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Environmental Migration: Prospects for a Regional Governance in the Asia-Pacific Region

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Abstract

The Asia-Pacific region is particularly concerned by forecasts that hundreds of million persons would be displaced by the mid-century 'because of' environmental change, given the high density of population in low-lying coastal areas and mega-deltas (for example, Ganges-Brahmaputra, Mekong), the high vulnerability of low-lying island developing states (for example, the Maldives, Tuvalu) and the low development of many of those regions. A journalistic but also academic discourse has developed to claim that the international community should protect the 'climate refugees', through extending or replicating the 1951 *Geneva Convention* on (political) refugees to those displaced by climate change-related environmental changes. However, many field studies have shown that environmental changes do not directly cause specific individual migration, but rather exacerbate existing migration flows. Rejecting the approach of a universal convention, a growing academic consensus is that regional institutions may be more efficient to deal with specific situations. In this context, this article argues that the Asia-Pacific region may play a leading role in defining an international governance of climate migration. It suggests a model of supra-national regional governance, which could serve as benchmarks, along with a multi-civilisational forum to work towards universal standards.

I. *Introduction*

Environmental migration in the context of climate change emerged as a governance issue over the last decade, but became a pressing issue over the last

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year. How to deal with possibly hundreds of millions of individuals forcedly displaced, in particular by sea level rise in coastal areas and low-lying islands, desertification, and more frequent and more extreme weather events?[1] The *Geneva Convention*[2] protects refugees displaced 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion',[3] but environmentally induced migrants usually do not fall within this definition. The framework of international human rights law certainly applies to these migrants, but it is neither sufficiently precise nor sufficiently ambitious.[4] The Guiding Principles on internally displaced persons, in particular, may be a source of inspiration — for, after all, all environmentally induced migrants will be displaced within the borders of their own state[5] — but the Principles do not comprise a constraining document and their influence on states' conduct is uncertain. The nascent literature on environmental migration identifies several competing grounds for an international engagement.[6] A first ground lies in multiple reflections on the notion of a distributive justice; it stems from human rights or humanitarian discourses. It emphasises the harm to humans resulting from environmental change, especially in the case of climate migration. In particular, it highlights the incongruity between 'political' refugees, currently protected by a specific international legal regime, and those whose displacement is induced by environmental change but who benefit from no legally binding protection. Many works focused on rights-based approaches call for significant engagement by the international community to protect environmentally induced migrants,[7] but they fail to explain why states would agree to any significant action.

A second ground for international governance is based on responsibility. Part of the literature highlights the unfairness of the international distribution of potential harm from climate change (mostly in the 'global south') compared with the distribution of advantages gained from greenhouse gas emissions (mostly for the 'global north', at least if historical emissions are taken into account).[8] From a legal perspective, the argument faces multiple hurdles, in particular due to the indirect causation and the sharing of responsibility among many polluting states.

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[1] Christian Aid, *Human Tide: The Red Migration Crisis*, 14 March 2007, 48.

[2] *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954).

[3] Ibid art 1(A)(2).

[4] See generally François Crépeau, Special Rapporteur, *Report on the Human Rights of Migrants*, UN Document A/67/299 (13 August 2012).

[5] See, eg, Foresight: Migration and Global Environmental Change: Final Project Report: Executive Summary (The Government Office for Science, 2011) ('Foresight Report').

[6] B Mayer, 'Fraternity, Responsibility and Sustainability: The International Legal Protection of Climate (or Environmental) Migrants at the Crossroads' in Michel Morin et al (eds), *Responsibility, Fraternity and Sustainability in Law* (LexisNexis, 2012) 723; J McAdam and B Saul, 'An Insecure Climate for Human Security? Climate-Induced Displacement and International Law' in Alice Edwards and Carla Ferstman (eds), *Human Security and Non-Citizens: Law, Policy and International Affairs* (Cambridge University Press, 2009) 3.

[7] See, eg, E Brindal, 'Asia Pacific: Justice for Climate Refugees' (2007) 32 *Alternative Law Journal* 240.

[8] See, eg, J Ikeme, 'Equity, Environmental Justice and Sustainability: Incomplete Approaches in Climate Change Politics' (2003) 13(3) *Global Environmental Change* 195.

The notion of a 'common but differentiated responsibility' may be put forward to plead for a prevailing role of Western states in bearing the cost of environmental migration.

A last ground for international governance relates to the notion of a complex interdependence; up to now, it has mainly been discussed in security spheres. It is based on the idea that states should act immediately to prevent both future political instability in partner or neighbouring countries and massive illegal migration, as both phenomena could exacerbate international drug, arms and human trafficking, or even terrorism. In contrast with the two other narratives, a security-based approach provides a credible answer to the question of why states would agree to act. In the past, protecting one's own interests by mitigating external threats has proved a great incentive for many states. Hathaway demonstrated that, in the period immediately following World War II, states' agreements to protect political refugees through a binding international convention resulted from a similar security-based narrative — more precisely, a shared willingness to 'govern disruptions of regulated international migration in accordance with the interests of states'.[9] The same incentive may be instrumental to decide states to take action relating to environmental migration. Yet, the challenge of the security-based narrative is to develop an ethical dimension — self-protection is certainly an agreeable goal, but the promise of international law lies in the commitment to supra-national coordination. While the climate security literature is arguably the most influential, it also highlights the risk of a 'fortress' response.

This article discusses the challenges of governing environmental migration, in particular in the context of the Asia-Pacific region. Section II examines the adaptability of international governance to environmental migration; specifically, it identifies several hurdles faced by global governance. Section III explores the possibilities of a regional governance of environmental migration in the Asia-Pacific region, showing that the dynamics and increased legitimacy of regional governance may help avoid some of the hurdles facing global governance.

II. *Challenges of Adapting International Governance to Environmental Migration*

This section inquires whether international governance is capable of adapting to the issues raised by environmental migration. It deals with the perception and analysis of environmental migration before discussing the possible actions and remaining hurdles.

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[9]   J C Hathaway, 'Reconsideration of the Underlying Premise of Refugee Law' (1990) 31 *Harvard International Law Journal* 133.

A. *Perception: The lack of empirical data*

Adaptation consists in integrating new circumstances in an existing system. Yet the adaptation of international governance to environmental migration is impeded by striking uncertainties regarding the nature and scope of this new phenomenon. The lack of empirical data regarding environmental migration is commonly highlighted. Numbers, Gemenne put forward, 'have become one of the most contentious issues in the debates on environmental migration'.[10] Significant differences appear between different numbers put forward by different studies, regarding both the stock of exiting environmentally induced migrants and, even more, predictions of future movements. By 2050, studies predicted between 150 million and one billion migrants.[11] Myers' estimates, in particular, have been criticised as mere speculation; Myers himself acknowledged that his estimations were based on 'heroic extrapolations'.[12] Some numbers are certainly inflated in order to attract greater political interest at the cost of certain credibility when such alarmist predictions do not materialise.[13] Accurate global figures can hardly be collected when, as Gemenne states, '[m]any developing countries lack the statistical capacity to monitor migration movements'.[14] Even beyond such methodological issues, the absence of commonly agreed-upon definitions also impedes any reliable measurement of environmental migration. Already in 1993 Suhrke recalled that 'broad categorizations invite large numbers'.[15] Most statistical measurement and predictions confuse internal and international, forced and 'voluntary', temporary and permanent movements of population.

If numbers and predictions remain a delicate art, it is however already possible to identify and describe scenarios prone to induce environmental migration. Walter Kälin distinguished between five scenarios of environmental migration:

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[10] François Gemenne, 'Why the Numbers Don't Add up: A Review of Estimates and Predictions of People Displaced by Environmental Changes' (2011) 21 *Global Environmental Change* S41, S41.

[11] Norman Myers, 'Environmental Refugees in a Globally Warmed World' (1993) 43(11) *BioScience* 752; Christian Aid, above n 1. See also *Climate Change and its Possible Security Implications: Report of the Secretary-General*, UN GAOR, 64th sess, Provisional Agenda Item 114, UN Doc A/64/350 (1 September 2009) UNHCR, 54 <http://www.unhcr.org/refworld/pdfid/4ad5e6380.pdf>.

[12] Cited in Oli Brown, 'The Numbers Game' (2008) 31 *Forced Migration* 8, 8.

[13] See, eg, Axel Bojanowski, 'Feared Migration Hasn't Happened: UN Embarrassed by Forecast on Climate Refugees', *Spiegel Online* (online), 18 April 2011 <http://www.spiegel.de/international/world/0,1518,757713,00.html>; Amos Aikman, 'World Still Waiting for "50 Million Climate Refugees by 2010"', *The Australian* (online), 21 April 2011 <http://www.theaustralian.com.au/national-affairs/world-still-waiting-for-50-million-climate-refugees-by-2010/story-fn59niix-1226042490227>.

[14] Gemenne, 'Why the Numbers Don't Add up: A Review of Estimates and Predictions of People Displaced by Environmental Changes', above n 10, S48.

[15] Astri Suhrke, 'Pressure Points: Environmental Degradation, Migration and Conflict' (Paper presented at Environmental Change, Population Displacement, and Acute Conflict workshop, Ottawa, June 1991) CMI, 6 <http://www.cmi.no/publications/1993%5Cpressure_points.pdf>.

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 salinization 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'.[16]

Each scenario is likely to induce different forms of migration: disaster-driven migration may be temporary, but environmental degradation is likely to lead to permanent migration, and sinking island states may cause international migration.

