

# Global Governance of Climate Migrants: A Critical Evaluation of the Global Compacts

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## Introduction

Climate change will fundamentally affect the lives of millions of people who may be forced to leave their villages and cities to seek refuge in other areas over the course of this century. Even though most climate migrants will move within their own country,<sup>1</sup> many might also migrate across international borders. So far, several initiatives have been put in place to strengthen soft law mechanisms to protect those displaced due to natural disasters and climate change, such as the ‘Nansen Initiative on cross-border displacement in the context of disasters and the effects of climate change’<sup>2</sup> and the ‘Peninsula Principles on Climate Displacement within States’.<sup>3</sup>

In an earlier work, Biermann and Boas have argued that there is a need for strong global governance mechanisms in the medium to long term. They suggested in 2008,<sup>4</sup> and more extensively in 2010,<sup>5</sup> a Protocol on Recognition, Protection and Resettlement of Climate Refugees under the 1992 United Nations Framework Convention on Climate Change. In their earlier work, Biermann and Boas argued that such a protocol could build on political support from almost all countries as parties to the climate convention. It could draw, they argued, on widely agreed principles, such as common but differentiated responsibilities and the reimbursement of full incremental costs. It could support the protection of climate migrants by linking their protection with the overall climate regime, including progress in

<sup>1</sup> See, for example, the statistics by the Internal Displacement Monitoring Centre. According to this organisation, 39 per cent of new internal displacements in 2018 were triggered by conflict and 61 per cent by disasters (18.8 million new displacements), <[www.internal-displacement.org/global-report/grid2018/](http://www.internal-displacement.org/global-report/grid2018/)> accessed 27 May 2020.

<sup>2</sup> The Nansen Initiative on Disaster-Induced Cross-Border Displacement 2016. Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, <[www.nanseninitiative.org/](http://www.nanseninitiative.org/)> accessed 27 May 2020.

<sup>3</sup> Peninsula Principles on Climate Displacement within States 2013, <[displacementsolutions.org/peninsula-principles/](http://displacementsolutions.org/peninsula-principles/)> accessed 27 May 2020.

<sup>4</sup> Frank Biermann and Ingrid Boas, ‘Protecting Climate Refugees . The Case for a Global Protocol’ (2008) 50(6) *Environment* 8–16.

<sup>5</sup> Frank Biermann and Ingrid Boas, ‘Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees’ (2010) 10(1) *Global Environmental Politics* 60–88.

climate science that defines risks for people in certain regions. For developing countries, they argued, a protocol on climate migrants based on the principle of common but differentiated responsibilities and full incremental costs could become a major negotiation goal given the increasing pressure from the North to integrate advanced developing countries in a global mitigation regime.<sup>6</sup>

Since the publication of the article in 2010, a decade of policy developments has passed, and it has become clear that the terminology of ‘climate refugees’, originally used by Biermann and Boas, is unacceptable to governments. Originally, the debate on ‘climate refugees’ was meant to open discursive space for a strong legal protection mechanism for those people who must give up their land because of climate change, such as inhabitants in low-lying coastal areas. Such a strong legal protection mechanism could have evolved around an extension of the legal notion of refugee under the 1951 Convention on Refugees, either by expanding its scope or by setting up additional regimes for new types of refugees who were not foreseen in the 1950s. In a sense, the discourse on ‘climate refugees’ was intended to ‘modernise’ a refugee regime that was neatly tailored to the policy context of the wars and political horrors of the early twentieth century, and to give new rights for people forced into migration due to the climate crisis in the twenty-first century.

However, governments did not allow such expansions of their obligations, so far, and the political discourse maintained the narrow definition of refugee as stipulated in article 1A (2) of the 1951 Geneva Convention on Refugees, read in conjunction with the 1967 Protocol relating to the Status of Refugees and the related institutional arrangements under the United Nations High Commissioner for Refugees. For that reason, also we follow here the standard mainstream terminology that refers to ‘migrants’ or ‘displaced persons’ when speaking about those who might need to leave their homes because of climate change.

And even though the parties to the 1992 United Nations Framework Convention on Climate Change increasingly refer to climate-related migration in decisions and action programmes under their conferences of the parties, no strong legal mechanism to protect climate migrants is likely to emerge there in the near future. In short, the early proposal by Biermann and Boas for a Protocol on Recognition, Protection and Resettlement of Climate Refugees under the 1992 United Nations Framework Convention on Climate Change did not find support among governments. However, this and other proposals by academics and policy advocates have helped move the debate forward and at least start a conversation on how best to protect those who will have to migrate because of climate change.

Importantly, in 2018, the United Nations agreed on two new frameworks to deal with migrants and refugees: the Global Compact on Refugees and the Global

<sup>6</sup> Biermann and Boas (n 5) 77.

Compact for Safe, Orderly and Regular Migration. Both frameworks refer to climate change and its impacts. This chapter focuses on how much progress is made in the global governance of climate migrants with the adoption of the Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees. Building on the earlier work by Biermann and Boas, this chapter explores to what extent these two new instruments are aligned with the five principles suggested to serve as a basis for the regime of global governance of climate migrants: (1) planned relocation and resettlement; (2) resettlement instead of temporary asylum; (3) collective rights for local populations; (4) international assistance for domestic measures; and (5) international burden-sharing.

We discuss each principle and its reflection in either of the Global Compacts in the following. When we use the term climate migrants, we refer to people who have to leave their homes, immediately or in the near future, because of sudden or gradual alterations in their natural environment due to sea-level rise, extreme weather events, and drought and water scarcity.<sup>7</sup>

### The Scope of the Two Global Compacts

The Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration represent the political will and ambition of the international community to build consensus on principles and practices to improve international cooperation on human mobility. The Global Compact on Refugees focusses on enhancing more predictable and equitable responsibility-sharing regarding large-scale refugee movements and protracted displacement. It seeks to prevent displacement where possible, respond more effectively when people are displaced, and find solutions for those who need protection (including by supporting conditions for return, and expanding access to resettlement and other protection pathways).<sup>8</sup> The Global Compact for Safe, Orderly and Regular Migration builds on the consensus that ‘no State can address migration alone’ (Para. 7). It is designed to: (1) ‘support international cooperation on the governance of international migration’; (2) ‘provide a comprehensive menu of options for States from which they can select policy options to address some of the most pressing issues around international migration’; and (3) ‘give states the space and flexibility to pursue implementation based on their own migration realities and capacities’.<sup>9</sup> Both instruments are non-binding<sup>10</sup> and expressly recognise ‘the primary responsibility and sovereignty of

<sup>7</sup> Biermann and Boas (n 5) 67.

