Environmental Migration in the Asia-Pacific Region: Could We Hang Out Sometime?

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Abstract
Several proposals for global legal governance of environmental migration have recently been published, almost exclusively by Western scholars. The present article denounces the geographical and intellectual disconnect between descriptive works on environmental migration as a phenomenon and the normative studies on the developments in law and governance. It suggests that this disconnect has resulted in a post-colonial approach towards tackling environmental migration, which could impede the protection of environmental migrants. While recalling that governance of environmental migration is most likely to succeed within a regional framework, this article pleads for a home-grown legal approach of environmental migration in the Asia-Pacific. Participating in a multilateral discussion is a unique opportunity for the rising countries of Asia and the Pacific to strengthen their growing diplomatic roles and to demonstrate their capacity in the development of liberal forms of transnational governance.

Although environmental conditions have always driven displacement of populations,[1] climate change has increasingly been perceived as a significant factor in migration.[2] Nonetheless, alarmist estimates of 250 million "environmental refugees" by 2050, proposed by the late Norman Myers,[3] were rejected by most authors as simplistic.

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1. See e.g. Harry F. LEE, Lincoln FOK, and David D. ZHANG, "Climatic Change and Chinese Population Growth Dynamics over the Last Millennium" (2008) 88 Climatic Change 131.

2. See e.g. Graeme HUGO, "Climate Change-Induced Mobility and the Existing Migration Regime in Asia and the Pacific" in Jane MCADAM, ed., *Climate Change and Displacement: Multidisciplinary Perspectives* (Oxford: Hart Publishing, 2010), 9.

3. This was stated in Norman Myers's interview with Christian Aid in London on 14 March 2007, cited in Christian Aid, "Human Tide: The Red Migration Crisis" (May 2007), online: Christian Aid ⟨http://www.christianaid.org.uk/images/human-tide.pdf⟩ at 48. For a previous estimate of 200 million "environmental refugees" by 2050 by the same person, see Norman MYERS, "Environmentally-Induced Displacements: The State of the Art", International Symposium on Environmentally-Induced Population Displacements and Environmental Impacts Resulting from Mass Migrations, United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), and

This is because environmental factors are only one in a cluster of causes,[4] making it difficult to distinguish environmentally induced migrants amongst other economic migrants.[5] Struggling with the one-dimensional notion of "environmental refugees", Kälin distinguished five scenarios of environmental migration:

(1) "Sudden-onset disasters, such as flooding [and] windstorms";

(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 environmentally triggered conflicts.[6]

Kälin's typology reflects the great diversity of the situations covered by the concept of environmental migration. Gemenne suggested the model of a triple continuum, differentiating between environmental migrants depending on the duration, coercion, and preparedness of their migration.[7]

Building on this premise, Western academics have released several governance proposals in the course of the 2000s. They quickly assumed that current legal frameworks and governance practices are ill-equipped to deal with environmental migration.[8] I have identified elsewhere three different narratives upon which a

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the Refugee Policy Group (RPG), Background Paper, 21–24 April 1996, at 74. The term "refugee" is also controversial, as it is not only a legal misnomer, but also induces a wrong conception of international forced migration.

4. See Graeme HUGO, "Environmental Concerns and International Migration" (1996) 30 International Migration Review 105 at 108; Astri SUHRKE, "Environmental Degradation and Population Flows" (1994) 47 Journal of International Affairs 473 at 475; Diane BATES, "Environmental Refugees? Classifying Human Migrations Caused by Environmental Change" (2002) 23 Population and Environment 465 at 468; François GEMENNE, "Environmental Changes and Migration Flows: Normative Frameworks and Policy Responses", Institut d'Etudes Politiques de Paris and the University of Liege, PhD Dissertation, 2009, at 173.

5. Astri SUHRKE, *Pressure Points: Environmental Degradation, Migration and Conflict* (Cambridge: American Academy of Art and Science, 1993) at 5. See also Stephen CASTLES, "Environmental Change and Forced Migration: Making Sense of the Debate", United Nations High Commissioner for Refugees, Working Paper, 31 October 2002; Richard BLACK, "Environmental Refugees: Myth or Reality?", United Nations High Commissioner for Refugees, Working Paper, 20 March 2001; Michelle LEIGHTON, "Desertification and Migration" in Pierre-Marc JOHNSON, Karel MAYRAND, and Marc PAQUIN, eds., *Governing Global Desertification: Linking Environmental Degradation, Poverty and Participation* (Aldershot: Ashgate Publishing, 2006), 43; Benoît MAYER, "Pour en finir avec la notion de 'réfugiés environnementaux': Critique d'une approche individualiste et universaliste des déplacements causés par des changements environnementaux" (2011) 7 McGill International Journal for Sustainable Development Law and Policy 33.

6. Walter KÄLIN, "Conceptualizing Climate-Induced Displacement" in Jane MCADAM, ed., *Climate Change and Displacement: Multidisciplinary Perspectives* (Oxford: Hart Publishing, 2010), 81 at 85–6.

7. Gemenne, *supra* note 4 at 173.

8. See 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; DIDCE, *Draft Convention on the International Status of Environmentally-Displaced Persons*, 31 May 2010, online: CIDCE ⟨http://www.cidce.org⟩; David HODGKINSON et al., "'The Hour when the Ship

governance framework on migration induced by climate change or (more broadly) by environmental factors could be based: "solidarity", "responsibility", and "sustainability" (or "security").[9] In addition, according to McAdam, legal approaches to tackle climate migration should reconcile a "plethora of existing as well as potential governance mechanisms, processes, and institutions … across the fields of migration, environment, development, human rights, disaster management, and humanitarian relief".[10] If there is no consensus on the form of governance, it appears to most researchers that at least some forms of action should be carried out at the international level.[11]

In contrast to the growing Western concern of environmental migration, this article looks at the development of a specific international legal approach towards environmental migration within the Asia-Pacific region. In criticizing the post-colonial drift in the discourse on the global governance of environmental migration, I argue that a multilateral forum of best practices would be a fairer and more efficient process for developing rules on the issue. Establishing and participating in this forum is a unique opportunity for the rising countries in Asia and the Pacific to affirm their aspirations towards playing a more prominent role in the international community, and, in particular, to demonstrate how the discourse on "Asian values" could also trigger a liberal normative framework.

As a brief introduction to the regional context, Part I emphasizes the relevance of discussing environmental migration in the Asia-Pacific region. Part II shows that global approaches towards regulating environmental migration are unlikely to provide much protection to environmental migrants in Asia and the Pacific. Part III identifies a Western bias in the policy-oriented research on environmental migration and criticizes current research on the governance of environmental migration. Part IV identifies alternative forms of regional resistance vis-à-vis global or Western constructions and describes the Asia-Pacific region's own endeavours to address environmental migration. Lastly, Part V assesses the prospects for a regional normative framework on environmental migration in the Asia-Pacific region.

This contribution to the debate does not deal in depth with the content of possible supranational normative frameworks on environmental migration in the Asia-Pacific region. Instead, it focuses on the preliminary issue of defining the respective roles

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Comes in': A Convention for Persons Displaced by Climate Change" (2010) 36 Monash University Law Review 69; Benoît MAYER, "The International Legal Challenges of Climate-Induced Migration: Proposal for an International Legal Framework" (2011) 22 Colorado Journal of International Environmental Law and Policy 357; Jane MCADAM, "Introduction" in Jane MCADAM, ed., *Climate Change and Displacement: Multidisciplinary Perspectives* (Oxford: Hart Publishing, 2010), 1 at 1; Jane MCADAM, "Swimming Against the Tide: Why a Climate Change Displacement Treaty is Not the Answer" (2011) 23 International Journal of Refugee Law 2 at 3.

9. Benoît MAYER, "The International Legal Protection of Climate (or Environmental) Migrants: Fraternity, Responsibility and Sustainability" (2012) 56 Supreme Court Law Review 723.

10. Jane MCADAM, "Environmental Migration" in Alexander BETTS, ed., *Global Migration Governance* (Oxford: Oxford University Press, 2011), 153. See also Benoît MAYER, "Sustainable Development Law on Environmental Migration: The Story of an Obelisk, a Bag of Marbles and a Tapestry" (2012) 14 Environmental Law Review 111.

11. See e.g. Principles IV–VII, IX, and X in United Nations High Commissioner for Refugees, "The Nansen Conference: Climate Change and Displacement in the 21st Century" (June 2011), online: UNHCR ⟨http://www.unhcr.org/4ea969729.pdf⟩ at 5.

of international and regional institutions (possibly) dealing with environmental migration in the Asia-Pacific region. In so doing, it confronts the ongoing debate on environmental migration with the perspectives known as Third World Approaches to International Law (TWAIL). Thus, the question here is not so much "what" should be done, but rather "who" should decide what should be done.

I. EVIDENCE OF ENVIRONMENTAL MIGRATION IN REGIONS OF ASIA AND THE PACIFIC

The decision to focus on the Asia-Pacific region in this article may seem somewhat arbitrary. I do not deny that some of the arguments developed in the following sections may apply, *mutadis mutandis*, to other regions of the Third World (e.g. Africa, Latin America, and the Caribbean). I am also duly aware that "Asia and the Pacific" does not exist as a coherent regional entity. It includes more than half of the world's population, with no real geographical, cultural, or political homogeneity, and therefore it might be that the "Asia-Pacific" means hardly anything more than "east of Europe". Nonetheless, I believe that such a focus makes sense here for two reasons. The first reason is simply to adopt the term "Asia-Pacific region" as a starting point for the discussion (although not, of course, to limit the discussion). Rightly or wrongly—and, I would say, somewhat arbitrarily—international politics has often dealt with the "Asia-Pacific region" as if it was a coherent part of the world. Examples are numerous, from the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), to the recent report published by the Asian Development Bank (ADB) on "Addressing Climate Change and Migration in Asia and the Pacific".[12] Second, most of the debates on environmental migration have focused mainly (although not exclusively) on countries of the Pacific (the small developing island states) and of Asia (e.g. Bangladesh and Vietnam).

Indeed, despite significant differences, the countries of Asia and the Pacific do generally have some common features that make them prone to environmental migration, as compared to other parts of the world. First, migration has often been described as "an established structural feature of the region".[13] Statistics indicate a lower frequency of international migrants in Asia and the Pacific than elsewhere in the world, but statistics may not be entirely reliable, for irregular migration is not taken into account and may be frequent in the Asia-Pacific region.[14] It is also well established

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12. Asian Development Bank, "Addressing Climate Change and Migration in Asia and the Pacific" (March 2012), online: ADB ⟨http://www.adb.org/sites/default/files/pub/2012/addressing-climate-change-migration.pdf⟩.
13. Graeme HUGO, "The Future of Migration Policies in the Asia-Pacific Region", International Organization for Migration, 2010 Background Paper at 5. See also: Amarjit KAUR and Ian METCALFE, "Thematic Introduction: Migration Challenges in the Asia-Pacific Region in the Twenty-First Century" (2007) 9 International Journal on Multicultural Societies 131; Amarjit KAUR, "Migration Matters in the Asia-Pacific Region: Immigration Frameworks, Knowledge Workers and National Policies" (2007) 9 International Journal on Multicultural Societies 135.
14. Emigrants represent 1.1 percent of the East Asian and Pacific population, and 1.6 percent of the South Asian population, while the proportion of immigrants in the population is 0.3 percent and 0.7 percent, respectively. By comparison, migrants represent 3.2 percent of the world's population. No Asian or Pacific state is among the first eight destination countries. See The World Bank, "Migration and Remittances Factbook 2011" (November 2010), online: The World Bank ⟨http://siteresources.worldbank.org/INTLAC/Resources/Factbook2011-Ebook.pdf⟩ at 18, 23, and 31.

that, despite a lack of data, internal migration is a significant phenomenon in the Asia-Pacific region, especially in large countries with significant regional inequalities, like China and India.[15] In the Pacific, studies have continuously highlighted the interconnectedness of the islands and the constant movement of people both within and across state borders.[16] While migration in Asia and the Pacific generally "remains a highly sensitive issue and the movement of workers … remains highly restricted",[17] Hugo explained that the factors of "globalization, increased levels of education, proliferation of international media, improved transport systems and the internationalization of business and labour markets" account for the rapid increase of regional flows during the last decade.[18] Beyond social, political, and demographic factors, historical and cultural ties (including past migration flows) are other factors contributing towards internal and international displacements.[19]

Second, except for Africa, no other part of the world is as exposed to climate change as Asia and the Pacific. According to the Fourth Assessment Report of the

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However, as Hugo has highlighted, "[m]easuring migration is especially problematic because of the widespread occurrence of undocumented migration" in Asia and the Pacific. See Graeme HUGO, "Demographic Change and International Labour Mobility in Asia-Pacific, Implications for Business and Regional Economic Integration: Synthesis" in Graeme HUGO and Soogil YOUNG, eds., *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* (Singapore: Institute of Southeast Asian Studies, 2008), 1 at 2. See also Tessa MORRIS-SUZUKI, "Cross-Border Migration and East Asian Regional Integration" (2007) 9 International Journal on Multicultural Societies 158; Jerrold HUGUET, "Towards a Migration Information System in Asia: Statistics and the Public Discourse on International Migration" (2008) 17 Asia Pacific Migration Journal 231.