Specific regions that are particularly likely to experience one of these scenarios — so-called 'hotspots' — may be identified.[17] Climate change will affect the Asia-Pacific region more than any other region of the world, except Africa.[18] According to the Intergovernmental Panel on Climate Change ('IPCC'), '[a]pproximately 1 billion people in South, South-East, and East Asia would face increased risks from reduced water supplies, decreased agricultural productivity, and increased risks of floods, droughts and cholera'.[19] The IPCC also highlighted that '[t]he long-term sustainability' of island societies in the Pacific 'is at great risk from climate change'.[20] Because high density and relatively low development add to physical exposure, the Asia-Pacific region counts many hotspots of environmental migration, and a higher frequency of additional migrants than any other region. EACH-FOR, a research program funded by the European Commission between 2007 and 2009, carried out case studies and showed that environmental change directly or indirectly induced displacement in or from Bangladesh, China, Kazakhstan, Kyrgyzstan, Tajikistan,

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[16]   Walter Kälin, 'Conceptualizing Climate-Induced Displacement' in Jane McAdam (ed), *Climate Change and Displacement: Multidisciplinary Perspectives* (Hart Publishing, 2010) 85.

[17]   Koko Warner et al, 'In Search of Shelter: Mapping the Effects of Climate Change on Human Migration and Displacement' (May 2009) Care, 3ff <http://www.care.org/getinvolved/advocacy/pdfs/Migration_Report.pdf>.

[18]   R V Cruz et al, 'Asia' in M L Parry et al (eds), Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (Cambridge University Press, 2007) 469, 471 <http://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-chapter10.pdf>; see also Louis Lebel, 'Climate Change, Water Insecurities and Food Systems in Monsoon Asia' in Christine Loh, Andrew Stevenson and Simon Tay (eds), Climate Change Negotiations: Can Asia Change the Game? (Civic Exchange, 2008) 88.

[19]   S H Schneider et al, 'Assessing Key Vulnerabilities and the Risk from Climate Change' in M L Parry et al (eds), above n 17, 779, 791 <http://www.ipcc.ch/pdf/assessment-report/ar4/wg2/ar4-wg2-chapter10.pdf>.

[20]   Ibid.

Tuvalu and Vietnam.[21] Regarding the first scenario, a study by the Office for the Coordination of Humanitarian Affairs reported that 31 of the 36 million people displaced by disasters (other than droughts) in 2008 were Asian.[22] Regarding the second scenario, Bangladesh and the Mekong delta in Vietnam are two of the most prone regions for migration induced by slow-onset environmental degradation (possibly triggered by sudden disasters).[23] As for the third scenario, small island developing states of the Pacific Ocean (Tuvalu, Kiribati) or the Indian Ocean (Maldives) have attracted most attention.[24] As for the fourth and fifth scenarios, few empirical studies have yet been carried out.

B. *Analysis: Conceiving an indirect environmental inducement to migration*

Being perceived as a phenomenon, environmental migration remains to be understood as a concept. A general tendency of the literature and even more of the media is to conceive environmental 'refugees' as an exception to the rule of sedentariness (and, if need be, in situ adaptation to environmental change). This neglects the constant adaptation of human beings through displacement, all along its history and before. In the Asia-Pacific region perhaps even more than elsewhere, environmentally driven displacements are not new; they are a constant reality of human societies.[25] Much organised resettlement occurred during the 20th century. In one instance out of many, in 1936, the village of

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21   Alice Poncelet, *EACH-FOR Case Study Report: Bangladesh, The Land of Mad Rivers* (2009) <http://www.each-for.eu/documents/CSR_Bangladesh_090126.pdf>; Qian Zhang, *EACH-FOR Case Study Report: China (Inner Mongolia)* (2009) <http://www.each-for.eu/documents/CSR_Inner_Mongolia_090331.pdf>; CEDEM, *EACH-FOR Case Study Report: Forced Migration and the Three Gorges Dam* (2009) <http://www.each-for.eu/documents/CSR_Three_Gorges_Dam_090317.pdf>; Dina Bulesheva and Arustan Joldasov, *EACH-FOR Case Study Report: Kazakhstan* (2009) <http://www.each-for.eu/documents/CSR_Kazakhstan_090330.pdf>; Emil Nasritdinov et al, *EACH-FOR Case Study Report: Kyrgyzstan* (2009) <http://www.each-for.eu/documents/CSR_Kyrgyzstan_090204.pdf>; P Sh Khakimov and M Sh Mahmadbekov, *EACH-FOR Case Study Report: Republic of Tajikistan* (2009) <http://www.each-for.eu/documents/CSR_Tajikistan_090330.pdf>; François Gemenne and Shawn Shen, *EACH-FOR Case Study Report: Tuvalu and New Zealand* (2009) <http://www.each-for.eu/documents/CSR_Tuvalu_090215.pdf>; Olivia Dun, *EACH-FOR Case Study Report: Viet Nam* (2009) <http://www.each-for.eu/documents/CSR_Vietnam_090212.pdf>.

22   Internal Displacement Monitoring Centre, Monitoring Disaster Displacement in the Context of Climate Change: Findings of a Study by the United Nations Office for the Coordination of Humanitarian Affairs and the Internal Displacement Monitoring Centre (September 2009) 11. Even if the 15 million persons displaced by the Sichuan earthquake are omitted given the exceptionality of this disaster and the lack of relation with the environment, Asia is still more affected than any other region, both in absolute terms and per capita.

23   Poncelet, above n 21; Olivia Dun, 'Migration and Displacement Triggered by Floods in the Mekong Delta' (2011) 49 *International Migration* 200.

24   Maryanne Loughry and Jane McAdam, 'Kiribati — Relocation and Adaptation' (2008) 31 *Forced Migration Review* 51; Gemenne and Shen, above n 21; *UN Expert Urges Maldives to Tackle Displacement Caused by Climate Change* (21 July 2011) UN News Center <http://www.un.org/apps/news/story.asp?NewsID=39111>.

25   See generally John Campbell, 'Climate Change and Population Movement in Pacific Island Countries' in Bruce Burson (ed), *Climate Change and Migration: South Pacific Perspectives* (Institute of Policy Studies, Victoria University, 2010) 29.

Naikeleyaga in Kabara, eastern Fiji, was resettled two kilometres away from the sea, after a cyclone partly destroyed it.[26] Although certainly less documented, spontaneous migration was also constantly induced by environmental factors.[27] Climate change may be new, but not its consequence; in many places within Asia and the Pacific that are particularly vulnerable to changing environmental conditions, people have always and constantly been adjusting to environmental change through diverse migratory strategies. Climate change — a global anthropogenic and sudden environmental change — however, is likely to exacerbate an existing phenomenon.

Yet, because the environmental inducement to displacement in the context of climate change is perceived as a well-circumscribed exception to sedentariness, there have been many attempts to define a workable definition of 'climate refugees' or other 'environmental migrants' as an enforceable legal category — a group of persons who can easily be distinguished from other individuals and be treated differently. After renouncing the notion of 'climate refugee' as a legal misnomer, some academics invented alternative notions, such as 'environmental migrants'[28] or 'environmentally displaced persons'.[29] However, at least two other kinds of conceptual issues may be raised. First, these notions seem to have little homogeneity, as they make no distinction between internal or international, temporary or permanent, forced or voluntary, spontaneous or organised migration. According to existing proposals, all of these

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[26] Ibid 36. See also Richard Bedford and Charlotte Bedford, 'International Migration and Climate Change: A Post- Copenhagen Perspective on Options for Kiribati and Tuvalu' in Burson (ed), above note 25, 89, 93ff.

[27] See Epeli Hau'ofa, 'Our Sea of Islands' in *A New Oceania: Rediscovering our Sea of Islands* (University of the Pacific, 1993) 2; see also Grant McCall, 'Migration in Oceania: A Quick Overview of the Settlement and Continuing Occupation of an Aquatic Continent' in Katarina Ferro, Margot Wallner and Richard Bedford (eds), *Migration Happens: Reasons, Effects and Opportunities of Migration in the South Pacific* (LIT Verlag, 2006) 29; Richard Bedford, 'Pasifika Mobility: Pathways, Circuits, and Challenges in the 21st Century' in Alastair Bisley (ed), *Pacific Interactions: Pasifika in New Zealand — New Zealand in Pasifika* (Institute of Policy Studies, Victoria University, 2008), 85 <http://ips.ac.nz/publications/files/ 0948897a067.pdf>; Graeme Hugo et al, *Labour Mobility in the Asia-Pacific Region: Dynamics, Issues and a New APEC Agenda: A Survey and Analyses of Governance Challenges on Labour Migration for APEC Economies* (Institute of Southeast Asian Studies, 2008); John Connell and Dennis Conway, 'Migration and Remittances in Island Microstates: A Comparative Perspective on the South Pacific and the Caribbean' (2000) 24 *International Journal of Urban and Regional Research* 52; Richard P C Brown and Dennis A Ahlburg, 'Remittances in the South Pacific' (1999) 26 *International Journal of Social Economics* 325; Stephen Castles, 'Migration Settlement, Transnational Communities and State Strategies in the Asia Pacific Region' in Robyn Iredale, Charles Hawksley and Stephen Castles (eds), *Migration in the Asia Pacific: Population, Settlement and Citizenship Issues* (Edward Elgar, 2003) 3; Manuhuia Barcham, Regina Scheyvens and John Overton, 'Rethinking Polynesian Mobility: A New Polynesian Triangle?' (CIGAD Working Paper Series 3/2007, 2007) <http://muir.massey.ac.nz/ bitstream/handle/10179/928/wps_Barcham%20et%20al%20wp%203_2007.pdf?sequence=3>.