<sup>8</sup> Jane McAdam, ‘A New Era for International Protection?’ (2018) 30(4) *International Journal of Refugee Law* 571–574, 573.

<sup>9</sup> See <[www.iom.int/global-compact-migration](http://www.iom.int/global-compact-migration)> accessed 27 May 2020.

<sup>10</sup> Global Compact on Refugees, Para. 4 and Global Compact for Safe, Orderly and Regular Migration, Para. 7.

States'.<sup>11</sup> They do both contain concrete frameworks for action to which States can be held to account, at least politically, through new formal review mechanisms.<sup>12</sup>

This section now analyses whether and how these two instruments might contribute to the protection of climate migrants.

### *Global Compact on Refugees*

The objectives of the Global Compact on Refugees are to:

(i) ease pressures on host countries; (ii) enhance refugee self-reliance; (iii) expand access to third country solutions; and (iv) support conditions in countries of origin for return in safety and dignity. The global compact will seek to achieve these four interlinked and interdependent objectives through the mobilization of political will, a broadened base of support, and arrangements that facilitate more equitable, sustained and predictable contributions among States and other relevant stakeholders.<sup>13</sup>

The Global Compact on Refugees explicitly states that 'While not in themselves causes of refugee movements, climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements.'<sup>14</sup> This makes it clear that climate, environmental degradation, and natural disasters are excluded from protection under this instrument and the entire refugee protection regime. While some advocates and lawyers had attempted to support an extension of the definition of 'refugee' under the 1951 Convention on Refugees, or the negotiation of a separate, equally binding agreement on the protection of 'climate refugees',<sup>15</sup> governments agreed in the Global Compact on Refugees that they decline such initiatives. Climate change does not in itself create 'refugees' under this regime. It is merely an intermediate variable with the drivers of refugee movements that lead to situations where individuals can claim refugee status

<sup>11</sup> Global Compact on Refugees, Para. 33 and Global Compact for Safe, Orderly and Regular Migration, Para. 7 and 15.

<sup>12</sup> 'In the case of the Refugee Compact, there will be a Global Refugee Forum every four years (from 2019) at the Ministerial level, to announce concrete pledges and contributions towards the Refugee Compact's objectives and to consider opportunities for enhancing responsibility sharing (paras 17, 103). There will also be an interim high-level officials' meeting every two years (from 2021), and new indicators to measure success towards the achievement of the Refugee Compact's four objectives (paras 19, 102, 104). Progress on the implementation of the Migration Compact will be discussed in a four-yearly International Migration Review Forum (from 2022). A United Nations network on migration will work to ensure effective and coherent system-wide support to implementation, follow-up, and review (paras 45, 49).' In Jane McAdam, 'A New Era for International Protection?' (2018) 30(4) *International Journal of Refugee Law* 571–574, 573 and 574.

<sup>13</sup> Global Compact on Refugees, Para. 7. <sup>14</sup> Global Compact on Refugees, Para. 8.

<sup>15</sup> On extension, see for example, Albert Kraler, Marion Noack and Tatiana Cernei, *Climate Refugees: Legal and Policy Responses to Environmentally Induced Migration* (DGIPOL Policy Department C: Citizens' Rights and Constitutional Affairs Study 2011) 36, and 39–42. On a separate agreement, see, for example, Anderson Court Reporting, Addressing the Legal Gaps in Climate Change Migration, Displacement, and Resettlement: From Sinking Islands to Flooded Deltas, The Brookings Institution, <[www.brookings.edu/wp-content/uploads/2012/04/20120403\\_climate\\_migration\\_transcript\\_uncorrected.pdf](http://www.brookings.edu/wp-content/uploads/2012/04/20120403_climate_migration_transcript_uncorrected.pdf)> accessed 27 May 2020.

under the 1951 Geneva Convention on Refugees, for example because they are persecuted based on their beliefs or political opinion.

This does not imply, however, that climate change is not seen as relevant for the protection of refugees. Instead, the Global Compact on Refugees includes the topic of climate- or environmentally induced migration in its scope in several sections. For example, the Global Compact on Refugees calls upon the international community to support efforts to reduce disaster risks.<sup>16</sup> It further recognises in its ‘Programme of Action’ that ‘in certain situations, external forced displacement may result from sudden-onset natural disasters and environmental degradation. These situations present complex challenges for affected States, which may seek support from the international community to address them.’<sup>17</sup> The Global Compact on Refugees hence stays ambivalent in its scope. It excludes environmental degradation as a cause for refuge, but acknowledges the practical reality and incorporates measures to deal with root causes of (forced) migration, such as climate change. This ambivalence is important. As long as climate migrants – whose forced migration shows many similarities with the flight of ‘traditional’ refugees and is frequently part of mixed migration flows – are not considered refugees, they are considered voluntary migrants that face huge obstacles for access and stay in third countries. On the positive side, the Global Compact on Refugees at a minimum has contributed to the recognition of the practical reality of climate-forced migration. It also provides a basis for some support due to the qualification as a root cause of migration.<sup>18</sup>

In conclusion, the Global Compact on Refugees has not resolved the tension between the need to support environmentally forced migrants and their lack of legal protection, including access to third countries. The status of environmental and climate migrants remains muddled, and the Global Compact on Refugees does not provide more predictable and equitable sharing of responsibility. Hence, in the future, the protection obligations towards environmental- or climate-forced migrants need to be better clarified to establish clearer accountability and support mechanisms.

### ***The Global Compact for Safe, Orderly, and Regular Migration***

The Global Compact for Safe, Orderly and Regular Migration was the outcome of a special conference on 10–11 December 2018 in Marrakech, Morocco. Governments reaffirmed here the earlier New York Declaration for Refugees and

<sup>16</sup> The international community as a whole is also called upon to support efforts to alleviate poverty, reduce disaster risks, and provide development assistance to countries of origin, in line with the 2030 Agenda for Sustainable Development and other relevant frameworks. Global Compact on Refugees, Para. 9.

<sup>17</sup> Global Compact on Refugees, Para. 12. <sup>18</sup> Ibid, Para. 12.

