Collectivized Obligations in Climate Change Migration Discourse: challenges and prospects

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Acronym

AOSIS – Alliance of Small Island States
AR4 – Fourth Assessment Report of IPCC
AWG-LA – Ad Hoc Working Group on Long-Term Cooperative Action
CAT – Convention Against Torture
CIREFCA - Conference on Central American Refugees (Spanish acronym)
CISDL – Centre for International Sustainable Development Law
CP – Convention Plus (initiative)
CPA – The Indochinese Comprehensive Plan of Action
EU – European Union
ExCom – Executive Committee of the United Nations High Commissioner for Refugees
GEF – Global Environment Facility
GHG – Greenhouse Gas
IASC – Inter-Agency Standing Committee
ICARA – International Conference on Assistance to Refugees in Africa
ICCPR – International Covenant on Civil and Political Rights
ICESCR – International Covenant on Economic, Social and Cultural Rights
ICHRP – International Council on Human Rights Policy
IDMC – Internal Displacement Monitoring Center of the Norwegian Human Right Council
IMF – International Monetary Fund
IOM – International Organization for Migration
IPCC – Inter-governmental Panel on Climate Change
NGOs – Non-governmental Organizations
NRC – Norwegian Refugee Council
OCHA – United Nations Office for the Coordination of Humanitarian Affairs
PAC – the Pacific Access Category
RSC – Refugee Study Center (of Oxford)
UNFCCC – United Nations Framework Convention on Climate Change
UNGA – United Nations General Assembly
UNHCR – United Nations High Commissioner for Refugees
UNU-EHS – United Nations University Institute for Environment and Human Security
US – United States
USA-INA – United States of America Immigration and Nationality Act
Abstract

Studies show that the overwhelming majority of the people forced to flee for environmental reasons are, and will be, in the under-developed world. While many are displaced within their own country, others would cross international borders. Unfortunately, developing states, which are least responsible for climate change, will bear the greatest burden of providing protection for forced climate migrants. In order to provide sufficient long term protection proposals have been made for responsibility sharing among the rich nations, which are most responsible for causing climate change. This collectivized responsibility is argued to allow governments to provide protection to involuntary migrants arriving *en masse* without placing unfair burden to a single state. The burden is to be shared according to capabilities, either in providing temporary protection, financing basic needs or offering resettlement. As good as it sounds, is the proposal achievable? What lessons do we learn from previous attempts to collectivize obligations? These questions are dealt with in the thesis.
Introduction

The change of the environment – caused by anthropogenic as well as natural factors – is affecting many around the globe. The adverse effects have led to, among others, sea level rise, sudden flood, extreme drought, withering of crops and rise in temperature. The affected areas become uninhabitable, for one or more of these factors, forcing many to flee in order to sustain their life. There are uncertainties especially with regard to those who are crossing borders for protection. Whether or not they should be considered as refugees, what legal instruments should they be governed with, as well as what obligations should states have towards their protection and assistance, remains unclear.

The absence of international norms dealing with such type of migration has created a protection gap for forced climate migrants. It is also yet unclear whether states, individually or collectively, have an obligation to provide protections.

In order to ease the burden of developing states that are facing the problem more apparently than others and also enhance the rights and life of climate migrants, a collectivized obligation has been proposed. Here, the burden of assistance and protection are dispersed among various nations, whereby, states would contribute towards the scheme according to their capability, geographical proximity, historical inter-relatedness, and contribution to the problem. While it affirms the commonality of the problem, it also takes into account the differentiated ability of states to deal with it. Such burden sharing in climate migration discourse is particularly important taking into account the suddenness (in case of sudden on-set environmental disaster) and/or magnitude that can swiftly overwhelm the resources of a first-asylum state, an innocent by-stander whose unfortunate geographical fate happens to locate it close to the home country. Though this kind of burden sharing scheme is substantively important in climate change migration discourse, it is yet a challenging issue to set up, facilitate and succeeded in international sphere.

The thesis has attempted to highlight the role of burden sharing schemes in climate change migration discourse, analyze foreseeable challenges, and indicate the conditions under which such a scheme could be successful. Historical experiences to collectivize obligations in the refugee regime were used to examine the state of international cooperation in such matters.
1. Chapter One: Introduction

1.1 Background

The number of people displaced by natural disasters now exceeds, by far, those displaced by war, armed conflict, and political persecution altogether.\(^1\) Perhaps a more fundamental concern is that while refugees from war and persecution are protected by international conventions, it is unclear what laws and policies protect those displaced by climate change.\(^2\)

Climate change “refers to any change in climate over time, whether due to natural variability or as a result of human activity and persists for an extended period, typically decades or longer.”\(^3\) Climate change as a result of ‘human activity’ is defined by the United Nations Framework Convention on Climate Change (UNFCCC) as:

\[
\text{... a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.}^4
\]

Among its various effects, the impact of climate change on human migration is enormous. Those who are forced to move because of climate change, described as ‘environmental migrants’ by the International Organization for Migration (IOM), are defined as:

\[
\text{...persons or groups of persons who, predominantly for reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad.}^5
\]

When the climate changes to the extent it makes a part of a country or the world uninhabitable by “causing food and water supplies to become more unreliable and increas[ing]...

\[\text{\footnotesize\(^1\) Kolmannskog (2011) p. 2.}\]
\[\text{\footnotesize\(^2\) Ibid.}\]
\[\text{\footnotesize\(^4\) UNFCCC art 1(2).}\]
\[\text{\footnotesize\(^5\) IOM (2008) p.2.}\]
the frequency and severity of floods and storms,” people will be forced to move. “While it is likely that the majority [of the people that are forced to move] remain within their country of origin, some may cross internationally recognized borders.” Those who cross borders will most likely move either to the neighboring countries or within the region. This is because such natural disasters cause group migration in which the population’s size affects their movement to travel long distance. “Those who are internally displaced owing to environmental or climatic events have more established rights and protections than those who cross international borders.” The latter have an uncertain legal status. This is because, first and foremost, there is no mechanism to deal with movement due to environmental degradation internationally, regionally or nationally. Some scholars are calling for a new regime to be devised entirely dedicated to climate displacement and migration, while others argue for supplemental instruments to complement the existing ones. Whether the need is for a new regime or for a supplemental instrument, most agree that in order to succeed, the obligation to protect should be devised and implemented collectively, based (at least) on the principle of common but differentiated responsibility. We shall see whether this proposed shift of the existing individual responsibility to protect aliens is feasible or not.

The terminology used for those displaced by climate change either within their own country or those forced to migrate across borders, is not settled. The term ‘forced climate migrant’ is used throughout this thesis, in part, for lack of a better alternative. Those who are displaced within their own country, identified as climate displaced, will not be dealt with in detail because of a lack of time and space.

1.2 Legal question and problems considered

It is argued that the current sole legal responsibility towards protecting involuntary migrants is not sufficient to provide protection to those who will be forced to move due to adverse environmental conditions. Even though studies show that many of the victims of harsh climatic conditions will end up being displaced within their country, some might be forced to cross international borders. While the effect of climate change on human migration is already noticeable, the fact that there is still no internationally agreed legal protection in the event of such migration is a fundamental concern. Of a particular concern are those who are (and will be) severely affected. Even though climate change affects every single country in the world, the Intergovernmental Panel on Climate Change (IPCC) highlights that the impact will be more severe in developing and small island states. Since migration caused by climate change triggers large-scale movements, states closest to the country of origin will inevitably be forced to receive these migrants. This means that besides being the most affected by a problem to which they have contributed least, the obligation to protect forced climate migrants will also fall on these states, individually. This is because the current

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6 Ibid.
international law governing migration provides for individuated legal obligations and lacks an enforceable collective responsibility. In order to curb such ‘unfair arrangements,’ collective responsibility is being proposed to protect forced climate migrants, as well as the climate displaced. The purpose of this thesis is, therefore, to determine whether or not collective responsibility is practicable, based on previous attempts toward shared obligations in refugee law and climate negotiations. It identifies possible challenges, and also makes suggestions on how to best go forward. For this, it is necessary to analyze the merits of shared responsibility in climate migration discourse.

1.3 Research method
The thesis uses primary and secondary data. The primary data is derived from normative analysis of the international and regional refugee and environmental law instruments, as well as analysis of United Nation’s reports, court decisions, press releases, and other relevant documents. The 1951 Refugee Convention on Status of Refugees (the Refugee Convention), the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (the OAU Convention), the UNFCCC, and its Kyoto Protocol are used as primary sources of law. Secondary literature including books, articles, journals, reports, and electronic sources are used. The texts of the International Conference on Assistance to Refugees in Africa (ICARA I&II) as well as the Indochinese Comprehensive Plan of Action of 1989 (CPA) and the United Nations High Commissioner for Refugees (UNHCR) Convention Plus initiative (CPI) are also analyzed. The research will be carried out objectively using qualitative research methods. Utilizing these research methods, I will gather data from journals and analyze documents and materials.

1.4 Structure of the thesis
The first chapter introduces the background of the thesis, legal issues, research method, and the overview of the chapters. The second chapter deals with the phenomena of climate change, its effect on human migration as well as the legal protection of climate migrants and the challenges of protection. It also provides facts and figures on climate change migration. It further looks at the Refugee Convention, the OAU Convention, UNFCCC, and the Kyoto Protocol. The third chapter deals with collective obligations, taking an in-depth look at its meaning and purpose. It gives an overall analysis of the proposed role of collectivized obligation in climate migration discourse, identifies its
status in existing legal instruments, and clarifies the role of the principle of common but differentiated responsibility in protecting and assisting forced climate migrants. It provides further examples of efforts to collectivize obligations towards refugee protection, particularly from ICARA I&II from Africa, CPA of 1989 in Asia and the CPI of 2003-5. Even though there were other attempts in Europe (Resolution on Burden-sharing with Regard to the Admission and Residence of Displaced Persons on a Temporary Basis' of September 1995) and Central America (International Conference on Central American Refugees, known by its Spanish acronym as CIREFCA), such instances of shared responsibility agreements are selected in order to provide, briefly, both cases of success - as it is the case with CPA - as well as failure, with regard to ICARA. Chapter four provides a general discussion on practicability and focuses on the realistic implementation of collectivized obligations in protecting forced climate migrants. It gives an overview of possible lessons to be drawn from previous attempts to collectivize obligations by identifying the challenges; it then makes a general conclusion.
2. Chapter Two: Climate Change and Migration

2.1 The Phenomena of Climate Change and its impact on human migration

Climate change has continued to raise concerns in the world. Even though some states might be more affected by the change in climate than others; it is inevitable that all will face adverse effects. In order to stabilize “greenhouse gas [GHG] concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system,” the international community adopted the UNFCCC and Kyoto Protocol in 1992 and 1997 respectively. While the UNFCCC recognized the need to limit emission levels in order to avoid the adverse effects of climate change and encouraged states to do so, Kyoto set binding targets for industrialized countries to reduce GHG emissions by an average of five percent against the 1990 levels over the first commitment period (2008-2012). Additional policy initiatives, such as the Asia-Pacific Partnership on Clean Development and Climate, the European Union (EU) Emissions Trading Scheme, the Alliance of Small Island States (AOSIS), were also concluded in order to reduce emission levels and implement adaptation and mitigation mechanisms.

