«Gimme Shelter»:

How Can States and the World Community Protect «Climate Refugees»?

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Abstract

The aim of this paper is to look at how the world community can offer protection to "climate refugees". Although migration in the face of natural or human made disasters is not a new trend, there are signs of increases in natural disasters, and further, estimations of a high number of people being forced to move due to the effects of climate change. Today, there is no international regime for the protection of those who are forced to flee due to the effects of environmental or climate change. The research question is therefore: *How can states and the world community protect "climate refugees"?*

To figure out how "climate refugees" can best be protected the paper first looks at definitions of "climate refugees" and terms linked to this concept, "environmental refugee", "climate migrant" and "environmental migrant", in academic texts. There currently exist no universal definitions of these terms, and the thesis shows how different terms are used in the same context. I use the definitions of the terms and the typology of forced versus voluntary migration to show how the terms could be defined based on why people are moving (effects of climate change or environmental change), whether or not the movement is internal or cross-border, and the extent of force involved in the movement.

As there are no protection mechanisms for people forced to move cross state borders due to climate or environmental change, it could be argued that there is a human rights "gap". On the other hand, population movement can lead to sovereignty issues. Human rights and sovereignty are discussed, in relation to each other, in relation to migration/population movement and in relation to climate change. This discussion is used to evaluate the proposed alternatives for protection mechanisms for persons that have to move due to the effects of climate change.

The thesis presents a broad range of proposed alternatives for protection mechanisms for people forced to move due to climate change: convention-related alternatives, regional alternatives, proportional migration, a global insurance scheme, and community relocation. It is hard to say which one would offer the best protection. The reason for this is due to the problems of generalization: the effects of climate change are not expected to be the same across the globe, and there might be needed different strategies in different regions. The generalization problem could, however, be an argument for claiming that regional alternatives could best address the issue.

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Chapter 1 - Introduction

1.1 Topic and Research Question

At COP[1] 17 in Durban in December 2011 the President of the Republic of Nauru, Sprent Dabwido, speaking on behalf of the Pacific Small Island Developing States (Pacific SIDS) stated that:

> "Already, communities in our islands have been forced to flee their homes to escape rising seas, and unless bold action is taken, much of my region could be rendered uninhabitable within our grandchildren's lifetimes" (Dabwido, 2011).

This thesis looks closer at how we define those forced to migrate because of climate change, especially the use of the terms "climate refugee" and "environmental refugee", and at proposed protection mechanism in relation to this kind of migration. My research question is:

How can states and the world community protect "climate refugees"?

Is the Refugee Convention outdated, or would an inclusion of climate as a ground for refugee status lead to a dilution of the refugee-concept? And what exactly is a "climate refugee"? As will be shown, there are no clear-cut answers. The latter question will be the central focus of the first part of this thesis. Here the aim is to give an overview of the concepts used, especially "climate refugee" and "environmental refugee". In the last part to the thesis I proceed to discuss the argument pro and con including those who flee for climate related reasons into the Refugee Convention and scrutinize other proposed alternatives to protection mechanisms for "climate refugees". By gathering definitions and proposed alternatives I hope to draw a picture of some of the challenges relating to this topic, and of the potential, and problems, related to some of the most prominent alternatives for protection.

1.2 Why Study Protection for "Climate Refugees"?

"Climate Refugee" is a commonly used term, but is not judicially correct. Climate change is not among the grounds for refugee status included in the 1951 Convention Relating to the Status of Refugees ("the Refugee Convention"), nor is there any protocol under the Convention that includes climate change as a factor that could lead to refugee status. On the other hand, over the next decades millions of people are expected to migrate due to climate

[1] Conference of Parties (to the United Nations Framework Convention on Climate Change (UNFCCC)).

change (see Myers, 2002, Tegart et al., 1990). The lack of protection mechanisms combined with high estimates of people in need of protection makes the research question "'important' in the real world" (see King et al., 1994:15).

Further, McAdam (2010b:2) argues that, while scientists have been considering the impacts of climate change for many years, social scientists have come to the area relatively late. Due to this I will argue that the research topic makes a contribution to social science literature, first and foremost as description of the field.

1.3 Structure of the Thesis

A methodology chapter follows this introduction. Chapter 3 provides the context and background information for the study. It explains how people can be forced to move due to the effects of climate change, and presents arguments for only focusing on cross-border migration. It includes estimates of "climate refugees" and "environmental refugees", and discusses the complexity of estimating this kind of migration. The chapter also includes a discussion of the Refugee Convention, and refugee theory, and introduces a typology of forced vs. voluntarily migration, which (although not included in the Refugee Convention) is used in several of the definitions of "environmental refugees" and "climate refugees" and which will be central to my own conceptualization of the terms (in chapter 4). Further, the chapter looks at the difference between environmental changes and climate change, and the arguments for keeping them separate, and it looks at the argument that someone should be held responsible for climate related damages with migration as a consequence. I bring this discussion with me when moving to chapter 4.

It is estimated that most people who flee for climate related reasons will remain inside their home country. I acknowledge the need for special protection regimes for those internal displaced by climate change. When I have chosen to focus on external migration or cross-border migration, it is partly for practical reasons; to focus on both internal and external movement would be beyond the scope of this paper. Also there is an important theoretical distinction. For those who remain in their home country protection mechanisms are, at least in principle in place. They should be protected by the state, and if the home state does not offer this protection they could be protected by the United Nation High Commissioner for Refugees (UNHCR) Guiding Principles of Internal Displacement and get protection as Internal Displaced Persons (IDPs). However, to the extent that the proposed protection mechanisms include both internal and external migration, I will to some degree include both.

While there is not a mono-causal relation between climate change, disasters and displacement there is a clear link (Kolmannskog, 2009:5-6). In chapter 4 I look closer at the differences between “traditional refugees”, meaning those who are covered by the Convention and Protocol Relating to the Status of Refugees of 1951, and those often referred to as “climate refugees”. There is no universal definition of the term “climate refugee” or the related terms “environmental refugee”, “climate migrants”, and “environmental migrants”. I show how these terms have been used and defined, and how complex the debate is.

Since people who migrate because of climate or environmental changes are not considered refugees under the Refugee Convention, they do not have the same rights as refugees – and states do not have asylum obligations for the people concerned. This could lead to human rights problems. On the other hand, the proposed alternatives or helping mechanisms could lead to sovereignty issues. Chapter 5 presents theoretical perspectives on sovereignty challenges arising in connection with external movement due to climate change. The theory on human rights and sovereignty in this chapter gives a basis for analyzing the alternatives to adaptation proposed in chapter 6 of the paper.

Chapter 6 explores proposed options for protection mechanisms for climate refugees. The options (or alternatives) include, among others, the creation of an optional protocol to the United Nation Framework Convention on Climate Change (UNFCCC) (see Biermann and Boas, 2010); a new treaty or convention relating to the rights of climate refugees (see Docherty and Giannini, 2009); and regional agreements or "neighbor agreements" (see Williams, 2008). While I have not come across many articles arguing explicit for an extension of the Refugee Convention to also include "climate refugees” there are some (see Conisbee and Simms, 2003)[2], this alternative has been criticized by several authors because it could lead to a dilution of the Convention (see for example Williams, 2008, Biermann and Boas, 2010). Chapter 7 synthesizes the discussions in the previous chapters and offers some concluding remarks.

[2] Further, in 2006 the government of the Maldives organized a meeting of representatives of governments, environmental and humanitarian organizations, and UN agencies on the issue of protection and resettlement of “climate refugees”. Delegates at the meeting proposed an amendment to the Refugee Convention that would extend the mandate of the UN refugee regime to include «climate refugees», according to Biermann and Boas (2008). And as chapter 6 shows, Cooper (1998) argues that “environmental refugees” already fit in the Refugee Convention.

Chapter 2 - Methodology

Since there are no existing mechanisms that are targeted purely to help or assist people who have to move due to climate- or environmental change, a statistical analysis of which one gives the "best" protection is not possible. Therefore, existing literature is the source of this study. The texts or literature used is found by searching scholarly databases and by finding other relevant texts in already scrutinized literature. This way of selecting texts is similar to "snowballing", but instead of using people I use texts.

2.1 Content Analysis

In chapter 4 I look at how the term "climate refugee" has previously been defined and used. In the analysis I include the related terms "environmental refugee"," climate (change) migrants", "environmental migrants". These terms are all closely linked to the concept of climate refugee, and some of them are often used in parallel to or instead of climate refugee.

I use content analysis to establish how these terms are used in scientific articles (social science). Qualitative content analysis demands a systematic review of documents for categorization of the content and recording of data relevant to the issue of the current study (Grønmo, 2004:187). The recording/collection of data takes place partly in parallel with data analysis. The selection of texts can also take place during data collection. As more and more texts are studied, analyzed and interpreted, new light will be shed on the research question, and the researcher get a growing understanding of other texts that are relevant and fruitful for the analysis (Grønmo, 2004:187). In other words, the plans for the research made in advance might be changed during the research. Grønmo (2004:189) writes that precisely because the collection of the data is based on this flexibility, it is important to keep in mind the target for the research and the purpose of the data collection. The research question is then the reference point.

The research question provides the basis for two types of clarifications when it comes to data collection (Grønmo, 2004:189). One regards the topics to prioritize during the collection of data, what the researcher should look for when going through the content of the texts. In my case this is the terms listed above, with "climate refugee" as the main focus, but also the related terms that I have chosen to include in the analysis. The definitions and usage of these terms is relevant to create a picture of the field. It is, for example, interesting to see how definitions of environmental- or climate *migrants* differs from that of climate- or environmental *refugees.*

The other clarification regards what kind of texts that are relevant for the research (Grønmo, 2004:189). For my research I have limited the texts to scientific articles (mostly social science).[3]

Texts for the analysis were collected as described above. As more and more texts were studied, analyzed and interpreted, my understanding grew of which other texts that would be relevant and fruitful for the analysis (Grønmo, 2004:187). Besides finding relevant texts by looking at what literature others have engaged, I searched for texts using the following keywords: "climate refugees", "environmental refugees", "climate migrants" and "environmental migrants".[4] The main aim of chapter 4 is to map how the mentioned concepts are defined, which provides a better basis for understanding and forming the terms for further analysis later in the chapter. When looking at the proposed helping or protection mechanisms in chapter 6 I have tried to find proposed alternatives that gives some kind of protection to people that have had to cross state borders due to climate changes (and/or environmental changes), which means that the authors not necessarily use the terms presented in chapter 4. It would be impossible to include all the proposed definitions of the terms, and it is not the aim of the chapter either, the goal is simply to get an understanding of what, or who, are included in these definitions.

2.2 Conceptualization

Sartori (1970) stress the danger of "conceptual stretching", when trying to deal with "the travelling problem" in comparative politics. He points out that the wider the world under investigation, the more we need conceptual tools that are able to travel (Sartori, 1970:1033-1034). Sartori argues that so far, comparative politics scientists have followed the line of least resistance, which means broaden the meaning, and thereby the range of application of the conceptualization at hand. He calls this process conceptual stretching. He agree that we need "universal" categories, concepts that are applicable to any time and place, but claims that nothing is gained if these universals turn out to be "no difference" categories leading to "pseudo-equivalence" (Sartori, 1970:1035). Further, this universals need to be empirical

[3]However, some of the used texts are linked institutions like the UN and the IOM. Initially I also wanted to include Non-Governmental Organizations (NGOs). The reason for not including them is simply that I did not find definitions of "climate refugees" or "environmental refugees" in any of the NGO-reports consulted.
[4] Further, keywords such as "climate change displacement" have also been used, and of course also more general keywords such as "climate change" and "environmental change" and the like.

universals, in spite of their “all-embracing very abstract nature” they must be amenable to empirical testing (Sartori, 1970:1035).

Definitions are not necessarily operational. According to Sartori (1970:1045) the definitional requirement for a concept is that its *meaning* is declared, while operational definitions are required to state the conditions by means of which a concept can be *verified* and measured. We can distinguish between definition of meaning and operational definition, operational definitions implement, but do not replace, definitions of meaning. There must be a conceptualization before engaging in operationalization. My focus will first and foremost be on declaration of meaning.

Adcock and Collier (2001:530) depict the relationship between concepts and observations in terms of four levels. At the first and broadest level is the background concept, which encompasses the constellation of potentially diverse meanings associated with a given concept. On the next level is the systematized concept, which is the specific formulation of a concept adopted by a particular researcher or group of researchers. The systematized concept is usually formulated in terms of an explicit definition. At the third level are indicators, which are also routinely called measures and operationalizations. This level includes any systematic scoring procedure, ranging from simple measures to complex aggregated indexes. It includes not only quantitative indicators but also the classification procedures employed in qualitative research. In qualitative research these are the operational definitions employed in classifying cases (Adcock and Collier, 2001:531). At the fourth level are scores for cases, which include both numerical scores and the result of qualitative classifications. I will primarily focus on the second level.

Adcock and Collier (2001) writes that in dealing with the choices that arise in establishing the systematized concept, researchers must avoid three common traps. First, researchers should not misinterpret the flexibility inherent in these choices as suggesting that everything is “up for grabs” (Adcock and Collier, 2001:532). It is important to recognize that a real choice is being made, but it is no less important to recognize that this is a limited choice. Second, researchers should avoid claiming too much in defending their choice of a given systematized concept. Adcock and Collier (2001:532) argues that it is more productive to recognize that scholars routinely emphasize different aspects of a background concept in developing systematized concepts. Rather than making sweeping claims about what the background concept “really” means, researchers should present specific arguments, linked to the goals and contexts of their research, that justify their particular choices. A third problem

occurs when researchers don't provide a "fleshed-out" account of their systematized concepts (Adcock and Collier, 2001:532). A fleshed-out account requires not just a one-sentence definition, but a broader specification of the meaning and entailments of the systematized concept.

These are problems that I must be aware of when dealing with the concept of climate refugees. Thus, in this thesis, I will use content analysis with something similar to snowball sampling of text for analysis. I do this being mindful of Sartori's warning of conceptual stretching and Adcock and Collier's discussion of the three common traps when establishing systematized concepts.

Chapter 3 - Background: Climate Change and Migration/Displacement

In this chapter I will try to put the research question in a context. The first part will explain why "climate refugees" are not considered as refugee under the Refugee Convention. Further, I look closer at migration and climate change, the difference between environmental change and climate change, the typology of forced and voluntary movement, and how those that move internally in their home country in theory shall be protected by either their own state or UNHCR.

3.1 The Refugee Convention and People Fleeing from Climate Change

The Convention and Protocol Relating to the Status of Refugees («the Refugee Convention») of 1951 came as a result of the large flow of people fleeing in Europe after 1945 (Cooper, 1998, Williams, 2008). The Convention was originally limited to persons fleeing events occurring before 1 January 1951 and within Europe. Later, it has been subject to only one amendment in the form of a 1967 Protocol, which removed the geographic and temporal limits of the 1951 Convention and gave the Convention universal coverage (UN General Assembly, 1951, UN General Assembly, 1967). The convention have what some refers to as a rather restrictive definition of "refugees" (see for example Cooper, 1998, Hugo, 1996). It states that the term "refugee" shall apply to any person who:

> "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 [sic] nationality and is unable or, owing to such fear, is unwilling to avail himself [sic] of the protection of that country; or who, not having a nationality and being outside the country of his [sic] former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (UN General Assembly, 1951:Artcle 1A).

This definition has at least three aspects; there must be a well-founded fear of persecution; the reason for the persecution must be either race, religion, nationality, membership of a particular social group or political opinion; and the person must be outside the country of his/her nationality or unwilling to avail himself/herself of the protection of that country. Change in the climate or the environment, as reasons for fleeing, are not mentioned. There are regional instruments with broader definitions of refugees, but none of these explicitly grant

refugee status for reasons of environmental or climate change (Kolmannskog, 2008:25). The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (Organization of African Unity, 1969) and the American Cartagena Declaration on Refugees (Americas - Miscellaneous, 1984) recognize events that seriously disturb public order.[5] However, as Cooper (1998:497) points out, none of the definitions in these conventions were expanded to include "environmental refugees" or will be able to give "environmental refugees" proper protection when crossing state borders. Although these conventions have a broader definition of refugees, none explicitly grant refugee status for environmental or climate change (Kolmannskog, 2008:25).

3.2 Environmental Change and Climate Change

Rather than making an exhaustive definition of how environmental changes and climate change are to be understood in the context of this paper, I will try to show how those who define environmental refugees or climate (change) refugees uses the terms, and what they emphasize. While some of the definitions referred to in chapter 4 have an exhaustive list of what they consider as environmental changes or climate change (see for example Biermann and Boas, 2010), others do not explicitly have a definition of these terms (see for example Docherty and Giannini, 2009). Some of the definitions have a marked division of climate change and environmental changes (see for example Biermann and Boas, 2010), while others grasp both climate change and environmental changes (see for example Myers and Kent, 1995).

While some scholars mix up the concepts of environmental and climate change, I have chosen to include them both, but still keeping them separate. The reason for this is a question of responsibilities. Who is responsible for people migrating or being displaced because of environmental changes, and who is responsible when people migrate because of the effects of climate change? The answer to the responsibility question might differ between environmental changes and climate change.

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[5]Article 1.1 in the OAU Convention set out the same definition of a refugee as the UN Refugee Convention, while Article 1.2 adds that "The term "refugee" shall also apply 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". While the Article 3 of the American Cartagena Declaration states that "(…) it is necessary to consider enlarging the concept of a refugee (…) Hence the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order".

Article 1A in the United Nations Framework Convention on Climate Change (UNFCCC, 1992), defines climate change as: "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". Human activity is one of the important components here. Docherty and Giannini's (2009) argument for looking at people who move across state borders because of climate change is exactly because climate change is "an anthropogenic phenomenon for which humans should be held morally and legally responsible". Biermann and Boas (2010:63) argues that politically it is "essential to specify climate refugees because of the link of this type of migrants with the overall climate regime and its emerging debates on liability, compensation, equity, and common but differentiated responsibilities". And further, while people who migrate due to other types of environmental degradation, for example industrial accidents or disaster unrelated to human activity, requires equal levels of care and protection through national governments and the international community, they should be dealt with by different institutions (Biermann and Boas, 2010:64).

However, environmental disruptions that are not climate change can also be caused by human activities. Examples of environmental disruptions caused by human activities includes industrial accidents and development projects (Hugo, 2010). The difference is, among others, that climate change is attributed directly or indirectly to human activity that "alters the global atmosphere", while a nuclear accident or a factory disaster is a single event where it might be easier to identify who is responsible. The causal link is evident, although those responsible might not respond in a desirable manner.[6] Environmental disasters might in other words have regional causes and be felt on an regional level, climate change, on the other hand, has global causes, yet the effects might be felt on regional levels. At the same time, it might be hard to see a clear causal link.

Kolmannskog (2009:6) refers to IASCs (Inter-Agency Standing Committee) typology when explaining how climate change can lead to displacement. Sudden-onset disasters, slow-onset disasters, sea-level rise and conflicts[7] due to climate change can all lead to displacements. Kolmannskog (2009:7) further points to the increase of certain diseases and

[6]As an example, Cooper (1998:514) argues that the Chernobyl nuclear explosion is an example of government negligence and inaction, which further led to an environmental crisis and wide-scale environmental refugees.
[7] For a discussion on climate change and conflicts, see for example Hartmann (2010).

epidemics, and displacement linked to measures to mitigate or adapt to climate change[8]. Sudden-onset disasters includes storms and floods, while slow-onset disasters includes drought, further, sea-level rise can also be regarded as a slow-onset disaster (see Hugo, 2010:11).

If one assumes that climate change is anthropogenic, which the UNFCCC does, then shouldn't humans (i.e. states) be held responsible? This is one of the questions that arise in the context of climate justice. In 2002 the first Climate Justice Summit took place in Hague, at the same time as the Sixth Conference of the Parties (Agostino and Lizarde, 2012). The Climate Summit's mission stated that: "climate change is a rights issue. It affects our livelihoods, our health, our children and our natural resources" (Agostino and Lizarde, 2012:90). The movement for climate justice focuses on issues related to ethics, equity and human rights in relation to the climate change debate (Agostino and Lizarde, 2012:90). In the past years there have been increased talking about climate justice among grassroots activists, environmental organizations, policy makers, governments, UN delegates, and trade associations (Lohmann, 2008:364). Those calling for climate justice demand reorganization of the disproportionate burden on countries of the South, as well as the historical responsibility of industrialized nations in the level of emissions that have contributed to the current problem of climate change (Agostino and Lizarde, 2012:90).

3.3 Migration as a Survival Strategy

There has been talk about the effect climate change can have on migration and displacement for a long time, "environmental refugees" and "climate refugees" are terms often used in academic as well as media discussions. Yet, the first large-scale conference[9] on climate change and displacement took place in 2011.

As many scholars have pointed out (see for example Hugo, 1996, Westing, 1992, Cooper, 1998, Keane, 2004, Kolmannskog, 2008, McAdam, 2010b) migration on a permanent or temporary basis in the face of natural or human made disasters is not a new trend. People have moved, both temporarily and permanently, during periods of drought and other environmental change (Kolmannskog, 2008:6).

[8] An example of the last category is biofuel projects and forest conservation that could lead to displacement if it is not carried out with respect for the rights of indigenous and local people. This might be linked to other environmental disasters, as discussed above, such as factory disasters/accidents.

[9] The Nansen Conference – Climate Change and Displacement in the 21st Century, held in Oslo 6-7 June 2011.

What several point to as a new thing, however, is how fast the environment is changing (see for example Wijkman and Timberlake, 1984, Cooper, 1998). Kolmannskog (2009:5) writes that the overall trend shows that the number of recorded natural disasters have increased, from approximately 200 to over 400 per year, over the past two decades. According to Kolmannskog (2009:5), the majority of these are climate-related disasters, that is disasters which climate change can influence both in terms of frequency and severity. Climate-related disasters includes the meteorological (for example storm), the hydrological (for example flood), and the climatological (for example drought) (Kolmannskog, 2009:5).

However, in addition of being incorrect in legal terms, Kolmannskog (2008:4) argues that the term "climate refugee" "implies a mono-causality that one rarely finds in human reality". This argument about the complexity of migration is also referred to by other scholars (see for example McGregor, 1994, Myers and Kent, 1995, Kibreab, 1997, Keane, 2004, McNamara and Gibson, 2009:478, Hartmann, 2010:238, Siyoum, 2011). It is likely that climate change will contribute to increased forced migration, but since it is not possibly to completely isolate climate change as a cause, it will be difficult to stipulate numbers. According to Kolmannskog (2008:4) we will, at best, only have "guesstimates" about the possible form and scope of forced migration related to climate. Hartmann (2010:238) writes that even on islands and atolls threatened by rising sea-level , decision to migrate can be a result of many more factors than climate change alone. She points to a study showing that socio-economic pressure from lack of employment and development opportunities as well as other kinds of environmental changes are the main drivers of migration away from Kiribati and Tuvalu, the role of climate change must be viewed together with these processes.

Nevertheless, there do exist estimates of people moving due to climate- and environmental change. In the first assessment report from 1990 Working Group 2 of the International Panel on Climate Change (IPCC) states that climate change can lead to significant movements of people (Tegart et al., 1990:3). The reasons for this movement include flooding due to sea-level rise and storm surges of costal lowlands, like Bangladesh, China and Egypt, as well as small island states. A one meter sea-level rise by 2100 would render some island states uninhabitable, and displace tens of millions of people (Tegart et al., 1990:4).