[28] F G Renaud et al, 'A Decision Framework for Environmentally Induced Migration' (2011) 49(S1) *International Migration* e5, e12-e14.

[29] CRIDEAU, 'Draft Convention on the International Status of Environmentally-Displaced Persons' (2008) 39 *Revue de Droit de l'Université de Sherbrooke* 451, 461–2; CIDCE, 'Draft Convention on the International Status of Environmentally Displaced Persons (Second Version — May 2010)' (2010) <http://www.cidce.org/ReseauDeplaces/index.htm>.

migrants would need an *analogous* (though not necessarily *identical*) legal protection: all should share a core of rights, although some additional rights may differ. But is there *anything* common between a retired Canadian deciding to go and live in Florida to avoid Canadian winters, a disparate fisher family from a 'sinking' island, a Nigerien farmer migrating to town to earn some revenue during the dry season, and a Bangladeshi family taking refuge in a shelter during a cyclone? What rationale could justify protection of those individuals and not, say, of any (other) individual suffering in their home country and sufficiently desperate to risk their lives crossing seas on overcrowded rafts or travelling in freight trains? The discourse on the protection of environmentally induced migrants assumes that those migrants are induced by one single phenomenon, global anthropogenic climate change, the responsibility of which would be borne by industrialised states. This assumption is often misleading — as environmental migration follows a cluster of causes — but it is also unhelpful — as there is no clear link between the cause of migration and the migrant's need for protection.

Here lies the second issue: the difficulty of determining the causal link between climate change and environmentally induced migrants. The difficulty is two-fold; two separate causal links should be identified. On the one hand, a causal relation should be established between global climate change and a local, specific environmental change. As argued earlier, environmental changes have always been an inducement to migration, although this inducement is currently exacerbated by the contemporary climate change. In other words, individual environmental phenomena are not necessarily caused by climate change. Scientific evidence that climate change results among other things in more frequent droughts is not sufficient to assess that a given drought is caused by climate change — that it would not have happened if climate had not changed. After all, there were hurricanes, desertification and sinking islands before climate change, and greenhouse gas emissions do not bear the responsibility for all of these phenomena happening today. Islands are not only 'sinking' because of sea-level rise, but also because of natural tectonic movements and erosion.[30]

On the other hand, in order to determine the status of one person as a 'climate migrant', one would also have to assess the causal link between a specific environmental change and an individual's decision to migrate. However, the notion of 'climate migrants' as individuals who can be singled out from the mass of economic migrants fits only a few circumstances. Dramatic — and highly controversial — forecasts according to which certain small island developing states (Maldives, Tuvalu, Kiribati) would have to be evacuated because of sea level rise draw a wrong picture of environmental changes as direct, isolable factors of migration.[31] In most cases, environmental changes, in

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[30] See, eg, Steve Marshall, 'Carteret Islands: That Sinking Feeling' on *World's Untold Stories* (18 April 2008) <http://www.cnn.com/CNNI/Programs/untoldstories/blog/2007/05/carteret-islands-that-sinking-feeling.html>.

[31] Carol Farbotko, 'Tuvalu and Climate Change: Constructions of Environmental Displacement in the *Sydney Morning Herald*' (2005) 87 *Geografiska Annaler: Series B, Human Geography* 279; François Gemenne, 'Tuvalu, un laboratoire du changement climatique?' (2010) n°204(4) *Revue Tiers Monde* 89; Kälin, above n 16, 85–6.

particular slow-onset degradation, are only one indirect (though potentially instrumental) factor of migration within a cluster of causes. Rather than a direct inducement to migration, environmental change generally contributes to a socio-economic context prone to result in a certain frequency of migration:[32] 'climate migrants' most of the time *are* economic migrants, but in circumstances where environmental change contributed to a rarefaction of natural resources at the place of origin, thus indirectly impacting individual behaviours. As Durkheim's classical works revealed that '[e]ach society is predisposed to contribute a definite quota of voluntary deaths'[33] and identified different underlying factors *influencing* the *frequency* of suicides in a society, environmental changes often encourage migration but are rarely a direct cause obliging one individual to seek a new life elsewhere.

This should not, however, lead to the opposite simplistic conclusion according to which environmental change does not 'force' people to move. Rather, the dichotomy between 'voluntary' economic migrants and 'forced' refugees is inherently false. Economic conditions leading to migration, be they triggered by an environmental change or not, can be and often are tragic. Deprivation of social and economic rights may be as strong an inducement to migrate as political persecution (that is, deprivation of civil and political rights).

The difficulty of establishing a causal link between climate change and an individual's behavior would often make it impossible to implement the concept of 'environmental migrants' as a legal category. However, climate change *is* inducing additional (economic) migrants in many affected societies. Flows of internally displaced persons and of out-migrants will continue to grow, and doing nothing is not an ethically acceptable reaction. Environmental migration is not a tag that is often placed on individual migrants, but it is a phenomenon likely to exacerbate existing tensions between the natural movements of individuals within and between sovereign states and the modern paradigm of migration control.

C. *Action: Utopian academics and pragmatic actors*

Following the analysis of environmental migration as a phenomenon, action is required to adjust societies. Academics suggested that an international convention be ratified that would essentially resemble the *Refugee Convention*.[34] These proposals clearly follow a rights-based narrative as they recommend a 'systems of global governance for the recognition, protection and resettlement of climate refugees'.[35] Boas and Biermann, for instance, refer to five guiding

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[32] EACH-FOR, *Synthesis Report* (2009), 71 <http://www.each-for.eu/documents/EACH-FOR_Synthesis_Report_090515.pdf>.

[33] Emile Durkheim, *Suicide, A Study in Sociology* (The Free Press, 1897) Internet Archive, 51 <http://www.archive.org/details/suicidestudyinso00durk>.

[34] *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) ('*Refugee Convention*').

[35] 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, 61; David Hodgkinson et al, '"The Hour When the Ship Comes in": A Convention for Persons

principles, which all endeavour to establish an extensive yet efficient protection regime:

1.   the 'Principle of Planned Re-location and Resettlement';
2.   the 'Principle of Resettlement Instead of Temporary Asylum';
3.   the 'Principle of Collective Rights for Local Populations';
4.   the 'Principle of International Assistance for Domestic Measures'; and
5.   the 'Principle of International Burden-sharing'.[36]

In order to ensure funding of resettlement, all projects propose that an international funding mechanism be established.[37]

It was naturally submitted that such proposals lacked realism, at least in the short or middle term. Thus, Williams put forward that:

> taking into consideration the unwillingness of states to compromise their sovereignty, and acknowledging the reluctance of the United States to agree to the most basic of commitments via the Kyoto Protocol, it would seem unlikely that a new global agreement could be reached specifically in relation to climate change displacement.[38]

McAdam joined Williams and 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.[39]

International organisations also expressed concerns and a certain readiness to take action on environmental migration-related issues. Research projects were coordinated by the 'Climate Change, Environment and Migration Alliance', an informal network putting together relevant international organisations (IOM, UNEP and OCHA), research centres (UNU-EHS and the university of Sussex) and NGOs (Munich Re Foundation, the Stockholm Environment Institute and WWF). The IOM carried out numerous projects, mainly with the view of avoiding migration. In the Asia-Pacific region, these projects aimed at building resilience to climate change[40] and developing disaster

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Displaced by Climate Change' (2009), 13 <http://www.ccdpconvention.com/documents/ Hour_When_Ship_Comes_In.pdf>.

[36]   Biermann and Boas, above n 35, 75–6; see also 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.

[37]   Docherty and Giannini, above n 36, 385ff; Hodgkinson et al, above n 35, 26ff; Biermann and Boas, above n 35, 79ff.

[38]   Angela Williams, 'Turning the Tide: Recognizing Climate Change Refugees in International Law' (2008) 30(4) *Law and Policy* 502, 517.

[39]   Jane Mcadam, 'Swimming against the Tide: Why a Climate Change Displacement Treaty is Not *the* Answer' (2011) 23(1) *International Journal of Refugee Law* 2, 2.

[40]   Indonesia: IOM, *Migration Initiatives Appeal 2010* 107 <http://www.iom.int/jahia/ webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/Migration-Initiatives- Appeal.pdf>. Timor-Leste: IOM, in 'Migration Initiatives Appeal 2010', ibid 99.

risk reduction, management and preparedness[41] and rehabilitation[42] programs, as well as 'human security and stabilization programs'.[43] The IOM also worked on 'preparing assistance to vulnerable populations … affected by natural disasters'[44] in Kyrgyzstan and Turkmenistan and, in Bangladesh, on '[a]dvocating for a policy framework'.[45]

Like the IOM, the UNHCR has increasingly undertaken humanitarian interventions in post-natural disasters. These actions were taken on pragmatic grounds, despite the fact that UNHCR has no formal mandate regarding people affected by natural disasters: the commissioner's 'local and regional capacity' to carry out such interventions in due time was simply unequalled.[46] At the time of the Indian Ocean tsunami in 2004, for instance, the UNHCR was already present in Sri Lanka as part of its mandate on conflict-induced displacement, while the IOM was carrying out missions in Myanmar and Aceh; both organisations could quickly respond to the disaster in these areas.[47]

However, while a 2010 IOM study called for migration to be practised as part of adaptation to climate change,[48] neither the IOM nor the UNHCR seemed to have engaged in any such program, certainly due to lack of mandate and resources. For both institutions, migration appears most often as a last resort to cope with degraded environment, and very rarely as an early, preventive adaptation strategy. At the UNFCCC negotiations, migration was not mentioned in official documents until 2010 when the Cancun Agreements 'enhance[d] action on adaptation' finally called for '[m]easures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation'.[49] It remains uncertain whether migration or resettlement programs are eligible to adaptation funding.