Migrants and adopted, as what they called ‘an important contribution to enhanced cooperation on international migration in all its dimensions’, the Global Compact for Safe, Orderly and Regular Migration. The compact was endorsed by the United Nations General Assembly in its resolution on 19 December 2018.<sup>19</sup>

The Global Compact for Safe, Orderly and Regular Migration aims

to facilitate safe, orderly and regular migration, while reducing the incidence and negative impact of irregular migration through international cooperation and a combination of measures put forward in this Global Compact.<sup>20</sup>

It is still unclear how climate migration is positioned under this instrument.<sup>21</sup> Para. 39 (b) mentions here

geographical areas from which *irregular migration* systematically originates *owing to* consistent impacts of poverty, unemployment, *climate change and disasters*, inequality, corruption and poor governance, among other structural factors, through appropriate cooperation frameworks, innovative partnerships and the involvement of all relevant stakeholders, while upholding national ownership and shared responsibility. [emphasis added]

This paragraph thus reflects the practical reality that climate migrants are often low-skilled and vulnerable people unable to benefit from regular migration possibilities and are therefore often irregular migrants. Obviously, however, the Global Compact is not aimed at supporting irregular migration. At the same time, it does include climate migration in its scope.

First, it considers that it rests among others on several instruments that address the situation of climate migrants, notably the United Nations Framework Convention on Climate Change, the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, the Paris Agreement and the Sendai Framework for Disaster Risk Reduction 2015–2030.<sup>22</sup>

Second, the Global Compact states that it aims to

mitigate the adverse drivers and structural factors that hinder people from building and maintaining sustainable livelihoods in their *countries of origin*, and so compel them to seek a future elsewhere . . . while recognizing that societies are undergoing . . . *environmental changes at different scales that may have implications for and result from migration*.<sup>23</sup>

Third, the Global Compact for Safe, Orderly and Regular Migration devotes an entire section to ‘Natural disasters, the adverse effects of climate change, and environmental degradation’ in its second Objective, which aims to minimise

<sup>19</sup> United Nations General Assembly, Resolution A/RES/73/195, 11 January 2019.

<sup>20</sup> Global Compact for Safe, Orderly and Regular Migration, Para. 11.

<sup>21</sup> Contrary to the Global Compact on Refugees, it is still unclear how the concept of climate migration will be adopted into daily action, as the first International Migration Forum (where progress on the implementation of the Global Compact for Safe, Orderly and Regular Migration will be discussed) will take place only in 2022.

<sup>22</sup> Global Compact for Safe, Orderly and Regular Migration, Para. 2. <sup>23</sup> Ibid, Para. 12.

adverse drivers and structural factors that compel people to leave their country of origin. The signatories of the Global Compact for Safe, Orderly and Regular Migration commit themselves to

create conducive political, economic, social and *environmental conditions* for people to lead peaceful, productive and sustainable lives in their own country and to fulfil their personal aspirations, while ensuring that desperation and *deteriorating environments do not compel them to seek a livelihood elsewhere through irregular migration*.<sup>24</sup>

To realise this commitment, the Global Compact for Safe, Orderly and Regular Migration calls upon states and others to: (1) strengthen joint analysis and sharing of information to better map, understand, predict, and address migration movements;<sup>25</sup> (2) develop adaptation and resilience strategies;<sup>26</sup> (3) integrate displacement considerations into disaster preparedness strategies and promote cooperation;<sup>27</sup> (4) harmonise and develop approaches and mechanisms at the subregional and regional levels to address the vulnerabilities;<sup>28</sup> and (5) develop coherent approaches to address the challenges of migration movements.<sup>29</sup>

Finally, Para. 21 (h) calls for cooperation

to identify, develop and strengthen solutions for *migrants compelled to leave* their countries of origin owing to *slow-onset natural disasters, the adverse effects of climate change, and environmental degradation*, such as desertification, land degradation, drought and sea level rise.<sup>30</sup>

After this introduction about the scope of both Global Compacts, we now analyse in more detail how the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration could support global governance of climate migrants, including their recognition and protection.

### Planned Relocation and Anticipation

As Biermann and Boas have previously argued, due to the predictability and foreseeability of climate change impacts, the governance of climate migrants can thus ‘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 programmes – sometimes over many years and decades – for certain populations, as opposed to spontaneous flights.’ At the core of a regime on climate migrants they thus saw ‘not programmes on emergency response and disaster relief, but planned and voluntary resettlement over (much) longer periods of time’.<sup>31</sup> Their focus was hence on anticipatory governance that would not be reactive but proactively

<sup>24</sup> Ibid, Para. 18. <sup>25</sup> Ibid, Para. 18 (h). <sup>26</sup> Ibid, 18 (i). <sup>27</sup> Ibid, Para. 18 (j). <sup>28</sup> Ibid, Para. 18 (k).

<sup>29</sup> Ibid, Para. 18 (l). <sup>30</sup> Ibid, Para. 21 (h). <sup>31</sup> Biermann and Boas (n 5) 75.

support communities that would be affected by climate change over the course of the century.

Do the two Global Compacts reflect this need for, and possibility of, anticipatory long-term planning as regards climate-related migration movements?

### ***Global Compact on Refugees***

The Global Compact on Refugees emphasises indeed the need to facilitate access to durable solutions for refugee situations, including by planning for solutions from the outset of refugee situations.<sup>32</sup> The Global Compact on Refugees also mentions the need for

tangible mechanisms for burden- and responsibility-sharing and a demonstration of solidarity, allowing States to help share each other's burdens and reduce the impact of large refugee situations on host countries.<sup>33</sup>

This can be seen, in a way, as an element of long-term planning. Also, data collected under the Global Compact on Refugees may be instrumental in developing long-term evidence-based migration policies and related planning processes.<sup>34</sup> Climate migration data may also help build more support for resettlement options over longer periods of time. However, at its core, the refugee regime is still reactive. It is about responding to emerging crises and about protecting those who flee due to persecution in their home countries. The instrument does call for risk monitoring and preparedness measures that 'will take into account global, regional, subregional and national early warning and early action mechanisms, disaster risk-reduction efforts, and measures to enhance evidence-based forecasting of future movements and emergencies'.<sup>35</sup> This way of anticipating climate-induced migration is, however, far from the planned relocation that is of paramount importance for some especially threatened groups of climate migrants.

### ***Global Compact for Safe, Orderly, and Regular Migration***

As mentioned earlier, Para. 21 (h) of the Global Compact for Safe, Orderly and Regular Migration acknowledges that migrants are compelled to leave their countries of origin owing to climate change. Planning is part of the thrust of this Global Compact. For instance, the Global Compact calls for 'devising *planned relocation* and visa options, in cases where adaptation in or return to their country of origin is not possible' [emphasis added].<sup>36</sup>

<sup>32</sup> Global Compact on Refugees, Para. 7. <sup>33</sup> Ibid, Para. 90. <sup>34</sup> Ibid, Para. 17 (j).

<sup>35</sup> Global Compact for Safe, Orderly and Regular Migration, Para. 53. <sup>36</sup> Ibid, Para. 21 (h).