IPCC gives illustrative examples of global impacts projected for climate change in its Fourth Assessment Report (AR4):^{10}

\[^9\] UNFCCC art 2.
Figure 1 – The black lines link impacts; broken-line arrows indicate impacts continuing with increasing temperature. Entries are placed so that the left-hand side of text indicates the approximate level of warming that is associated with the onset of a given impact. Quantitative entries for water scarcity and flooding represent the additional impacts of climate change relative to the conditions projected across the range of SRES scenarios A1FI, A2, B1, and B2. Adaptation to climate change is not included in these estimations. Confidence levels for all statements are high. Lower panel: Dots and bars indicate the best estimate and likely ranges of warming assessed for the six SRES marker scenarios for 2090-2099 relative to 1980-1999.\textsuperscript{11}

Climate change will challenge the adaptive capacities of many different communities by ‘interacting with and exacerbating existing problems’ as well as the ability of

\textsuperscript{11} Ibid.
ecosystems with regard to food security, water scarcity, and shelter.\textsuperscript{12} The change in climate that is brought about by either human activities or natural phenomena is, therefore, forecast to affect the way of life of millions of people.

In 1990, IPCC noted that the “greatest single impact of climate change could be on human migration as millions of people [are] displaced by shoreline erosion, coastal flooding and agricultural disruption.”\textsuperscript{13} According to IOM, in the mid 1990s 25 million people were forced to move by a series of environmental pressures; a figure more than all the refugees from war and political persecution documented during the same period.\textsuperscript{14} The International Council on Human Rights Policy (ICHRP) states that the most dramatic impacts of climate change are expected to occur in the world’s poorest countries.\textsuperscript{15} “Numerically and geographically, South and East Asia are particularly vulnerable to large-scale forced migration. This is because sea level rise will have a disproportionate effect on their large populations living in low-lying areas.”\textsuperscript{16} Millions more are also vulnerable in Africa, particularly around the Nile Delta and along the west coast of Africa. “Changed patterns of rainfall would [also] have particularly serious impacts for food security in sub-Saharan Africa.”\textsuperscript{17}

The metrological impact of climate change can be divided into two distinct drivers of migration; \textit{climate processes} such as sea-level rise, salinization of agricultural land, desertification and growing water scarcity, and \textit{climate events} such as flooding, storms and glacial lake outburst floods.\textsuperscript{18} The first category, climate processes, is linked to slow-onset disasters which “emerge gradually over time, often based on a confluence of different events.”\textsuperscript{19} The latter category, climate events, is a result of sudden-onset disasters which emerge from single catastrophic event.

\textsuperscript{13} Lonergan (1998) p. 5 [Emphasis added].
\textsuperscript{14} IOM (2008) p.11.
\textsuperscript{17} Ibid [Emphasis added].
\textsuperscript{18} Ibid p.13.
\textsuperscript{19} OCHA (2011) p. 3.
Migration in climate change discourse is considered both as a driver of future forced migration, as well as a mechanism to deal with climate stresses. It is, therefore, both an adaptive measure as well as an adverse effect. When migration is used as a coping mechanism to escape adverse effects of climate change, the movement is voluntary. However when climate disaster happens, the migration will be a forced one, for survival.\(^{20}\) Distinguishing between voluntary and forced movement is, however, not as easy as it looks. This is because of lack of criteria to distinguish between the two movements (particularly in case of gradual environmental degradation).\(^{21}\) In this case, where environmental degradation is steady, “[m]igration starts as partially a voluntary process but becomes involuntarily or forced where permanent depletion of resources such as water or grazing land or inundation render livelihoods impossible.”\(^{22}\) For Hodgkinson and Young, nonetheless, “prospective migration based on the likely consequence of climate change is as coerced as migration in response to climate change impacts that immediately render a particular area uninhabitable”\(^{23}\) and therefore both should be treated in the same way.

### 2.1.1 Forced climate migrants: facts and figures

There is considerable argument with regard to what terminology should be used to refer to those who are forced to cross borders because of climate change. Terms such as ‘climate migrants,’ ‘climate (environmental) refugees,’ and ‘climate displaced’ have been used by different scholars, organizations, and states. The term ‘climate refugee’ particularly faces the most resistance. The UNHCR, for instance, does not recognize these ‘environmentally driven migrants’ as ‘refugees’ as they are not ‘recognized’ in the list of convention refugees under international Refugee Law.\(^ {24}\)

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\(^{20}\) NRC (2009) p.5 [Emphasis added].  
\(^{21}\) Ibid.  
\(^{23}\) Hodgkinson and Young (2012) p.11.  
The terms ‘environmental refugee’ and ‘climate refugee’ have no legal basis in international refugee law and it is recommended that they not be used in official or unofficial documentation.\(^{25}\)

However, it can be argued otherwise. The fact that they are seeking refuge from climate-induced environmental change that is threatening their life or ability to survive in the country of origin might as well identify them as ‘refugees.’ There is also nothing inherent in the ordinary meaning of the word that would suggest that those who should be considered refugees are only the ones who are fleeing persecution due to the five enumerated grounds set out in the Refugee Convention, namely race, religion, political opinion, nationality, and membership of a particular social group. This is evident from the OAU Convention and the Cartagena Declaration on Refugees (the Cartagena Declaration) which incorporated additional grounds that could grant recognition of refugee status besides those specified under the Refugee Convention.

The other terminologies, namely ‘climate displaced’ or ‘climate migrant’ on the other hand, carry with them a negative connotation. In the latter case, the term ‘migrant’ tends to carry with it a misconception in that it is likely to imply a voluntary move which is prompted by the need for a ‘more attractive lifestyle.’\(^{26}\) The terminology ‘climate displaced,’ on the other hand, “does not accurately describe [the] situations [of those crossing borders] as the term is mostly used for those who are dislocated within their own states.”\(^{27}\) Ascertaining the exact label is, nevertheless, important as the way it is defined will be crucial in guiding the obligations and policies of the international community under international law.\(^{28}\) This is because the ‘label’ will carry implications for recognition of status and status will affect the provision of protection and assistance such as access to aid grants (be it financial, food, shelter, or other necessities for survival) for these migrants.

The existence and scale of climate change migration is often established by reference to the likely numbers of people that are forced to move.\(^{29}\) The projections for the

\(^{27}\) Ahlborn and Swerissen (2011) [emphasis added].  
\(^{29}\) Hodgkinson and Young (2012) p.2.
number of people who are said to migrate or be displaced because of the impact of climate change vary greatly because of “absence of baseline information on current levels of disaster-related displacement.” While the Fourth Assessment Report (AR4) of IPCC estimates that 150 million people may be displaced by 2050, the Stern Review of the Economics of Climate Change (the Stern Review), on the other hand, estimated the number to be 200 million in the same year. According to a study carried out by the Inter-Agency Standing Committee (IASC), the UN Office for the Coordination of Humanitarian Affairs (OCHA) and the Internal Displacement Monitoring Center of NRC (IDMC), millions are already displaced due to climate related disasters each year. OCHA-IDMC says that in 2008 alone, 20 million people were displaced as a result of climate related sudden-onset natural disasters, while an average of 75 million people were annually affected by drought, a slow-onset disaster, between 2000 and 2009. According to a report issued by the Internal Displacement Monitoring Center (IDMC), 38.3 million people were displaced by climate-related disasters in the year 2010. Separate estimates for those who cross borders due to adverse climate effects, nonetheless, are not readily available.

2.2 The current international refugee protection framework

2.2.1 The 1951 Refugee Convention (and its the 1967 Protocol), the OAU Convention and the Cartagena Declaration

The Refugee Convention forms the cornerstone of modern refugee law. It “resurrected the earlier commitment to codify […] legally binding refugee rights.” It was drafted in the aftermath of World War II and was meant to apply to persons who were outside of their country of origin as a result of events occurring in Europe or elsewhere before 1 January 1951. As new refugee crises emerged during the late 1950s and early 1960s, it became necessary to widen both the temporal and geographical scope of the Refugee Convention. Thus, a Protocol to the Convention (the 1967 Protocol) was drafted and adopted. By acceding to the 1967 Protocol, States undertake to apply the substantive provisions of the 1951 Convention to refugees as defined in the Convention, but without the 1951 dateline. Although related to the Convention in this way, the Protocol

32 Ibid.
33 IDMC (2011) p.4.
is an independent instrument, accession to which is not limited to States parties to the Convention.\textsuperscript{36}

According to the Refugee Convention, a refugee is a person who:

\begin{quote}
\ldots owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.\textsuperscript{37}
\end{quote}

“Displacement in the context of climate change disasters was not part of the drafters’ considerations when this definition was formulated”\textsuperscript{38} This is because for refugee status, one must fulfill the requirement of a ‘well-founded fear’ that is based on one of the enumerated grounds. There are, however, some who argue that forced climate migrants could still qualify under the Refugee Convention by claiming that “government-induced environmental degradation is a form of persecution and that such persecution is taking place ‘for reasons of’ environmental refugees membership in a social group.”\textsuperscript{39} The argument, nonetheless, “is unlikely to be accorded any significant credibility even if one adopts the most liberal approach to treaty interpretation, given the object and purpose of the agreement and the narrow applicability of the Refugee Convention intended by the parties.”\textsuperscript{40} According to Williams, the definition of refugee is also not open for interpretation of the reasons for persecution, but instead includes an exhaustive list of grounds for refugeehood which are only race, religion, nationality, membership of a particular social group, or political opinion, an “approach that has subsequently been supported by refugee law jurisprudence.”\textsuperscript{41} An environmental factor that causes movements across international borders, therefore, does not confer refugee status \textit{in and of itself} under the Refugee Convention unless of course a “situation where

\begin{itemize}
\item \textsuperscript{36} Ibid.
\item \textsuperscript{37} The Refugee Convention art I (A) (1).
\item \textsuperscript{38} NRC (2009) p.16.
\item \textsuperscript{39} Williams (2008) p.508.
\item \textsuperscript{40} Ibid.
\item \textsuperscript{41} Ibid.
\end{itemize}
the victims of natural disaster flee because their government has consciously withheld or obstructed assistance in order to punish or marginalize them on one of the five listed grounds, although such cases are likely to be few.”

The OAU Convention and the Cartagena Declaration, on the other hand, expanded the refugee definition provided under the Refugee Convention. Under those instruments, the term ‘refugee’ also applies to every person:

… who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.  
… who have fled their country because their lives, safety or freedoms have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights, or other circumstances which have seriously disturbed public order.