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[41] Cambodia: IOM, 'Migration Initiatives Appeal 2010', ibid 97. Indonesia: IOM, 'Migration Initiatives Appeal 2010', ibid 99. Nepal IOM, 'Migration Initiatives Appeal 2010', ibid 90. Bangladesh See, eg, IOM, 'Migration Initiatives Appeal 2010', ibid 85.

[42] Bangladesh: IOM, 'Migration Initiatives Appeal 2010', ibid 85.

[43] Tajikistan, ibid 113.

[44] Kyrgyzstan Ibid 107. Turkmenistan IOM, 'Migration Initiatives Appeal 2010', ibid 114.

[45] Bangladesh IOM, 'Migration Initiatives Appeal 2010', ibid 87.

[46] UNHCR Emergency Preparedness and Response, 'Briefing Note: The Management of Humanitarian Emergencies Caused by Extreme Climate Events' (April 2009), 1 <http://www.unhcr.org/4a1e4eb42.html>; see also Antonio Guterres, 'Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective' (2009) <http://www.unhcr.org/4901e81a4.html>.

[47] François Gemenne et al, 'Le rôle des cadres normatifs et des organisations internationales: Une conversation avec Jean-François Durieux (HCR) et Philippe Boncour (OIM)' (2010) 1284 *Hommes et migrations* 128 (interview of J-F Durieux of the UNHCR and P Boncour of the IOM).

[48] IOM, *Disaster Risk Reduction, Climate Change Adaptation and Environmental Migration: A Policy Perspective* (2010), 3 <http://publications.iom.int/bookstore/free/DDR_CCA_report.pdf>.

[49] Conference of the Parties, United Nations Framework Convention on Climate Change, *Report of the Conference of the Parties on its Sixteenth Session, Held in Cancun from 29 November to 10 December 2010 — Addendum — Part Two: Action Taken by the Conference of the Parties at its Sixteenth Session — Decision 1/CP.16: The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention*, UN Doc FCCC/CP/2010/7/Add.1, §14(f).

Generally, no single organisation is in charge of managing or even coordinating environmental migration. Existing institutions with relevant know-how, such as the IOM and the UNHCR, may come to play the role to which no specific institution is specifically dedicated, as long as there is some political will to support such a role. Yet the fact that the emphasis has generally been on reactive humanitarian policies instead of early actions aiming at avoiding, preparing or anticipating migration precisely reflects a lack of such a political will. Unlike that which ambitious academic proposals may suggest, the lack of international action on environmental migration does not result from a lack of institutional know-how, but, instead from a lack of political will to do something. States are arguably reluctant to set up one more institution to which they would be pushed to contribute, or to allow the movement of people who could possibly end up knocking on their doors.

D. *Hurdles: A post-colonial whiff*

Several elements of the current debate on the governance of environmental migration pave the way to a post-colonial critique. It is a striking fact that most current research on environmental migration is carried out within Western institutions. A top international researcher in the field circulated an email among fellow researchers asking if anyone knew 'anyone from the south' knowledgeable about environmental migration to participate in a public event.[50] The Asian Development Bank's Regional Conference on Policy Responses to Climate-Induced Migration in Asia and the Pacific, in Manila in September 2011, was important at least because it was probably the first time such a major international event on environmental migration was organised in a developing country; however, here again, an overwhelming majority of the participants were coming from Australian, European and American institutions. Even more than a program of resources, these anecdotes reflect a system-wide issue of communication: research carried out in the Third World often does not reach the global north.

This is not peculiar to research on environmental migration. However, this is particularly an issue for a nascent field of research dealing with a phenomenon that occurs mostly — and is sometimes perceived as occurring exclusively — in the global south. Developing countries are generally more exposed (many are in tropical regions) and, precisely because they are less developed, they are generally more vulnerable. This combination of a concentration of research capacities in the north and a phenomenon concentrated in the south is a dangerous cocktail for othering and other post-colonial structures of thought.

Thus, Farbotko showed that 'environmental refugees' have been constructed by the Western medias and some NGOs as a vulnerable, passive

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[50] On file with the author.

'other', unable to leave their 'sinking islands'.[51] Even in the academic literature, these 'refugees' are often conceived as a vulnerable but dangerous other, a threat that 'we' must urgently address, rather than an end in itself. Indeed, the very term 'refugee' seems reserved to people of the Third World: when 1.2 million New Orleanians were displaced by Hurricane Katrina in 2005, this term 'was unanimously rebutted by the victims themselves who insisted on being called "evacuees" or "survivors"'.[52] President Bush had to intervene in the debate to assess that the displaced New Orleanais 'are not refugees. They are Americans, and they need the help and love and compassion of our fellow citizens'.[53] Americans are too influential on the making of the dominant global discourse to be subjected to the othering process imposed on Bangladeshis or Nigerians.

Indeed, the abstraction of notions such as 'refugees' or 'environmental migrants', covering extremely heterogeneous situations, reflects a distant understanding of what is happening tens of thousands of kilometres from where such notions are conceived. While most environmentally induced migrants are displaced within the territory of their own state, the notions of 'migrants' and 'refugee', which at least seem to imply an international journey, reflect a Western concern — that those individuals could come and 'invade' 'our' countries. Similarly, the Western domination on the construction of 'environmental migration' as a global concern is reflected in the climate security literature, the emphasis of which is mainly to avoid illegal migration from developing to developed states (for example, Australia, the United States and Europe) and concomitant transnational crime, human trafficking, terrorism or regional instability. Or, at least, the concerns of the Third World for the consequences of environmental migration are peripheral: what is at stake in most security-based literature on environmental migration is the security of the global north.

Moreover, academic research carried out in the north too often calls for a top-down implementation of universal standards or international treaty, but does

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[51]   Farbotko, 'Tuvalu and Climate Change', above n 31; Carol Farbotko, 'Wishful Sinking: Disappearing Islands, Climate Refugees and Cosmopolitan Experimentation' (2010) 51(1) *Asia Pacific Viewpoint* 47; Carol Farbotko, 'The Global Warming Clock is Ticking So See These Places While You Can: Voyeuristic Tourism and Model Environmental Citizens on Tuvalu's Disappearing Islands' (2010) 31(2) *Singapore Journal of Tropical Geography* 224; Carol Farbotko and Heather Lazrus, 'Where is the Glory in Being Called the First Climate Refugees?: Contesting Global Narratives of Climate Change in Tuvalu' (2012) 22(2) *Global Environmental Change* 382; Carol Farbotko, 'Skilful Seafarers, Oceanic Drifters or Climate Refugees? Pacific People, News Value and the Climate Refugee' in T Threadgold, B Gross and K Moore (eds), *Migrations and the Media* (Peter Laing Publishing, 2012) 119.

[52]   François Gemenne, 'What's in a Name: Social Vulnerabilities and the Refugee Controversy in the Wake of Hurricane Katrina' in Tamer Afifi and Jill Jäger (eds), *Environment, Forced Migration and Social Vulnerability* (Springer, 2010) 36; see also Adeline Masquelier, 'Why Katrina's Victims Aren't Refugees: Musings on a "Dirty" Word' (2006) 108(4) *American Anthropologist* 735.

[53]   White House Press Secretary Office, 'President Meets with Representatives from National Voluntary Organizations (Press Release, 6 September 2005), cited in Gemenne, 'What's in a Name: Social Vulnerabilities and the Refugee Controversy in the Wake of Hurricane Katrina', above n 52, 37.

not conceive any bottom-up assessment of these standards. Developing states are seen as little more than holders of one single duty: complying with 'universal standards'. Biermann and Boas proposed a 'global protocol' to protect 'climate refugees', in particular in Bangladesh,[54] apparently without giving much attention to the fact that neither Bangladesh nor India is party to the *Refugee Convention*, and that those two states (those most severely concerned by environmental migration) are therefore even less likely to ratify a new, similar treaty. In this conception, it seems that India and Bangladesh *should* ratify these treaties and the fact that they did not seems, indeed, irrelevant. Yet if concerns relating to the governance of environmental migration are new, it is essential to learn from empirical experience, to reflect best practices and to discourage what appears as counterproductive or inefficient policies. Is it even conceivable that 'universal standards', defined *in abstracto*, in Europe, for developing countries, could have it right from the outset?

Finally, the Western bias of policy-oriented research on environmental migration and its isolation from empirical evidence has led to an emphasis of the international governance (international organisations) on avoiding migration, as opposed to the model of 'migration as adaptation'.[55] As shown, the IOM's action focused on building resilience and helping populations face natural disasters, far from the purpose assigned by its constitution: to facilitate 'orderly migration' and, among other things, 'voluntary return migration' (not to avoid migration).[56] This discrepancy reflects a climate of widespread hostility toward migration, mainly in central states. The debate on environmental migration was often reduced to the Western fear that a tide of 'environmental refugees' from developing countries would hit developed states. Increasingly, however, policy-oriented research emphasises the risks of maladaptation and the need to facilitate migration as adaptation, at least in circumstances where migration cannot be avoided.[57] Migration as adaptation is tolerated by the 'international community' as a guarantee for a sustainable security, but it is also controlled and contained. The ultimate goal is and remains to prevent migration to the West.

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[54] Biermann and Boas, above n 35, 10, 12.