However, as access and stay of migrants is subject to state sovereignty, it depends upon the goodwill of the host countries whether access and stay is granted and under what conditions.<sup>37</sup> It is hence not the interest of climate migrants that stands central in the decision on their access and stay, but the interest of the host state. Despite the call in Para. 21 (h) of the Global Compact for Safe, Orderly and Regular Migration, it is unlikely that many states will commit themselves to the relocation and resettlement of large numbers of climate migrants. Resettlement of climate migrants can be particularly difficult for the inhabitants of island-developing states that have limited options for domestic migration. These people will not necessarily seek integration in third countries, but rather a place to keep their own culture and identity and right to self-determination.

The Global Compact for Safe, Orderly and Regular Migration also has the objective to ‘[e]nhance availability and flexibility of pathways for regular migration’.<sup>38</sup> Although these pathways may not necessarily result in planned relocation and resettlement, climate migrants may be able to benefit. These pathways may, for example, exist in labour migration schemes that allow individual members of a family to migrate and to supplement the family income through remittances. These remittances may allow the rest of the family to better support themselves in their place of origin that no longer sustains them or to rebuild their homes after disasters.

### **Resettlement Instead of Temporary Asylum**

In case of severe climate impacts, climate migrants cannot return to their homes. Following Biermann and Boas, ‘the underlying assumption in current political refugee governance that refugees may return once state-led persecution in their home countries has ended, needs to be replaced by an institutional design that conceives of climate migrants as permanent immigrants to the regions or countries that accept them.’<sup>39</sup>

### ***Global Compact on Refugees***

With respect to climate-induced migration, the Global Compact on Refugees is very much geared towards return, not resettlement. It acknowledges that those forcibly displaced by natural disasters need temporary protection and humanitarian stay. It calls for

<sup>37</sup> The Global Compact for Safe, Orderly and Regular Migration ‘reaffirms the sovereign right of States to determine their national migration policy and their prerogative to govern migration within their jurisdiction, in conformity with international law.’ Para. 14 (c).

<sup>38</sup> *Ibid.*, Para. 16, objective 5. <sup>39</sup> Biermann and Boas (n 5) 75.

guidance and support for measures to address other protection and humanitarian challenges. This could include measures to *assist those forcibly displaced by natural disasters*, taking into account national laws and regional instruments as applicable, as well as *practices such as temporary protection and humanitarian stay arrangements*, where appropriate. [emphasis added]<sup>40</sup>

One of the objectives is also to ‘support conditions in countries of origin for return in safety and dignity’.<sup>41</sup> This, again, may be contrary to the practical reality and the need for permanent resettlement.

The Global Compact on Refugees does contain a part on resettlement,<sup>42</sup> but this does not refer to climate-induced migrants. It recognises the importance of resettlement as ‘a tangible mechanism for burden- and responsibility-sharing and a demonstration of solidarity’ for refugees.<sup>43</sup> It also stresses the need for the progressive development of resettlement strategies. It is unclear from this section if those forced into migration by climate change can benefit from resettlement options. The instrument may provide a little opening for the inclusion of this group through Para. 95, where it discusses complementary pathways for admission that are to be included in the three-year strategy on resettlement. These ‘complementary pathways could include humanitarian visas and humanitarian corridors and other humanitarian admission programmes’,<sup>44</sup> which could be applied to climate migrants.

In practice, however, only a few countries offer resettlement options, and no country has explicitly offered resettlement options based on legal obligations as a consequence of climate change. Furthermore, before resettlement can be considered a workable strategy under the Global Compact on Refugees, it must first meet its own target to enhance resettlement as a strategic tool.<sup>45</sup>

If climate migrants are unable to return to their home state due to the permanent degradation of living conditions in that state, they might have to fall back upon the principle of non-refoulement to protect them from expulsion to areas that are unliveable. However, even though the Global Compact on Refugees specifically refers to the principle of non-refoulement in Para. 5, this principle needs to be developed before it provides protection against forced expulsion of climate migrants.

So far, no court has granted stay based solely on the principle of non-refoulement for cases of severe environmental degradation. The non-refoulement obligations under the 1951 Geneva Refugee Convention are limited to those that fall within the scope of the protection grounds of the Convention. It is agreed that climate migrants generally fall outside this scope.<sup>46</sup> Even the broader non-refoulement obligation

<sup>40</sup> Global Compact on Refugees, Para. 63. <sup>41</sup> Ibid, Para. 7 objective (iv). See also Ibid, para 3.1 in Para. 87.

<sup>42</sup> Ibid, Para 3.2 Resettlement. <sup>43</sup> Ibid, Para. 90. <sup>44</sup> Ibid, Para. 95 <sup>45</sup> Ibid, Sections 18 and 92.

<sup>46</sup> Michelle Morel, *The Right not to be Displaced in International Law* (Intersentia 2014) 101 and 102.

based on human rights law has not yet led to a prohibition to deport individuals to their home countries that are severely affected by climate change.<sup>47</sup>

However, recently the UN Human Rights Committee ruled on a complaint by an individual from Kiribati (one of the threatened small island states) that countries may not deport individuals who face climate change-induced conditions that violate the right to life.<sup>48</sup> In this case – despite the serious situation in Kiribati – the court concluded that there was no violation of the right to life, although the majority allowed for the possibility that conditions may deteriorate in the future in Kiribati, which would then engage non-refoulement.<sup>49</sup> Interestingly, in a dissenting opinion, Vasilka Sancin concluded that – due to clear indications that the situation is unsafe (in this case that the home State fails to implement policies for access to safe drinking water) – ‘it falls on the State Party, not the author, to demonstrate that the author and his family would in fact enjoy access to safe drinking (or even potable) water in Kiribati, to comply with its positive duty to protect life from risks arising from known natural hazards.’<sup>50</sup> In a second dissenting opinion, Duncan Laki Muhumuza argued that a human-sensitive approach to human rights issues leads to the conclusion that,

[t]he conditions of life laid out by the author – resulting from climate change in the Republic of Kiribati, are significantly grave, and pose a real, personal and reasonably foreseeable risk of a threat to his life under Article 6(1) of the Convention. Moreover, the Committee needs to handle critical and significantly irreversible issues of climate change, with the approach that seeks to uphold the sanctity of human life.<sup>51</sup>

Even if, in case of return to the low-lying small islands states, a violation of the right to life would be accepted in the future, the relevance of this ruling beyond low-lying small island states must be considered limited, as often internal flight alternatives will be available. For the low-lying small islands states, the non-refoulement system is also suboptimal, as it only provides for access on an individual basis and does not include possibilities for group access that is susceptible to the protection of the culture and self-determination of the inhabitants of the islands (see more in Part 5).