15. Philip Guest, "Bridging the Gap: Internal Migration in Asia", Conference Paper on African Migration in Comparative Perspective, 4−7 June 2003; Priya DESHINGKAR, *Internal Migration, Poverty and Development in Asia: Including the Excluded* (London: Overseas Development Institute, 2006); Cindy FAN, *China on the Move: Migration, the State, and the Household* (New York: Routledge, 2008); Cindy FAN, "Economic Opportunities and Internal Migration: A Case Study of Guangdong Province, China" (2005) 48 The Professional Geographer 28; Salut MUHIDIN and Martin BELL, *Cross National Comparisons of Internal Migration in Asia-Pacific Region* (Princeton: Office of Population Research at Princeton University, 2011).

16. See Epeli HAU'OFA, "Our Sea of Islands" in Eric WADDELL, Vijay NAIDU, and Epeli HAU'OFA, eds., *A New Oceania: Rediscovering Our Sea of Islands* (Suva: School of Social and Economic Development, The University of the South Pacific, in association with Beake House, 1993), 2. See also Grant MCGALL, "Migration in Oceania: A Quick Overview of the Settlement and Continuing Occupation of an Acquatic Continent" in Margot WALLNER and Richard BEDFORD, eds., *Migration Happens: Reasons, Effects and Opportunities of Migration in the South Pacific* (Wien: 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* (Wellington: Institute of Policy Studies, 2008), 85; Hugo and Young, *supra* note 14; 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; Manuhuia BARCHAM, Regina SCHEYVENS, and John OVERTON, "Rethinking Polynesian Mobility: A New Polynesian Triangle?", Centre for Indigenous Governance and Development, Massey University, Working Paper, 2007.

17. Hugo, *supra* note 14 at 1. See also Stephen CASTLES, "Migrant Settlement Transnational Communities and State Strategies in the Asia Pacific Region" in Robyn R. IREDALE, Charles HAWKSLEY, and Stephen CASTLES, eds., *Migration in the Asia Pacific: Population, Settlement and Citizenship Issues* (Cheltenham/Northampton, MA: Edward Elgar, 2003), 3 at 6; Melissa CURLEY and WONG Siu-lun, *Security and Migration in Asia: The Dynamics of Securitisation* (London: Routledge, 2008).

18. Graeme HUGO, "The New International Migration in Asia: Challenges for Population Research" (2005) 1 Asian Population Studies 93 at 94.

19. M.C. RICKLEFS et al., *A New History of Southeast Asia* (Basingstoke: Palgrave Macmillan, 2010) at 1−18; Castles, *supra* note 17 at 3.

Intergovernmental Panel on Climate Change (IPCC), "new evidences show that climate change has affected many sectors in Asia", has increased the "risk of hunger and water resource scarcity", and "is likely to continue to adversely affect human health in Asia".[20] Extreme weather events are already becoming more frequent and more intense.[21] According to the IPCC, "[a]pproximately 1 billion people in South, South-East, and East Asia will face increased risks from reduced water supplies, decreased agricultural productivity, and increased risks of floods, droughts and cholera".[22] Regarding "small islands" in the Pacific, the IPCC expressed "very high confidence" that the rise in sea levels will "exacerbate inundation, storm surge, erosion and other coastal hazards, thus threatening vital infrastructure, settlements and facilities that support the livelihood of island communities",[23] in particular compromising fresh water resources. Accordingly, "[t]he long-term sustainability [of these] societies is at great risk from climate change".[24]

Third, the low adaptive capacity of many populations in Asia and the Pacific renders such societies more particularly vulnerable to climate change.[25] Moreover, while economic development is generally conceived to facilitate adaptation to climate change, Asian economic development has often come hand in hand with "increased stresses on the environment"[26] and greater social vulnerability. Industrial activity has also caused major environmental disasters from Bhopal to Fukushima, and major development projects, such as the building of hydroelectric dams (e.g. the Three Gorges project in China, the Narmada Valley project in India, and, most

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20. M.L. PARRY et al., "Asia" in M.L. PARRY et al., eds., *Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge: Cambridge University Press, 2007), 469 at 471. See also Christine LOH et al., "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?* (Singapore: Singapore Institute of International Affairs, 2008), 88.
21. Parry et al., *ibid.*, at 473.
22. M.L. PARRY et al., eds., "Assessing Key Vulnerabilities and the Risk from Climate Change" in M.L. PARRY et al., *Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge: Cambridge University Press, 2007), 779 at 791.
23. M.L. PARRY et al., eds., "Small Islands" in M.L. PARRY et al., *Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge: Cambridge University Press, 2007), 687 at 689. See also Australian Bureau of Meteorology and Commonwealth Scientific and Industrial Research Organisation, "Climate Change in the Pacific: Scientific Assessment and New Research. Volume 1: Regional Overview. Volume 2: Country Reports". (2011), online: The Centre for Australian Weather and Climate Research ⟨http://www.cawcr.gov.au/projects/PCCSP/publications.html⟩.
24. Parry et al., *supra* note 23 at 791.
25. It is usually considered that the vulnerability of a society is "influenced by its development path, physical exposures, the distribution of resources, prior stresses and social and government institutions". W.N. ADGER et al., "Assessment of Adaptation Practices, Options, Constraints and Capacity" in M.L. PARRY et al., *Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge: Cambridge University Press, 2007), 717 at 720.
26. 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* (Singapore: Marshall Cavendish Academic, 2005). See also Simon TAY, "Southeast Asian Fires: The Challenge for International Environmental Law and Sustainable Development" (1999) 11 Georgetown International Environmental Law Review 241 at 256.

recently, the Bakun dam in Malaysia), have had considerable environmental and human consequences. Lastly, high demographic density exacerbates environmental migration[27] in many regions of Asia and the Pacific (e.g. coastal regions,[28] megacities,[29] mega-deltas,[30] and small, low-lying islands[31]), much more than in any other part of the world.

Thus, environmental migration is frequent in Asia and the Pacific because of the combination of high mobility with great environmental exposure and a significant social vulnerability. EACH-FOR, a research programme funded by the European Commission between 2007 and 2009, carried out case-studies, which showed that environmental change directly or indirectly induced displacement within and without Bangladesh, China, Kazakhstan, Kyrgyzstan, Tajikistan, Tuvalu, and Vietnam.[32] Similarly, the Internal Displacement Monitoring Centre has examined global estimates on the number of people displaced by disasters induced by natural hazards, starting in 2008. These estimates show that "Asia was consistently the continent most affected in terms of the absolute and relative numbers of people displaced" and accounted "for at least three quarters (between 77% and 87%) of all displacement each year".[33] Concomitantly, seventy-four percent

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27. Parry et al., *supra* note 20 at 488.

28. *Ibid.*, at 484−5; Robert J. NICHOLLS et al., "Climate Change and Coastal Vulnerability Assessment: Scenarios for Integrated Assessment" (2008) 3 Sustainability Science 89.

29. Diana RECKIEN, Martin WILDENBERG, and Kaushik DEB, "Understanding Potential Climate Change Impacts and Adaptation Options in Indian Megacities" in Konrad OTTO-ZIMMERMANN, ed., *Resilient Cities* (Dordrecht: Springer Netherlands, 2011), 15; Sari KOVATS and Rais AKHTAR, "Climate, Climate Change and Human Health in Asian Cities" (2008) 20 Environment and Urbanization 165; Roland FUCHS, Mary CONRAN, and Elizabeth LOUIS, "Climate Change and Asia's Coastal Urban Cities" (2011) 2 Environment and Urbanization Asia 13; Roland J. FUCHS, "Cities at Risk: Asia's Coastal Cities in an Age of Climate Change", East-West Center, Research Paper, July 2010.

30. Parry et al., *supra* note 20 at 493; Oli BROWN, *Migration and Climate Change* (Geneva: International Organization for Migration, 2008) at 17.

31. Parry et al., *supra* note 23 at 700−1; Brown, *supra* note 30 at 31.

32. See Alice PONCELET, "Bangladesh Case Study Report: 'The Land of Mad Rivers'", EACH-FOR, Environmental Change and Forced Migration Scenarios, European Commission, Case Study Report, 30 January 2009; Qian ZHANG, "China (Inner Mongolia): Case Study Report", EACH-FOR, Environmental Change and Forced Migration Scenarios, Case Study Report, European Commission, 31 March 2009; Dina BULESHEVA and Arustan JOLDASOV, "Kazakhstan: Case Study Report", EACH-FOR, Environmental Change and Forced Migration Scenarios, European Commission, Case Study Report, 30 March 2009; Center for Ethnic and Migration Studies, "Case Study Report: Forced Migration and the Three Gorges Dam", EACH-FOR, Environmental Change and Forced Migration Scenarios, European Commission, Case Study Report, 17 March 2009; Emil NASRITDINOV et al., "Case Study Report: Kyrgyzstan", EACH-FOR, Environmental Change and Forced Migration Scenarios, European Commission, Case Study Report, 30 January 2009; P.Sh. KHAKIMOV and M.Sh. MAHMADBEKOV, "The Case for Tajikistan", EACH-FOR, Environmental Change and Forced Migration Scenarios, European Commission, Policy Brief, 31 March 2009; François GEMENNE and Shawn SHEN, "Tuvalu and New Zealand: Case Study Report", EACH-FOR, Environmental Change and Forced Migration Scenarios, European Commission, Case Study Report, 15 February 2009; Olivia DUN, "Viet Nam Case Study Report: Linkages Between Flooding, Migration and Resettlement", EACH-FOR, Environmental Change and Forced Migration Scenarios, European Commission, Case Study Report, 30 January 2009.

33. Internal Displacement Monitoring Centre, "Displacement Due to Natural Hazard-Induced Disasters: Global Estimates for 2009 and 2010", June 2011, online: Prevention Web ⟨http://www.preventionweb.net/files/20220_idmcnaturaldisasters200920101.pdf⟩ at 16. See also Internal Displacement Monitoring Centre, "Monitoring Disaster Displacement in the Context of Climate

of the funds that the International Organization for Migration (IOM) spent on projects relating to environmental migration over the last decade flowed to Asia and the Pacific.[34]

Specific countries have come to be associated with the debate on environmental migration. In particular, Bangladesh, a low-lying, densely populated, and disaster-prone country, has attracted much attention after Myers estimated that fifteen,[35] or even twenty-six, million "environmental refugees" of that country could be displaced by the mid century.[36] While India's reaction has been to fence 4,000 kilometres of its borders, further studies have shown that most environmentally displaced persons moved within Bangladesh.[37] Low-lying small island developing states (SIDSs) in the Indian and Pacific oceans, such as Kiribati, the Maldives, and Tuvalu, have also come to be known as "sinking islands" and to symbolize climate migration.

Yet the debate on environmentally driven displacement tends to forget that such phenomena are not new—in Asia and the Pacific as probably elsewhere.[38] They have certainly occurred in early human settlements, although only some of the most recent displacements have been documented. An example of this is the resettlement of the village of Naikeleyaga in Kabara, eastern Fiji, two kilometres further from the sea, after a cyclone partially destroyed it; this was in 1936.[39] Similarly, Indonesia's transmigration programme (started in 1903, but most vigorously carried out by Suharto's government in the 1970s and 1980s), which was partly justified by environmental concerns, resettled close to five million people from overpopulated Java to less-populated peripheral islands, with controversial human and environmental costs and benefits.[40] Although this is less documented, spontaneous

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Change: Findings of a Study by the United Nations Office for the Coordination of Humanitarian Affairs and the Internal Displacement Monitoring Centre", September 2009, online: Internal Displacement Monitoring Centre ⟨http://www.internal-displacement.org⟩ at 11.

34. International Organization for Migration (IOM), "Compendium of IOM's Activities in Migration, Climate Change and the Environment" (2009), online: IOM ⟨http://publications.iom.int/bookstore/free/Compendium_of_IOMs_Activities.pdf⟩ at 35 [*IOM Compendium*].

35. Norman MYERS, "Environmental Refugees in a Globally Warmed World" (1993) 43 BioScience 752 at 754.

36. Norman MYERS, "Environmental Refugees: A Growing Phenomenon of the 21st Century" (2002) 357 Philosophical Transactions of the Royal Society Biological Sciences 609 at 611.

37. Matthew WALSHAM, "Assessing the Evidence: Environment, Climate Change and Migration in Bangladesh", International Organization for Migration, Report, June 2010, at xiii; Poncelet, *supra* note 32 at 18; Jane MCADAM and Ben SAUL, "Displacement with Dignity: International Law and Policy Responses to Climate Change Migration and Security in Bangladesh" (2010) 53 German Yearbook of International Law 233.

38. See generally John CAMPBELL, "Climate Change and Population Movement in Pacific Island Countries" in Bruce BURSON, ed., *Climate Change and Migration: South Pacific Perspectives* (Wellington: Institute of Policy Studies, 2010), 29.

39. *Ibid.*, at 36. See also Richard BEDFORD and Charlotte BEDFORD, "International Migration and Climate Change: A Post-Copenhagen Perspective on Options for Kiribati and Tuvalu" in Bruce BURSON, ed., *Climate Change and Migration: South Pacific Perspectives* (Wellington: Institute of Policy Studies, 2010), 89 at 93ff.

40. See e.g. Philip M. FEARNSIDE, "Transmigration in Indonesia: Lessons from its Environmental and Social Impacts" (1997) 21 Environmental Management 553 at 555; The World Bank, *Indonesia: The Transmigration Program in Perspective* (Washington, DC: World Bank, 1988); Colin MACANDREWS, "Transmigration in Indonesia: Prospects and Problems" (1978) 18 Asian Survey 458; Anthony J.

migration has also been constantly induced by environmental factors.[41] While climate change—as a global, anthropogenic environmental change—is a new phenomenon, its consequence—the human adaptation to environmental changes through migratory strategies—is a recurrent phenomenon. Rather than creating a new type of "refugee", climate change is likely to exacerbate existing phenomena and their ramifications, which reinforces the need to urgently address the structural causes of migration.