Some argue that those (individuals living within the African and Latin-American regions) who are forced to migrate because of climate-related factors, to the extent that climate change seriously disturbs public order, can qualify as a refugee under the additional criteria ‘events seriously disturbing public order’ of the OAU Convention and the Cartagena Declaration. It is perhaps this definition of a situation of seriously disturbed public order that comes closest to some form of official international recognition, which could potentially encompass those compelled to leave their country of origin due to environmental factors.

Nonetheless, the fact that the instruments do not explicitly mention climate change or disasters as a reason to grant refugee status makes these provisions insufficient to protect those forced to flee for climate change reasons.

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43 The OAU Convention, art 1(2).  
44 The Cartagena Declaration, art III (3).  
2.3 The legal protection of climate migrants under international law

The legal protection that is going to be discussed here is that associated with entitlements under the law. It can also be taken to mean “the act of respecting and upholding fundamental human rights, such as the core rights declared in the Covenants on Civil and Political Rights (CCPR) and Economic, Social and Cultural Rights (ESCR)”.

In case of climate change migration, protection would mean an international obligation that, as a matter of international law, does not return people to climate-related harms but rather grants them a domestic legal status until durable solutions can be secured.

Both the Refugee Convention and customary international law recognize that, in certain circumstances, the international community is responsible for upholding the rights and providing assistance to persons displaced across international borders and unable to rely upon their own nation for protection. The current refugee protection regime, however, provides protection to those refugees who can make successful claims under the Refugee Convention only. Unfortunately, there are no norms of international law that specifically protect forced climate migrants, or those displaced within their own country for that matter. As Brown puts it, “[t]here is no ‘home’ for forced climate migrants, either literally or figuratively.”

The Geneva Convention is unsuitable, the OAU Convention falls short, and there are weaknesses in European Union instruments relating to asylum and immigration.

“Attempts to recognize and attribute legal status to environmental refugees have traditionally been channeled via the Refugee Convention.” As discussed in the above section, however, the Refugee Convention is not suitable to offer protection to forced climate migrants. In cases when international Refugee Law proves incapable of providing protection, the idea of complementary protection becomes relevant.

Complementary protection is “protection granted by states on the basis of an

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46 Ibid p.22.
47 McAdam (2011) p.103 [Emphasis added].
48 Hodgkinson and Young (2012) p.17.
49 RSC (2011) p.16.
international protection need outside of the 1951 Convention framework.” As McAdam states, complementary protection is a form of human right or humanitarian protection that is derived from the obligation of non-refoulement, the obligation not to ‘send back.’ The non-refoulement principle prohibits states from returning a refugee to a place where s/he might be subject to torture (read in conjunction with article 3 of the Convention Against Torture, CAT) or to inhuman or degrading treatment or punishment (read in conjunction with article 7 of International Covenant on Civil and Political Rights (ICCPR). This suggests, therefore, that complementary protection will not be sufficient to accommodate forced climate migrants who do not fear torture or inhuman or degrading treatment upon return but, rather, will face a dry land, lack of water or perhaps no state at all (in case of sea level rise).

Operating largely on an ad hoc basis, and unable to recognize or address the underlying causes of environmental displacement, [complementary protection] … is currently better suited to other refugee groups seeking alternative protection, rather than those subject to environmentally motivated displacement.

The very essence of the non-refoulement principle is to require states to at least temporarily allow a person ‘to remain’ where return is impossible or cannot reasonably be required from the individual. In this sense, on the other hand, we can argue that the principle of non-refoulement could ‘implicitly’ be interpreted to apply to forced climate migrants who under normal circumstance do not qualify as refugees. However, while clarifying this matter the UNHCR has stated that “given the existing human rights law, including the non-refoulement principle, there is still no right to remain.”

International human rights law provides protection for forced climate migrants. This group, of course, has the same rights and protection needs as others who cross international borders. Whatever the cause of the flight might be (environmentally-initiated or because of fear of persecution), all migrants are entitled to human rights

55 Ibid, p.38.
57 UNHCR (2009) p.11.
58 Ibid (emphasis added).
protections by the treaties protecting them.\textsuperscript{59} Keane argues that it is possible to expand the refugee definition along human rights lines\textsuperscript{60} since the Refugee Convention clearly recognizes persecution resulting from the denial of human rights.\textsuperscript{61} He states that the Convention recognizes the right to seek safety, as contained in Article 14(1) of the Universal Declaration of Human Rights (UDHR), as well as in the ICCPR and ICESCR. This “acknowledges the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources and in no case may people be deprived of their own means of subsistence in article 47 and article 1 respectively.”\textsuperscript{62} Therefore, a solution to the problem of environmentally displaced persons would be to extend the refugee definition contained in the Refugee Convention in line with those developments in international human rights law.\textsuperscript{63} However, expanding the definition would lead to strong opposition from states because, \textit{inter alia}, it would impose on them something they did not specifically agree to when drafting the Convention. Another potential human rights argument can made based on the right to a healthy environment. Numerous judicial decisions have expanded the right to life, under international human rights law, to include the right to a healthy and clean environment; this implies that failure to offer the necessary protection of these rights would be in breach of states’ international human rights obligations.\textsuperscript{64} In the \textit{Gabcikovo-Nagymaros Project case}, Judge Weeramantry stated that:

\begin{quote}
The protection of the environment […] is a vital part of […] the right to health and the right to life itself.\textsuperscript{65}
\end{quote}

Even if this argument is debatable - which is beyond the scope of this thesis - the fact that there is no clear enforceable legal right to a healthy environment\textsuperscript{66} tells much by itself to counter such an argument.

\textsuperscript{59} IOM (2008) p.16.
\textsuperscript{60} Keane (2004) p. 215.
\textsuperscript{63} Ibid (emphasis added).
\textsuperscript{64} IOM (2008) p.16.
\textsuperscript{65} Hungary v Slovakia (1997) Para. A (b).
\textsuperscript{66} There is however a ‘right to general satisfactory environment favorable to development’ under article 24 of the African Charter on Human and Peoples’ Rights (the Banjul Charter). Whether or not the right is an enforceable right, on the other hand, is still debatable.
There is a lack of obligation to protect in international environmental law as well. Environmental laws developed so far are not designed to address migration issues related to climate change. While discussing the UNFCCC, Docherty and Giannini state that:

[A]lthough the UNFCCC has an initiative to help states with adaptation to climate change, that program does not specifically deal with the situation of climate change refugees. Like the refugee regime, the UNFCCC was not designed for, and to date has not adequately dealt with, the problem of climate change refugees. 67

Other environmental negotiations - such as COP 15 and COP/MOP 5 in Copenhagen in 2009 and COP 16 and COP/MOP 6 in Cancun in 2010 - have not also ‘addressed’ climate migration or displacement. 68

Some individual countries on the other hand, have established special policies to give protection (mostly temporary) to those who are victims of environmental disasters. Swedish Immigration Policy, 69 for instance, categorized an environmental migrant as a ‘person in need of protection’ who is unable to return to his/her country of origin due to an environmental disaster. 70 “In the parliamentary text explaining the category, [however], a nuclear catastrophe is given as an example of an ‘environmental disaster’ whereas natural disasters such as climate change impacts are not specifically mentioned,” 71 and this has left the policy unclear with regard to its extent of its application to forced climate migrants. The other example could be the Pacific Access Category 72 of New Zealand, which is a run by a ballot to accept 75 citizens of Kiribati, 75 citizens of Tuvalu, and 250 citizens Tonga annually “to enable environmental refugees who are displaced from their homes by the effects of climate change to move to a less vulnerable environment.” 73 The Pacific Access Category (PAC), nonetheless, does not make any reference to environmental degradation as the basis for such the

69 Swedish Aliens Act (2005), Chapter 4, Section 2(3).
72 The PAC (2001).
ballot.\footnote{Brown (2007) p.28.} Even if PAC is argued to be environmentally oriented, the fact that the program only accepts applicants that fulfill the criteria for selection (such as those aged between 18 and 45, with English language skills, minimum income and an employment offer) limits the accessibility of the ballot to many categories of people such as the poor and the elderly.

The United States also enacted an Immigration and Nationality Act (USA-INA) in 1990\footnote{USA-IA, section 302 (b) (B) (i).} that provides temporary protected status to victims of an environmental disaster, among others. Section 302 provides that the Attorney General may grant an alien temporary protected status in the United States if:

\begin{quote}
... there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the [foreign] state resulting in a substantial, but temporary, disruption of living conditions in the area affected.\footnote{Ibid.}
\end{quote}

For such status, the foreign state must request designation\footnote{Countries or parts of countries are designated by the Attorney General (after consultation with appropriate agencies of the government), allowing nationals only of those countries to apply.} of Temporary Protected Status for its nationals. The downside of this policy is that, however, it only applies to persons already in the United States at the time of the designation. The policy “is not meant to be a mechanism to respond to an unfolding crisis in which people seek admission from outside of the country.”\footnote{Martin (2010) p. 406}

This briefly demonstrates the lack of an adequate legal regime to protect forced climate migrants under international or national law. In order to address the lack of legal protection, many - including states and scholars (such as Biermann and Boas 2007, Docherty and Giannini, 2009) - have called for a new international instrument on climate displacement and migration either in the form of a Protocol to the Refugee Convention or the UNFCCC, or for an independent instrument.\footnote{McAdam (2011) p.103.} At the state level, for example, in 2006 the Maldives proposed an amendment of the 1951 Refugee
Convention to extend the definition of a ‘refugee’ to include ‘climate refugees.’ Others, meanwhile, have called for either re-interpretation or amendment of the existing law or otherwise for a supplementary instrument (see for instance Kolmannskog 2011; this also appears to be NRC’s approach). McAdam, however, argues that the kind of protection climate migration calls for depends on the way the movement is categorized and responded to - which, in turn, determines how law and policy are developed. For instance, if the movement is seen as a protection issue, “the assumption is that movement is forced and should be treated as refugee-like in nature, with binding obligations for states with respect to those displaced” (hence calls for a new treaty). If, on the other hand, the movement is taken as a migration issue “movement is seen as voluntary, and therefore as not compelling the ‘the international community’ to respond.” The movement could also have a different outcome if it is categorized as an environmental or development issue.

Whether the best option is to devise a new treaty or supplementary instrument or to amend the existing relevant instruments - an issue beyond the scope of this thesis - the one thing that remains constant is the need to provide legal protection under international law.

