

## Climate Migration and the State's Duty to Protect

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*Climate change will have as a consequence a more or less important rise of global sea levels. For some countries, this is likely to mean their total disappearance, if no measures are taken. Some of these measures might be too costly for the country to finance and its population will have no other choice but to migrate to another country. This contribution considers this kind of problem from the point of view of political philosophy. My arguments will rest on two fundamental assumptions. On the one hand, we find the state's duty to protect its citizens against internal and external dangers, and on the other, the individual's right not to have to migrate. Each state must protect its own citizens against foreign dangers. It will also be assumed that no state has a right to endanger the very existence of another state. The contribution aims to show some of the major consequences of these assumptions for the ethical problem of migration due to the consequences of human-induced climate change.*

### Introduction

When climate change is being discussed, whether in the academic world or in the society at large, one often tends to focus on what should be done in order to prevent the risk of an all too massive climate change in the decennia to come.<sup>1</sup> So-called climate skeptics either deny the very existence of a permanent climate change or, if they admit its existence, tend to think that it is not provoked by human activities or their consequences, but that it should be seen as a purely natural phenomenon. Against this position, the great majority of scientists working in the field of climatology or of related disciplines maintains that the global rise of temperatures we are experiencing since at least the beginning of the 20<sup>th</sup> century is due to the presence of so-called greenhouse gases in our atmosphere and that the massive presence of such gases is a direct outflow of human activities. If the industrial revolution had not happened or if its pace had been much

<sup>1</sup> There has been some debate concerning the question of how to call the phenomenon (see Stephen Gardiner, 'Ethics and Global Climate Change', in *Climate Ethics. Essential Readings*, edited by Stephen Gardiner, Simon Caney, Dale Jamieson, and Henry Shue (Oxford: Oxford University Press, 2010), pp. 3-35, at p. 4). I will generally use the term 'climate change', as it leaves open the possibility of a global cooling, induced by phenomena that first provoked by a global warming. As many scientists point out, the climate is dependent on many factors.

slower than it has been, we would not be faced with the risk of a massive climate change. For these scientists – when they take a stand as citizens and draw normative conclusions from the results of their scientific observations – these activities should be globally reduced so as to reduce the emission of greenhouse gases, thus preventing a further rise of global temperatures with probably dramatic consequences in a not too distant future.<sup>2</sup> With what has already been emitted, the future is not bright, but it is still time to prevent its becoming totally obscure.

While these discussions go on and while politicians, scientists, philosophers, theologians, etc. insist on the necessity to do something in favor of a sustainable future, i.e. of a future in which human activities do not risk to make the planet earth a place where living will no more be worthwhile, at least for many people, millions of people have to leave their usual places of residence because of the consequences of climate change.<sup>3</sup>

Thus, while discussions concerning the impact of climate change on future generations go on, a relatively important number of people belonging to the present generation are already confronted with the problem. They are not the virtual victims of alternative scenarios for the future, but many of them are the actual victims of actions done in the past or they will be such victims in the years or decennia to come.<sup>4</sup> Their fate foreshadows what is going to happen to a still more important number of people if no concrete and energetic measures are taken in the years to come. Had the problem of climate change due to human activities already been put on the agenda a hundred years ago and had the necessary measures been taken at that time, the number of climate migrants would probably have been much smaller.

If there is no denying the fact that we should discuss the question of what to do to reduce the global rising of temperatures in the decennia to come in order to provide a sustainable future for our great-grandchildren, this discussion should not prevent us from confronting the problem of those people who are already the victims of climatic phenomena or who are very likely to become such victims in a near future. Climate migration is a fact, and any society pretending to be a decent or even only an ethically responsible society must ask itself how it must respond to the situation of climate

<sup>2</sup> A global reduction does not necessarily mean that everybody should reduce his or her emissions. Some argue that developed countries should reduce their emissions massively, so as to allow developing nations to augment their emissions, this augmentation being seen as necessary to allow development in those nations. On this question, see for example Henry Shue, 'Subsistence Emissions and Luxury Emissions', in *Climate ethics. Essential readings*, edited by Stephen Gardiner, Simon Caney, Dale Jamieson, and Henry Shue (Oxford: Oxford University Press, 2010), pp. 200-214.

<sup>3</sup> According to whether one adopts an alarmist stance or not, the number of climate migrants will vary. Moreover, it is not always easy to make out whether climate is the only, the main or merely a secondary or supplementary cause for migration. Sometimes, climate may also only be an indirect cause, as when climate changes induce a rising of sea levels, which lead to a submersion of arable land, which leads to fewer agricultural machines being needed, which may lead sellers of such machines to close their firms and to emigrate. On this question, see for example Norman Myers, 'Environmental Refugees', *Population and Environment* 19 (1997), pp. 167-182, and, for a criticism of the methodological shortcomings of the 'alarmists', Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford: Oxford University Press, 2013), p. 25f.