Kolmannskog (2009:6) points to a study by OCHA-IDMC[10] which shows that there were 20 million people displaced due to climate-related sudden-onset disasters (such as floods and storms) in 2008. Estimating the number of people displaced due to slow-onset disasters, such as drought, are harder, but according to the OCHA-IDMC study, more than 26.5 million people were affected by 12 droughts in 2008.

Myers (2002) estimate that there already in 1995 were 25 million "environmental refugees"[11] worldwide. Out of these, roughly five million were located in the African Sahel, four millions located in the Horn of Africa, included Sudan, seven millions in other parts of Sub-Saharan Africa. This makes Sub-Saharan Africa the "prime locus of environmental refugees" (Myers, 2002:609). Today, Myers argue, the number is much higher. At least six million people deserve to be regarded as "environmental refugees" in China, there are one million new "environmental refugees" in Mexico each year, and finally there are those people who are displaced involuntarily due to public works projects, like large dams, which are increasing by 10 million worldwide every year. Myers (2002) claims that "when global warming takes hold" there could be as many as 200 million people "overtaken by sea-level rise and coastal flooding, by disruptions of monsoon systems and other rainfall regimes, and by droughts of unprecedented severity and duration". It should, however, be mentioned that Myers have gotten some critique on his numbers, despite Myers himself describing the 1995 estimate of 25 million "environmental refugees" as "cautious and conservative" (see Myers, 2002:611). Gemenne (2011:43) argues that Myers estimates of the number of "environmental refugees" does not rely on any specific methodology. Myers rather makes an estimate based on the number of internally displaced people in each region, and on the basis of these numbers Myers makes an estimate of the proportion that could have been displaced due to environmental disasters (Gemenne, 2011:43). This last estimate is based on reports and observations of environmental degradation in the considered region, but no attention is given to an examination of the linkages between environmental change and migration, Gemenne (2011:43) argues. That way Myers assumes that all people displaced in an area affected by environmental changes have been displaced solely because of these changes.

[10] The UN Office for the Coordination of Humanitarian Affairs and the International Displacement Monitoring Centre of Norwegian Refugee Council (NRC).

[11] Defined as "people who could no longer gain a secure livelihood in their homelands because of drought, soil erosion, desertification, deforestation and other environmental problems, together with the associated problems of population pressure and profound poverty. (…) many being internally displaced" (Myers 2002:609).

Further, what is important to note is that these estimates includes internal displaced as well as people who cross state borders (and Myers estimate only include internalmigration/displacement). There are, however, estimates on external displacement as well. According to Gain and Bari (2007:50) studies shows that about 40 million people in Bangladesh will become “environmental refugees” due to one meter sea level rise, and they state that “[t]he victims of the rise of sea level naturally become environmental refugees in India and this may lead to political tensions” . However, both Myers and Gain and Bari estimates are estimates of “environmental refugees”, and while it is sea-level rise due to climate change that are the push factor in Gain and Bari’s case, Myers includes both climate and environmental causes for displacement.

While it is predicted that most of those migrating will still reside in the country of origin (see for example Kolmannskog, 2009), this essay will have its main focus on international migration. The reason for this is that internal migrants are first and foremost the home states responsibility, and if the state fails to offer this protection the UNCHR can in some cases intervene as I will come back to later. Internal migration will be included where it is natural, and some of the alternatives presented in chapter 6 also include internal migration.

3.3.1 Mitigation vs. Adaptation?

Mitigation and adaptation are at present the two dominant approaches to addressing climate change (Loughry, 2010:230). This is exemplified by the UNFCCC (1992), who identifies two responses to climate change: mitigation of climate change by reducing greenhouse-gas emissions and enhancing sinks, and adaptation to the impacts of climate change (Klein et al., 2007:748). The IPCC defines mitigation as “[a]n anthropogenic intervention to reduce the sources or enhance the sinks of greenhouse gases” (Klein et al., 2007:750), or as Loughry (2010:231-232) puts it; “[i]t is about the implementation of policies that reduce greenhouse gas emission and enhance natural and purpose-built “sinks” that can store carbon-containing compounds for indefinite periods of time”. Adaptation is defined by the IPCC as “[a]djustment in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates harm or exploits beneficial opportunities” (Klein et al., 2007:750). In this context adaptation normally refers to a process or action in a system which helps the system better cope or manage with changing condition, stress, risks and opportunities (Loughry, 2010:230). Simply put, climate change mitigation means the

reduction of future emissions of greenhouse gases, while climate change adaptation means ways to adapt or coping with the effects of climate change.

McNamara and Gibson (2009) interviews ambassadors to the UN from Pacific island states, and from these interviews it seems that there exist a fear that adaption will mean giving up on mitigation. According to McNamara and Gibson (2009:480) the ambassadors they interviewed avoided to look at migration as an solution to rising sea level, as this could send the message that they had given up on mitigation measures. Although migration may be seen as an adaptation strategy, that don't necessarily mean that one is giving up on mitigation.

As discussed above, migration in the face of disasters is far from a new thing, and has been used as an adaptation strategy. McLeman and Smit (2006) refers to research done in Africa which shows that populations in rural areas have adopted strategies to cope with recurring drought that incorporate migration. In Western Sudan male household members have often migrated to Khartoum in search for wage labor when low rainfall prevent agricultural production, and in dryland areas of Ethiopia migration is undertaken by families during times of drought after other measures have been exhausted (McLeman and Smit, 2006:33). Understood in this way migration is, and has been, an adaptation strategy.

Barnett and Webber (2010) and de Moor (2011) argues that in many cases migration enhances the sustainable development of both sending and host states. Migration can contribute positively to adaptation to climate change, in particular through the way it can build financial, social and human capital (Barnett and Webber, 2010:38). Facilitating legal migration for persons affected by environmental degradation is both a way to prevent forced displacement and the suffering it generates, and a way to relieve pressure on vulnerable regions. If migration due to climate change is managed effectively, humanitarian crisis could be minimized and conflicts avoided (de Moor, 2011:93). However, this view of migration as a positive form of adaptation does not include involuntary resettlement. If people are to some degree forced to move in response to climate change, and the movement is an outcome they would rather avoid, then this movement should be considered as "impacts of climate change" rather than adaptation, Barnett and Webber (2010:50) argues. They emphasize that migration will work best as adaptation if people move voluntary, in the situations where the people are their own decision makers (this is also emphasized by de Moor (2011) and Warner (2010)).

With that said whether or not migration could be seen as an adaptation strategy or not is not agreed on, and governments do not generally view migration as an adaptation strategy or alternative (Warner, 2010:403). Warner (2010) argues that different kinds of

environmentally caused movement differs in whether they can be perceived as adaptation strategies or not, as discussed above. While some forms of environmentally induced migration might be adaptive, other forms of forced migration and displacement might indicate a failure of the social-ecological system to adapt (Warner, 2010:403).

Although migration may in some instances be seen as an adaptation strategy, that don't necessarily mean that one is giving up on mitigation. As the IPCC point out, mitigation and adaptation are not contradictory (see Klein et al., 2007). Further, this paper should not be seen as an argument for adaptation rather than mitigation, the goal is simply to explore proposed alternatives to adaptation to one of the consequences of climate change, namely population mobility.

3.4 The Typology of Forced vs. Voluntary Migration

Black (2001) calls for more theory in the growing field of refugee studies. He claims that the definition, as put down in the Convention from 1951 is devoid of any deeper academic meaning or explanatory power:

> "by conveying academic respectability, the uncritical use of the term in scholarly literature can contribute to the perception of the naturalness of the category of refugees and of differential policies towards those who do and those who do not qualify for the label. The simple acceptance by social scientists of a legal definition might have some justification were this definition legally uncontested; yet as the burgeoning field of refugee law amply demonstrates, this is far from the case" (Black, 2001:63).

Despite clinging on to the judicial/policy-based definition of refugee, Black (2001:64) argues that there are still far from a clear consensus on what the term should or should not include. This is shown by the academic work that argues for an extension of the refugee definition to include other types of forced migrants, thus potentially enlarging the field of refugee studies as well. Black (2001:64) claims, however, that this work often appears to have an agenda based much more in the extension of policy definitions than in any deeper academic attempt to understand in a more comprehensive way the situation or distinctiveness of refugees as opposed to other kinds of migrants. Attempts to promote the use of other terms in academic literature seem to represent a struggle to ensure that these terms are also incorporated into concrete policy initiative. Black (2001:64-65) point to internally displaced persons and environmental refugees as terms that have been tried to be promoted like this. What the new

categories have in common, he writes, is the development of academic literature based less on theoretical reflection about what constitute a refugee, and more on the documentation of empirical examples of displacement, often led by researchers based within policy organizations that are directly concerned with responding to particular types of displacement. By empirically extending the concept, which Black warns about, one risks conceptual stretching, which Sartorti (1970) warns about.

Nevertheless, there are theories in the field of refugee studies. One is the typology of forced vs. voluntary migration (Black, 2001:65). Hugo (1996) shows that this distinction between voluntary and forced migration is not as easy as it might appear. He points to Speare (1974) and Amin (1974) who have two different ways of looking at the voluntary vs. non-voluntary element. Speare (1974:89) writes that in the strictest sense migration can be considered to be forced only when a person actually is physically transported from a country and has no opportunity to escape from those who are transporting him. In this way, movement under threat contains a voluntary element, as long as there is an option to escape to another part of the country, go into hiding, or to remain and hope to avoid persecution. On the other hand, Amin (1974:100) writes, in the context of migration in Western Africa, that even though there might seem to be an alternative, the reality is often that there are not. Hugo (1996:107) therefore argue that population mobility is best viewed as being arranged along a continuum ranging from totally voluntary migration to totally forced migration.

Hugo (1996) is not alone in looking at it as a continuum. Bates (2002) claims that the two most important features of the term “environmental refugee” is the transformation of the environment to one less suitable for human occupation and the acknowledge that this causes migration. When looking at the difference of refugees and migrants, her focus is on external compulsion as the trigger for fleeing. She illustrates this by a continuum, where people who have no control over their relocation represent the left-hand end of the continuum, designated as “involuntary” (Bates, 2002:468). It is in the “involuntary” end of the spectrum that we find environmental refugees. In the middle, described as “compelled” we find environmental migrants, while at the right side migrants, characterized by voluntary migration.

In the end, even if scholars go beyond the traditional definition of refugees as stated in the Refugee Convention, persons migrating because of climate change, environmental changes, natural disasters, and so on are still not recognized as refugees in international law, even though there might be an element of force.

3.5 Internal Displacement

In this paper the focus will first and foremost be on external displacement, people displaced or migrating outside their own home state. However, when looking at definitions this distinction is often not clear. The usage of "refugee" and "migrant" does not necessarily imply that the one describes external movement and the other internal movement. For that reason I have chosen to include both "migrant" and "refugee" when looking at definitions. Further, the alternatives presented in chapter 6 of the paper are sometimes directed at both internal and external migration.

People internally displaced because of climate change are covered by what the UNHCR calls IDPs (Internally Displaced Persons) (UNHCR, 2011). UNHCR's original mandate does not cover internally displaced persons, but because of the expertise on displacement, they have for years helped millions of internally displaced persons (UNHCR, 2011). In 1998, the Guiding Principles of Internal Displacement were adopted. IDPs might be displaced for much of the same reasons as refugees, but have not crossed state borders, and are still situated in their home state. UNHCR emphasizes that internally displaced persons remain under the protection of their own state / government, although this state may be the cause of the migration. As citizens, they have rights and protection enshrined in human rights conventions and international humanitarian law.

According to a report by the Norwegian Refugee Council (NRC), written by Kolmannskog (2009:8), two-thirds of all people who are displaced because of persecution, war and conflict remains within their own country. UNHCR Guiding Principles of Internal Displacement has no formal legal status, and Williams (2008:511) writes that concerns about state sovereignty and the fear of intervention by international organizations was tempered by the requirement that projects carried out by UNHCR must be at the request of the Secretary-General or a main body of the UN, and in addition the state concerned must give their consent. In other words, assistance from UNHCR offers no sovereignty issues, at least in theory. Mills (1998:108-109) shows how UNHCR in many ways has become a migrant management organization, helping states maintain sovereign control over their borders and territory. On the other hand, he emphasize that international agencies may be able to engage in humanitarian incursions on state sovereignty once they have gained access to a country.

Further, Kolmannskog (2009:11) writes that although there is a normative framework for internally displaced persons, there are some fundamental problems related to this. States, which has the primary responsibility for the people within its borders, are often unwilling or

unable to protect displaced persons, and in some cases denies the execution of international protection and support services with regard to the principle of national sovereignty and non-interference.

Having now discussed some important issues one must be mindful of when considering definitions of refugees and climate change, I will in the next chapter move on to look at definitions of "climate refugees" and "environmental refugees".

Chapter 4 - How "Climate Refugees" and "Environmental Refugees" have been Defined

The aim of this study is to look at how the world community can offer some kind of protection to "climate refugees". Seeing that there are no universal definition of the term "climate refugee", and neither any universal definitions of the related terms "environmental refugee", "environmental migrant" and "climate migrant", I chose to look closer at how the terms have been defined.[12] By looking at these definitions I hope to create a broader understanding of what this kind of movement constitute. And further, what a potential protection regime or mechanism must be aware of. I will bring these definitions with me when moving on to the last part of this chapter, where I will try to conceptualizing these terms.

4.1 Definitions of "Environmental Refugees"

The term "environmental refugee" seems to be the oldest one, and the definitions of this term also include people who move due to climate change. Therefore I chose to start with this term. Table 1 sums up the definitions presented here. Some of them are old and often cited, like El-Hinnawis (1985), others are of newer date, like Aminzadeh (2007).

According to Tyssing (2010) and Biermann and Boas (2010), El-Hinnawi (1985) was the one who "popularized" the term "environmental refugees" when he used it in a UN Environment Program (UNEP) report in 1985.[13] El-Hinnawis (1985:4) definition of "environmental refugees" is shown in table 1. He explains that by "environmental disruption" in this definition is meant "any physical, chemical and/or biological changes in the ecosystem (or the resource base) that render it, temporarily or permanently, unsuitable to support human life" (El-Hinnawi, 1985:4). As El-Hinnawi (1985:4) himself point out, this definition of environmental refugees does not cover people displaced for political reasons or by civil strike, nor does it cover people migrating purely on economic grounds.

[12] There are of course examples of scholars who neither use "refugee" nor "migrant" when discussing people who move due to climate- or environmental changes. Byravan and Rajan (2006, 2009, 2010) for example distinguish between "climate migrants" and "climate exiles". To include more terms would, however, make this part of the study larger than necessary. When choosing to look at those who use the term refugee to describe population movement due to climate- or environmental change it is partly the usage of the term is in some way or another connected to the term as used in the Refugee Convention.

[13] This is not to say that El-Hinnawi (1985) was the first to use the concept. Black (2001:65) writes that ever since Lester Brown of the Worldwatch Institute first wrote about ecological refugees in the 1970s, the notion of environmental refugees has periodically appeared as an issue demanding the attention of academics researchers and policymakers. According to McNamara and Gibson (2009:477) the term environmental refugee dates back to the nuclear testing in the post second world war, while the term climate refugee is of newer date.

Table 1 - Definitions of "Environmental Refugee"

Author	Definition
El-Hinnawi (1985:4)	"(…) people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life".
Jacobson (1988:37-38)	"Environmental refugees have become the single largest class of displaced persons in the world. They fall into three broad categories: those displaced temporarily because of a local disruption such as an avalanche or earthquake; those who migrate because environmental degradation has undermined their livelihood or poses unacceptable risks to health; and those who resettle because land degradation has resulted in desertification or because of other permanent and untenable changes in their habitat".
Suhrke (1993:9-13)	"If it is to have a meaning at all, the concept of environmental refugee must refer to especially vulnerable people who are displaced due to extreme environmental degradation." "Environmental degradation will give rise to two kinds of population outflows: environmental migrants and refugees. The latter have little or no resources to cope with deepening degradation; in other words, they constitute those who are already the most marginalized and impoverished in their own society. It follows that relative to the population as a whole, they would not be very numerous".
Myers and Kent **(1995:18-19)**	Persons "who can no longer gain a secure livelihood in their homelands because of environmental factors of unusual scope, notably drought, desertification, deforestation, soil erosion, water shortages and climate change, also natural disasters such as cyclones, storm surges and floods".
Bates (2002:468)	"People who migrate from their usual residence due to changes in their ambient non-human environment".
Aminzadeh (2007:256)	"persons displaced by the environment. An environmentally displaced person is 1) one who leaves his or her home and seeks refuge elsewhere, and 2) does so for reasons relating to the environment".

According to El-Hinnawi (1985:4-5) there are three broad categories of environmental refugees. First, there are those who have been temporarily displaced because of an "environmental stress". These environmental refugees return to their "habitat" when the environmental disruption is over and the area is rehabilitated to its original state. This is usually situations where people are relocated because of natural hazards such as earthquakes or cyclones or an environmental accident. Secondly, there are those who have to be permanently displaced and re-settled in a new area, they are displaced because of permanent changes, generally man-made, that affect their original "habitat" (El-Hinnawi, 1985:5). The

third category of environmental refugees are those individuals or groups of people who migrate from their original "habitat", temporarily or permanently, to a new one within their own national boundaries, or cross state borders, in search of a better quality of life. The main reason for this type of migration is that the resource base in their original "habitat" has deteriorated to such a degree that it can no longer meet peoples basic needs (El-Hinnawi, 1985:5).

El-Hinnawi's (1985) definition does not emphasize whether the migration is internal or external. As illustrated by the third category of environmental refugees, he does not separate between migration within or outside of national borders.

Jacobsen (1988) does not present a clear definition, but she illustrates what can be the causes of environmental migration, and according to Myers and Kent (1995:17) this is her definition (see table 1). Jacobsen (1988) does not differentiate between internal and external displacement, she discuss both people migrating inside of Mauritania and the US and people migrating from Bangladesh to India.

Another of the often cited definitions, together with Jacobsen (1988) and El-Hinnawi (1985) is Myers and Kent (1995) (see table 1). They first limit the definition to those who "can no longer gain a secure livelihood in their homelands", in other words, those who leave their homelands. However, the last part of the definition, "people feel they have no alternative but to seek sustenance elsewhere, whether within their own countries or beyond", seem to include internal displaced as well as persons external displaced by environmental disruptions. Myers (2002:609), who uses the same definition in his article from 2002, makes this clear when he writes that "[n]ot all of them have fled their countries, many being internally displaced". Furthermore, while El-Hinnawi's (1985) definition emphasize that the migration is forced, the element of force is not mentioned in Myers and Kent's (1995) definition (see table 1).

Biermann and Boas (2010:62) argues that the breadth of these definitions (those of El-Hinnawi, 1985 and Myers and Kent, 1995) make it impossible to specify or quantify climate-related migration. However, Suhrke (1993:9) writes that "if it is to have a meaning at all, the concept of environmental refugee must refer to especially vulnerable people who are displaced due to extreme environmental degradation". Suhrke (1993:13) distinguishes between environmental migrants and environmental refugees, the latter having little or no resources to cope with deepening environmental degradation (see table 1). Those who migrate before the situation becomes so desperate that they have no choice, Suhrke (1993) refer to as

environmental migrants. Environmental refugees constitute those who are already the most marginalized and impoverished in their own society.

Bates (2002) has a vague working definition in her paper on environmental refugees, shown in table 1. She explains that this definition remains vague in order to incorporate the two most important features of environmental refugees, which is the transformation of the environment to one less suitable for human occupation and the acknowledge that this causes migration (Bates, 2002:468-469). When looking at the difference between refugees and migrants, she refers first to the Refugee Convention, but then turn the focus to external compulsion as the trigger for fleeing. She illustrates this by a continuum, where people who have no control over their relocation represent the left-hand end of the continuum, designated as "involuntary" (Bates, 2002:468), as discussed in chapter 3.

Aminzadeh (2007) uses the concept of climate refugees without any further reflections of the concept, and from Aminazdeh's definition of environmental refugee it is not clear whether the "displaced person" have to leave their homeland or just their home to be labeled as environmental refugees (see table 1). But the way Aminazdeh (2007:244) uses the term "climate refugee", for example by stating that "[c]limate refugees from some Pacific island states are already seeking shelter in neighboring countries", indicates that she is referring to cross-border migration when using this concept, and this might also be the case for "environmental refugee".

Seeing that the definitions have the push-factor of environmental change in common, but that the definitions is quite unlike the "traditional definition" of a refugee in the Refugee Convention, by for example including both internal and cross-border movement, this study now move on to see how the term "climate refugee" have been defined.

4.2 Definitions of "Climate Refugees"

While there is a somewhat consensus on who popularized the concept of "environmental refugee", who, how, and at what time the concept of "climate refugee" was popularized is not as clear. As with the term "environmental refugee" it is defined in different ways, as table 2 below shows.

Table 2 - Definitions of "Climate Refugee"

Author	Definition
Biermann and Boas (2010:67)	"people who have to leave their habitats, immediately or in the near future, because of sudden or gradual alterations in their natural environment related to at least one of three impacts of climate change: sea-level rise, extreme weather events, and drought and water scarcity"
Docherty and Giannini (2009:361)	"an individual who is forced to flee his or her home and to relocate temporarily or permanently across a national boundary as the result of sudden or gradual environmental disruption that is consistent with climate change and to which humans more likely than not contributed"
McNamara and Gibson (2009:475)	"those forced from their homeland because of climate change"

Though McNamara and Gibsons (2009:475) definition seems like a simple definition, compared to others definitions in table 2, it set a lot of limitations on the use of the term. As far as I can see there are three core elements of this definition. First, it emphasize that the migration is forced, not voluntarily. Second, by stating that climate refugees are forced from their homelands, they limit the definition to only count for persons who move cross state borders. Third, it only applies to persons displaced because of climate change. They do not have a clear definition of what climate change is[14]; however, not having a definition of effects of climate change is not necessarily a bad thing, as I will show later in this section.

Biermann and Boas (2010:62) argues that "lack of conceptual clarity and consensus is a key problem that hinders research on climate refugees". They distinguish between the term "environmental refugee" and "climate refugee", the former concept being a larger phenomenon. Their definition includes both sudden and gradual alteration in the natural environment of the persons migrating, and by not limiting the definition to cross-state migration it also includes both external displacement and IDPs, as shown in table 2. Further, Biermann and Boas (2010:62) have an explanation of what they mean by climate change included in the definition of climate refugee, which actually might limit the definition as shown below. An interesting part of this definition is where they write that climate refugees are people who have to leave their habitats *"*immediately or in the *near future"* (emphasize added) (Biermann and Boas, 2010:67). The other definitions I considers include persons who

[14] However, neither the concept of climate change or the definition of climate refugees is the main focus of the paper, nevertheless, they write that "[r]ising global surface temperatures are predicted to cause changes in the atmospheric circulation, create a more active hydrological cycle, and increase the water holding capacity throughout the atmosphere" (McNamara and Gibson, 2009:475).

have left their home, but not those who leave their home in the near feature. This definition could, in other words, include people who have not yet left their "habitats".

Docherty and Giannini (2009:376-372) writes that their definition of climate refugees tries to address the shortcomings of Biermann and Boas definition.[15] They claim that Biermann and Boas definition is too wide, when including both displacement cross state borders and IDPs, and at the same time too restricted in their focus on climate change, as their definition does not take into account the possibility that advances in science could enable more accurate determination of which events are caused by climate change (Docherty and Giannini, 2009). Docherty and Gianninis (2009) definition, as shown in table 2, includes six elements that must be met for a refugee to be considered a victim of climate change: forced migration, temporary or permanent relocation, movement across national borders, disruption consistent with climate change, sudden or gradual environmental disruption, and a "more likely than not" standard for human contribution to the disruption" (Docherty and Giannini, 2009:372). What is, and what is not, climate change is left open on purpose, so that no future climate changes will be excluded from the definition.

