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Recognising Climate Migrants in International Law: Towards a Just Protection Framework

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Recognising Climate Migrants in International Law

Towards a Just Protection Framework

Bachelor Thesis



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Abstract

While the number of cross-border climate migrants is increasing, their legal protection remains fragmented. Examining the idea of expanding the 1951 UN Refugee Convention to include climate migrants, I conclude that their situation is different from those of political refugees in a morally relevant sense, which entitles them to a new kind of protection. Based on that conclusion, I develop a just protection framework for climate migrants, which sets out migrants' rights and the duties of states that are associated with granting these rights. The proposed framework particularly focuses on migrants' agency and procedural justice since both highly contribute to the relocation's success. To mitigate possible feasibility constraints, because of states' lack of willingness to implement such a framework, I introduce a market system which allows states to trade the responsibility to host climate migrants in the form of "migrant quotas", thereby giving them more flexibility. However, since such a market approach would undermine migrants' agency, I propose a matching system, which matches migrants' preferences about where to move, with states' non-discriminatory preferences about what migrants they are willing to accommodate.

Contents

Abstract	1
I. Introduction	3
II. Literature Review	4
2.1 Political Refugees.....	4
2.2 Climate Migrants.....	5
2.3 Legal Frameworks.....	7
2.3.1 Refugee Law.....	7
2.3.2 Environmental Law	7
2.3.3 Human Rights Law.....	8
2.4 Moral Duties towards Climate Migrants.....	9
III. Moral Differences between Climate Migrants and Political Refugees.....	11
3.1 The Arbitrariness Objection.....	14
3.2 The Importance of Categorisation.....	14
IV. Towards a Just Protection Framework.....	15
4.1 The Matching System	17
4.2 Feasibility Constraints and the Market Solution	19
4.3. The Dignity Objection.....	20
V. Conclusion	21
Bibliography	23

I. Introduction

The Intergovernmental Panel on Climate Change (IPCC) forecasts that climate change related events will lead to the displacement of around 200 million people over the course of the 21st century (Human Rights Council, 2018). These adverse effects will predominantly fall on developing states, which are the least responsible for climate change. Conversely, developed states that highly contributed to climate change are less affected, which leads to an unequal distribution of climatic burdens.

To address this global injustice, we must consider climate change an ethical problem. Although normative scholars have noticed this, there is no consensus on a just distribution of climatic burdens among states. This is especially problematic in the case of climate migration, as it leaves the critical question of who is responsible for protecting migrants unaddressed. Moreover, the relationship between climate change and claims of procedural justice for climate migrants has been ignored so far. Addressing these claims is important not only because climate migrants, as moral agents, are entitled to influence decisions that substantially affect them but also because participation in decision-making contributes to the movement's (perceived) success (Kravchenko, 2010; McAdam, 2014).

Despite the increase in climate migrations, current international law lacks explicit reference to climate-induced cross-border migration (McAdam, 2021). This is suboptimal because to manage climate migration as a global problem, states must pull together to provide adequate protection. Protection can best be guaranteed by establishing a legal framework which specifies the rights of climate migrants and the correlated duties of states. Although there is general agreement that climate migrants should receive legal protection, it is less clear what form it should take. Some favour a regional protection framework, while others advocate a universal framework (Anastasiou, 2018; McAdam, 2011). As long as these questions remain unsettled, it is impossible to negotiate an urgently needed protection framework. Therefore, we also need to address the problem of climate migration from a legal perspective.

As demonstrated, the interplay between climate change and migration is not only highly salient within political philosophy but also legal debates. Combining both disciplines helps to establish a just legal protection framework and unifies the academic debates about climate change, migration, and justice. By looking at climate migration from different perspectives, one

might look at issues in ways they would not normally do and therefore get greater insight into the problem at hand.

One intuitively appealing idea to provide legal protection for climate migrants is to link forced cross-border climate migration with other forms of forced migration, such as the movement of political refugees. By linking these two forms, we do not need to establish a new protection framework but can just add another protocol to the 1951 United Nations (UN) Refugee Convention. I will address this proposal by asking whether there is a moral difference between political refugees and climate migrants. And if so, on what moral grounds can we justifiably distinguish both groups? Concluding that there is a moral difference, I then ask how a just protection framework for cross-border climate migration should look like.

To answer these questions, I start by outlining the concepts of political refugees and climate migrants and their protection under international law. After showing that the legal protection of climate migrants is highly fragmented, I examine whether it is adequate to add another protocol to the UN Refugee Convention, which guarantees the protection of climate migrants. I conclude that the situation of climate migrants is different from the situation of political refugees in a morally relevant sense, which entitles them to a special form of protection. Based on this conclusion, I develop a just protection framework for climate migrants, which sets out migrants' rights and the duties of states that are associated with these rights. This framework especially focuses on procedural justice and migrants' agency since they influence relocation's success. To mitigate possible feasibility constraints, I introduce a market system which allows states to trade the responsibility to host climate migrants, thereby giving them more flexibility and increasing the overall willingness to implement the framework. However, since such a market approach would undermine migrants' agency, I propose a matching system, which matches migrants' preferences about where to move with states' non-discriminatory preferences about what migrants they are willing to accommodate. In a final chapter, I conclude this thesis by highlighting its limitations along with possible suggestions for further research.