<sup>4</sup> The so-called identity-problem (see Derek Parfit, *Reasons and persons* (Oxford: Oxford University Press, 1985)) is irrelevant in their case. If Kiribati, Vanuatu or the Maldives are to be submerged by 2050, we already know who the persons who will have to migrate by 2050.

migrants. Can something be done to prevent migration though the sea levels will rise to a point where, if nothing is done, migration will be the only option left? And if nothing can be done, which country should accept the migrants on its territory?

If we consider the geographical origin of climate migrants, we can see that most of them – 98 percent in fact – are from underdeveloped or developing countries, whereas only two percent live in developed countries. Developing countries thus pay the highest toll. As long as climatic events are simply seen as natural events, i.e. as events which happen without any human intervention, we may feel sorry for the victims, maybe even think that we, who have the means to help at no excessive cost to ourselves, stand under a duty of beneficence to help them in some way, but we will probably not admit that we stand under a duty of strict justice to help them. Things are a bit more complicated if we suppose that though nobody is responsible for bringing about the climatic events, these events could nevertheless have been prevented or can still be prevented, for example by geoengineering.<sup>5</sup> Helping climate migrants as climate migrants is not the same as helping people not to become climate migrants. We must thus distinguish between at least the following cases:

- (1) Climate migration due to purely natural phenomena nobody could prevent.
- (2) Climate migration due to purely natural phenomena that could have been prevented.
- (3) Climate migration due to human-induced natural phenomena.

In this contribution, I want to concentrate on people who have become or will become climate migrants because of the consequences of climatic events provoked by human activities, and I will concentrate on those populations who are the victims of the impact of climate change on the rising of waters, and even more especially on the rising of global sea levels<sup>6</sup>.

Climate migration may be temporary or permanent, and if temporary, it can be recurrent or non recurrent. If the global sea level were to rise by two meters, not a few islands in the Pacific as well as many coastal regions all over the world would become permanently inhabitable.<sup>7</sup> And if in some regions extraordinary climatic events – say

<sup>5</sup> For a skeptical approach to geoengineering, see Stephen Gardiner, 'Is "Arming the Future" with Geoengineering Really the Lesser Evil? Some Doubts about the Ethics of Intentionally Manipulating the Climate System', in *Climate Ethics. Essential Readings*, edited by Stephen Gardiner, Simon Caney, Dale Jamieson, and Henry Shue (Oxford: Oxford University Press, 2010), pp. 284-312.

<sup>6</sup> According to a recent study, global sea levels didn't change between the lifetime of Jesus Christ and 1900, but since the beginning of the 20<sup>th</sup> century it is 'rising at an increased rate' and 'it is projected to rise at an even greater rate in this century' (Nathan Bindoff, Jürgen Willebrand, Vincenzo Artale, *et al.*, 'Observations: Oceanic Climate Change and Sea Level', in *Climate Change 2007: The Physical Science Basis, Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, edited by Susan Solomon, Dahe Qin, Martin Manning, *et al.* (Cambridge and New York: Cambridge University Press, 2007), pp. 385-432, at p. 409).

<sup>7</sup> To quote Shue: 'Some island nations in the South Pacific are already well into the process of being submerged by rising sea levels' (Henry Shue, 'Deadly Delays, Saving Opportunities', in *Climate Ethics. Essential Readings*, edited by Stephen Gardiner, Simon Caney, Dale Jamieson, and Henry Shue (Oxford: Oxford University Press, 2010), pp. 146-162, at p. 147. In the case of these nations, the most pressing question is not so much: 'What should be done to reverse the process?' – though this

hurricanes – were to become ordinary, bringing about massive inundations every two years<sup>8</sup>, these regions would also become practically inhabitable, or the cost of continuing to live there would be such that, if a rational person had the choice to go and live somewhere else, he or she would do so. You may accept the risk of having to rebuild your house every 50 years or so, but not of having to do so every two years.

My arguments rest on the presupposition that at least some of the climatic events that place people before the option – not to say: the necessity – of having to migrate are human-induced events. I will also presuppose that the activities mainly responsible<sup>9</sup> for these climatic events have been and are still going on in a limited number of countries, first and foremost the United States of America,<sup>10</sup> China, most EU countries, Japan or Russia – the list is of course not complete. As it is virtually impossible to say which activities produce exactly which climatic events and hence which activities are responsible for which consequences, I will work with the presupposition that the group of countries most contributing to the emission of gases provoking climatic changes should be held collectively responsible and that it is also these countries which have primarily a duty to help.<sup>11</sup>

As I will not make a case for criminal responsibility but only for what might be called civil liability, the presupposition of collective responsibility should not provoke too many horrified reactions.<sup>12</sup> I will also only focus on the *negative* consequences of climate change. According to some scenarios, global climate change could lead to a displacement of rainfalls due to monsoon and through this displacement many tracts of desert land could become fertile and thus allow people to live there permanently. If this

question remains of course important –, but ‘What should be done to help those who are going to be the victims of the process?’.

<sup>8</sup> According to a recent estimation, 1,2 percent of the world population will be exposed to yearly inundations by 2100 against only 0,1 percent today (*Science et Vie*, no. 1152, September 2013, p. 35).