[55] See in particular Jon Barnett and Michael Webber, 'Migration as Adaptation: Opportunities and Limits' in Jane McAdam (ed) *Climate Change and Displacement: Multidisciplinary Perspectives* (2010) 41; IOM, 'Disaster Risk Reduction, Climate Change Adaptation and Environmental Migration: A Policy Perspective', above n 48; Jon Barnett and Natasha Chamberlain, 'Migration as Climate Change Adaptation: Implications for the Pacific' in Bruce Burson (ed) *Climate Change and Migration: South Pacific Perspectives* (Institute of Policy Studies, Victoria University, 2010) 51; R McLeman and B Smit, 'Migration as an Adaptation to Climate Change' (2006) 76 *Climatic Change* 31; ADB, *Facing the Challenge of Environmental Migration in Asia and the Pacific* (2011).

[56] Constitution of the International Organization for Migration 1953 art 1.

[57] ADB, 'Facing the Challenge of Environmental Migration in Asia and the Pacific', above n 55; Barnett and Webber, 'Migration as Adaptation: Opportunities and Limits', above n 55; IOM, 'Disaster Risk Reduction, Climate Change Adaptation and Environmental Migration: A Policy Perspective', above n 48; Barnett and Chamberlain, 'Migration as Climate Change Adaptation: Implications for the Pacific', above n 55; McLeman and Smit, 'Migration as an Adaptation to Climate Change', above n 55.

Such a Western drift is highly worrying. Many efforts for a better governance may be fruitless if they are not headed in the right direction. The Western debate has often been blind to the voices of the would-be 'climate refugees'. Not enough was made of the islanders' unreadiness to be called 'refugees'.[58] Maldives Prime Minister Gayoom vainly highlighted that calling Pacific Islanders 'refugees' denies their willingness to 'stand up and fight'.[59] As Gemenne and Shen argued, there is a risk of a 'relativist trap ... preventing [Islanders] from developing adequate adaptation strategies':[60] the West seems to have decided that in situ adaptation in Maldives or in Tuvalu is just not possible and 'climate refugees' (so-called even before having moved) are bound to flee.

III. *Regional Legitimacy: Governing Environmental Migration for the Asia-Pacific Region*

In the following section, instead of a global approach, sub-section A argues in favour of regional governance of environmental migration for both pragmatic and 'ideological' reasons. Such a regional governance can be unified, coordinated, or simply consist in a patchwork of subregional or bilateral policies. Sub-section B reflects the timid role of regional institutions in Asia and the Pacific. Sub-section C then discusses the apparent dilemma between regional leadership and extraneous (global) funding. Lastly, sub-section D suggests the model of a multi-civilisational forum of best practice articulating regional and global governance of environmental migration.

A. *Regionalism: Pragmatic and 'ideological' motives*

Two kinds of arguments plead for a regional (rather than global) governance of environmental migration: the pragmatic argument that regional governance is likely to be more efficient, and the 'ideological' argument that Asia should take the lead in dealing with environmental migration occurring in Asia.

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[58] Jane McAdam and Maryanne Loughry, 'We aren't Refugees' [2009] *Inside story*; Karen Elizabeth McNamara, 'Conceptualizing Discourses on Environmental Refugees at the United Nations' (2007) 29 *Population and Environment* 12; Karen Elizabeth McNamara and Chris Gibson, 'We do not Want to Leave our Land': Pacific Ambassadors at the United Nations Resist the Category of "Climate Refugees"' (2009) 40(3) *Geoforum* 475.

[59] M A Gayoom, 'International Assistance can Save our Peoples' in M A Gayoom (ed) *The Maldives: A Nation in Peril* (1998) 29, cited by McNamara and Gibson, above n 58, 479; Gemenne and Shen, 'EACH-FOR case study report: Tuvalu and New Zealand', above n 241; Gemenne, 'Tuvalu, un laboratoire du changement climatique ?', above n 31; McNamara, ibid; Apisai Ielemia, 'A Threat To Our Human Rights: Tuvalu's Perspective On Climate Change' (2007) 44 *UN Chronicle* 18.

[60] Gemenne and Shen, above n 21, 28; for a similar argument in the case of the 'salvation' paradigm and the responsibility to protect, see Frédéric Mégret, 'Beyond the "Salvation" Paradigm: Responsibility to Protect (Others) vs the Power of Protecting Oneself' (2009) 40(6) *Security Dialogue* 575.

1. *The pragmatic reason: good neighbourhood policies*

When utopian plans for a global treaty and universal standards started to fade, several scholars proposed less ambitious and, accordingly, more realistic plans that were to take place in the regional or sub-regional arenas. Williams, for instance, argued 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'.[61] The present author joined this effort and suggested that a resolution of the General Assembly could give the tone of a protection of climate change-induced migrants and encourage the negotiation and implementation of ad hoc agreements.[62] The underlying assumption of this 'regionalisation' of the governance of climate migration is that states would have a greater incentive to agree on curtailing their sovereign rights through regional agreements. Such agreements could refer to specific groups of population instead of the abstract and ill-defined notion of 'environmental migrants': the delicate definitional issues described in the previous section would be displaced from the legal to the political sphere. Thus, states would at least know how far such agreements would bind them. Their readiness to agree on a rule would be more likely if the rule was concrete and clearly circumscribed.

This recent trend in the literature on environmental migration is supported by the experience of regional successes where international governance stalled to tackle migration or environmental issues. Regarding migration, on the one hand, Latin America and Africa went significantly further than the 'universal' *Refugee Convention*; both adopted a more ambitious definition of 'refugee'.[63] Moreover, the 2009 *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* gives a binding force to the universal 'soft law' Guiding Principles on Internal Displacement.[64] Similarly, ASEAN adopted in 2007 the *Declaration on the Protection and Promotion of the Rights*

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[61] Williams, above n 38, 518.

[62] Benoit Mayer, 'The International Legal Challenges of Climate-Induced Migration: Proposal for an International Legal Framework' (2011) 22(3) *Colorado Journal of International Environmental Law and Policy* 357.

[63] *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954); Regional Refugee Instruments and Related, *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama* (22 November 1984); *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*, opened for signature 10 September 1969, 1001 UNTS 14691(entered into force 20 June 1974).

[64] *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, opened for signature 22 October 2009, 49 ILM 86 (entered into force 6 December 2012). See also Commission on Human Rights, *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission Human Rights, Mass Exoduses and Displaced Persons Report of the Representative of the Secretary-General, Mr Francis M Deng, submitted pursuant to Commission resolution 1997/39*, 54th sess, Provisional Agenda Item 9(d), UN Doc E/CN.4/1998/53/Add.2 (11 February 1998) Addendum ('*Guiding Principles on Internal Displacement*'). The *Guiding Principles* are not ratified by states and, therefore, are generally considered as 'soft law' or non-binding law.

of Migrant Workers and established a committee on its implementation, although these institutions have not yet been very effective.[65] This regional relative success contrasts starkly with the lukewarm reception of 'universal standards' in Asia. For instance, the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* was ratified by only one state (the Philippines, a notable country of origin) in the ASEAN.[66] Further, many states in the Asia-Pacific have engaged in regional consultative processes on migration organised by the IOM, in particular the Colombo Process,[67] to facilitate convergence between states as well as their regional socialisation.[68]

Regarding environmental cooperation, on the other hand, strong arguments have been developed in favour of regional governance, in particular in the Asia-Pacific region. In Singapore, Simon Tay highlighted that the incentive to cooperate may be stronger within a regional community of proximate and interdependent states with a relatively homogenous level of development.[69] From Washington DC, the Centre for Strategic and International Studies ('CSIS') put forward the ability of regional cooperation in Asia to 'shar[e] and coordinat[e] physical infrastructure', to 'harmoniz[e] standards and policies', and to 'establish ... norms and expectations for regional policies'.[70] Overall, the CSIS argued that regional organisations may 'develop ... networks of cooperation' where 'officials and leaders from nearby countries who have to interact on border issues or other common problems are more likely to develop close working relationships than those whose home countries are distant and very different'.[71]

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[65] *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers*, adopted 13 January 2007 ('*Cebu Declaration*'); *2007 Statement of the Establishment of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers* (30 July 2007).

[66] Cambodia and Indonesia have signed, but not ratified, the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, GA Res 45/158, UN GAOR, 69th plen mtg, UN Doc A/RES/45/158 (18 December 1990).

[67] Ministerial Consultations on Overseas Employment and Contractual Labour for Countries of Origin in Asia ('Colombo Process'), established in 2003. Its members are Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand and Vietnam. Its partners and observer states (that is, receiving countries) are Bahrain, Italy, Kuwait, Malaysia, Qatar, Republic of Korea, Saudi Arabia and the United Arab Emirates. The IOM Regional Seminar on Irregular Migration and Migrant Trafficking in East and South-East Asia ('Manila Process') has 16 members, all in the East Asia-Pacific region. Australia and New Zealand are members to the Inter-Governmental Consultations on Migration, Asylum and Refugees ('IGC'), along with other Western countries. See, eg, Randall Hansen, *An Assessment of Principal Regional Consultative Processes on Migration* (IOM, 2010).

[68] Colleen Thouez and Frédérique Channac, 'Shaping International Migration Policy: The Role of Regional Consultative Processes' (2006) 29(2) *West European Politics* 370, 386.

[69] Simon Tay, 'The Environment and Southeast Asia: Regionalism, States and Community' in Victor R Savage and May Tan-Mullins (eds), *The Naga Challenged: Southeast Asia in the Winds of Change* (Marshall Cavendish, 2005).

[70] Center for Strategic & International Studies, *Asia's Response to Climate Change and Natural Disasters* (2010), 57–8 <http://csis.org/publication/asia%E2%80%99s-response-climate-change-and-natural-disasters>.