II. Literature Review

2.1 Political Refugees

Although the number of migrants fleeing their home countries in search of a better life is increasing, the legal status of a refugee is only granted to a person who is

“owing to a 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” (The UN Refugee Agency [UNHCR], 1967, p. 14).

This definition is very restrictive, limiting its scope to a relatively small group of migrants, which has been criticised by several scholars (Carens, 2013; Gibney, 2018; Hosein, 2019; Owen, 2017; Shacknove, 1985). They claim that focusing only on five grounds of persecution and disregarding other causes of migration is fairly arbitrary. Some argue that a definition of refugees should primarily focus on the deprivation of the needs of displaced persons rather than the cause of deprivation. They define a refugee as a person whose needs are unprotected by their country of origin and whose only resource to fulfil these needs is to seek refuge in another state (Hosein, 2019; Shacknove, 1985). However, others argue that the refugee status should be reserved for a normatively distinct group, as defined by the UN Refugee Convention. They justify this by saying that this group of migrants can only be helped by granting them asylum (Carens, 2013). In contrast, others, such as people displaced by poverty, can be helped through development aid delivered to their home countries.

Because refugees can only be helped through relocation, which is not the case for other displaced persons, and because this definition is already widely accepted, I will take the UN Refugee Convention’s definition as the working definition of *political refugees*¹. However, since this definition does not include climate migrants, it is necessary to define this group as well.

2.2 Climate Migrants

Although cross-border climate-induced displacement is increasing, there is no consensus on how to refer to people displaced by climate change. Being displaced due to environmental reasons in the broader sense, climate migrants fall into the category of “environmental refugees”, which encompasses “people who have been forced to leave their traditional habitat, temporarily or permanently, because of marked environmental disruption [...] that jeopardised their existence and/or seriously affected the quality of their life” (El-Hinnawi, 1985, p. 4).

¹ Political refugees and refugees is used interchangeably

However, this definition fails to generate a clear link to climate change, which, as I will argue below, is essential to claim corrective justice. In that sense, displaced people must be forced to leave their habitat as a result of events associated with anthropogenic climate change (Biermann & Boas, 2010; Byravan & Rajan, 2022). I will refer to this type of people as “climate migrants”. Within this category, Byravan and Rajan (2022) differentiate between “climate migrants” and “climate exiles” (p. 3). While the former includes all people displaced by climate change, the latter exclusively refers to those who will be permanently displaced, thereby losing their ability to be well-functioning members of society (Byravan & Rajan, 2022). Similarly, Keyserlingk (2018) defines three categories based on the motivation or the event that triggers migration. He distinguishes between “climate-induced migrants”, who move to reduce the risks of adverse impacts (migration as adaptation), “forced climate migrants”, whose living conditions became unbearable and are thus forced to leave to fulfil their basic needs and “climate-displaced persons”, who move as a response to materialised sudden-onset disasters. However, the above definitions fail to include the scope of displacement. Regarding climate-induced natural events, such as floods or sea-level rise, hundreds to thousands of people will be displaced simultaneously, making it necessary to not only look at migrants as individuals but also as entire communities. Including communities in a definition of climate migrants is thus crucial because communities are entitled to different rights than individual migrants.

Therefore, I will define *cross-border climate migrants* (climate migrants²) as individuals or communities forced to leave their habitat temporarily or permanently as a direct result of an imminent or already materialised threat to their most fundamental rights due to anthropogenic climate change. *Forced*, in this context, refers to the reasonable inevitability of threat because there is no appropriate alternative (de Shalit, 2011). This definition intentionally focuses on the most fundamental rights because rights are claimable against other actors who are obligated to ensure them.

² Climate migrants and migrants is used interchangeably

2.3 Legal Frameworks

Climate migrants, as I defined them, are not yet recognised within international law and, therefore, cannot claim legal protection as a distinctive group. Nonetheless, there are ways in which current legal rights can apply to the case of climate migrants.

2.3.1 Refugee Law

As mentioned above, the category of refugees is restricted to persons who flee because of the fear of being persecuted for reasons explicitly stated in the UN Refugee Convention. Climate migrants only fall into this category if they are displaced by climate-induced events and are persecuted for any of these reasons, which is usually not the case. Acknowledging that, some states introduced complementary protection schemes to protect those who fall outside the legal application of the Convention (McAdam, 2007). The Organisation of African Union (OAU) Refugee Convention (1969), expanded its definition of refugees to include persons who flee because of “events seriously disturbing public order” (p. 3). Such events can be triggered by climate change, as in the case of the drought crisis in the East African region from 2011- 2012. People displaced because of this crisis were granted refugee status in Kenya, Ethiopia, and Djibouti based on the Convention’s expansion (Anastasiou, 2018). Furthermore, the 1984 Cartagena Declaration in Latin America expanded the UN Refugee Convention’s definition to include “circumstances which have seriously disturbed public order” (Atapattu, 2018, p. 42). These disturbances can be triggered by natural sudden-onset disasters, such as earthquakes and climate change-induced events. For instance, people displaced by the 2010 Haitian earthquake, which led to a breakdown of political order, found refuge in neighbouring states. Similarly, a hurricane leading to a breakdown of political order would grant displaced people in this course refuge in other states.