<sup>9</sup> Greenhouse gases are of course produced in *all* countries, but there is a huge difference between *per capita* emissions if one compares industrialized nations with other nations.

<sup>10</sup> The US contributes approximately one quarter of all greenhouse gas emissions (see Gardiner, ‘Ethics and Global Climate Change’, p. 21). At the risk of being cynical: When future generations will learn that Barack Obama intended to bomb Syria for its use of chemical weapons against its civil population, they will probably think that they would have had a very good reason to bomb the United States of Barack Obama for its emission of greenhouse gases. Without downplaying the deaths that occurred and still occur in Syria, we must be honest enough to acknowledge that the consequences of our economic activities cause and will many more deaths.

<sup>11</sup> This does not mean that they are responsible as a collective entity, but that each individual member of the group is to bear a part of the responsibility. Since the beginning of the century, the topic of an ethical framework to deal with climate-induced migration begins to be discussed in the scientific literature, though contributions are still rather scarce (see for example Derek Bell, ‘Environmental Refugees: What Rights? Which Duties?’, *Res Publica* 10 (2004), pp. 135-152; Mathias Risse, ‘The Right to Relocation: Disappearing Island Nations and Common Ownership of the Earth’, *Ethics and International Affairs* 23:3 (2009), pp. 281-300; Cara Nine, ‘Ecological Refugees, States Borders, and the Lockean Proviso’, *Journal of Applied Philosophy* 27:4 (2010), pp. 359-375; Sujatha Byravan and Chella Rajan Sudhir, ‘The Ethical Implications of Sea-level Rise due to Climate Change’, *Ethics and International Affairs* 24:3 (2011), pp. 239-260; Avner de Shalit, ‘Climate Change Refugees, Compensation and Rectification’, *Monist* 94 (2011), pp. 310-328).

<sup>12</sup> On this point, see Henry Shue, ‘Global Environment and International Equality’, in *Climate Ethics. Essential Readings*, edited by Stephen Gardiner, Simon Caney, Dale Jamieson, and Henry Shue (Oxford: Oxford University Press, 2010), pp. 101-111, at p. 104.

were the case, many migrant populations of the desert would have the possibility to settle down, so that in their case climate change would contribute to the reduction of migration. If new territories were thus to become inhabitable, they should be reserved for climate migrants, even for climate migrants from other countries.

### **Climate Migrants and Other migrants**

Though the problem discussed in this contribution falls under the general topic of migration,<sup>13</sup> climate migration must be distinguished from other types of migration, as for example political or economical migration, to name only the two most frequent types.<sup>14</sup> A political migrant, in a broad sense of the word,<sup>15</sup> is a person who has to leave her country because the government oppresses her on account either of her political or religious ideas, or because of her ethnic origin or sexual orientation – to name only the most important factors –, or because the government does nothing and maybe even does not want to do anything to protect the person against social oppression exercised on account of one of these factors.

An economical migrant is a person who leaves his or her country because of the hope to find better economic conditions – a job, higher wages, etc. – in a foreign country. Economic migration may sometimes be favored by a country that needs workers of a certain type.<sup>16</sup> If economic conditions in a country or region deteriorate because of climatic consequences, economic and climate migration may coincide.

As this last case shows, there is no radical or essential difference between these types of migration. Nevertheless, some lesser and morally relevant differences must be pointed out. One such difference is that political and economical migration is generally only due to internal factors. Usually, the political regime of a country is not imposed by an outside state, and the economic orientation of a country is not dictated by an outside state. I want to stress the '*usually*', as it is undeniable that a political regime, though not imposed by an outside state, may nevertheless be supported by an outside state. The weapons used for oppressing the population may have been sold to the government by an outside state or with its authorization. In such a case, one may wonder whether that

<sup>13</sup>'Migration' is here used as a general term to cover emigration as well as immigration. Basically, emigration is also immigration: you leave one place to enter another place. In common parlance, the notions of emigration and immigration are usually reserved for international migration. Thus, if I were to leave Northern France to settle down in Southern France, I would hardly be called an emigrant or an immigrant. I will not use the term 'refugee', as it is a technical term of international law and gives rise to many problems in the context of climate change (see McAdam, *Climate Change, Forced Migration, and International Law*).

<sup>14</sup> One could also mention nuclear migration, i.e. migration due to massive accidents in nuclear plants. Chernobyl and Fukushima are two examples for this type of migration. Fiscal migration can be seen as a form of economic migration, with the only difference that traditional economic migration mainly concerns the poor, whereas fiscal migration mainly concerns the rich.

<sup>15</sup> I don't want to quarrel with those who think that the term 'political migrant' should only be used for people who have to leave their place of origin because they are threatened in life and limb on account of their strictly political opinions. As I use the term here, it simply denotes oppression by government or by society.

<sup>16</sup> In the 1960s and 1970s for example, Luxembourg induced thousands of Portuguese to immigrate into the Grand-Duchy, as they were needed in the building sector.

state is not also responsible for the migration. And in the economic case, decisions by the International Monetary Fund may contribute to massive waves of emigration from countries that have to structure their economy along the lines imposed by the International Monetary Fund.