Williams (2008) looks at how "climate refugees" can be recognized in international law, and favors regional agreements as a mechanism for protection. Williams (2008:520) emphasize that one of the key challenges in securing protection for those affected by climate change displacement lies with the definitional complexities of the term, taking into account previous attempts to define environmental refugees. Despite this, or maybe because of this, she does not present a clear definition of what she labels as climate change refugees, neither does she refer to any clear definition of environmental refugees. However, Williams (2008:517-518) adds to the problems surrounding attempts to create an international agreement on "climate change refugees" that the present legal terminology distinguishes between transborder (refugees) and internal displacement (IDPs), while most of the literature on climate change and environmental refugees make no differentiation between internal or external displacement. A system that recognize the idea of "climate change displacement" at an international level, while leaving the detail of agreement and degree of engagement (and hence the definition) to regional groupings, appears more responsive and appropriate to the problem, according to Williams (2008:520).

[15] They cite Biermann and Boas definition in working paper from 2007, but this definition is the same as in the paper by Biermann and Boas from 2010 referred to here.

While claiming that it is best if it is up to the regional groupings to agree upon a definition or understanding of the term, Williams (2008:522) have some ideas on how states could identify "climate change refugees". It might be, she argues, possible to propose one definitional approach that still allows a certain degree of flexibility. Williams (2008:522) illustrates a "sliding scale", an climate change continuum, which can be used to recognize "climate change refugees" and the correlating levels of protection that is needed. In any case, a definition of "climate change refugees" should address both the displacement and the causes of displacement (Williams, 2008:523).

I find that there are several who use the term without any clear definition, like Aminzadeh (2007) referred to in the section concerning "environmental refugees".[16] This might be because she sees it as a category of environmental refugee, which she defines, or it could be a mix-up between the concepts. Biermann and Boas (2010:62) writes that the notion of environmental refugees includes climate refugees, based on Myers and Kents (1995) and Myers' (2002) usage and definition of the term. They also claim that many studies leave the term undefined, or rely on broader concepts when trying to analyze "climate refugees". They concludes that there does not exist a consensus definition of climate refugee. As shown above this seems to be a problem with the concept of environmental refugee as well, even though a lot of those writing about environmental refugee refers to either Myers and Kent (1995), El-Hinnawi (1985) or Jacobsen (1988).

4.3 Critique of the terms Climate Refugee and Environmental Refugee

Not being judicial correct terms, the use of the term climate refugee and environmental refugee have gotten some critique.

Bates (2002) point to some of the critique of the term environmental refugee, especially of El-Hinnawi's (1985) definition. She writes that his definition makes no distinction between refugees who flee volcanic eruptions and those who gradually leave their homes as soil quality decline, which leads critics to question the usefulness of the term, since there would be a lot of people classified as environmental refugees (Bates, 2002:466). As

[16] Another example of the use of the term without a concrete definition is when Roy (2011:30) writes that "[a]s the numbers of climate or environmental migrants are expected to rise in coming years due to climate change and sea level rise, developed countries may face demands to accept climate refugees from vulnerable and affected countries". Although no clear definition is presented, from what Roy writes about climate refugees we see that they are migrating because of climate change and sea-level rise, and that they leave their homeland to seek refuge elsewhere, and that environmental or climate migrants becomes climate refugees when they cross state borders.

table 1 shows, Bates herself define "environmental refugee" as "people who migrate from their usual residence due to changes in their ambient non-human environment", which in itself might be just as "open" as El-Hinnawis (1985) definition. Bates refers to three other key problems in the current[17] literature on environmental refugees. First, studies of environmental refugees have focused mostly on Africa and Asia, and mostly ignoring other regions. Second, detailed case studies of conditions that actually produce environmental refugees are rare. Third, scholars inclined towards international law, security concerns, and broader questions of migration resist the term of "refugee". Bates (2002:466) argues that these weaknesses all arise, at least partly, from the "uncritical acceptance of El-Hinnawi's vague conceptualization of environmental refugees".

Bell (2004:137), who refers to El-Hinnawi's (1985) definition of environmental refugees as a standard definition, reflects upon some of the critique of the term; that the term oversimplifies the causes of forced migration, that there are no evidence of very large numbers of people being displaced by environmental disruption, and that it is a strategic mistake to use the label/term "environmental refugees" because it might encourage receiving states to treat refugees in the same way as "economic migrants" to reduce their responsibility to protect and assist. In Bell's (2004:138) opinion, none of these criticisms provides adequate reason for not using the concept. First, he argues, the label "environmental" identifies a particular mechanism of displacement and broadens the category of "refugees". It does not exclude closer scrutiny of the causes of "population-displacing environmental displacement" (Bell, 2004:138). Second, the evidence of the number of people being displaced by environmental disruption is contested, and if the number may increase in the future we should start consider our responsibility. Third, Bell (2004:138) argue that the claim that using the term "environmental refugees" should make it more likely that all refugees would be regarded as "economic migrants" is unlikely. Bell have, however, gotten some critique for his use of the term. Biermann and Boas (2010:62) uses Bell's (2004) paper as an example of studies who rely on broader concept when trying to analyze what perhaps should be referred to as "climate refugees". They write that Bell, "while focusing in his work 'on one cause of environmental disruptions, namely, global climate change,' seems to draw on the much broader UNEP concept of environmental refugees [El-Hinnawi's (1985) definition] without further differentiation" (Biermann and Boas, 2010:62).

[17] Current is here referring to the 1990s.

Hartmann's (2010:237-238) critique is also three folded, like Bates critique, but Hartmanns critique is coined at the concept of "climate refugees". First, even though climate change is likely to cause displacement, the extent of this displacement will not only depend on how much the temperature rises and affects sea-levels and other events, but also on the existence and effectiveness of adaption measures that help individuals and communities cope with environmental stress (Hartmann, 2010:237). Whether or not such measures are in place depends on political economies at local, national and international levels, but this is often left out of the discussion of "climate refugees", Hartmann (2010:237-8) claims. Secondly, migration is too complex to be labeled simply as environmental or climate-induced (as discussed in chapter 3). Third, the term "climate refugee", like the term "environmental refugee", could undermine the rights of "traditional refugees". Hartmann (2010:238) explains that at the same time as it has become popular to apply the label refugee to any group of forced migrants, immigration enforcement agencies have fractioned the traditional refugee category by creating "a hierarchy of asylum seeker eligibility in order to restrict admission".

Kibreab (1997:21) writes that the concept of environmental refugee is increasingly used by states to justify restrictive refugee policy. He accuse academics for using the term uncritically, instead of questioning the conceptual and legal foundation of the term, and in so doing they unintentionally contributes to the hardening of attitudes and policies against involuntary migrants (Kibreab, 1997:21). Further, he claims that with few exceptions most of the available literature fails to "emphasize the multi-causality of displacement, which has led to confusion and, ultimately, the resort to poorly defined and legally meaningless terms, such as 'environmental refugees'" (Kibreab, 1997:21).

Further, McGregor (1994:128) claims that the conceptual problems arise from the problem of separating environmental causes from political and economic causes of flight. It is not analytically useful to separate "environmental" from "political", "economic" or "ethnic" causes of migration. The decision to flee is much more complex than "a simple 'environmental' push" (McGregor, 1994:128). Legal and institutional problems arise because refugees currently receive protection that goes beyond the assistance given to disaster victims (McGregor, 1994:128). While it is important to highlight environmental problems and the link with migration, in so far as the term "environmental refugee" merges the idea of disaster victims and refugees, it use brings with it the danger that key features of refugee protection could be undermined and the lowest common denominator adopted, according to McGregor

(1994:128). States might use the term in the same way as “economic migrant” to reduce their obligation to protect and assist.

According to McGregor (1994:128), one of the consequences of reducing the complexity of “real situations” is that the concept of “environmental refugee” can reinforce images of a “Malthusian squeeze”; “[b]ased on generally inaccurate conceptions of the relation between population change and environmental resource use, Malthusianism commonly underlies current literature on population and the environment in the Third World”. Such ideas can contribute to the paranoia of “fortress Europe”[18], and hence restrictive asylum politics. Hartmann (2010:234), in the context of “climate refugees” and conflict, claims that for those familiar with the environmental security field, and particularly neo-Malthusian models of environmental conflict developed in the 1980s and 1990s, climate refugee and conflict narratives “seem very much like old wine in a new bottle”. She refers to what she calls degradation narratives;

> “Drawing on old colonial stereotypes of destructive Third World peasants and herders, degradation narratives go something like this: population-pressure induced poverty makes Third World peasants degrade their environments by over-farming or over-grazing marginal lands. The ensuing soil depletion and desertification then lead them to migrate elsewhere as ‘environmental refugees’, either to other ecologically vulnerable rural areas where the vicious cycle is once again set in motion or to cities where they strain scarce resources and become a primary source of political instability” (Hartmann, 2010:234).

Hartmann (2010:234) claims that the degradation narrative has proved particular popular in Western policy circles because it kills a number of birds with one stone:

> “it blames poverty on population pressure, and not, for example, on lack of land reform or off-farm employment opportunities; it blames peasants for land degradation, obscuring the role of commercial agriculture and extractive industries and it targets migration both as an environmental and security threat”.

Hartmann (2010:234) writes that after the Cold War, growing interest in sustainable development and alternative visions of security increased the authority of the degradation

[18] See discussion in chapter 5.

narrative, in particular, concern began to mount about the dangers posed by so-called "environmental refugees". According to Hartmann (2010:234-235), the assumption that population pressure is one of the main precipitating causes of environmental degradation and resulting migration is central to the concept of "environmental refugees". Spinning climate change as a security threat is likely to undermine, rather than strengthen, serious efforts to link climate change mitigation and adaption to development efforts that reduce poverty and promote equity (Hartmann, 2010:239).

Further, McNamara and Gibson (2009) show how ambassadors at the UN, from the Pacific islands, resist the category of climate refugees, fearing it will lead to a break with the continuing as sovereign state. This is a discussion I will go deeper into in chapter 5.

4.4 Migrants – Environmental Migrants and Climate Migrants

What becomes clear when looking at definitions of "environmental refugees" and "climate refugees" is that most of them include both internal and cross-border movement, which is a marked difference from the Refugee Conventions definition of a refugee, which only includes cross-border movement. This is one of two reasons to look at the terms "environmental migrant" and "climate migrant", if the terms "environmental *refugee*" and "climate *refugee*" also include internal movement, then what distinguish them from "environmental *migrants*" or "climate *migrants*"? The second reason for taking these terms into the study is that not all scholars will use the term refugee to describe movement due to climate- or environmental changes, due to its non-judicial nature. There are some who prefer to use the term "migrant", instead of "refugees" when referring to people displaced or migrating because of environmental or climate change (see for example Hugo, 1996). What is worth noting is that while "environmental migrants" is a fairly often used concept there are few examples of usage of "climate migrants". There is several discussing climate *migration*, but few instances where the term "climate migrant(s)" is used. As with the terms above, "environmental refugees" and "climate (change) refugees", the term is often used without a concrete or clear definition. There are no "common and generally agreed upon" definition of environmental migrants, according to Siyoum (2011). Table 3 sums up the definitions of environmental migrants and climate migrants I have looked at. As with the definitions above, there is in most cases not a clear distinction between international and internal migration.

Table 3 - Definitions of “Environmental Migrant” and “Climate Migrant”

Author	Definition
Suhrke (1993:13)	“[those who] migrate before the situation becomes so desperate as to yield no choice. Using conventional terms, they would be environmental migrants”.
Swain (1996:965-966)	“are forced to move away from their homes as a result of the loss of their livelihood and/or living space because of environmental changes (natural as well as anthropogenic) and who are forced to migrate (temporarily or permanently) to the nearest possible place (within or outside the state boundary) in search of sustenance”.
Hugo (1996:108)	“migrants who are forced to flee their home areas by the onset of (or fear of) a natural calamity or disaster, would incorporate the first two categories of Olson's classification of external compulsions to migration listed above [physical danger (e.g., floods, volcanic eruptions, etc.) and economic insuffiency (e.g., frought, famine)], and covers not only the migrations initiated by the sudden and violent onset of floods, earthquakes, volcanic eruptions, etc., but also the "silent violence" (…) of drought, famine and the onset of severe food shortage associated with the gradual degradation of environments”.
IOM/Naik (2009:253)	“persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or chose to do so, either temporarily or permanently, and who move either within their country or abroad”.
Byravan and Rajan (2010:242)	“the victims of SLR [sea-level rise] attributed to climate change” (…) “includes all those who are displaced because of the effects of climate change”

Byravan and Rajan (2010) reserve the term “climate migrants” for those displaced by sea level rise. In addition to climate migrants they also use the term “climate exile”. Both the terms describes “the victims of SLR [sea-level rise] attributed to climate change” (Byravan and Rajan, 2010:242). The difference is that climate migrants include everyone who have to move due to sea-level rise, while “climate exile” represents a special category of climate migrants “who will have lost their ability to remain well-functioning members of political societies in their countries” (Byravan and Rajan, 2010:242). A further difference is that while most climate migrants will be IDPs, or have the opportunity of returning to their countries or regions of origin if/when adequate adaptation measures are taken, climate exiles will be forced to become “permanently stateless in the absence of other remedies” (Byravan and Rajan 2010:243). Byravan and Rajan’s focus on sea-level rise makes the definitions somewhat different from the other definitions. For instance, in their definition of “climate refugees” Biermann and Boas (2010) list three impacts of climate change that could lead one to be characterized as an “climate refugee”, sea-level rise is one of them, while others, like Myers and Kent (1995), points to examples but no exhaustive list.

Another of the few examples I have found of the usage of "climate migrants" is by Roy (2010). Roy (2011:30) does not have a clear definition of environmental or climate migrants, or climate refugees which he also uses, but states that "[t]he international migration policies do not adequately support the protection of environmental or climate migrants". From what Roy (2011:30) writes it seems that climate refugees are migrating because of climate change and sea-level rise, and that they leave their homeland to seek refuge elsewhere, and that environmental or climate migrants becomes climate refugees when they cross state borders. This leaves Roy (2010) as one of the few who separate migrants and refugees based on whether they are internal or external.

Suhrke (1993) differentiates between environmental refugees (see table 1) and environmental migrants (see table 3). Those who migrate before the situation becomes so desperate that they have no choice, Suhrke (1993:13) refer to as environmental migrants, as shown in table 3. Suhrke (1993:13) expects the number of environmental migrants to be much larger than the numbers of environmental refugees.

Swain (1996:965) criticizes Suhrke for confusing environmental migrants with "economic migrants", and to avoid this confusion he argue that it is important to draw a clear line between economic and environmental migrants. Economic migrants are those who move to economically better off regions in search for themselves and their family, Swain (1996:966) stresses that economic migrants are voluntarily migrating, while there are an element of force in environmental migration. The element of force is also clear in Swain's definition, as seen in table 3.

Hugo (1996:108) writes that since the term environmental refugees, despite gaining wide usage, are not officially recognized by national governments or international agencies, the term environmental migrants is preferable (see table 3). Hugo (1996:108) further writes that refugees, as defined by the Refugee Convention, are distinguished from environmental migrants "by the fact that the overt force impelling migration is conflict or the threat of conflict (…) it has human rather than environmental origins". He stress that this refers to the immediate cause which triggers the forced migration, not necessarily the deeper underlying long-term determinants, as many natural disasters have their roots in long-term political, social, economic or agricultural practices or policies (Hugo, 1996:109). In both types of forced migration, external pressure are essential in initiating migration, the migration would not have occurred without the sudden introduction of particular external forces.

Both Swain (1996) and Hugo (1996) emphasize that the migration is forced, thus to be defined as an environmental migrant by their definitions the migration should not be voluntarily. In Suhrke's (1993) view, however, environmental refugees are forced, while environmental migrants migrate before the situation becomes so bad that they are forced to relocate. As we see, the same term is located at different spots at the "forced vs. voluntarily" continuum. Tyssing (2010:21) chose to use Bates' (2002) definition in her paper (see table 1), but at the same time she chose not to use the term "refugee" since this is not a legal correct term. She uses instead the term "forced environmental migrants"[19]. The migrant term has, according to Tyssing (2010:15), an aspect of free will, but this aspect is not present to the same degree when people are "fleeing" for environmental reasons. Tyssing (2010:15) is not satisfied with using the term migrant when referring to this group of people, but claims that the term nevertheless makes it clear that they are forced to flee because of environmental changes and at they are not to be confused with those who are characterized as refugees by the Refugee Convention.

Siyoum (2011), who states that a universal definition of environmental migrants are missing because of a lack of consensus among researchers and academics, refers to the International Organization for Migrations (IOM) (see Naik, 2009:250) definition of environmental migrants (see table 3). This definition also includes an element of force, by stating that the migrants are "obliged" to leave their homes. In Siyoum's (2011) context, environmental degradation in Ethiopia, he claims that environmentally induced migration took place in two forms; spontaneous migration and assisted migration. Spontaneous migration is in most cases temporary, in times of stress, people affected by drought and environmental degradation are inclined to migrate to places that offer employment opportunities, or to places where they have relatives (Siyoum, 2011:66). Assisted migration takes place in the form of resettlement programs (Siyoum, 2011:67).

4.5 Some Thoughts on these Definitions

What seems to be clear is that most of the definitions of "environmental refugee" and "climate refugees" do not take into account that the person referred to as a refugee must be displaced in another state than her/his homeland, if the term "refugee" is to be used in its conventional meaning. Some of the definitions of climate refugees do include this element (see McNamara

[19]My translation, original term in Norwegian: «tvungne miljømigrantar».

and Gibson, 2009, Docherty and Giannini, 2009), but none of the definitions of environmental refugees.

However, it is not said that the term "refugee" cannot be applied to persons not fitting into the Refugee Convention. Article 1A states that "[f]or the *purposes of the present Convention*, the term "refugee" shall apply to any person who [definition]" (emphasize added) (UN General Assembly, 1951). With that said, persons who do not migrate beyond state borders, who are still in their own homelands, are the states responsibility. If the state cannot, or will not, offer protection for its citizens they can be protected as IDPs by the UNHCR, as discussed in chapter 3.

While some have an exhaustive list of what constitute effects of climate change (see for example Biermann and Boas, 2010), others shows examples of effects of climate change but choose to not include this in the definition (see for example Docherty and Giannini, 2009). What all the definitions have in common is of course that "climate refugees", "environmental refugees" and "environmental/climate migrants" describes people who *move* from one place to another due to environmental changes/disruptions, which might or might not include climate change. Further, a lot of the definitions include *force* as an element, which is an element I will look closer at in the next section.

4.6 Conceptualization

As discussed in chapter 3, one of the theories in the field of refugee studies is the typology of forced vs. voluntary migration (see Black, 2001:65). This typology is not included in the Refugee Convention's definition of the term. The IOM defines forced migration as:

> "the non-voluntary movement of a person in order to escape armed conflict, a situation of violence, violation of his or her rights, a natural disaster or a man-made disaster. This term applies to refugee movements and forced exchanges of populations between states" (Naik, 2009:252).

This typology could also be useful when discussing environmental- and climate-related migration and displacement. Penz (2010:153) argues that what distinguishes refugees in general from the broader category of migrants is that they are *forced* to move. He further argues that this means that there can be "war refugees", "famine refugees", "development refugees" and possibly "poverty refugees". Those who fit the definition of the Refugee Convention, Penz (2010:152) choose to refer to as "convention refugees". In this context

"climate change refugee" is one category of forced migration among many categories. However, as Penz points to, it is crucial to clarify what it means to be *forced* to move.

As the arguments of Speare (1974) and Amin (1974) shows, what should be regarded as forced is not necessarily clear. While Speare (1974) argues that in its strictest sense migration is only forced when a person is physically transported from a country and has no opportunity to escape, Amin (1974) argues that in some cases the reality is that there are no alternatives, although it might seem like there are. In Penz (2010) view forced migration can take the form of compulsion, threat or harm. The first one, *compulsion*, can include evictions, compulsory evacuations and deportations (Penz, 2010:153). Penz links the second, *threat*, to "Convention refugees" who escape from certain dangers just as those who flee war, famine, disease and so on. And finally, people can be forced to move when deprived of necessities to such an extent that not moving would be unreasonable option. Penz illustrate threat and harm with an example; "If a family's house and crop have been burned down by someone determined to grab the property, that may be sufficient to force the family to leave. No further threat may be needed" (Penz 2010:153). Penz argument is hence closer to Amin's than to Speare. When related to climate change, Penz (2010:153) argues that most of the impacts of climate change fall under actual harm sufficient to force people to move, and further, people might move in anticipation of such harm or the expectation of future recurrence of already experienced harm.

Following the uncertainty of forced vs. voluntary exemplified by Speare and Amin, Hugo (1996, 2010) choose to use a continuum with the typology forced vs. voluntary movement when discussing environmental migration. Bates (2002) does the same when discussing "environmental refugees", where, as discussed in chapter 3, people who have no control over their relocation represent the left-side of the continuum, designated as "involuntary". In this end of the spectrum we find environmental refugees. In the middle, described as "compelled" we find environmental migrants, and at the right side migrants, characterized by "voluntary migration" (Bates, 2002:468). While voluntary movement is characterized by the decision to relocate by the person/family that relocates, forced or compelled migration is characterized by external forces (Bates 2002:467). In this context, both "environmental migrants" and "environmental refugees" are characterized as being forced or compelled to relocate by external forces. While not all of those who define environmental/climate (change) migrants/refugees choose to do this by referring to a continuum, there are several who use "forced" to categorize the migration. El-Hinnawi (1985)

(environmental refugee), Shurke (1993) (environmental refugee), Docherty and Giannini (2009) (climate refugee) and Swain (1996) (environmental migrant) are among those who emphasize that the migration is forced.

Renaud et al. (2007) refer to the International Association for the Study of Forced Migration's (IASFM) explanation of forced migration as a "a general term that refers to the movements of refugees and internally displaced people (those displaced by conflicts) as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects" (FMO, 2012). With this as a backdrop, Renaud et al. (2007:11-12) chose to define "forced environmental migrant" as "a person who 'has' to leave his/her place of normal residence because of an environmental stressor (…) as opposed to an environmentally motivated migrant who is a person who "may" decide to move because of an environmental stressor". Renaud et al. (2007:14) see limitations in applying the definition of the Refugee convention to those displaced because of environmental changes, and especially the criteria of fear of persecution. Therefore, they chose to retain the usage of the term "refugee" in the context of their essay to characterize "people precipitously fleeing their place of residence because of an environmental stressor regardless of whether or not they cross an international border". To sum this up, Renaud et al. (2007) distinguishes between "environmentally motivated migrants", "environmentally forced migrants" and "environmental refugees". The first category, environmentally motivated *migrants*, are those who choose to leave a deteriorating environment (Renaud et al., 2007:29). Environmentally *forced migrants* have to leave in order to "avoid the worst". While environmentally *motivated migrants* might move on a temporary or permanent basis, environmentally *forced migrants* often migrate on a permanent basis (Renaud et al., 2007:29-30). The difference between environmentally forced migrants and environmental refugees is that the latter have no choice about when to move. This is illustrated by events as floods and extensive droughts.