Despite being and having been more largely affected by environmental migration, the states of the Asia-Pacific region have, so far, shown little willingness to adopt compulsory normative frameworks to mitigate climate change and to protect environmental migrants, in stark contrast to Western countries and some countries of the Third World.[42] Of course, climate change is less pressing an issue for states facing immediate development challenges. Only three states in Asia and the Pacific currently have mandatory commitments under the Kyoto Protocol to the United Nations Framework Convention on Climate Change.[43] Although there are strong ethical reasons to argue that developed countries with the largest financial capacities should take the lead in mitigating climate change, this should not prevent states in Asia and the Pacific from being concerned with mitigation, adaptation, and the protection of human beings.

II. THE DEADLOCKS: WHY GLOBAL APPROACHES TO ENVIRONMENTAL MIGRATION DO NOT WORK

A. *The Limits of Global Institutions*

Several international organizations have expressed concerns about environmental migration and shown their readiness to take action to combat it. Conceived as an informal platform for co-ordination, the Climate Change, Environment, and Migration Alliance put together international organizations (the International Organization for Migration, the United Nations Environment Programme (UNEP), and the United Nations Office for the Coordination of Humanitarian Affairs (OCHA)), research centres (the United Nations University Institute for Environment and Human Security (UNU-EHS) and the University of Sussex), and non-governmental organizations (NGOs) (the Munich Re Foundation, the Stockholm Environment Institute, and the WWF).[44]

WHITTEN, "Indonesia's Transmigration Program and its Role in the Loss of Tropical Rain Forests" (1987) 1 Conservation Biology 239.

41. Regarding the Pacific region, see references in *supra* note 16.

42. "Climate Change 'Will Increase Migration in Asia'" *The Telegraph* (15 September 2011). See also Carol FARBOTKO, "Tuvalu and Climate Change: Constructions of Environmental Displacement in the 'Sydney Morning Herald'" (2005) 87 Geografiska Annaler, Series B: Human Geography 279; Anne Fauvre CHAMBERS and Keith Stanley CHAMBERS, "Five Takes on Climate and Cultural Change in Tuvalu" (2007) 19 Contemporary Pacific 294; Fiona HARVEY, "More Than 30 Million Climate Migrants in Asia in 2010, Report Finds" *The Guardian* (19 September 2011).

43. These are Australia, Japan, and New Zealand; Russia might also be considered part of the Asia-Pacific region. See *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, 11 December 1997 (entered into force 16 February 2005), online: UNFCC 〈http://unfccc.int/resource/docs/convkp/kpeng.pdf〉.

44. See online: Climate Change, Environment and Migration Alliance 〈http://www.ccema-portal.org/article/read/about〉.

For international organizations, migration generally appears as a last resort for coping with a degraded environment, and very rarely as an early preventive adaptation strategy. IOM has made significant efforts in terms of generating awareness. In particular, it published a study in 2010 to support migration as an adaptation to climate change.[45] Yet IOM did not include many programmes that really promoted migration in a compendium of its activities on migration, climate change, and the environment published in 2009.[46] Instead, its actions generally seem to aim to prevent or avoid migration, rather than facilitate it. Thus, numerous projects of the IOM in Asia and the Pacific aim at building resilience to climate change[47] and developing disaster risk reduction, management and preparedness,[48] rehabilitation,[49] and "human security and stabilization".[50] "Adaptation", in this context, is sometimes conceived as an antonym of "migration", the latter being considered at best as a solution of last resort—a necessary ill. On the other hand, IOM has often put forward the Colombian Temporary and Circular Labour Migration (TCLM) as an example of its actions, although this example is not representative of other scenarios. The TCLM allowed a few hundred individuals to work temporarily and receive training in Spain to "bolster their capacity as potential agents of development".[51] The underlying idea seemed to be that controlled migration, through remittances and development, would avoid larger or longer displacements, hence reinforcing the conception of sedentariness as the norm. In only one country (Bangladesh), a programme conducted by IOM aimed at "[a]dvocating for a policy framework".[52]

In addition, both the United Nations High Commissioner for Refugees (UNHCR) and IOM carried out more conventional humanitarian operations to rescue individuals displaced by natural disasters.[53] For the UNHCR, these actions were taken on pragmatic grounds, despite the fact that it has no formal mandate with respect to people affected by natural disasters; the commissioner intervened simply because of its capacity to act.[54] Thus, at the time of the 2004 tsunami, UNHCR was

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45. International Organization for Migration, "Disaster Risk Reduction, Climate Change Adaptation and Environmental Migration: A Policy Perspective" (November 2010), online: IOM ⟨http://publications.iom.int/bookstore/free/DDR_CCA_report.pdf⟩ at 3.

46. *IOM Compendium, supra* note 34.

47. International Organization for Migration, "Migration Initiatives Appeal 2010" (June 2010), online: IOM ⟨http://publications.iom.int/bookstore/free/Migration_Initiatives_2010.pdf⟩ at 107 (Indonesia) and 99 (Timor-Leste).

48. *Ibid.*, at 85 (Bangladesh), 90 (Nepal), 97 (Cambodia), and 99 (Indonesia).

49. *Ibid.*, at 85 (Bangladesh).

50. *Ibid.*, at 113 (Tajikistan).

51. *IOM Compendium, supra* note 46 at 25.

52. International Organization for Migration, "Migration Initiatives Appeal 2010" (June 2010), online: IOM ⟨http://publications.iom.int/bookstore/free/Migration_Initiatives_2010.pdf⟩ at 87 (Bangladesh).

53. For examples of programmes by IOM to provide assistance to affected populations, see *ibid.*, at 107 (Kyrgyzstan) and 114 (Turkmenistan).

54. United Nations High Commissioner for Refugees, "Briefing Note: The Management of Humanitarian Emergencies Caused by Extreme Climate Events" (April 2009), online: UNHCR ⟨http://www.unhcr.org/4a1e4eb42.html⟩ at 1. See also Antonio GUTERRES, "Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective", United Nations High Commissioner for Refugees, Policy Paper (14 August 2009).

already present in Sri Lanka as part of its mandate on conflict-induced displacement, while IOM was carrying out missions in Myanmar and Aceh; therefore, both organizations could quickly respond to the disaster in those areas.[55]

The climate change negotiations were no more successful than migration organizations in promoting normative frameworks on climate migration. For the first time, in 2010, state representatives at the sixteenth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) in Cancun called for "[m]easures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels".[56] With such vague language and without further clarification, the eligibility of migration or resettlement programmes to adaptation funding remains uncertain.

Although no single organization is in charge of regulating climate migration, existing institutions with relevant know-how, such as IOM and UNHCR, may come to play a role as long as there is some political will to support them. Yet the practice of the international community of states, through IOM, UNHCR, and UNFCCC, reflects a reluctance to allow environmental migration. International action has been limited to either purely humanitarian programmes, or programmes aiming at avoiding migration, excluding actions aimed at ensuring the dignity of the potential migrant. The greatest hurdle to global regulation of environmental migration does not lie in institutional flaws, which could be corrected if there was political will, but precisely in the global hostility towards migration in general. In the dominant paradigm of migration control, "migration" and "law" just do not go together, and climate change has not (yet) fundamentally changed this notion.

B. *The Deadlock of Universal Standards*

Existing international legal standards are also part of the problem. For lack of a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion", and, in most cases, for lack of cross-border displacement, environmentally displaced persons generally do not fall within the scope of the 1951 Convention Relating to the Status of Refugees (Refugee Convention) and its protocol.[57] On the other hand, the international status

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55. François GEMENNE, "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 130.

56. "Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention" in 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" (March 2011), online: UNFCCC ⟨http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf#page=2⟩, para. 14(f) [*Cancun Agreements*].

57. *Convention Relating to the Status of Refugees*, 28 July 1951 (entered into force on 22 April 1954), online: UNHCR ⟨http://www.unhcr.org/3b66c2aa10.html⟩, art. 1(A)(2) [*Refugee Convention*]; *Protocol Relating to the Status of Refugees*, 13 January 1967, online: UNHCR ⟨http://www.unhcr.org/3b66c2aa10.html⟩, art. 1(2) [*Protocol Relating to the Status of Refugees*]. Under certain circumstances, the status of a refugee within the Refugee Convention may be affected by environmental factors. This may occur when a government purposefully leaves a certain category of its population unprotected in the face of adverse environmental circumstances, thus utilizing environmental factors to

of stateless persons could conceivably apply to environmentally displaced persons leaving the sinking islands of a disappearing state, even though such a hypothesis raises many legal issues.[58]

Of more immediate practical importance, however, it has been argued that international human rights law may protect environmentally displaced persons. At stake for internal migrants is the freedom of movement within one's own state, and, for international migrants, state prohibition "from sending people back to places where they risk being tortured, exposed to cruel, inhuman, or degrading treatment or punishment, or subjected to the death penalty or arbitrary deprivation of life".[59] Alternatively, "soft" legal instruments, such as the Guiding Principles on Internally Displaced Persons, are relevant in guiding domestic policies.[60] In addition, many Western scholars and activists have pleaded for new rights-protecting instruments to be adopted specifically for environmental migrants.[61]

Yet many states in Asia and the Pacific remain outside the geographical scope of existing "universal standards"—and the same would probably apply to any new such standards. For instance, no state in South Asia is among the 145 parties to the Refugee Convention or its protocol.[62] Among the ten Member States of the Association of Southeast Asian Nations (ASEAN), this treaty was only ratified by the Philippines and Cambodia, with the latter repeatedly failing to comply with its

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persecute a population. Another possible circumstance where environmental factors may affect the status of a refugee under international law relates to violence exacerbated by environmental factors. See generally Christopher M. KOZOLL, "Poisoning the Well: Persecution, the Environment, and Refugee Status" (2004) 15 Colorado Journal of International Environmental Law and Policy 271; Bruce BURSON, "Environmentally Induced Displacement and the 1951 Refugee Convention: Pathways to Recognition" in Tamer AFIFI and Jill JÄGER, eds., *Environment, Forced Migration and Social Vulnerability* (New York: Springer, 2010), 3 at 5; Jane MCADAM, "From Economic Refugees to Climate Refugees?" (2009) 10 Melbourne Journal of International Law 579 at 584; McAdam, *supra* note 10 at 162–4.

58. *Convention Relating to the Status of Stateless Persons*, 28 September 1954 (entered into force 6 June 1960), online: OHCHR ⟨http://www2.ohchr.org/english/law/stateless.htm⟩. [*Convention Relating to the Status of Stateless Persons*]. See also Jane MCADAM, "'Disappearing States', Statelessness and the Boundaries of International Law" in Jane MCADAM, ed., *Climate Change and Displacement: Multidisciplinary Perspectives* (Oxford: Hart Publishing, 2010), 105; Susin PARK, "Climate Change and the Risk of Statelessness: The Situation of Low-lying Island States", United Nations High Commissioner for Refugees, Background Paper, May 2011; Brad K. BLITZ, "Statelessness and Environmental-Induced Displacement: Future Scenarios of Deterritorialisation, Rescue and Recovery Examined" (2011) 6 Mobilities 433.

59. McAdam, *supra* note 10 at 164. See also Kees WOUTERS, *International Legal Standards for the Protection from Refoulement* (Cambridge: Intersentia, 2009). See generally the report of the UN Special Rapporteur on the Human Rights of Migrants, Professor François Crépeau, on Climate Change and Migration, UN Doc. A/67/299 (2012).

60. United Nations, "Guiding Principles on Internal Displacement" (April 1998), online: International Committee of the Red Cross ⟨http://www.icrc.org/eng/resources/documents/misc/57jpgl.htm⟩ [*Guiding Principles*]. Unlike refugees, internally displaced persons are not necessarily persecuted people. They are defined as:
   persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situation of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

61. See note 8.

62. See note 57. See online: United Nations Treaty Collection ⟨http://treaties.un.org⟩ (accessed on 10 October 2011). See also Ravi NAIR, "Refugee Protection in South Asia" (1997) 51 Journal of International Affairs 201; Fernando CHANG-MUY, "International Refugee Law in Asia" (1991) 24 New York University Journal of International Law and Policy 1171.

obligations.[63] As for the 1954 Convention Relating to the Status of Stateless Persons,[64] the only state parties in Asia and the Pacific are Australia, Fiji, Kiribati, South Korea, and, most recently, the Philippines.[65] The International Covenant on Civil and Political Rights[66] has been more widely ratified in Asia and the Pacific, although exceptions remain, including China, Myanmar, Malaysia, and Singapore.[67] Some have argued that international standards on refugees, stateless persons, and human rights have become part of customary international law, thus applying to defiant states as well.[68] However, the sole reluctance to ratify these instruments, let alone implement them, reflects their limited influence in Asia and the Pacific. This reluctance by states in the Asia-Pacific region to follow rights standards is a major hurdle to normative arguments for the global governance of environmental migration through some form of existing or new universal standards.

In this context, the debate on the governance of environmental migration cannot ignore the region's perspectives on international law. For instance, theoretical works on "Asian values" typically conceptualize the emphasis by Asian states on sovereignty in the discourse on international human rights norms,[69] the importance of economic and social rights,[70] and the need to balance rights with the promotion of

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63. See Amnesty International, "ASEAN Members Must Ratify UN Refugee and Migrant Conventions" (July 2005), online: AI ⟨http://www.amnesty.org⟩; Human Rights Watch, "Public Letter to Cambodian Prime Minister Regarding New Refugee Regulations" (March 2010), online: HRW ⟨http://www.hrw.org/news/2010/03/24/letter-cambodia-sub-decree⟩.