As it stands, the Global Compact on Refugees does not offer a radical departure from the classic refugee paradigm, which focusses on temporary stay and voluntary

<sup>47</sup> Also generally, not the entire country will be affected. Therefore, individuals could be deported to safe areas that are considered a flight-alternative.

<sup>48</sup> UN Human Rights Committee, ruling on a complaint by an individual, UN Doc CCPR/C/127/D/2728/2016, 7 January 2020, Para. 9.11.

<sup>49</sup> UN Human Rights Committee, ruling on a complaint by an individual, UN Doc CCPR/C/127/D/2728/2016, 7 January 2020, Para. 9.7–9.11. For further information see [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25482&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25482&LangID=E).

<sup>50</sup> UN Human Rights Committee, ruling on a complaint by an individual, UN Doc CCPR/C/127/D/2728/2016, 7 January 2020, Annex 1, Para. 5.

<sup>51</sup> *Ibid.*, Annex 2, Para. 1.

repatriation. It also does not aim for the development of an institutional response that facilitates permanent resettlement for climate migrants.

### ***Global Compact for Safe, Orderly, and Regular Migration***

The general focus of the Global Compact for Safe, Orderly and Regular Migration for irregular migration is safe and dignified return; the special need of climate migrants for permanent resettlement is not part of this Global Compact either. One opening for resettlement might be the general call for developing

coherent approaches to address the challenges of migration movements . . . including by taking into consideration relevant recommendations from State-led consultative processes, such as the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, and the Platform on Disaster Displacement.<sup>52</sup>

For example, the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change contains the following text:

Effective practices States could consider with regard to finding lasting solutions for cross-border disaster-displaced persons include the following: . . . Alternatively, allowing cross-border disaster-displaced persons to apply for renewed or permanent residency, or *resettlement to a third country* when conditions causing the displacement persist for an extended period of time or become permanent. [emphasis added]<sup>53</sup>

The Global Compact for Safe, Orderly and Regular Migration, however, does not develop an institutional design that conceives of climate migrants as permanent immigrants to the regions or countries that accept them. To deal with climate migration in a safe, regular, and orderly way, transparent resettlement options should be developed both domestically and, where needed, internationally. However, this is unlikely to happen soon.

### **Collective Rights for Local Populations**

Another dimension of climate-related migration is the need of individuals for collective protection. For small island developing states, rising sea levels may be a threat to cultural survival or the right to self-determination when whole states are submerged. Also indigenous peoples may face threats to the right to development when they are forced out of their territories due to climate measures. But even individual migration can only be properly assessed in the context of group behaviour. For example, an area may no longer sustain its inhabitants, but it is able to sustain a limited number. It is hard to determine which people in this group are

<sup>52</sup> Global Compact for Safe, Orderly and Regular Migration, Para. 18 (l).

<sup>53</sup> Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, III.A.71, 30.

forced into migration. In general, climate migrants are affected as a group, whether a village, a city, a region, a province, or – as in the case of small island states – entire nations.<sup>54</sup> Collective rights are therefore of great importance, but current refugee law is based on individual assessment of the causes of migration, and the system is unable to take into account the situation of the affected group.

### ***Global Compact on Refugees***

The Global Compact on Refugees does not entail any provisions for group protection, apart from the context of large refugee movements, where ‘group-based protection (such as prima facie recognition of refugee status) can assist in addressing international protection needs, where considered appropriate by the State.’<sup>55</sup> This group-based protection under the Global Compact on Refugees is not meant to deal with the protection of groups per se, but is a practical solution when national status determination systems are overwhelmed due to high influx and are temporarily unable to deal with all individual asylum claims. Therefore, the Global Compact on Refugees lacks any possibilities for the collective protection and collective titles of groups of people, such as the populations of coastal villages or islands.

### ***Global Compact for Safe, Orderly, and Regular Migration***

The Global Compact for Safe, Orderly and Regular Migration is also geared towards the traditional individual determination of migration status. One could argue that formulations such as developing adaptation and resilience strategies, ‘taking into account the potential implications for migration’,<sup>56</sup> should entail a group-based protection framework, because climate change often affects populations of entire villages, cities, regions, provinces, or small nations. And yet, the Global Compact for Safe, Orderly and Regular Migration does not mention such a group-based protection scheme or title.

### **International Assistance for Domestic Measures**

The protection needs of climate migrants differ from the traditional refugee concept also in the role of the government of the person who is migrating. As argued by Biermann and Boas, climate migrants ‘enjoy in principle the protection of their own countries, and in many cases, serious climate change impacts will affect only parts

<sup>54</sup> Biermann and Boas (n 5) 75 and 76. <sup>55</sup> Global Compact on Refugees, Para. 61.

<sup>56</sup> Global Compact for Safe, Orderly and Regular Migration, Para. 18 (i).

of a country.<sup>57</sup> The protection of climate migrants should therefore focus on their protection within their home state. The governance challenge of protecting and resettling climate migrants is thus essentially about *international* assistance and funding for the *domestic* support and resettlement programmes of affected countries that have requested such support.<sup>58</sup>

### ***Global Compact on Refugees***

At first sight, it seems illogical to seek assistance under the Global Compact on Refugees for domestic measures to protect those internally displaced due to climate change, as the refugee definition requires cross-border movement. The instrument does, however, support early efforts to address root causes.<sup>59</sup> Para. 32 discusses funding and effective and efficient use of resources. It also calls for making resources available to countries that are faced with large-scale refugee situations relative to their capacity. Support includes humanitarian assistance and development cooperation. However, no reference is made to disasters, climate change, or environmental degradation. It thus stays unclear if funding would be provided to prevent or manage environmental degradation for large refugee situations.

It is noteworthy that Para. 53 of the Global Compact on Refugees, which opens up the possibility for the support of governments for forced internal displacement, explicitly includes considerations on disaster risk reduction and specifically refers to forced international migration:

Under national leadership, capacity development for relevant authorities will be supported, enabling them to put in place risk monitoring and preparedness measures in advance, and to draw on support from a wide range of relevant stakeholders, including the private sector as appropriate. Preparedness measures will take into account global, regional, subregional and *national early warning and early action mechanisms, disaster risk reduction efforts*, and measures to enhance evidence-based forecasting of future movements and emergencies. They could, where appropriate, also consider *forced internal displacement* that may result from a particular situation. [emphasis added]

That Para. 53 of the Global Compact on Refugees can be instrumental in the protection of climate migrants was demonstrated in the submissions of good practices for the first Global Refugee Forum,<sup>60</sup> which took place in Geneva on 17–18 December 2019.<sup>61</sup> For example, the ‘Cox’s Bazar project’ sought improved disaster preparedness for refugees and host communities in Bangladesh. It also

<sup>57</sup> Biermann and Boas (n 5) 76. <sup>58</sup> Ibid 76. <sup>59</sup> Global Compact on Refugees, Para. 8.