Figure 1 – Voluntary vs. Forced Movement, Terms Used by Other Authors

Voluntary	Compelled		Forced/ Involuntary
Migrants (Bates, 2002)	Environmental migrant (Bates, 2002; Suhrke, 1993)	Environmentally forced migrants (Renaud et al., 2007)	Environmental refugees (Bates, 2002; Suhrke, 1993; Renaud et al., 2007) Environmental migrant (Hugo, 1996, 2010)

Figure 1 sums up some of the uses of forced vs. voluntary discussed above. As can be seen the same term might refer to different degrees of voluntary or forced movement. In this figure I have not graded the terms after how much force the definitions includes, but rather put the terms at the continuum in response to whether or not the term includes force. Furthermore, it is only those who propose several terms or the usage of a continuum which are included in this figure. Seeing that there are several who argue for the use of a continuum, and even more who argue for "evaluating" the migration based on whether it is forced or not, I will argue that this is useful.

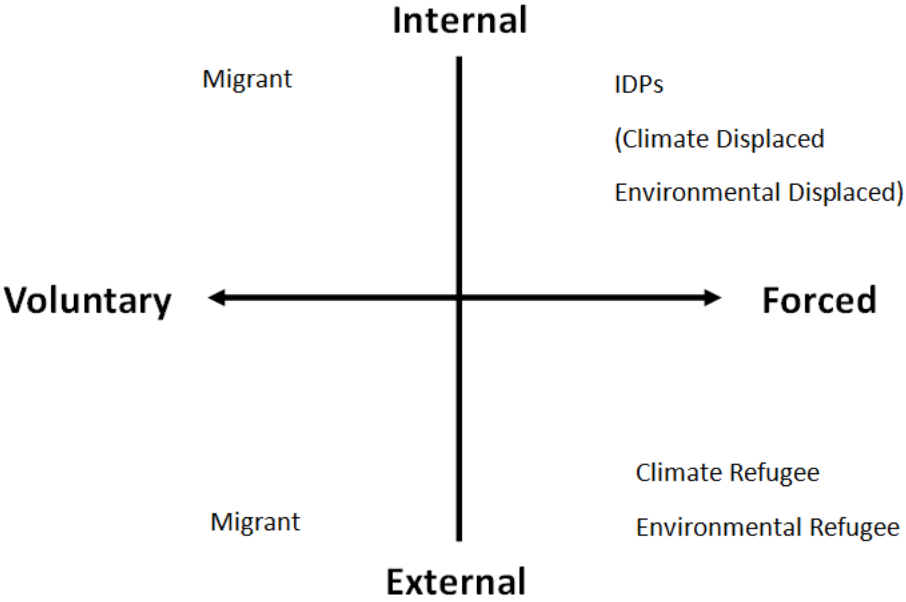
As the definitions in this chapter shows, there are also some who base the terms they use on what people are migrating from. What all the definitions have in common is of course that they include people migrating/moving from environmental or climatic disruption. But there are those who specify what environmental or climatic disruptions the definition is based on. Examples include Biermann and Boas (2010) who emphasize that "climate refugees" leave because of "sea-level rise, extreme weather events, drought or water scarcity", and Myers and Kent`s (1995) who emphasize drought, desertification, soil erosion, water shortages and climate change, and natural disasters such as cyclones, storm surges and floods in their definition of "environmental refugee". I will not, however, make an exhaustive list of environmental and climatic disruptions, following Docherty and Giannini`s (2009) argument

that advances in science could enable more accurate determinations of which events are caused by climate change.

Nevertheless, I will argue that it is useful to distinguish between climatic causes and more general environmental causes for migration, following the discussion in chapter 3. An important question is whether the term “refugee” is useful or not. Arguments against using “refugee” to describe people moving because of climate- or environmental changes includes the fact that it is not a judicial correct concept (see for example Hugo, 1996) and fear that it will do more damage than good (see for example McGregor, 1994 and Kibreab, 1997). Further, one could argue that there are danger of “conceptual stretching”, following Satori’s (1970) argument that one should be careful about broadening the meaning of a term. In this specific case it would be unfortunate if the concept of “refugee” became too broad. Using the conventional meaning of the term it should by its nature describe people (limited in numbers) in dire need of protection. But I will argue that the terms “environmental refugee” and “climate refugee” imply that they are different from “conventional refugees”.

Further, the term “refugee” is useful in describing people moving because of external pressure. Following Docherty and Giannini (2009), I will argue that if the term “refugee” is to be used, it should describe external movement, meaning movement across state borders. Additionally, following the discussion of forced vs. voluntary movement, climate- and environmental refugees should be characterized by forced external movement. Those forced to move, but who still stay in their home country are the responsibility of that state. If the state is not able to offer protection, they should be protected under the UNHCRs Guiding Principles on Internal Displacement, as discussed in chapter 3. As such, if it is necessary to make a distinction between IDPs displaced by climate or environmental disruptions and IDPs displaced because of other disruptions, they could be called “climate displaced” or “environmental displaced”. Whether or not this distinction is necessary is outside the scope of this study. However, taking into account that many of the alternatives for protection or help mechanisms presented in chapter 6 focus on both internal and external movement, and that it is estimated that the largest number of those who would have to move will still be located in their home country, this distinction might be necessary. Internal voluntary movement and external voluntary movement is coined as migration (following Bates, 2002, see figure 1). It is this migration that Barnett and Webber (2010) sees as adaptation to climate change, as discussed in chapter 3. Figure 2 sums up the terms.

Figure 2 – Movement due to Climate- or Environmental Change



Following figure 2, a proposal of a definition of climate refugee could be "a person who is forced to leave her/his homeland, temporarily or permanent, due to slow or rapid effects of climate change", and a definition of an environmental refugee: "a person forced to leave her/his homeland, temporarily or permanent, due to slow or rapid environmental changes". In both definitions it should be added that the state/government has failed to offer the protection needed, and in such a way that people are forced to leave the country.

Taking into account that using the term "refugee" might do more damage than good (See Kibreab, 1997, McGregor, 1994), and following Adcock and Colliers (2001) argument that one should not claim to much in defending the choice of concept, and what concepts really "means", I acknowledge that it might not always be fruitful to use the terms "climate refugee" and "environmental refugee". However, "refugee" in this context emphasize that the movement is both forced and external, and that help/protection is needed. Moving the discussion towards help mechanisms in chapter 6, I will argue that it is useful to define concepts in accordance with the help mechanisms.

At present there are few help mechanisms available for those displaced by climate or environmental changes, but there are several proposed alternatives. And as chapter 6 shows, those proposals includes concepts and definitions of people who moves because of climate

change. If one of these alternatives are adopted, then there must also be adopted a set of terms/concepts to declare who should be protected under that institution. This, however, is more likely to happen the other way around. Today we have the terms, but no clear definition and no clear helping mechanisms. Although there could be pitfalls in using the terms refugee, the greatest of them being that it is assumed that they already get the help needed, it sends a strong message that this situation is urgent and that it is a rights-situation.

The definitions stated above would need an operationalization if they were to be used in accordance with helping mechanisms, for example a new convention. As Sartori (1970) argues, it is important that concepts are amenable to empirical testing, which of course would be necessary for a convention or protocol to be operating effectively. Because of this, I chose to use the terms the authors themselves uses when I present the proposed alternatives for help mechanisms in chapter 6. Most of the alternatives have their "own" terms and definitions of these terms, which includes different components. For example, Biermann and Boas (2010) propose a protocol to the UNFCCC and their definition of "climate refugees" includes both internal and external movement, while Docherty and Giannini (2009) who propose a new treaty or convention includes only external movement in their definition of "climate refugees". Byravan and Rajan (2006, 2009, 2010), who propose a form of proportionate migration, use the terms "climate migrant" and "climate exiles", both of which demand that people move or are threatened by sea-level rise due to climate change. Therefore, it would be a mistake to use the term "climate refugee" or "environmental refugee" with my own definition of the terms when discussing these alternatives. The alternatives must be understood in the context they are meant.

What this discussion first and foremost show is how complex these terms are. What one author calls "environmental migrant" might be called "environmental refugee" by another one. By using the term "refugee", whether in its judicial form in the Refugee Convention or to describe people who have to move due to climate change, one sends a strong signal that the movement is done out of necessity. And hence, that protection is needed. On the other hand, the term "migrant" can include the same amount of necessity or force as "refugee", as figure 1 shows.

Chapter 5 - Theory: Migration, Human Rights and Sovereignty

Seeing that there at present is no protection mechanism available for people who are forced to move due to climate change, i.e. "climate refugees", I will argue that this could be seen as a human rights "gap". Those *forced* to flee cross-border have no more rights than people who voluntarily cross state borders. Those internal displaced have the same right as every other citizens in that country, although there might be need for more protection and helping mechanisms for internal displaced as well, as many of the proposed alternatives in chapter 6 point out.

Further, cross-border movement can lead to sovereignty issues. Here I will focus on two approaches to sovereignty and migration, which could roughly be divided into the "receiving" states sovereignty and the "sending" states sovereignty. Borders establish the categories of citizen and alien, and are central to the theory and practice of sovereignty, which further is exemplified by the use of border patrols and passports. (Mills, 1998:95). On the other hand, McNamara and Gibson (2009) and Barnett and Adger (2003) points at the sovereignty of low-lying atoll states, such as Kiribati and Tuvalu, which are in danger of becoming "sending" states if the predictions of rising sea-level come true.

I start this chapter by looking at human rights more general, the implications climate change have for human rights, and inter-generational rights which is a rights issue that sometimes arise when discussing climate change and rights. I then move on to discussing sovereignty. It is useful to see sovereignty in relation to human rights, and of course migration as discussed above. The last part of this chapter is concerned with the concepts of harm, responsibility, and sovereignty.

5.1 Human Rights

Freeman (2002:78) claims that political scientists neglected human rights between the adoption of the Universal Declaration in 1948 and the mid-1970s, with the exception of some descriptive studies. Freeman (2002:78) thinks that this negligence can be explained by two main influences on the discipline, realism and positivism. Realism because it taught that politics was overwhelmingly the pursuit of power, and that ethical considerations, such as human rights, played a marginal role (Freeman, 2002:78). Positivism because it taught that social scientists should not include ethical judgments in their work, because ethical judgments were unscientific and subjective. This situation began to change in the 1970s, and especially during the period of the Carter presidency in the USA, as human rights were becoming part of

reality of international politics. Freeman (2002:4) points out that the human rights-field needs social scientists, and states that “we cannot understand the gap between human-rights ideals and the real world of human-rights violations by sympathy or legal analysis”.[20] To understand this gap it requires investigations by various social sciences of the causes of social conflict and political oppression, and of the interaction between national and international politics. While the UN introduced the concept of human rights into international law and politics, the field of international politics is dominated by states and other powerful actors who have priorities other than human rights (Freeman, 2002:4).

The idea of universal rights first became an important issue in international relations among states after the Second World War[21] (DeLaet, 2006:5, Freeman, 2002:33). In 1948 the UN General Assembly adopted the Universal Declaration of Human Rights that identifies a wide range of political and economic fundamental human rights. Article 1 of the Declaration states that: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood” (UN General Assembly, 1948). Since the Universal Declaration of Human Rights, there have been a number of conventions. A quick glance shows that a number of conventions and international agreements are ratified by a large part of the world's countries (Globalis, 2012a). The International Covenant on Civil and Political Rights (UN General Assembly, 1966a), which entered into force in 1976 has been ratified by 164 states, while the Covenant on Economic, Social and Cultural Rights (UN General Assembly, 1966b) has been ratified by 160 states. The Convention on the Status of Refugees is ratified by 144 states (Globalis, 2012b). As Morsink (1999:x) puts it: “At the end of the twentieth century there is not a single nation, culture or people that is not in one way or another enmeshed in human rights regimes”.

According to Caney (2010:164) there are four main components of human rights. The first one is “Humanity”, which states that human rights refer to those rights that persons have by virtue of being humans. Human rights are understood as rights that persons have independently of any social convention[22] or social practice, rights that persons have in virtue of their humanity, and not because of the nation or state into which they were born or any

[20] “The gap” is here referring to the gap between the “promises” or rights of the 1948 declaration, and conventions, and the real world of human-rights violations.

[21] This is not to say that the idea of human rights first occurred in the 1940s, for a discussion on the history and philosophical origins and sources of human rights, see for example DeLaet (2006) and Freeman (2002).

[22] However, as shown above, the human rights regime operates mainly through conventions.

action that they have performed. The second component is “Moral thresholds”, this means that human rights represent basic moral thresholds below which people should not fall (Caney, 2010:164). The third component is “Universal protection”, human rights represents the entitlements of each and every individual to certain minimal standards of treatment (Caney, 2010:165). Further, human rights generate obligations on all persons to respect these basic minimum standards. Here Caney (2010:165) refer to the Article 1 of the Universal Declaration of Human Rights (1948), which states, as shown above, that: “[a]ll human beings are born free and equal in dignity and rights”. The last component is “Lexical priority”, which means that human rights constrain the pursuit of other moral and political ideals, and if there are a clash between not violating human rights on the one side and promoting welfare on the other, not violating human rights should take priority (Caney, 2010:165).

Human rights could be divided into different “categories”, one is the distinction between positive and negative rights. A positive human right is formulated as a “right to”, examples include the right to life, the right to food, and the right to education (see for example Caney, 2010:165, DeLaet, 2006:21). Negative rights, on the other hand, requires inaction on the part of the state, and hence is coined as “freedom from”. “Freedom from” includes for example freedom from torture and freedom from discrimination. Reality is, however, often more complicated than a simply distinguishing between these two categories.[23] Further, there is a distinction between collective and individual rights. Collective rights often framed as “peoples” rights, while individual rights are framed as “persons” rights.

Further, according to Mills (1998:40) there are certain human rights that have achieved the status of “jus cogenes”, meaning that they are principles or norms from which there can be no derogation. This includes prohibition against genocide, torture and slavery, Mills claims. No state can violate these principles, regardless of whether or not they have explicitly bound themselves by these principles (Mills, 1998:40). This might, however, seem more like a theoretical ideal than an empirical fact. Meron (1986:3) emphasize that the hierarchical terminology in international human rights is of a practical importance in resolving conflicts between norms. But, except for in a few cases (like the right to life or freedom from torture),

[23] The category of negative rights often is used to refer to civil and political rights, and the positive rights to economic and social rights. When using “negative rights” about civil and political rights it is assumed that these rights simply require the state abstaining from acting in a manner that abuses rights, and, when using “positive rights” to describe economic and social rights it is believed that these rights require positive state action to achieve their fulfillment), this might be misleading (DeLaet, 2006:21-22). DeLaet (2006:21) emphasize that states might actually have to take concrete actions to fulfill basic civil and political rights. Although it is true that governments often need to take action to ensure that the basic economic and social rights are met, there are also times when inaction on the part of a government may better serve these ends, DeLaet (2006:22) argues.

to choose which rights are more important than other rights is rather difficult (Meron, 1986:4). Which rights are more important are of course fraught with personal, cultural and political bias. Further, even well-established rights, such as the prohibition of systematic racial discrimination presents problems when regarded as “jus cogenes” (Meron, 1986:16). An example is the Apartheid regime in South Africa, which ended in 1994, years after Meron wrote this article.

5.1.1 Human Rights and Climate Change

In 2008 UNs Human Rights Council adopted a resolution on human rights and climate change. This resolution states that the Human Rights Council is “*Concerned* that climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights” and further that the Human Rights Council “*Recognizing* that climate change is a global problem and that it requires a global solution” (italics in original) (Human Rights Council/OHCHR, 2008). In the Human Rights Council’s third resolution on human rights and climate change, how climate change can affect human rights is more elaborated; the *Human Rights Council*

> *“Emphasizing* that climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights, including, inter alia, the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination and the right to safe drinking water and sanitation, and recalling that in no case may a people be deprived of its own means of subsistence” (italics in original) (Human Rights Council/OHCHR, 2011).

Caney (2010:166) points to three key human rights that climate change jeopardizes. These are the right to life, the right to health, and the right to subsistence.[24] Caney (2010:166) argues that all the rights are formulated in a modest way, to show that “one does not need to rely on more controversial or ambitious conceptions of human rights in order to see how climate change jeopardize human rights”.

[24] This list of rights is in no way exhausted, and Caney (2010:169) mentions as an example that one might argue that there is a human right not to be forcibly evicted, and that climate change violates this because people from coastal settlements and small island states could be forced to leave.

The right to life is extracted from the International Covenant on Civil and Political Rights (UN General Assembly, 1966a:Article 6.1), which states that "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". Caney (2010:166) rephrase this to "Every person has a human right not to be 'arbitrarily deprived of his life'". This is framed as a negative right; it does not make the claim that persons have a positive right to have their life saved from all kinds of threats. Climate change is projected to result in an increased frequency of severe weather events, such as tornadoes, hurricanes, storm surges, and floods, as well as flooding and landslides, which can be devastating and lead to a direct loss of life (Caney, 2010:166-167). In virtue of this, Caney concludes that the current anthropogenic climate change violates the human right to life.

The right to health can be found in the International Covenant on Economic, Social and Cultural Rights (UN General Assembly, 1966b) and the Convention on the Rights of the Child (UN General Assembly, 1989). In both, the right to health is framed as the right to attain the highest standard of health, Caney (2010:167) however, trying to keep to basic and modest rights, rephrase it as "[a]ll persons have a human right that other people do not act as to create serious threats to their life". This does not require people to maximize the health of all, and it does not affirm a positive right to health, but rather a negative right that persons do not harm the health of others. Climate change is predicted to bring with it several health effects, like the increase of the number of people suffering from diseases and injury from heat waves, floods, storms and droughts, and increases of the number of people at risk of dengue and malaria (Caney, 2010:168). Caney therefore concludes that human-induced climate change clearly results in a variety of different threats to the human right to health.

The third right in focus here, the right to subsistence, Caney (2010:168) frame as "[a]ll persons have a human right that other people do not act so as to deprive them of the means of subsistence". This right is, as the others, portrayed as a negative right, and is more modest or basic than the corresponding rights in the International Covenant on Economic, Social and Cultural Rights and the Universal Declaration of Human Rights. Climate change will challenge this right in several ways: temperature increases will lead to drought and thereby undermine food security, sea-level rise will involve loss of land to the sea and thus hit agriculture badly, flooding will lead to crop failure, and extreme weather events will also destroy agriculture (Caney, 2010:168).

What is of special interest in the context of climate change and human rights is the argument Caney (2010:169) makes that if the impacts of climate change were entirely the result of natural phenomena and were not traceable to human causes then the preceding arguments would not succeed. This is important because the rights are framed in a way that means that humans have a right to not have other people deprive them their rights. Put in another way, the right to life says that persons have a human right that other people do not deprive them of their lives, and so if persons lose their life because of purely natural causes, then this right is intact (Caney, 2010:169). The threats to life, health, and subsistence as results of climate change, are seen by Caney (2010:169) as threats that are the products of the actions of other people.

McAdam and Saul (2010:9) argues that international human rights law is important to climate-induced displacement for three reasons. The first is that it sets out a minimum standard of treatment that states must provide to persons within their territory or jurisdiction, and it provides a means of determining which rights are endangered by climate change and which national authorities that have the primary responsibility for responding to the rights at risk (McAdam and Saul, 2010:9). Secondly, human rights law might provide a legal basis on which protection can be sought (and granted in another state). Thirdly, if relocation should occur, human rights law requires minimum standards of treatment in the host state, and is therefore relevant to the legal status afforded to those displaced (McAdam and Saul, 2010:9). McAdam and Saul (2010:9) emphasize that the effects of climate change potentially impinge upon the enjoyment of the full range of internationally protected human rights. Climate changes and disasters affect basic human rights such as the right to food and the right to water, rights that can be necessary components of the right to life (McAdam and Saul 2010:10).

In the extreme case of “disappearing” island states, rights of political participation, voting and political freedoms suffer if island states should disappear, as well as the ability of affected states to fulfill their obligations to provide for social, economic, and cultural rights, such as housing, health care and education (McAdam and Saul 2010:10). And further, in the case of “disappearing” of island states, and the resulting permanent displacement of their inhabitants, the fundamental right to self-determination is threatened; a breach of the link between people and the state makes it difficult to maintain the standards of popular self-

determination.[25] McAdams and Saul (2010:9) writes that self-determination is difficult to realize unless "special regimes for people in exile" is adopted, which is unthinkable. An example of "special regimes for people in exile" could be if for example Tuvalu's people had formed an autonomous region within Australia's state borders if a majority of Tuvalu's population emigrated there after their government had "disappeared". There are several examples of governments in exile in history, however, as McAdam (2010a:116) points out this has traditionally operated on the assumption that it is a time-bound alternative which enables a government to operate outside its territory until it once again becomes possible for that government to reassert its control in its own territory. Functions that governments have performed while in exile includes treaty making, maintaining diplomatic relations, and conferring immunities, privileges and jurisdiction over nationals. Further, the government in exile idea is premised on there still being an identifiable population over which the government has jurisdiction (McAdam 2010a:117). However, in the context of the "sinking state" scenario of small island states the government would be in exile because the territory is not inhabitable anymore, and as such most of the population would probably already have left as well. In this scenario the population of the state has already moved to other sovereign states, and hence must follow the laws of the new state. The role of the home state becomes the same as the jurisdiction that any state can exercise with respect to its nationals abroad (mostly diplomatic protection). McAdam (2010a:117) predicts that over time, the function of the government will wane.

Further, the issue of whether or not individuals would be covered by the Convention Relating to the Status of Stateless Persons in this kind of extreme context, is not clear. According to McAdam (2010a:119), existing international law lacks uniform practice in satisfactorily resolving the issue when a state ceases to exist. The Convention Relating to the Status of Stateless Persons (UN General Assembly, 1954)[26] do not deal with the eventuality of literal, physical statelessness. Further, the precise point at which a state loses its legal identity as a state is unclear, according to McAdam (2010a:106). She refers to the Article 1 of the 1933 Montevideo Convention on the Rights and duties of States to define, or formulate,

[25] Self-determination in the International Covenant on Civil and Political Rights, Article 1:
1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
[26] Article 1 of the Convention Relating to the Status of Stateless Persons define a stateless person as "a person who is not considered as a national by any state under the operation of its law".

statehood (McAdam, 2010a:110). This formulation includes four elements: defined territory, a permanent population, an effective government, and the capacity to enter into relations with other states. McAdam (2010a:110) writes that while all four criteria would seemingly have to be present for a state to come into existence, the lack of all four may not necessarily mean the end of a state. The reason for this is the established strong presumption of continuity of existing states. Since the establishment of the UN Charter in 1945 there have been very few cases of extinction of states and virtually none of involuntary extinction (McAdam, 2010a:110-111). So called failed-states continue to be recognized as states, even when they in reality don't function as a state according to the Montevideo Convention.

However, UNHCR's institutional mandate to prevent and reduce statelessness includes de facto statelessness as well (McAdam, 2010a:120). In the context of “sinking island states” the UNHCR has argued that even if the international community were to continue to acknowledge a state's on-going existence as a state, despite sign that it no longer met the full criteria of statehood, its population could be regarded as de facto stateless (McAdam 2010a:120). The population in this scenario would be likely to find themselves in a situation that is similar to a situation where the statehood have ceased, according to UNHCR (2009)

Another interesting question in the context of Pacific island states is if there would still be sea territory, even if the islands should actually sink. McAdam (2010a) does not directly reflect upon this, although the discussion implicitly gives a “no” to the above question. It is worth some consideration, discussion and explanation when discussing territory and population. Take Kiribati as an example. With one island and 32 atolls spread across three island groups its territory is rather small, especially considering that a large part of its population is located on the main atoll, Tarawa (Globalis, 2012c). However, Kiribati has a rather large sea territory, and what will happen to this territory if the atolls should sink into the sea? Paskal (2007) point out that legally speaking a country’s ocean territory is determined by its land territory, as set out in the UNs Convention on the Law of the Sea (1982). It would therefore be important for such states to find stronger “protector states” to defend them both diplomatically and militarily, Paskal (2007) argue.