64. *Convention Relating to the Status of Stateless Persons, supra* note 58.

65. See online: United Nations Treaty Collection ⟨http://treaties.un.org⟩ (last accessed 10 October 2011).

66. *International Covenant on Civil and Political Rights*, 19 December 1966 (entered into force 23 March 1976), online: OHCHR ⟨http://www2.ohchr.org/english/law/ccpr.htm⟩.

67. See online: United Nations Treaty Collection ⟨http://treaties.un.org⟩ (last accessed 10 October 2011).

68. On international standards on refugees, see Phil C.W. CHAN, "The Protection of Refugees and Internally Displaced Persons: Non-Refoulement Under Customary International Law?" (2006) 10 International Journal of Human Rights 231; Kay HAILBRONNER, "Non-Refoulement and Humanitarian Refugees: Customary International Law or Wishful Legal Thinking" (1985) 26 Virginia Journal of International Law 857; James HATHAWAY, *The Law of Refugee Status* (Toronto: Butterworths, 1993) at 27. On human rights standards, see Bruno SIMMA and Philip ALSTON, "The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles" (1988) 12 Australian Yearbook of International Law 82; Theodor MERON, *Human Rights and Humanitarian Norms as Customary Law* (Oxford: Oxford University Press, 1989). See also Fania DOMB, "Jus Cogens and Human Rights" (1976) 6 Israeli Yearbook of Human Rights 104.

69. Jack DONNELLY, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2003) at 108; "Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights" in *Report of the Regional Meeting for Asia of the World Conference on Human Rights*, World Conference on Human Rights, UN Doc. A/CONF.157/ASRM/8, para. 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" [*Final Declaration*].

70. The West is accused of prioritizing civil and political rights over social, economic, and cultural ones. See e.g. Donnelly, *supra* note 69 at 110; *Final Declaration, supra* note 69 at 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"; *Final Declaration, supra* note 69, para. 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"; *Final Declaration, supra* note 69, para. 19: "Affirm that poverty is one of the major obstacles hindering the full enjoyment of human rights"; Simon TAY, "Human Rights, Culture, and the Singapore Example" (1995) 41 McGill Law Journal 743 at 750; Ibrahim ANWAR, "Luncheon Address" Kuala Lumpur, 1994; B.S. Chimni, "Third World Approaches to International Law: A Manifesto" (2006) 8 International Common Law Review 3 at 5.

social harmony, traditional order, and growth.[71] In this debate, however, it increasingly appeared that culture-centrism, political discourses, and, perhaps, regionalist prides, have led to extreme positions on both sides. According to Tay, Asia's distinctiveness regarding human rights does not stem from an essential cultural particularism, but rather from the region's "will to differ" and to "evolv[e] on its own path",[72] or even a certain "public mood … of disgruntlement with the west".[73] In contrast, the Western side, as Panikkar argued in 1982, claimed that universalism

> would appear, once again, as a continuation of the colonial syndrome, namely the belief that the construct of one particular culture (God, Church, Empire, Western civilization, science, modern technology, etc.) have, if not the monopoly, at least the privilege of possessing a universal value which entitles them to be spread over all the Earth.[74]

The reader may or may not agree with the argument on "Asian values", and would probably disagree with the way it might have been used to justify certain illiberal policies, but the development of this discourse and its relative success in regional political spheres reflect a certain regional defiance vis-à-vis "universal standards" developed by the West. This defiance at the root of the "Asian values" may impede any global, "top-down" normative approach towards environmental migration. Therefore, if such rules are to be respected by the states of the Asia-Pacific region, they probably have to be created by these states themselves.

III. THE WESTERN BIAS OF ENVIRONMENTAL MIGRATION STUDIES

A. *"Anyone from the South"? A Predominantly Western Concept*

Legal reasoning, generally, is based on the implementation of general rules to specific circumstances.[75] If rules are deemed inadequate with regard to paralegal criteria (ethical norms, or dominant interests), law may be changed; here again, law provides for specific processes to amend the law. The governance debate on environmental migration has generally been conceived within such a framework. If international institutions are not appropriate, new institutions should be established; if universal standards are not appropriate, new universal standards should be found. Two distinct ethical notions, in particular, have influenced calls for new international norms, namely solidarity between wealthy states with those populations affected by

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71. Donnelly, *supra* note 69 at 112; *Final Declaration, supra* note 69, at 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"; Anwar, *supra* note 70; William Theodore DE BARY, *Asian Values and Human Rights: A Confucian Communitarian Perspective* (Cambridge, MA: Harvard University Press, 1998).
72. Tay, *supra* note 70 at 768. See also B.S. CHIMNI, "Asian Civilizations and International Law: Some Reflections" (2011) 1 Asian Journal of International Law 39 at 40−1.
73. Joanne R. BAUER and Daniel A. BELL, "Introduction" in Joanne R. BAUER and Daniel A. BELL, eds., *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999), 3 at 4.
74. R. PANIKKAR, "Is the Notion of Human Rights a Western Concept?" (1982) 30 Diogenes 75 at 76−7.
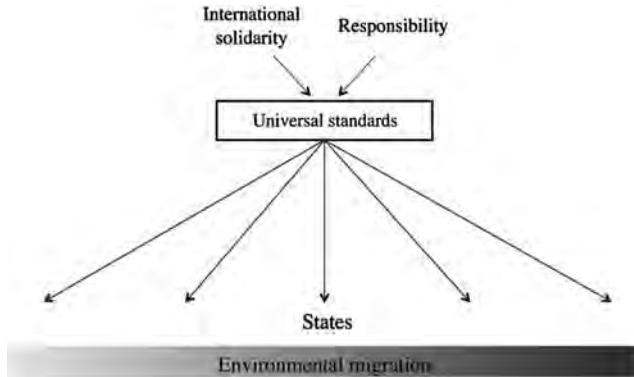75. Edward H. LEVI, *An Introduction to Legal Reasoning* (Chicago: University of Chicago Press, 1948) at 1−2.

Figure 1:   Compliance Model

climate change, and the responsibility of polluting states towards people suffering from climate change.[76] Figure 1 shows the idealized process through which law would adapt to the new challenges brought by environmental migration.

Following the simplicity of this approach to law in isolation from social and political processes, identifying law-making institutions is not necessary. After all, it seems, rights-based approaches towards environmental migration do not aim at doing anything other than help environmental migrants. Critical approaches to law, however, show that who makes law does matter, because it has a decisive influence on how laws are made and, finally, on what laws are made.

Chimni recently highlighted "the problems of doing research in the poor world" and "the academic domination of Northern academic institutions".[77] In many fields, Western institutions—American, European, and Australian universities, research institutes, and NGOs—are defining the world's research agenda. This gap is obvious within studies concerning environmental migration. As one example out of many, a top Western researcher, having recently edited a significant book, circulated an email amongst fellow researchers asking if anyone knew "anyone from the South" knowledgeable about environmental migration to participate in a public event.[78] The Asian Development Bank Regional Conference on Policy Responses to Climate-Induced Migration in Asia and the Pacific, held 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 organized in a developing country; however, once again, the overwhelming majority of the participants came to represent European, American, and Australian institutions. This reflects a system-wide vicious circle, whereby lack of research capacities impedes the recognition of Third World researchers in the global West, thus limiting access to resources that would develop capacity.

This is paradoxical—to say the least—for environmental migration is, or is perceived as, a phenomenon that concerns the developing world almost

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76. Mayer, *supra* note 9 and accompanying text.
77. Chimni, *supra* note 70 at 3−4.
78. For ethical reasons, the identity of this researcher is kept confidential.

exclusively. Lack of development certainly impedes in situ adaptation—living under the sea level is not much of an issue for the Netherlands, but low elevation leads to much more critical situations in Bangladesh. Even when people are massively displaced by a hurricane in Louisiana or by a nuclear accident in Japan, researchers rarely perceive these displacements to be similar to those occurring in Bangladesh or in Ethiopia. An artificial dichotomy is assumed between "survivors" of environmental disasters in the West and "environmental refugees" in the Third World.

This geographical distance has led to a Western bias because it came hand in hand with an intellectual isolation. Western researchers working on environmental migration have generally been isolated from their "objects" of study; some of them have never visited any of the affected countries. Here, the asymmetrical posture of Western institutions looking at the Third World means that researchers may start with flawed preconceptions leading to wrong analyses. Several authors have recently identified the foreseeable consequence of this geographical gap—the construction of the environmental "refugee" as a poor, dark-skinned, and vulnerable, but dangerous, "other",[79] leading to certain forms of securitization of the discourse on environmental migration. While the recent emphasis of Western research institutions on empirical research is important, it is probably not enough to correct fundamentally flawed perceptions, especially for legal or other policy-relevant research, which has often remained isolated from empirical elements. For instance, suggesting the ratification of a convention on "climate refugees" does not make much sense when dealing with countries that are not willing to ratify the Refugee Convention;[80] by contrast, the possibility of India extending its own (generous) refugee protection regime to international environmental migrants has rarely, if ever, been explored. In addition, the fact that most studies on migration, development, and security are written in the West has also impeded the development of transdisciplinary and holistic approaches to migration, security, and development.[81] Thus, geographical isolation has also led to disciplinary isolation. For instance, legal analyses of environmental migration that suggest a status for the "climate refugees" have paid little attention to the many works on migration studies highlighting, from the early 1990s, that environmental factors can rarely be isolated from other factors that cause environmental migration.[82]

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79. See e.g. Betsy HARTMANN, "Rethinking Climate Refugees and Climate Conflict: Rhetoric, Reality and the Politics of Policy Discourse" (2010) 22 Journal of International Development 233 at 238; Chris METHMANN, "Invisible Images Imaging the Invisible: Picturing Climate Refugees as the Human Face of Global Warming", COST Workshop on "The Securitisation of Climate-Induced Migration: Critical Perspectives", Climate Service Center Hamburg, Presentation, 11 June 2012.

80. Refugee Convention, supra note 57.

81. Riwanto TIRTOSUDARMO, "Migration-Development-Security Nexus: In Search of New Perspectives in the Changing East Asian Contexts" in Dewi Fortuna ANWAR, ed., Development, Migration and Security in East Asia: People's Movements and Non-Traditional Security Challenges in a Changing East Asia (Jakarta: The Habibie Center, 2005), 13 at 38.

82. See e.g. Richard E. BILSBORROW, "Rural Poverty, Migration and the Environment in Developing Countries: Three Case Studies, Volume 1", The World Bank, Policy Research Working Paper, 30 November 1992; Richard BLACK, "Environmental Refugees: Myth or Reality?", UNHCR, Working Paper Series on New Issues in Refugee Research, Working Paper No. 34, 2001; Castles, supra note 5.

Also, the emphasis in the normative debate on theoretical questions with little immediate relevance is another symptom of the intellectual isolation from descriptive studies. Despite the fact that most environmental migrants are displaced within national borders, relatively little research has yet been carried out on the application of the guiding principles on internal displacement,[83] or, with regards to African countries, the role of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, adopted in 2009.[84] In contrast, the sensational scenario of a whole state submerged by a rising sea, thus disappearing as a state, recalling legends such as Atlantis, has attracted much curiosity on the legal status of possible "stateless" islanders.[85] This is in spite of the obvious fact that all inhabitants of such a state would hopefully have left (or, if not, would have drowned) well before the total disappearance of the whole national territory. The (political) organization of a resettlement would, therefore, precede—and in practical terms at least contribute to solving—the (legal) issues of climate-induced statelessness.

B. *Three Grounds for a Post-Colonialist Critique of the Governance of Environmental Migration*

The disconnect between the normative research carried out in Western institutions and the reality of environmental migration mostly occurring in the Third World has impeded the policy-oriented debate to date. I am certainly not arguing that Western researchers intended to establish a post-colonial structure of governance. Rather, my argument is that certain elements in the debate reflect a drift towards favouring post-colonial structures of law and governance.

A few authors have already suggested post-colonial critiques of governance proposals relating to environmental or climate migration. Responding to Biermann and Boas's "case for a global protocol",[86] Hulme submitted that, "[e]stablishing a protocol that would be supervised by an international executive committee would open up a new front in the emerging debate about green neo-colonialism".[87] He argued that an exogenous management of environmental migration would

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83. One exception is Carolin BEVERUNGEN, "A Framework for the Protection of Internally Environmentally-Displaced Persons: Application of the United Nations Guiding Principles on Internal Displacement", Center for International Sustainable Development Law (CISDL), Working Paper, December 2011.

84. *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa*, 22 October 2009, online: UNHCR ⟨http://www.unhcr.org/refworld/docid/4ae572d82.html⟩ [*Kampala Convention*].

85. Park, *supra* note 58; McAdam, *supra* note 58; Blitz, *supra* note 58; Maxine BURKETT, "In Search of Refuge: Pacific Islands, Climate-Induced Migration, and the Legal Frontier", East-West Center, Paper, January 2011; Ilan KELMAN, "Island Evacuation" (2008) 31 Forced Migration 20.

86. Frank BIERMANN and Ingrid BOAS, "Protecting Climate Refugees: The Case for a Global Protocol" *Environment Science and Policy for Sustainable Development* (November-December 2008), 8, online: Environment Science and Policy for Sustainable Development ⟨http://www.environmentmagazine.org/Archives/Back%20Issues/November-December%202008/Biermann-Boas-full.html⟩.

