably diminish the capacities of states, some of which already face many other severe issues such as poverty, violence and corruption. On the other hand, it is also uncertain that international law can curb the conduct of those states that are able but unwilling to act in a certain way. There is no direct way to enforce international law (like police does in domestic contexts). The international trade sanctions that are often used against pariah states affect the population more than their leaders. In any case, a treaty only obligates those states that have decided to ratify it. Most of the norms that an instrument on the protection of climate migrants would contain are already norms of international law, and simply rehearsing those norms will not automatically lead to a change of conduct, although it may contribute to different political, social and cultural processes through which the international community influences domestic politics.

Rather than international regulation, attention should be given to institutional governance as a possible element to promote international cooperation with regard to climate migration and other forms of migration. In the many states that show willingness but are unable to provide protection, cooperation is essential to supplement the capacities that a country needs, among others through international assistance and capacity building. In those other countries that would be able but are unwilling to comply with their obligations, international socialization would help to prompt compliance. Rather than states-to-state discussions, an international organization would provide a greater authority as a unique voice, relatively independent from global day-to-day politics, established on a solid expertise.

Therefore, perhaps the most worrisome issue raised by the debate on climate migration is the absence of an international institution with a specific mandate of protecting migrants. On the one hand, the UN High Commissioner for Refugee, which is the "UN refugee agency," has

developed significant expertise on assistance and protection, but its mandate is narrowly conceived. The agency's initial focus on refugees has been extended to other persons of concern, such as stateless persons, returnees, asylum seekers, and some internally-displaced persons, and it has provided some assistance in responding to natural disasters. Yet, the UNHCR has no general mandate covering generally all migrants or climate migrants. On the other hand, the International Organization for Migration (IOM) is a self-standing international organization, outside of the United Nations system, which has significantly expanded its membership since the end of the Cold War, reaching 155 parties in January 2014, but has no proper protection mandate. The IOM provides logistical assistance as requested by states, for instance with regard to the control of migration and to the recruitment, transfer and voluntary return of migrants. As the UN Special Rapporteur on the Human Rights of Migrants recently noted, "the mandate and funding of IOM pose structural problems with regard to fully adopting a human rights framework for its work: both would need to be revised if the organization is to become a key player in the promotion and protection of the human rights of migrants" (Crépeau 2013). The Special Rapporteur considered new institutional arrangements, such as a new UN agency, the expansion of the mandate of the UNHCR or the transformation of that of the IOM, or, on a shorter term, a set of measures to strengthen the current institutional framework such as through increasing the frequency of High-Level Dialogues on Migration and Development within the UN General Assembly. Such options suggest relevant responses to many of the questions raised by the debate on climate migration.

Other institutional questions relate to the ability of today's international institutions to channel efficient international funding to support development and capacity building, in particular in countries affected by climate change. Important discussions are on-going, within the climate regime, on international funding for climate change adaptation as well as loss and damage

mechanisms that may support countries affected by climate change. The voluntary nature of states' contributions and the limited amounts proposed so far fail however to respond to the constant calls for the responsibility of greenhouse gas emitters.

Conclusion

Social progress rarely comes straightforwardly from fully reasoned ethical arguments. Rather, biased representation and emotions are some of the factors that allow the success of certain arguments instead of others in public deliberation (Crawford 2006). That the concept of climate migration is essentially flawed and virtually impossible to implement should accordingly not be the end of our discussion: because of its ability to generate momentum for change, the concept appears as a rare opportunity for meaningful progress toward fairer international governance. The refugee regime succeeded in the post-Second World War thanks to its ability to reconcile individuals' rights with states' "enlightened self-interests" (Hathaway 2005), thus fostering an important step toward what was to become international human rights law.

The concept of climate migration is a powerful one as it calls to two of our deepest contemporary fears: climate change and migration. Doing nothing in front of such fears is politically impossible, while granting an individual status to "climate migrants" is practically impossible. It belongs to us to foster advocacy and create institutions that are able to direct the momentum for change toward meaningful progress toward the protection of the rights of migrants and the responsibility of greenhouse gas emitters. There are major risks, however, that such fears may rather fuel xenophobia and tense the relations between developed and developing countries, or at least impose inappropriate policy priorities on resource-constrained states.

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