This discussion is of course highly related to the discussion of sovereignty later in this chapter. However, before moving on to this discussion I will have a quick glance on what is referred to as “inter-generational rights”, which is another aspect of climate change and human rights.

5.1.2 Inter-generational Rights

When the IPCC in 1990 argued that a one meter sea-level rise by 2100 would "render some island states uninhabitable, and displace tens of millions of people" (Tegart et al., 1990:4), it touches questions of the rights of future humans. When discussing "climate refugees" there is almost always a generational dimension. Much of what is written about the topic refers to events likely to happen in the future, like "sinking" island states. This is not to say that climate change is not happening now, and that people are not relocating, migrating or being displaced because of climate change today (NRC /IDMC[27] and OCHA[28] (2009) estimates that 20 million people were displaced due to sudden onset-climate-related disasters in 2008), but a lot of the information and articles is focusing on what is likely to happen in the future. And in this sense a lot of what is written, implicit if not explicitly, discuss intergenerational issues.

Further, the international agreements on climate change, like the UNFCCC (1992), obligate states to take action to reduce greenhouse gases. Article 2 states the objective of the Convention as

> "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner" (UNFCCC, 1992:Article 2).

Although it does not set out a specific date for this, the goal is to "save the world" before it's too late, and hence make it sustainable for future generations.

According to Weiss (2008:618) climate change is likely to produce profound effects on the way we live, now *and* in the future. She states that: "No longer can we ignore the fact that climate change is an intergenerational problem and that the well-being of future generations depends upon actions we take today" (Weiss, 2008:616). Climate change, partly induced by human activities, raises serious issues of justice between the present generation and future generations, and between communities within future generations (Weiss 2008:619). The present generation, when using the planet's resources for its own, may pass on many of the cost to future generations in the form of climate change and the need to adapt to such change. Weiss (2008:620) argues that we, as the present generation, have certain

[27] The International Displacement Monitoring Centre.
[28] The UNs Office for the Coordination of Humanitarian Affairs.

obligations to future generations which must guide the strategies which we chose to address the issue of climate change. Unless this is recognized, we will benefit ourselves at the expense of the future generation.

Today, the obligation towards future generations are to some extent recognized, as exemplified by the UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations (1997). The obligations of the present living generation towards the future generations is one thing, rights for future generations another. Weiss (2008:619) for example claims that "[i]f we only have obligations to future generations, we may act from a sense of nobleness oblige toward them. If, on the other hand, future generations have rights, people living today must consider their interests, examined from their perspective, in the action we take today". However, while Weiss (2008:619) argues that future generations should have rights, other claim that they should not. Feinberg (2009) argues that the only beings that can have rights are those that have interests, while Beckerman and Pasek (2001) argues that future generations may well have rights when they come into existence, but these rights will only be rights that can be fulfilled at the time they come into existence.[29]

5.2 Sovereignty

Above I discussed how it is not clear whether or not small Pacific island states will be able to function as states should their territory "disappear", which further leads to sovereignty issues. As I discussed initially in this chapter this is one of the sovereignty issues related to climate change and population movement. To look closer into this I choose to start with an clarification of what sovereignty is.

Sovereignty can be defined as the exclusive right states have to decide over their own citizens and be free from external interference (DeLaet, 2006:3). The classic explanation is, according to Montgomery (2002:5) that sovereignty allows the state to get "the last word". Sikkink (1993:413) writes that "[t]raditionally, (...) State Sovereignty has meant that the state 'is subject to no other state, and has full and exclusive powers within its jurisdiction'". Krasner (1993:142) defines sovereignty as a system of political order based on territorial control. He argues that the defining principle of the sovereign state system is that external actors do not have authoritarian power in the given territory. In his book "Sovereignty: Organized Hypocrisy", Krasner (1999) look at four different ways in which the term

[29] They, however, claim that future generations have interests, which means that we are under moral obligation to take account of them and of the effect that our environmental policies may have on them (Beckermann and Pasek, 2001).

sovereignty have been used; international legal sovereignty, Westphalian sovereignty, domestic sovereignty, and interdependence sovereignty. International legal sovereignty is concerned with establishing the status of a political entity in the international system. The basic "rule" for this type of sovereignty is that recognition is extended to territorial entities, states, that have formal juridical independence (Krasner, 1999:4,19). The rule for Westphalian sovereignty is the exclusion of external actors from the territory of a state. In this context the sovereignty is violated when external actors influence or determine domestic authority structures (Krasner, 1999:20). Domestic sovereignty involves both authority and control, both the organization and effectiveness of political authority (Krasner, 1999:4). Interdependence sovereignty is concerned with control, more specific with the capacity of a state to regulate movement across borders. In this context the inability to regulate the flows of goods, persons, ideas, diseases and pollutants across territorial borders has been described as a loss of sovereignty (Krasner, 1999:12). These various kinds of sovereignty does not necessarily covary, a state can have one but not the other, according to Krasner (1999:4). Further, the exercise of one kind of sovereignty can undermine another kind of sovereignty.

According to Mills (1998:11) there are two aspects of state sovereignty, the external and internal. Internally, states have the supreme authority or control within their own borders. The link between the internal and the external aspect of state sovereignty is the principle of non-intervention (Mills, 1998:12). At the end of World War II and the founding of the United Nations the non-intervention principle became an international norm according to Mills (1998). Externally, states have the right to engage in the international community, through trade, taking part in diplomatic conferences and similar activities. In theory, every state is considered equal in relation to all other states. However, Mills (1998:12) argues that this is a misleading assumption, since many states, including "mini-states" like Samoa and Monaco, don't have the same opportunities as bigger states, like the USA or France, to participate in international activities.

Krasner (1993:142) claims that sovereignty, in addition to the non-intervention principle, consists of the norm of self-help. Self-help means that every sovereign state has the right to pursue an independent foreign policy in whichever way that gains the state.

Without going to deep into the different kinds of sovereignty, it seems clear from this that the traditional concept of sovereignty have an external and internal dimension (see for example Sikkink, 1993, Krasner, 1993, Mills, 1998, DeLaet, 2006). There are those who claim, however, that this sovereignty is challenged by a new understanding of sovereignty.

Whilst some argue that human rights are in fact challenging traditional sovereignty (see Mills, 1998), and as a result we see a new sovereignty emerging, other argues that it is time that we let human rights, and people in general, form a new sovereignty (see Sikkink, 1993). Because of this, I will argue that when looking at human rights and sovereignty it is fruitful to also look at them in relation to each other, which I will do in the next section.

5.2.1 Human Rights and Sovereignty – A New Sovereignty? [30]

Mills (1998:12) argues that the principle of non-intervention erode because of the increasing focus on human rights. The most fundamental issue regarding sovereignty is that of the relation of individuals to sovereign entities and their rights contained in this relationship (Mills, 1998:36). Further, why people have rights beyond what the state grants them could be investigated from two different perspectives, according to Mills (1998:36-37). A constructive reading of human rights tells us that the rights can be derived from the social purpose of the institutions against which they are arrayed, namely the state (Mills, 1998:39). Theoretically, in this view, states exists for the well-being of their inhabitants, the primary function of states is that of their protection (Mills, 1998:36). On the other hand, a positive approach tells us what rights people have as a result of state practice rather than state purpose. Mills (1998:39) writes that a positive approach is useful as a complement to a constructive approach in two ways, the first reason being that most people, and especially state elites, that look at the issue of human rights do not employ a constructivist analysis. Rather, they tend to look at what conventions have been signed, what declarations have been agreed to, and what treaties are in force when looking at the application of human rights law. Secondly, turning to these various sources of human rights law allow us to get a better sense of how human rights might be enumerated and how they might be carried out in practice (Mills, 1998:39).

If states can be bound by international agreements, part of their sovereignty has been eroded, according to Mills (1998:40), who points to Article 21(3) in the The Universal Declaration of Human Rights (UDHR) (UN General Assembly, 1948) which states that "[t]he will of the people shall be the basis of the authority of government". As Reisman (1990:869) puts it "International law still protects sovereignty, but – not surprisingly- it is the people's sovereignty rather than the sovereign's sovereignty". International law is still concerned with the protection of sovereignty, but in its modern sense the object of protection is not the power base of a tyrant, but rather the continuing capacity of a population freely to express and effect

[30] This section borrows from an unpublished paper, written by the author, for the course "Sampol 304", fall 2010.

choices about the identities and policies of its government (Reisman, 1990:872). In this context the Chinese Government's massacre in Tiananmen Square to maintain the political order against the wishes of the people was a violation of Chinese Sovereignty, and the Ceausescu dictatorship was a violation of Romanian sovereignty. The concept of "Popular sovereignty" goes as far back as the French Revolution, according to Benhabib (2007:21). Popular sovereignty reflects the idea that people are both subjects and objects of the law, they are makers as well as obeyers (Benhabib, 2007:21). The state must be responsible to the people (Mills, 1998:42).

In this view the people, not the governments, are sovereign. According to Mills (1998:40-41), this statement is problematic, but helps us to understand that individuals are subjects of international law in a way they were not when sovereignty was first conceived, and that states have lost some of their standing. The dividing line between international law and the domestic is becoming increasingly blurred, and as this line erodes the principle of non-intervention which has been the link between the internal and external dimension of sovereignty correspondingly weakens (Mills, 1998:41). The international community which recognizes human rights has a right to violate the principle of non-intervention.

Mills is not alone in emphasizing a new understanding of sovereignty. Sikkink (1993:415) writes that human rights are not an alternative to sovereignty, but that they contribute to a future model in which the understanding of sovereignty has changed in relation to specific matters that are deemed important enough that the international community limits the scope of the "sovereign authority". Furthermore, she writes that the change of sovereignty also occurs in other areas, such as the environment, emergency relief and protection of minorities. In that sense, human rights is more than just an exception to the rule of sovereignty, they are part of the international issues that make a modified (or altered) understanding of sovereignty becoming more accepted and practiced (Sikkink, 1993:415).

DeLaet (2006), on the other hand, looking at the status quo, claim that sovereignty always trumps human rights. State sovereignty is an obstacle to human rights, precisely for the reason that universal human rights represents an attempt to develop rights that go across the state borders (DeLaet, 2006:3). Sovereign states can violate human rights with the argument that it is necessary to ensure state sovereignty, which often happens, according to DeLaet (2006:62). This is also evident in the declarations and conventions. Article 29 of the Universal Declaration of Human Rights (1948) states that human rights can be restricted, among other things, to preserve the security of a democracy.

Keith (1999) has studied whether the ratification of the International Covenant on Civil and Political Rights actually leads to a difference in states' protection of human rights. To determine this, she looks at 178 countries over a period of 18 years. Her conclusion is that it is probably too optimistic to expect that being a full member of an international convention would lead to observable improvements (Keith, 1999:112). One of the reasons she points out is that the implementation mechanisms of the Conventions are too weak and is based on the expectation that the states themselves should follow up on human rights. Thus, states that are aware of these shortcomings conclude that there is little risk of their sovereignty if they ratify a convention (Keith, 1999:112). On the other hand, Hathaway (2007:612-613) finds that states with robust domestic politics may be reluctant to ratify the conventions simply because these conventions can make a difference. She claims to find clear evidence that states with strong domestic institutions and a poor will to preserve human rights are less willing to ratify conventions than states with weaker institutions with the same level of human rights (Hathaway, 2007:613).

According to Krasner (1999:125) some human right conventions are inconsistent with what he refer to as Westphalian Sovereignty. Further, coercive practice, for example economic sanctions to promote human rights, violates International Legal Sovereignty. Human rights are, however, only one more incarnation of a long standing concern in the international system, which is consistent with Sikkink's (1993) arguments above. In this view human rights is understood more generally as a problem linked to the relations between rulers and ruled. Other examples that could be placed in the same "category" as human rights includes issues of religious toleration which were prominent in the sixteenth and seventeenth centuries and minority rights in the nineteenth and early seventeenth century (Krasner, 1999:125). Human rights accords in the late twentieth century have been conventions, and compliance and enforcement mechanisms have tended to be weak (Krasner, 1999:126). Westphalian Sovereignty has never been an absolute practice, and in Western Europe most rulers have never enjoyed full autonomy with regards to the treatment of their own subjects. In this way, the issue of human rights is only the latest example of a "long-standing tension between autonomy and international attempts to regulate relations between rulers and ruled" (Krasner, 1999:126).

Sovereignty's standing in the relation between states and in the relation between states and the citizens of the state is a rather well discussed topic. Despite claims that it is time to redefine the traditional concept of sovereignty we still see that it is a norm in international

relations. One example, related to migration, is the fact that UNHCR cannot help IDPs unless the state in question agrees to this. On the other hand, we see that human rights can actually make a difference in some aspects of states sovereignty (see for example Hathaway, 2007). Whether human rights has changed the traditional notion of sovereignty, or the time is right to change the meaning of the term so that it fits into the human rights regime is unclear. However, it seems that while human rights might influence sovereignty, sovereignty can still limit the exercise of human rights. I will now move on to discuss how sovereignty relates to migrants and refugees.

5.2.2 Sovereignty and Migration

NcNamara and Gibson (2009) interviews with Pacific island UN-ambassadors shows that they fear for their states sovereignty if there in the future will be a policy discourse that legitimize displacement of people because of climate change. IPCC notes that the actual sea-level rise poses a threat to the low-lying Island atolls states of Kiribati, Tuvalu, Tokelau and the Marshall Islands (Adger et al., 2007:736). Barnett and Adger (2003) argues that both the sovereignty of low-lying atoll states and the human rights of the people living there are at risk. Barnett and Adger (2003:327) not only argues that climate change poses a sovereignty problem for low-lying atoll states, but that the reason for this is that climate change put sovereignty at risk because of the way it might impact on human welfare and human rights. Small atoll states have a high degree of ethnic homogeneity combined with a high population density, which further means that there is little political distance between the people and the "nation-state" (Barnett and Adger, 2003:327).

Bhabha (1996:3) argues that refugees crystalize the conflict between the belief in universal human rights and the sovereignty of nation sates. Judgments dismissing an asylum application can in some cases adopt a language of cultural relativism or respect for the state sovereignty as a tool for limiting refugee admission numbers (Bhabha, 1996:11).

On the other side is the hosting or receiving state's sovereignty. The sovereignty issues surrounding hosting states are far more discussed than that of the "sending state". Borders establish the categories of citizen and alien, and are central to the theory and practice of sovereignty (Mills, 1998:95). This is exemplified by the use of border patrols and passports. Benhabib (2007:20) claims that the condition of refugees and asylum seekers has not

benefitted from the spread of "cosmopolitan norms".[31] While their numbers are increasing worldwide, most liberal democracies after September 11, 2001, and even before then, has shifted toward criminalizing the refugee and asylum seeker either as lying to gain access to economic advantages or as a potential security threat, according to Benhabib (2007:20). When looking at Mills, writing in 1998, we see that this seem to have started before 2001. Mills (1998:95) argue that we define individuals in terms of citizenship instead of humanity, and that this allows us to discard human rights in favour of citizen rights. Although sovereignty is perceived to give states the right and the ability to maintain exclusive sovereign control over their borders, the reality is different. Mills (1998:95) claims that a closer look at empirical realities, as well as commitment to human rights and a recognition that states are not natural, absolute entities and thus that borders do not circumscribe the only possibility for community and protection of rights, will provide a view of borders which are not as impermeable as the traditional concept of sovereignty would suggest. What seems most threatening to states and people within state borders is the flow of people (Mills, 1998:96). There is a growing consensus in the community of states to lift border controls for the flow of capital, information, and services, but when it comes to immigrants and refugees states asserts their sovereign right to control its border (Sassen, 1996:9,15). But even as states are increasing their efforts to control their borders, they are losing ground (Mills, 1998:96).

The emergence of a kind of "Fortress Europe" as a way of keeping out unwanted asylum seekers and others from the EU, and other changes in Western "border-politics", has served to undermine two basic and interrelated principles of international refugee law: non-refoulment and asylum, according to Mills (1998:103-105). Further, Mills (1998:106) claim that the very fact that states feel they must take such actions demonstrate how important borders are for the practice of sovereignty and how much borders are not what they once were. Freedom of movement, as stated in the Universal Declaration of Human Rights (UN General Assembly, 1948:Article 13 and 14) and the International Covenant on Civil and Political Rights (UN General Assembly, 1966a:Article 12), ends at the border, at least for many Western states. In the face of these efforts to minimize international refugee protection, UNHCR has been accused of helping states maintain sovereign control of their border (Mills, 1998:108-109). At the same time, Mills (1998:122) argue that the movement of people calls into question the concept of sovereignty as anywhere near an absolute principle, if states

[31] Such as those related to universal human rights, crimes against humanity, and refugee, immigrant and asylum status.

cannot control who enters and stays then it would seem that one of the building blocks of traditional conceptions of sovereignty is called into question. Further, actions by international actors, such as UNHCR, have resulted in incursion on state sovereignty and increasing recognition by those organizations that borders should not be the barrier that they have been. If states did possess absolute sovereignty, then they could decide who can and cannot become members, expel members, and prevent them from leaving (Mills, 1998:123).

In the view above, controlling state borders and who enters the territory is a central principle of sovereignty. Dauvergne (2004) claims, on the other hand, that worldwide regulation of migration is a relative new invention. Dauvergne (2004) argues that migration law, which refers to the domestic law or laws which regulate the entry and stay of foreigners in a state, is transformed into the new last bastion of sovereignty. As globalizing forces challenge and transform sovereignty, the place of migration law in the nation are altered (Dauvergne, 2004:588). According to Dauvergne (2004:588), this challenge leads prosperous and powerful nations[32] to imprint even more strongly than before a sense of "self", a sense of identity and of essential "nation-ness", onto the text of their migration laws.

Dauvergne (2004:589) show how worldwide regulation of migration was an invention of the twentieth century. This means that nation states and the system of international law and sovereignty managed for three centuries without comprehensive migration regulations (Dauvergne, 2004:589). According to Dauvergne (2004:593), there is a discernible trend in which people are more important to sovereignty than they were in the past. Further, this enhanced role for control over people in accounts of sovereignty contributes to an explanation of contemporary migration laws. Dauvergne (2004) looks at how three contemporary migration law phenomena, refugee flows, illegal immigration, and the "international pursuit of the best and brightest migrants", challenges sovereignty.

All in all, Dauvergne (2004) concludes that the Refugee Convention impinges very little on essential sovereignty. There are four reasons for this, the first one being that when a nation commits itself to the Convention it does so as a sovereign act (Dauvergne, 2004:597). The state, or nation to use Dauvergne's term, chooses voluntarily to respect the Conventions provisions, including the implication that some refugees will have permission to remain. The second reason is that nations make legal, public and political efforts to limit the number of people who will be protected under the Refugee Convention (Dauvergne, 2004:597). Third,

[32] Dauvergne (2004) prefer to use the term «nation», rather than «state», because of its emotive rather than political end structural implications. The usage of this term does, however, not have an essential ethnic basis, but rather fits onto the framework of the modern state.

the non-refoulment provision, the only one which affects the nations sovereign capacity to admit or expel anyone except nationals, constrains the nations with the most sovereignty the least. Of potential candidates for refugee status currently in the world, a comparatively small number are in prosperous Western states, and Dauvergne (2004:597) argues that it is primarily in relation to these nations that refugee status is regarded as a somehow unfair advantage, akin to immigration status. It is for these Western nations that the formally equal notion of national sovereignty is most powerfully deployed in a globalized world. The last reason is that prosperous nations, like Canada and Australia, have begun backing away from some of the Conventions provisions without consequences. This leads Dauvergne (2004) to the question of what accounts for the role that refugee matters play in the growing "moral panic" about migration. Dauvergne (2004:598) finds that the answer got two parts. The first is that in the absence of any other constraint in the migration realm, potential protection against refoulement stands as a beacon to "desperate" individuals around the world who might seek to better their life chances. The second is that precisely because sovereignty is increasingly focused on control over population movements, the movement of refugees is much closer to the core of nations understandings of their own essence and power than before (Dauvergne, 2004:598).

Dauvergne (2004) findings related to the Refugee Convention is in contrast to the arguments of Bhabha (1996:3), who writes that "[r]efugees crystalize the conflict between two founding principles of modern society: the belief in universal human rights which inhere all individuals by virtue of their common human dignity, and the sovereignty of nation states". Bhabha (1996) focuses, however, on another aspect of sovereignty than Dauvergne (2004) does. Bhabha (1996) shows how important the origin states sovereignty have been in asylum application cases. All decisions about the relationship between personal identity and national/ethnic origin confront asylum adjudicators with the central paradox of refugee protection: it undermines the ideal of sovereign nation states (by providing non-national protection) while at the same time reinforcing the division of the globe into nation states as a whole (by insisting on the necessity of state protection) (Bhabha, 1996:10). Further, Bhabha (1996:11) points out that the decisions upholding an asylum applicant's claim of persecution may contain culturally arrogant, and even racist, descriptions of the state of origins policies, but on the other hand, judgments that dismiss the asylum application may adopt the language of cultural sensitivity or respect for the state sovereignty as a device for limiting refugee admission numbers. An example is a case from Canadian Refugee Appeals Board, where a

woman and her daughter applied for refugee status on the ground that if the woman returned to China she would be forcibly sterilized, seeing that she had two children. The Board denied the application, with the argument that

> "(…) It [forced sterilization] is not a policy born out of caprice, but out of economic logic (…) The possibility of coercion in the implementation of the policy is not sufficient (…) to make it one of persecution. I do not feel it is my purpose to tell the Chinese government how to run its economic affairs" (Bhabha, 1996:22).

By reasoning that a sovereign state can legitimately resort to such measures as compulsory sterilization the board defined its responsibilities to individual asylum applicants variable standard, determined by the individual's nationality, according to Bhabha (1996:22). In this case, the individual woman's body was considered legitimate site of state control in China, although such control would be considered unlawful in Canada. And, hence, Chinese sovereignty was more important in this case than the rights of the individual.[33]

If we go back to Dauvergne's (2004:598) discussion, illegal immigration is, in contrast to refugees/the Refugee Convention, "an affront to sovereignty because it is evidence that a nation is not in control of its borders". Although it is difficult to be certain that illegal migration is on the increase, as a response to perceived or real growth of illegal migration, and to the increase in smuggling and trafficking that is intertwined with it, the nations of the prosperous worlds are cracking down , according to Dauvergne (2004). Nations assert their "nationness" by cracking down on illegal migration.[34] Legal crackdowns needs to be understood in the context of the threats globalization presents to nation states (Dauvergne, 2004:600). With decreasing capacity in economic policy and trade realms, in military matters and corporate management, cracking down on illegal migration represents a strong assertion of sovereign control. Further, not only does refugees and illegal migrants occupy much of the same space in our collective imagination, but the Refugee Convention provides no right to enter for those who seek to claim refugee status, which means that some people seeking this status enter illegally (Dauvergne, 2004:601). Thus the current crack down on illegal migration cracks down on refugees as well.

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[33] This case was later reversed by the Federal Court of Appeals (Bhabha 1996). Cases concerning fear of forced sterilization if returned to China have varied in outcome in the US and Canada.