2.3.1 Challenges of protection

As discussed above, there is no legal instrument addressing the protection needs of forced climate migrants. First and foremost, it is difficult to measure the extent to which environmental factors compel people to move. It is difficult to show a direct mono-causal link between climate change and migration often because “[m]igration, even forced migration, is not just a product of an environmental ‘push’ from a climate process.” For migration to result from deteriorating environmental conditions some kind of ‘pull’ like social or economic factors are required except for cases of sea level rise and situations where peoples are fleeing for their life. Non-climatic drivers that

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80 Ibid.
82 Ibid.
83 Ibid.
85 Ibid (Emphasis added).
put vulnerable people in marginal situations and create a hope for a better life elsewhere remain a key variable.\textsuperscript{86} Second, there are uncertainties about the actual impacts of the environment on human migration.\textsuperscript{87} This has made the international community reluctant in responding. The fact that there is no existing international regime clearly entrusted to manage the international movements of those compelled to move by the effects of climate change contributes to the uncertainties. Third, even when some studies show the link between climate factors and migration, there is a lack of political commitment to devise a policy or a law to protect forced climate migrants. On top of the political unwillingness, most potential destination countries for cross border migration are also economically incapable of accommodating such \textit{en masse} movement. Fourth, the fact that migration in case of climate change might be of a permanent nature has also affected the otherwise humanitarian response of potential destination countries. States’ willingness to help and protect refugees emanates from the fact that their assistance is not necessarily required long-term; that is that while a refugee’s return is impeded, once the persecution that triggered the original flight has ceased, the refugees will return to their state of origin. This return is, of course, impossible in case of forced climate migrants which makes it appear to be a lifetime burden, particularly in case of sea level rise. “Climate refugees do not require temporary asylum, but a new home.”\textsuperscript{88} Fifth, in case of climate induced migration, the likelihood that movement might be in large numbers that “entails an entire group, villages, cities, provinces and at times entire nations”\textsuperscript{89} to move, is also another challenge for the host state to accept an obligation to protect and assist, especially since the current refugee governance is individually oriented and confers sole responsibility on host states. This also creates a ‘burden’ on the community of the host state leading to possible conflict over resources, as well as a burden on the environment itself.

\textsuperscript{86} Ibid (emphasis added).
\textsuperscript{87} Martin (2010) p.398.
\textsuperscript{88} Biermann and Boas (2007) p.15.
\textsuperscript{89} Ibid.
3. Chapter Three: Collectivized obligations

3.1 Collectivized obligations: what, why and how?

Burden sharing can be considered to be the provision of protection to refugees who are on the territory of another state, through for instance, resettlement or financial contributions…

As we have seen in the above chapter, despite different opinions on how to devise the new regime governing human migration (and displacement) that is caused by climate change, most agree that the obligations should be collectivized. ‘Collectivization’ in this context is used to signify a system by which states come together in order to share the burden of hosting refugees so that poorer states -which will be hosting the majority of forced climate migrants - will not be over-burdened. Here it is important to define exactly what the ‘burden’ is. On one hand, hosting large number of migrants is considered a burden because it has a notable impact on the economy, environment, peace, and security, as well as on the social infrastructure of the host state. On the other hand, ‘burden’ also relates to the effect the migrants have on the host state’s population in terms of, for instance, wage earning employment. The gravity of such a migration-related burden on a host state depends on different variables, which in turn affects the level of impact on the latter state. Such variables include “the size of the refugee population, the ratio of refugees to the host country or regional population, the fragility of the environment in refugee impacted area, the length of time refugees have been present, the availability of arable land, the cultural and ethnic make-up of the refugee and host country population and the policies of the host government toward the refugees.” This point is further elaborated in the section below.

A system of burden sharing could be devised in the form of multilateral cooperation, an alliance system or by way of a distributive-development framework.

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90 Betts (2011) p.57 [emphasis added].
91 For a detailed explanation of these effects see UNHCR 5th Annual Plenary Meeting of the APC (2001) p.3.
93 Acharya and Dewitt (1997) p.124
Multilateral cooperation aims for more “inclusive and equitable settings for international relations”\textsuperscript{94} whereby all states are expected to act or contribute in a similar way. An alliance system, on the other hand, sets discriminatory forms of collaboration towards achieving a common goal, which is keeping away a common perceived threat.\textsuperscript{95} The distributive-developmental framework is a cooperation that takes into account the economic problems of developing countries and, thereby, devised to redistribute resources from North to the South “in order to enable the latter to overcome its own problems and vulnerabilities.”\textsuperscript{96} Here, the primary burden to protect migrants lies on developing countries as a country of first asylum while the North is expected to provide the necessary resources.\textsuperscript{97} The anticipated collectivized obligations in case of forced climate migrants take a form of the distributive-development framework in order to ensure a more meaningful and effective burden sharing, although some aspects of multilateral cooperation could also be necessary.

Burden sharing and international cooperation are not new concepts. Though they fail short of articulating precisely the way in which such cooperation would be facilitated,\textsuperscript{98} principles that call for international cooperation in responding to any movement relating to migration are embedded in various regional, as well as international, documents. The preamble of the Refugee Convention, for instance, endorses some degree of international cooperation among states as follows:

\begin{quote}
Considering that the grant of asylum may place unduly heavy burdens on certain countries and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation.\textsuperscript{99}
\end{quote}

The OAU Convention emphasizes international cooperation in a similar way in case when an asylum destination state is ‘over-burdened’ by refugees:

\begin{quote}
…member States shall in the spirit of African solidarity and international cooperation take appropriate measures to lighten the burden of the Member
\end{quote}

\textsuperscript{94} Ibid.
\textsuperscript{95} Ibid.
\textsuperscript{96} Ibid p.129.
\textsuperscript{97} Ibid p.130.
\textsuperscript{98} McAdam (2011) p.112.
\textsuperscript{99} The Refugee Convention, Preamble, Para. 4.
State granting asylum.\textsuperscript{100}

The 1967 United Nations Declaration on Territorial Asylum also states that:

Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of \textit{international solidarity}, appropriate measures to \textit{lighten the burden} on that State.\textsuperscript{101}

The Executive Committee of the United Nations High Commissioner for Refugees’ (ExCom) in its Conclusion No. 22, 52 and 62, respectively, stresses “the need to establish effective arrangements in context of international solidarity and burden sharing” for assisting countries which receive large number of asylum seekers.\textsuperscript{102}

International cooperation has also been invoked in relation to climate change migration. Non-paper 41 on climate change adaptation by the Ad-Hoc Working Group on Long-Term Cooperative Action (AWG-LA) under the UNFCCC refers to migration and displacement as follows:

All Parties [shall] [should] jointly undertake action under the Convention to enhance adaptation at the international level, including through … (b) Activities related to migration and displacement or planned relocation of persons affected by climate change, while acknowledging the need to identify modalities of \textit{interstate cooperation} to respond to the needs of affected populations who either cross an international frontier as a result of, or find themselves abroad and are unable to return owing to, the effects of climate change.\textsuperscript{103}

“In refugee matters the logic of burden sharing starts from the premise that helping refugees is a jointly held moral duty and obligation under international law.”\textsuperscript{104} It has primarily been discussed with reference to mass inflows of refugees, who

\textsuperscript{100} The OAU Convention art 2(4).
\textsuperscript{101} Declaration on Territorial Asylum, art 2(2).
\textsuperscript{102} ExCom Conclusion No. 22, Part I, Para.3, Part IV, Para.1. See also ExCom Conclusion No. 52 and 62.
\textsuperscript{103} Ad Hoc Working Group on Long-Term Cooperative Action (2009). See also NRC (2009), p.23.
also may not fall under the Refugee Convention’s definition. It assumes that the weak and poor states in the South might restrict asylum if the rich states do not take their 'fair share' either by relaxing asylum procedures or increasing resettlement. So far, however, “[t]he actual duty to admit refugees, not the real costs associated with their arrival, are fairly apportioned among governments.”

The duty of international cooperation and assistance with respect to forced climate migrants, on the other hand, is mainly based on the principle that climate change is a global problem and any attempts to mitigate the consequences through migration could only be successful if the action is taken globally and collectively. This will be discussed in the following two sub-sections.

As discussed in the previous chapter, the current refugee protection regime is based on an individuated state responsibility. Many scholars, as well as refugee agencies such as the UNHCR, stress the need for a shift from a sole responsibility of receiving states to a collectivized response involving all other states. This is because, as Hans and Suhrke opine, the current sole legal responsibility has proved to be insufficient to deal particularly with en masse migration. Speaking about the limitations of the present refugee situation, they further state that:

- the present system entails systematic biases in cost distribution among receiving states as most refugees originate in, and are accommodated, in the world’s poorer countries;
- encourages destructive beggar-thy-neighbor policies as states unilaterally shift refugees onto the “next state” in the manner of protectionist states in a trading system and;
- the random characteristics of the system accentuate the hardship inflicted on refugees, who may or may not happen to arrive in an area that provides protection.

A shared scheme toward protecting refugees, therefore, is aimed at remedying the shortcomings of the current system. It can be argued it keeps the institution of asylum

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105 Ibid.
106 Ibid.
108 Hans and Suhrke (1997) p.84.
intact since states are more likely to offer protection if they can share the burden. It helps states to “discharge their obligations in a manner that simultaneously promotes national interest”\textsuperscript{109} because collectivized obligations give “more predictable responses, greater international order, and lower transaction costs during a refugee (migration) emergency - all of which are goods that states value, and which they seek to obtain through organized international cooperation.”\textsuperscript{110}

Of course the main question remains, why would states agree to share responsibilities to protect refugees who turn up uninvited, suddenly and in large numbers? It is in the common interest of states to come up with a collective response toward climate migration since it is inevitable that most states, at one time or the other, deal with climate migration. This is especially true when we consider that it has been estimated that climate-related displacement and migration will force one in every 45 people from their homes by 2050.\textsuperscript{111} Agreement could, therefore, be reached to collectivize obligations, first, for the sake of ‘reciprocity,’ if a state insulates itself from such obligations, why would another state be obliged to assist? Second, the fact that today’s ignored problem might create a future crisis that is difficult to control will influence states to commit to a ‘fair’ scheme toward climate migrants.

The primary motivation for states to cooperate in responding to the arrival of refugees will be the perceived cost of not responding. Cost, real or perceived, is central to the model.\textsuperscript{112}

The ‘good insurance scheme’ that guarantees a state not to face a refugee or migration emergency alone is also said to attract states to the negotiation table.\textsuperscript{113} For Suhrke the fact of whether or not states can control the cause of migration plays a significant role in deciding to commit to a shared responsibility scheme. For her, states would be willing to accept burden sharing “if they simultaneously had some assurance that they

\textsuperscript{110} Ibid.
\textsuperscript{112} Hans and Suhrke (1997) p.160.
could control events that produce refugees.” This is because addressing the cause will be an assurance that their cumulative efforts will stop migration flows in the long run and relieve them from their obligations of protecting and assisting migrants. This is something that has been impossible with regard to convention refugees because what causes their flight - war, conflict and human rights violations - cannot be controlled. In climate-related migration, on the other hand, states could control the cause of the problem by working together to ‘stabilize GHG concentrations in the atmosphere’ and regulating anthropogenic interference with the environment. This, in turn, serves as a potential incentive for states to act collectively. Other factors such as cultural or religious similarities between the affected states and a potential donor state, the need to trade and seek other economic interests in these states, or simply a motivation for advancement of refugee protection can also attract states to collectivized obligations.