[71] Ibid 57–8.

2. *The 'ideological' reason: accommodating the region's 'will to differ'*[72]

Beside the pragmatic reason, regional governance in the Asia-Pacific region may also be justified on what could be called 'ideological' grounds. I do not use the word 'ideological' here in any pejorative way, but merely to describe a systematic scheme of ideas. It is often said that the alleged absence of any ideology is nothing but a concealed ideology; all ideas are framed by a coherent and systematic scheme of conceptions. Therefore, what is called 'ideology' is, most often, the *other*'s ideology — as one is only conscious of an ideology that differs from one's own.

For some time already, scholars in Asia have strived to create coherent and systematic 'Asian' schemes of ideas — Asian 'ideologies'. In the 1990s, the discourse on so-called 'Asian values' was an attempt to question the 'universal standards' developed in the West and applied to the East (and perhaps a way to justify illiberal governance in some countries). Theoretical works on 'Asian values' typically emphasised the prevalence of sovereignty over international human rights norms[73] and the importance of economic and social rights (thus accusing the West of prioritising civil and political rights),[74] and they put forward holistic approaches, balancing rights with the promotion of social harmony, traditional order and development (as opposed to Western individualism, materialism and hedonism).[75]

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[72] Simon Tay, 'Human Rights, Culture, and the Singapore Example' (1995) 41 *McGill Law Journal* 743, 768; see also B S Chimni, 'Asian Civilizations and International Law: Some Reflections' (2011) 1(1) *Asian Journal of International Law* 39, 40–1.

[73] Jack Donnelly, *Universal Human Rights in Theory & Practice* (Cornell University Press, 2003) 108; L M Singhvi, *Report of the Regional Meeting for Asia of the World Conference on Human Rights*, *Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights (Bangkok Declaration)*, UN Docs A/Conf.157/ASRM/8 and A/Conf.157/PC/59 (7 April 1993) ('*Bangkok Declaration*') [5] ('Emphasize the principles of respect for national sovereignty and territorial integrity as well as non-interference in the internal affairs of States, and the non-use of human rights as an instrument of political pressure').

[74] Donnelly, above n 73, 110; *Bangkok Declaration* 13th recital ('Emphasizing that endeavours to move towards the creation of uniform international human rights norms must go hand in hand with endeavours to work towards a just and fair world economic order'); [10] ('Reaffirm the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the need to give equal emphasis to all categories of human rights'); [19] ('Affirm that poverty is one of the major obstacles hindering the full enjoyment of human rights'); Tay, above n 72, 750; Ibrahim Anwar, 'Luncheon Address' (International Conference on Rethinking Human Rights, Kuala Lumpur, 7 December 1994) <http://ikdasar.tripod.com/anwar/94-29.htm>. See also B S Chimni, 'Third World Approaches to International Law: A Manifesto' (2006) 8 *International Community Law Review* 3, 5.

[75] Donnelly, above n 73, 112; *Bangkok Declaration* 11th recital ('the inherent interrelationship between development, democracy, universal enjoyment of all human rights, and social justice, which must be addressed in an integrated and balanced manner'); Ibrahim Anwar, above n 74:

> In the final analysis, the protection of human rights is but a means to an end. The ultimate object of governance is the establishment and preservation of a civil society, wherein all its members are free to enjoy these fundamental liberties, to pursue happiness, each according to his religion or philosophy. The protection of human rights would be meaningless without the concomitant inculcation of those social values which enhance the quality of life, through education, and cultural and moral upliftment. Liberty must not lead to licentiousness, freedom must not lead to anarchy.

Yet this critique failed to materialise as an 'Eastern' or 'post-colonialist' critique of human rights values. Some elements of the critique have actually been appropriated by 'Western' scholars,[76] but at the same time they lost their 'Asian' originality. Against Lee Kwan Yew and Mahathir Mohamad, prominent Asian researchers argued that the core of human rights is, indeed, universal. Amartya Sen fairly highlighted that '[t]here are no quintessential values that apply to this immensely large and heterogeneous population, that differentiate Asians as a group from people in the rest of the world'.[77] Tay argued that Asia's distinctiveness regarding human rights does not stem from an essential cultural particularism, but rather results from the region's 'will to differ' and to 'evolve[e] on its own path',[78] or even a certain 'public mood ... of disgruntlement with the west'.[79] Indeed, this legitimate 'will to power', as Nietzsche called it,[80] is potentially promising as it may emulate the region's legal creativity; but it also runs the risk of fuelling possibly self-realising conceptions of an ineluctable 'clash' between two (or more) civilisations.

However, the Eastern 'will to power' was soon reincarnated in a new 'ideology' or school of thought: the Third World Approaches of International Law ('TWAIL'). While 'Asian Values' were mainly a Malayan invention, TWAIL ideas matured in the fertile academic ground of New Delhi's Jawaharlal Nehru University ('JNU') and forums of unimpeded academic research. While the former were invented largely in order to justify actual illiberal practices, the latter was developed by liberal academics. Therefore, it is no surprise if TWAIL scholars greatly differs from the 'Asian values' or the ASEAN way. According to Anghie and Chimni:

> while recognising the fundamental importance of the doctrine of sovereignty for advancing Third World interests and for protecting and preserving Third World states against various forms of intervention, TWAIL II scholars have developed powerful critiques of the Third World nation-state, of the processes of its formation and its resort to violence and authoritarianism.[81]

See also William Theodore De Bary, *Asian Values and Human Rights: A Confucian Communitarian Perspective* (Harvard University Press, 2000); Tay, above n 72, 756.

[76] See, eg, David Kennedy, 'Spring Break' (1984) 63 *Texas Law Review* 1377; Frédéric Mégret, 'Where Does the Critique of International Human Rights Stand? An Exploration in 18 Vignettes' in José María Beneyto and David Kennedy (eds) *New Approaches to International Law* (Springer, 2013) 3.

[77] Amartya Sen, 'Human Rights and Asian Values', Sixteenth Morgenthau Memorial Lecture on Ethics & Foreign Policy (1997) 7, 13.

[78] Tay, above n 72, 768; see also Chimni, 'Asian Civilizations and International Law: Some Reflections', above n 2, 40–1.

[79] Jane McAdam, 'Introduction' in Jane McAdam (ed), *Climate Change and Displacement: Multidisciplinary Perspectives* (Hart Publishing, 2010) 4.

[80] Friedrich W Nietzsche, *The Will to Power* (1968). See also Friedrich Nietzsche, *Thus Spake Zarathustra, A Book for All and None* (Thomas Common trans, 2008) <http://ebooks.adelaide.edu.au/n/nietzsche/friedrich/n67a/part1.html> Prologue, V: 'one must still have chaos in one, to give birth to a dancing star'.

[81] A Anghie and B S Chimni, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflicts' (2003) 2(1) *Chinese Journal of International Law* 77, 83.

TWAIL II theorists argue that the protection of the individual may and should justify interference with sovereign states.[82]

However, just like the discourse on the 'Asian values', TWAIL calls for the empowerment of Asia, in order to develop a model of governance that would fully take into account Asia's particularities. In the words of Elliott and Breslin, 'there is no single approach to regional cooperation and governance':[83]

> there is a multiplicity of intergovernmental regional environmental efforts, some highly institutionalised and others not; some embedded in broader regional efforts and others specific only to environmental policy; some fragmented and some coherent; some constrained by the efforts or demands of individual regional powers — hegemonic regionalism — and others more equitable or balanced.[84]

Alvarez similarly underscored that the 'modern' Western ideal of international law consisting of obligations, precision and delegation is not the only way of conceiving relations between peoples, nor even the only way of conceiving international law.[85] Asia may prefer options that Europe left behind when determining the method of 'international' law.

Now, any definitive statement on what an Asian or Pacific conception of international law should be like would readily fall into what Chimni called the 'trap of cultural essentialism in characterising and discussing the features of different civilizations',[86] not least because Asia and the Pacific (and each of them separately) have extremely little civilisational homogeneity.[87] But even if one should refrain from monolithic statements about civilisations, the recognition of their abstract specificity (their right to differ) is instrumental in the achievement of a 'just world under law'.[88]

B. *Actors: The timid role of regional institutions*

While no great success has yet been achieved in the Asia-Pacific region in terms of supra-national governance, hopes come from several elements. First, a

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[82] See, eg, Antony Anghie, 'Universality and the Concept of Governance in International Law' in Edward Kofi Quashigah and Obiora Chinedu Okafor (eds), *Legitimate Governance in Africa: International and Domestic Legal Perspectives* (Martinus Nijhoff, 1999) 21, 39.

[83] Lorraine Elliott and Shaun Breslin, 'Researching Comparative Regional Environmental Governance: Causes, Cases and Consequences' in Lorraine Elliott and Shaun Breslin (eds), *Comparative Environmental Regionalism* (Routledge, Taylor & Francis, 2011) 4.

[84] Ibid.

[85] Jose E Alvarez, 'Institutionalised Legislation and the Asia-Pacific Region' (2007) 5 *New Zealand Journal of Public and International Law* 9, 10; Prabhakar Singh, 'The Scandal of Enlightenment and the Birth of Disciplines: Is Post-Colonial International Law a Science?' (2010) 12 *International Community Law Review* 5, 17.

[86] Chimni, 'Asian Civilizations and International Law: Some Reflections', above n 72, 39.

[87] See, eg, Alvarez, above n 85, 20 ('There is no such thing as an "Asia-Pacific region"'); see also Chimni, 'Asian Civilizations and International Law: Some Reflections', above n 72, 41 (addressing 'Indian civilization' and 'Asian civilizations').