<sup>60</sup> Guided by the Global Compact on Refugees, the Global Refugee Forum is an opportunity to translate the principle of international responsibility-sharing into concrete action.

<sup>61</sup> Another Good Practice was shared by members of the Foreign Affairs Working Group, Disaster and Emergency Management Authority (AFAD) from Turkey, but this project did not specifically focus on those displaced by natural disasters. See <[www.globalcompactrefugees.org/article/construction-coordination-and-management-temporary-accommodation-centres](https://www.globalcompactrefugees.org/article/construction-coordination-and-management-temporary-accommodation-centres)> accessed 27 May 2020.

aimed at strengthening capacities of existing coordination mechanisms and institutional structures for disaster management. The project states: ‘This good practice focuses on one of the key objectives of the Global Compact on Refugees – enhancing refugee self-reliance, specifically related to natural hazard events and strengthening capacities of refugees to take appropriate pre-emptive actions to reduce loss and damage.’<sup>62</sup> The results of this **Good Practice are**

(1) Rohingya refugees have increased knowledge and capacities to prepare and response to disasters; (2) refugees trained and appointed as Cyclone Preparedness Programme Volunteers which increases their access to information that enhances their protection. It has increased refugees’ confidence and dignity through meaningful inclusion as part of the wider Cyclone Preparedness Programme; (3) Bangladesh National Early Warning System and related systems has been extended across all 34 refugee camps covering the entire refugee population in the Cox’s Bazar district; and (4) both refugee populations and host communities have increased awareness of risks and impacts of disasters through their participation in the wider emergency response mechanism.<sup>63</sup>

This inclusion of climate action under the Global Compact on Refugees may pave the way for future practice to include climate considerations and may be built upon for support of climate migrants within their own country.

In general, the Global Compact on Refugees reflects a political will to achieve ‘more equitable and predictable burden- and responsibility-sharing’. It calls to ‘support the search for solutions, including, where appropriate, through assistance to countries of origin.’<sup>64</sup> Although there is no explicit reference to climate migrants, it may be argued that if this paragraph would apply to climate migrants, it may support the argument that the international community should assist affected home states in taking measures to protect their populations against forced displacement due to climate change. Possibly, states will refer more often to the support of such measures in their Global Refugee Forum.

The Global Compact on Refugees also acknowledges the need for international cooperation and the translation into concrete and practical action.<sup>65</sup> It stresses the relevance of early efforts to address drivers and triggers for averting and resolving large refugee situations<sup>66</sup> and calls upon states and relevant stakeholders ‘to tackle the root causes of large refugee situations and it specifically calls upon the international community to support efforts to reduce disaster risk and provide development assistance’.<sup>67</sup> As promising as this may sound, the instrument fails to identify how this support should be translated into concrete and practical action. It is unclear whether these efforts cover the support of domestic measures to prevent or mitigate

<sup>62</sup> <[www.globalcompactrefugees.org/article/expanding-early-warning-refugee-settlements-coxs-bazar](http://www.globalcompactrefugees.org/article/expanding-early-warning-refugee-settlements-coxs-bazar)> accessed 27 May 2020.

<sup>63</sup> <[www.globalcompactrefugees.org/article/expanding-early-warning-refugee-settlements-coxs-bazar](http://www.globalcompactrefugees.org/article/expanding-early-warning-refugee-settlements-coxs-bazar)> accessed 27 May 2020.

<sup>64</sup> Global Compact on Refugees, Para. 15. <sup>65</sup> Ibid, Para. 2. <sup>66</sup> Ibid, Para. 8. <sup>67</sup> Ibid, Para. 9.

the negative consequences of climate change that may force people into migration, or the support for adaptation to these negative consequences. In particular, for slow-onset disasters, there is a time frame that can help to adopt adaptation or mitigation measures in order to prevent forced migration, or to support migration as a form of adaptation. International assistance to home governments of heavily affected developing countries is not only necessary to deal with climate change but is justified due to the responsibility of industrialised countries for climate change. The principle of common but differentiated responsibilities and respective capacities under the climate change regime may help shape the contours of such a system in the migration framework.

### ***Global Compact for Safe, Orderly, and Regular Migration***

As for international support, the Global Compact for Safe, Orderly and Regular Migration calls for the development of ‘adaptation and resilience strategies taking into account the potential implications for migration, while recognising that *adaptation in the country of origin is a priority*’.<sup>68</sup> As mentioned earlier, the signatories of the Global Compact for Safe, Orderly and Regular Migration also commit themselves to

create conducive political, economic, social and *environmental conditions* for people to lead peaceful, productive and sustainable lives in their own country and to fulfil their personal aspirations, while ensuring that desperation and *deteriorating environments do not compel them to seek a livelihood elsewhere through irregular migration*.<sup>69</sup>

The Global Compact for Safe, Orderly and Regular Migration embraces the concept of supporting home states to prevent migration. For example, it has a large section on minimising the adverse drivers and structural factors that compel people to leave their country of origin, seeking to

[e]stablish or strengthen mechanisms to *monitor and anticipate the development of risks and threats that might trigger or affect migration movements*, strengthen early warning systems, develop emergency procedures and toolkits, launch emergency operations and support post-emergency recovery, in close cooperation with and in support of other States, relevant national and local authorities, national human rights institutions and civil society.<sup>70</sup>

It also explicitly includes national disasters in its call upon national states to take account of migrants in national emergency preparedness and response.<sup>71</sup> Further, it calls for the development of

adaptation and resilience strategies to sudden-onset and slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, such as desertification,

<sup>68</sup> Global Compact for Safe, Orderly and Regular Migration, Para. 18 (i). <sup>69</sup> Ibid, Para. 18.

<sup>70</sup> Ibid, Para. 18 (c). <sup>71</sup> Ibid, Para. 18 (g).



land degradation, drought and sea level rise, taking into account the potential implications for migration, while recognizing that *adaptation in the country of origin* is a priority.<sup>72</sup>

Finally, it calls for the integration of

displacement considerations into disaster preparedness strategies and promote cooperation with neighbouring and other relevant countries to prepare for early warning, contingency planning, stockpiling, coordination mechanisms, evacuation planning, reception and assistance arrangements, and public information.<sup>73</sup>

From this paragraph, it is clear that the Global Compact for Safe, Orderly and Regular Migration includes the home state of climate migrants as an important partner to deal with climate migration. International support for the home state of climate migrants may therefore prevent migration altogether or help the migration to take place in a safe and orderly way.