[34] And Dauvergne (2004:601) emphasize that it is one of the reasons why the term "nation" brings more to this story than "state", because this "nationness" attunes to both power and identity.

When it comes to "The Best and the Brightest", Dauvergne (2004:604) claims that the challenge that the recruitment of skilled migrants poses to sovereignty is "the structure of the internationalised economy to which they are recruited and the impermanence with which they remain". While this kind of immigration is good politics in receiving states, it's a direct cause of brain drain in less prosperous nations (Dauvergne, 2004:603). Seeing that this kind of migrants were recruited based on their economic value, it is likely that they find themselves admissible to others as well. Further, this makes it harder for those in a marginal situation. Through much of the twentieth century migration mirrored economic goals, this economic migration is not possible any longer since it is now looked upon as "mere economic migrants" or "bogus refugees" (Dauvergne, 2004:604).

McNamara and Gibson (2009) show how ambassadors at the UN, from Pacific island states, resist the category of climate refugees. In this setting climate refugees are explained as "those forced from their homelands because of climate change" (McNamara and Gibson, 2009:475). McNamara and Gibson (2009:480) writes that the ambassadors they interviewed avoided to look at migration as a solution to rising sea level, because this would have sent the message that they had effectively given up on mitigation measures to avert future impacts of climate change. The ambassadors seemed to think that talk of climate refugees is geopolitical damaging to Pacific states. The vision for the future legitimizing the category of climate refugees is based on Pacific islands (as weaker, marginal nations) having to adapt in the most extreme way to problems created by large, polluting nations (rather than those polluting nations curbing their own emission as "the solution"), according to McNamara and Gibson (2009:481). In contrast, Pacific nation ambassadors envision a future as self-determining nation-states, and thus, strongly resist media/policy discourses that legitimize their possible future displacement en masse. In other words, it's not only a question of climate change mitigation, but also a question of sovereignty.

5.2.3 Harm, Responsibility and Sovereignty

Penz (2010), in the context of responsibilities to "climate change refugees", find the focus on the obligation not to harm, and further, when harm is done, the remedial obligation to provide compensation, the most useful focus in the context. With respect to climate change, the "harm" is the damaging consequence of climate change, and where harm is not avoided, compensation is required (Penz, 2010:162). Could the harm responsibility be applied internationally? Sovereignty could be one problem, but according to Penz (2010:162-163) the

principle of state sovereignty was designed to make harm across borders unacceptable. And even though war has certainly not disappeared as a threat to humanity, climate change has come to match it as a "major worldwide threat" (Penz, 2010:163). The reason for climate change "matching" war as a worldwide threat, claims Penz, is not only because of the broad range of impacts, and the possibility of severe impacts, but also the danger of climate-induced environmental conflicts leading to war. To the extent that sovereignty remains a useful protective norm, protection against harm to countries through alteration of the global commons is required for the self-determination and self-government of countries, according to Penz (2010:163). Penz therefore claims that the right to non-interference, the external aspect of sovereignty, now needs to cover human-caused invasion by destructive environmental processes. In this scenario, climate change constitute a violation of an environmentally redefined conception of sovereignty (Penz, 2010:163).

Restitution to harm simply requires living conditions equivalent to those before the damaging climate change events, but whether this is best accomplished by international migration or not is a separate question, according to Penz (2010:164). He adds that only when adaptation in the affected place is impossible or exorbitantly expensive is migration a preferable adaptation option.

In tort law, harm does not have to be intended for it to be considered tortious and thus requiring compensation (Penz, 2010:164-165). And since climate change can be considered as a "colossal, planetary accident", it fits well into the tort law framework, according to Penz (2010:165). One question is whether it is the negligence or whether it is clear causation that makes the harming party responsible. When looking at whether those who have caused and continue to cause climate change acts negligent, a distinction has to be made between those who caused climate change in the past (before the greenhouse effect and the human contributions to its intensification were known), and the more recent past, present and future, following its recognition (Penz, 2010:165). Earlier contributors cannot be deemed to negligent because of the lack of knowledge of the consequences. However, it is not clear at which point it should be treated as negligent. This and other shortcomings can be used as arguments against applying the negligence criterion.

Penz (2010:165) claims that even if damaging behavior should not be deemed negligent it has typically benefited the party with causal responsibility, which is a strong argument for using the application of strict liability. Benefiting from greenhouse-gas-emitting activities applies to all countries, but not equally. Some states have been and continue to be

net beneficiaries of this process and there will be net losers. Stemming from this argument, Penz (2010:166) presents the “benefit criterion” of responsibility and liability as an alternative to the application of the mere causal criterion of strict liability. In this scenario a greenhouse gas emitter is liable if the emitter benefits.

However, both the causal criterion and the benefit criterion runs into certain difficulties if they were to be applied strictly (Penz, 2010:166). Determining what benefits were/are derived from atmosphere-damaging activities would be challenging, and to distinguish what proportion of economic growth is due to production and consumption unrestrained by controls on greenhouse gas emission requires comparing an actual growth with a hypothetical one (Penz, 2010:166). The causal criterion runs into problems when it comes to assess the magnitudes of aggregative impact, there are differences between regions and countries, and what can be wholly attributed to greenhouse gas emission. Further, it would be hard for the poorest and most marginalized states to pursue compensation for climate change damage on a case-by-case basis if the model of tort law were to be made applicable in international law (Penz, 2010:167). This could be seen as an alternative similar to those presented in the next chapter; however, it is included here to give a discussion of the concepts of harm and responsibility. Harm is used as an argument for the alternative presented by Conisbee and Simms (2003) and Byravan and Rajan (2010). Penz, still focusing on harm, propose a somewhat different approach, a global climate change insurance scheme, as a solution, which I will get back to in the next chapter.

In this chapter I have looked at human rights and sovereignty in relation to population movement. In the next chapter I will look closer at some proposed alternatives for helping/protection mechanisms for “climate refugees”, by using this discussion of human rights and sovereignty as a basis for analyzing the alternatives.

Chapter 6 - Alternatives for Protection Mechanisms

In this chapter I will discuss some of the proposed alternatives for protection mechanisms for people who are forced to migrate due to climate change (in some instances also for those who are forced to move due to environmental changes, like Cooper's (1998) proposal).

As chapter 3 shows, climate or environmental disruptions are not included in the definition of a refugee in the Refugee Convention. There are, however, states which have included environmental reasons for protection in their alien acts. Sweden has recognized that complementary protection might be necessary for a person who "is unable to return to the country of origin because of an environmental disaster" (see Swedish Aliens Act 2005:716, 2005:Chapter 4, Section 2). Similar, Finland's Alien Act states that:

> "[a]n alien residing in Finland is issued with a residence permit on the basis of humanitarian protection, if there are no grounds under section 87 or 88 for granting asylum or providing subsidiary protection, but he or she cannot return to his or her country of origin or country of former habitual residence as a result of an environmental catastrophe (…)" (Finlands Aliens Act, 2004:88a).

Further, in Denmark, which don't have an explicit recognition of such displacement in their legislation, there was a presumption from 2001 to 2006 that families with young children should not be returned to Afghanistan due to the draught there (Kolmannskog, 2009:20) . This can be linked to the principle of non-refoulment, included in the Refugee Convention, which states that:

> "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion"(UN General Assembly, 1951:Article 33(1)).

In human right law non-refoulment is an absolute ban on sending a person to places where he/she risks certain rights violation (Kolmannskog, 2009:18). Kolmannskog (2009:19) argues that in some cases one could claim that the *return* itself could constitute the ill treatment and perhaps even torture. He illustrate with an extreme example: "how should we consider a case where a public official leaves a person to cope by himself with hardly any means in the middle of the desert?" (Kolmannskog, 2009:19).

The Aliens Acts of Sweden and Finland is an alternative other states could follow. However, the Swedish law had not been applied by 2009[35] according to Kolmannskog and Myrstad (2009:323). The presented alternatives that follows in this chapter have their focus on an international or regional level, while the Swedish and Finnish is an example of what states can do to respond to people that are unable to return to their homeland due to environmental disruptions. I will first present convention-related alternatives, then move on to regional alternatives, a proposal of proportionate migration, global climate change insurance and community relocation. Every alternative presented will be looked at in relation to human rights and sovereignty.

6.1 Convention-Related Solutions

There are several who argue for the creation of a new convention or implementation of protection of people displaced by climate change into the Refugee Convention or the UNFCCC. Conisbee and Simms (2003) argue for the inclusion of "environmental protection" in the Refugee Convention. Cooper (1998) claims that people fleeing because of climate change already fit definition of refugees and hence should have refugee status. Biermann and Boas (2010) propose a Protocol on Recognition, Protection and Resettlement of Climate Refugees ("Climate Refugee Protocol") to the UNFCCC, while Docherty and Giannini (2009) propose a whole new convention.

6.1.1 Could the Definition of Refugees cover People Migrating Because of the Environment?

There are two obvious ways in which people who migrates due to climate change could be offered protection under the Refugee Convention. The first is to expand the convention, which could be done by adopting an optional protocol, and secondly it is also possible to argue that "climate refugees" already fit the definition in the Refugee Convention.

Delegates at a meeting organized by the government of the Maldives in 2006, including representatives of governments, environmental and humanitarian organizations and UN-agencies, on the issue of protection and resettlement of "climate refugees", proposed an amendment to the Refugee Convention to include "climate refugees" (or "environmental refugees") (see Biermann and Boas, 2008, Renaud et al., 2007).

[35] I have not been able to find any information on whether it has been applied later, and if it has, how many people it have concerned.

Along these lines, Conisbee and Simms (2003) argues that Refugee Convention should be expanded to incorporate a new category of "environmental persecution". Their argument is that the environment can be used as an instrument of harm (Conisbee and Simms, 2003:30). They define harm as intentional when a set of policies is pursued in full knowledge of its damaging consequences. The causes and consequences, who is responsible and who gets hurt, of climate change should now be sufficiently understood. When states increase their emission of greenhouse gases, that is an intentional behavior which will result in "environmental refugees" (Conisbee and Simms, 2003:30). Granting "environmental refugees" status as refugees would provide them with internationally assured protection, independent and separate from the actions of their own governments (Conisbee and Simms, 2003:33). Conisbee and Simms (2003:27) further argue that one should not expect that people will be relocating inside their own home country, and hence be the states responsibility. There are two reasons for this. The first is that the governments of the countries in context might be the direct cause of the displacement, for example in dam projects (environmental), and as such they constitute a poor source of protection. Secondly, the countries themselves, or large parts of them, might disappear or become uninhabitable (Conisbee and Simms, 2003:27). They emphasize that this is not only concerning Pacific island states, but millions of people in Bangladesh, the Philippines, Cambodia, Thailand, Egypt, China and Latin America. If the UNHCR should not manage this transition or inclusion, they argue that a new convention should be written.

Cooper (1998), on the other hand, look closer at the two main elements of the definition in the Refugee Convention, "persecution" and "for reasons of", and claims that environmental refugees do meet the requirements of the 1951 definition of refugees, and they deserve the help and protection that traditional refugees receive.

According to Cooper (1998:501) there is actually a way for environmentally displaced persons to achieve refugee status without expanding the text of the Refugee Convention of 1951. In the first element of the refugee definition, persecution, it is a government's involvement in environmental crises that brings "environmental refugees" within the reach of current international refugee law and provides the strongest argument for stretching the refugee definition to cover their situation (Cooper, 1998:502). Disasters require decisions by governments, and failure to decide or negligent decision-making on the part of a particular set of authorities is common in the face of environmental disasters. When governments are playing such an important role in handling, and the occurrence of, environmental crises,

refugees seeking refuge from the resulting environmental degradation are effectively seeking refuge from their governments as well, Cooper(1998:502) claims. Cooper (1998:519) points to desertification of the African Sahel, the rise of sea level due to global warming, and the Chernobyl disaster as examples of environmental crisis that have generated "environmental refugees" in satisfaction of the persecution requirement for official refugee status under the Refugee Convention. In other words, persecution occurs when government action harms individuals. Wijkman and Timberlake (1984) stresses the role of human agencies in populations vulnerability to disasters, and could support Cooper's claims.

When it comes to the second element, "for reasons of", Cooper (1998:521) argues that the broadest of the five bases of persecution, "social group", is the one people fleeing because of environmental or climate disasters could fit into. She writes that this social group is composed of persons who lack the political power to protect their own environment.

6.1.2 Protocol to the UNFCCC

On the other hand, Biermann and Boas (2010, 2008) propose a "Protocol on the Recognition, Protection and Resettlement of Climate Refugees" [36] to the UNFCCC. They argue that such a protocol could build on the political support from almost all countries as parties to the climate convention (Biermann and Boas, 2008:12). It could draw on widely agreed principles such as common but differentiated responsibilities, and it could aid climate refugees by linking their protection with the overall climate regime, including future advances in climate science in defining risks for people in certain regions.

They first address five core principles which a separate regime for the recognition, protection, and resettlement of "climate refugees" must build on (Biermann and Boas, 2010:75). The first is the "Principle of Planned Re-location and Resettlement". It is argued that the governance of "climate refugees" can be better organized and planned than in the case of victims of political turmoil or war, and can be carried out in planned, voluntary relocation and resettlement programs (Biermann and Boas, 2010:75). Thus, the core of a regime on "climate refugees" is not focused on programs on emergency response and disaster relief, but rather on planned and voluntary resettlement over longer periods of time. The second principle is the "Principle of Resettlement Instead of Temporary Asylum", the argument being

[36] They define "climate refugees" as "people who have to leave their habitats, immediately or in the near future, because of sudden or gradual alterations in their natural environment related to at least one of three impacts of climate change: sea-level rise, extreme weather events, and drought and water scarcity" (Biermann and Boas, 2010). See chapter 4.

that in the long term most "climate refugees", and especially the victims of sea-level rise, will not be able to return to their homes (Biermann and Boas, 2010:75). Therefore, the instrument (the proposed protocol) must recognize (most) "climate refugees" as permanent immigrants to the countries that accept them. The third is the "Principle of Collective Rights for Local Populations". Biermann and Boas (2010:75-76) argues that a "climate refugee regime", would need to be focused on collectives of people, such as populations of certain villages, cities, regions, provinces or of entire nations, as in the case of small island states. The fourth is the "Principle of International Assistance of Domestic Measures". Since "climate refugees" in principle is protected by their own state, and since climate change impacts will affect only part of a country in many cases, an international regime will have the main focus on supporting governments, local communities, and support to protect people within their own country (Biermann and Boas, 2010:76). The challenge of protecting and resettling "climate refugees" is therefore fundamentally about international assistance and funding for the domestic support and resettlement programs of affected countries that have requested such support (Biermann and Boas, 2010:76). The last one is the "Principle of International Burden-sharing". Climate change is a global problem, but the industrialized countries bear most of the moral responsibilities for its victims (Biermann and Boas, 2010:76).

Theoretically, Biermann and Boas (2010:76) writes, governments could agree on a new treaty based on these principles. However, they argue that an independent convention could require a lengthy negotiation process on core principle and would weaken the link with the climate policy process and its particular agreements on equity, responsibility, and international cooperation. A protocol to the UNFCCC would, on the other hand, garner support more easily from state parties to the convention.

When it comes to procedural operationalization, Biermann and Boas (2010:77) argues that the protocol could provide for an executive committee on the recognition, protection and resettlement of "climate refugees". Such a committee could function under the authority of the Conference of the Parties to the UNFCCC. This executive committee would maintain a list of administrative areas (such as villages, islands, districts) under the jurisdiction of member states whose population is determined to be in need of relocation or threatened by having to relocate (Biermann and Boas, 2010:77).

Further, dealing with the resettlement of a large number of "climate refugees" will require not only a new legal regime, but also one or several international agencies to deal with this task (Biermann and Boas, 2010:79). Biermann and Boas (2010:79) look to UNDP, the

World Bank, UNEP and UNHCR for help with this. When it comes to funding, they argue that the best option appears to be the creation of an separate regime for the financing of the protection of "climate refugees", such as a "Climate Refugee Protection and Resettlement Fund" (Biermann and Boas, 2010:81).

6.1.3 A New Convention

Another suggested proposal is a new convention. Docherty and Giannini (2009) start by laying out a "climate change refugee instrument", this has nine components, divided in three categories. The first category is "Guarantees of Assistance": the keys here are standards for "climate change refugee"[37] status determination, human rights protection and humanitarian aid. The instrument should guarantee basic assistance for the class of people that it defines, it should ensure both that "climate change refugees" receive human rights protection as they move from one state to another and that their essential humanitarian needs are met (Docherty and Giannini, 2009:373).

The next category is "Shared Responsibility", this include host state responsibility, home state responsibility and international cooperation and assistance. Host states should bear the primary burden of implementing guarantees, since "refugees" relocate to host states. Home states should in particular focus on preventing or preparing for climate-induced migration which "flows" from their territory (Docherty and Giannini, 2009:379). The rest of the international community should support these efforts through obligatory in-kind or financial assistance proportional to states' contribution to climate change and capacity to pay.

The last category, "Administration of the Instrument", includes a global fund, a coordinating agency and a body of scientific experts. The global fund should collect and distribute financial assistance, the coordinating agency should help oversee human rights protection and humanitarian aid programs, and the body of scientific experts should make determinations related to the instrument's definition and the division of financial responsibility (Docherty and Giannini, 2009:384).

Further, Docherty and Giannini (2009:391) claims that the current regimes, the Refugee Convention and the UNFCCC, was not created for the purpose of protecting this kind of migration/displacement and sometimes clash with some of the essential components of the

[37] Docherty and Giannini (2009) defines "climate change refugee" as "an individual who is forced to flee his or her home and to relocate temporarily or permanently across a national boundary as the result of sudden or gradual environmental disruption that is consistent with climate change and to which humans more likely than not contributed". See chapter 4.

"climate change refugee" instrument that they outlined. Instead of trying to fit the instruments into already existing conventions they argue for the creation of a new convention, specially targeted on migration/displacement due to climate change. A convention devoted to "climate change refugees" offers several advantages over protocols to existing instruments, according to Docherty and Giannini (2009:392). A new treaty would stress that this emerging problem deserves serious attention independent of other framework. It would establish that this problem is a multidisciplinary one that needs to blend different legal and normative principles, in doing so it would maximize the availability of tools for crafting a solution to this complex situation. Creating an independent treaty requires a new process that offers opportunities to promote, and benefit from, the involvement of civil society and affected communities (Docherty and Giannini, 2009:392).

Docherty and Giannini (2009:400) admits that there might be some reluctance to develop a new treaty given the existence of two seemingly relevant conventions. However, they still claim that there are good reasons to believe that states, as well as civil society and affected communities, will embrace an international instrument. States directly affected by a "climate change refugee" situation would receive assistance to address it, and host states would benefit from support for implementation of human rights protection and humanitarian aid, for which they would not be eligible if they were not party to the treaty (Docherty and Giannini, 2009:400). Host countries will, treaty or not, be unable to halt migration because refugees and migrants have historically found ways to cross borders despite state efforts to stop them (Docherty and Giannini, 2009:400-401). A convention like this will provide assistance for both remedial and preventive measures, and sufficient prevention might even avert refugee flows and hence keep communities intact, which further would preserve exposed or vulnerable states' cultural and in some cases national integrity (Docherty and Giannini, 2009:401). For states that are not that vulnerable to climate change, humanitarian needs might be a motivation for signing such a convention. Given the close link between economic growth and emission reduction, it might be easier to come to a conclusion or agreement about humanitarian assistance than it has been to do the same about emission. Further, it might be easier to get states to ratify a convention that emphasizing assisting vulnerable states with preventing flows of refugees, rather than to take in refugees themselves (Docherty and Giannini, 2009:401).

6.1.4 Is Convention-Related Alternatives Workable Solutions?

So far I have considered three convention-related alternatives. However, one may ask if these are workable solutions. Biermann and Boas (2010:74) argues that "climate refugees" requires a different kind of protection than "traditional refugees". Climate-related migration can be planned and organized, and unlike the political or religious persecution faced by "traditional refugees" this migration can be coordinated with the support of their governments and public agencies. It would also be hard to get state parties to the Refugee Convention to agree to this inclusion. The problem of "climate refugees" is at its core a problem of development policy (Biermann and Boas, 2010:74). Warner (2010:404) argues that even if the Refugee Convention were expanded to include "climate refugees", the institutions that currently address asylum issues would not be sufficiently equipped to manage the issue. In the context of population movement due to climate or environmental stressors a wider range of issues including disaster risk management, development, natural resource management, and social policy will be needed to address the needs of those migrating.

Coopers (1998) argument does not receive much support either. Williams (2008:508) admit that the argument might have some academic merit, but emphasize that the situation the Refugee Convention were created for and the situation in the context of environmental or climate induced disasters will be quite different from each other. Even though government involvement in environmental crises might lead to claims of contributory negligence or liability in respect of the refugee issue, it remains unlikely that such behavior could be equated to and categorized with traditional legal notions of persecution provided for by the Refugee Convention, Williams (2008:508) argues. As shown above, Docherty and Giannini (2009:391) argues that the Refugee Convention was not created for migration/displacement due to climate or environmental changes. And while they see positive features of implementing climate or environmental issues in the already existing framework of the Refugee Convention, they argue that this framework is too restrictive to embrace the essential components of the "climate change refugee instrument" they set out. In this sense, Docherty and Giannini's argument is more in the context of their own presented alternative, than in the context of Cooper's claim.

Kolmannskog (2008:25) emphasize that persecution itself cannot define the social group and that such interpretation of the "generally underexplored and unclear 'social group'

ground is highly controversial".[38] Cooper (1998:522) also take this in to account, but claims that persons lacking the political power to protect their environment constitute a concrete social group even outside of the 1951 refugee definition.

A new protocol or a new convention will in theory pose no greater threat to sovereignty than any other convention or protocol. If we are to follow Krasner (1999:125), conventions can be inconsistent with what he refer to as Westphalian Sovereignty, however, he also emphasize that Westphalian Sovereignty has never been an absolute principle in practice. Including people fleeing from environmental or climate disasters in the already existing framework of the Refugee Convention might, on the other hand, lead states to protest on the ground that it is a breach with sovereignty. One of the reasons for Dauvergne (2004:597) to argue that the Refugee Convention does not impinge on state sovereignty is that states make efforts, legally, publicly and politically, to limit the number of people who will be protected under the convention. If the Convention where to include an even greater number of people, it is not far-fetched to assume that states party to the Convention will oppose this. In theory, Cooper's proposal does not mean that it will be a new group included in the Refugee Convention, she rather argue that there is a group of people who have the right to protection under this convention. However, in practice it would probably be perceived as giving rights to a new group, and this might be hard for state parties to accept.

A convention or protocol dealing with climate change and displacement, although supposed to be an alternative to implementing this aspect in the Refugee Convention, would probably be similar to the Refugee Convention than any of the other human rights conventions. Both alternatives open up for people migrating/fleeing across borders, but in the end, the states themselves chose whether they would sign and ratify protocols and conventions, the decision is a sovereign act as pointed out by Dauvergne (2004:597).

When it comes to human rights, a protocol or a convention could fill a legal gap and give protection to people displaced due to climate change. Biermann and Boas (2010:75-76) argues that a "climate refugee regime" would need to be focused on collectives of people, such as populations of certain villages, cities, regions, provinces or of entire nations, as in the case of small island states. This would be a marked difference from many of the other UN-conventions on human rights, which mainly focuses on individual rights. The Refugee

[38] For more discussion of "social group" in the Refugee Convention and environmental disruptions see for example Kozoll (2004). For a more general discussion on "social group" in the Refugee Convention, see for example Goodwin-Gill and McAdam (2007) and Parish (1992).