[88] B S Chimni, 'A Just World under Law: A View from the South' (2006) 22 *American University International Law Review* 199, 215; Nancy Fraser, 'Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation' in Larry Ray and Andrew Sayer (eds), *Culture and Economy after the Cultural Turn* (Sage, 1999) 25.

transnational civil society is progressively emerging which plays an increasing role in fostering a regional debate and in pushing for different kinds of formal or informal regional cooperation.[89] The Asian Disaster Preparedness Centre, for instance, aims at pushing for 'safer communities and sustainable development through disaster risk reduction'.[90] Two Christian organisations, the Pacific Conference of Churches and the World Council of Churches (Oikumene), are among the few regional civil society organisations to have addressed the issue of environmental migration as such, at the regional level.[91] Elliott recently highlighted that:

> The impetus for governments to respond regionally to environmental challenges has ... been generated by a growing regional activism and agency on the part of domestic non-governmental organizations ... and transnational civil society groups, some endogenous to the region and others represented by local offices of global organizations.[92]

A step further in the involvement of states, the Asia-Pacific Forum of National Human Rights Institutions, established in 1996, is implementing an advocacy program on the rights of migrant workers;[93] soon, it may want to push further to public policies on environmental migration. As will be discussed in next sub-section, the Asian Development Bank ('ADB') has also shown some interest with regard to environmental migration.

Regional endeavours regarding environmental migration require that Asian and Pacific states accept some degree of international interference within internal affairs. In this regard, two likely candidates for sub-regional cooperation are the SAARC and ASEAN.

As early as 1991, the SAARC recognised that its 'region's ecology is such that it makes it one of the most disaster-prone regions in the world, exposed to a substantial share of the world's floods, droughts, cyclones, landslides, and earthquakes'.[94] In April 2010, the SAARC summit finally adopted the *Thimphu*

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[89] *Contra*, on the Northeast Asian context, Yasumasa Komori, 'Evaluating Regional Environmental Governance in Northeast Asia' (2010) 37 *Asian Affairs: An American Review* 1.

[90] *Core Programs* (2013) Asian Disaster Preparedness Center <http://www.adpc.net/2011/>.

[91] See *Climate Change & Resettlement* (2010) Pacific Conference of Churches <http://www.pcc.org.fj/climateresettle.aspx>. See also Marianne Elliott and David Fagan, 'From Community to Copenhagen: Civil Society Action on Climate Change in the Pacific' in Bruce Burson (ed), *Climate Change and Migration: South Pacific Perspectives* (Institute of Policy Studies, Victoria University, 2010) 61.

[92] Lorraine Elliott, 'Climate Migration: Why it is a Human Security Issue', RSIS Commentaries 28/2011 (25 February 2011) 57 <http://www.rsis.edu.sg/publications/Perspective/RSIS0282011.pdf>.

[93] It includes 21 national bodies. See *Larrakia Declaration: Conclusions, Recommendations and Decisions 1996* <http://www.asiapacificforum.net/about/annual-meetings/1st-australia-1996/downloads/larakia.pdf>; 'Promoting and Protecting the Rights of Migrant Workers' (August 2012) <http://www.asiapacificforum.net/support/training/rights-of-migrant-workers/listing_content/downloads/resources/promoting-and-protecting-the-rights-of-migrant-workers-the-role-of-nhris-2012>.

[94] South Asian Association for Regional Cooperation, *Regional Study on the Causes and Consequences of Natural Disasters and the Protection and Preservation of the Environment* (1991), 198 <http://www.saarc-sec.org/userfiles/Large%20Publications/CCNDPPE/index.php>;

Statement on Climate Change, taking note of the region's particular vulnerability to 'climate change and related disasters making the need for a regional response to meet the challenge of climate change more urgent and compelling'.[95] Accordingly, such a regional program could consist in 'cooperative regional initiatives and approaches, exchange of experiences, knowledge, transfer of technology, best practices to address the challenges posed by climate change'.[96] We are yet to see whether the *Thimphu Statement* will go unheeded, or whether some actions will follow.

ASEAN is another interesting candidate for a sub-regional cooperation. As an 'imagined community'[97] in the making, ASEAN has gone further than other regional organisations in Asia and the Pacific when dealing with the rights of migrant workers and the protection of the environment.[98] However, the outcomes have been limited: no binding agreement could yet be adopted on the rights of migrant workers,[99] and the Agreement on Trans-boundary Haze Pollution was not ratified by Indonesia, the main regional source of haze pollution.[100] Generally speaking, ASEAN member states have proved reluctant to accept international interference, thus significantly limiting the prospects of an approach based on compulsory rights-based standards.[101] Nonetheless, Koh and Robinson remain optimistic. Accordingly, 'ASEAN appears to have sustained a regional system for collaboration'[102] and 'has been remarkably successful in shaping a common regional environmental policy framework'.[103] Regarding

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see also Ashok Swain, 'South Asia, its Environment and Regional Institutions' in Lorraine Elliott and Shaun Breslin (eds), *Comparative Environmental Regionalism* (Routledge, Taylor & Francis, 2011) 76.

[95] *Thimphu Statement on Climate Change*, Doc No SAARC/SUMMIT.16.15 (2010), 10th recital.

[96] Ibid 13th recital.

[97] 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); inspired by the concept proposed by Benedict Richard O'Gorman Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso, 1991).

[98] On migrant workers, see the *Cebu Declaration*; *2007 Statement of the Establishment of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers* (30 July 2007). On the protection of the environment, see *ASEAN Agreement on Transboundary Haze Pollution* (10 June 2002) <http://haze.asean.org/?wpfb_dl=32>; see generally Lorraine Elliott, 'East Asia and Sub-regional Diversity: Initiatives, Institutions and Identity' in Lorraine Elliott and Shaun Breslin (eds), *Comparative Environmental Regionalism* (Routledge, Taylor & Francis, 2011) 60.

[99] After the *Cebu Declaration*, several states are pushing to a binding agreement: see, eg, 'ASEAN Community in a Global Community of Nations' (Chair's Statement presented at the 18th ASEAN Summit, Jakarta, Indonesia, 8 May 2011) ASEAN <http://www.asean.org/archive/Statement_18th_ASEAN_Summit.pdf>.

[100] L Tacconi, F Jotzo and R Q Grafton, 'Local Causes, Regional Co-operation and Global Financing for Environmental Problems: The Case of Southeast Asian Haze Pollution' (2008) 8 *International Environmental Agreements: Politics, Law and Economics* 1, 3–4 et passim.

[101] See, in particular, *Charter of the Association of Southeast Asian States* (January 2008) art 2.2(a) <http://www.asean.org/archive/publications/ASEAN-Charter.pdf>.

[102] 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 and Comparative Law* 640, 643.

[103] Ibid 659.

migration, the possibility of a regional dialogue is itself a complete and promising novelty: discussing the limits of states' control over their borders in the ASEAN or the rights of foreigners was not conceivable two or three decades ago.[104]

C. *The apparent dilemma: Regional leadership and global funding*

Regional actors in Asia and the Pacific face one great hurdle: global funding. Not that Asia relies entirely on the West for funding. After all, some Asian countries are becoming increasingly wealthy, while Western states are facing financial crises. As a matter of fact, a growing share of official development assistance now comes from Asian states.[105] Yet a strong ethical and social demand is that developed states, bearing historical responsibility for climate change, pay for the consequences incurred by developing countries. These demands, relating to climate change matters in general, are reflected in the principle of common but differentiated responsibility.[106] Now, regional approaches are likely to impede the flow of international finance from developed/polluting states to affected/developing states, as should follow, among other things, from the principle of a common but differentiated responsibility.

In some cases, the apparently insurmountable financial obstacle to regional cooperation led regional leaders to turn away from any properly regional governance. In September 2010, Bangladeshi Prime Minister Hasina assessed that environmental change in her country would lead to 'formidable social and even cross-border problems'.[107] Despite the promising project of the SAARC as a governing structure in the context of climate change, she proposed to use the South Asian cooperation only to coordinate a 'united call ... to consider and adopt a new legal regime under the UNFCCC Protocol to ensure social, cultural and economic rehabilitation' of environmentally displaced persons.[108] The regional level is apparently, in this proposal, only a means to an end, pleading for an international regime that would channel north-south financial flows.[109] Other regional initiatives mainly aim at pushing the international community to act. Founded in 2009, the Climate Vulnerable Forum gathered 'Heads of State, Ministers and representatives of Government from Africa, Asia, Caribbean and the Pacific, representing some of the countries most

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[104] Graeme Hugo, 'Internal and International Migration in Asia: Exploring the Linkages' (Keynote address delivered at Crossing Borders, Traversing Boundaries: Bridging the Gap between International and Internal Migration Research and Theory', National University of Singapore, 13–14 October 2011).

[105] See, eg, Chris Alden, *China in Africa* (Zed, 2007).

[106] *Report of the United Nations Conference on Environment and Development*, UN Doc A/Conf.151/26 (Vol 1) (12 August 1992) annex I ('*Rio Declaration*') principle 7; *United Nations Framework Convention on Climate Change*, opened for signature 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994) sixth recital, arts 3.1, 4.1.

[107] Sheikh Hasina, 'PM Warns of Climate Refugee Crisis', *The Daily Star* (Dhaka), 22 September 2010.

[108] Ibid.