3.2 Proposals to collectivize obligations

Under the current international regime, the distribution of state responsibility for refugees is primarily based ‘upon accidents of geography’ and states’ ability to control their borders. As a result, the majority of world’s refugees are found in poor nations which are not economically well off. In order to mitigate this unfair distribution of burden, collectivized obligations has been proposed by many scholars, as early as the 1970s. Grahl-Madsen, for instance, anticipated assigning refugees worldwide by using the ratio concept of ‘refugee per GNP,’ which matches the refugee preferences with host countries wealth and population density. At present a more elaborate initiative is proposed in order to allocate responsibilities not only based on geography or wealth, but also based on one’s contribution to the cause of the problem.

115 Ibid.
For Hathaway and Neve, states should come together to share the burden and responsibility of migration in line with international law. The responsibility is said to be shared when governments provide ‘safe and humane’ protection to refugees, while the 'burden' sharing, on other hand, relates to the fiscal cost of refugee protection.

Sharing the burden and responsibilities of refugee protection not only makes practical sense as a means to combat the withdrawal of states from the duty to protect refugees, but is consistent with general norms of international law. Responsibility is proposed to be extended among all nations in providing first hand protection, giving humanitarian aid as well as other assistance to support forced climate migrants. The home and the host state, facing the effects of climate change, perhaps more than others, would be assisted financially (or in-kind contribution) by the developed states for both gradual and sudden environmental changes causing migration, in order to mitigate the migration, as well as prevent further harms.

In order for collectivized obligations to work, according to Docherty and Giannini, it should be based on law, legally enforceable, attuned to humanitarian needs, and tailored for the specific circumstances of climate change. Schuck also states that the norms of burden sharing should be based on international human rights guarantees, resource maximization (such as cash, space, and ethnic diversity), consent, broad participation and proportionality, as well as respect for political constraints such as sovereignty and traditions. Consent is particularly 'essential’ in that for one thing, “[n]o state should be obliged to participate in a burden-sharing scheme unless it

121 Ibid.  
122 Ibid, p.18.  
124 Ibid.  
voluntarily undertakes to do so”\textsuperscript{126} and for another, it is only when states take a freely assumed obligation that they “feel a genuine commitment to the enterprise and take responsibility for its success or failure.”\textsuperscript{127} Broad participation is also vital for the system to work since large scale influxes need massive resources in terms of, for instance, finance and location. More importantly, “the norms of fairness and a constraint dictated by political prudence demands that a state’s share of the burden be limited to its burden-bearing capacity relative to that of all other states in the international community.”\textsuperscript{128} This proportionality principle helps the most affected states not to bear more than they possibly can and helps to distribute the burden accordingly.

To conclude, the core idea of these proposals is that collective action would lighten the burden of host states by distributing responsibility while at the same time it strengthens protection for refugees.

3.3 Methods of burden sharing

Scholars have proposed many different ways of burden sharing. For some scholars responsibility should be allocated in a way that for the asylum hosting states to provide protection for the migrants within their region, while the rest provide financial support to compensate for the costs incurred in giving protection to the migrant.\textsuperscript{129} For others, the participating states should be free to choose whatever protection measure they want to offer - be it provision of food, shelter, clothes, or physical protection.

According to Docherty and Giannini, because they are in the best position to implement assistance, host states should have the primary burden in realizing the protection guarantees for the migrants.\textsuperscript{130} The protection provided by host states

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{126} Ibid.
  \item \textsuperscript{127} Ibid.
  \item \textsuperscript{128} Ibid (emphais added).
  \item \textsuperscript{129} Hans and Suhrke (1997) p.103.
  \item \textsuperscript{130} Docherty & Giannini (2009) p.379.
\end{itemize}
\end{footnotesize}
should meet the standard of treatment that is enshrined in the Refugee Convention, which provides for equal human rights entitlements for aliens and nationals of a host state.\textsuperscript{131} Host states should also bear the duty to provide humanitarian aid with financial and in-kind contributions from other states and non-governmental organizations (NGOs).\textsuperscript{132} Home states, on the other hand, have the obligation to assist the host state as far as possible. This is according to the consensus that a state has an obligation to care for its people and provide protection under international and human rights law.\textsuperscript{133} When one’s nationals flee to another territory in search of refuge, the home state is under duty to cooperate with the host state in order to reach a durable solution.\textsuperscript{134}

Such cooperation might include, as appropriate, assisting in the removal or mitigation of the cause of flight, contributing to the voluntary return of nationals abroad [if return is possible], and facilitating, in agreement with other states, the process of orderly departure and family reunion.\textsuperscript{135}

Home states should also have the responsibility to “provide financial, material, and/or logistical assistance for temporary relocation or permanent resettlement to the degree they can”\textsuperscript{136} in the host state. The responsibility of home states is particularly emphasized in climate migration as opposed to convention refugees. This is because climate migrants flee not due to the unwillingness, but rather by the inability of the home state to provide protection within its territory.\textsuperscript{137}

Other states, beside the home and the host state should also have an obligation to assist forced climate migrants, if not for other reasons, for the mere fact that climate change is a global problem which should be dealt with collectively.\textsuperscript{138} Developed states should in particular have the responsibility to provide financial assistance to affected states because the former are at the fore for causing the problem. The rest of

\textsuperscript{131} Ibid.
\textsuperscript{132} Ibid.
\textsuperscript{133} Ibid.
\textsuperscript{134} Goodwin-Gill and McAdam (2007) p.3.
\textsuperscript{135} Ibid.
\textsuperscript{136} Docherty & Giannini (2009) p.380.
\textsuperscript{137} Ibid.
\textsuperscript{138} Ibid.
the international community should provide financial assistance to host states to cover the costs of preventive, as well as remedial, measures and also assist refugees themselves directly or through other aid organizations. This is also in line with the principle of common but differentiated responsibility, a principle which is now well entrenched under international environmental law. This will be discussed separately in the next sub-section.

For Schuck, on the other hand, the participating states should be free to choose whatever protection measure they want to adopt. As discussed above, the kind of burden sharing he proposes is one which is consensual and regionally based, for which freedom to choose the kind of contribution might better work.\footnote{Schuck (1997) p.269/270.} Docherty and Giannini as well as Suhrke also support regional cooperation for shared schemes especially when the stay is likely to be long term.\footnote{See Docherty & Giannini (2009) and also Suhrke (1998).} This is because, first, when a regional arrangement is adopted, it is difficult for states to insulate themselves since there would be a prevailing sense of relationships. Second, there is likely to be a greater sense of political or other responsibility toward the refugees. Third, the regime of shared obligations would be built on an existing pattern of regional relationships.\footnote{Ibid, p.108.} States will also be more likely to develop sharing schemes out of the prospect of common fate and reciprocity.\footnote{Suhrke (1998) p.403.} According to Suhrke, the “tradition of regional responsibility for localized refugee flows and solutions,” the “communality of interest and values,” ‘the administrative and cost manageability of relocation’ and the ‘intense patterns of interaction they exhibit’ will give a regionally-structured system an advantage over a global one.\footnote{Ibid.} However, such an arrangement should not totally close the door for individual out-of-region resettlement opportunities whenever a particular circumstance demands it.\footnote{Ibid.}

With regard to the kind of assistance, so far, burden sharing has focused on financial assistance rather than ‘redistribution of refugees,’ at least in relation to refugee

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140 See Docherty & Giannini (2009) and also Suhrke (1998).
141 Ibid, p.108.
143 Ibid.
144 Ibid.
protection and the environment.

[F]inancial aid to states that host large refugee populations has long been regarded as essential and self-evidently necessary, although practice typically has lagged behind principle.\footnote{Hans and Suhrke (1997) p.102.}

This arrangement whereby developed countries contribute financial and/or in-kind support to developing countries is entirely consensual. In this sense, developed states are not legally required to make such assistance because, more importantly, they are not responsible for the movement; it is only the home persecuting state that is solely accountable.\footnote{Ibid p.387.} As we shall see in the discussions below however, this is not the case when it comes to forced climate migrants.

The proposed financial assistance ought to be obligatory. Most agree that it should be channeled through a ‘global fund,’\footnote{See Docherty & Giannini (2009) p.384, Müller (2002) p.3. and Boas (2007) p.35 and Young (2012) p.13.} which is essential to “determine the size of obligatory contributions, collect payments, and distribute grants to states in need and organizations that provide aid to refugees themselves.”\footnote{Docherty & Giannini (2009) p.385.} This is similar to the Global Environment Facility (GEF) established by the UNFCCC under Article 11 and 21(3) of the Convention. But the financial assistance for climate migration ought to be set as a mandatory legal obligation.

The other important issue worth noting is how the protection offered to the migrants is implemented. \textit{En masse} movement has traditionally been dealt with by interim measures until permanent solutions are found. Temporary protection has been preferred by many states because such movement often demands high fiscal and political cost for adjudication as well as resettlement, for which many are simply unwilling to provide.\footnote{Schuck (1997) p.265. Of course temporary protection has an advantage in providing “flexible and practicable”\footnote{Ibid.} means for immediate assistance, but it is
less relevant in the case of climate migration which is inclined to be of a permanent nature because of irreversible environmental degradation. As opposed to temporary measures, resettlement is the other alternative. Resettlement is a “protective strategy of last resort, employed only when the root causes of flight cannot be prevented or eliminated.”\textsuperscript{151} However, it might be very hard to achieve. As we shall see below, this is reflected in the International Conference on Assistance to Refugees in Africa, whereby the African states refused to accept such a commitment even in exchange for financial aid.

To facilitate the implementation of a burden sharing scheme - from identifying climate migrants in need to assigning quotas to states - many anticipate the establishment of some sort of international authority.\textsuperscript{152} Because of its experience and expertise in refugee protection, the first candidate for this is UNHCR. The details of such proposals will not be covered in this thesis.

3.4 The role of the principle of common but differentiated responsibility

The acknowledged common but differentiated responsibilities for climate change phenomena make the funding of climate-related disaster relief a prime candidate for a transformation from relying on voluntary charitable donations to being based on binding contributions.\textsuperscript{153}

Common but differentiated responsibility (CBDR) is an important principle of international environmental law. Even though it was not explicitly spelled out, it was recognized as early as 1972 in the Stockholm Declaration:

… it will be essential in all cases to consider the systems of values prevailing in each country, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries.\textsuperscript{154}

The Rio Declaration of 1992 explicitly provides for this principle as follows:

\textsuperscript{151} Schuck (1997) p.268.
\textsuperscript{152} See Docherty & Giannini (2009), Suhrke (1998), Schuck (1997).
\textsuperscript{153} Müller (2002) p.3.
\textsuperscript{154} The Stockholm Declaration, Principle 23.
In view of the different contributions to global environmental degradation, States have **common but differentiated responsibilities**. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.\(^\text{155}\)

The principle of CBDR is also enshrined in the UNFCCC and Kyoto Protocol. The preamble of the UNFCCC acknowledges that “the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their **common but differentiated responsibilities** and respective capabilities and their social and economic conditions.”\(^\text{156}\) Article 3(1) of the Convention further adds that "the developed country Parties should take the lead in combating climate change and the adverse effects thereof."\(^\text{157}\) The Kyoto Protocol further confirmed the principle of CBDR by allocating commitments to developed countries to limit their GHG emissions for a period between 2008 and 2012. Despite an explicit recognition of the principle, the UNFCCC does not endorse ‘burden sharing’ in its strict sense. The Convention only states that industrialized countries have a main responsibility in taking the lead to curb climate change.