Within domestic law, some countries, such as Sweden, Finland, the United States, Cuba, and New Zealand, provide subsidiary temporary protection to people who cannot return to their home states due to environmental disasters (Kuusipalo, 2017; Mayer & Crépeau, 2017).

2.3.2 Environmental Law

International environmental law encompasses several legally binding and non-binding frameworks protecting climate migrants. Under the INDs (Intended Nationally Determined

Contributions) of the 2015 Paris Agreement, states, such as Kiribati, Togo, Egypt, India, and Haiti, explicitly pledged to address climate-induced migration in the form of planned relocation and evacuation plans in case of sudden-onset disasters (Kuusipalo, 2017). In addition to that, the 2015 Nansen Initiative sets out non-binding recommendations for the protection and assistance regarding cross-border migration caused by natural and other disasters (Schloss, 2018). Building on the effective practices of the Guiding Principles on Internal Displacement, it intends to foster international cooperation in regard to the standards for the treatment of migrants (Nansen Initiative, 2015). By harmonising migrants' rights, it aims to establish a universal framework. Enhancing cooperation in a similar non-binding way, the Sendai Framework for Disaster Risk Reduction and the Cancún Adaptation Framework intend to promote preparedness for climate-induced migration. By establishing coordination mechanisms for sudden-onset events and mechanisms facilitating planned relocation in the case of slow-onset events, both set out guidelines for protecting climate migrants (Kuusipalo, 2017; Mayer & Crépeau, 2017). In particular, the Sendai Framework stresses the importance of protecting all human rights of climate migrants (Human Rights Council, 2018).

2.3.3 Human Rights Law

Protecting human rights implies a positive obligation of all states against the arbitrary deprivation of those rights (Mayer & Crépeau, 2017; Prieur, 2018). Among others, the most fundamental human right threatened by climate-induced displacement is the human right to life. Having recognised this, courts are beginning to rule against states that have failed to protect against foreseeable climate-induced risks (McAdam, 2012). In the case of *Budayeva and Others v. Russia*, the European Court of Human Rights (ECtHR) concluded that Russia's failure to protect against a foreseeable environmental threat violated the human right to life (Kuusipalo, 2017). However, jurisprudence in regard to human rights violations is inconsistent, differing from case to case. In the case of a Tuvaluan family in New Zealand, which claimed they would be in danger of arbitrary deprivation of their lives if returned to Tuvalu, a Tribunal found that this was insufficient evidence to trigger New Zealand's protection. The Tribunal stated that one needs to show a real risk of inhumane or degrading treatment, which requires "a positive act or omission by authority that 'transcend[s] failure of the state's general [...] policies to provide an adequate standard of living'" (McAdam, 2021, p. 841) A "simple" lack of resources is not enough to count as an omission.

This sub-chapter demonstrates that climate migrants are legally protected under several legal frameworks. Nevertheless, these frameworks remain fragmented, which leads to inconsistent protection. Since all displaced people should receive equal treatment, there is a need to establish one universal framework. Moreover, current protection frameworks only apply to individuals, which is insufficient for climate migrants, as in their case, entire communities get displaced. Therefore, a new framework needs to be established that deals with their special situation and grants them correspondent rights. But to which rights should climate migrants be entitled? Among others, climate migrants are entitled to accommodation in another state. This moral right is based on rectification or humanitarianism. I will outline both accounts in the following sub-chapter and explain which implications these entitlements have for the international community.

2.4 Moral Duties towards Climate Migrants

Since climate migration is a global problem that requires global solutions, the international community as a whole has a duty to help climate migrants. But according to which principles should the responsibility to host climate migrants be distributed among states? The literature concerning the distribution of the costs of climate change suggests that states should share the costs of accommodating climate migrants according to their common but differentiated responsibilities (CBDR). This approach of remedial responsibility is built on two moral principles, namely the “do not harm” principle and the “help those in need when you can” principle. In other words, if a state has contributed to the climate-induced displacement and therefore harmed those people, it has a duty to accommodate them on the account of corrective justice. Additionally, if a state is able to host climate migrants, it should do so as for humanitarian reasons.