### **International Burden-Sharing**

A final difference between traditional refugees and climate migrants is that climate change is a global problem in causation and consequences, and that the industrialised countries bear most of the moral responsibility for climate change victims.<sup>74</sup> This moral and possibly legal responsibility should be translated into international burden-sharing for the costs of the negative consequences. This burden-sharing could include, for instance,

the ‘principle of common but differentiated responsibilities’ and respective capabilities (which suggests that richer countries have to bear higher costs for the protection of climate refugees); the principle of reimbursement of the full incremental costs of affected countries incurred through the resettlement of climate refugees; and the principle of double-weighted decision-making procedures, which would give both developing and industrialized countries equal clout in a new institution on climate refugees.<sup>75</sup>

### ***Global Compact on Refugees***

In general, international burden-sharing and cooperation are central to the Global Compact on Refugees.<sup>76</sup> Due to the ambiguity of the instrument on climate migrants, however, it is less clear whether – and in fact unlikely that – the references to international burden-sharing under the Global Compact apply to those forcibly displaced due to climate change. Also, the burden-sharing and international cooperation duties are non-committal as they are based merely on vague notions of

<sup>72</sup> Ibid, Para. 18 (i). <sup>73</sup> Ibid, Para. 18 (j). <sup>74</sup> Biermann and Boas (n 5) 76. <sup>75</sup> Ibid 75.

<sup>76</sup> ‘[T]here is an urgent need for more equitable sharing of the burden and responsibility for hosting and supporting the world’s refugees, while taking account of existing contributions and the differing capacities and resources among States.’ Global Compact on Refugees, Para. 1.

solidarity. The instrument ‘represents the political will and ambition of the international community as a whole for strengthened cooperation and solidarity with refugees and affected host countries.’<sup>77</sup> More specifically, Para. 53 calls for the support of capacity development for relevant authorities, but does not translate this into a specific responsibility.

One new mechanism under the Global Compact on Refugees is a Support Platform to enable context-specific support, including ‘mobilizing financial, material and technical assistance, as well as resettlement and complementary pathways for admission to third countries’.<sup>78</sup> Home states can solicit support in situations of large-scale or complex refugee situations where the response capacity of a state is overwhelmed or is expected to be so soon.<sup>79</sup> It can be argued that complex refugee situations that include those displaced by climate change may activate this support if solicited by the home state. So far, however, no support on this ground has been asked for, and it still is to be seen how such a request would be answered.

On a positive note, a Good Practice labelled as ‘burden and responsibility-sharing’ was submitted to the first Global Refugee Forum in Geneva on 17–18 December 2019. This grant and support mechanism is financed by the Norwegian Ministry of Foreign Affairs, administered by Innovation Norway and supports the Humanitarian Innovation Programme.<sup>80</sup> Under this programme, a project for a self-sustaining climate positive refugee camp<sup>81</sup> and other projects such as self-sustaining waste to energy,<sup>82</sup> household energy kits,<sup>83</sup> and reforestation<sup>84</sup> were supported. These examples show that, although only voluntarily, at least some states are now willing to share burdens for the negative effects of climate change. The fact that these projects were considered Good Practices under the Global Compact on Refugees further shows the relevance of these projects in the refugee context.

<sup>77</sup> Global Compact on Refugees, Para. 4. <sup>78</sup> Global Compact on Refugees, Para. 23.

<sup>79</sup> Global Compact on Refugees, Para. 24.

<sup>80</sup> <[www.globalcompactrefugees.org/article/innovation-can-make-humanitarian-assistance-more-efficient](http://www.globalcompactrefugees.org/article/innovation-can-make-humanitarian-assistance-more-efficient)> accessed 27 May 2020.

<sup>81</sup> The aim is to define and test a model for a self-sustaining climate positive refugee camp that produces sustainable food and clean energy for 100,000 refugees. CAMP+ presents a holistic, integrated, and circular approach by including natural resource management planning, livelihood training, waste management, sustainable energy (for lighting, charging, etc.), sustainable cooking fuel, and climate-smart agriculture and food production systems. See <[www.innovasjon Norge.no/no/subsites/hipnorway/innovation-projects2/the-worlds-first-climate-positive-refugee-camp/](http://www.innovasjon Norge.no/no/subsites/hipnorway/innovation-projects2/the-worlds-first-climate-positive-refugee-camp/)> accessed 27 May 2020.

<sup>82</sup> <[www.innovasjon Norge.no/no/subsites/hipnorway/innovation-projects2/scaling-nrc-waste-to-fuel/](http://www.innovasjon Norge.no/no/subsites/hipnorway/innovation-projects2/scaling-nrc-waste-to-fuel/)> accessed 27 May 2020.

<sup>83</sup> <[www.innovasjon Norge.no/no/subsites/hipnorway/innovation-projects2/innovative-household-energy-kits/](http://www.innovasjon Norge.no/no/subsites/hipnorway/innovation-projects2/innovative-household-energy-kits/)> accessed 27 May 2020.

<sup>84</sup> <[www.innovasjon Norge.no/no/subsites/hipnorway/innovation-projects2/reforestation-through-cutting-edge-techniques/](http://www.innovasjon Norge.no/no/subsites/hipnorway/innovation-projects2/reforestation-through-cutting-edge-techniques/)> accessed 27 May 2020.

### ***Global Compact for Safe, Orderly, and Regular Migration***

As the home states most heavily affected by climate change are generally developing states, a crucial element of managing climate migration is international burden-sharing. Irrespective of questions of responsibility for climate change and compensation, without the support of the international community many affected countries will be unable to take the necessary steps to effectively protect climate migrants.<sup>85</sup>

One of the aims of the Global Compact for Safe, Orderly and Regular Migration is here to strengthen international cooperation and global partnerships for safe, orderly, and regular migration.<sup>86</sup> The instrument calls for enhanced international cooperation in the spirit of solidarity. Governments seemingly also had climate migrants in mind, as the section further states:

We further commit to take joint action, in addressing the challenges faced by each country, to implement this Global Compact, underscoring the specific challenges faced in particular by African countries, least developed countries, landlocked developing countries, small island developing States and middle-income countries.<sup>87</sup>

It also refers to the interdependence between migration and sustainable development.<sup>88</sup> These general obligations have also been converted in more concrete actions: (a) the provision of financial and technical assistance; (b) increased international and regional cooperation to accelerate the implementation of the 2030 Agenda for Sustainable Development; (c) the involvement and support of local authorities in the identification of needs and opportunities for international cooperation for the effective implementation of the Global Compact and integrate their perspectives and priorities into development strategies, programmes, and planning on migration.<sup>89</sup>

Although the actions to be taken are identified, there are no concrete obligations for particular states to take these actions. Even if the identified actions were enough to protect climate migrants, without the inclusion of concrete obligations, it is unlikely that the international community will provide the support required. These general obligations of the Global Compact for Safe, Orderly and Regular Migration form a stark contrast with the climate regime which embraced the principle of common but differentiated responsibilities and respective capacities

<sup>85</sup> This is also reflected in Global Compact for Safe, Orderly and Regular Migration, Para. 42: We will implement the Global Compact through enhanced bilateral, regional, and multilateral cooperation and a revitalized global partnership in a spirit of solidarity. We will continue building on existing mechanisms, platforms, and frameworks to address migration in all its dimensions. Recognizing the centrality of international cooperation for the effective fulfilment of the objectives and commitments, we will strive to reinforce our engagement in North–South, South–South and triangular cooperation and assistance. Our cooperation efforts in this regard will be aligned with the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda.