The principle of CBDR requires the consideration of the ‘economic and technical capacity’ of the nations of the world as well as their ‘historical contribution’ for anthropogenic climate change in allocating responsibility to deal with the consequences of adverse environment as well as preventing further harms.\(^\text{158}\) It lays down the basis upon which the GHG emitters (developed states) could make contributions to developing states that are affected by the changing environment in mitigating and adapting to climate change. It is a public secret that the developed countries are the main culprits for the changing climate that is adversely affecting

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\(^\text{155}\) The Rio Declaration, Principle 7.

\(^\text{156}\) UNFCCC, Preamble Para.6.

\(^\text{157}\) Ibid, Article 3.

many people’s lives. Their contribution to the problem, coupled with their ability to address the problem, places the developed states in a prime position to take the lead to protect forced climate migrants.

As the Center for International Sustainable Development Law (CISDL) notes, the principle has two basic elements: “the common responsibility of States for the protection of the environment, or parts of it, at the national, regional and global levels” and “the need to take into account the different circumstances, particularly each State's contribution to the evolution of a particular problem and its ability to prevent, reduce and control the threat.”\textsuperscript{159} The differential responsibility “aims to promote substantive equality between developing and developed States within a regime, rather than mere formal equality.”\textsuperscript{160} The polluter pays principle also supports this proposition. This principle of international environmental law states that “the polluter should bear the cost of measures to reduce pollution according to the extent of either the damage done to society or the exceeding of an acceptable level (standard) of pollution.”\textsuperscript{161} The principle was affirmed in the Rio Declaration:

\begin{quote}
National authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.\textsuperscript{162}
\end{quote}

The application of this principle to allocate responsibility in case of climate migration is supported by various scholars.\textsuperscript{163} Based on this principle, the contributions to be made by states will be proportionate to their differentiated responsibilities and ability to pay for protection of forced climate migrants.

\textsuperscript{159} Ibid, p.1.
\textsuperscript{160} Ibid.
\textsuperscript{162} Rio Declaration, Principle 16.
3.5 ICARA I and ICARA II

The concept of burden sharing was formally introduced in Arusha, Tanzania, in 1979 in the Agenda for the first International Conference on Assistance to Refugees in Africa (ICARA I). It was regional in character but called for international assistance for wider development.\textsuperscript{164}

The burden sharing concept introduced at this conference focused initially on the “promotion of resettlement of some refugees from the most seriously affected asylum countries to other countries in Africa.”\textsuperscript{165} But later on, it was expanded to include international assistance to help host countries cope with development burdens caused by migration,\textsuperscript{166} as well as to provide “emergency aid and aid for long-term rehabilitation of refugees…”\textsuperscript{167} The purpose of ICARA I is summed up in Gorman\textsuperscript{168} as follows:

- To increase international attention to the refugee situation in Africa
- To mobilize resources for refugee relief and assistance, and
- To consider assistance to asylum countries to help them cope with the additional burdens placed by refugees on their economic and social infrastructure.

Nonetheless, ICARA I is more focused on emergency assistance than dealing with development assistance needs of host countries.\textsuperscript{169} As far as assisting refugees is concerned (in meeting their continuing needs), ICARA I was successful. There were some financial contributions, the most significant coming from the United States.\textsuperscript{170} Its failure was with regard to addressing the refugee-related development needs of host countries.\textsuperscript{171} For this reason, a second conference, ICARA II, was convened by the UNGA in 1982. ICARA II affirmed the principle of burden sharing

\textsuperscript{164} Hans and Suhrke (1997) p.84.
\textsuperscript{166} Ibid.
\textsuperscript{167} Hans and Suhrke (1997) p.91 [emphasis added].
\textsuperscript{168} Gorman (1987) p.15.
\textsuperscript{169} Ibid.
\textsuperscript{170} Betts (2011) p.66.
\textsuperscript{171} Gorman (1987) p.15.
by conceiving refugees as a burden to African states’ economies and demanded financial aid from the West in lieu of shared resettlement.\textsuperscript{172} Among the purposes of ICARA II, paragraph 5(c) of Resolution No.37/197 states the ‘centerpiece’:

\begin{quote}
[T]o consider the impact imposed on the national economies of the concerned countries and to provide assistance to strengthen their social and economic infrastructure to cope with the burden of refugees and returnees.\textsuperscript{173}
\end{quote}

ICARA II highlighted the benefit of burden sharing to both Northern donors, by reducing the long-term need for humanitarian assistance, and African states, by compensating for the infrastructure costs of hosting large refugees.\textsuperscript{174} It “sharpened […] an already emerging dialogue on the connection between refugees and development.”\textsuperscript{175} Just like ICARA I, the second conference demanded development assistance as part of refugee aid. This was considered to be essential to help host countries cope with economic, social, and other related burdens resulting from migration. Such development assistance ambition, however, was diverted to emergency relief due to refugee flows from Ethiopia and Sudan.\textsuperscript{176}

However, the African plea for such responsibility sharing met limited response from the rest of the world. One reason for this, as Gorman states, is that the Northern “donor countries demanded the African host countries to provide commitments to ‘integrate’ refugees into their society,”\textsuperscript{177} for which the latter states were simply unwilling. In the absence of such a commitment, “there was very little substantive base to claim that there would be a relationship between increased support in the present and a reduction in humanitarian needs in the future.”\textsuperscript{178} Most African states preferred voluntary repatriation rather than integration. This was evident from the conference itself, which highlighted it as the ‘ideal durable

\begin{flushright}
173 UNGA Resolution 37/197, Para 5(c).  
\end{flushright}
solution’ as a key answer to the refugee crisis.\textsuperscript{179} As a UNHCR evaluation later revealed, the reluctance of African states to commit to local integration or self-sufficiency opportunities for refugees was due to the lack of interest to use the development funds for refugees; they were actually “trying to win funds for development project under the guise of refugee emergency relief.”\textsuperscript{180} There was also “very little structural interdependence between refugee protection in Africa and Northern interest.”\textsuperscript{181} As we will see in the next discussion, whenever there is another vested interest of the North’s in the region or a country, besides refugee protection, burden sharing projects will work out better. This was absent in ICARA process.

3.6 The Indochinese Comprehensive Plan of Action

The Comprehensive Plan of Action (CPA), concluded in Geneva in 1989 toward a common response for refugees from Vietnam, Cambodia, and Laos, is an important example of a successful burden sharing scheme. In 1979 the UNHCR convened an international conference in Geneva in order to seek a solution for over two million people who were fleeing their countries in Southeast Asia, specifically Cambodia, Laos and Vietnam. These people were flooding into the neighboring countries, which were poor and under-developed. The UNHCR states that cooperation was essential in order to respond to the situation effectively:

Since the countries of first asylum were developing countries confronted with serious economic and social constraints, it was essential that countries outside the area assumed the principal responsibility for resettlement.\textsuperscript{182}

The first-asylum countries were demanding other ‘able’ states share their burden in terms of cost and providing actual protection. The latter countries, on the other hand, wanted to “preserve the precarious temporary refugee policies of first-asylum

\textsuperscript{179} Ibid, p.79.
\textsuperscript{180} Loescher (2001) p.228.
\textsuperscript{181} Betts (2011) p.66.
\textsuperscript{182} UNGA (1979) p.5.
countries."

Eventually agreement was reached to the effect that the burden was dispersed among all countries to the agreement and was effectively spread over time.

The CPA led to a three-way agreement between the country of origin, the first country of asylum and the Northern resettlement countries. Accordingly, the states participating in the conference agreed to allocate responsibility among them in such a way that the first country of asylum in the region would admit refugees and determine their refugee status, provide at least temporary asylum, and refrain from returning refugees. The international community, on the other hand, was responsible to ‘offer resettlement places for those who had already fled’ and were recognized as refugees. The countries of origin had also an obligation to ‘discourage hazardous departures,’ cooperate with the UNHCR to encourage orderly departures and voluntarily accept the return of failed asylum seekers.

The CPA was considered a success. All states held up their end of the bargain. Because of the ‘allocation and cost-sharing agreement,’ first asylum countries continued to offer temporary protection.

The countries were persuaded with an assurance that the international community will effectively take care of the refugees, and the smooth operation of a resettlement program aiming at an equitable sharing of the burden imposed on the Southeast Asian countries.

Many countries also accepted Indochinese refugees for resettlement and donor countries shouldered the cost of resettlement and assistance. Vietnam successfully reduced the outflows. The UNHCR led the whole arrangement to success by “coordinating international discussions, establishing refugee camps and holding centers, channeling funds to care for the refugees, and monitoring the implementation of the resettlement programs.”

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186 Ibid.
It is obvious to see that the success of the arrangement was due to the full cooperation of all countries involved; “any shirking of one country’s responsibilities could [have] upset the precarious international balance.”\textsuperscript{187} The role of the United States (US) was also significant in the success of the CPA. It “[underwrote] the initiative by committing to resettle a significant portion of the Vietnamese refugees and to convince European states and Australia to also resettle refugees.”\textsuperscript{188}

Cooperation, however, was not a complete success. Rather the neighboring countries, at times, turned their back on any responsibility and were sending back refugees who were coming in large number. This ‘defection’ triggered exclusionary reactions in others. Nonetheless, ‘interlocking interests’ eventually made all states discharge their responsibilities, thereby “contributing not only to the implementation of burden sharing programs, but also to their effective maintenance.”\textsuperscript{189}

3.7 Convention Plus initiative

The Convention Plus (CP) initiative was started in 2003 by the UNHCR to “improve refugee protection worldwide and to facilitate the resolution of refugee problems through multilateral special agreements.”\textsuperscript{190} Its particular aim was “to develop a normative framework on international burden sharing through interstate bargaining on resettlement, target development assistance, and irregular secondary movement.”\textsuperscript{191} ‘Resettlement and target development assistance’ related to Northern support for in-region protection in the South and ‘irregular secondary movement’ related to the Southern commitment to provide sufficient protection within the

\textsuperscript{187} Ibid.
\textsuperscript{188} Betts (2011) p.71.
\textsuperscript{189} Ibid (emphasis added).
\textsuperscript{191} Betts (2011) p.74 [emphasis added].
region. This initiative was different from other instances of collectivized obligations, such as ICARA and CPA, in that it was not established to address specific migration issues; rather it tried to come up with a global agreement that could address specific refugee issues whenever they arose.