Corrective justice, as a remedial principle, applies when a person wrongfully disadvantages another person. The victim can demand rectification from the wrongdoer, who then must restore “the victim to the position she would have been in had the wrongful behaviour not occurred” (Miller, 2021, para. 2). But this is only possible if the wrongful act can be directly linked to the harm. In the context of climate change this is also called the “polluter pays principle” (PPP). Applied to climate migration, states that emitted high levels of greenhouse gases (GHGs), which cause climate change and subsequently lead to displacement, have an ex-post obligation to rectify migrants (Buxton, 2019; Byravan & Rajan, 2010; Fruh, 2021). However, this

approach of assigned responsibility cannot account for “excusable ignorance”, which states that earlier polluters could not have known about the harmful consequences of their emissions, and therefore can be excused. To solve this problem, scholars introduced the “beneficiary pays principle” (BPP), which holds current states responsible if they have unjustly benefited from emissions causing climate change (Page, 2012). Yet, both the BPP and PPP fail to consider the multicausal nature of climate migration. Sometimes climate change might only be one factor, among others, such as poverty, conflict, or economic reasons. If climate migrants cannot sufficiently prove that their displacement is linked to climate change, potential host states might eschew their responsibilities to accommodate them (Draper, 2022; Keyserlingk, 2018; Zetter, 2010). Therefore, we must seek other principles to distribute the duty to accommodate climate migrants.

One of these principles is the “ability to pay principle” (APP) (Caney, 2010). This principle distributes the costs of climate migration among states proportional to their ability to bear the burden of accommodating migrants. As noted above, the APP is derived from the moral principle of “help those in need when you can”, which implies that states have a general obligation towards vulnerable people, no matter the cause of their vulnerability. Vulnerable people are people who lack sufficient resources to sustain a dignified life. On that account, climate migrants are entitled to protection by all states that can aid at a relatively low cost, simply because they are vulnerable (Bell, 2004; Bradley, 2012; Wyman, 2013). Focusing on the cause of vulnerability, advocates of cosmopolitanism, such as Beitz (1999), argue that the least well-off still need to benefit from the global distribution of resources, income, and wealth (Bell, 2004). If their own state cannot provide these resources, they are entitled to emigrate to states that can guarantee a sufficient amount of them. In regard to climate change, people have a right to relocate if they lack resources due to climate-induced events (Bell, 2004; Bradley, 2012; Wyman, 2013). Comparatively significant is ensuring people’s dignity, which requires respecting their human rights (McAdam, 2012). Since climate change threatens some of the most fundamental human rights, such as the human right to life, health, subsistence and physical security, the international community has a duty to assist people deprived of these rights (Caney, 2009; Keyserlingk, 2018; Shue, 2020). In short, if people are at risk of their most fundamental human rights being violated, or deprived of necessary resources or other things that consequently make them vulnerable, they are entitled to move to another state, which can guarantee a better life.

As demonstrated in this sub-chapter, there is a broad consensus that climate migrants are entitled to protection by the international community. However, there are different views on how to justly distribute the responsibility to host climate migrants, or more precisely on which distributive principle this should be based. This is problematic because, with these discrepancies, it will be nearly impossible to negotiate a feasible framework to govern climate migration. Moreover, all principles come with their downside. While the PPP and BPP fail to take the multicausal nature into account, the APP, as a principle of charity, does not directly imply legal obligations and therefore is less suitable for a legal framework, which is based on rights that can be claimed against certain actors. Additionally, all of these approaches fail to take the migrants' agency into account.

In trying to address these shortcomings, some authors pushed for the idea to negotiate a new legal protection framework for climate migrants, focusing on a just distribution of hosting climate migrants and participatory rights of climate migrants (Biermann & Boas, 2017; Docherty & Gianni, 2009). But, negotiating and implementing a new framework will take time, which is limited, considering the growing numbers of climate migrants. Thus, some authors suggest expanding the UN Refugee Convention in a similar way as the OUA Refugee Convention did, so that it also includes climate migrants (Cherem, 2016; Lister, 2013). While this might intuitively seem appealing because political refugees and climate migrants both do not have another alternative than to leave, I argue that despite some similarities, they are morally different. For this reason and because, this would be too demanding on the UN Refugee Agency (UNHCR), there is a need for a new protection framework for climate migrants (Docherty & Giannini, 2009).

III. Moral Differences between Climate Migrants and Political Refugees

Political refugees and climate migrants are people whose basic human needs and rights are insufficiently protected, which forces them to leave their home country. Insofar both can only be helped through relocation. However, we have to differentiate between those who cannot return and those who can be expected to go back after some time. The first category includes political refugees, who lost national protection as their states actively turned against them, as well as permanently displaced climate migrants, whose homes will become uninhabitable through slow-onset disasters (Bradley, 2012; Buxton, 2019; Cherem, 2016). The second category includes climate migrants displaced by sudden-onset disasters. Differentiating

between these two categories is crucial, because permanently displaced refugees and climate migrants will become permanent members of their host states, and therefore should be entitled to the same rights as local citizens. These rights should include civil, political, social, cultural, and economic rights (Docherty & Giannini, 2009; Prieur, 2018). Since climate migration affects not only individuals but also groups of people, these rights should also apply to them.

In the case of community displacement, it is important to preserve communities' distinct characteristics, such as cultural practices, traditions, and knowledge. To ensure that none of these characteristics are lost, host states must facilitate ways migrants can maintain links with their home states and communities. One way to do this would be to grant new communities some self-determination in the form of local governance (McAdam, 2017). However, although it is important to preserve a community's character, it is equally important to integrate migrants into their new society. A way to preserve the identity of their homeland and integrate migrants into their new community is to grant them dual citizenship so that they are still legally connected with their home, which also upholds their emotional connection.