But even if we suppose that external factors can also play a substantial role in the cases of political and economic migration, there still exists a difference with regard to the bearer of responsibilities. In the case of political oppression by government A, we can relatively easily identify the country or countries that sold weapons to that government. And in the case of externally induced economical migration, we can also generally determine responsibilities in a fairly easy way. Thus, if the economy of Ghana declines because the country cannot sell its cocoa anymore, this is generally due to the fact that countries needing cocoa to produce chocolate have at their disposal an artificial *ersatz* that is much cheaper. The direct link between the causes and effects can usually be more clearly established than in the case of climate change.

But there is still a more fundamental difference. When a chocolate-producing nation uses artificial cocoa, it creates economical problems in a cocoa-producing nation, yet it does so without destroying the cocoa-plants or the country in which they grow. In the case of climate change, it is different. Suppose that the production of artificial cocoa resulted in a massive emission of greenhouse gases and suppose that due to this emission, climate in Ghana was to change to such a degree that cultivation of cocoa would become impossible in that country. As a result, the economy of Ghana would break down. Though the ultimate consequence is the same, what brought about this consequence is very different. Outdoing a competitor without destroying his instrument of production is not the same as outdoing a competitor and destroying his instrument of production, even where this destruction is not positively willed but only accepted as a consequence.

One could still mention a further difference. The causes of political and economical migration may generally be more easily changed than the causes of climate migration. Though it may be difficult to get rid of a tyrant and though it may be difficult to change economic conditions, the difficulty is in both cases utterly different from that linked to changing the climate. And the same holds true for reverting to previous conditions. Once a coastal region is under water because of the rise of sea levels, it is very difficult, if not nearly impossible, to get rid of the water again. Or imagine a South Pacific island: You can reestablish a democratic government after having gotten rid of the tyrant; you can rebuild an economy which has collapsed; but can you 'desubmerge' it again after it lies under four or five meters of water?

### **A State's Duty to Protect**

I take as a starting point of my argumentation the political notion of a state's duty to protect. Whatever else a state may be there for, it has a general duty to protect its citizens, this protection being the minimal condition that has to be fulfilled for citizens having a duty to obey. There is thus an exchange: obedience in exchange for protection. This vision of the state has its roots in the social contract theory elaborated in the 17<sup>th</sup> century, notably by Thomas Hobbes in the *Leviathan*. The state's duty to protect is primarily a duty to protect its own citizens against each other. However much civic friendship may be extolled as a virtue, real human beings living in political communities will be prone to

acts of violence and they will thus need protection from that violence. These acts of violence may result from purely criminal motives, but they may also result from ideological motives, and the absolute state, as it was defined by Jean Bodin in France and Thomas Hobbes in England, had to protect its citizens against civil war.

But besides protecting its citizens against each other, the state has also the duty to protect them against foreign aggression. There is first of all the state's duty to protect its citizens against a foreign invasion, especially if the invader is likely to impose another religion or another political system. But there is also the state's duty to protect those of its citizens who happen to be in foreign states, for example because they do commerce with foreign merchants. If you are a citizen of a state, the state has the duty to protect and to help you wherever you are – provided you haven't committed some action depriving you of that protection, as for example a crime.<sup>17</sup>

Has a state also a duty to protect citizens of another state? This seems to be so in the case of ambassadors or legates. These persons act in an official capacity as intermediaries between states. As such, the state that accepts them on its territory for a transaction has also a special duty to protect them. If the government of state A knows that the legates of state B are likely to be lynched by an angry mob if they come for peace transactions, it has to protect them against that mob if it wants peace transactions to take place.

So state A has to protect the citizens of state A against the citizens of state, and state B has to protect the citizens of state A against the citizens of state B if state B has to transact with citizens of state A. But has state A a duty to protect citizens of state B against the government of state B or against citizens of state B?

In the 16<sup>th</sup> century, Spanish theologians, first among them the Dominican friar Francisco de Vitoria, founder of the School of Salamanca, maintained that though the world was split into nations, nationhood did not cancel or destroy the common tie existing between all human beings.<sup>18</sup> And in virtue of this common human tie, human beings had not only the right, but also the duty to help each other, irrespective of national borders. The paradigm case involved citizens who were persecuted by their own government or whose government did nothing to protect them against persecution. If the persecutions were massive and threatened the very life of the victims,<sup>19</sup> then any nation could intervene to put an end to these persecutions, if necessary by military force. Any state had a duty to protect any large group of human beings against massive persecution. When a state stopped protecting its own citizens or even persecuted them massively, it so to say lost the rights linked to sovereignty. Sovereignty was not the object of an absolute and unconditional right, as it became after the Peace of Westphalia, but it was only conditional – as it is again today.<sup>20</sup>

<sup>17</sup> But even then, your state of origin has the duty to look to it that you will receive a fair trial. This kind of duty is usually fulfilled through diplomatic channels.