87. Mike HULME, "Climate Refugees: Cause for a New Agreement?" *Environment Science and Policy for Sustainable Development* (November-December 2008), 50 at 51, online: Environment Science and Policy for Sustainable Development ⟨http://www.environmentmagazine.org/Archives/Back%20Issues/November-December%202008/hulme-full.html⟩.

likely be "paternalistic and centralizing".[88] Similarly, Kolmannskog recognized the possibility of a post-colonialist critique

> in the context of north-south discourse where 'environmental security' is seen as a colonisation of the environmental problems, suggesting that the underdeveloped south poses a physical threat to the prosperous north by population explosions, resource scarcity, violent conflict and mass migration.[89]

I can see at least three points of entry to a post-colonialist critique of the current normative debate; namely, the notion of the "environmental refugee", the growing influence of security-based approaches, and the policy priority given to preventing displacement.

First, the "climate refugee" has been constructed by the Western media and some NGOs as a vulnerable, passive "other", unable to leave his (more often than "her") "sinking islands".[90] Gemenne and Shen showed that this construction of islanders ran the risk of "enclos[ing] them into a relativist trap and prevent[ing] them from developing adequate adaptation strategies".[91] Gayoom also underscored that this perception could deny the willingness of most Pacific islanders to "stand up and fight".[92] Additionally, little was made of the islanders' unreadiness to be called "refugees".[93] Often, Western environmentalists have used the image of sinking islands to push for actions to mitigate climate change; exotic "environmental refugees" were called to play the role of a canary in the coalmine.[94]

A symptom of a post-colonial construct, the very term "refugee" is reserved for people of the Third World.[95] Following Dalby, Barnett showed that the perception of

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88. *Ibid*.

89. Vikram Odedra KOLMANNSKOG, "Future Floods of Refugees: A Comment on Climate Change, Conflict and Forced Migration", Norwegian Refugee Council, Report, April 2008, at 10.

90. Farbotko, *supra* note 42. See also Carol FARBOTKO, "Wishful Sinking: Disappearing Islands, Climate Refugees and Cosmopolitan Experimentation" (2010) 51 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 Singapore Journal of Tropical Geography 224; 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* (New York: Peter Lang Publishing, 2012).

91. Gemenne and Shen, *supra* note 32 at 28.

92. M.A. GAYOOM, "International Assistance Can Save Our Peoples" in M.A. GAYOOM, ed., *The Maldives: A Nation in Peril* (Malé: Ministry of Planning Human Resources and Environment, 1998), 29 at 29, cited in 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 Geoforum 475 at 479.

93. Jane MCADAM and Maryanne LOUGHRY, "We Aren't Refugees" *Inside Story* (30 June 2009), online: Inside Story ⟨http://inside.org.au/we-arent-refugees/⟩; McNamara and Gibson, *supra* note 92; Karen Elizabeth MCNAMARA, "Conceptualizing Discourses on Environmental Refugees at the United Nations" (2007) 29 Population and Environment 12.

94. See e.g. François GEMENNE, "Tuvalu, un laboratoire du changement climatique?" (2010) 204 Revue Tiers Monde 89. See also Friends of the Earth Australia, "A Citizen's Guide to Climate Refugees" (2006), online: Project SafeCom ⟨http://www.safecom.org.au/pdfs/FOE_climate_citizens-guide.pdf⟩ (advising Australian citizens to take actions such as "talk[ing] to [their] local MP about mandatory renewable energy targets and binding emissions reduction targets for Australia" or "[r]educ[ing] greenhouse gas emissions in your household, transport use and recreational activities").

95. Similarly, Chimni notes that the "key subjects of Forced Migration Studies", in particular, the internally displaced persons (IDPs), "primarily exist only in the non-western world". See B.S. CHIMNI, "The Birth of a 'Discipline': From Refugee to Forced Migration Studies" (2009) 22 Journal of Refugee Studies 11 at 20.

environmental change as a security issue relies on the discourse of "barbaric Southern Others residing in decaying natural environs (over there)".[96] In contrast to the discourse on Pacific islanders, the term "refugee" "was unanimously rejected when 1.2 million New Orleanians were displaced by Hurricane Katrina in 2005, and the victims insisted on being called 'evacuees' or 'survivors'".[97] Former US President Bush had to intervene in the debate to assess that the displaced New Orleanians "are not refugees. They are Americans, and they need the help and love and compassion of our fellow citizens."[98]

Also, the term "refugee" conveys an inexact conception of people displaced by environmental change. It seems to imply an international, forced movement, which is at odds with the reality of environmental migration. On the one hand, most environmental migrants are displaced within their state,[99] and this prevalence of internal migrants is not likely to change even in worst-case scenarios of global environmental change.[100] On the other hand, environmental inducement to migration has increasingly been described as spanning a long continuum between forcedness and voluntariness. As explained above, in most circumstances, environmental factors are only one in a cluster of causes.[101] The notion of "climate refugee" is a symptom of an isolation of normative research from more descriptive research on environmental migration. Further, "refugee" has a connotation of internationality and violence that reflects and further conveys the dominant perspective on environmental migration: the "environmental refugee" is essentially constructed as a threat to the highly guarded and yet fragile prosperity of the global West.

Second, the securitization of environmental migration also reflects a post-colonialist drift in normative studies.[102] Ideally, international law, if it purports to convey "neutral"

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96. Jon BARNETT, "Destabilizing the Environment-Conflict Thesis" (2000) 26 Review of International Studies 271 at 285. See also Simon DALBY, "Threats from the South? Geopolitics, Equity, and Environmental Security" in Daniel H. DEUDNEY and Richard A. MATTHEW, eds., *Contested Grounds: Security and Conflict in the New Environmental Politics* (Albany: State University of New York Press, 1999), 155; Gregory BANKOFF, "Rendering the World Unsafe: 'Vulnerability' as Western Discourse" (2001) 25 Disasters 19.

97. 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* (New York: Springer, 2010), 29 at 36. See also Adeline MASQUELIER, "Why Katrina's Victims Aren't Refugees: Musings on a 'Dirty' Word" (2006) 108 American Anthropologist 735.

98. The White House, "President Meets with Representatives from National Voluntary Organizations" (September 2005), online: The White House ⟨http://georgewbush-whitehouse.archives.gov/news/releases/2005/09/20050906-1.html⟩, cited in Gemenne, *supra* note 55 at 37.

99. See e.g. EACH-FOR, Environmental Change and Forced Migration Scenarios, European Commission, "Synthesis Report" (May 2009), online: EACH-FOR ⟨http://www.each-for.eu/documents/EACH-FOR_Synthesis_Report_090515.pdf⟩ at 72; Frank LACZKO and Christine AGHAZARM, "Migration, Environment and Climate Change: Assessing the Evidence", International Organization for Migration, Report, (2009) at 73; R. BLACK et al., "Demographics and Climate Change: Future Trends and Their Policy Implications for Migration", Development Research Centre on Migration, Globalisation and Poverty (University of Sussex), Brighton, June 2008, at 7.

100. See François GEMENNE, "Climate-Induced Population Displacements in a 4 C+ World" (2011) 369 Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences 182 at 188.

101. See note 4.

102. See generally Jon BARNETT, "Security and Climate Change" (2003) 13 Global Environmental Change 7; Jon BARNETT and Neil ADGER, "Climate Change, Human Security and Violent Conflict" (2007) 26 Political Geography 639; Jon BARNETT and Neil ADGER, "Climate Dangers and Atoll Countries" (2003) 61 Climatic Change 321; Thomas F. HOMER-DIXON, *Environment, Scarcity, and Violence* (Princeton: Princeton University Press, 1999); Nils Petter GLEDITSCH, "Environmental Conflict:

norms, should take the interests of all states into account. Yet the discourse on security is mainly focused on the interests of dominant states where this discourse is developed. The focus is generally on the possible risks that transnational crime, human trafficking or terrorism, and failing states could pose for Australia, the United States, and (perhaps to a lesser extent) Europe. Replacing the solidarity or responsibility-based narratives, "security" concerns have become more and more influential, and the fear of a human tide of "environmental refugees" in Western countries became the single most influential argument for political action. Countries of the Third World may have concerns of a similar nature, but what is at stake in most Western literature on environmental migration is the security of the West. Here again, however, the securitization of environmental migration relies on an alarmist discourse denounced by contemporary descriptive research;[103] in particular, it is based on the misleading assumption that environmental migrants will try to cross borders and "invade" developed countries. Such security-based perspectives displace the assumed neutrality of "universal standards", as the security agenda looks at developing states exclusively with the interests of the developed world in mind.

Third, the Western bias in normative discussions on environmental migration has been reflected in an oft-heard hostility towards any form of displacement, as Western states perceived that they had much to lose and little to gain in allowing any form of migration. Far from searching for a sustainable solution for environmental migration, many policy-makers consider all forms of migration to be wrong.[104] Therefore, the emphasis has often been put on increasing resilience to avoid migration. As shown above, the action of the IOM in the Third World aimed mainly at building resilience and helping populations to face natural disasters without displacement, or at providing humanitarian support to those who had already moved, but not much at ensuring the dignity of potential migrants. To this extent, the IOM distances itself from its purpose, as defined by its constitution, which is to facilitate "orderly migration", not to avoid migration.[105]

Neomalthusians vs. Cornucopians" in Hans Günter BRAUCH et al., eds., *Security and Environment in the Mediterranean: Conceptualising Security and Environmental Conflicts* (Heidelberg: Springer, 2003), 477; Scott EDWARDS, "Social Breakdown in Darfur" (2008) 31 Forced Migration 23; Ashok SWAIN and Steve LONERGAN, "Environmental Degradation and Population Displacement" *Aviso* (May 1999), online: Academia.edu ⟨http://uppsala.academia.edu/AshokSwain/Papers/353770/ Environmental_Degradation_and_Population_Displacement_AVISO_Papers_no._2_Global_Environmental_ Change_and_Human_Security_Project_Victoria_Canada_1999_with_Steve_Lonergran_8_pages._http_www. gechs.org_aviso_02_⟩.

103. James MORRISSEY, "Environmental Change and Forced Migration: A State of the Art Review", Refugee Studies Center, Background Paper, January 2009.

104. A policy expert, presenting the draft conclusions of a World Bank project, argued that, "migration … is not a good thing. It brings a lot of messy things." Accordingly, the goal should not be "to facilitate migration per se, but once you have migration … and you have people sending remittances at home, you have to facilitate this". See Andrea LIVERANI, "Environmental Migration in the Middle East and North Africa", Centre for International Studies and Research, Sciences Po, Presentation, 13–14 June 2012. Several members of the audience disagreed with this discourse. However, Liverani's presentation reflected a widespread underlying hostility towards migration, at the roots of the paradigm of migration "management".

105. *Constitution of the International Organization for Migration*, 19 May 1953, online: IOM ⟨http:// www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/about_iom/iom_constitution_eng_ booklet.pdf⟩, art.1 [*Constitution of the IOM*].

While migration is a constant adaptation strategy, the dominant paradigm on migration "management" (i.e. control) is certainly the greatest hurdle to successful adaptation to climate change. Indeed, it is often because they cannot migrate that vulnerable populations cannot adapt. The paradigm of migration management, which depicts the immigrant as an economic burden and a threat to national identity,[106] aims at protecting Western interests in a fundamentally unequal world. This paradigm can accommodate certain forms of migration only when those forms of migration are considered as a lesser evil. In this context, the rapid development of a discourse on migration as adaptation[107] may not have been entirely emancipated from the structural influence of this paradigm. On the one hand, internal or South-South migration may be perceived as a means to avoid mal-development and international migration. The Nansen Principles, reflecting a consensus amongst researchers, adopted the goal of "preventing displacement" before "assisting and protecting people and communities affected by such displacement" and "finding durable solutions".[108] On the other hand, the development of temporary and circular migration provides cheap labour to Western countries[109] (cf. Figure 2 for a representation of the post-colonial model).

IV. RESISTANCE IN ASIA AND THE PACIFIC

A. *A Theory of Resistance*

Chimni fairly insists that a critique of the dominant ideology in order to defend the interests of Third World peoples "has to go hand in hand with a theory of resistance".[110] Accordingly, "we need to study and suggest concrete changes in existing international legal regimes".[111] Two different avenues can be followed in order to re-empower the Third World in general, and Asia and the Pacific in particular, with the legal frameworks applicable to the issue of environmental migration. The first option

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106. See e.g. Savitri TAYLOR, "From Border Control to Migration Management: The Case for a Paradigm Change in the Western Response to Transborder Population Movement" (2005) 39 Social Policy & Administration 563; Ole WAEVER et al. with David Carlton et al., *Identity, Migration, and the New Security Agenda in Europe* (London: Printer Publishers, 1993); François CRÉPEAU, Delphine NAKACHE, and Idil ATAK, "International Migration: Security Concerns and Human Rights Standards" (2007) 44 Transcultural Psychiatry 311; François CRÉPEAU and Delphine NAKACHE, "Controlling Irregular Migration in Canada: Reconciling Security Concerns with Human Rights Protection", Institute for Research on Public Policy, Paper, February 2006; Myron WEINER, "Security, Stability, and International Migration" (1992) 17 International Security 91.