But, for communities whose entire state will become extinct, membership in a new one might not be enough. By losing their territory, they lose not only a place to live but also their right to self-determination. For a group to be self-determining, it needs to rule itself and have authority over its members (Nine, 2010). To do so, it must define its boundaries, which is usually done by demarcating a territory with a permanent population, which this group then rules. Without a legally defined territory under its jurisdiction, a group ceases to exist as a self-determining group (Nine, 2010). To enable states to continue to exist, it is thus necessary to give them new territories (Wyman, 2017). However, even with a new territory and the continuation of the state, climate migrants will still suffer a partial loss of their identity. The land a person inhabits is not merely a place of subsistence in the physical sense but also a place which is essential to their identity, especially in the case of indigenous peoples. With the submergence of their island, Tuvaluans will forever lose places with which they associate happy memories, natural surroundings they enjoy, or other things they are familiar with (de Shalit, 2011). This sense of belonging cannot be rectified by granting them a new territory because it will never perfectly replace the lost home (Draper & McKinnon, 2018).

Although a new place can never fully compensate for losing the old one, the international community can ensure that the new place is as pleasant as possible. This is because climate migration can be planned in contrast to migration caused by persecution. In the case of sudden-

onset events, vulnerable states and communities could establish an emergency plan, which regulates where people will go in the case of a disaster. For example, home states, potential host states and people living in vulnerable regions could agree on where to go, how the movement will occur (e.g., on which routes) and when people will be moved so that life-threatening situations will be minimised (McAdam, 2012). In the case of slow-onset events, affected individuals and communities could engage in pre-emptive relocation programmes over several years, so that host states can slowly adapt to the increase in population. This also benefits climate migrants because, when host states do not have to handle a large influx of migrants, protection can be better tailored to their needs. For instance, a first group could consist of working people, which then can be effectively trained and financed in order to be integrated into the economy, while a second group comprises people seeking university education, who can be assisted with that. Though such integration approaches might also be possible for political refugees, as they mostly arrive in smaller numbers, states cannot prepare in advance. Additionally, in the case of climate migration, home states can already prepare future migrants for their new home, which is not possible for political refugees because their flight is more sudden.

Concerning justice, political refugees and climate migrants have humanitarian and human rights claims, which generate general duties of humanitarian justice (Buxton, 2019). However, some refugees and all climate migrants have a particular claim against one or more specific states because they were responsible for their displacement. This causal connection triggers demands for corrective justice, which obligates responsible states to host migrants or refugees. Furthermore, since climate migrants' movement can be planned, climate migrants are entitled to some form of control over the decisions being taken.

While there are some similarities, climate migrants are for the most part morally different from political refugees. Because of climate migrants' different needs and entitlements, expanding the UN Refugee Convention is inadequate. Therefore, there is a need to negotiate a new protection framework, especially for climate migrants. Nevertheless, a new protection framework for climate migrants can benefit from adapting effective practices from the current refugee regime.

3.1 The Arbitrariness Objection

But what makes climate migrants and political refugees more deserving of legal protection than other displaced people? Why does a woman in Ethiopia suffering hunger triggered by poor economic prospects deserve less protection than a woman in Kenya also suffering from hunger but triggered by a climate-change-related event? Both suffer the same deprivation; both are the least responsible for their situation, and both can be helped through relocation. However, only the woman in Kenya will be legally entitled to refuge in another state. Denying relocation to the first woman because her hardship is unrelated to climate change seems morally arbitrary. Furthermore, it is well established that climate change interacts with other socio-economic and political factors (Draper, 2022; McAdam, 2011). For instance, climate change may only be the tipping point which makes people migrate. The woman in Kenya might have been in the same situation as the one in Ethiopia before a climate change-related flood, and only got “lucky” due to the flood. Singling out a category of climate migrants consequently obscures the complexity of climate change displacement. To deal with this monocausal nature, it would be more beneficial to shift the attention away from the causes of displacement and towards the needs of people (Betts, 2010; Gibney, 2018; McAdam, 2011). Betts (2010) proposes such a humanitarian approach by introducing the concept of survival migration, which defines “persons outside their country of origin because of an existential threat to which they have no access to a domestic remedy or resolution” as migrants entitled to international protection (p. 362).