<sup>18</sup> See Francisco de Vitoria's *Relectio de Indis* (Madrid: Corpus Hispanorum de Pace, 1967) and *Relectio de iure belli o paz dinámica* (Madrid: Corpus Hispanorum de Pace, 1981) For a recent discussion of Vitoria, see Norbert Campagna, *Francisco de Vitoria. Leben und Werk. Zur Kompetenz der Theologie in politischen und juridischen Fragen* (Münster: LIT-Verlag, 2010).

<sup>19</sup> The paradigm case in the 16<sup>th</sup> century debates was human sacrifices.

<sup>20</sup> On the question of sovereignty, see Henry Shue, 'Eroding Sovereignty', in *The morality of Nationalism*, edited by Robert McKim and Jeff McMahan (New York, Oxford University Press, 1997), pp. 340-359.

In contemporary political theory, a state failing to fulfill adequately its duty to protect is called a 'failed state'. The public institutions may still exist, but they are inefficient and the real power lies in the hands of political groups fighting against each other for gaining political power – not in order to reestablish protection, but so that the leaders of these groups may enrich themselves.

If the duty to protect has traditionally been understood as the duty to protect against overt acts of violence, one may legitimately ask whether it should be restricted to protection against such acts. If my neighbor can kill me by voluntarily shooting at me, he can also kill me by negligently emitting toxic gases, without any intention do to me any harm and in pursuance of some activity which will bring him some kind of economic benefit. Should the state only protect me against his shooting me or should it also intervene to prevent my being a victim of his polluting activities? As a matter of fact, many states protect their citizens against at least extreme forms of pollution by imposing the use of filters or even by prohibiting the polluting activities. And many states also protect their citizens against some of the consequences of a free-market economy by providing them with financial help in case of unemployment. Imposing an obligatory health insurance can also be seen as a kind of protection. In some of these cases, the duty to protect can also be seen as a duty to help. Thus, though the state cannot guarantee me a new job if I lose my old one, it nevertheless helps me while I have no job.

Given these developments of the duty to protect, we may wonder whether a state has also a duty to protect against some of the consequences of climate change, and more especially against the rise of sea levels. And if it is no more possible to protect a population against the rise of sea levels so that the population will have to migrate, what are the duties of a state with regard to climate migrants? Has state A the duty to protect its own citizens against climate migration, and if it has no possibility to protect them against climate changes as such, does it have a duty to help them face the consequences of having to migrate? Has state A the duty to make sure that no activity going on within the borders of its territory contributes to climate changes very likely to provoke migration of citizens living within the borders of state B? And if it is already too late to prevent the phenomena causing migration, as for example the rising of sea-levels, has state A the duty to help citizens of state B who have no other choice left but to migrate? And if so, how?

### **A Right Not to Have to Migrate**

According to Simon Caney, the human rights discourse, though it should not be the only kind of discourse deployed in the context of a global strategy against climate change and its consequences, should nevertheless occupy a central place in such a strategy. Whatever else climate change may do, it also leads to the violation of some basic human rights. Caney insists on three such rights: the right to life, the right to health and the right to subsistence. In order to make his case as universally acceptable as possible, Caney proposes a very weak reading of these three rights and conceives them only as negative rights.

Though he concentrates on these three rights, Caney nevertheless suggests that other rights might also have a role to play. One of these is a right to be protected against forced migration: 'Furthermore, one might argue that there is a human right not to be

forcibly evicted (HR 5) and that climate change violates this because people from coastal settlements and small island states will be forced to leave'.<sup>21</sup>

In the traditional sense, forced eviction happens when the government displaces people. We will here concentrate on forced eviction of great numbers of people. This may happen for example when the state intends to construct a barrage where people used to live. In such cases, thousands of people are asked to leave their houses and to settle somewhere else. But forced eviction may also happen when a certain population – for example an ethnic minority – is declared *populatio non grata* on a given national territory. The crucial difference between the two cases is that in the first case, the evicted population is allowed to resettle somewhere else within the national territory, whereas in the second case, the evicted population has to find a state that accepts it on its national territory.

In modern liberal democracies, forced evictions, especially of large numbers of persons, is very rare. It may happen with individuals who have no valid authorization to stay on the national territory. It sometimes happens that such people are forcibly evicted from the national territory by being put on a plane and flown back to their country of origin. It also sometimes happens that some persons are evicted from their houses because a motorway or a railway line will pass exactly where they happen to live. In a case like that, the persons concerned will be financially compensated for their loss and they will also generally be helped by government.

In the case evoked by Caney and which is also the topic of this contribution, the eviction is forced not because the government forces people to leave their place of residence *manu militari*, but because the people have apparently no other choice left but to leave their place of residence. When your house stands completely under water, you won't wait until military forces come and chase you from there. You just leave by yourself because it is so to say physically impossible for you to continue living where you used to live. Though migration is in a certain sense voluntary – you are moved by a decision of your own will and not by soldiers or the police carrying you away –, it is nevertheless not voluntary in the sense of free, as freedom, if it means anything, means at least that you can choose between several options.

At this stage, someone might wonder why forced eviction is a bad thing, which one must be protected against. Or to put it in more neutral terms:<sup>22</sup> Why is it bad to have to go and live somewhere else? After all, many people all over the world freely and voluntarily leave their usual places of residence to live somewhere else. Or to put it still differently: What values does the right not be forcibly evicted protect?