Initially the program was funded by Denmark, the Netherlands, the United Kingdom, and the European Commission, which support the concept of in-region protection as a ‘substitute for onward movement’ to their territories. Support of other Northern states was minimal.

The CP, however, failed to address any specific migration issues as was initially envisaged. The negotiations were unsuccessful in producing any substantive agreement on shared obligations regarding refugee protection. Northern states, apart from the European countries, were reluctant to support in-region protection by providing funds and resources. The UNHCR also did very little to “highlight the complex interdependence that connected Northern states’ interests to refugee protection in the South.”

\[^{192}\] Ibid.
\[^{193}\] Betts (2011) p.74/75.
\[^{194}\] Ibid.
\[^{196}\] Ibid.
4. Chapter Four: challenges and prospects

4.1. General discussion

As discussed in the above chapters, states have previously participated in redistributive schemes as a response to massive migration on an *ad hoc* basis, by setting their own intake according to their own admission criteria. We saw that some burden sharing schemes, such as CPA, were successful in securing collective protection for refugees while others like ICARA I and II were not. CPA suggests that similar arrangements of collectivized obligations may well be established and succeed in response to migration if they are devised and applied in a way that is beneficial to all. And shared responsibility, according to the principles of need and equity, is beneficial to all. It minimizes the burden on individual states by distributing responsibility among others. These contributing states could use such arrangements as a forum to advance their interests or fulfill their societal obligations. It could, furthermore, be used to hold accountable those states that are responsible, directly or indirectly, for the cause of the flight regardless of their geographical location.

As discussed in the previous chapter, the ICARA process witnessed a lack of political will to implement obligations even after a consensus on a burden sharing scheme was reached. The lack of genuine and well-conceived projects based on accurate refugee estimates has further affected the willingness of donor countries to participate in shared responsibility schemes aimed at refugee protection.

When we analyze the CPA, an important point to note is that the cooperation among first asylum countries’ to provide temporary protection was based on the agreement that the developed countries would cover the cost of protection and would offer durable solutions through resettlement. Moreover, the assistance by the developed states was further reinforced by the assurance from the refugee-generating country to reduce the outflow. As discussed in chapter three, Suhrke’s assertion that states would be more willing to participate in burden sharing schemes if they were confident in controlling the source, is highlighted by the CPA. This ‘root cause strategy,’ as Suhrke calls it, could have an important role in managing climate migration. Here identifying and mitigating the cause of flight, which is climate change, is foreseeable (unlike
persecution-led migration) even though other issues, such as economic and political matters, also contribute, in part, to climate factors.\textsuperscript{197}

On the other hand, CP that tried to develop a global international agreement was not successful because of the reluctance of Northern states to commit to binding obligations. The initiative was premised upon the idea that Southern states wanted others to share their burdens and Northern states wanted to prevent the movement of refugees into their territories, and that these two sets of interests could lead to mutually beneficial cooperation. The failure therefore, as Britts observed,\textsuperscript{198} was a paradox to this assumed structural interdependence of Southern states need for material assistance and Northern states’ interest in border security.

In general, ICARA, CPA, and CP highlight the ugly truth that burden sharing arrangements based solely on altruistic reasons are nothing more than wishful thinking. This is clearly evident in ICARA process. Developed states contribute only in as far as they have other related interests. In the CPA, for instance, the US’s strategic interest in the region was the basis of cooperation to resettle the Vietnamese refugees.\textsuperscript{199} Its financial contribution in ICARA was also driven by the same motive.

4.2. Possible challenges

As discussed in the above chapters, forced climate migration could be best addressed by a collectivized system of protection by which all states, not just the host state, join together to assist and protect these migrants by utilizing their available resources. Such a scheme, however, may face challenges in implementation as illustrated in different instances of burden sharing agreements discussed in chapter three. Let us now examine these possible challenges in more detail.

The first challenge that can be raised is the uncertainty that exists with regard to the effect of climate change in relation to migration. As explained in the introductory

\textsuperscript{197}Schuck (1997) p.261.  
\textsuperscript{198}Britts (2011).  
\textsuperscript{199}Ibid, p.71.
chapter, there is still a lack of hard data to directly link the effect of climate change with that of human migration. This makes the issue of climate-related migration highly contentious. Second, even when there is some consensus on the possible effect climate change could have on migration, estimating - with any degree of certainty - the numbers of those who will be forced to cross international borders because of climate change, is almost impossible. This, in turn, makes estimating the burden forced climate migrants pose to asylum countries a considerable challenge. The frequency and magnitude of climate change events is also unknown and therefore, as Suhrke states, “the cost implications of joining such schemes will be highly uncertain.”

Consequently, given all these uncertainties - which might force states to take “a certain proportion of future refugee flows of unknown frequency and magnitude” - institutionalizing binding sharing schemes would clearly be unattractive.

Another challenge relates to possible resistance to a burden sharing arrangement by the developed states due to a belief that they will be immune from large refugee flows because of their geographical location and their restrictive immigration policies. As discussed in the above sub-section, states’ committing to collectivized schemes for altruistic reasons is very unlikely. Countries not normally affected by large influx migration need an ulterior motive to allocate resources to deal with migration happening elsewhere. One motive, for instance, could be fear of becoming ‘one of the affected countries.’ The absence of such a motive would mean that states won’t be willing to come to the negotiating table to commit to anything. Because of this, cooperation for collective actions in the refugee regime has so far been characterized by failure. This, Suhrke argues, is because other states benefit from one state providing refugee protection, thereby ‘free riding’ on other states’ contribution. This, as we shall see, is especially the case in the absence of binding institutional mechanisms to control and facilitate implementation.

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200 Suhrke (1998) p.397 [emphasis added].
201 Ibid.
202 Ibid.
203 Ibid.
The fact that it is developing states that are most susceptible to the effects of climate change on human migration is also another challenge. These states do not have the technological advancement or financial capability (or the legal obligation) to mitigate climate change. This in turn, will affect the so-called ‘root cause strategy’ referred to above. When the impacts of climate change materialize - in this case in the form of forced migration - mass movement will be triggered, which will demand high fiscal and political costs to manage. These states, however, do not have the financial resources or the political capacity to deal with large-scale migration, even on temporary basis, let alone offering permanent solutions. Because of this, most developing countries have demonstrated unwillingness to accept obligations in regard to long-term refugee protection. They prefer temporary protection for such sort of en masse movement. Even though it could be argued that such protection provides a ‘flexible and practicable’ means of offering immediate protection to migrants, this is not the case here. In climate change migration discourse anything temporary might as well be impracticable taking into account the permanent nature of environmental degradation.

The absence of a central entity with the requisite legal authority and coercive power to enforce institutionalized sharing schemes is also a challenge. As we saw in the past attempts at burden sharing, such an entity - be it a hegemonic power with a vested interest or an organization established for that specific purpose - is vital in enforcing the apportioned obligations and protecting the rights of migrants. As Betts illustrates, “the only time in which collective action failure has been overcome is when a global hegemon such as the United States has unilaterally underwritten the costs of refugee protection on the basis of its own interest.” This is also true for Schuck who writes that “the current system of protection is equally dependent on the more powerful states exercising leverage and transferring resources to persuade the weaker first-asylum states to harbor.” Such carrot-and-stick arrangements have worked in many instances under international systems and might also be used to facilitate burden sharing in the case of climate forced migration.

The pressure exerted on the host states’ environment and populations because of large influx is also another demanding factor. *En masse* movement, for instance, will have security implications within the host state; it will affect the local job market and deplete the environment. This, in turn, discourages potential host states from providing physical protection. Archarya and Dewitt sum it up perfectly, stating that refugees or migrants “are victims, but [they] can also contribute to further victimization.”

The other challenge that could be raised related to climate factors is the absence of any real binding obligations for states to cut their GHG emissions. Anthropogenic interference with the environment continues and climate negotiations in respect to setting emission cuts have achieved little. The Kyoto Protocol’s first commitment period will end on 31 December 2012, leaving no binding agreement on emission cuts. The difference in proposals between the North and South with regard to ‘who should be committed’ is an issue that still has not been resolved. Some of the Northern states, such as Japan, Russia and Canada, have already expressed their unwillingness to extend their emissions cut commitments beyond the first commitment period of Kyoto unless all major emitters sign up to a binding deal. China is, for instance, a major emitter that does not have any obligation to curb its emissions because it is considered as a developing country and thus exempted from assuming any real obligations under the Kyoto Protocol. The Southern states, on the other hand, are baulking at any agreement that requires them to commit to any particular obligations regarding GHG control because they fear it would hinder their economic growth. On the other hand, adopting green technology in order for the economy to keep growing while at the same time benefiting the environment, is either unavailable or too expensive for them. Technological assistance from the North that was required under the UNFCCC is still not widespread. This ‘who-should-commit’ debate - on top of other disagreements - has made post-Kyoto negotiations impossible, leaving the environment to continue deteriorating.

The current global economy could also be another difficulty in securing the compliance of developed countries to a burden sharing scheme. According to the International Monetary Fund (IMF), the early 21st Century (sometimes referred as the ‘great

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207 Archarya and Dewitt (1997) p.120.
recession’) was the worst financial crisis since 1930s. Because of large budget deficits and continued economic recession, countries are more focused on trimming their budgets, and anything else requiring their financial resources, is being set aside.

4.3. The way forward

The first steps should be focused on mitigating climate change. If the concentration of GHGs in the atmosphere is allowed to continue at current levels, the problem we will be facing - especially with regard to migration - will be enormous. All countries must work toward achieving a better and healthier environment by reducing their GHG emissions and adopting green technologies. Even now the changing climate cannot be reversed but only stabilized. States, therefore, should concentrate at the same time on adaptation programs in order to deal effectively with the already-happening consequences. In some countries, for instance, people are already on the move. Hence, as a way of dealing with this aspect of climate change, all states must come together to protect forced climate migrants. One feature of climate migration is that, except cases of sudden on-set disasters like storm and floods, the frequency and magnitude of climate change impacts can be predicted (though not with certainty). This degree of predictability provides a window of opportunity for planning in how to deal with the affected populations and devise ways of protecting them.

In order to narrow the difference of opinion between the North and South with regard to a binding climate change mitigation agreement, an arrangement whereby major GHG emitters from developing countries commit themselves to emission cuts in return for providing sufficient finance for green technology, should be secured. Such financial and technological assistance for a shift to green technology would help the major growing economies develop sustainably. Sustainable development, one which does not affect the environment, should underpin the economic policies of developing countries.

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\(^{208}\) IMF (2009).
Once forced climate migrants are in a foreign land, responses could include repatriation, relocation, or resettlement depending upon the migrant’s circumstances and prospects. Repatriation might be impossible as the country of origin may no longer be habitable. If only part of the country is affected, repatriation may be viable to the non-affected area within the territory. In such a case, the country of origin should take effective action to facilitate ‘within’ relocation and resettlement. If return is impossible, temporary protection should be devised if it is feasible that the environment in the home country might revive again. The continuing rise in the rate of global emissions of GHGs, however, has not only undermined the prospects for voluntarily repatriation, but raised the threat of continued refugee flows.