107. See in particular, Jon BARNETT and Michael WEBBER, "Migration as Adaptation: Opportunities and Limits" in Jane MCADAM, ed., *Climate Change and Displacement: Multidisciplinary Perspectives* (Oxford: Hart Publishing, 2010), 41; see note 45; 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* (Wellington: Institute of Policy Studies, 2010), 51; R. MCLEMAN and B. SMIT, "Migration as an Adaptation to Climate Change" (2006) 76 Climatic Change 31; The Government Office for Science, London, "Foresight: Migration and Global Environmental Change (2011) Final Project Report" (2011), online: Department for Business, Innovation and Skills ⟨http://www.bis.gov.uk/assets/foresight/docs/migration/11-1116-migration-and-global-environmental-change.pdf⟩.

108. *Supra* note 11, Principle IV.

109. See Romain FELLI, "Managing Climate Insecurity by Ensuring Continuous Capital Accumulation: 'Climate Refugees' and 'Climate Migrants'" (2012) New Political Economy (forthcoming).

110. Chimni, *supra* note 70 at 19.
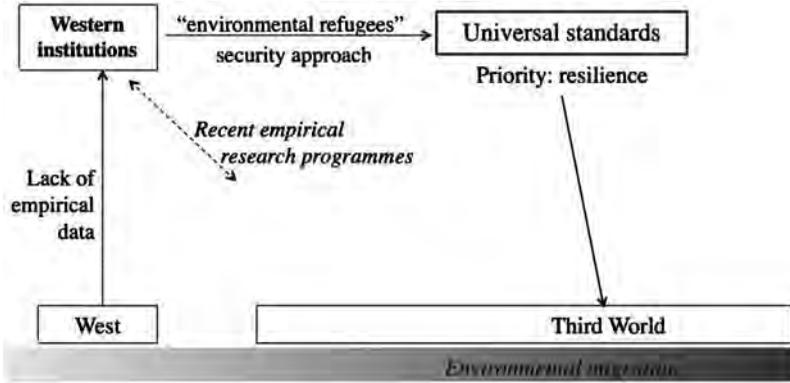
111. *Ibid.*, at 22.

Figure 2: Post-Colonial Model

would be for the Third World to oppose Western domination and establish a symmetrical Southern or Eastern domination. The second, "softer" option would be to build up the capacity of states of the Third World to develop regional normative frameworks, which can apply to environmental migration.

The first option is unlikely to succeed in the foreseeable future. While some states in Africa, Asia, the Pacific, and Latin America may wish to push for global co-operation regarding environmental migration, the West has no such direct incentive, and would likely oppose any exogenous "universal standards". Also, this option is impeded by the lack of political unity amongst states of the Third World and, as a consequence, by their lack of influence over the global political agenda. Experience highlights the striking differences between central and peripheral states regarding their ability to define issues and to impose a global agenda, in particular, regarding the issue of migration. In 1990, developing countries succeeded in having the General Assembly adopt the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.[112] The main innovation of the treaty consisted in recalling the fundamental rights of undocumented migrants and the treaty does not contain any right to migrate. Twenty-one years after its adoption, the convention is now ratified by forty-five states, mostly sending countries in Latin America and Western Africa; no Western state and few significant countries of destination have ratified it.[113] To this extent, it is highly unlikely that some peripheral states would succeed in imposing any form of international governance regarding environmental migration

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112. *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, (entered into force 1 July 2003), online: OHCHR ⟨http://www2.ohchr.org/english/law/cmw.htm⟩ [*International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*].

113. See online: United Nations Treaty Collection ⟨http://treaties.un.org⟩ (accessed on 5 November 2011). See generally Euan MACDONALD and Ryszard CHOLEWINSKI, "The Migrant Workers Convention in Europe: Obstacles to the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families: EU/EEA Perspectives", United Nations Educational, Scientific and Cultural Organization, Report, 2007. At most, art. 44(2) provides that "States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate" family reunification. See *ibid.*, art. 44(2).
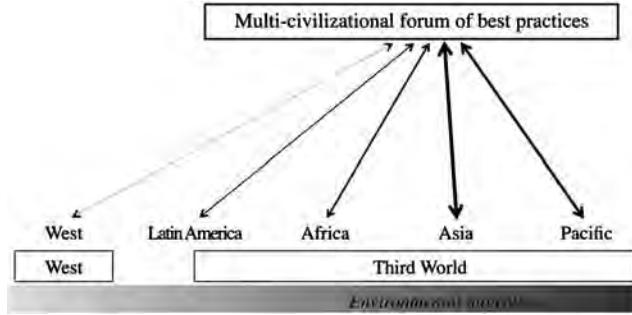
Figure 3: Participative Model

globally or even upon other developing countries. International efforts on climate change mitigation or adaptation are supported by powerful civil society organizations, but even these organizations may be unable to affect state behaviour over the control of their borders. To this extent, global adoption of any binding instrument on environmental migration is unlikely,[114] even if it is supported by a significant number of states from the Third World.

In comparison, the second option is more realistic. It consists of building up the capacities of states of the Third World to develop regional legal frameworks which can apply to environmental migration. While climate change is a global phenomenon, environmental migration, given that it occurs mainly within states and, at times, in a regional context,[115] does not necessarily justify a globally harmonized normative response. Overall, global regulation would be impeded by the isolation of normative research from empirical understanding of environmental migration. A bottom-up collection of best practices and an interregional forum, which may foster innovative policies, should be preferred to a top-down application of standards developed in disconnection from empirical experience. In such a bottom-up approach of regional best practices, actors in Asia and the Pacific are likely to play a major role, as this region is largely affected by environmental migration and has a growing research capacity in this area (cf. Figure 3 for a representation of the participative model).

Several normative studies on environmental migration have submitted that regional negotiations are more likely to succeed at pushing states to co-operate and take action than global negotiations.[116] This is not only because global engagement seems unfeasible at this stage, but also because past experience of legal development in the fields of migration and environmental protection have shown regional co-operation to be more efficient in establishing normative frameworks.

In migration matters, in particular, regional law has often proven to be an efficient tool for peripheral states to develop further co-operation and higher standards of

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114. Jane MCADAM, "Swimming Against the Tide: Why a Climate Change Displacement Treaty is Not the Answer" (2011) 23 International Journal of Refugee Law 2 at 17; Angela WILLIAMS, "Turning the Tide: Recognizing Climate Change Refugees in International Law" (2008) 30 Law and Policy 502 at 517.

115. See *supra* notes 99 and 100.

116. See generally Williams, *supra* note 114 at 518; Mayer, *supra* note 8.

protection in legal fields where the West has been reluctant to improve "universal standards". Famously, instruments broadening the definition of the refugee were adopted in both Latin America and Africa.[117] Moreover, the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa will give a binding force to a set of norms similar to the UN Guiding Principles on Internal Displacement.[118] Similarly, in 2007, ASEAN adopted the Declaration on the Protection and Promotion of the Rights of Migrant Workers (Cebu Declaration) and established a committee on its implementation.[119] Although this has not yet led to any binding instrument, this step may be of more significance than the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, ratified by only one state (the Philippines) among the ten Member States of ASEAN.[120] Last, but not least, many states in Asia and the Pacific have engaged in regional consultative processes on migration organized by IOM, in particular the Colombo Process[121] and some local academic events,[122] with a view to facilitating regional co-operation between researchers, states and local authorities, and potential donors.

117. Inter-American Commission on Human Rights, "Cartagena Declaration on Refugees" (November 1984), online: University of Minnesota ⟨http://www1.umn.edu/humanrts/instree/cartagena1984. html⟩; *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September 1969, online: African Union, ⟨http://www.africa-union.org/Official_documents/Treaties_%20 Conventions_%20Protocols/Refugee_Convention.pdf⟩ [*Convention Governing the Specific Aspects of Refugee Problems in Africa*].

118. *Kampala Convention, supra* note 84. See also *Guiding Principles, supra* note 60. The Guiding Principles are not open to ratification, and, therefore are generally considered as "soft law" or non-binding law.

119. *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers*, 13 January 2007, online: ASEAN ⟨http://www.aseansec.org/19264.htm⟩ [*Cebu Declaration*]; *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, online: ASEAN ⟨http:// www.aseansec.org/20768.htm⟩ [*Statement of the Establishment of the ASEAN Committee*].

120. Cambodia and Indonesia have signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, but they have not ratified it. See *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, supra* note 112.

121. Ministerial Consultations on Overseas Employment and Contractual Labour for Countries of Origin in Asia (Colombo Process) was established in 2003. Its members are Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand, and Vietnam. Its partners and observer states (i.e. 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 sixteen members, all in the East Asia-Pacific region. Australia and New Zealand are members of the Inter-Governmental Consultations on Migration, Asylum and Refugees (IGC), along with other Western countries. See International Organization for Migration, "Ministerial Consultations on Overseas Employment and Contractual Labour for Countries of Origin in Asia (Colombo Process)", online: IOM ⟨http://www.iom.int/jahia/ Jahia/policy-research/pid/820⟩; International Organization for Migration, "IOM Regional Seminar on Irregular Migration and Migrant Trafficking in East and South-East Asia (Manila Process)", online: IOM ⟨http://www.iom.int/jahia/Jahia/policy-research/regional-consultative-processes/rcps-by-region/ manila-process⟩; International Organization for Migration, "Inter-Governmental Consultations on Migration, Asylum and Refugees (IGC)", online: IOM ⟨http://www.iom.int/jahia/Jahia/policy-research/regional-consultative-processes/rcps-by-region/igc⟩. See generally Colleen THOUEZ and Frédérique CHANNAC, "Shaping International Migration Policy: The Role of Regional Consultative Processes" (2006) 29 West European Politics 370 at 386.

122. For instance, IOM organized a workshop on climate change adaptation and migration in the Mekong Delta, with United Nations Development Programme and Can Tho University, in June 2012.

Similarly, on environmental matters, strong arguments have been developed in favour of regional governance. Tay highlighted that the incentive to co-operate may be stronger within a regional community of proximate and interdependent states with a relatively homogenous level of development.[123] Again, the Centre for Strategic and International Studies (CSIS) emphasized the ability of regional co-operation 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".[124] Overall, the CSIS argued that regional organizations 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".[125]

Nonetheless, regional negotiations are certainly not the panacea. They may be an obstacle to financial contribution from the polluting developed states to the affected, developing states as should follow from the principle of a common but differentiated responsibility.[126] Furthermore, even at the regional level, states may be unwilling to adopt binding instruments. However, the flexibility of regional governance is desirable when dealing with environmental migration, where new policies need to be invented, evaluated, and circulated, and where excessive reliance on Western research capacities can be avoided. Moreover, no general definition of "environmental migrants" has been agreed upon that could be used to define a specific legal category of individuals.[127] Due to the complex causes of migration, applying such an abstract definition would face major practical hurdles.[128] Yet without a legal definition, there is a need for international co-operation. Therefore, a regional forum of decision-makers sharing good practices and agreeing upon non-binding principles could raise awareness, foster intraregional and interregional debates on specific issues, and thus contribute in substantially improving the lot of environmental migrants.

Besides, the regional normative debate on environmental migration in the Third World needs to steer clear of Western discourse on the issue. Admittedly, many

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123. Tay (2005), *supra* note 26.

124. Center for Strategic and International Studies, "Asia's Response to Climate Change and Natural Disasters: Implications for an Evolving Regional Architecture. A Report of the CSIS Asian Regionalism Initiative" (July 2010), online: CSIS ⟨http://csis.org/files/publication/100708_Freeman_AsiasResponse_WEB.pdf⟩ at 57−8.

125. *Ibid*.

126. United Nations Environment Programme, "Rio Declaration on Environment and Development" (June 1992), online: UNEP ⟨http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163⟩ Principle 7 [*Rio Declaration*]; *United Nations Framework Convention on Climate Change*, 9 May 1992, online: UNFCCC ⟨http://unfccc.int/resource/docs/convkp/conveng.pdf⟩, at Sixth Recital, arts. 3(1) and 4(1) [*UNFCCC*].

127. The definition given by the IOM in a discussion note in 2007 is often cited, although less often agreed with. Accordingly,
    environmental migrants are persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or chose to do so, either temporarily or permanently, and who move either within their country or abroad.
    However, the IOM itself called this a "working definition". See International Organization for Migration, "Discussion Note: Migration and the Environment" (November 2007), online: IOM ⟨http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/microsites/IDM/workshops/evolving_global_economy_2728112007/MC_INF_288_EN.pdf⟩ at 1−2.

128. See Mayer, *supra* note 5.

regional initiatives in the Third World do not differ significantly from the dominant Western discourse. For instance, many rights advocates and state representatives from Bangladesh support the idea of a convention on "climate refugees", which is often inspired by Western normative works.[129] There are three ways of explaining this. First, some leaders and researchers in the Third World have close links with the West; they may, for instance, be influenced by their Western education when analyzing local issues. This may explain their resort to security-based approaches towards environmental migration or preventive approaches towards migration that are similar to those developed in the West. Second, local researchers lacking access to research tools may have no choice but to rely on simplistic conceptions of environmental migration in the dominant Western scholarship. Third, Floremont showed that national authorities might have used Western security language to put environmental migration issues on the forefront as part of fund-seeking strategies.[130]

Thus, the disconnect between research and empirical studies may be replicated within the Third World under the influence of Western education, the domination of Western research, and the demands of Western donors. Therefore, normative research needs to be carried out with a constant view of defending the interests of the Third World. A theory of resistance needs to take these important obstacles into account. Yet it would be wrong to conclude, in view of these difficulties, that scholarship on environmental migration should continue to be developed almost exclusively in the West, as this would only result in perpetuating the unfairness and inefficiency of post-colonial forms of governance. Due to geographical proximity, researchers and leaders of the Third World in general are more likely to understand the phenomenon and its challenges, and to identify possible solutions for the benefit of those affected, as compared to their Western counterparts. In the long term, increasing the capacity of research in the Third World can help avoid over-dependence on Western research institutions and enable the development of much-needed critical scholarship in the Third World.