In the case of forcible eviction *manu militari*, the answer is rather simple, as such an eviction violates the right not be subjected to violence. The answer is more complicated when we turn to the case of the persons who will have to leave coastal regions submerged by rising sea levels. They are not subjected to any kind of physical violence. So what is wrong with their having to go and live somewhere else?

Many people, so it can be argued, are sentimentally attached to their place of residence, especially if they have lived there for a long time. Having to leave a place

<sup>21</sup> Simon Caney, 'Climate Change, Human Rights, and Moral Thresholds', in *Climate Ethics. Essential Readings*, edited by Stephen Gardiner, Simon Caney, Dale Jamieson, and Henry Shue (Oxford: Oxford University Press, 2010), pp. 163-177, at p. 169.

<sup>22</sup> 'Forced eviction' contains already an implicit moral condemnation.

where your parents and grandparents already lived, where you spent most of your life and where you 'feel good' is not always an easy matter. They also have adapted to that place and they have also adapted that place to their needs and interests, at least insofar as such adaptations are possible. By having to leave their usual place of residence, they will have to readapt to a new place, which will take time and energy. Then, even if we assume that it may be easy to leave a place of residence, it may not be so easy to find a new place of residence which has more or less the same advantages as the old one. Thus, having to leave a very fertile coastal region with a moderate climate, to resettle in a sterile mountain region with severe winters is not really attractive. Another point to be mentioned is the risk that one will not be accepted by the population of the new place of residence, especially if that population suffers economic distress or if there are important cultural differences between the migrants and the autochthones. This may create social tensions or even conflicts.

Besides all these problems, there is the more fundamental problem of finding a place to go to. In the case where internal migration is an option, this problem is not too acute, as there is at present no country that is so densely populated that it would be physically impossible to resettle the population of its coastal regions. The problem becomes acute, however, once we envisage the disappearance of a whole state, as it will be the case with some island states in the Pacific Ocean. Once sea levels will have risen above a certain threshold, their inhabitants will have no other choice left but to migrate to another country if they want to survive. If it would be possible to prevent these islands being submerged by stopping greenhouse gases at once, then we would at least have a *prima facie* duty to do so. Yet it is to be expected that even if we stopped all such emissions *hic et nunc*, the sea level would still rise to such a height that at least some of these islands would be completely submerged. So the question is: Which countries have a duty to help the populations of countries very likely to exist no more in a not too distant future?<sup>23</sup>

### **The Duty to Protect Against Forced Migration**

As a principle of international public law, the first addressee of the duty to protect citizens of state A is the government of state A.<sup>24</sup> Let us suppose that state A is Kiribati, a

<sup>23</sup> Is the right in question a collective or an individual right? Personally, I do not think that there are – in a strong ontological sense – collective rights. If anything, there is an individual right to be part of a collective that is a locus of identification for the individual. Or to put it differently: rights of collectives are derivative rights and collectives have a value only insofar as individuals belonging to them value them. So if individual Kiribatians value their collective life, their relocation in another country should, as far as possible, give them the possibility to continue to share their common life as Kiribatians. There is no doubt that this might lead to serious problems which, due to lack of space, can only be mentioned here: Should Kiribatians continue to have their own Parliament? Should they be given a territory with no native inhabitants of the country? And if they are given a territory where there are native inhabitants, should these be treated as foreigners? To solve these problems or even to come nearer to a solution it would be necessary to rethink the notion of citizenship, distinguishing clearly between a purely political republican notion of citizenship and a cultural notion.

<sup>24</sup> It is the so-called principle of subsidiarity.

conglomerate of South Pacific islands covering about 900 square kilometers. In a few decennia, these islands are likely to be submerged, so that about one hundred thousand persons – its actual population – will have to find a new state of residence. If a massive reduction of greenhouse gas emissions could still prevent the submersion of Kiribati, the government of Kiribati would have the duty to make itself heard on the international scene in order to convince other governments to take the necessary measures for such a reduction. Kiribati would certainly find allies, as it is not the only state to risk partial or even total submersion. Yet it is doubtful whether even with these allies, Kiribati would be able, just with arguments,<sup>25</sup> to bring about a reduction of greenhouse gas emissions.

One of the major characteristics of a state is its national territory, and whatever else a state must do, it must protect the integrity of its national territory, as this territory is the place where its citizens can live. This protection means, on the one hand, that the government may not cede a part of the national territory and, on the other hand, that it must protect its territory against other states wanting to annex a portion of it. But it should also mean that the government must take the necessary steps to prevent the territory to disappear. Preventing this disappearance is preventing the disappearance of a state.

If Kiribati is submerged, it will cease to exist as a state. But Kiribati has, like any other state, a right to exist. And all states have the duty to respect Kiribati's existence, which means among other things that no state should tolerate on its territory activities likely to have the disappearance of Kiribati as a consequence. Or should they tolerate such activities, they have duties of compensation.