Convention applies to persons, not people.[39] That is not to say that collective human rights is unusual, newly independent African countries in the aftermath of decolonization framed human rights as "peoples" right rather than individual rights (DeLaet, 2006:78). Further, the right to self-determination as set out in the International Covenant on Civil and Political Rights (UN General Assembly, 1966a) and the International Covenant on Economic, Social, and Cultural Rights (UN General Assembly, 1966b) is a collective right. There are good arguments for the use of both collective and individual rights (for a discussion, see DeLaet, 2006:80-81), and according to DeLaet (2006:80) it all boils down to how to protect the rights the best; by prioritizing individual rights first or by ensuring basic rights protections for groups. Linking climate change and migration to collective rights makes sense seeing that whole villages, regions and in some instances nations are likely to be affected, their right to self-determination states that "all peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development" (see UN General Assembly, 1966b:Article 1, UN General Assembly, 1966a:Article 1). According to DeLaet (2006:82) the placement of this right, in the beginning of these treaties, separate from and prior to the other human rights, indicate the great importance states attach to this right. Further, the right to self-determination receive such a prominence because states must be able to realize this collective right in order to promote and protect basic rights (DeLaet, 2010:82).

How effective a protocol or convention would be in enforcing those rights is another question. If we go back to Dauvergne's claim that states take action to limit the people protected under the Refugee Convention, it might be assumed that there may be a danger for seeing the same trend in relation to a new protocol or convention as well. After all, if we follow Dauvergne's (2004) argument about Western states cracking down on both refugees and "illegal migration", which occupy the same space in the collective imagination, then it will be logic to assume that "climate change refugees" will be a part of that collective imagination as well. This brings us to the question of whether states will ratify such a protocol or convention or not.

Hugo (2010) argues that provision for the protection of and providing assistance to "climate change-forced migrants" through a treaty or convention is a worthy and useful long

[39] However, one of the reason for refugee status is persecution based on membership of a "social group".

and medium-term goal.[40] In the short term, Hugo (2010:31) claims, there will appear to be significant barriers to the formulation and widespread acceptance of such a treaty or convention. The reason for this includes that there are considerable difficulty in identifying "climate changed-forced migrants" and separating them from other migrants, and hence establishing their status, it's politically unlikely that destination countries will open up another category (the first being refugees under the Refugee Convention) for those seeking asylum. The countries of the Asia-Pacific region have not been among the most ready to sign key international migrant instruments (Hugo, 2010:31). Hugo (2010:31-33) emphasize the importance of the search for an international treaty on "climate change-forced migrants" as a medium to long-term goal, but in the short and medium-term it is important to find ways to assist people who are (or who are likely to become) displaced. Williams (2008:518) also argue that it would be hard to garner support for a new international agreement. She claims that at present it would be unlikely that states would agree to a globally binding treaty that requires recognition of the existence of climate change displacement and that depends upon agreement to provide support and protection to those affected. The reason for this is the "general reluctance of states to voluntarily commit to obligations that may impact on economic, social, and political policy" (Williams, 2008:518). And as shown in chapter 5 Hathaway (2007) argues that states with robust domestic politics might be reluctant to ratify conventions, seeing that they can make a difference.

What is important to keep in mind is that the protocol proposed by Biermann and Boas (2010) and the convention proposed by Docherty and Giannini (2009) is not only focused on cross-border migration. They emphasize that in many cases people will migrate, or need assistance, inside their own country. Helping people that are still located inside their home states territory might be easier for Western states to agree to, as Docherty and Giannini (2009:401) points out. While 87 percent of those asked in a survey in 2010 was positive to Norwegian development aid (Wilhelmsen, 2011), another survey from 2011 shows that 44 percent of the asked believes that it should be harder for refugees and asylum seekers to get permission to be granted residence in Norway (SSB, 2012). Although these numbers cannot be generalized to other Western countries, and it is the politicians, not the general population, that makes these kind of decisions, it still gives us an idea of the Norwegian populations attitudes. In this context it's possible that the ratification of a protocol or convention that

[40] Hugo (2010) uses Burton and Hodgkinson (2009) draft treaty for people displaced by climate change as an example, but the critique is on more general on the making of a new convention/treaty.

opens up for helping people in their homelands will have more support than a protocol or convention that only focuses on external migration.

6.2 Regional Alternatives

There are also those who favor regional alternatives, based on existing networks between states. Both Williams (2008) and Hugo (2010) emphasize that an international convention could be the result of these agreements, but they both claim that the first step is to use existing frameworks.

6.2.1 Regional Agreements

Williams (2008) propose an alternative where a regional system of collaboration rather than an international agreement is favored. Williams (2008:517) see two issues with creating a new international agreement. The first one is a sovereignty issue,

> "[t]he notion of attributing international rights and responsibilities in respect of displaced persons cuts to the very heart of state sovereignty and thus would likely prove a contentious issue upon which to achieve universal (or as close to universal so as to make worthwhile) agreement" (Williams, 2008:517).

Williams points to the solution proposed by Byravan and Rajan (2006)[41] as an example of such an international agreement, and argues that when taking into consideration the unwillingness of states to compromise their sovereignty and recognizing the reluctance of the United States to agree to the most basic of commitments in the Kyoto Protocol, it would seem unlikely that a new global agreement could be reached specifically in relation to climate change displacement (Williams, 2008:517). The second reason is related to the conceptualization of "climate change refugees". Although it might be possible to identify displacement as a direct result of climate change, attempts to conclude a new international agreement on "climate change refugees" would be problematic given the present international legal terminology that distinguishes between transborder (refugees) and internal displacement (IDPs) (Williams, 2008:517).

Therefore, Williams (2008:518) suggest that an alternative system for addressing the plight of those displaced by climate change may be better coordinated by regional agreements, operating under an international umbrella framework. Regional cooperation and

[41] Which will be presented later in this chapter.

bilateral agreement building on existing geopolitical and economic relationships and that allow states to create responsive policies in a timeframe appropriate to the relative capacity of the countries involved, appears a model better suited to climate change displacement, Williams (2008:518) argues. Regional agreements are more likely to be able to achieve a greater level of commitment from participating states than might otherwise be achieved at the international level. Williams (2008:518) argues that this was demonstrated when refugee terminology was drafted so as to conceivably extend to "environmental refugees" in regional agreements for both Africa and Central America. However, as discussed in chapter 3, the the OAU convention and the American Cartagena declaration does not specific mention "environmental refugees". Williams (2008:518) further argue that the use of regional initiatives is already commonplace within the international legal system and regional and international agreements are used to complement and strengthen one another. An example is the Regional Seas Programme which operates under the United Nations Law of the Sea Convention.

The regional agreements on "climate change refugees" can be put into frames of already existing regional agreements, such as the African Union, the Organization of American States, and the European Union (Williams, 2008:520-521). Regional agreements could also be enforced where no regional organization currently exists, but where the evidence of strong regional cooperation is apparent, like the South Pacific. Whether inside the frames of already existing regional organizations or where inside areas where regional cooperation is existing, this would allow states to deal with climate change displacement specifically in that region (Williams, 2008:521).

Williams (2008:521) see several possible advantages with regional agreements. The first one is that such a structure represents an opportunity to further implement the framework on IDPs into discussion on climate displacement. Second, a structure where good practice can be demonstrated and exchanged between regional groups can be established, gives states the opportunity to both demonstrate new initiatives and to analyze how programs are operating in other regions (Williams, 2008:521). Third, a regional agreement could easier take into account the individual capacity of each state involved and the severity of the problem in that area. And, finally, in the long term, the conclusion and acceptance of various regional agreements might lead to the creation of customary international law (Williams, 2008:521-522).

As discussed in chapter 4, Williams (2008:522) leaves the regional associations with the responsibility of concluding on a definition or understanding of the term "climate change refugee". However, Williams argue that it still would be possible to propose one definitional approach that allows for a certain degree of flexibility. This could be secured by a continuum, where climate change refugees are identified along a graduating scale that allow for differing degrees of protection to be accorded depending on the severity of the situation (Williams, 2008:522). Williams (2008:503) emphasize that it is not within the scope of the article to address issues of responsibility or specific rights and entitlements within the proposed framework.

6.2.2 Modification of Existing Migration Networks

On the other hand, Hugo (2010) focuses on migration in the Asia-Pacific region, arguing that no region of the world is expected to be affected more by climate change than this region, and at the same time countries of the Asia-Pacific region have not been among the most ready to sign international migration instrument.

The first strategy that needs to be initiated, according to Hugo (2010:33), is to accommodate climate change-related migration as far as possible within existing international migration mechanisms. According to Hugo (2010:33), this option have several advantages: it is immediately available to "climate change-forced migrants", since the migration visa category already exist; it overcomes the manifest suspicion of host/destination country governments and societies towards existing, and expanded, refugees categories; there is no need to set up new institutions, structures and mechanisms; many states have a number of different categories for migration which provide a range of ways which people displaced by climate change could be accommodated; and it would be possible to make use of existing migration networks (where they exist) to facilitate migration and to assist settlement at the destination. As an example he points to New Zealand, that have a range of temporary and permanent migration categories, which could provide some corridors for Pacific Islanders forced to migrate as a result of climate change. New Zealand have both permanent settlement schemes, included in the New Zealand Immigration Program (NZIP), and temporary migration schemes (Hugo, 2010:34). The first category include, among others, skilled migrants and business immigrants, "Pacific Access Category" (which is an annual quota of settler selected from Tonga, Tuvalu, Kiribati and Fiji), and international humanitarian migration (Refugee Convention) (Hugo, 2010:34). The temporary options includes a "Work

Permit Scheme", which allows New Zealand employers to recruit temporary workers from overseas, and "Recognized Seasonal Employer (RSE) Scheme", which allows agricultural employers to bring in workers for an agricultural season (Hugo, 2010:34).

For example, the RSE-Scheme allows temporary work immigration from several of the Pacific islands. Each year it allows 8000 seasonal workers to come to New Zealand and work for 7 months during a 11 month period, and employers can request the same workers to return for more than one season (Thornton, 2011:85). While all Pacific Island states are eligible to participate, the implementation of the RSE scheme varies between countries, with the terms for each set out in inter-agency understandings, usually between the New Zealand Department of Labour and the respective ministry of labor in the island state (Thornton, 2011:86). This scheme has had mixed results, with New Zealand being the biggest benefiter, and Thornton (2011:86) points out that if migration was to aid the development of adaptive capacity to climate change in the Pacific island states, then the development component of the RSE scheme will probably have to be employed with greater care. Thornton (2011:88) lay out measures to consider to make this agreements more fit for coping with climate change and migration. It will be important to ensure maximum uptake, by proactively identify skills and attributes of sending states workers that are in demand in destination labor markets, and by providing opportunities for training of migrants to match the destination labor markets demands (Thornton, 2011:88). Further, to decrease vulnerability it should be facilitated for labor migration from places most vulnerable to climate change, the flows of remittances and return migration should be facilitated through channels that ensure that they assist with climate change adaptation goals, and it should be recognized that labor migration might have a positive influence on adaptive capacity to climate change in sending states by helping to enhance human, social and financial capital (Thornton, 2011:88). Some mechanisms must be improved, like the development of appropriate transport links and immigration procedures that facilitate migrants travel to destination labor markets, the establishment of regional cooperation mechanisms and the establishment of appropriate governance and regulatory systems in both sending and receiving states (Thornton, 2011:88). Thornton (2011:88) argues that if these measures are implemented migration might influence positively on the quality of life for many individuals, families and communities. It might permit more people to stay longer, "whilst facilitating the gradual expansion of communities and network abroad, aiding necessary eventual permanent relocation and adaptation to a new culture" (Thornton 2011:88).

While the visa categories available at present in countries like Australia and New Zealand, are not necessarily easily available to “climate change-forced migrants”, they can be made so with relatively little change, according to Hugo (2010:33). The bottom line is that such modification of existing channels of migration is a more achievable immediate objective than the introduction of a new migration regime.

6.2.3 Is Regional Alternatives a Workable Solution?

Although a convention, treaty or protocol on climate change and migration would not interfere more or less with sovereignty than other conventions, treaties or protocols, Williams (2008) have a point when arguing that it could be hard to garner support for a new international agreement. Seeing that the United States are unwilling to agree to the most basic agreements in the Kyoto Protocol, while Canada announced its withdrawal from the protocol in December 2011, it might be hard getting states to actually sign and ratify an international agreement on climate change and migration.

However, even on a regional level there might be fear of loss of sovereignty, or unwillingness to cooperate. Gain and Bari (2007) show how the conflict between India and Bangladesh is illustrated with a 2,5 meter high and 2,100 mile (about 3380 kilometers) long iron border fence, and arguing that previous migration from Bangladesh to India has been a factor in violence in the region. India has not ratified the Refugee Convention, has a large population, and according to NRC (Haldorsen, 2011) there were perceived to be almost 1,5 million newly internally displaced in 2010 due to natural disaster (including both environmental disasters and climate disasters). How would a regional agreement be shaped when both India and Bangladesh faces difficulties relating to environmental and climate change?

There might be needed a lot of modifications in already existing institutions in the Asia-Pacific region if they are to fit people migrating because of climate change as Hugo (2010) propose. Warner (2010:404) argues that in the current governance structure, the country interests (and especially the interests of industrialized countries) and the implicit system of mutuality in international negotiations “provides few incentives for active leadership in reshaping governance for human mobility and environmental change”. There are several laws, norms and recommendations established by the International Labor Organization (ILO) and other organizations to protect migrants who are workers. However, as

Warner (2010:404) points out, member states to the ILO, and especially destination states, have not widely subscribed to such conventions.

Further, throughout the 1990s, Australia's earlier pro-climate change stance began to weaken, so much that by the late 1990 Australia was refusing to ratify the Kyoto Protocol (Barnett and Campell, 2010:107). All in all, the years of the Howard government in Australia, from 1996 to 2007, were notable for the unwillingness of the Australian government to take any action on climate change, and there was even reluctance to admit that climate change was a problem, according to Barnett and Campell (2010:107). When Australia announced its Pacific Seasonal Workers Scheme, similar to New Zealand's RSE-Scheme, there had been a shift in politics. With the election of the Australian Labour Party in 2007 Kevin Rudd, the new Prime Minister, ratified the Kyoto Protocol at COP13 in Bali, as he promised in the campaign (Barnett and Campell, 2010:108). Despite the change in politics there were much discussion about the consequences of implementing seasonal employment schemes. And some of the objections to these kinds of schemes, for example fears of overstaying or "stealing" Australian jobs, gained significant media attention (Mares, 2007).

At the other hand, it would probably be easier to modify existing agreements and institution, than creating new ones. After its announcement in 2008 the implementation went slow, however, the scheme seems to be perceived positive in the Pacific island states, according to Ritchie (2009). Ritchie (2009:17) argues that a strong reason for this is that a season work scheme is a significant mark of Australia's willingness to engage in a mutually responsive manner with the region. Further, it is hoped that an engaged Australia will be more likely to be there to assist Pacific island states if they face severe economic and environmental challenges (Ritchie, 2009:17). However, what Australia's politics in the 1990s and 2000s shows is how fast the political climate can change, and further, how important the timing will be when trying to modify these already existing institutions.

6.3 Proportionate Migration

Another proposal is by Byravan and Rajan (2006, 2009, 2010) who propose that people living in regions/areas that are likely to be uninhabitable due to climate change should have the option of migrating to other countries, in numbers roughly proportionate to the host countries' cumulative greenhouse gas emission. What is interesting is that they recommend that an international treaty begin to address this issue so that climate migrants and *future* climate

exiles[42] will be able to find homes well in *advance* of the actual emergency (Byravan and Rajan, 2010:242). They argue that the alternative, to ignore potential victims until after they become "environmental refugees", is morally indefensible as well as impractical. Byravan and Rajan's (2010:243) essential argument is that humanity carries a special obligation to "present and future generations of people whose homes, means of livelihood and memberships in states will be lost specifically as a result of sea-level rise caused by climate change".

Their fundamental argument is that "humanity carries a special obligation to present and future generations of people whose homes, means of livelihood, and membership in states will be lost specifically as a result of sea-level rise caused by climate change" (Byravan and Rajan, 2010). They draw upon the principle of intergenerational equity, which they explains as meaning that each generation is collectively responsible for protecting and using natural resources in a sustainable manner so that future generations are not unduly harmed by their present misuse (Byravan and Rajan, 2010:243).

6.3.1 Is Proportionate Migration a Workable Solution?

McAdam and Saul (2010:14-15) criticize this alternative for not accounting for the complexity of contributory causes in any given displacement solution, and ignoring the role of intervening factors and other human actors in determining how the effects of climate change manifest themselves in a particular place. Further, they claim that "such a blunt approach" is unlikely to garner genuine political support (McAdam and Saul, 2010:15). Byravan and Rajan (2009) tries to change this, by encouraging the US to be the one to initiate this. They write that "[c]limate migrants and exiles pose a unique challenge that requires a special international strategy, which only the United States, with its well-established and transparent regimes for legal immigration, has the experience and capacity to develop" (Byravan and Rajan, 2009:19). They might have a point; the US could have the experience and capacity to develop such a strategy. However, as argued above in relation to regional agreements, it would be unlikely that the US would agree, not to mention initiate, such a strategy, seeing that the US has been unwilling to agree to the most basic agreements in the Kyoto Protocol. And, further, although the Refugee Act of 1980 incorporates the basic terms of the Refugee

[42] Definition of «climate migrants» and «climate exiles»: "the victims of SLR [sea level rise] attributed to climate change. The former [climate migrants] includes all those who are displaced because of the effects of climate change, while the latter [climate exiles] refers to a special category of climate migrants who will have lost their ability to remain well-functioning members of political societies in their countries, often through no fault of their own (…) while most climate migrants will be internally displaced people, or have the opportunity of returning to their countries or regions of origin if adequate adaptation measures were taken, climate exiles will be forced to become permanently stateless in the absence of other remedies" (Byravan and Rajan 2010:242-243).

Conventions refugee definition (Fullerton, 1993:513), the US have not ratified the Refugee Convention (Globalis, 2012b).

Another immediate visible problem is that Byravan and Rajan (2006, 2009, 2010) leaves the details of *who* should be considered for immigration rights, *which* countries should absorb exiles, *how* the rights could be exercised, *how* and *whethe*r internal displacement needs to be considered as part of the international treaty and *what* institution should established to reduce the risks of massive humanitarian crisis as climate impacts become more severe, to the international society. This is understandable, as it is most likely not something that can be solved by one paper, but it is also unlikely that it could be solved as an agreement between states in the near future.

Further, this could be seen as a threat to states sovereignty. The wishes of the states in danger of being severely affected by climate change are not accounted for. Climate exiles should have the right to at least a limited menu of to where they wish to resettle (Byravan and Rajan, 2010:253), but what about the state who wishes to continue functioning as a state? Byravan and Rajan (2010:252) claims that the

> "climate exiles will be stateless persons, individuals who are stripped for rights, but what is exceptional with them is that this will be a permanent condition (…) since the original state *and* its territory will either no longer exist or will be rendered unviable for all practical purposes" (italics in original).

However, as discussed in chapter 5 it still remains unclear whether people who lose their state because of climate change, such as citizens on "sinking" island states, will be considered stateless, since the Convention Relating to the Status of Stateless People don't include de facto statelessness. But, as McAdam (2010a:120) argues, the people concerned might be considered as stateless by the UNHCR. UNHCR (2009) argues that the population in this extreme scenario would be likely to find themselves in a situation that is similar to a situation where the statehood have ceased.

As discussed in chapter 5, Paskal (2007) point out that legally speaking a country's ocean territory is determined by its land territory, as set out in the UNs Convention on the Law of the Sea (UN General Assembly, 1982). Meaning that legally speaking there will be no territory should all the island and atolls of an island state actually sink, this further breaks with the crucial link between statehood and territory (see McAdam, 2010a:112). However, as McAdam (2010a:128) emphasize, state practice suggest that there is likely to be a

presumption of a state's continuity for a while, even after the legal indicia of statehood wanes. Although she argues that this will probably change after a while, and states might gradually withdraw their recognition of a state, it is not said when this will happen.

Further, when linked to human rights, one could claim, as McAdam and Saul (2010:9) does, that the fundamental right to self-determination is threatened. A breach of the link between people and the state makes it difficult to maintain the standards of popular self-determination.[43] The continuing for sovereign states to be sovereign is not considered in Byravan and Rajans proposal, and there is a chance that sovereign states which are likely to be affected by climate change would be skeptic to this alternative.

On the other hand, this proposal represents an alternative in which humans are more important than states. That Byravan and Rajan open up for people being relocated before the island states "disappear", should they "disappear", is only logical seeing that it would be unreasonable to demand that people should wait until *after* the island is no longer inhabitable. As discussed in chapter 5 in relation to governments in exile, most of the population would probably already have left before the situation becomes this emergent.

6.4 Global Climate Change Insurance

Penz (2010) proposes a global climate change insurance scheme. A global climate change insurance would be an inter-state system providing compensation to affected states for climate-related damage (Penz, 2010:167). The insurance pay outs in this scenario would be for different kinds of adaptation measures, not only migration. All adaptation projects should be assessed and approved on the basis of appropriate analysis that take account of harm, risks, cost and benefits (Penz, 2010:170). When the adaptation strategy is migration, Penz envision differences between external migration and internal migration. Internal, funds may go to migrants themselves, to migrant-receiving communities for their accommodation, to resettlement projects and to expand urban infrastructure to absorb additional people moving into cities without making condition worse (Penz, 2010:170). When it comes to cross-border migration, Penz (2010:171) emphasize that the funds may need to go to receiving states, both as an incentive to accept migrants and as compensation for expenses incurred in accommodating and integrating them.

The level of the premiums that each state would have to pay to the scheme would be based on the predictions of periodic payouts, and further, past emission (Penz, 2010:167-168).

[43] See chapter 5.

An initial fund could also be established on the basis of an assessment of past emission. In this scenario, levies for the initial fund would need to be determined on the basis of a formula that take the following considerations into account: 1) The global ecosystem's absorptive capacity (atmosphere, oceans, forests) already used up by the past emissions of particular countries; and 2) The period of ignorance about climate change (the negligence criterion, see chapter 5), counterbalanced by the benefits obtained from relatively unrestrained emission during this earlier period (the benefit criterion, see chapter 5) (Penz, 2010:168).

The payouts should be for the costs of adaptation to deal with climate change damage (Penz, 2010:168). This could, however, be complicated by the fact that adaptation not only is reactive to specific harmful events, but also preventive and therefore anticipatory. Further, slow-onset or gradual disasters require action to be anticipatory as well as reactive. Determining to what extent preventive adaptation is legitimate and warranted will involve considerable discretion, but Penz (2010:168) claims that inserting staff with appropriate expertise and professional impartiality between claimant states and payer states will serve to contain conflict over such discretion.

Another significant issue would probably be to determine what is due to climate change and what to treat as due to other causes. However, Penz (2010:168) argues that this distinction should not be taken to strict, and that even in the absence of climate change, there is a strong case to be made for global insurance against natural or environmental disasters. When in doubt the scheme should focus on the side of inclusion rather than exclusion of disastrous events and compensation for them (Penz, 2010:168).