3.2 The Importance of Categorisation

While this concept might work in an ideal world, it will not work in today’s real world. Defining the concept of migrants that broadly would evidently lead to an increase of people who have a right to asylum. States that are already reluctant to take in political refugees under current frameworks might not be willing to take in a large number of additional migrants. This reluctance can lead to stricter immigration policies, which subsequently cause a collapse of the entire protection regime, leaving millions unprotected (Carens, 2013). Furthermore, economic migrants escaping poverty can be better helped through development aid provided to their home state. This also benefits vulnerable people who do not have the means to migrate (Lister, 2013). However, can’t the same be said about climate migrants and their situation? Would it not be more beneficial to support vulnerable people through adaptation aid so that displacement does not occur in the first place? While this is a valid point, it is not relevant to the discussion here,

as I have defined climate migrants as people who do not have any other alternative but to migrate. For instance, it might be the case, that the community put adaptation measures, such as seawalls, in place, which, however, can no longer hold back the pressure of the flood. And since this and/or other adaptation measures are already exhausted, people are forced to leave their place. Additionally, the same argument can be made about political refugees, namely that they can be helped by supporting democratic institutions so that people do not have to flee. While this may be desirable, it comes with high costs. Forcing a regime change from outside requires some form of military intervention, which causes more harm than accommodating people escaping persecution. However, this is not to say that the international community should do nothing and let human rights violations continue. Lastly, climate change-induced displacement raises particular questions of responsibility and corrective justice, which is not the case for most other forms of migration (Buxton, 2019; Draper, 2019). By adopting a “catch-all regime,” we ignore states’ responsibilities and let them get away with their wrongful actions (Nishimura, 2015, p. 113). By being made liable for the harm they caused, states might change their behaviour, reducing further harm, which benefits people at potential risk for displacement and others negatively impacted by climate change.

Thus, questions about feasibility, other forms of help for non-climate migrants and corrective justice give rise to a particular category for climate migrants, which is legally recognised. Based on that conclusion, I will now develop a protection framework for climate migrants, particularly focusing on procedural justice and their entitlements as groups and individuals.

IV. Towards a Just Protection Framework

In order to negotiate a new protection framework, it is necessary to address the question of how to involve those affected in the decision-making process, since involvement is not only a legal right, but also affects the movement’s success (Kravchenko, 2010; McAdam, 2014). One way to do this is to focus on procedural justice, which sets out just procedures for decision-making (Gardiner, 2011). Procedural justice in the context of climate migration requires that migrants have the opportunity to participate in and influence the decision-making process regarding their movement (Marion Suiseeya, 2010).

But who should be allowed to participate? Hourdequin (2019) emphasises the importance of formal equality of all affected people, which suggests that all affected moral agents capable of

acting ethically may participate on an equal standing. Stressing formal equality is crucial, because otherwise already existing injustices of misrecognition, which occur when perspectives of certain groups are ignored, may be exacerbated (Blue et al., 2019). However, if 2,000 people are likely to be displaced, it is not feasible to invite every single one of them to the negotiation table. To resolve this problem, affected people can send representatives who then participate on their behalf. Although migrants themselves cannot participate under this scheme, it is crucial that they are informed of and consent to all decisions before any movement takes place. To guarantee a successful relocation, it is also important to focus on the implementation within host states. Evidence suggests that negative public views can constitute a critical soft feasibility constraint, making relocation less successful (Ruhs, 2022). To mitigate these constraints, it is therefore important to enable members from host states to send their representatives as well.

Focusing on implementation suggests moving from the question of *who* gets to decide towards the question of *what* is decided. Before addressing this question, we first have to differentiate between two forms of relocation, namely evacuation and resettlement. Evacuation mostly occurs in relation to disasters and has to take place immediately. Most of the time displacement due to evacuations is temporary, with a high likelihood for migrants to return. In contrast, resettlement intends to be permanent (McAdam & Ferris, 2015).

As stated above, permanent relocation in the case of climate change mostly requires community resettlement. To identify those communities, it is important to involve the scientific community, which can determine which areas are likely to become uninhabitable and when (McAdam & Ferris, 2015). After identifying these “vulnerable zones (VZs)” the planning of the movement can begin (Byravan & Rajan, 2022, p. 5). In the case of Bangladesh, whose low-lying coastal areas will become uninhabitable, a second step would be to determine where communities living there should be resettled. During the pre-movement phase, affected communities would express their preferences on where they would like to move, and the potential host and home states then can negotiate the terms of the movement (I will outline the process of choosing a host state below). During these negotiations states first would determine the time frame over which the movement would occur, so that it is not too demanding on the host state. For example, if a community of 200 people needs to be resettled, home and host states can agree on a staggered resettlement over several years. As mentioned earlier, in this case the community is divided into smaller groups with similar characteristics and needs, which are then resettled gradually, so that host states can particularly focus on satisfying these needs.

Second, as permanent resettlement implies migrants' permanent membership in their host state, a next step would be to define their legal status and the rights and duties that are associated with this. Among other things, this can concern questions about local self-governance and diaspora rights of communities, but also questions about dual citizenship for their members as individuals (McAdam, 2017). The same procedure applies when migrants are resettled as individuals.