Is there a possibility for Kiribati to continue to exist despite rising sea levels? Suppose that we know that whatever we do, sea levels will rise to a level that will place Kiribati below sea level. Is it possible to have Kiribati continuing in existence below sea level? Let us imagine that dams with a height of about ten meters are placed all around the islands composing Kiribati and let us suppose that these dams are efficient to protect the islands. If this is the only possibility for Kiribati to continue to exist as an independent state, the government of Kiribati has a *prima facie* duty to have such dams built.<sup>26</sup> To take another example: If a much frequented road is threatened by falling stones, public authorities must protect the users of the road against these falling stones, for example by putting nets or whatever else prevents the stones from killing automobile drivers.

It is important to note that it is only a *prima facie* duty. For it might well be that the inhabitants of Kiribati would prefer to go and live somewhere else rather than live in what might be seen as a kind of prison-island. If in a referendum a majority of the inhabitants of Kiribati reject the project of building dams, the government does no more have the duty to build dams.

But suppose that the inhabitants want dams to be built. Who is to bear the probably astronomical costs? It is very unlikely that the budget of Kiribati will suffice. In that case, it might be just to turn towards those nations that have until now most benefited from greenhouse gas emissions. As was said before, their contribution is not to be seen as a punishment, but as a measure of compensation. Some countries have hugely benefited from greenhouse gas emissions whereas other countries will have to bear the

<sup>25</sup> And states like Kiribati generally have nothing else but arguments to offer.

<sup>26</sup> Such dams exist in the Netherlands. Shue imagines a 'Great Sea Wall of China' (Shue, 'Subsistence Emissions and Luxury Emissions', p. 205).

negative consequences of these emissions, consequences that, for some countries, amount to their disappearance as independent nations. Fairness requires that the latter countries should at least be helped in preventing the worst consequences and that they be helped by the countries benefited, because by allowed the massive emission of greenhouse gases on their territory they were able to get wealthy. In order to finance a project of dam building, the countries hosting the entities mainly responsible for greenhouse gas emissions could tax those emissions more heavily than they do today.<sup>27</sup>

In this context one could also mention a fundamental duty of the community of states to protect the independence of one of their members. This duty should not be restricted to the protection of independence when a country has been invaded – like Kuwait by Iraq –, but it should also at least be extended to cases where the very existence of a state is in danger because of human activities.

But suppose that for technical reasons the dams cannot be built.<sup>28</sup> In that case, there is no other option but to emigrate. If there were still habitable territories belonging to nobody, the population could go to these places and colonize them. But such territories don't exist anymore – at least not on our planet. Hence if the population of Kiribati has to emigrate, at least one state must accept that population on its territory. Is any state more obligated than another to accept the emigrants on its territory?

Here again it seems as if fairness required looking first to those countries that are responsible for the climate change. If we are in a situation where population of country A must emigrate and where it can emigrate either to country B – which doesn't bear any causal responsibility with regard to the necessity to emigrate – or to country C – which bears a causal responsibility –, *tertium non datur* and *ceteris paribus*, there is one morally relevant reason more for saying that C should accept the migrants on its territory.

But what if the country mainly responsible cannot bear the burden of massive immigration? Or what if the cultural differences between the migrants and the autochthones is so important that an integration seems impossible or at least extremely difficult, creating the risk of social tensions and conflicts? In such a case, a third country might decide, or might even be morally obligated, to accept the migrants on its territory, but it would be justified in asking financial support from the country responsible for the consequences which led to migration.

<sup>27</sup> At this point, it is important to distinguish two principles, *viz.* the beneficiary pays and the polluter pays principle. Often, though not always, the polluter also benefits, at least economically, from the polluting activity. He can, of course, also become himself a victim of his polluting activity. In this latter case, he will have to make a cost-benefit analysis in order to see whether the benefits are worth the cost. It may also happen that a third party who is not polluting benefits from the polluting activity. This benefit can be the result of an agreement between the third party and the polluting party – with the latter getting some benefit in exchange – or it may just happen without anybody having consciously willed it. In this last case, only the polluter should pay. In the former case, i.e. where there is an agreement, the polluter and the benefiter should both pay. Costs related to pollution should be internalized and benefits related to consciously willed and accepted pollution should be – at least partly – externalized.

<sup>28</sup> One could also suppose that the inhabitants of Kiribati do not want to live imprisoned by high dams. Though it that case they would have an alternative option to migration and the question would be whether this alternative option to migration is so bad, that it couldn't just be imposed on Kiribatians.

If we suppose that any nation has a right to exist as an independent nation, we might even come to the conclusion that the fact of having contributed, even if unknowingly, to the disappearance of the national territory of a nation involves the duty of giving that nation a part of one's own territory so as to allow it to continue to exist as an independent nation. In our concrete example this would mean that the United States should part with some 900 square kilometers of their national territory so as to allow the inhabitants of Kiribati to live there as an independent nation once their own national territory has been submerged. And these 900 square kilometers should be such as to allow at least a minimally decent life.