B. *Regional Endeavours in the Asia-Pacific Region*

While there is no legal or governance framework applicable to environmental migration in the Asia-Pacific region as yet, the situation may be changing. First, a transnational civil society is progressively emerging and playing an increasing role in fostering regional debate and pushing for different kinds of formal or informal regional co-operation.[131] The Asian Disaster Preparedness Centre, for instance, aims at pushing for "safer communities and sustainable development through disaster risk reduction".[132] Two Christian organizations have also been among the few civil

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129. See in particular the advocacy of the Equity and Justice Working Group, online: EJWG ⟨http://www.equitybd.org/⟩.

130. Fanny FLOREMONT, "Migratory Issues in Climate Adaptation Policies: A New Conceptualisation of Population Displacements?" (2012) 39 Forum for Development Studies 31 at 43.

131. In the Northeast Asian context, see Yasumasa KOMORI, "Evaluating Regional Environmental Governance in Northeast Asia" (2010) 37 Asian Affairs: An American Review 1.

132. See online: Asian Disaster Preparedness Center ⟨http://www.adpc.net/2011/⟩.

society organizations that have actively addressed the issue of environmental migration at the regional level. They are the Pacific Conference of Churches and the World Council of Churches (Oikumene).[133] Elliott recently highlighted that

> [t]he 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.[134]

In a step by state authorities, the Asia Pacific Forum of National Human Rights Institutions, established in 1996, is currently implementing an advocacy programme on the rights of migrant workers.[135] It may soon push further to formulate public policies on environmental migration.

Regional legal frameworks on environmental migration or regional governance require that states accept certain restrictions on their sovereignty. In this regard, the South Asian Association for Regional Cooperation (SAARC) and ASEAN are two models of regional organizations that could open the way to normative discussions on environmental migration. SAARC started committing itself to environmental issues as early as 1991, when it recognized that the "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".[136] Later, in April 2010, the Thimphu Statement on Climate Change took 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".[137] Accordingly, a regional programme could consist of "cooperative regional initiatives and approaches, exchange of

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133. See online: 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* (Wellington: Institute of Policy Studies, 2010), 61.

134. Lorraine ELLIOTT, "Climate Migration: Why it is a Human Security Issue", S. Rajaratnam School of International Studies, Commentary, 25 February 2011 at 57.

135. It includes eighteen national bodies. See "Bangladesh Becomes Newest APF Member" *Asia Pacific Forum* (20 September 2011), online: Asia Pacific Forum ⟨http://www.asiapacificforum.net/news/bangladesh-becomes-newest-apf-member⟩. See also Asia Pacific Forum of National Human Rights Institutions, "Larrakia Declaration: Conclusions, Recommendations and Decisions" (July 1996), online: Asia Pacific Forum ⟨http://www.asiapacificforum.net/about/history/annual-meetings/1st-australia-1996/downloads/larakia.pdf⟩ [*Larrakia Declaration: Conclusions, Recommendations and Decisions*]. A workshop was held in Bangkok on 17–21 October 2011, and the forthcoming publication of an "Operational Guide for National Human Rights Institutions on the Rights of Migrant Workers" was announced for 2012. See "Human Rights Advocacy and Migrant Workers in the Asia-Pacific Region" *Asia Pacific Forum*, online: Asia Pacific Forum ⟨http://www.asiapacificforum.net/news/human-rights-advocacy-and-migrant-workers-in-the-asia-pacific-region⟩.

136. 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), online: SAARC ⟨http://www.saarc-sec.org/userfiles/Large%20Publications/CCNDPPE/index.php⟩ at 198. See also Ashok SWAIN, "South Asia, Its Environment and Regional Institutions" in Lorraine ELLIOTT and Shaun BRESLIN, eds., *Comparative Environmental Regionalism* (London: Routledge, 2011), 76.

137. South Asian Association for Regional Cooperation, "Thimphu Statement on Climate Change" (April 2010), online: SAARC ⟨http://www.saarc-sec.org/userfiles/ThimphuStatementonClimateChange-29April2010.pdf⟩ at 10th Recital [*Thimphu Statement on Climate Change*].

experiences, knowledge, transfer of technology, [and] best practices to address the challenges posed by climate change".[138]

ASEAN is another possible normative framework. As an "imagined community"[139] in the making, ASEAN has gone further than any other regional organization in Asia and the Pacific in dealing with the rights of migrant workers or with the protection of the environment.[140] However, progress has been limited; no binding agreement has yet been adopted on the rights of migrant workers,[141] and the Agreement on Trans-boundary Haze Pollution was not ratified by Indonesia, which is the main regional source of haze pollution.[142] Generally speaking, ASEAN Member States have been reluctant to accept significant restrictions on their sovereignty, thus significantly limiting the prospects of an approach based on compulsory rights-based standards.[143] Nonetheless, Koh and Robinson highlighted that "ASEAN has emphasized programmatic cooperation".[144] Accordingly, "ASEAN appears to have sustained a regional system for collaboration" and "has been remarkably successful in shaping a common regional environmental policy framework".[145] Indeed, the possibility of a regional dialogue on migration is itself an achievement, as discussing the issue of state control on its borders within ASEAN could not have been imagined two or three decades ago.[146]

Yet some degree of international funding may also be necessary for successful negotiations on environmental migration in the Asia-Pacific region. If not for its own sake—after all, some Asian countries are becoming increasingly wealthy, while Western states are facing financial difficulties—international funding is at least a

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138. *Ibid.*, at 13th Recital.

139. 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* (London: Ashgate, 2007), which was inspired by the concept proposed by Benedict ANDERSON, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (New York: Verso, 1991).

140. On migrant workers, see *Cebu Declaration, supra* note 119; *Statement of the Establishment of the ASEAN Committee, supra* note 119. On the protection of the environment, see *ASEAN Agreement on Transboundary Haze Pollution*, 10 June 2002, online: ASEAN ⟨http://www.aseansec.org/pdf/agr_haze.pdf⟩ [*ASEAN Agreement on Transboundary Haze Pollution*]. See generally Lorraine ELLIOTT, "East Asia and Sub-Regional Diversity: Initiatives, Institutions and Identity" in Lorraine ELLIOTT and Shaun BRESLIN, eds., *Comparative Environmental Regionalism* (London: Routledge, 2011), at 60−6.

141. After the Cebu Declaration, several states are pushing for a binding agreement. See e.g. Association of Southeast Asian Nations, "2011 Chair's Statement of the 18th ASEAN Summit" (May 2011), online: Centre for International Law ⟨http://cil.nus.edu.sg/rp/pdf/2011%20Chairs%20Statement%20of%20the%2018th%20ASEAN%20Summit-pdf.pdf⟩ at 8.

142. 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 at 3−4.

143. See in particular, *Charter of the Association of Southeast Asian States*, 20 November 2007, online: ASEAN ⟨http://www.aseansec.org/21069.pdf⟩, at art. 2(2)(a) [*ASEAN Charter*].

144. 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 at 643.

145. *Ibid.* at 643 and 659.

146. Graeme HUGO, "Internal and International Migration in Asia-Exploring the Linkages", Asia Research Institute, National University of Singapore, Keynote Address, 13 October 2011.

moral responsibility as developed states which bear historical responsibility for climate change should pay for the consequences of climate change incurred by developed countries. In some cases, the apparently insurmountable financial obstacles to regional co-operation have led regional leaders to turn away from regional governance, and regional co-operation has at times been reduced to a fund-seeking strategy. For instance, despite the promising project of a regional governance through SAARC, Bangladesh Prime Minister Hasina proposed in September 2012 to use South Asian co-operation only to co-ordinate a "united call … to consider and adopt a new legal regime under the UNFCCC Protocol to ensure social, cultural and economic rehabilitation" for environmentally displaced persons.[147] Regional co-operation is, in this proposal, only to plead for an international regime that can channel North-South financial flows through a climate change fund.

Prime Minister Hasina's proposal for a united call contrasts with the statement by the Pacific Islands Forum in 2008, which seemed to expect more from regional co-operation. This statement 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".[148] Thus, while regional co-operation remains contingent to external funding, the statement by the Pacific Islands Forum implies that its regional co-operation could extend to defining the necessity of migration policies. Other groups of states merely aim at pushing the international community to act. Thus, the Declaration of the Climate Vulnerable Forum, adopted just before the Copenhagen Climate Change Conference, expressed the determination of those states most vulnerable to climate change, exhorting them "as low-emitting countries that are acutely vulnerable to climate change, to show moral leadership on climate change through actions as well as words, by acting now to commence greening our economies as [their] contribution towards achieving carbon neutrality".[149]

In this context, the involvement of the Asian Development Bank (ADB) is particularly promising. In 2010, the ADB launched a preliminary research programme, the goal of which was to identify the "policy options to support climate-induced migration".[150] This programme consisted of an effort to improve empirical research and to realize a financial feasibility study, while developing a

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147. *Ibid.*

148. Pacific Islands Forum Secretariat, "Niue Declaration on Climate Change" (August 2008), online: Pacific Islands Forum Secretariat ⟨http://www.forumsec.org/resources/uploads/attachments/documents/THE%20NIUE%20DECLARATION%20ON%20CLIMATE%20CHANGE.pdf⟩ at para. 4 [*Niue Declaration on Climate Change*]. See also Secretariat of the Pacific Regional Environment Programme, "Pacific Islands Framework for Action on Climate Change 2006–2015" (June 2005), online: Secretariat of the Pacific Regional Environment Programme ⟨http://www.sprep.org/att/publication/000438_PI_Framework_for_Action_on_Climate_Change_2006_2015_FINAL.pdf⟩ [*Pacific Islands Framework for Action on Climate Change 2006–2015*].

149. DARA, "Declaration of the Climate Vulnerable Forum" (November 2009), online: DARA ⟨http://daraint.org/wp-content/uploads/2010/12/Declaration-of-the-CVF-FINAL2.pdf⟩ at first operative paragraph.

150. Asian Development Bank, "Policy Options to Support Climate-Induced Migration" (December 2009), online: ADB ⟨http://www2.adb.org/Documents/TARs/REG/43181-REG-TAR.pdf⟩.

regional dialogue and raising awareness.[151] Although the programme was initially
not presented as preparation for a further role for the ADB in financing national
policies,[152] Dobias, a senior advisor to the programme, admitted that the ADB might
nonetheless consider "enter[ing] into partnerships"[153] with other organizations.
In particular, Dobias insisted that the ADB could "provide financial expertise
and capacity [and] use [its] convening power [to] support programs and projects".[154]
The final report of the project, presented in March 2012, announced the
establishment of an "Asia-Pacific Migration and Environment Network of
researchers",[155] but did not provide for international funding on specific actions.

The ADB may become an essential element of a regional approach towards
environmental migration in the Asia Pacific region, as it has the institutional capacity
and know-how to channel funds from its nineteen non-regional members to its forty-
eight "regional" members through loans, grants, and technical assistance.[156] Its broad
geographical scope, however, lacks coherence; developing member countries (DMCs)
as distant as Kazakhstan and Fiji are unlikely to shape any form of imagined
community. Yet this may be a necessary drawback of any organization which is able
to channel multilateral funds on a global scale, and it can be mitigated by the
capacity of the ADB to enter partnerships with other subregional organizations such
as the SAARC, ASEAN, and the Pacific Islands Forum. However, developed states
are unlikely to fund substantial programmes without having control over them,
especially since donor countries do keep close control over the activities funded by
the ADB.[157] Here again, subregional partnerships might contribute to reducing the
asymmetrical power relations between the donors and receivers of international
funds if groups of Asia-Pacific states succeed in co-ordinating a coherent position.

V. TOWARDS A REGIONAL GOVERNANCE OF ENVIRONMENTAL MIGRATION IN THE ASIA-PACIFIC REGION

A. *"Asian Values" and Third World Approaches to International Law*

The impediments to regional co-operation on environmental migration policies in
Asia and the Pacific are well known. Both Third World Approaches to International

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151. *Ibid.*, at 4−5.
152. 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", thus suggesting that funding should
      be operated at a global level. *Ibid.*, at 4.
153. Robert J. DOBIAS, "ADB's Role in Addressing Climate Change and Migration", Centre for Non-
      Traditional Studies, S. Rajaratnam School of International Studies, Presentation, 27 May 2011.
154. *Ibid.*
155. *Supra* note 12 at 73.
156. *Agreement Establishing the Asian Development Bank*, 4 December 1965, online: ADB ⟨http://
      www2.adb.org/documents/reports/charter/charter.pdf⟩, art. 2 [*ADB Charter*]. See also Asian
      Development Bank, "ADB Financial Profile 2011" (April 2011), online: ADB ⟨http://www.adb.org/
      sites/default/files/pub/2011/financialprofile2011.pdf⟩ [*ADB Financial Profile 2011*].
157. On the rule, see *ADB Charter, supra* note 156, art. 33. On the repartition of shares, see *ADB Financial
      Profile 2011, supra* note 156 at 36 regarding subscriptions to the authorized capital stock of the ADB.