Another problem that Penz (2010:170) point to is that a global insurance scheme could create incentives for corruption on the part of irresponsible governments, and further create a dilemma in a system of sovereign states. However, conditions that involves a certain compromise with sovereignty already exists in international agreements, treaties and institutional memberships. Sovereign states agree to enter such arrangements, and they enter them with all the conditions that they involve and these constrain future actions by the states (Penz, 2010:170). Based on this, and the increasingly accepted doctrine of sovereignty as responsibility, in addition to the doctrine of sovereignty as right, Penz (2010:170) argues that it is not inappropriate for participation in the global insurance scheme to require accountability of how funds are spent and how closely they conform to the objective of genuine adaptation measures that save lives and livelihoods. Accountability and correlative

monitoring by the global insurance agency could deter both corruption and prevent major incompetence.

According to Penz (2010:168-169), this insurance approach has the advantageous features of the tort-based approach, while at the same time avoiding some of the difficulties of it. The insurance approach provides for corrective justice and compensation to countries harmed by climate change, as an tort-based approach also would have done, but the advantage of the insurance approach is the avoidance of expensive litigations and the complicated assessment of complicated causal links (Penz, 2010:169). Such avoidance of costs not only contributes to global efficiency, but also avoids that states with limited resources have to incur additional costs to finance litigation under the tort model and risk losing.

6.4.1 Is a Global Climate Change Insurance a Workable Solution?

Pnez (2010) focus on sovereignty is far greater than many of the other alternatives to protection or adaptation strategies. Penz could be right in claiming that this insurance scheme does not seem to pose greater threat to sovereignty than other international agreements, however, treaties, convention and other international agreements often lack the control mechanism that this insurance scheme proposes. Conventions to the UN often lack control mechanisms all together, but in some instances optional protocols gives the opportunity to individual complaint procedure.[44] In this sense the proposed insurance scheme might be closer to the International Criminal Court (ICC) when it comes to sovereignty issues. The Rome Statute gives the ICC jurisdiction to investigate and try individuals accused of serious war crimes, crimes against humanity, and genocide. In 2009 and 2010 the ICC issued arrest warrants for the sitting Sudanese leader al-Bashir, the warrant included among other the accusation of genocide, despite the fact that Sudan was not a member state of the ICC (Human Rights Watch, 2010). The question to consider in that case is whether human rights are more important than sovereignty. Further, even though ICC has 120 member states there are still a lot of states that are not members, and non-member states includes influential states like the US, India and China. How to get these states, and states with high degree of emission

[44] Examples of conventions in international law which contain rights of individual complaints procedure (or has adopted an optional protocol that includes this) includes the International Convenant on Civil and Political Rights (UN General Assembly, 1966a), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN General Assembly, 1984), the International Convention on the Elimination of All Forms of Racial Discrimination (UN General Assembly, 1965), and the Convention on the Elimination of All Forms of Discrimination against Women (UN General Assembly, 1979) (see OHCHR, 2010).The individual complaints procedure allows individuals to bring complaints of violations of their rights by a particular state before an independent UN-committee, but only after all domestic legal remedies have been exhausted.

but that are not in immediate danger to be exposed to climate change related disasters, to agree to the insurance scheme is a question that should not be neglected.

Further, it might be hard finding enough states being neutral both in relations to claimant states and payer states, for every case, to determine to what extent preventive adaptation is legitimate and warranted.

While Penz argues that there is a strong case to be made for global insurance against natural or environmental disasters, and hence that the distinction between what is due to climate change and what is due to environmental changes is not to be taken so strict, there is a difference when it comes to the conception of harm. In this insurance scenario, Penz propose to use the level of emission to determine the level of premiums states should pay, and this is where the conception of harm comes in. It is not the states that are in the greatest danger of needing the insurance that pay the most, but the states that has contributed to the problems. The causal link is already pretty complicated, which is one of the reasons to favor the insurance scheme, but when it comes to environmental disasters it could be argued that the causal link is missing altogether. Penz might be right in that there are good arguments for a environmental disaster insurance, but there are also a lot of problems connected with mixing these two forms of disasters. Why should the biggest polluters pay more for disasters they did not create? Having a strict focus could maybe benefit the insurance scheme more, on the other hand, Penz is probably right that it would be more effective to be inclusive rather than exclusive. That meaning that when in doubt, one should err on the side of inclusion.

6.5 Community Relocation

Relocation of whole communities, even states, has been presented as an alternative to migration and displacement caused by climate change. Both Kiribati and Tuvalu have raised this alternative, and it has been embraced by the President of the Maldives, who has stated that he is seeking to buy land in India or Australia to which to relocate his nation (McAdam, 2010a:122). On the other side of the specter, the Indonesian Maritime Minister has announced that Indonesia is considering renting out some of its islands to "climate change refugees", although it is unknown if this was a response to the President of the Maldives statement (McAdam, 2010a:122). As I will show in the case of Alaska there is also the more common option of moving communities inside the state.

In Shishmaref, Alaska, most of the 600 inhabitants voted to relocate the village by 2015 (Chomette, 2010:22). 2015 is supposed to be the last chance before Sarichef (the island

on which Shishmaref is located) becomes uninhabitable, according to geologists, meteorologists and other experts that have looked into the island's future. Alaska is getting warmer at a fast rate, and at the same time storms have increased in frequency and strength. Shishmaref's permafrost is thawing and no longer has its usual “rock-like strength”, and can therefore not withstand the battering of waves and wind during storms (Chomette, 2010:20). As a result large pieces of permafrosted land breaks off and fall into the sea. Erosion is spreading as well, over the past 20 years four levees were built in an attempt to contain erosion, but the levees quickly sank into the sand and the effort failed (Chomette, 2010:20-21).

Where the Shishmaref community will be located is yet to be determined, but two options have emerged (Chomette, 2010:22). The first option involves moving the community to small towns around Nome and Kotzebue, about 322 kilometers to the south and east. This is the less expensive solution and the one favored by the state of Alaska and federal funding agencies. The second option, estimated to cost the doubled of that of the first option, is to relocate the community to the mainland only about 20 kilometers from Sarichef. This second option includes that the community would be recreated in an uninhabited area called Tin Creek that would be safe from erosion.

Chomette (2010) found, by interviewing the inhabitants of Shishmaref, that the second alternative, relocation to Tin Creek is the preferred option for the people it affects. In Tin Creek the people will be able to continue living the way they do, and the community will be able to stay together and continue functioning like a community. There are great fear for loss of way of living, unemployment and assimilation if they were to be moved to another village (Chomette, 2010:26-28). Some of the inhabitants in Sishmaref Chomette is talking to say they will relocate to Tin Creek themselves, without help from the state, as they put it “[t]his shore, this lagoon, these rivers – this is our home, you understand? We have deep roots here. And, as you well know, there's no place like home” (Chomette, 2010:28).

6.5.1 Community Relocation: A Lesson from the Pacific?

Campell (2010) looks closer at community relocation as an option to, or result of, climate change. What he finds is that the ideas of relocation fails to account for the extremely important losses that dislocation from the land will bring about (Campell, 2010:78). This goes for internal relocation as well as international relocation.

Campell (2010) uses the term relocation to refer to the permanent (or long-term) movement of a community (or a significant part of the community) from one location to another. Important characteristics of the original community are still retained, the community stays together at the destination in a social form that is similar to the way it was in the place of origin (Campell, 2010:58). Relocation is distinctively different from evacuation, displacement and migration.

Using the Pacific Island states as a case for looking at relocation, Campell (2010:60) emphasize that land has multiple meanings in the majority of Pacific Island states. In many cases the land cannot be separated from those who «belong to it». Further, many migrants, even long-term ones, still consider themselves to belong to their land, even if they are physically dislocated from it (Campell 2010:63).[45]

Many Pacific Islands have a great history of migration, and migration should not be seen as a new thing. The difference is, according to Campell (2010:64-65), that this "traditional" migration and the rapid urbanization that is ongoing does not mean that the link to the land is broken. It does not involve moving a whole community, and the migrant can stay in contact with remaining family and friends.

Campell looks at two specific cases, in-country relocation, from the Carterets to Bougainville, and international relocation, from Banaba (now a part of Kiribati) to Rabi (a Fijian island). In the in-country case, all the families who were relocated there in 1984 had left the village set aside for them and went back to their home village by 1989 (Campell 2010:68-70).[46]

The relocation of the people of Banaba to Rabi is an example of international relocation, and although not because of climate change, it is used here to illustrate some of the problems surrounding this kind of relocation. The relocation of the community of Banaba to Rabi happend as a consequence of environmental degration, in the form of phosphate mining. From around 1900 Banaba became important for the the Gilbert and Ellice island Protectorate as the British Phosphate Cooperation (PBC) started to extract phosphate (Campell 2010:74). As the extraction of phosphate continued, the utility of Banaba as a home for the Banabas was declining, and by 1940 the protectorate government was encouraging the people to relocate to

[45] It might be argued, however, that this is not limited to migrants from the Pacific Island states. In an White Paper discussing Norwegian citizenship it is argued that "[i]t must be assumed that even if a person speaks Norwegian well and has extensive Norwegian contacts, he or she will preserve a factual and emotional attachment to their country of origin" *(my translation)* (NOU, 2000:32).

[46] Some went home before 1989, others left as a civil conflict started in Bougainville in 1988.

another site (Campell 2010:74). The population had mixed opinions about this, some were keen to move, others were concerned that if they did relocate they would lose the sovereignty over Banaba. Plans were put on hold when Banaba was occupied by Japanese forces in 1942, shortly after the phosphate company staff and colonial officials abondoned the island. The Japanese relocated many of the Banabans to other locations in Micronesia. After the war, Australian forces reclaimed Banabas and the British colonial government resettled the Banabans on Rabi, and island in Fiji, because of the war damage in Banabas.

Those who relocated were given two years to decide whether they would stay on Rabi or return (Campell 2010:74). The majority of Banabans were opposed to relocation, but eventually accepted it as a result of compulsory land expropriations and concerns that an alternative environment would be necessary to sustain future generations, according to Campell (2010:74). Funds accumulated from phosphate royalties were used for the purchase, which was facilitated by the British colonial service in the form of the Western Pacific High Commission and the Governor of Fiji. When the Banabans set about reproducing a Banaban society in a new setting a paradoxical condition ensued, Banabans set out to confirm both their status as the rightful inhabitants of Rabi as well as retaining autonomy over Banaba (which was promised to them when the agreement to relocate to Rabi was settled). Seeking sovereignty over Banaba was a major way in which the link to land could be sustained, but despite a long struggle the Banabas did not succeed and when Kiribati got its independence the Banaba became a part of Kiribati (Campell 2010:75).

6.5.2 Is Community Relocation a Workable Solution?

In the case of Alaska the relocation is internal, and there are several examples of internal relocations for different reasons.[47] The relocation of Lateu on Tegua Island, Vanuatu, is said to be the first case in the world of the formal community relocation because of climate change. A group of hundred residents were relocated further inland due to storm damage and erosion (see Burton et al., 2011, Panda, 2010).That is not to say that relocation inside the home state is unproblematic. Barnett and Webber (2010:53) argue that community relocation

[47] Another example is the relocation from Alenville to Hopeville in Arizona, USA, (see Perry and Lindell, 1997). Campell (2010:59-60) writes that in some jurisdictions (mostly in developed countries) local government bodies encourage people that are living in hazardous sites to relocate through voluntary acquisition schemes, in which vulnerable properties are purchased (generally by the government), which enables the owners to purchase properties in a safer place. Further, there are several examples of Pacific island communities that have relocated to sites that are believed to be less vulnerable (see Campell, 2010:60).This examples are examples of voluntary relocation, Perry and Lindell (1997:49) argues that the bulk of *forced* relocations have been either temporary, as in the case of Darwin (Australia), or relative short-term and appropriate classified as evacuations.

should be a strategy of last resort. The first reason for this claim is that even in the case of highly exposed populations the full extent of adaptation responses, and their barriers and limits, has not been adequately assessed. Further, the empirical record of involuntary resettlement points to the risk of landlessness, joblessness, homelessness, marginalization, food insecurity, loss of access to common property resources, increased morbidity and community disarticulation (Barnett and Webber, 2010:53). The impacts of resettlement on communities imply that it leads to increased vulnerability to climate change; moving communities in anticipation of climate change may therefore accelerate vulnerability more than it avoids it (Barnett and Webber, 2010:53). Barnett and Webber (2010:53) further argues that if community relocation is absolute necessary, its social and political costs can be minimized by allowing adequate time for community consultation and planning. In the context of community relocation in Alaska, the inhabitants of Shishmaref themselves voted on whether or not to relocate the village, while the state government of Alaska funds the relocation. However, there seem to be fear for the same situations as Barnett and Webber (2010) lists, especially way of living and unemployment.

Further, Warner (2010:409-410) points at critical “governance gaps” that need attention if the relocation of Shishmaref and other relocations in the US/Alaska is to occur: no government agency has the authority to relocate communities, no funding is designated for relocation, and no criteria are defined for identifying relocation sites. Warner (2010) argues that governance in developing countries might face even more challenges than the US in trying to resettle people.

The big question here is of course if it would be possible to relocate an entire state, and hence keeping the states sovereignty. According to McAdam (2010a:121) there is nothing in international law that would prevent the reconstruction of a state such as Kiribati or Tuvalu within an existing state, for example Australia, although the political likelihood for this kind of relocation happening seems highly unlikely. Theoretically it would be possible for a state to “lease” territory from another, although there might be some questions about the extent to which power could be freely exercised in a manner sufficient to meet the other requirements of statehood in such a case (McAdam, 2010:122).

Relocation, however, means more than just securing territory, the acquisition of land alone does not secure immigration or citizenship rights, but is simply a private property transaction (McAdam, 2010:123). Even when legal issues are solved, relocation may still not

be a popular option, as concerns about the maintenance of identity, culture, social practices and land tenure are very real to those whose movement is proposed (MmcAdam, 2010:123).

Campell (2010:77) claims that the case of Banaba/Rabi should be of considerable relevance to those looking at community relocation in Pacific Island countries as a response to climate change. According to Campell (2010:77) climate change-induced degradation may be even more profound, and the implications for those relocated even more devastating. In Rabi, the Banabans still try to keep the «mud-blood linkage», 60 years after the relocation. By looking at the Alaskan case, I would argue that this «mud-blood linkage» and relationship to land is not only important when dealing with relocation is Pacific island states. The people living in Shishmaref do not want to leave their land either, and fear that their way of life is under threat if they should be relocated (Chomette 2010).

The different alternatives presented here will be compared and discussed in the next chapter.

Chapter 7 - Summary, Discussion and Concluding Remarks

The goal of this paper is to look at how the world community can offer protection to "climate refugees". Although migration in the face of natural or human made disasters is not a new trend, there are signs of increases in natural disasters (Kolmannskog 2009:5), and further, estimations of a high number of people being forced to move due to the effects of climate change (see for example Myers, 2002, Tegart et al., 1990). Today, there are no international regime for the protection of those who flee due to the effects of environmental or climate change. To figure out how "climate refugees" can best be protected I first looked at definitions of "climate refugees" and terms linked to this concept, seeing that there are no universal accepted definition of either "climate refugee", "environmental refugee", "climate migrant" or "environmental migrant".

Although the goal is not necessarily to find room for this kind of displacement in the Refugee Convention, the definition of refugees in the convention is indirectly used as a reference point. As discussed in chapter 3, the definition of a refugee in the Refugee Convention has at least three aspects; there must be a well-founded fear of persecution; the reason for the persecution must be for the reasons of race, religion, nationality, membership of a particular social group or political opinion; and the person must be outside the country of his/her nationality or unwilling to avail himself/herself of the protection of that country. However, most of the definitions of "*environmental* refugees" and "*climate* refugees" include both cross-border and internal movement. Further, while the reason for the movement is the effects of environmental or climate change in all the definitions in chapter 4, how this is defined varies from definition to definition. There might be advantages and disadvantages with both approaches. A definition which includes both environmental and climatic disruptions, like Myers and Kents (1995) and El-Hinnawis (1985), include a large group of people, on the other hand, too restrictive definitions might exclude large groups of people in dire need of help or protection.

Further, chapter 4 shows how different terms are used in the same context. This is illustrated by figure 1, where terms are placed on a continuum after how they are defined by the authors; those who define the movement as forced is located at the right side, described as "Forced/involuntary", while the terms that do not include an element of force at all are placed at the left side of the continuum. As the figure shows, the same term are located at different places in the continuum, due to being defined in different ways. Further, I use the definitions presented earlier in the same chapter and the typology of forced versus voluntary migration to

show how the terms could be defined based on what people are moving from (climate change or environmental change), whether or not the movement is internal or cross-border, and the extent of force involved in the movement (as summed up in figure 2). There are several components which must be considered here. The use of the term "refugee" to describe the movement in the context of climate or environmental related effects as a push factor might not be the right one, however, it is used to emphasize that the movement is forced, that it is external and that help or protection is needed.

Seeing that climate change can have impact on the implementation of several human rights, and that one of the consequences of the effects of climate change might be population movement chapter 5 moves on to discuss human rights. As there is no protection mechanisms for people forced to move cross state borders due to climate or environmental change, it could be argued that there is a human rights "gap". Further, I have shown that there is a discussion on whether or not human rights have an impact on states sovereignty. While DeLaet (2006) argues that sovereignty always trumps human rights, Mills (1998) claims that part of states sovereignty has been eroded if they can be bound by international agreements. However, how much "power" or impact the ratification of a human rights convention has is not agreed upon. As Keith (1999) points out, the implementation mechanisms of conventions are often weak, and she argues that states aware of these shortcomings conclude that there is little risk of their sovereignty if they ratify a convention, in this case at the ratification of the International Covenant on Civil and Political Rights. On the other hand, Hathaway (2007) argues that states with a robust domestic politics might be reluctant to ratify human rights conventions, simply because the conventions can make a difference. This leads the discussion on to whether or not the Refugee Convention leads to sovereignty issues, and more general if cross-border movement leads to sovereignty issues. Dauvergne (2004) argues that the Refugee Convention impinges very little on sovereignty; the most important argument being that states ratifies the convention as a sovereign act. Both Mills (1998) and Dauvergne (2004) argues that western states tries to limit the number of refugees/asylum seekers, and that is one of the other reasons Dauvergne has for claiming that the Refugee Convention does not impinge on states sovereignty. Illegal immigration, on the other hand, is an "affront" to states sovereignty, because it makes it evident that the state cannot control its borders. Further, Bhabha (1996) argues that refugees crystalize the conflict between two founding principles of modern society, the belief in human rights and the sovereignty of nation states. By scrutinizing asylum application cases she shows how important the origin states sovereignty is, sometimes so

important that asylum applications are denied based on arguments grounded in the “sending” states sovereignty. There is also another aspect of “sending” states sovereignty; according to McNamara and Gibson (2009) ambassadors at the UN form Pacific island states resist the category of “climate refugees”, arguing that it is geopolitical damaging to the Pacific island states. The ambassadors envision a future as self-determining states, and therefore resist the media/policy discourses that legitimize their possible future displacement en masse. It is this discussion that lay the formation of the analysis of proposed alternatives in chapter 6.

Chapter 6 presents a broad range of proposed alternatives: convention-related alternatives, regional alternatives, proportional migration, a global insurance scheme, and community relocation. As the chapter shows it is not the lack of proposed alternatives for “climate refugees” that is the problem. It is hard to say which one would offer the best protection. It is especially hard because of the different effects of climate change; there might be need of other mechanisms to cope with slow-onset disasters than what is needed in the context of sudden-onset disasters. As discussed in chapter 3, it seem like it is harder to estimate numbers of people affected by slow-onset disasters (such as drought). Furthermore, Kolmannskog (2009:25) argues that the way the movement happens differs in these two scenarios. The causal link is more blurred than in sudden-onset disaster, and further, in conflicts and sudden-onset disasters, entire families are often forced to move, while droughts might be characterized by family separation, with one or two in the household leaving in search of work (Kolmannskog, 2009:25). This illustrates the importance of how the concepts are defined. For example, Docherty and Giannini (2009) and Biermann and Boas (2008, 2010) propose convention-related alternatives, and both the alternatives are coined on climate refugees. However, despite using the same term, the alternatives are not necessary targeted at the same kind of movement, and hence not the same group of people. Docherty and Giannini (2009) includes only those who cross state borders in their definition of climate refugees, while Biermann and Boas (2010) also include internal movement. Further, while Biermann and Boas have a list of what should be regarded as climatic reasons for flight, Docherty and Giannini argues that there could be advances in science and for that reason it is best to leave open what should and should not be regarded as effects of climate change. Further, Byravan and Rajan (2006, 2009, 2010) only focuses on those who have to move due to sea-level rise. To make generalizations of which alternative would give the best protection in all situations would therefore be hard, seeing that different components underlie the definitions and the proposed alternatives.

The generalization problem could, however, be an argument for claiming that regional alternatives could best address the issue. In Williams (2008) proposal of regional agreements the definition of "climate change refugees" is left open to the regional associations to define. That way the regional associations can evaluate what threats linked to the effects of climate change they are up against, and further, what kind of help or protection is needed. Additionally, Williams (2008:521) argue that an regional agreement could easier take into account the capacity of each state involved and the severity of the problem in that era. Solutions could in other words be "tailored" after the situation.

The problems surrounding the alternative of regional agreements should not be ignored, as discussed above there might be fear of loss of sovereignty, or unwillingness to cooperate, on regional level as well as on an international level. Further, there are calls for several modifications if already existing migration institutions are to be used, as Hugo (2010) proposes. Warner (2010) argues that not only are modifications needed; the current governance structure, the country interests, and the implicit system of mutuality in international negotiations provides scarce incentives for active leadership in reshaping governance for human movement and environmental change.

Further, I will argue that there are some alternatives that are less likely to come into existence than others. Byravan and Rajan's (2006, 2009, 2010) proposal of proportional migration raises important questions about who should be held responsible for climate change and the consequences, in this context migration, and hence who should take responsibility. Nevertheless, this alternative raises more questions than answers. And the most important question of them is why "sending" states *and* "receiving" states should agree to the proposal. It is not unreasonable to assume that it will be in the best interest of the "sending" states to remain to function as a sovereign state, and seeing that states already try to limit the number of "traditional refugees" (as discussed in chapter 5) it is unlikely that they would sign up for an agreement that open up for more "refugees". The climate change insurance proposed by Penz (2010) has some of the same issues; why would "big polluters" join an agreement where they have to pay without necessary being in direct danger themselves?

7.1 Limitations and Suggestions for Future Research

There are no clear-cut answers to the research question. But, as discussed above, there are some alternatives for protection that are less likely to come into existence, and further some that might be easier for states to agree on. This paper gives a broad view of the field, and there

are several aspects that might deserve closer scrutiny. Each "part" could with some modification be a thesis in itself. This can be seen as one of the weaknesses of the paper; the study gives a broad view of the topic, but might leave out important details. It would be possible to look closer at one or more of the proposed alternatives presented in chapter 6, and for example do a case study to see if it would be a suitable solution in different contexts. Another interesting and important topic that might have received too little focus here is what states can do to prevent that people are forced to move cross-border due to the effects of climate change. Warner (2010) argues that the efficacy of governance plays a critical role in whether those displaced because of environmental disruptions will return, or whether they will become environmentally *motivated* or environmentally *forced* migrants (see chapter 4).

In relation to human rights linked to climate change and population movement one could look closer on litigations and rights movements, with or without the element of sovereignty.

As discussed in chapter 3, Myers (2002) argues that "when global warming takes hold" there could be as many as 200 million people "overtaken by sea-level rise and coastal flooding, by disruptions of monsoon systems and other rainfall regimes, and by droughts of unprecedented severity and duration". We must therefore begin to prepare *how states and the world community can protect "climate refugees"*.

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