<sup>86</sup> Global Compact for Safe, Orderly and Regular Migration, Objective 23. <sup>87</sup> Ibid, Para. 39.

<sup>88</sup> Ibid, Para. 39. <sup>89</sup> Ibid, Para. 39.

at its core. The Global Compact for Safe, Orderly and Regular Migration promotes the implementation of the Paris Climate Agreement<sup>90</sup> but does not adopt concrete state obligations itself. In Para. 43, a capacity-building mechanism within the United Nations is proposed. This mechanism is built upon ‘existing initiatives that support efforts of member states to implement the Global Compact’. These contributions are on a voluntary basis. In sum, the Global Compact for Safe, Orderly and Regular Migration did not establish an international burden-sharing instrument that is likely to address the needs of climate migrants.

### Conclusion and Way Forward

So far, both the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration have opened up new opportunities to address climate change, and hence climate migration, in global migration governance. The Global Compact on Refugees and also the Global Compact for Safe, Orderly and Regular Migration are cautious steps forward in the recognition of the protection needs of climate migrants and the responsibilities of the international community. Both instruments reflect an understanding of the nexus between migration and environmental degradation and understand migration as an adaptation strategy or as a response strategy. Under both instruments, climate migration is acknowledged as a factor that contributes to forced migration. Even though the Global Compact on Refugees is unclear on the status of climate migrants, at a minimum it acknowledges its importance. The Global Compact for Safe, Orderly and Regular Migration is much more explicit on the concept of climate migration. It explicitly recognises that environmental changes ‘may have implications for and result from migration’<sup>91</sup> and has as one of its objectives to ‘[m]inimize adverse drivers and structural factors that compel people to leave their country of origin’<sup>92</sup>.

At the same time, however, there are also missed opportunities for the protection of climate migrants. Both the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration are unclear on the precise legal and institutional status of the climate migrant. Under the Global Compact on Refugees, climate change is understood to increasingly interact with the drivers of refugee movements but is unclear to what extent climate change needs to be addressed by the international community under the Compact. The Global Compact for Safe, Orderly and Regular Migration, in its turn, concludes that climate migration is often irregular; but it fails to translate the forced character of this type of migration into any rights of access or stay in third countries. Instead, it focusses on supporting domestic measures. As this would only address parts of climate

<sup>90</sup> Ibid, Para. 18 (a). <sup>91</sup> Ibid, Para. 12. <sup>92</sup> Ibid, Para. 16, Objective 2.

migration, those in need to cross an international border still lack regular migration pathways.

Due to this ambiguity in both the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration, questions on access and stay in third countries are still unanswered. This complicates the use of planned relocation and resettlement as a managing tool for climate migration. If there are no clear obligations, states are unlikely to adopt these measures. Before planned relocation and resettlement can be considered a workable governance strategy under the Global Compact on Refugees, it must first meet its own target to enhance resettlement as a strategic tool. Planned relocation is also a viable strategy for those who cannot return, and yet, access and stay of migrants are still subject to state sovereignty and depend upon the goodwill of the host state. From a management perspective, the focus of the instrument on temporary stay does not support planned relocation and resettlement to new home states. In short, the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration do not radically depart from the classic refugee and migration paradigm (which focusses on temporary stay and voluntary repatriation) and do not support an institutional response that facilitates permanent resettlement for climate migrants.

Another element that is insufficiently incorporated is the collective character of climate migration. It is often a group of people together that depends on migration options. Both instruments focus on the protection of individuals, as common under the traditional refugee and migration paradigms, and do not foresee protection regimes for communities affected by climate change.

Finally, a core element of the protection of future climate migrants must be the support for domestic measures combined with international burden-sharing. The Global Compact on Refugees calls for support of risk monitoring and preparedness measures (such as early warning and action mechanisms and disaster risk-reduction efforts) and for the assistance of affected home states. The international support for these types of measures, however, is based on voluntary contributions. The Global Compact for Safe, Orderly and Regular Migration seeks to monitor and anticipate the development of risks and threats that might trigger or affect migration movements, for example through strengthening early warning systems and developing emergency procedures. It seeks 'close cooperation with and in support of other States'. However, it does not establish any concrete obligations for states to do so. Although both Global Compacts do address the shared responsibility of the international community to minimise the adverse drivers and structural factors that compel people to migrate, it is unclear what type of measures could be included under this shared responsibility.

Overall, both Global Compacts seem to be only a first step in the international recognition of climate migration and the protection of climate migrants. Both instruments support measures to protect climate migrants, but they do not adopt any binding or concrete obligations for states. As long as climate migrants are not clearly defined and included in the instruments, climate migrants are likely to lose the ‘competition’ with other types of migration that are better covered under these instruments and that more easily fit the traditional concepts of migration.

As a first step for better recognition and protection of climate migrants, data that will be collected under the Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees must include also data on climate-related migration, even though multi-causality will always be present. It is obvious that climate migrants have special protection needs that are not always similar to those of other migrants. More data would help to make their needs more tangible. Also, pledges of states under the Global Compact for Safe, Orderly and Regular Migration should explicitly address climate migrants. Good Practices have shown that it is possible to link concrete actions on the protection of climate migrants to the Global Compact on Refugees. Finally, burden-sharing on a non-voluntary basis should form the basis of any future climate migration instrument. Without support of the international community, the measures listed under the two global compacts will often be unachievable. Even in the climate change context, where the concept of common but differentiated responsibilities and respective capacities has been embraced, it is hard to get funding for the protection of climate migrants.

In short, both the Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees do not fully recognise climate-related migration, and they do not offer enough instruments, mechanisms, and institutional support for future climate migrants. Better protection for climate migrants is hence still urgently needed.