In contrast to that, states that are affected by more frequently occurring sudden-onset disasters, which require evacuations, need to develop emergency plans for the case of disasters. In order to set up such a plan, they need to engage with the scientific community, which can advise on disaster risk assessment. For example, coastal regions which are more vulnerable to natural hazards like hurricanes can be determined as VZs for evacuations. The next step is to prepare their residents for eventual disasters, by providing information on the evacuation itself and the return. Including local populations in this step is crucial as they have specific knowledge about the area, which can facilitate movement. Since evacuations must happen immediately, it is necessary to pre-organise transportation and ensure it is always available. When evacuation movements involve crossing borders, mainly those of neighbouring states, these states also need to be involved. Among other things, they need to determine migrants' legal status and their rights. More specifically, host states must specify whether migrants are only entitled to the protection of their human rights, or if they are also entitled to social welfare and other benefits. Furthermore, home and host states must decide on where migrants should be accommodated. Suppose they agree to set up camps, like refugee camps, host states must ensure that these camps either already exist at the time of the evacuation, or that they can be set up quickly. If, after a reasonable amount of time, migrants can return to their homes, home and host states must contribute to an orderly return (Docherty & Giannini, 2009). If this is not possible, they qualify for permanent relocation.

4.1 The Matching System

When it comes to permanent relocation, it is crucial to rectify migrants' loss of place and belonging as best as possible. This can be ensured by letting climate migrants themselves choose where to resettle. To combine migrants' wishes and states' remedial responsibilities, I propose a matching system which matches migrants' preferences with the preferences of states (Jones & Teytelboym, 2017). While this system cannot fully grant freedom of movement, it can

ensure some autonomy over the relocation process. The matching only occurs once it has been established, which states, and which migrants participate. Therefore, the first step is to determine all participating agents. Due to the limited scope of this thesis, I only focus on migrants with a claim for individual or group asylum, disregarding communities, such as the population of sinking islands with the right to self-determination and governance over a particular territory.

Since climate migrants have a moral claim against states³ responsible for their displacement, potential host states must be chosen according to the principles of corrective justice. Thus, a participating state is one which can be held liable for causing displacement. But, as mentioned in the first chapter, principles of corrective justice fail to consider the multicausal nature of climate migration. However, I argue that additional factors contributing to migration are irrelevant because, for claiming rectification, it is only necessary that a climate-related factor can be determined, among others. Thus, the BPP and PPP can be used to determine which states should accommodate climate migrants. To account for excusable ignorance of past emissions, I propose that the distribution of responsibility should follow the BPP (Jamieson, 2010). A state then has the duty to accommodate climate migrants if it benefited from climatic actions that impose undeserved harm on others, such as climate migrants (Page, 2012). Because the BPP is backward looking, it is less useful to determine liability for future emissions. To account for that, I propose an insurance system based on the risk a GHGs emitter poses towards climate displacement.

Within this system, states that exceed a threshold of “survival emissions”, which are needed for subsistence, should accommodate more migrants (Draper, 2022). For example, if France annually emits five billion and Russia twelve billion tons of GHGs, Russia must accommodate more migrants than France. According to which calculations this can be determined, needs to be negotiated in advance. This approach has two benefits. First, it assigns strict liabilities, and second, it incentivises states to cut their emissions so that they may not have to pay additional costs for hosting climate migrants.

³ I intentionally focus on states as agents as duty-bearers because they are in control of immigration issues (Byravan & Rajan, 2010).

However, some might object that one ton of GHGs does not translate into a certain amount of displaced people. Since solving this problem is beyond the scope of this thesis, I will only sketch a potential solution. The first step to solve this problem is to define a minimal per capita threshold of GHGs, which is needed to survive. Based on that, states receive emission permits, which they may not exceed. Suppose they exceed them nonetheless by a certain amount, which needs to be scientifically determined, they are then obligated to take in a certain number of climate migrants. In other words, if Russia exceeds its assigned emissions by ten per cent, it has a duty to accommodate a to be determined per cent of climate migrants.

After determining liable states and eligible migrants, the next step is to indicate preferences. In one system, migrants living in a VZ can indicate their preferences about potential host states drawn from a group of liable states. Another system would be one where states indicate their preferences about migrants (Jones & Teytelboym, 2017). A centralised organisation would then evaluate these preferences and match migrants to states. To avoid discriminatory practices from states, an organisation has to check the applications thoroughly. For example, it can provide binding guidelines which prohibit certain forms of discrimination (e.g., it is not allowed to only “request” Christian migrants) and sanction states that do not comply.

4.2 Feasibility Constraints and the Market Solution

However, this model, like other liability models, faces challenges regarding implementation, as responsible states are unwilling to accept any responsibility that makes them liable (Eckersley, 2015). In addition to that, states may fear that accommodating people from a different culture might endanger their exclusive national identity. who do not share their society’s exclusive national identity (Keyserlingk, 2018).

While a framework that primarily focuses on the rights and entitlements of climate migrants rather than those of states and their citizens cannot entirely solve these problems, it can incentivise states’ willingness to participate in such a framework. One of these incentives can be a market system. As outlined above, each state gets assigned a quota of migrants. If, for whatever reason, a state cannot accommodate its previously agreed upon quota of migrants, it can pay another state to host them. To avoid the exploitation of less affluent states by affluent states by paying them to accommodate migrants, I propose a market system that only allows trading among liable states. Most of them are affluent, so exploitation is less likely to occur.

One exemption is evacuation due to unforeseeable disasters. In those cases, migrants mostly migrate to neighbouring countries. Because relocation must happen immediately, liable states could compensate those neighbouring countries if those were not assigned liable.