[109] Hasina's intervention mainly pleaded for a 'climate change fund': ibid.

vulnerable to the adverse impacts of climate change'.[110] In its 2009 Malé Declaration, adopted a few months before COP15, its members:

> Call[ed] upon developed countries to provide public money amounting to at least 1.5 per cent of their gross domestic product, in addition to innovative sources of finance, annually by 2015 to assist developing countries make their transition to a climate resilient low-carbon economy.[111]

By contrast, the 2008 statement of the Pacific Islands Forum reflected a more ambitious conception of regional cooperation when it encouraged:

> the Pacific's Development Partners to increase their technical and financial support for climate change action on adaptation, mitigation and, if necessary, relocation ... and to ensure their assistance aligns with regional and national priorities and supports existing regional and national delivery mechanisms.[112]

Thus, despite recognising the necessity of extraneous funding, the Pacific Islands Forum nonetheless emphasises the need of a regional leadership through the determination of regional priorities.

In fact, it is not unrealistic that developed states may agree to fund regional programs in the Asia-Pacific region or in other developing regions. Developed states have already shown some readiness to contribute *financially*, on a voluntary basis, to common efforts aiming at supporting political refugees, or at mitigating and adapting to climate change. The UNHCR operational budget, which amounts to US$3 billion per year, is entirely provided by voluntary donations, mostly by states. Similarly, during COP16, developed states committed themselves to 'mobilize USD 100 billion per year by 2020 to address the needs of developing countries'.[113] Regarding environmental migration, developed states may use funding as a lever or a compromise in particular negotiations, and perhaps as an insurance to contain migrants outside of their own territories while promoting a sustainable world order. Additionally, the fairness of claims by affected states for substantive contributions from Western countries is echoing in Western civil societies: democratic governments may be interested in showing their support for such causes. Lastly, it is not excluded that threat of litigation might push developed states to compromises.

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[110] Para 1.

[111] Malé Declaration of the Climate Vulnerable Forum, reproduced in Bangladesh Centre for Advanced Studies, *Clime Asia* (December 2009), 1 and 8, 8 <http://www.bcas.net/bcas-admin/documents/newsletters/7.pdf >.

[112] *Niue Declaration on Climate Ch*ange (adopted 19 August 2008) <http://www.forumsec.org/resources/uploads/attachments/documents/THE%20NIUE%20DECLARATION%20ON%20CLIMATE%20CHANGE.pdf>. See also SPREP, *Pacific Islands Framework for Action on Climate Change 2006–2015* (2005) <http://www.sprep.org/climate_change/pycc/documents/PIFACC.pdf>.

[113] Conference of the Parties, United Nations Framework Convention on Climate Change, *Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010* — Addendum — *Part Two: Action taken by the Conference of the Parties at its sixteenth session* (Decision 1/CP.16: Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention), UN Doc FCCC/CP/2010/7/Add.1 (15 March 2011) 98.

To channel such international funds, I recently suggested that a global umbrella institution could be in charge of monitoring voluntary donations, with a view to encouraging fruitful negotiations and effective implementation of regional programs.[114] In fact, the involvement of the ADB may announce the creation of such a structure in charge of channelling funds southwards. The ADB is certainly not a global institution, but its large membership (67 states on three continents, if donor states are counted) allows it to play, in Asia and the Pacific, a financial role similar to a global institution: channelling funds from Northern America and Europe to Asia and the Pacific.

In 2010, the ADB launched a preliminary research program that aimed at identifying the 'policy options to support climate-induced migration'.[115] This program included an effort to improve the empirical basis and to realise a financial feasibility study, while developing a regional dialogue and raising awareness.[116] Although this research was not initially presented as preparing a further role of the ADB in financing national policies,[117] Robert Dobias, a senior advisor to the program, admitted that the ADB may nonetheless consider 'enter[ing] into partnerships'[118] with other organisations. In particular, he insisted that the ADB could 'provide financial expertise and capacity [and] use [its] convening power [to] support programs and projects'.[119]

The ADB could be an essential element of a regional approach to environmental migration in the Asia-Pacific region, as it has the institutional capacity and know-how to channel funds from its 19 non-regional members to its 48 'regional' members, through loans, grants and technical assistance.[120] The ADB's broad geographical scope surely lacks coherence: developing member countries ('DMCs') as distant as Kazakhstan and Fiji are unlikely to shape any type of an imagined community. Yet, this is the necessary drawback of any organisation able to channel multilateral funds worldwide, and it can be balanced by the capacity of the ADB to enter into partnerships with genuinely sub-regional organisations such as the SAARC, ASEAN and the Pacific Islands Forum.

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[114] Mayer, 'The International Legal Challenges of Climate-Induced Migration: Proposal for an International Legal Framework', above n 62.

[115] Asian Development Bank, 'Policy Options to Support Climate-Induced Migration, Project Number: 43181-01' (December 2009) <http://www.adb.org/Documents/TARs/REG/43181-REG-TAR.pdf>.

[116] Ibid 4–5.

[117] The initial project document actually provides that the financial feasibility study 'will undertake a comprehensive feasibility study for the expansion of existing funding facilities (including the Adaptation Fund of the Kyoto Protocol and the United Nations Central Emergency Response Fund) or the establishment and maintenance of a new funding facility' (ibid 4), thus suggesting that funding should be operated at a global level.

[118] Robert Dobias, 'ADB's Role in Addressing Climate Change and Migration' (Paper presented at Climate Change, Migration and Human Security in Southeast Asia, Singapore, 27 May 2011) <http://www.rsis.edu.sg/nts/events/docs/Bob_Dobias.pdf>.

[119] Ibid.

[120] *Agreement Establishing the Asian Development Bank (ADB Charter) 1965* art 2 <http://www.adb.org/sites/default/files/pub/1965/charter.pdf>; see also *ADB Financial Profile 2011* (April 2011) <http://www.adb.org/sites/default/files/pub/2011/financialprofile2011.pdf >.

Developed states are unlikely to fund regional or sub-regional programs without keeping some control over the use of funds. In fact, Western states exercise a strong control over the use of 'their' moneys within the ADB.[121] However, partnerships with sub-regional organisations would reduce the asymmetry, especially if Asian developing states succeed in adopting a common, coherent position. Thus, sub-regional strategies developed by sub-regional organisations and implemented in partnership with regional organisations such as the ADB could guarantee some degree of sub-regional self-determination while channelling international funding.

D. *Interregional evaluation: A multi-civilisational forum*

Instead of a top-down approach of compliance to international law, TWAIL is based, Chimni says, on the idea that civilisations should 'draw … on the best practices of all civilizations'.[122] In the constitution of this 'multi-civilizational approach to international law',[123] imports from other civilisations are legitimate if and as long as they 'advance the cause of a peaceful, democratic, and just world order'.[124] Chimni takes the example of the protection of political refugees. He concedes to the 'West' that, 'in the absence of a law on the status of refugees, it may be difficult to effectively protect the rights of refugees'.[125] Yet, international law lacks the means of enforcement of domestic law, and even the most generous international treaty would not force its parties to implement their obligations. In other words, states parties to the *Refugee Convention* do not necessarily provide refugees with a better treatment than non-parties do.

In fact, in circumstances such as environmental migration, where the ratification of a treaty is simply unrealistic, paths of supranational governance can only be found through a subtle mix of laws and practices, based on what Chimni called a 'multi-civilizational … conversation on the ideal and optimal mix of legal and societal values and practices'.[126] It is what Williams suggested when highlighting that a regional approach would 'establish … a structure whereby good practice can be demonstrated and exchanged between regional groups'.[127] Many existing institutions — intergovernmental organisations or NGOs — could already foster such a multi-civilisational forum through observing, reporting and discussing best practices.

This multi-civilisational bottom-up approach of environmental migration governance may lead to the recognition of 'universal standards' on the rights of

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[121] On the rule see *Agreement Establishing the Asian Development Bank (ADB Charter) 1965* art 33 <http://www.adb.org/sites/default/files/pub/1965/charter.pdf>. On the repartition of shares, see art 36 (subscriptions to the authorised capital stock of the Asian Development Bank).

[122] Chimni, 'Asian Civilizations and International Law: Some Reflections', above n 72. See also Edward W Said, 'The Clash of Ignorance', *The Nation* (22 October 2001), 146–50 (in reaction to Samuel Huntington, 'The Clash of Civilizations' [1992] 72(3) *Foreign Affairs* 22).

[123] Chimni, 'Asian Civilizations and International Law: Some Reflections', above n 72.

[124] Ibid 40.

[125] Ibid 40–1.

[126] Ibid 41.

[127] Williams, above n 38, 521.

categories of migrants. However, this approach assumes that such standards should be deducted from experience, instead of pure reason. 'Universal standards' would not stem from a certain paradigm of thoughts which, per definition, is not universal, but from the observation of universal aspirations. Extremely little is yet known about the specific needs of specific categories of environmental migrants, or the obstacles of humanitarian operations following large displacement in the context of extreme weather events, or the ways of effectively aiding people displaced by desertification or land salinisation, for instance.

IV. *Conclusion*

This article has discussed the challenges of governing environmental migration, in the particular context of the Asia-Pacific region. Identifying the hurdles of a global governance, it has suggested a regional governance in the Asia-Pacific region. Indeed, it seems that the governance of environmental migration is a rare opportunity for the Asia-Pacific region to take the lead in a section of international governance, affirming its growing influence through a new model of governance.

Protecting the rights of environmentally induced migrants will never be easy, but it might be less difficult at a smaller scale, where incentives are higher for states to cooperate and understanding of the multiple issues raised by the links between environmental changes and migration might be more genuine. Such action in the Asia-Pacific region does not need to be integrated; subregional or bilateral actions would also help make possible what global governance cannot achieve.