### **The Strength of Nations**

Suppose that on one of the many islands of Kiribati a very huge industrial plant emits greenhouse gases in massive quantities. And suppose further that American scientists analyzing the effects of these emissions come to the conclusion that if nothing is done to stop them, the whole West Coast of the United States will be submerged, provoking the migration of millions of people and economic damages likely to amount to thousands of billions of dollars. What would the United States do?<sup>29</sup>

They would probably begin by using the diplomatic way and ask the government of Kiribati to close the plant. If it should refuse, the government would probably be promised billions of dollars to compensate the financial losses from a closing. If it should refuse this many as well, maybe because it does not want to be 'bought', the United States government would exercise economic pressure upon Kiribati. But suppose that Kiribati remains insensitive to all promises and pressures. And suppose also that the UN Security Council can't agree on any resolution, Russia blocking any initiative by using its veto-right.<sup>30</sup> It is to be expected that in such a situation the US will launch several missiles and destroy the plant on Kiribati, with Kiribatians having nothing else but their eyes to weep.

Now reverse the scenario. Due to the pollution of industrial plants in the US, Kiribati is threatened in its territorial existence. What means of pressure does Kiribati have? Whereas the American government can protect its citizens by using military means, this is not the case for the government of Kiribati. And what holds true for military means also holds true for economic threats and promises. The government of Kiribati just has no efficient means to act on the US government. Kiribatians may appeal to public opinion in the US and worldwide, but it is hardly to be expected that this will change the politics of the US government *vis-à-vis* its national industry.

From the standpoint of international law, a military intervention by Kiribati against the United States would have a higher degree of justification than an intervention of the United States against Kiribati – in the hypothetical case of the massively polluting

<sup>29</sup> This scenario is hypothetical. It is intended to discuss, in the context of just war theories, the threat that human-induced climate change may pose to the existence of states.

<sup>30</sup> The introduction of the Security Council into discussion of this hypothetical event is here intended to draw attention to a distinction between two approaches to migration due to climate change. Whereas some conceptualize it as a global security problem, others conceptualize it as an individual rights problem. On this issue see, for example, Gregory White, *Climate Change and Migration* (Oxford: Oxford University Press, 2011).

plant on an island of Kiribati. Whereas the United States will only be deprived of a part of their territory by submersion, so as to allow the victims to move to other places within the United States, this is not the case for the inhabitants of Kiribati.<sup>31</sup> There is a huge and morally relevant difference between a mere violation of territorial integrity and a violation of a state's territorial existence. And as long as there will be a huge difference between the power of nuisance of Kiribati and the United States, there is hardly any hope that Kiribati will survive.<sup>32</sup>

## Conclusion

In this contribution, I have tried to show that climate change already produces and will continue to produce – even if we immediately stopped greenhouse gas emission – climate migrants. Some of these climate migrants will have the opportunity to resettle within their own countries, whereas others will have no other choice but to migrate to another country.

I showed that we have good reasons to accept the idea of a human right not to have to migrate. If this is the case, then this right should be protected. At the very least, every country has a *prima facie* duty of not allowing on its territory activities that, through their consequences, will force people to migrate another country. If such activities have already taken place in the past and if the consequences cannot be stopped, then the countries that authorized the activities have a duty to help those populations who are placed in front of the option of migration. Wherever possible, these populations should be presented with a set of measures that will allow them to remain where they used to live, and these measures should be financed by the countries which have most benefited from the aforementioned activities.

Where internal migration is possible, the government of the country should be financially and logistically helped to make a decent internal migration possible. The financial help should again come from the nations that bear the causal responsibility for the migration. If internal migration is not possible and where protective measures aren't possible either, external migration is the next option. And here again, the countries

<sup>31</sup> It is not only, as Singer notes (Peter Singer, 'One Atmosphere', in *Climate Ethics. Essential Readings*, edited by Stephen Gardiner, Simon Caney, Dale Jamieson, and Henry Shue (Oxford: Oxford University Press, 2010), pp. 181-199, at p. 183), richer nations that can more easily remove people from flooded areas. One must also consider the dimension and the topography. Luxembourg is a rich nation, but if 2586 square kilometers of its national territory were to be submerged, there would be no place left to resettle the country's population. But if 2586 square kilometers of Nigeria were to be submerged, the victims could be removed to some other place within Nigeria.

<sup>32</sup> These reflections show that ethics cannot be separated from politics. Byravan and Rajan have made an important contribution to discussion of this issue, and I agree with much of what they say (Sujatha Byravan and Chella Rajan Sudhir, 'The Ethical Implications of Sea-level Rise due to Climate Change', *Ethics and International Affairs* 24:3 (2011), pp. 239-260). Yet to my mind they do not insist enough on what we might call the 'ethical implications of power asymmetry'. If small and imperiled island states were militarily much more powerful than the states allowing activities dangerous for them, they would be in a position to influence these states to cease allowing those activities. I do not question Byravan's and Rajan's conclusions, but put these conclusions in a larger perspective.

bearing causal responsibility should provide help, either by providing land and all the necessary infrastructures for the migrants or by helping another country to do so if migration to that country is better for the migrants.

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