It is argued that collectivizing obligations and spreading the costs of protection is the best way to address forced climate migration. As discussed, however, when it comes to ways of devising this regime, there are many different opinions and arguments. What form it should take, global or regional, how responsibility should be assigned, whether it should be voluntary or otherwise, and more importantly, how to deal with the cause of climate change, are some of the questions that scholars have been struggling with.

We saw in the previous section that because “legal obligations and humanitarian considerations rarely suffice to persuade states to admit refugees,” 209 a burden sharing scheme based solely on altruistic motives is very unlikely. Therefore, any new regime should be based on “realpolitik” 210 rather than moral or ethical considerations. Northern states should have incentives - as well as obligations - to participate in burden sharing schemes. The incentive for developed states would be fulfilling their community duty to address negative impacts that they helped bring about in the first place, as well as seeking to minimize uncontrolled inflows of migrants into their territories. Institutionalizing such schemes based on enforceable legal obligations is important here. This is because the current burden-sharing arrangement is voluntary, with weak incentives for cooperation, and this undermines the viability of the system. Likewise, the infrastructure needs of developing states, as well as the burden borne by their

209 Ibid.
210 Ibid.
populations, should be fairly apportioned among other states. This is necessary because burden sharing schemes depend significantly on the ability of host states to effectively implement such arrangements and meet recurrent costs. As Gorman\(^{211}\) rightly observed, burden sharing schemes should address not only the general burden on the host country’s infrastructure but also the specific needs of these states to successfully meet the recurring costs of running this infrastructure. For him, states should not only build hospitals, for instance, but also make medicine and trained personnel readily available. The required space, personnel to run different facilities and other related resources should be met in addition to setting up the facilities and the structure itself.

In order to alleviate the true burden on the host state and its population, assistance should also target the development needs of these low income countries. Migration by itself imposes a substantial burden on the economy of receiving states which makes it difficult to cope with the influx of large numbers. Development assistance should, therefore, be well integrated in the scheme. This is also supported by the UNHCR, “neither refugee assistance that ignores development nor development assistance that ignores refugee-related burdens can be truly effective over the long run.”\(^{212}\) This is mainly because development is the top priority for developing states. It’s only when they live up to these criteria that responsibility sharing schemes can effectively be implemented. The regular development aid, nonetheless, should not be mixed with refugee-related development assistance. What Gorman refers to as the concept of ‘additionality’ plays a significant role here. This is the notion that “the resource a country of asylum receives for refugee-related development projects should not be provided at the expense of funds it would have otherwise received for its regular development program.”\(^{213}\) Any fund should be additional to ongoing regular development aid. Existing contributions to assist refugee protection, through UNHCR for convention refugees for instance, or for pure development purposes, should not be affected.

\(^{211}\) Gorman (1987) p.34 & ff.
\(^{212}\) Report Meeting of Experts on Refugee Aid and Development of the UNHCR (1983) p.3.
When we come to apportioning the kind and level of contribution from states, national wealth, contribution to the problem that is causing the flight, the technological capacity to mitigate, population density, land space for resettlements, among others, should play respective roles. Different states have different capabilities to contribute to a burden sharing scheme. While some states are best suited to provide physical protection, even temporarily, other states will be in a better position to contribute financially. Others, on the other hand, even if they are not geographically convenient, they will be motivated to provide resettlement opportunities. Such a system of common but differentiated responsibilities works best here by requiring states to contribute in ways that correspond to their interests and capacity. This set up, however, should not be left unregulated to ensure that powerful states do not abuse it. Even though states should be given some degree of flexibility in choosing their means of contribution, a central entity (discussed below) proposed here should have a supervisory role with power to allocate or demand certain forms of contribution whenever necessary. Setting up some sort of ‘global fund,’ in order to secure funding in protecting migrants until responsibility is apportioned and implemented, is also necessary. In this kind of arrangement, rich states should be required to make mandatory contributions to the ‘global fund’ in fixed terms under supervision of the central entity.

In order to include all states in the scheme, even those who are destitute, and also provide wealthy states with flexibility in fulfilling their obligations, states should be free to transfer their burden to another by paying the necessary cost according to agreement. In this way those states which cannot participate in a burden sharing scheme for lack of capacity will indirectly be able to participate as wealthier states that cannot or will not give physical protection could shift their burden to the protecting states by covering the necessary costs.\(^{214}\) This is similar to the flexibility mechanisms of the Kyoto Protocol. These mechanisms, namely Emission Trading (ET), the Clean Development Mechanism (CDM) and Joint Implementation (JI), were designed to achieve emission reduction targets at the lowest possible cost and with flexibility. Here, states can remove carbon from the atmosphere by implementing projects elsewhere or buying allowances from those countries with excess amounts in order not to restrict

their emissions at home. This would enable states that don’t want to resettle the portion of migrants that are assigned to them to do so in another country in exchange for funding or other incentives. Of course the risk of such proposals is the lengthy process involved in planning, reaching agreement with a potential ‘receiving’ country, and executing such a scheme. The central entity mentioned above, however, could have a role in facilitating and expediting the process.

Overall, a shared scheme to provide protection to climate migrants should focus on providing protection within the region of migration. Since climate-related migration is likely to be long-term, redistribution of migrants out of the region should be resorted to when these countries are unable to provide the necessary protection. This is because, firstly, large-scale movement to other regions for resettlement will not only be problematic but will also be costly and very hard to manage. Secondly, for peoples that are of a reasonable number, studies\(^{215}\) show that they prefer to stay near their state of origin because of their hopes of eventually returning home one day. Thirdly, resettlement will work better if it is in the country where there is reasonable similarity in terms of culture and identity. Such is the case, for instance, in Ethiopia where Eritrean refugees of Afar ethnicity settle in the Afar region of Ethiopia. Here, both communities (the refugees and the host community) have the same ethnic ties and ancestors. They are known for their peaceful co-existence and for establishing a strong cooperative working culture. Though such forms of common ancestral ties are not found everywhere, the chance of sharing a common culture, identity, etc, is at least higher within the region of origin. In general, migrants [refugees] “should be protected where they are safest, most self-sufficient, least likely to experience social conflict, and ultimately in the best position to repatriate if and when safety is restored in their country of origin.”\(^{216}\)

This, however, does not mean that the scheme should strictly be ‘regionally based’. Indeed, it can be argued that the proposed burden-sharing regime should be globally oriented. According to the social scientist Anthony Richmond, a shared system that operates at a global level to protect refugees is ‘morally attractive’ and helps to “spread

the cost of providing asylum among states to minimize the high cost on any particular government.”217 This is because in case of climate migration, in-region settings alone will not suffice to protect those affected by climate change. In addition, the states that are most responsible for bringing about climate change that is the cause of the movement should be the major actors in providing protection, not only in financial terms. Though financial contributions to compensate states for the different expenses are vital, physical protection and resettlement (when return appears highly unlikely) should always remain the principal choices. This obligation of donor countries should be triggered whenever resettlement and durable solutions proves impossible within the region. This will also prevent developed states from taking advantage of the system by buying their way out of the arrangement.

With regard to the need for a central entity, UNHCR can play a substantive role in facilitating the burden sharing arrangement and highlighting the substantive linkages between climate preservation and migration. The participation of other intergovernmental organizations, such as the United Nations Development Program, is also critical in playing a facilitative role in initiating and promoting dialogue and negotiations.218 As we can see from the ICARA and CPA processes, such authoritative organs are significant in creating, disseminating, and facilitating burden sharing.

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Conclusion

It is widely recognized that one of the major consequences of climate change will be human migration. Even though the exact number of people that will be forced to flee their homes because of climate change is not yet known, there is a consensus that millions will be affected in the near future. These victims are expected to move in large numbers mostly within their own territories, while others will cross international borders. Such *en masse* movement across borders will place burdens on host states, which will primarily be borne by them individually. At times, however, there have been some examples of regional and international burden-sharing. While some of these agreements were regional in nature, some involved cooperation among countries of the world. These precedents demonstrate that strong cooperative partnership among regional and international actors could be an effective strategy to protect refugees and prevent future outflows.

ICARA I & II of 1981 and 1984 respectively, and the CPA of 1988-96 represent ad hoc initiatives by UNHCR to tackle refugee problems in the South. While ICARA failed to achieve any substantive outcomes, the CPA was successful in dealing with the problem. The CP, on the other hand, though also not successful, tried to create an international cooperative framework whereby cases of mass influx could be easily dealt with whenever they arose.

A number of international instruments and scholars stress the importance of shared responsibility to protect refugees and urge states to adopt such obligations. However, most seem to view a burden sharing scheme more as a moral aspiration than a legally binding duty. Financial contributions made to governments that take on a ‘disproportionate share of protective responsibility’ have so far also been seen as a matter of charity, not of obligation.\(^{219}\) Relying entirely on voluntary assistance offered by a relatively small number of states, has so far affected the viability of the system. Northern states have been unwilling to commit to any burden sharing scheme that would require them to allocate resources to that effect. The sharing arrangements also

have not given due regard to the development needs of the host developing states which, as discussed, is their top priority. Because of this, redistribution of refugees in a sense of burden sharing has so far been unattainable.

Since the future changes in climate can pretty much be predicted, the immediate response to climate migration should be targeted toward reducing GHG emissions in the atmosphere. Climate mitigation should always precede adaptation measures. For this, all states must work toward stabilizing climate change in order to stop further deterioration of the environment. For developing states, however, the agenda of climate change adaptation comes before mitigation. This conviction is rooted from their quest to use their natural resources to meet their full development requirements. Adaptation, here, is prioritized because the majority of people in these countries are already vulnerable to climate change and, therefore, the primary aim is to build their adaptive capacity. In such cases adaptation strategies must be combined with mitigation measures. In climate migration, for instance, adaptation measures of relocation (either within the country or cross border) should go hand in hand with implementing other mitigating strategies within the country. This can be done, for instance, by resorting to clean technology such as renewable power sources like wind and solar. Assistance and aid should be provided not only to forced climate migrants but also to climate change displaced populations. This is because today’s displaced might become tomorrow’s migrants.

For those already facing the prospect of forced migration because of climate change, a system of burden sharing that takes into account the vulnerabilities of the poor states and the responsibility of the rich states, should be devised. The mere fact that responsibility is collectivized and is agreed upon does not mean the problem of climate refugees is resolved. Political will and commitment is needed to translate these intentions into practical and normative frameworks.

221 Ibid.
In conclusion, it can be argued that to ignore the effect of climate change on human migration - and fail to prepare to manage these impacts, - will be a dangerous approach. In order to sufficiently address the multitude of problems that will arise, a burden sharing scheme is required, for which states should come together in spirit of international solidarity and cooperation.
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