Law on the liberal side and the argument based on "Asian values" on a more conservative side have traditionally put a strong emphasis on state sovereignty.[158] Such a theoretical posture generally resulted in, or, perhaps, was used to justify a lack of, international or regional co-operation amongst Asian countries. As a result, it was often argued that the "Asian way" is based on pragmatism and use of consensus, the avoidance of conflicts, non-intervention in the domestic affairs of other countries, and, until recently, an emphasis on the protection of states' sovereignty.[159]

However, descriptive arguments on Asian values and the "Asian way" tend to artificially reduce a complex set of civilizations to a few simple features. In the words of Amartya Sen,

> there are no quintessential values that separate the Asians as a group from people in the rest of the world and which fit all parts of this immensely large and heterogeneous population. The temptation to see Asia as a single unit reveals a distinctly Eurocentric perspective.[160]

For instance, while the Charter of the Association of Southeast Asian States underscores the principle of sovereignty as a limitation of the mandate of ASEAN,[161] so do, for instance, the Charter of the United Nations[162] and the Consolidated Version of the Treaty on European Union.[163] The principle of state sovereignty is a constitutive feature of Westphalian international law and it is not unique to Asia. At most, it may be argued that Asian states have generally invoked sovereignty with greater insistence than states of other regions.[164]

Moreover, the causes for a lack of regional co-operation in the Asia-Pacific region are not to be found in any essential civilizational feature, but in contingent circumstances. On the geopolitical perspective, Weatherbee argued, "Southeast Asia is not analytically sui generis. It is a regional setting for an international relations regime that is a part of a global international order."[165] On a more sociological perspective, Tay argued that ASEAN's inability to generate broad co-operation on environmental matters stems from the fact that "[t]ies between the peoples of the region have not received much attention, whether as regards environmental concerns

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158. See *supra* note 69. See also A. ANGHIE and B.S. CHIMNI, "Third World Approaches to International Law and Individual Responsibility in Internal Conflicts" (2003) 2 Chinese Journal of International Law 77 at 81; ZOU Keyuan, "Asian Approaches and Contributions to International Law" in ZOU Keyuan, ed., *China-ASEAN Relations and International Law* (Oxford: Chandos Publishing, 2009), 21 at 26ff.

159. Simon CHESTERMAN and Kishore MAHBUBANI, "The Asian Way of Handling the World" *The Guardian* (4 March 2010), online: The Guardian ⟨http://www.guardian.co.uk/commentisfree/2010/mar/04/global-problem-solving-asian-way⟩. See also Kheng-Lian and Robinson, *supra* note 144 at 642–3.

160. Amartya SEN, "Human Rights and Asian Values" *The New Republic* (14–21 July 1997), 33 at 34.

161. *ASEAN Charter*, *supra* note 143, art. 2(2)(a).

162. *Charter of the United Nations*, 26 June 1945 (entered into force 24 October 1945), online: UN ⟨http://www.un.org/en/documents/charter/⟩, art. 2(1).

163. *Consolidated Version of the Treaty on European Union*, 7 February 1992, online: EUR-Lex ⟨http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:en:PDF⟩, arts. 4(1) and 5.

164. Tom GINSBURG, "Eastphalia as the Perfection of Westphalia" (2010) 17 Indiana Journal of Global Legal Studies 27 at 31–5; M. KAHLER, "Legalization As Strategy: The Asia-Pacific Case" (2000) 54 International Organization 549.

165. Donald E. WEATHERBEE, *International Relations in Southeast Asia: The Struggle for Autonomy* (Lanham: Rowman & Littlefield, 2009) at 298.

or other issues".[166] Accordingly, instead of an Asian civilizational particularism, the little regional co-operation within Asia may be explained by the "lack of a sense of regional community".[167]

Similarly, in the debate on Third World Approaches to International Law, a recent turn has somewhat nuanced the emphasis on the notion of sovereignty. According to Anghie and Chimni,

> while recognizing 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.[168]

Today, "TWAIL II" theorists argue that the protection of the individual may, and should, justify interference with sovereign states.[169] Therefore, protecting environmental migrants through self-determined regional co-operation is one of the circumstances where "TWAIL II" proponents would, I believe, agree that limiting state sovereignty is in the interests of the Third World.

B. The Prospects of the Regional Governance of Environmental Migration in Asia and the Pacific

Another consequence of the concentration of normative studies on environmental migration within the West is with regard to the forms of governance considered. Already, Panikkar has warned against the mistake of assessing the "progress" of Asia from a Western standpoint.[170] More specifically, Alvarez has argued that the "modern" Western ideal of international law as consisting of obligations, precision, and delegation is not necessarily the only way of thinking about relations between peoples, nor even the only way of conceiving of international law.[171] Evaluating institutions of regional co-operation in Asia and the Pacific using the benchmark of international co-operation as carried out, say, by European institutions, is a wrong approach. According to Elliott and Breslin, "there is no single approach to regional cooperation and governance".[172] Instead, they argued,

> there is a multiplicity of intergovernmental regional environmental efforts, some highly institutionalized and others not; some embedded in broader regional efforts and others

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166. Tay, *supra* note 26.
167. *Ibid.*
168. Anghie and Chimni, *supra* note 158 at 83.
169. See e.g. 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* (The Hague: Kluwer Law International, 1999), 21 at 39.
170. See, by analogy, Panikkar, *supra* note 74 at 94.
171. Jose E. ALVAREZ, "Institutionalised Legislation and the Asia-Pacific Region" (2007) 5 New Zealand Journal of Public and International Law 9 at 10; Prabhakar SINGH, "The Scandal of Enlightenment and the Birth of Disciplines: Is International Law a Science?" (2010) 12 International Community Law Review 5 at 17.
172. Lorraine ELLIOTT and Shaun BRESLIN, "Researching Comparative Regional Environmental Governance: Causes, Cases and Consequences" in Lorraine ELLIOTT and Shaun BRESLIN, eds., *Comparative Environmental Regionalism* (London: Routledge, 2011), at 4.

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.[173]

Any definitive statement on what an Asian or Pacific conception of international law should be like would readily fall into the "trap of cultural essentialism in characterizing and discussing the features of different civilizations",[174] not least because Asia and the Pacific, and each state within the region, have extremely little civilizational homogeneity.[175] Flirting with such essentialism, however, Chimni argued that the "Asian exceptionalism … in the area of refugee protection", in particular the lack of ratification of the Refugee Convention,[176] may result from the civilizational fact that "law is not perceived as the principal response and solution to safeguarding the dignity of strangers".[177] As reflected by Chimni, "Asian cultures arguably tend to rely instead on societal values and traditional practices to ensure protection" for forced migrants.[178]

Even though one should refrain from generalized statements about civilizations, the recognition of their specificity is instrumental in the achievement of a "just world under law".[179] Therefore, instead of the top-down approach towards compliance of international law, Chimni has argued that civilizations should "draw … on the best practice[s]" of each other.[180] In the constitution of this "multi-civilizational approach to international law",[181] imports from other civilizations are legitimate as long as they "advance the cause of a peaceful, democratic, and just world order".[182] Thus, Chimni underscores that "in the absence of a law on the status of refugees, it may be difficult to effectively protect the rights of refugees".[183] However, the contrary is also true, at least in theory—the most comprehensive international treaty may not be able to force the state parties to implement their obligations. All state parties to the Refugee Convention do not systematically provide better treatment to refugees than non-party states. In circumstances such as environmental migration, where the ratification of a treaty is unrealistic, international governance can only be found through a subtle mix of legal norms, political governance, and social norms—what Chimni called a "multi-civilizational … conversation on the ideal and optimal mix of legal and societal values and practices".[184]

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173. *Ibid*.
174. Chimni, *supra* note 72 at 39.
175. See for e.g. Alvarez, *supra* note 171 at 20: "There is no such thing as an 'Asia-Pacific region'." See also *ibid*., at 41, addressing "Indian civilization" and "Asian civilizations".
176. *Refugee Convention*, *supra* note 57.
177. Chimni, *supra* note 72 at 40.
178. *Ibid*.
179. B.S. CHIMNI, "A Just World Under Law: A View from the South" (2006) 22 American University International Law Review 199 at 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* (London: Sage, 1999), 25.
180. Chimni, *supra* note 72 at 41. See also Edward W. SAID, "The Clash of Ignorance" *The Nation* (22 October 2001) at 146.
181. Chimni, *supra* note 72 at 42.
182. *Ibid*., at 40.
183. *Ibid*., at 40–1.
184. *Ibid*., at 41.

Empirical research is needed to identify the existing best practices in Asia-Pacific states. For instance, it may appear while reading Tay that one of the best practices of Southeast Asia is transnationalism, a form of governance which can be defined as "the complex web of national, local and international actors that bring attention to issues like the Bakun dam construction in Malaysia".[185] Instead of conceiving of international law as a monolithic pyramid of norms, there are many practices in Southeast Asia, in particular, with regard to the protection of migrants and the environment, whereby a plurality of public and non-public actors collaborate in the negotiation and implementation of pluralistic and hybrid systems of governance.[186] It may be to the benefit of environmental migrants to develop this practice of transnational governance and share it with other regions. In this sense, the Asia-Pacific region may be more than a canary in the coalmine or a laboratory for environmental migration policies.[187] The Asia-Pacific region, incentivized by a "will to differ"[188] and to affirm its role in a new global order, may participate in a multi-civilizational forum where normative approaches to environmental migration are shared.

Indeed, Asian scholars' take on the challenges brought by environmental migration may fill some of the gaps of a Western perspective. The Western notion of individualistic human rights and the emphasis on law and states as assistance providers (to the exclusion of communities) do not suffice to tackle all of the challenges raised by environmental migration. Thus, defining a category of environmental migrants may be difficult because of the complex causes of displacement.[189] Similarly, a state may be unable to protect its population when affected by a vast natural disaster. In this context, something is needed beyond human rights. The so-called "Asian values" may precisely invite such a constructive discussion with the human rights regime, for instance, through its emphasis on the role and rights of communities. The importance that "Asian values" places on social and economic rights also makes sense in addressing the causes of environmental migration driven by slow-onset environmental changes, where migration is often induced by the social and economic consequences of environmental changes. Thus, if "Asian values" is something more than a pretext for some governments not to implement some generally recognized human rights standards, it should also lead to its own form of protection and assistance. Indeed, one can hardly imagine a better opportunity for the participation of the rising states in the Asia-Pacific region in the international law-making community and the affirmation of alternative positive values.

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185. Tay, *supra* note 26.
186. See P.S. BERMAN, "Global Legal Pluralism" (2006) 80 South California Law Review 1155; P.S. BERMAN, "A Pluralist Approach to International Law" (2007) 32 Yale Journal of International Law 301; Naomi JOHNSTONE, "Indonesia in the 'REDD': Climate Change, Indigenous Peoples and Global Legal Pluralism" (2010) 12 Asian-Pacific Law and Policy Journal 93; Sally Engle MERRY, "International Law and Socio-Legal Scholarship: Toward a Spatial Global Legal Pluralism" in Austin SARAT, ed., *Law and Society Reconsidered* (Oxford: Elsevier, 2008), 149; Justin G. HOLBROOK, "Legal Hybridity in the Philippines: Lessons in Legal Pluralism from Mindanao and the Sulu Archipelago" (2009) 18 Tulane Journal of International and Comparative Law 403; M. CHIBA, *Legal Pluralism: Toward a General Theory Through Japanese Legal Culture* (Tokyo: Tokai University Press, 1989).
187. Gemenne, *supra* note 94.
188. Tay, *supra* note 70 at 768.
189. Mayer, *supra* note 5.

VI. CONCLUSION

This article has shown that there are two main reasons why the Asia-Pacific region should feel concerned by environmental migration. One is obvious—exposure to environmental change, a low level of development, and high population density, coupled with migration as a regional "structural feature", explain why a large proportion of global environmentally induced migration is occurring and will continue to occur within Asia and the Pacific. Yet this article has also shown another reason why researchers and decision-makers in Asia and the Pacific are concerned with environmental migration. From a normative perspective, protecting millions of people on the move, often without the necessary preparations, is a real challenge. Ambitious standards of protection for climate migrants are unlikely to be adopted any time soon. The Western-led debate tends to impose a post-colonial discourse that constructs "environmental refugees" as passive victims, and international law as an instrument to roll back migrants in the perceived interest of Western states, instead of protecting them for their own sake. This debate would lead to an impasse. Instead, intra-regional and interregional discussions would certainly be able to invent a new form of governance, and the Asia-Pacific region, with its rapid pace of development and growing research capacity, is the ideal place for legal innovation on this issue.

Thus, the Asia-Pacific region should continue to enhance new research capacities in order to address environmental migration from within. Since 1985, when a UNEP report on "environmental refugees" was published,[190] Western researchers have published many reports, books, and articles on the subject, but very little research has come from the Third World. Too often, Third World researchers and research institutions have seemed unaware of or disinterested in the issue of environmental migration. Today, the development of regional governance structures to address environmental migration may express the will of Asia-Pacific states to differ and to demonstrate the capacity of their regional values to contribute positively to the conduct of global affairs.

Some regional fora already exist in the Asia-Pacific region that may take the lead at the regional or subregional level, and a transnational civil society is developing. There is no existing law that is directly applicable to instruments for transnational governance or legal frameworks to date. A multilateral convention seems unlikely to be ratified, but other possible routes include, for instance, discussion, planning, co-operation, and regulation. A home-grown approach towards environmental migration governance does not need to reinvent the wheel, but it does need to decide how the vehicle will be used in the most efficient manner, and quickly. Regional and subregional engagement is necessary and urgent. At stake are the lives and the dignity of millions, most of whom are in the Asia and Pacific region.

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190. E. EL-HINNAWI, "Environmental Refugees", United Nations Environment Programme, Report, 1985.