To illustrate the general relocation process, let us imagine a Bangladeshi engineer from a VZ who wants to migrate. First, the engineer must choose his preferred host state from a group of participating states. There can be a “Western group”, including all liable states in Europe and North America, an “Asian group”, including all liable states in Asia, et cetera. If the engineer wants to resettle in Canada, he has to state that he wants to be resettled within the “Western group”. To further specify his preferences, he can then indicate that he wants to move to Canada in the next step. If there is a shortage of qualified engineers in Canada, so that it welcomes foreign engineers, they will be matched, and the movement can be prepared. Suppose during this preparation phase, Canada experiences a war and cannot host the engineer, it can pay another state among the group the engineer chose from, to host him. In this case, Canada can sell its responsibility to any state of the “Western group”. Even though the engineer will not be resettled in his preferred state, he will be resettled in his preferred group.

4.3. The Dignity Objection

Though such a market system might increase states’ willingness to participate, it raises two questions about its morality. First, “selling” migrants demeans them by giving them the feeling of being unwanted and second, it puts a price on people, treating them as means instead of an end (Schuck, 1997). By doing so, Gibney (2007) claims the market system violates migrants’ dignity.

To unfold these objections, I will first look at the concept of dignity as a principle of morality. While there are many conceptions of dignity, I will focus on Kant’s definition, as it is the most suitable for the commodification objection. Kant argues that “what has a price can be replaced by something else as its equivalent. Whatever by contrast is exalted above all price and so admits of no equivalent has a dignity” (Kant & Wood, 2002, p. 84). Therefore, human beings, with inherent dignity, cannot be labelled with a price tag. While this objection is valid, it misinterprets the market system. The system’s purpose is not to put a price on migrants per se but on the responsibility to host them. Since the “duty to host” in form of quotas does not possess any dignity, it can be traded among states. Second, the approach I proposed here does

not devalue migrants because of its built-in matching system. This scheme suggests that states chose specific migrants, because they might be beneficial to the host state's economy or other sectors that are in their national self-interest. This shows that host states value migrants. So, therefore this objection does not hold, and we can use a market-based approach of responsibility trading to increase states' willingness to implement a protection framework, thereby improving overall protection of climate migrants.

V. Conclusion

Considering the presented argument, I conclude it is insufficient to add another protocol to the UN Refugee Convention, to protect cross-border climate migrants. This conclusion rests on the premise that climate migrants and political refugees are morally different from each other which gives rise to a new legal protection framework for climate migrants. While some might object that the categorisation of migrants is arbitrary, I claim it is important because different groups of migrants are entitled to different forms of protection. Some can be helped through permanent relocation, some can return after a reasonable amount of time, and some can be helped in situ so that they do not even have to take on the burden of moving.

Climate migrants as moral agents whose movement can be planned are furthermore entitled to procedural justice which contributes to the movement's success. For the decision over where to move, I propose a "matching system", which matches migrants' preferences with the preferences of participating states. However, this approach faces two problems, namely that liable states are unwilling to participate because they do not accept their liability or are sceptical about migrants. To address this issue, I introduce a market-based approach, which incentivises states to participate by assigning each liable state a quota of migrants. This quota can then be traded among groups of other liable states. Critics of this practice object that it violates migrants' dignity by putting a price on human beings and devaluing them. I argue that this is not the case with the proposal I made here, because first, states specifically "request" migrants through the matching system, and second, states do not trade migrants per se, but the responsibility to host them.

As highlighted above, due to the limited scope of this thesis, I could not focus on the relocation of communities that have a right to self-determination within a new territory. Following the account of corrective justice, states that can be held liable must surrender some

part of their territory, which then belongs to the migrants' community. Obviously, not every liable state can surrender a small part of their territory, instead, one state must surrender a larger part. But which state should that be, and according to which principles should this be determined? To answer these questions, further research is needed, which must go beyond the current principles of distributive justice. Additionally, a new account for the distribution of territory must consider the interests of the population currently living on that territory, so that a new form of "climate migration" can be avoided.

Concerning the host state's population, I assumed that our obligations of justice towards foreigners are the same as towards co-nationals, which can be questioned. If, for example, we take on a statist approach, we can argue that we owe more to co-nationals than to foreigners, which leads to an entirely different distribution of the responsibility to accommodate migrants. Similarly, cosmopolitans would argue for a different distribution than I did, since they favour open borders, which implies freedom of movement of all people, regardless of their motivation. This would not only lead to a different approach of distributive justice but would also make the categorisation of migrants redundant. Because of this plurality of approaches, that lead to different conclusions, it is necessary to engage with each of them, to find the best possible solution for protecting climate migrants.

Furthermore, I exclusively focused on cross-border movement. However, during sudden-onset events, movement will primarily take place internally. While the Guiding Principles on Internal Displacement provide a good foundation for internal climate migration, it does not address any questions of corrective justice and liability. Therefore, further research is needed, that links both of these issues.

Lastly, since climate migrants are usually the most vulnerable, it is important to solve the underlying causes of their vulnerability. To do so, future research needs to look at theories of global justice.

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